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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. 954 Press
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Dated 15-7-1876 ~~196~~ .

Not to be folded or roughly handled

No. 157. Read the following Proceedings of the Board of Revenue, dated 11th July 1876, No. 1,774:—

Read the following letter from J. HOPE, Esq., Acting Collector of the Godavery District, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Cocanada, 27th June 1876, No. 183.

I HAVE the honor to forward herewith copy* of plaint filed in Suit No. 107 of 1876 on the file of the District Munsif of Cocanada by Ravulaparti Bhadriraz and Vadlamuri Sattayya, Toddy Contractors of the Ramachendrapur Taluq, against the Arrack Contractor of the taluq and myself. The plaint alleges that in violation of the rights of the Toddy Contractors, the Arrack Contractor of his own accord and on the strength of orders issued by Mr. Foster and myself issued licenses to Toddy Drawers to draw and carry toddy from the palmyra and date trees in Government waste, &c., and thereby usurped plaintiffs' functions and privileges and caused them a loss of Rupees 2,500 which they seek to recover.

* No. 1.

2. Translations† of the orders referred to are herewith forwarded for information.

† Nos. 2 and 3, dated 29th October 1875, No. 70, and 21st January 1876, No. 3.

3. The Board will observe that the orders are in accordance with the terms of the Notification published in the Gazette and Board's Proceedings of the 23rd February 1875, No. 439; 7th April 1875, No. 847; and 5th August 1875, No. 2,184. The Toddy Contractors denied the Arrack Renter's right to draw toddy at all, and they were told that this interpretation was incorrect, as paragraph 5 of the conditions of sale of arrack contemplated the Arrack Renters' right to trees on Government waste land, by saying that they have no right to trees on private property.

4. I therefore propose to file the accompanying answer‡ on my behalf in the suit, and request the Board's approval of the same and their authority for me to defend the suit at the public expense.

‡ No. 4.

5. The suit was filed on 31st March; the summons was dated the 11th April; it was served on me on the 1st May; copy of the plaint was applied for on 12th May and was granted on 15th June. The hearing was fixed for the 14th July 1876, and I request the favor of an early reply.

ENCLOSURE No. 1.—Copy of Plaint.

ENCLOSURES Nos. 2 and 3.—Translations of Orders.

ENCLOSURE No. 4.—Draft Answer.

SUBMITTED for the orders of Government.

2. In July 1875, the Collector brought to notice that disputes had arisen between the Toddy and Arrack Contractors as to the right to draw toddy. The

* Board's Procs., 5th August 1875, No. 2,184.

Toddy Contractors maintained that they have an exclusive right to draw toddy, and that the Arrack Contractors must purchase the supply they require from them, or at least obtain it through them. This the Arrack Contractors disputed. The Collector was directed to settle this dispute in accordance with paragraphs 4 and 5 of Board's Proceedings, dated 23rd February 1875, No. 439. Paragraph 5 was to the effect that the Arrack Contractor is not necessarily to obtain his supplies from the Toddy Renter, and that it was open to him to deal with Toddy Drawers or with private parties.

3. With reference to a dispute between the Toddy and Arrack Contractors of the Ramachendrapur Taluq, the Collector, Mr. Foster, issued an order (29th October 1875) observing that both Contractors had the right of drawing toddy, the one for vend and the other for distillation, and he offered to settle the dispute if they would agree to abide by his advice, otherwise they might have recourse to the Civil Courts. How the matter was then settled does not appear. Shortly afterwards (January 1876) the Arrack Contractor complained that he had made application to the Toddy Renter for permission to draw toddy from palmyra trees on certain Government waste lands, but that the latter refused to grant immediate permission, and required that the application should be made in a particular form and that the parties concerned should be sent to him to obtain licenses. The Collector observed* that the Toddy Renter was wrong in refusing immediate compliance with the application and in requiring the attendance of the Toddy Drawers. He directed the Tahsildar to warn the Toddy Renter that in future such applications should be sanctioned immediately, and that any delay in doing so would be a violation of the conditions of the contract.

* Mr. Hope's order, dated 21st January 1876.

4. It was at the same time observed that the Toddy Renter's permission was required only as regards trees on Government waste land, and that toddy might be drawn from trees on private land without reference to the Toddy Renter. The Toddy Renters have filed a suit for the recovery of Rupees 2,500, loss alleged to have been sustained in consequence of the Arrack Contractor having, with reference to the Collector's orders above noted, obtained his supply of toddy direct from the Toddy Drawers without reference to plaintiffs, which they contend is an infringement of their rights as Toddy Renters. They claim the *exclusive* rights of drawing, carrying, and vending toddy.

5. The relative rights of the parties in respect of toddy must be determined with reference to the terms of their respective contracts. Clause 4 of the Toddy Renter's Contract and Clause 6 of the Arrack Contract are precisely the same. The former does not in terms confer any right, but it implies that the Toddy Renter has the privilege of drawing toddy from trees on Government waste and, with the consent of the owners, from trees on private land for the purpose of vend, of which the exclusive right is reserved to him. The use of the same terms in Clause 6 of the Arrack Contract must be regarded as conceding the same privilege to the Arrack Contractor *for the purpose of distillation*, of which he has the exclusive right.

