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(1) Number of Pages.....12
(2) Date of repair.....3-7-66
(3) Initials of the Referencer.....*Cher*

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Rw. DEPARTMENT

G.O. No.	332	Press
B.P. No.		Mis.
Dated	11-3-	1874 196

Not to be folded or roughly handled

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1

Read the following:—

No. 2,581.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 12th December 1873.

Read the following letters:—

From J. HUNTER-BLAIR, Esq., Collector of Madras, to J. GROSE, Esq.,
Secretary to the Board of Revenue, dated 3rd December 1873, No. 260.

I HAVE the honour, with reference to Section 9 of Act. XIX. of 1852, to request the sanction of the Board for the withdrawal of the license of a Toddy Shop No. 114.

2. The holder of this Shop, Veerasawmi Gramany, was found to have drawn toddy from eighty-three unstamped trees in certain gardens, and for this offence he was called upon to pay the penalty prescribed by Clause 7 of the license, viz., five times the daily dowe of the shop for each unstamped tree, which, in this case, amounted to Rupees 1,348-12-0. He has neither paid this penalty, nor would he appear before the Deputy-Collector when ordered to do so. He admitted the unauthorized use of the trees before the penalty was imposed.

3. Although the shopkeeper has undoubtedly transgressed the most important condition of the license and to a formidable extent, and although for this breach the Collector is competent under Section 9 of the Act to withdraw the license himself, still the terms of Clause 7 of the license are such that the Collector cannot withdraw it for the first offence, though he can do so for much less serious offences against other clauses.

4. The license contains a Clause (No. 17) at the end that breach of any of its conditions will entail forfeiture of license, but I doubt whether I can act upon this general clause when a special penalty is provided for breach of another clause.

5. The present offence though the first on record in the case of this shopkeeper, has no doubt been frequently committed by him previously, and the eighty-three trees discovered are only part of a much larger number he has been actually drawing toddy from. I am credibly informed that in two very large gardens belonging to the shopkeeper himself and a friend, which were inspected after those in which the above number were found, the flowers of certain unstamped trees were found cut off and some of the cut flowers were seen in the gardens.

6. The fraud is clearly one of very long standing, and has deprived the Government of no small amount of revenue. It requires the severest measures, and I trust that the Board will deem fit to direct the immediate cancelment of the license under the authority undoubtedly vested in them by Section 9.

7. I beg at the same time that the Board will authorize the terms of the Toddy Shop license being revised so as to admit of the Collector withdrawing it for the first breach of any of its conditions. This is only what the law itself authorizes the Collector to do by Section 9.

8. With regard to the penalty prescribed by Clause 7, viz., five days' dower of the shop for each tree used unstamped, I beg to be informed whether I can collect it by distraint, under Section 13 of the Act. The items which this section refers to are arrears of *tax duty* or *fee* and I am doubtful whether the penalty in question can be held to be a *tax* or *duty* within the meaning of this section. Clause 9 of the license also provides the same penalty for other offences, viz., carrying liquor without a pass or for carrying liquor to a shop different from that to which the garden belongs, and makes this charge leviable by distraint though such authority is not to be found in Clause 7. I think that the penalty under either clause partakes more of the nature of a fine than a prohibitory duty.

9. Should the Board decide that the penalty cannot be levied by distraint, some means must be found to enable the Collector to realize it. This may probably be done by designating this charge on penalty *tax duty* instead of a fine like penalty godown rent in the Custom House. There is no use retaining on the license a provision which cannot be enforced. Similar provisions exist also in the arrack license, *Vide* Clauses 3 and 8.

10. It is also worthy of note that if in the present case the shopkeeper be prosecuted, Section 14 and 233 before the Magistrate, the maximum fine, the latter can inflict is only Rupees 50, or one-twenty-seventh of the amount, Rs. 1,348-12-0 chargeable according to Clause 7 of the license; and if this fine be not paid, the Magistrate cannot levy it by distress, but can only imprison the defaulter for six months.

11. The present form of toddy license was approved by the Board, in their Proceedings, No. 2,693 of 6th May 1863, and a copy of it is forwarded for reference.

