APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1889. April 10.

QUEEN-EMPRESS

v.

JAMMU AND ANOTHER.*

Abkári Act—Act I of 1886 (Madras), ss. 55 (a), 69—Rules notified by Government under Abkári Act—Rules for "immediate" removal of toddy.

Toddy-drawers failing to remove their toddy to a shop or distillery "within a reasonable time" after it is drawn, are punishable under section 55(*a*) of the Abkári Act, though their licenses do not refer to the Government notification, made under the Act, prescribing its immediate removal.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure, by H. S. Wynne, Acting District Magistrate of South Canara.

The case was stated by the Acting District Magistrate as follows:—

"The accused are both licensed toddy-drawers and the charge in both cases is that they after drawing toddy left it for some hours in the gardens, which is found to be an offence under section 55 (*a*) of the Abkári Act, in that paragraph 6 of the Government Notification No. 220, dated 28th July 1888, issued in *Fort St. George Gazette*, dated 31st July 1888, Part I, page 548, directs that toddy is to be 'immediately' conveyed to a distillery or shop.

"But the same notification (*vide* page 551) contains the form of the license issued to these tappers under sanction of which they draw toddy, and nothing is said in it of carrying the toddy 'immediately' to the shop or distillery, nor is the Government notification referred to in any way in the said license so that it could be held to be incorporated in it. The section under which they have been convicted runs: 'whoever in contravention of this Act, or of any rule or order made under this Act, *or of any license or permit* obtained under this Act . . . . possesses liquor.' It seems to me doubtful whether under the circumstances the convictions are legal."

* Criminal Revision Cases Nos. 96 and 97 of 1889.

The *Acting Government Pleader* (*Subramanya Ayyar*) for the Crown.

The Court (Collins, C.J., and Wilkinson, J.) delivered the following

ORDER.—We are unable to concur with the District Magistrate that the conviction was wrong. The rules framed by the Governor in Council have the force of law, and in accordance with them, the holder of a tree-tapping license is bound to convey the pots containing toddy to the shop immediately after removal from the trees. As remarked by the Sub-Magistrate the word "immediately" must be held to be equivalent to "within a reasonable time," and what is a reasonable time must depend on the facts of each case, care being taken that opportunity for illicit sale is not encouraged. We decline to interfere.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

QUEEN-EMPRESS

v.

SUBBAYYA.*

1889. July 11, 17.

Penal Code, ss. 181, 182—*Examination on affirmation of one preferring a criminal appeal — Verification of petition of appeal—Criminal Procedure Code, ss.* 342, 428, 540.

In a petition of appeal from a conviction, the appellant falsely stated that the convicting Magistrate declined to summon his witnesses. The Magistrate to whom the appeal was preferred called upon the appellant to verify the allegations in the petition of appeal on solemn affirmation, and he did so:

Held, that the appellant had not committed an offence under s. 181 or 182 of the Penal Code.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure, by E. J. Sewell, the Acting District Magistrate of Cuddapah.

The accused was charged under sections 181 and 182 of the Penal Code under the circumstances set out in the judgment of the High Court.

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* Criminal Revision Case No. 241 of 1889.