6. There is an additional Clause (5) in the Toddy Contract which provides that the renter "shall allow the Arrack Contractor to obtain supplies of toddy for distillation without hindrance or interference."

Proceedings of the Madras Government, Revenue Department,
15th July 1876.

7. The separation of the arrack and toddy farms, which was brought into operation at the commencement of the current leases, necessitated some provision being made to ensure that, in districts in which arrack is distilled from toddy, the Arrack Renter should have a sufficient supply of toddy for distillation, and accordingly the latter part of Clause 5 of the conditions imposed on the Toddy Renter was framed to secure this object. Owing to its not being sufficiently definite, however, questions as to the real intent of the condition have arisen from time to time, and the Board have been called upon to interpret its meaning. Difficulties were anticipated at the outset, but it was too late to amend the Notification when the question was brought prominently to notice, and the Board left it to Collectors to make the most equitable settlement of the matter possible under the circumstances in case of dispute. The principal questions which have arisen are, as to whether the Arrack Renter can deal directly with the Toddy Drawers, and as to the rights of the Arrack and Toddy Renters respectively to trees on Government waste. The specific violation of their rights complained of by the Toddy Renters in the present suit is the issue of licenses to Toddy Drawers by the Arrack Renter without the Toddy Renters' permission. The Toddy Renters contend that what was conveyed to them was the exclusive right of drawing toddy as well as vending it. The claim is based on the circumstance that, although the sale notice advertises the exclusive privileges of vending only, the license granted to the Toddy Renter confers the exclusive privilege of *manufacture* as well as vend. This was a necessary consequence of the prohibition of manufacture for domestic consumption, and when the difficulty was prominently brought to notice by the Collector of Malabar, it was explained that "if the Toddy Renter is bound to give permission to sell to the Arrack Renter, he is also bound to give permission to manufacture. There is nothing in the wording of the conditions implying that the Toddy Renter's permission is required to enable the Arrack Renter to obtain his supply for distillation, but the wording of the clause, "he shall allow the Arrack Renter to obtain supplies, &c.," implies that the latter may obtain them in any way he chooses, provided only the toddy is drawn for distillation and not for sale. The Board have ruled that the Arrack Renter is at liberty to deal direct with the Toddy Drawers or with private parties; that the latter must have permission from the toddy farmer in order that he may be kept informed of the extent of the drawing, but that the toddy farmer is bound to give permission, and that no payment to him is necessary. This interpretation of the terms of the contract is consistent with the somewhat vague wording of the conditions, and it does not appear that the Arrack Renter has infringed any condition by dealing with the drawers direct. From the Collector's orders on the dispute, it seems that the Arrack Renter made application to the Toddy Renter in the first instance, but that the latter delayed to give permission and threw obstacles in the way of his obtaining the requisite supply. The former therefore dealt with the drawers direct, which he was justified in doing. As regards plaintiffs'

Board's Proceedings, 23rd February 1875.

Board's Precs., 11th October 1875, No. 2,836.

Board's Proceedings, 23rd February 1875.

Board's Proceedings, 7th April 1875.

Board's Proceedings, 11th October 1875.

claim to the exclusive usufruct of the trees on Government land, the terms of the agreements do not support it. Condition 6 of the Arrack Renter's agreement and 4 of the Toddy Renter's agreement are identical. They confer no privilege on either party, but merely impose a restriction on both. It is not implied that either has a preferential claim to trees on Government waste, and the Board have left it to the Collector to determine, with reference to the requirements of the rival Contractors, how the trees should equitably be divided. Mr. Hope is wrong in stating that the assent of the Toddy Renter is required. Looking to all the terms of the two contracts, it appears that what is conveyed to the Toddy Renter is the exclusive privilege of *manufacture and vend* subject to the condition that the Arrack Renter shall be allowed to obtain supplies for *distillation* without let or hindrance in districts where arrack is distilled from toddy. The latter may obtain his supplies in any way he pleases,—from private trees with the consent of the owners, from Government trees with the permission of the Collector, and the permission of the Toddy Renter is no part of the agreement, though it is reasonable that application should be made to him. In case of refusal, which is a breach of the Toddy Renter's agreement, the Arrack Renter is justified in making his own arrangements.

8. The Board are of opinion that under Clauses 4 and 6 of these respective contracts, the Toddy Contractor and the Arrack Contractor have an equal right to draw toddy,—the former for vend, and the latter for distillation; and that the latter part of Clause 5 of the Toddy Contract is restrictive, and merely implies that the Toddy Renter shall place no obstacle in the way of the Arrack Contractor's obtaining his supplies of toddy. It is not alleged in the plaint that the toddy drawn for the Arrack Contractor has been used for any purpose other than distillation. In these circumstances, they consider that plaintiffs' rights have not been infringed; that there is no cause of action against Government; and that it should be pleaded that the terms of the contract have not been altered or varied, and that the Collector merely explained the meaning of the conditions affecting the relations of the rival Contractors, and is in no way responsible for the Arrack Renter's proceedings.

