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# TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

*Judicial* DEPARTMENT

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,*

*25th February 1868.*

No. 302. Read the following Proceedings of Government, Revenue Department.  
Read the following :—

Proceedings of the Board of Revenue, dated 20th December 1867, No. 8213.

Read the following letter from Lieutenant T. H. B. YOUNG, Acting Superintendent of Police, South Arcot, to the Inspector General of Police; dated Cuddalore, 3rd October 1867, No. 153.

I have the honor to enclose letters, as per margin, for your perusal. You will observe that, according to Mr. Hathaway's idea of the Salt Laws, any one may manufacture earth-salt if he only uses a chatty in so doing. Some of the Sub-Magistrates in the Joint Magistrate's range also hold the same opinion, and the consequence, therefore, is that, as the only penalty is confiscation, a considerable quantity is, according to the Virdachellum Inspector's report, being manufactured in the different villages of the Taluq.

2. Looking at the matter from a Police point of view, this new procedure of simple seizure and confiscation is a great improvement on the old system of prosecutions before Magistrates. Being relieved of these petty cases, Police have more time to look after grave crime.

3. On the other hand, every Policeman, and, judging from the number of Circular Memoranda and Magistrates' letters on the subject, every Magistrate in this district knows that, in spite of fines, &c., salt in considerable quantities is manufactured throughout the district. Mr. Clarke, of the Revenue Board, made a remark to that effect when at Gingee in 1864; and at that time Inspector Kasava-charee, of Gingee Division, was rewarded by the Inspector General for detecting nine teen individuals in one village alone.

4. Now, if every one takes to manufacturing, and the practice is not put down with a high hand, the salt revenue will decrease, and, although it can afford to do so according to some people's ideas, yet that is no argument in favor of illicit manufacture of salt. I beg that you will, if considered necessary, lay the matter before Government, as the Magistrates in one part of the district are punishing as usual, and in the other they are simply confiscating, and I believe selling the salt, the proceeds of sale going partly to Government and partly to informers. I never heard of earth-salt being sold; I understood it was always destroyed after conviction of the prisoners.

From W. F. HATHAWAY, Esq., Joint Magistrate of South Arcot, to the Acting Superintendent of Police, South Arcot; dated Virdachellum, 1st October 1867, No. 138.

I have the honor to inform you that the Station Officer of Uttangal has applied to me to know whether, under the Order of the 28th May 1864, at page 140 of the Police Weekly Circular for that year, he is justified in arresting persons taking away salt-earth, or boiling it to extract the salt.

2. Under that Order, Police may arrest for offences punishable under the Salt Laws, but the question is whether this is an offence so punishable.

Proceedings of the Madras Government, Judicial Department,  
25th February 1868.

3. This petty manufacture of salt plainly is not punishable under Regulation No. I of 1805. It is forbidden, and such illicit salt made liable to confiscation by Section 3; but no punishment is provided. Section 8 provides penalties against landed proprietors for Salt Works set upon their estates, but cannot be twisted into applying to a petty case of a chatty being boiled in a man's hut. These acts, then, not being punishable at once under Regulation I of 1805, it seems that no law has been passed since, creating new offences, and making that punishable which was not punishable before. Acts Nos. XVII of 1840 and VII of 1852 merely extend the jurisdiction, and give power to Magistrates and Sub-Magistrates over the same offences as are punishable under Regulation No. I of 1805 to the extent of their powers, but in no way create new crimes. They are much the same as the Act giving jurisdiction to Sub-Magistrates in the case of special and local laws to the extent of their powers. But here no new crime can be created by the law, so that, for instance, an act not punishable by the Railway Act can in no way be punishable under Act No. III of 1865 (Madras) giving jurisdiction in the matter to Sub-Magistrates. If not a breach of the law before, it is not a breach afterwards; the new law simply having respect to the jurisdiction, as is shown in the preamble, not to the particular act. Thus the preamble of Act No. XVII of 1840 particularly specifies that it refers to "those persons who, till then, were tried by the Criminal Court," and, therefore, proves that the Act cannot refer to persons who could not be committed to the Court under the old laws.

4. It may be thought anomalous that an act should be forbidden by law, and yet no penalty be attached; but it must be considered that it is precisely the same under the Customs Act: smuggling goods that have not paid duty (just as smuggling salt that has not paid duty) is illegal and the goods liable to seizure, but it is not a crime for which the offender can be tried. In fact, it seems that these acts being not in any way criminal of themselves, *malum in se*, but merely opposed to a Government monopoly, and therefore *malum prohibitum*, it was specially considered that simple confiscation was the most fitting punishment, instead of a criminal trial and sentence.

5. I mention, therefore, to you the opinion that I have given, because I am aware that there is a very wide-spread practice of Sub-Magistrates and Police based on an opposite, and what seems an erroneous, supposition, arising from not carefully studying the *ipsissima verba* of the law.

From Lieutenant T. H. B. YOUNG, Acting Superintendent of Police, South Arcot, to the Joint Magistrate of South Arcot; dated Cuddalore, 3rd October 1867, No. 325.