ENCLOSURE No. 1.—Form of License.

From the same Officer, dated Madras, 10th December 1873, No. 267.

I HAVE the honour to submit the following report on Board's petitions, Nos. 2,853 and 2,854 of 1873:—

* In No. 2,853, herewith returned. 2. Petitioner's case* has been already submitted by me for the orders of the Board, in letter No. 260 of 3rd instant, with a full explanation of the circumstances which led to the fine complained of.

3. On the 28th ultimo, the Deputy-Collector personally explained to me that the petitioner would neither pay the penalty under Clause 7 of the license, nor would he appear before him in obedience to requisitions issued under Clause 13 of the same. Under these circumstances, I thought it proper to cancel the license for breach of its provisions, under the authority vested in the Collector by Section 9 of the Act (XIX. of 1852) and authorized him to do so.

4. On second thoughts, I considered it advisable to obtain the sanction of the Board to the cancelment of the license, as the chief offence of which the petitioner was guilty was the use of the unstamped trees for which Clause 7 of the license only provided a fine for the first offence, not withdrawal of the license. I

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accordingly wrote the above letter to the Board, and at the same time asked the Deputy-Collector to postpone the sale, pending the Board's orders.

5. In my letter above referred to, I reported to the Board the great extent to which Government has been defrauded of revenue by the malpractices of the petitioner, and I believe that the Board will agree with me that the interests of Government revenue require the immediate withdrawal of the license.

6. Petitioner's statements in paragraphs 2 and 3 that in September last the Deputy-Collector fined him for the same offence Rupees 100 and cancelled the license, and that he restored the license on the 4th November, are not referred to in the report* made to me by the Deputy-Collector on the subject. These state-

* 10th November 1873, No. 867.

ments were made in an appeal presented by the petitioner on the 3rd instant, and I referred it two days ago for the Deputy-Collector's report.

In the above report, the Deputy-Collector simply recommended the levy of the full penalty prescribed for the offence in Clause 7 of the license, viz., Rupees 1,348-12-0, and I approved his recommendation.

7. I beg that the Board will be good enough to pass early orders on my letter of 3rd instant, in order that I may make arrangements for giving the license to others.

8. From information I have received, I believe that Toddy shops are making enormous profits and are capable of paying much larger dowles than are now prescribed, and in order to try what the present shop was likely to fetch by competition, I had it advertized for sale. I will report to the Board the results of the sale. I also purpose reporting shortly on the present system of assessing the Government alterations.

ENCLOSURE No. 1.—Petition.

BEFORE the Board can pass orders on this case they must have further information before them.

2. It is clear from the Collector's second letter that his first letter was written with an imperfect knowledge of the case.

3. The petitioner says he was fined Rupees 100 for drawing toddy from unstamped trees last September and his license withdrawn. He appealed to the Collector on the 31st October (if his statements are true) so that these circumstances must have been known in Collector's office when his letter of the 3rd instant was written. Petitioner says his license was returned on the 4th November but on the 15th he was fined Rupees 1,348-12-0 for the same offence as before, and on the 29th his license was again withdrawn.

4. * On the 3rd December, Mr. Blair doubting (on re-consideration) his power to withdraw the license for a first offence of this nature, reported the case to the Board but said nothing about the September fine or the two withdrawals of the license.

5. The Board resolve to make the following enquiries:—

1. Was a fine inflicted under Clause 7 of the license in September, and the license withdrawn and if so on what evidence?

2. Was petitioner's license returned on the 4th November and if so by whom and under what circumstances?

3. Is there any evidence that the petitioner drew toddy from unstamped trees between the 4th and the 15th November, and if so what evidence?

(True Copies and Extract.)

(Signed) J. GROSE,
Secretary.

To the Collector of Madras, with Petition No. 2,853 of 1873.

No. 361.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th February 1874.

Read again Board's Proceedings, dated 12th December 1873, No. 2,581.

