

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1396

Press

~~Mis~~

Leg 2.493

Dated

27-7-1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
27th July 1863.*

No. 492. Read the following letter from R. A. DALYELL, Esq., Sub-Secretary to the Board of Revenue, to J. D. SIM, Esq., Secretary to Government, Revenue Department, dated Madras, 16th July 1863, No. 4,350:—

SIR,

1. Adverting to the Order of Government, dated 17th June 1863, I am directed by the Board of Revenue to submit the accompanying revised draft of an Abkarry Act, consolidating and amending the existing law on the subject.

2. I am to bring to the notice of Government that the objections raised in paragraph 3 of the Order have been met by striking out the forms of licenses. The Board have also followed the instructions of Government by including all offences in the Act itself, and have inserted an additional Clause in Section 13, making punishable any breach of license, or any breach of the rules laid down by the Board when such shall not be otherwise punishable as an offence under the Act.

3. The remarks of Government in paragraphs 2 and 4 of the Order have been attended to and an addition made to Section 2 of the words, "and all references which may occur in any existing law to the aforesaid Regulation, Sections, or Acts, shall be taken as being references to this Act;" and in Section 5 of the words "authorized in that behalf by the Collector." The Board direct me to state that it is in their opinion of doubtful expediency to limit more particularly the class of officers before whom Mochilkas may be executed, lest any disproportionate inconvenience should be incurred by Sub-renters in small farms.

4. The Board have also slightly amended the wording of Section 9 of the old draft, which stands as Section VIII of the Act now submitted. They believe that the proviso requiring the renter to obtain the Collector's permission before proceeding to distrain, will be a sufficient protection for the Sub-renters. The insertion of the word "Ryotwary" in Section VII and the amendment now made in Section VIII, will obviate any doubt as to the Act under which procedure is to be taken, and will render unnecessary any alteration of these Sections when the Bills now before Council, relating to arrears of revenue or rent, may become Law.

5. The suggestions of Government in paragraphs 8, 9, 10, 11 and 12 of the Order have been duly attended to. The Board doubt the propriety of omitting to make the mere possession of liquor illegal. Such a course would probably be strongly objected to by Abkarry Renters, as, if possession were permitted, it would be difficult to repress unlicensed sales, and the Board are of opinion that the difficulty raised by Government in paragraph 8, will best be met by making a special exception in favor of English and Foreign Beer, Wines and Spirits. This course has been followed in the draft. With reference to the remark made by Government at the close of this paragraph, the Board observe that, as Section 15 of Act XIX of 1852 makes a special exception in favor of these liquors, no difficulty is likely to arise from maintaining the strict requirements of the Act, but a reference has been made to the Collector of Madras on this subject and his reply will be submitted for the information of Government.

6. The Board will carefully attend to the instructions of Government, as contained in paragraphs 13, 14, 15, 16, 17 and 18 of the Order, when re-drafting the licenses, which they will prepare, with such subsidiary rules as may be necessary, as soon as the draft Act has received the approval of Government. They direct me, however, to state that they have deemed it advisable to take, in the Act itself (Section 6), powers for the Collector to recover arrears as proposed by Government in paragraph 13, and that they have also provided against such adulteration of liquor as may not amount to the offence of adulteration as defined in the Criminal Code.

* Section 13.

7. The Board have not considered it necessary to give a definition of a retail transaction, as the licenses themselves will invariably specify the nature of the sales which such licenses will authorize. Such a definition was formerly required, as it was only sale by retail that was contrary to Law.

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8. The suggestion of Government in the last paragraph of the Order has been adapted, and powers have been taken for the Board (in Section 19) to declare illegal the unlicensed manufacture of fermented liquor, in particular towns or Districts, even for home consumption.

9. The Board direct me to add that they have taken the opportunity which the return of the draft has given them, to make certain verbal amendments, and to re-arrange the Sections in what seems to them to be a more convenient order. It has also been deemed desirable to repeal so much of Section 16 of Act VII of 1832 as refers to Abkarry limits, leaving the powers of the Cantonment Magistrate the same as at present within Cantonment limits, and to make the wording of Section 4 of the draft more general, so as to admit of the introduction of any new system of Abkarry without a change in the Act. A system of excise has accordingly been provided for, and powers have been taken for the Board (Clause 2nd, Section 4) to issue rules under which such a system might be introduced and regulated. The words "Country Arrack and Toddy" have also been omitted lest on any future occasion it should be considered advantageous to include any other liquors in the rent.