9. The Plaintiffs should also be put to the proof of the alleged losses, which are merely estimated with reference to certain anticipated profits, for the non-realization of which there is nothing to show that the defendants were responsible. It is not alleged even that the Arrack Renter vended toddy, and the damages are assessed on the principle that the defendants are responsible for the failure of the Toddy Renters to realize certain profits; but nothing is adduced to show that those profits are reasonable, or that the plaintiffs' disappointed expectations have resulted from any action on the part of the defendants.

10. The Board recommend that the defence of the suit be sanctioned, and suggest the following answer. The date fixed for the hearing is the 14th instant, but the Collector has been directed by telegraph to apply for an extension of one month:—

ANSWER.

THIS defendant submits that the plaint discloses no cause of action against him.

Proceedings of the Madras Government, Revenue Department,
15*th July* 1876.

2. Plaintiffs have not exclusive rights in respect of toddy to the extent claimed in the plaint. They have, under the terms of their contract, an exclusive right to vend toddy, and also to manufacture toddy subject to the condition that the Arrack Contractor shall be allowed to obtain supplies of toddy for distillation without hindrance or interference on their part.

3. Though it is not necessary that first defendant, the Arrack Contractor, should obtain his supplies of toddy through plaintiffs or with their permission, he applied to them for assistance in obtaining supplies; but as they in violation of the conditions of their contract threw obstacles in his way, he made arrangements for obtaining his supplies independent of them. In thus acting he has infringed no right of plaintiffs, and no loss has resulted to them in consequence; but in any case as the terms of the contract have not been altered or varied, and as this defendant merely explained the meaning of the conditions of the contract affecting the relations of first defendant and plaintiffs as Arrack and Toddy Renters respectively, he is in no way responsible for the Arrack Renter's proceedings or for any loss that may have resulted therefrom.

4. He therefore prays that the suit as against him may be dismissed with costs.

(A true Copy and Extract.)

(Signed) C. A. GALTO
Acting Sec[illegible]

No. 158. ORDER THEREON, 15th July 1876, No. 954.

Miscellaneous.

THE defence of the suit is sanctioned, and the Board's draft Answer approved.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Board of Revenue.

Rxd. F. R. Bantleman.

No. 439.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 23rd February 1875.

Read the following letter from G. D. LEMAN, Esq., Collector of the Kistna District, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Masulipatam, 13th February 1875, No. 187:—

WITH reference to Board's Proceedings, No. 70, dated 14th January 1875, I have the honor to return the Abkári and toddy farm notices.

2. As it is decided that the Amani system is to be introduced, I see no reason for choosing only the wet taluqs. I have added Guntur to the list; and if the Board so please, I will introduce it in all the taluqs. I know of no reasons that apply specially to these taluqs, and not to those in which the change is ordered.

3. I have made a few alterations in the notices which, I believe, will meet with approval. They are under-scored in red ink.

4. The upset prices are those given by the present renters as almost the value.

5. I have made the 15th April the day for the execution of agreement. The renters will then have ample time to prepare themselves, or if they fail, the Collector will have time for new arrangements.

6. I shall be glad to know how far the conditions are to be enforced. The Board themselves remark that the clause about the strength of liquor must be in abeyance for the present. I believe that if that about the keeping accounts is enforced, I shall shut up most of the arrack shops and all the toddy shops in the district. There will also be no little difficulty about the new measures here; the pint bottle or a broken cocoanut shell are the only ones used.

7. I am doubtful whether Condition 6 is really meant to find a place in the arrack license. It is exactly the same as that in the toddy license, Condition 4; and by analogy it seems to give the right to the arrack renter of taking toddy from all trees in Government waste. I do not see how the Board can confer this same privilege on each renter, or if they can, how is it possible to hope that they and their servants will not be perpetually fighting?

8. As for the last part of Clause 5 in the toddy license, I do not see how it is to be worked, unless the amount is defined, which the arrack renter is to have. To say he is to have supplies without let or hindrance, is to say he may have all if he likes. I do not understand whether these supplies are to be made to the arrack renter by the toddy renter on his demand, or if it is meant that the arrack renter is to provide himself with the toddy as he can; nor is it clear to me whether the arrack renter is to have this toddy given to him, or to pay the toddy renter for it.

ENCLOS Nos. 1 and 2.—Forms of Abkári Notices.

WITH reference to some of the upset prices both for arrack and toddy, it appears that the deposits required before bidding and on completion of the sale, will be too high. The former should be "5 per cent. on the upset price, or Rupees $\{^{1,000}_{200}\}$ whichever is least;" and the latter "5 per cent. on the amount of the bid, or Rupees $\{^{1,000}_{200}\}$ whichever is least."

2. In the toddy notice, Condition 5, the words "in districts" should be omitted, and in Condition 6, for "employed by them," should be read "employed by him."

3. It is not the desire of the Board that the conditions about accounts should be too strictly enforced at first, though it is made incumbent on the renters under the engagements to see that they are kept, and though the accounts required are of the simplest kind, and merely such as would probably be kept by the renters for their own purposes. The conditions about strength of liquor and measures are rendered necessary by the requirement of the law that a minimum price shall be prescribed, though they are no more likely to be strictly observed than hitherto.