Read also the following letter from A. McC. WEBSTER, Esq., Acting Collector of Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 9th January 1874, No. 4:—

WITH reference to the Board's Proceedings, under date, 12th ultimo, calling for explanation on certain points in connection with the complaint of the holder of Toddy shop No. 114, in his petition to Board No. 2,853 of 1873, (herewith returned) I have the honour to forward a copy of a report from the Deputy-Collector of Madras, No. 993 of 15th ultimo, on the case, and also an Extract from a previous report from him, No. 867, of 10th November last.

2. It will be observed that there was but one case of using unstamped trees against the petitioner, and that Andiyappa Gramani, in whose management petitioner admits having left the shop for the last two years, admitted before the Deputy-Collector the fact of his servants having made use of the trees in question. The Deputy-Collector heard the case for the first and only time on the 29th October last (not in September) when he adjudged for the offence a penalty of Rupees 100 and the forfeiture of the license, and instructed the Abkari Superintendent to recover the license from the petitioner. After the order was passed, he doubted his authority to cancel the license for a first offence, and being of opinion that Clause 7 of the license was against his action, he informed the petitioner personally on the day the order was issued, that his decision would be held in abeyance. He did not, however, countermand his order to the Abkari Superintendent. The result was that the Abkari officials took the license from the petitioner, and it was afterwards restored by the Deputy-Collector on complaint by petitioner on the 4th November last.

3. With reference to paragraph 3 of the Proceedings, under reply, I beg to state that the appeal petition alleged to have been presented to the Collector on the 31st October, does not appear to have been received in this office, and the circumstance of the Deputy-Collector having for this offence first fined the petitioner Rupees 100 and withdrawn his license, was not known in the office when the Collector's letter No. 260 of 3rd December was written.

ENCLOSURE No. 1.—Petition No. 2,853 of 1873.

ENCLOSURE No. 2.—Letter from Deputy-Collector to Collector of Madras, dated 15th December 1873, No. 993.

ENCLOSURE No. 3.—Letter from Deputy-Collector to Collector of Madras, dated 10th November 1873, No. 867.

ENCLOSURE No. 4.—Statement.

IN the case immediately before the Board they resolve to direct that the License be cancelled and the shop sold by auction, the sale being subject to con-

1873.
Board of Revenue,
MADRAS.

PROCEEDINGS, 12TH DECEMBER 1873, No. 2,581.

Encl.

Received

DECEMBER.

No. 2,581.

Toddy Shop—in Madras District.—Further report requested from Collector on Petitions Nos. 2,853 and 2,854 of 1873 regarding fine imposed on holder of certain — and withdrawal of his license, for drawing toddy from unstamped trees.

firmation by the Collector, but the fine must be reduced to Rupees 100. The result of the sale must be reported.

2. All arrack and toddy shops must be registered in the names of the real owners and not of men of straw who, having nothing to lose, can violate the rules with impunity. The Collector will cause careful inquiries to be instituted at once and will report any cases in which the real owners of the shops refuse to be registered as such.

3. In his letter of the 3rd December the Collector inquires whether penalties imposed under Section 7 of the License can be collected by Distraint under Section 13 of the Act, and points out that under Clause 9 of the License the penalties thereby imposed can be levied by distraint. The Board think that the power of distraint for a penalty (which is certainly not described by the words in Section 13 of the Act, viz., "arrears of tax, duty or fee") is not conferred by the law, and they doubt whether such a power when not expressly given by the law can be secured by an agreement, or made one of the conditions of a license. They accordingly resolve to request Government to obtain the opinion of the Advocate General on this point.

(A true Copy and Extract.)

Secretary.

To the Acting Secretary to Government, Revenue Department,
with three original enclosures and Board's Proceedings,

dated 12th December 1873, No. 2,581, with one original
enclosure, to be returned.

the Acting Collector of Madras.

Ed. G. A. Turton.

Referred accordingly for
the opinion of the Advocate General

3 to Adv. Gen. this for S. Subrah 12-3-74
13 to Board of Revenue
11 March 1874

Toddy shop—of petitioner in No. 1873, in Madras District—Sale of—1
auction, and cancellation of license
petitioner, directed, owing to toddy
been drawn from unstamped trees—
to report any cases in which real
shops refuse to be registered as such—
ment requested to obtain opinion of
General in regard to collection of
imposed under Section 7 of the license

FEBRUARY.
No. 361.