With reference to your letter, No. 138, of the 1st instant, I have the honor to state, for your information, that I have forwarded a copy of your letter to the Inspector General of Police, with a view to the matter being laid before Government. The illicit manufacture of salt is generally carried on by means of chatties, and if, as I gather from paragraph 3 of your letter, the mere boiling earth-salt in a chatty is not a punishable offence, every man will have his chatty at work. The illicit manufacture of earth-salt is carried on to a great extent in this district (I speak from personal experience, having been two and a half years in the Assistant's range), and, to judge from the number of letters and Circulars, and also from the remarks made by Mr. Clarke in the year 1864 on the subject, I should say that something should be done to suppress it. As you remark in your letter, it is a pity that the time of the Police is taken up in petty boiling cases; but what can we do? Very stringent orders have been issued to us, and we have merely to obey.

No. 1852.

Submitted to the Board of Revenue, with a request that instructions may be given on the point raised, with a view to the guidance of the Police.

(Signed) W. ROBINSON,  
Inspector General of Police.

Forwarded to the Collector of South Arcot for early report.

Proceedings of the Madras Government, Judicial Department,  
25th February 1868.

Proceedings of the Board of Revenue, dated 31st January 1868, No. 789.

Read again Board's Proceedings, dated 20th December 1867, No. 8213.

Read also the following letter from C. W. READE, Esq., Collector and Magistrate of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 14th January 1868, No. 13.

Adverting to the Board's Proceedings of the 20th December last, forwarding for report a letter from the Acting Superintendent of Police of the 3rd October 1867, regarding the disposal of charges for infringement of the Salt Laws by the Magistracy, who, it is stated, adopt different courses in applying the provisions of the law in different parts of this district, I have the honor to state that the Joint Magistrate's interpretation of the law appears to me correct, inasmuch as parties holding no land, when accused with having possessed manufactured earth-salt, cannot be convicted under Section 8 of Regulation No. I of 1805, but the salt is merely liable to confiscation under Section 3 of the same enactment, and there seems to be no Act, as Mr. Hathaway observes, subjecting the accused to the penal provisions of the Salt Law.

2. Acts Nos. XVII of 1840 and VII of 1852 only extend to the Magistracy and former Heads of Police, now subordinate Magistrates, the powers which before had been exclusively vested in the Zillah Court under the Regulation already quoted.

3. I do not, however, agree with Mr. Hathaway in the view he takes of the practice of chatty boiling for the purpose of procuring salt from earth. It appears to me that the system is one which is a distinct breach of the Salt Laws, and, as remarked by Lieutenant Young, if permitted, "every man will have his chatty at work to extract salt," and my belief is that all such acts are offences for which the parties may be made amenable to the penal provisions of the law,\* and the prosecution of such persons invariably follows

\*Section 8, Regulation No. V, (A.D. 1805). Powers extended by Acts Nos. XVII of 1840, and VII of 1852, to all grades of the Magistracy.

offences of the kind in all other parts of the district, excepting those immediately subject to the jurisdiction of the Joint Magistrate. The term "other works," used in Section 8, may, I think, be held legally and reasonably to include the manufacture of earth-salt by boiling in chatties, and it was so regarded by previous Joint Magistrates prior to Mr. Hathaway's arrival.

4. It may be true, as observed by the Acting Police Superintendent, that illicit manufacture of earth-salt is carried on to a considerable extent in this district, notwithstanding the efforts made for its suppression and the occasional convictions which take place; but with whatever result, and under whatever provision of the law, cases of the kind be dealt with, it clearly affords to the Police no ground for relaxing in their endeavours to detect and bring to punishment those who violate the law, and it is rather in the interest and protection of the Government revenue that those endeavours should be directed, and which should stimulate the Police, than the prospect of the trifling reward payable to themselves for the discovery of such cases, and thus the duty of the Police would seem clear and undoubted, whatever the mode of disposal of cases of the kind.

The Board resolve to submit this correspondence, relative to a decision by the Joint Magistrate of South Arcot, that the petty manufacture of earth-salt is not a punishable offence, for the orders of Government.

*Proceedings of the Madras Government, Judicial Department,*  
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2. If the Joint Magistrate is right, the Board are clearly of opinion that the interests of the salt revenue require that the law should be so altered as to make the manufacture penal. Liability to confiscation alone will not be a sufficient deterrent.

3. It appears to the Board, however, that Section 18 of Regulation No. I of 1805, which does not seem to have attracted the attention of the Magistrate, or the Joint Magistrate, clearly renders the clandestine manufacture of earth-salt punishable by fine.

*Order, 19th February 1868, No. 463.*

The Government concur in opinion with the Board that Section 18, Regulation I of 1805, makes ample provision for the punishment by fine of "any person" "..... making, purchasing, obtaining, or selling" "salt in an illicit manner," and meets the case of the unlicensed manufacture of earth-salt.

(True Extract).

(Signed) F. BRANDT,  
*Under Secretary to Government.*

No. 303. ORDER THEREON, 25th February 1868, No. 321.

Communicated to the Inspector General of Police, and to the Several Magistrates.