4. The Board fear that the difficulties indicated in paragraphs 7 and 8 of the Collector's letter may prove real and serious, but arrangements must be made for settling them if they arise. The Board observe that the clauses in the arrack and toddy notices give neither renter any absolute right to the use of trees in Government waste, though no doubt it is implied that such use will be permitted, in accordance with the custom observed heretofore. The Collector, therefore, will be in a position to settle disputes should they arise, either by division of the trees in any given tract, or in such other way as may seem equitable. The right is of more importance to the toddy renter than to the arrack renter, and the Board would be inclined to rule that the former should have the preference. But there may be cases in which the privilege might fairly be allowed to the arrack renter also; and change in the condition could not well be made in Kistna only, but should also be extended to other districts, the advertisements for which have however been published ere this. On the whole, the Board think the matter must be left as it is, and if dispute occur, it must be settled as best may be on its merits. The matter is one of the difficulties incidental to the separation of the rents.

5. The arrack contractor is not necessarily to obtain his supplies from the toddy renter. It is open to him to deal immediately with toddy drawers or with private parties.

6. With these remarks, the notices are approved and will be published in accordance with Board's Proceedings, dated 14th January 1875, No. 70.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

To the Collector of the Kistna District.

Exd. W. H. French.

1875.
Board of Revenue,
MADRAS.

PROCEEDINGS, 23RD FEBRUARY 1875, No. 439

Encl.

Received

FEBRUARY.
No. 439.

Arrack and Toddy Farms—of Kistna District.—Certain alterations directed to be made in the sums required as deposits for — before bidding and on completion of sale, and remarks passed with reference to conditions about accounts, strength of liquor and measures. Instructions issued regarding renters' right to the use of trees in Government waste.

No. 847.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 7th April 1875.

Read the following letter from A. MACGREGOR, Esq., Collector of Malabar, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Calicut, 1st April 1875, No. 97 :—

I HAVE the honor to inform you that I have this day sold the abkári as shown in the annexed list subject to the Board's confirmation.

2. It will be seen that, as already telegraphed, there is a net excess over upset price of Rupees 32,550, and a decrease, as compared with last year, of Rupees 24,300.

3. There is a considerable increase in Cannanore, Cherakal, and Calicut owing mainly to the fact that the normal increase is not interrupted. The decrease in the taluqs, where the new conditions told, owing to the central system not having already been in operation to any extent, is not more than was to be expected in carrying out such radical change of system, and will doubtless be recouped at the next auction.

4. In Wynaad there is a decrease of nearly 15,000 Rupees, which is to a great extent due to the encouragement given to country beer. This liquor is coming into favor among coolies in Wynaad where it probably deteriorates less than in the plains from climate. Cheap brandy is also displacing arrack.

5. I recommend the confirmation of the sales.

6. At the commencement of the auction the question was mooted as to whether an arrack renter could purchase toddy direct from the drawer, and whether a man could draw toddy without the consent of the toddy renter.

7. I stated that an arrack renter could deal direct with the drawer, that the latter must have permission from the toddy farmer, but that the latter is bound to accord permission if the application is supported by the arrack farmer. This seems to me the natural inference to be drawn from the latter part of condition 5. It is necessary for the protection of the toddy renter that he should know of any toddy drawing. After this explanation, the bidding went on freely, though previously all the leading distillers had declared that it would be impossible for them to bid under the conditions of separate toddy and restricted stills.

ENCLOSURE No. 1.—Statement showing particulars of Sales of Abkári Farms.

THE explanation furnished to the bidders by the Collector, as reported in paragraph 7, was correct.

2. The Board confirm the sales as recommended.

3. The Collector is requested to report where the cheap brandy mentioned in paragraph 4 comes from, how many licenses have been issued for its sale, what is the retail price, and whether there is any reason to suspect that it is really country spirit manufactured in Mysore and which has not paid import duty.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

To the Collector of Malabar.

Exd. A. Grubert.

1875.

Board of Revenue,

MADRAS.

PROCEEDINGS, 7TH APRIL 1875, No. 847.

Encl.

Received

APRIL.

No. 847.

Abkari Farms—of Malabar District.—Sale of —, confirmed, and Collector's explanation as to whether an arrack renter could purchase toddy direct from the drawer, and whether a person could draw toddy without the consent of the toddy renter, approved. Report requested on certain points in connection with cheap brandy.

No. 2,184.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 5th August 1875.

Read the following letter from J. KELSALL, Esq., Acting Collector of the Godavery District, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Cocanada, 21st July 1875, No. 303 :—

I HAVE the honor to ask the attention of the Board to paragraph 5 of the conditions on which the contract for arrack has been sold. The renter is not to interfere with cocoanut, date or palmyra trees on private property, and it is inferred that he has a claim to draw the juice from trees growing on Government waste lands.

2. Paragraph 4 of the conditions under which toddy is leased is worded in exactly the same way, and the next paragraph provides that the contractor shall allow the Arrack Contractor to obtain supplies of toddy for distillation without hindrance or interference.