Received

PROCEEDINGS, 17th FEBRUARY 1874, No.

MADRAS.

BOARD OF REVENUE

1874.

Proceedings of the Madras Government, Revenue Department,
11th March 1874.

Read the following:—

No. 116. Proceedings of the Board of Revenue, dated 12th December 1873,
No. 2,581.

Read the following letters:—

From J. HUNTER-BLAIR, Esq., Collector of Madras, to J. GROSE, Esq.,
Secretary to the Board of Revenue, dated 3rd December 1873, No. 260.

I HAVE the honour, with reference to Section 9 of Act XIX. of 1852, to
request the sanction of the Board for the withdrawal of the license of a Toddy Shop,
No. 114.

2. The holder of this Shop, Veerasawmi Gramani, was found to have drawn
toddy from eighty-three unstamped trees in certain gardens, and for this offence
he was called upon to pay the penalty prescribed by Clause 7 of the license, viz.,
five times the daily dowe of the shop for each unstamped tree, which, in this case,
amounted to Rupees 1,348-12-0. He has neither paid this penalty, nor would he
appear before the Deputy-Collector when ordered to do so. He admitted the
unauthorized use of the trees before the penalty was imposed.

3. Although the shopkeeper has undoubtedly transgressed the most important
condition of the license, and to a formidable extent, and although for this breach
the Collector is competent under Section 9 of the Act to withdraw the license
himself, still the terms of Clause 7 of the license are such that, the Collector cannot
withdraw it for the first offence, though he can do so for much less serious offences
against other clauses.

4. The license contains a Clause (No. 17) at the end that breach of any of its
conditions will entail forfeiture of license, but I doubt whether I can act upon this
general clause, when a special penalty is provided for breach of another clause.

5. The present offence, though the first on record in the case of this shop-
keeper, has no doubt been frequently committed by him previously, and the eighty-
three trees discovered are only part of a much larger number he has been actually
drawing toddy from. I am credibly informed that in two very large gardens
belonging to the shop-keeper himself and a friend, which were inspected after those in
which the above number were found, the flowers of certain unstamped trees were
found cut off, and some of the cut flowers were seen in the gardens.

6. The fraud is clearly one of very long standing, and has deprived the
Government of no small amount of revenue. It requires the severest measures,
and I trust that the Board will deem fit to direct the immediate cancellation of the
license under the authority undoubtedly vested in them by Section 9.

7. I beg at the same time that the Board will authorize the terms of the
Toddy Shop license being revised, so as to admit of the Collector withdrawing it for
the first breach of any of its conditions. This is only what the law itself authorizes
the Collector to do by Section 9.

8. With regard to the penalty prescribed by Clause 7, viz., five days' dowe
of the shop for each tree used unstamped, I beg to be informed whether I can collect
it by distraint, under Section 13 of the Act. The items which this section refers to
are arrears of tax duty or fee and I am doubtful whether the penalty in question
can be held to be a tax or duty within the meaning of this section. Clause 9 of the

*Proceedings of the Madras Government, Revenue Department,
11th March 1874.*

license also provides the same penalty for other offences, viz., carrying liquor without a pass or for carrying liquor to a shop different from that to which the garden belongs, and makes this charge leviable by distraint though such authority is not to be found in Clause 7. I think that the penalty under either clause partakes more of the nature of a fine than a prohibitory duty.

9. Should the Board decide that the penalty cannot be levied by distraint, some means must be found to enable the Collector to realize it. This may probably be done by designating this charge on penalty tax *duty* instead of a fine like penalty godown rent in the Custom House. There is no use retaining on the license a provision which cannot be enforced. Similar provisions exist also in the Arrack License—*Vide* Clauses 3 and 8.

10. It is also worthy of note that if in the present case the shopkeeper be prosecuted, Section 14 and 233 before the Magistrate, the maximum fine, the latter can inflict is only Rupees 50, or one-twenty-seventh of the amount, Rs. 1,348-12-0 chargeable according to Clause 7 of the license; and if this fine be not paid, the Magistrate cannot levy it by distress, but can only imprison the defaulter for six months.