10. In conclusion I am to draw the notice of Government to Section 9 of the revised draft, by which provision is made for excising, under certain circumstances, spirits manufactured by the European process, and for admitting spirits of this description into the market. It will be the duty of the Board to take care that this provision is never acted upon to the detriment of the interests of an Abkarry Renter, but its introduction seems to be advisable in case an excise system should at any future period be adopted. Such a provision in regard to country made spirits has also become the more immediately necessary as Section 183 of Act VI of 1863 prohibits the shipping of Rum, *free of duty*, as stores, on any vessel not going over sea or on a voyage of less than thirty days' duration. The Board have also recently become aware that country made spirits when consumed on board ships in port, at Calcutta and Bombay, are liable to excise duty, and it seems undesirable that a different practice should exist at the port of Madras.

No. 493.

ORDER THEREON, 27th July 1863, No. 1,396.

The Government would require the engagements of Renters with the Sub-renters to be in writing, as a necessary condition of granting them summary powers. With this addition and a few verbal alterations, the Government resolve to accept the Board's draft and refer it to the Judicial Department, where the necessary steps will be taken to bring it before the Council for making Laws and Regulations.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.
.. Judicial Department.

Exd. S. T. Augustin.

ACT

OF 1863.

AN Act for amending the Abkary Laws of the Madras Presidency beyond the limits of the Madras Abkary as prescribed by Act XIX of 1852.

WHEREAS the provisions of Regulation I of 1820, and of Act XXXII of 1845, have been found to be defective, and whereas it is desirable to provide for the licensed manufacture and sale of Rum, Wines, Beer, and other spirituous and fermented liquors, beyond the limits of the Madras Abkary as prescribed by Act XIX of 1852, and to transfer the management of the Abkary in Military Cantonments to the Civil Authorities, it is hereby enacted as follows:—

II. From the date of the passing of this Act, Regulation I of 1820 of the Madras Code, so much of Section 16 of Act VII of 1832 as gives special powers within Abkary limits as distinct for Cantonment limits, Sections 43, 44, 45, 46, and 47, of that Act, and Act XXXII of 1845 shall be repealed except in so far as they rescind any other Regulations or Acts, and except as to any act or offence which shall have been done, or committed, or to any money which shall have become due, or to any fine or penalty which shall have been incurred, or to any proceedings which shall have been commenced, before this Act came into operation, and all references which occur in any existing Law, to the aforesaid Regulation, Sections, or Acts shall be taken as being references to this Act.

III. All persons are hereby forbidden to manufacture or sell spirituous or fermented liquors of any description, beyond the limits of the Madras Abkary as prescribed in Act XIX of 1852, except in conformity with the provisions of this Act.

IV. *First.*—The Board of Revenue shall authorize Collectors either to retain the exclusive privilege of manufacturing all spirituous or fermented liquors, as well as the sale of all such liquors, whether of country or foreign manufacture, in their respective Districts, under their own immediate management, on account of Government; or to assign such exclusive privilege in regard to any particular liquors, for a fixed sum, or to rent it to the highest bidder, for such periods as may be deemed expedient, and to grant licenses for the sale or manufacture of any other liquors subject to the payment of a

definite fee or of an excise duty on the quantity of liquor manufactured or sold; or to issue such licenses, subject to such conditions aforesaid, under which the manufacture and sale of all liquors whatsoever shall take place.

Second.—The Board of Revenue shall prescribe the rules and forms of licenses under which the manufacture and sale of all spirituous and fermented liquors shall take place, and from time to time, as occasion may require, shall alter, and amend, such rules and licenses.

Third.—In cases where exclusive privileges of manufacture or sale have been granted to a renter or assignee, the Collector subject to the approval of the Board of Revenue shall determine the places at which stills and shops shall be erected, and, if they think proper, the plan on which such shops shall be built, and the number of such in each District or other division of territory, the minimum rates to be established, and the measures to be used in the sale of such liquors, the due publication of such rates and measures, and generally all matters relating to the detailed management and control of such places of manufacture or sale.

V. First.—The form of license for renting out exclusive privileges of manufacture or sale shall specify the amount of rent by the year, the period for payment of the instalments, the minimum price at which liquors shall be sold, and the number of stills and shops and their positions; it shall provide against any improper practices in the stills or shops, or any adulteration of the liquors manufactured or sold, and shall contain such other conditions as the Board of Revenue may consider necessary; and no Abkarry Renter or other person shall be allowed to establish a still or shop, until he shall have obtained such license from the Collector of the District, and have executed a counterpart thereof to be lodged with the said Collector.

Second.—Every person placed by a Renter, or by the Collector, when the Abkarry is retained in his management, in charge of a still or shop, shall sign in duplicate a Mochilka or engagement prepared in the vernacular language of the District containing similar conditions to those of the Renter's license, in the presence of the Tahsildar or other Government Officer authorized in that behalf by the Collector, after the same shall have been read over by him, or read and explained to him if he is

unable to read it himself. Two credible witnesses shall be present when the Mochilka is acknowledged and executed by him, and shall sign their names in testimony of such acknowledgment; one copy of the said Mochilka shall be deposited with the Collector, or Tahsildar and the other shall be fixed up in some conspicuous place in the shop or distillery.