3. It is not clear from this whether the cocoanut, date, and palmyra trees are under the Abkári Contractor or the Toddy Contractor or both, and there have been disputes between them in a few of the taluqs.

4. The Toddy Contractors claim that the right of drawing the juice is theirs exclusively, and that the Abkári Contractors must purchase from them what they require, or at least obtain it through them. They urge that if the Subordinates of the Abkári renter may draw toddy when and where they please, that they will take more than is needed, will perhaps sell it secretly, and that in any case the Toddy Contractor will sustain loss.

5. The Abkári Contractors urge that if the control of *all* trees rests with the Toddy Contractors, there is no meaning in the proviso that the Abkári Contractors shall have no claim to trees on private property.

6. I understand that when the farms were put up to auction, the bidders asked Mr. Foster to explain how their conflicting claims were to be adjusted, and that he declined to give an opinion.

7. I have the honor to ask for the Board's instructions on the subject.

THE disputes must be settled in accordance with paragraphs 4 and 5 of Board's Proceedings, dated 23rd February 1875, No. 439, copy of which will now be furnished to the Collector of Godavery.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

To the Acting Collector of the Godavery District, with copy of Board's Proceedings, dated 23rd February 1875, No. 439.

Exd. W. J. Lewis.

1875.

Board of Revenue,

MADRAS.

PROCEEDINGS, 5TH AUGUST 1875, No. 2,184.

Encl.

Received

AUGUST.

No. 2,184.

Abstract.—Instructions issued to Collector of Godavery as to how disputes between Arrack and Toddy Contractors regarding Cocoanut, Date and Palmyra trees should be settled.

No. 2,836.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th October 1875.

Read the following letter from W. LOGAN, Esq., Acting Collector of Malabar, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Calicut, 14th September 1875, No. 290 :—

THE Board are aware that Clause 5 of the conditions of sale of the toddy farms of this district was explained to the bidders at the time of the sale by Mr. Macgregor as meaning "that an arrack renter could deal direct with the drawer" (of toddy), "that the latter must have permission from the toddy farmer, but that the latter is bound to accord permission if the application is supported by the arrack farmer;" and the Board* approved that explanation as correct.

* *Vide* Board's Proceedings, dated 7th April 1875, No. 847.

2. A practical difficulty has arisen in this district in consequence of a difference of opinion between the toddy and arrack renters of the Calicut Taluq as to what the explanation meant. The toddy renter is willing to supply the arrack renter with as much toddy as he wants, *provided he is paid for it*; and the arrack renter on the other hand maintains that he is at liberty to "deal direct" with the drawers, and that he is therefore bound to pay nothing to the toddy renter. To this the toddy renter replies that unless he is paid for permission to manufacture and sell the toddy required by the arrack renter, he will withhold his permission to manufacture and sell; and the question then comes to be, whether he is not bound, under any circumstances, to give permission when the application is supported by the arrack renter.

3. When I lately pointed out to the toddy drawer that what was sold to him was the exclusive privilege not of "manufacturing and vending toddy," but of simply "vending" it, subject among other things to the conditions of paragraph 5 of the sale notice, which conditions were interpreted at the time of sale as meaning that "an arrack renter could deal direct with his toddy drawers," he pointed out in reply that his license which had been drawn up in accordance with No. I-3 of the forms circulated with Board's Proceedings, No. 870, dated 9th April 1875, assigned to him "the exclusive privilege of *manufacturing and* vending toddy;" and this fact complicates the question still further, because if it were held that what was sold was simply the privilege of "vending" toddy, the renter had clearly before him at the time of sale that the arrack renter would be entitled to deal direct with the drawers, and he could not have been disappointed at receiving nothing for the toddy which was to be manufactured into arrack; but, on the other hand, if he understood that what he was buying was the exclusive privilege of "*manufacturing and* vending," he might reasonably have thought that, although the arrack renter could "deal direct" with the drawers, the drawers would still have to pay him something for the privilege of being allowed to "manufacture."

See sale-notice published in the Fort St. George and District Gazettes, dated, respectively, 23rd March 1875, pages 631 and 632, and 20th February 1875.

4. As regards this last point, it does not seem to admit of doubt that what was advertised for sale was the exclusive privilege of "vending" and not of "*manufacturing and* vending;" and, unless the Board intentionally varied it,

which does not appear to be the fact as it is not specially commented on in the Proceedings, and unless the renter had any reason, of which I am not aware, to suppose that anything but the privilege of "vending" was to be assigned to him, I consider he would have no reasonable ground of complaint if the words "manufacturing and" were now struck out of his license.

5. There therefore only remains for consideration :—(1) whether the toddy renter's *permission* to sell to the arrack renter in such a case is *necessarily* required; and, (2) whether he would be justified in withholding his permission unless paid for it. As regards the first of these points, looking at the wording of Clause 2 of Section 4 of the Act, I conclude, as Mr. Macgregor seems to have done, that a toddy-vending renter's permission to sell toddy is essentially necessary before a license to sell can be issued by the Collector. As regards the second point, I consider that if the toddy renter had had any doubts at the time of the sale as to how far his exclusive privilege of selling was to be infringed by the arrack renter's privilege of "dealing direct" with the drawers, he should then have had the point cleared up, and it will not do for him now to come forward and claim payment for according "permission" to sell. This point would be set at rest if the Board were to prescribe, as they seem to have power to do under Clause 6 of the toddy renter's engagements, a fresh rule making it compulsory on the toddy renter to license such persons as the arrack renter might, with the Collector's permission, appoint to sell toddy for the distillation of arrack.