(True Extract).

R. S. ELLIS,  
*Chief Secretary.*

To the Inspector General of Police.  
" Magistrate of

Ed. J. H. Burns.

*Proceedings of the Madras Government, Judicial Department,*  
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32/2

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4. Now, if every one takes to manufacturing, and the practice is not put down with a high hand, the salt revenue will decrease, and, although it can afford to do so according to some people's ideas, yet that is no argument in favor of illicit manufacture of salt. I beg that you will, if considered necessary, lay the matter before Government, as the Magistrates in one part of the district are punishing as usual, and in the other they are simply confiscating, and I believe selling the salt, the proceeds of sale going partly to Government and partly to informers. I never heard of earth-salt being sold; I understood it was always destroyed after conviction of the prisoners.

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4. It may be thought anomalous that an act should be forbidden by law, and yet no penalty be attached; but it must be considered that it is precisely the same under the Customs Act: smuggling goods that have not paid duty (just as smuggling salt that has not paid duty) is *illegal* and the goods liable to seizure, but it is not a *crime* for which the offender can be tried. In fact, it seems that these acts being not in any way criminal of themselves, *malum in se*, but merely opposed to a Government monopoly, and therefore *malum prohibitum*, it was specially considered that simple confiscation was the most fitting punishment, instead of a criminal trial and sentence.

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No. 1852.

Submitted to the Board of Revenue, with a request that instructions may be given on the point raised, with a view to the guidance of the Police.

(Signed) W. ROBINSON,  
Inspector General of Police.

Forwarded to the Collector of South Arcot for early report.

*Proceedings of the Madras Government, Revenue Department,*  
19th February 1868.

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No. 1,852.

Submitted to the Board of Revenue, with request that instructions may be given on the point raised with a view to the guidance of the Police.

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Inspector General of Police.

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I do not, however, agree with Mr. Hathaway in the view he takes of the practice of chatty boiling for the purpose of procuring salt from earth. It appears to me that the system is one which is in distinct breach of the Salt Laws, and, as remarked by Lieutenant Young, if permitted, "every man will have his chatty at work to extract salt," and my belief is that all such acts are offences for which the parties may be made amenable to the penal provisions of the law, and the prosecution of such persons invariably follows offences of the kind in all other parts of the district, excepting those immediately subject to the jurisdiction of the Joint Magistrate. The term "other works," used in Section 8, may, I think, be held legally and reasonably to include the manufacture of earth-salt by boiling in chatties, and it was so regarded by previous Joint Magistrates prior to Mr. Hathaway's arrival.

Section 8, Regulation No. V. A. D. 1805, powers extended by Acts Nos. XVII. of 1810 and VII. of 1852 to all grades of the Magistracy.

4. It may be true, as observed by the Acting Police Superintendent, that illicit manufacture of earth-salt is carried on to a considerable extent in this district notwithstanding the efforts made for its suppression, and the occasional convictions which take place; but with whatever result and under whatever provision of the law cases of the kind be dealt with, it clearly affords to the Police no ground for relaxing in their endeavours to detect and bring to punishment those who violate the law, and it is rather in the interest and protection of the Government revenue that those endeavours should be directed, and which should stimulate the Police, than the prospect of the trifling reward payable to themselves for the discovery of such cases, and thus the duty of the Police would seem clear and undoubted, whatever the mode of disposal of cases of the kind.

*Proceedings of the Madras Government, Revenue Department,  
19th February 1868.*

1. The Board resolve to submit this correspondence, relative to a decision by the Joint Magistrate of South Arcot, that the petty manufacture of earth-salt is not a punishable offence, for the orders of Government.

2. If the Joint Magistrate is right, the Board are clearly of opinion that the interests of the Salt revenue require that the law should be so altered as to make the manufacture penal. Liability to confiscation alone will not be a sufficient deterrent.

3. It appears to the Board, however, that Section 18 of Regulation No. I. of 1805, which does not seem to have attracted the attention of the Magistrate, or the Joint Magistrate, clearly renders the clandestine manufacture of earth-salt punishable by fine.

No. 389.

ORDER THEREON, 19th February 1868, No. 463.

Separate Revenue, No. 11.

Salt.

The Government concur in opinion with the Board that Section 18, Regulation I. of 1805, makes ample provision for the punishment by fine of "any

"person \* \* \* \* making, purchasing, obtaining, or selling \* \* salt in an illicit "manner," and meets the case of the unlicensed manufacture of earth-salt.

(True Extract.)

25 February 1868 N:321 Under Secretary to Government.

*Communicated to the Inspector General of Police, and to the several Magistrates.*

*To the Inspector General of Police & to the Magistrates of all Districts & to the Board of Revenue.*

To the Board of Revenue.  
,, the Judicial Department.

*Recd of Secy*

*Judicial Dept*

*Recd of Secy*

*Recd of Secy*

*21/2/68*

*No 408*

*to every that furnish*

*instruct for the illicit*

*manufacture of earth*

*-salt is sufficient if the*

*-is not under 18 of 1805*

*14/1/68*

*With an order*

302.303