11. The present form of toddy license was approved by the Board, in their Proceedings, No. 2,693 of 6th May 1863, and a copy of it is forwarded for reference.

ENCLOSURE No. 1.—Form of License.

From the same Officer, dated Madras, 10th December 1873, No. 267.

I HAVE the honour to submit the following report on Board's petitions, Nos. 2,853 and 2,854 of 1873:—

* In No. 2,853, herewith returned.

2. Petitioner's case* has been already submitted by me for the orders of the Board, in letter No. 260 of 3rd instant, with a full explanation of the circumstances which led to the fine complained of.

3. On the 28th ultimo, the Deputy-Collector personally explained to me that the petitioner would neither pay the penalty under Clause 7 of the license, nor would he appear before him in obedience to requisitions issued under Clause 13 of the same. Under these circumstances, I thought it proper to cancel the license for breach of its provisions, under the authority vested in the Collector by Section 9 of the Act (XIX. of 1852) and authorized him to do so.

4. On second thoughts, I considered it advisable to obtain the sanction of the Board to the cancelment of the license, as the chief offence of which the petitioner was guilty was the use of the unstamped trees for which Clause 7 of the license only provided a fine for the first offence, not withdrawal of the license. I accordingly wrote the above letter to the Board, and at the same time asked the Deputy-Collector to postpone the sale, pending the Board's orders.

5. In my letter above referred to, I reported to the Board the great extent to which Government has been defrauded of revenue by the malpractices of the petitioner, and I believe that the Board will agree with me that the interests of Government revenue require the immediate withdrawal of the license.

*Proceedings of the Madras Government, Revenue Department,
11th March 1874.*

6. Petitioner's statements in paragraphs 2 and 3 that in September last the Deputy-Collector fined him for the same offence Rupees 100 and cancelled the license, and that he restored the license on the 4th November, are not referred to in the report* made to me by the Deputy-Collector on the subject. These statements were made in an appeal presented by the petitioner on the 3rd instant, and I referred it two days ago for the Deputy-Collector's report.

*10th November 1873, No. 867.

In the above report, the Deputy-Collector simply recommended the levy of the full penalty prescribed for the offence in Clause 7 of the license, viz., Rupees 1,348-12-0, and I approved his recommendation.

7. I beg that the Board will be good enough to pass early orders on my letter of 3rd instant, in order that I may make arrangements for giving the license to others.

8. From information I have received, I believe that Toddy shops are making enormous profits and are capable of paying much larger dowles than are now prescribed, and in order to try what the present shop was likely to fetch by competition, I had it advertized for sale. I will report to the Board the results of the sale. I also purpose reporting shortly on the present system of assessing the Government revenue on toddy, which I consider calls for very great and absolutely necessary alterations.

ENCLOSURE No. 1.—Petition.

BEFORE the Board can pass orders on this case they must have further information before them.

2. It is clear from the Collector's second letter that his first letter was written with an imperfect knowledge of the case.

3. The petitioner says he was fined Rupees 100 for drawing toddy from unstamped trees last September and his license withdrawn. He appealed to the Collector on the 31st October (if his statements are true) so that these circumstances must have been known in Collector's office when his letter of the 3rd instant was written. Petitioner says his license was returned on the 4th November but on the 15th he was fined Rupees 1,348-12-0 for the same offence as before, and on the 29th his license was again withdrawn.

4. On the 3rd December, Mr. Blair doubting (on re-consideration) his power to withdraw the license for a first offence of this nature, reported the case to the Board but said nothing about the September fine or the two withdrawals of the license.

5. The Board resolve to make the following enquiries:—

- (1.) Was a fine inflicted under Clause 7 of the license in September, and the license withdrawn and if so on what evidence?
- (2.) Was petitioner's license returned on the 4th November and if so by whom and under what circumstances?
- (3.) Is there any evidence that the petitioner drew toddy from unstamped trees between the 4th and the 15th November, and if so what evidence?

*Proceedings of the Madras Government, Revenue Department,
11th March 1874.*

No. 117. Read the following Proceedings of the Board of Revenue, dated 17th February 1874, No. 361.