6. The arrack renter should not be allowed to harass the toddy renter by arbitrarily breaking these engagements with drawers and entering into fresh ones; but this is a point which the Collector can easily control ; and, to this end, I have directed all such engagements to be reported through Divisional Officers to the toddy renters in the subjoined form :—

Consecutive numbers of Persons entering into Agreements during whole Currency of Lease.	The numbers, Persons withdrawing from Agreements bore in Column 1.	Names of Individuals.	Place of Residence.			Quantity of Toddy in Quart-bottles to be supplied daily.	To what Place of Manufacture to be conveyed.	Within what Hours of the Day.
			House or Paramba	Deshom.	Amshom.			
1	2	3	4			5	6	7

The words "manufacture and sale" were entered in the engagement because no one can manufacture toddy, even for domestic consumption, any more than sell it. If the toddy renter is bound to give permission to sell to the arrack renter, he is also bound to give permission to manufacture for him. The Board agree with the Collector that the toddy renter cannot demand payment for the toddy so supplied.

2. If, however, the statements made in the petition are true, it would appear that the arrack renter is causing toddy to be drawn for him, which he cannot possibly use for distillation. The toddy is unfit for this purpose after the fermentation has reached a certain degree, as the alcohol becomes converted into vinegar. The Collector should look into this point.

3. The petition will be endorsed—

"The Board approve the Collector's endorsement to petitioner and decline to interfere."

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

To the Acting Collector of Malabar, with Petition and Endorsement to be delivered to Petitioner.

Endorsement to Petitioner.

Exd. W. H. French.

1875.

Board of Revenue

MADRAS.

PROCEEDINGS, 11TH OCTOBER 1875, No. 2,8

Enclosure

Received

OCTOBER.

No. 2,836.

Abkári—of Malabar District.—Agreement with Collector in thinking that toddy renters cannot demand payment for the toddy supplied to arrack renter for distillation.

Revenue Department

9

Proceedings of the Board of Revenue

Dated 11 July 1876

Read the following

No 183

From

Lancer Hope Esquire

Acting Collector

To

C A Gatton Esquire

Ag Secretary to the Board of Revenue

Madras

Sir,

I have the honor to forward herewith copy of plaint filed in suit No 107 of 1876 on the file of the District Munsiff of Cocanada by Ravidaparti Bhadriraz and Vaddamuri Sattayya Toddy Contractors of the Ramachendrapur Taluq against the Arrack Contractor of the Taluq and myself. The plaint alleges that in violation of the rights of the Toddy Contractors the arrack Contractor

of

of her own accord and on the strength of orders issued by Mr Foster and myself issued licences to Toddy drawers to draw and carry Toddy from the palmyra and date trees in Government waste &c and thereby usurped Plaintiff's functions and privileges and caused them a loss of Rs 2,500 which they seek to recover.

2 Translations of the orders referred to are herewith forwarded for information. Nos 2 & 3 of 29 Oct & 21 Jany 1876 No 3

3 The Board will observe that the orders are in accordance with the terms of the notification published in the Gazette and Board's Proceedings of the 23 February 1875 No 439, 7 April 1875 No 847 and 5 August 1875 No 2184. The Toddy Contractors denied the arrack renters right to draw toddy at all

all, and they were told that this interpretation was incorrect as para 5 of the conditions of sale of arrack contemplated the arrack renters right to trees on Government waste land, by saying that they have no right to trees on private property.

4 I therefore propose to file the accompanying answer on my behalf in the suit and request the Board's approval of the same and their authority for me to defend the suit at the public expense. No 6

5 The suit was filed on 31 March the summons was dated the 11 April, it was served on me on the 1st May, copy of the plaint was applied for on 12 May and was granted on 15 June. The hearing was fixed

fixed for the 16th July 1876 and I request
the favor of an early reply

I have &c
(Sd) James Hope
Ag Collector

Gd Savery District
Collectors office
Cocanada
27 June 1876

Submitted for the orders
of Government

In July 1875 the Collector brought to notice that disputes had arisen between the Toddy and Arrack Contractors as to the right to draw toddy. The Toddy Contractors maintained that they have an exclusive right to draw Toddy and that the arrack Contractors must purchase the supply they require from them or at least obtain it through them. This the arrack Contractors disputed. The Collectors was directed to

15th Rs 5 Aug 1875 No. 2184

to settle the dispute in accordance with paras 4 and 5 of Board Proceedings 23 February 1875. No 439. Para 5 was to the effect that the arrack contractor is not necessarily to obtain his supplies from the Toddy renter and that it was open to him to deal with Toddy drawers or with private parties.