Read again Board's Proceedings, dated 12th December 1873, No. 2,581.

Read also the following letter from A. McC. WEBSTER, Esq., Acting Collector of Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 9th January 1874, No. 4:—

WITH reference to the Board's Proceedings, under date, 12th ultimo, calling for explanation on certain points in connection with the complaint of the holder of Toddy shop No. 114, in his petition to Board No. 2,853 of 1873, (herewith returned) I have the honour to forward a copy of a report from the Deputy-Collector of Madras, No. 993 of 15th ultimo, on the case, and also an Extract from a previous report from him, No. 867, of 10th November last.

2. It will be observed that there was but one case of using unstamped trees against the petitioner, and that Andiyappa Gramani, in whose management petitioner admits having left the shop for the last two years, admitted before the Deputy-Collector the fact of his servants having made use of the trees in question. The Deputy-Collector heard the case for the first and only time on the 29th October last (not in September) when he adjudged for the offence a penalty of Rupees 100 and the forfeiture of the license, and instructed the Abkari Superintendent to recover the license from the petitioner. After the order was passed, he doubted his authority to cancel the license for a first offence, and being of opinion that Clause 7 of the license was against his action, he informed the petitioner personally on the day the order was issued, that his decision would be held in abeyance. He did not, however, countermand his order to the Abkari Superintendent. The result was that the Abkari officials took the license from the petitioner, and it was afterwards restored by the Deputy-Collector on complaint by petitioner on the 4th November last.

3. With reference to paragraph 3 of the Proceedings, under reply, I beg to state that the appeal petition alleged to have been presented to the Collector on the 31st October, does not appear to have been received in this office, and the circumstance of the Deputy-Collector having for this offence first fined the petitioner Rupees 100 and withdrawn his license, was not known in the office when the Collector's letter No. 260 of 3rd December was written.

ENCLOSURE No. 1.—Petition No. 2,853 of 1873.

ENCLOSURE No. 2.—Letter from Deputy-Collector to Collector of Madras, dated 15th December 1873, No. 993.

ENCLOSURE No. 3.—Letter from Deputy-Collector to Collector of Madras, dated 10th November 1873, No. 867.

ENCLOSURE No. 4.—Statement.

IN the case immediately before the Board they resolve to direct that the License be cancelled and the shop sold by auction, the sale being subject to con-

*Proceedings of the Madras Government, Revenue Department,
11th March 1874.*

firmation by the Collector, but the fine must be reduced to Rupees 100. The result of the sale must be reported.

2. All arrack and toddy shops must be registered in the names of the real owners and not of men of straw who, having nothing to lose, can violate the rules with impunity. The Collector will cause careful inquiries to be instituted at once and will report any cases in which the real owners of the shops refuse to be registered as such.

3. In his letter of the 3rd December the Collector inquires whether penalties imposed under Section 7 of the License can be collected by Distraint under Section 13 of the Act, and points out that under Clause 9 of the License the penalties thereby imposed can be levied by distraint. The Board think that the power of distraint for a penalty (which is certainly not described by the words in Section 13 of the Act, viz., "arrears of tax, duty or fee") is not conferred by the law, and they doubt whether such a power when not expressly given by the law can be secured by an agreement, or made one of the conditions of a license. They accordingly resolve to request Government to obtain the opinion of the Advocate General on this point.

ORDER THEREON, 11th March 1874, No. 332.

No. 118.

Separate Revenue, No. 9.
Abkari.

REFERRED accordingly for the opinion of the Advocate-General.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Advocate-General, through the Government Solicitor.
,, the Board of Revenue.

Ed. G. A. Turton.

1874/111

Colt. of 1874

REVENUE.

To

THE ADVOCATE GENERAL,

do, do, do.

Dated March 11th

Recd.

Encl.

G. O. 11th March 1874, No. 332.

MARCH.

Nos. 116-118.

Trading Shop Licensees under Mauritius Abolition Act.—Refers to Advocate General for opinion, Board's Proceedings regarding collection by district of penalties imposed under Section 7 of —.