With reference to a dispute between the Toddy and Arrack Contractors of the Ramachendrapur Taluq the Collector, Mr Foster issued an order (29 Octr 1875) observing that both Contractors had the right of drawing Toddy the one for vend and the other for distillation and he offered to settle the dispute if they would agree to abide by his decree otherwise they might have recourse to the Civil Courts. How the matter

was

was then settled does not ap-
pear. Shortly afterwards (January/76)
the arrack Contractor complained
that he had made applica-
tion to the Toddy renter for
permission to draw Toddy from
palmyra trees on certain Govt
waste lands but that the latter
refused to grant immediate
permission and required that
the application should be made
in a particular form and that
the parties concerned should
be sent to him to obtain licences
The Collector observed that
the Toddy renter was wrong
in refusing immediate com-
pliance with the application
and in requiring the attendance
of the Toddy drawers. He directed

Mr Hope's order of 21 January/76.

the

the Tahsildar to warn the Toddy
renter that in future such ap-
plications should be sanctioned
immediately and that any delay
in doing so would be a violation
of the conditions of the Contract.

It was at the same time
observed that the Toddy renter's
permission was required only
as regards trees on Government
waste land and that Toddy
might be drawn from trees
on private land without re-
ference to the Toddy renter.

The Toddy renters have
filed a suit for the recovery
of Rs 2,500 loss alleged to
have been sustained in con-
sequence of the arrack con-
tractor

tractor, having with reference to the Collectors orders above noted, obtained his supply of Toddy direct from the Toddy drawers without reference to Plaintiffs which they contend is an infringement of their rights as Toddy renters. They Claim the exclusive rights of drawing, carrying, and vending Toddy.

The relative rights of the parties in respect of Toddy must be determined with reference to the terms of their respective Contracts. Clause 4 of the Toddy renters Contract and Clause 6 of the arrack Contract are precisely the same. The former does not in terms confer any right but it implies that the Toddy renter has the privelege of drawing Toddy from trees on Government waste and with the Consent of the owners from trees on private land for the purpose of vend of which the exclusive right is reserved to him. The use of the same terms in Clause 6 of the arrack contract must be regarded as conceding the same privilege to the arrack Contractor for the purpose of distillation of which he has the ex= clusive right.

The

There is an additional Clause (5) in the Toddy Contract which provides that the renter "shall allow the arrack Contractor to obtain supplies of Toddy for distillation without hindrance or interference"

The separation of the arrack and Toddy Farms which was brought into operation at the commencement of the current leases necessitated some provision being made to ensure that in Districts in which

arrack

arrack is distilled from Toddy, the arrack renter should have a sufficient supply of Toddy for distillation and accordingly the latter part of Clause 5 of the conditions imposed on the Toddy Renter was framed to secure this object. Owing to its not being sufficiently definite, however, questions as to the real intent of the Condition have arisen from time to time and the Board have been called upon to interpret its meaning. Difficulties were anticipated at the outset but it was

to

too late to amend the notifi-
-cation, when the question
was brought prominently
to notice and the Board left
it to Collectors to make the
most equitable settlement
of the matter possible under
the circumstances in case of
dispute. The principal ques-
tions which have arisen are
as to whether the arrack renter
can deal directly with the
Toddy drawers and as to the
rights of the arrack and Toddy
Renters respectively to trees
on Government waste. The
specific violation of their rights
Complained of by the Toddy
Renters in the present suit

is

B^d Pro. 23 Feb 75

is the issue of licenses to Toddy drawers
by the Arrack Renter without the
Toddy Renter's permission. The Toddy
Renters contend that what was conveyed
to them was the exclusive right of
drawing Toddy as well as vending it.
The claim is based on the circumstance
that although the sale notice advertises
the exclusive privileges of vending only,
the license granted to the Toddy Renter
confers the exclusive privilege of
manufacture as well as vend. This
was a necessary consequence of
the prohibition of manufacture for
domestic consumption and when the
difficulty was prominently brought
to notice by the Collector of Malabar,
it was explained that if the Toddy
Renter is bound to give permission
to sell to the arrack renter, he is also
bound to give permission to
manufacture. There is nothing

Board's Proc^s
dated 11 October
1875, No: 2836.

in the wording of the Conditions implying that the Toddy Renters permission is required to enable the Arrack Renter to obtain his supply for distillation but the wording of the clause "he shall allow the arrack renter to obtain supplies" so implies that the latter may obtain them in any way he chooses provided only the Toddy is drawn for distillation and not for sale. The Board have ruled that the Arrack Renter is at liberty to deal direct with the Toddy drawers or with private parties, that the latter must have permission from the Toddy farmer, in order that he may be kept informed of the extent of the drawing, but that the Toddy Farmer is bound to give permission and that no payment therefor is necessary.

Board's Proceedings 27 23 Feby 1875.

Board's Proceedings 7th April 1875.

Board's Proceedings 11 October 1875.

This interpretation of the terms of the Contract is consistent with the somewhat vague wording of the Conditions and it does not appear that the Arrack Renter has infringed any Condition by dealing with the drawers direct. From the Collectors orders on this dispute it seems that the Arrack Renter made application to the Toddy Renter in the first instance but that the latter delayed to give permission, and threw obstacles in the way of his obtaining the requisite supply. The former therefore dealt with the drawers direct which he was justified in doing. As regards Plaintiffs claim to the exclusive enjoyment of the trees on Government land, the terms of the agreements do not support it. Condition 6 of the

Arrack Renter's agreement and 4 of the Toddy Renter's agreement are identical. They confer no privilege on either party but merely impose a restriction on both. It is not implied that either has a preferential claim to trees on Government waste and the Board have left it to the Collector to determine with reference to the requirements of the rival contractors how the trees should equitably be divided. Mr Hope is wrong in stating that the assent of the Toddy Renter is required. Looking to all the terms of the two contracts it appears that what is conveyed to the Toddy Renter is the exclusive privilege of manufacture and vend. Subject to the condition

that the Arrack Renter shall be allowed to obtain supplies for distillation without let or hindrance in districts where arrack is distilled from Toddy. The latter may obtain his supplies in any way he pleases, from private trees with the consent of the owners from Government trees with the permission of the Collector, and it is no part of the agreement that such it is reasonable that application should be made to him. In case of refusal which is a breach of the Toddy Renter's agreement, the Arrack Renter is protected in making his own arrangements. The Board are of opinion that under clauses 4 and 6 of the

respective contracts the Toddy
Contractor and the Arrack Con-
-tractor have an equal right to
draw toddy, the former for vind
and the latter for distellation
and that the latter part of clause
5 of the Toddy Contract is restrictive
and merely implies that the Toddy
Renter shall place no obstacle in
the way of the arrack contractors
obtaining his supplies of toddy.
It is not alleged in the plaint
that the toddy drawn for the
arrack Contractor has been used
for any purpose other than
distillation. In these circumstances
they consider that plaintiff's rights

have not been infringed, that there
is no cause of action against Govern-
-ment and it should be pleaded that
the terms of the Contract have not
been altered or varied and that the
Collector merely explained the
meaning of the conditions, affec-
-ting the relations of the rival
Contractors and is in no way res-
-ponsible for the arrack Renter's
proceedings.

The Plaintiff should also be
put to the proof of the alleged losses
which are merely estimated with
reference to certain anticipated
profits for the non-realization of
which there is nothing to shew
that the defendants were responsible

It is not alleged even that the arrack Renter vended toddy and the damages are assessed on the principle that the defendants are responsible for the failure of the toddy renters to realize certain profits but nothing is adduced to shew that those profits are reasonable or that the plaintiffs disappointed expectations have resulted from any action on the part of the defendants. The Board recommend that the defence of the suit be sanctioned and suggest the following answer. The date fixed for the hearing is the 14th Instant, but the

Collector has been directed by Telegraph to apply for an extension of one month.

Answer.

This defendant submits that the plaint discloses no cause of action against him.

Plaintiffs have not exclusive rights in respect of toddy to the extent claimed in the plaint. They have under the terms of their contract an exclusive right to vend toddy and also to manufacture toddy subject to the condition that the Arrack Contractor shall be allowed to obtain supplies of toddy for distillation without hindrance

or interference on their part.

Though it is not necessary that 1st Defendant, the arrack Contractor, should obtain his supplies of toddy through plaintiffs or with their permission he applied to them for assistance in obtaining supplies but as they in violation of the conditions of their contract threw obstacles in his way he made arrangements for obtaining his supplies independent of them. In thus acting he has infringed no right of plaintiffs and no loss has resulted to them in consequence; but in any case as the terms of the Contract have

not been altered or varied and as this Defendant merely explained the meaning of the Conditions of the contract affecting the relations of 1st Defendant and plaintiffs as arrack and Toddy renters respectively he is in no way responsible for the arrack Renters proceedings or for any loss that may have resulted therefrom.

He therefore prays, that the suit as against him may be dismissed with Costs.

(True copy Intrd)

G. L. Clay
Ag. Secretary.

To.

The Secretary to Government R.D. with 4 original Deeds thereto, & copies of B.D. Pro. 7 28th Feby 1875, No 439-5th Aug 1875, No. 2186, 7th April 1875, No 847, and 11th Octr 1875, No. 2836

C. & C.

No. 2855
Revenue 1876 Depart

Proceedings of the
Board of Revenue

Dated 11th July 1876.
Recd 11th —
Read 14th —
and Recommended
by [illegible]

No 954. 10th July 1876

Recommending for Sanction to
defend at Ernakulam the
suit instituted by R. Thadeu-
raz and V. Sattan in the
District Munsiff's Court
at Ernakulam.

[illegible]

The Secretary to the Board of Revenue

Sir

I have the honor to request that the Board will be pleased to move the Government to sanction the defence of the suit instituted against the Secretary of State for India in Council by Messrs. R. Thaderaz and V. Sattan in the District Munsiff's Court at Ernakulam, the plaint in which is herewith returned.

I have the honor to be
Sir
Your most obedient servant
[illegible]
Secretary to Government

Fort St. George 10th July 1876

Recd 12/7/76
15 July 1876
14 July 1876