VI. Collectors may proceed against Abkarry Renters under this Act for the recovery of arrears due by them, in like manner as for the recovery of arrears from Ryotwarry defaulters of Land Revenue, or may, at their discretion, take the farm under Government management at the risk of the Renter, or may declare the lease forfeited, and re-sell the farm at the said Renter's risk and loss.

VII. First.—Abkarry Renters shall be authorized to sub-rent their Farms on such terms as they may respectively agree upon.

Second.—Sub-renters shall execute, in the mode prescribed in Clause second, Section 5 of this Act, a Mochilka similar to that entered into by persons in charge of a still or shop, and binding them to observe all the stipulations of the Renter's license.

VIII. Renters under this Act are authorized to proceed against Sub-renters for the recovery of arrears in the same manner as landholders are empowered by law to proceed against tenants for arrears of rent, provided that they shall first apply for, and obtain the permission of the Collector so to proceed. The Collector shall grant such permission if he is satisfied that the arrear is due, and that the claim of the Renter is otherwise good. If the Collector refuses his permission the Renter may then have recourse to the Civil Courts for the recovery of the arrear.

IX. First.—Annual licenses for the distillation of spirits by the European process shall be issued by the Collector under the orders of the Board of Revenue, on the payment of such fee as they shall from time to time determine.

Second.—Such licenses shall provide for the exportation of such spirits over sea, and shall prohibit the sale of such spirits to any person other than an Officer of Government, or an Abkarry Renter, except when methylated and disposed of under the provisions of Act XVI of 1863, or when, under special circumstances, they shall have been duly excised with duty by the Collector.

Third.—It shall not be optional with any person licensed under this Section to demand that the spirits manufactured by him be excised, but the Board of Revenue shall be competent at their discretion, to permit such spirits to be excised and brought into the market for sale.

X. First.—Annual licences shall also be granted by the Collector at his discretion, but subject to such conditions as the Board of Revenue may think proper, to any respectable persons applying for them, on payment of the fee to be fixed from time to time by the Board of Revenue (1) for the manufacture and wholesale vend of any liquors not included in the farm of the Abkarry Renter; and (2) for the wholesale and retail sale of such liquors and of all spirituous and fermented liquors of foreign manufacture.

Second.—Such licences shall provide against any breach of Abkarry privileges granted to any other person, or any improper practices at the place of sale, and shall contain such other conditions as to the Board of Revenue may consider necessary.

XI. First.—The transit of any quantity exceeding one Imperial quart of spirituous or fermented liquor without a permit, is hereby prohibited; and all persons not being licensed to dispose of such liquors, are prohibited from having in their possession any quantity thereof exceeding one Imperial quart without a valid permit except such quantities of English or foreign wines, beer or spirits as may be required for *bona fide* private consumption.

Second.—Permits for the transit of spirituous or fermented liquors shall be issued only by Collectors, Sub-Collectors, Head Assistant Assistant or Deputy Collectors, or by Abkarry Renters, or their Sub-renters or by other licensed vendors duly authorized by the Collector to grant such permits in regard to spirits sold by them.

Third.—The permit of a Collector or of his Assistant or Deputy shall pass any quantity of spirituous or fermented liquor, and shall be held valid throughout the Territories subject to the Government of Fort Saint George; the permit of a Renter, or Sub-renter, shall not pass more than 100 gallons of spirituous and fermented liquor and shall not be valid beyond the limits of his farm: and the permit of a licensed vendor shall not pass more than

50 gallons of such liquor as may have been purchased from him, and shall not be held valid beyond the boundaries of the District in which it is granted.

XII. All spirituous or fermented liquor passing through the Territories under this Government, beyond the limits of the Madras Abkarry as prescribed by Act XIX of 1852, unaccompanied by a valid permit, or materially differing from the quantity specified in the permit, and all spirituous or fermented liquors except such quantities of English or Foreign wines, beer or spirits as may be required for private consumption found in the possession of any person not being a licensed vendor, or Officer of Government authorized to dispose thereof, without a valid permit, shall be liable together with the vessels, packages and coverings in which the liquors are found, and the animals and conveyances used in carrying them to be confiscated by the Collectors, subject to the orders of the Board of Revenue, who shall be competent to grant such portion of the proceeds to the informer, and to the person making the seizure as they may think proper.

XIII. First.—Any person having obtained a license for the distillation of spirits by the European process, who shall dispose of such spirits in breach of the conditions prescribed in Section IX of this Act shall, on conviction thereof before a Magistrate, be liable to the forfeiture of his license, and to a fine not exceeding Rupees 1,000.

Second.—Any person duly licensed under this Act, either to manufacture or sell spirituous or fermented liquors of any description, convicted before the Magistrate of permitting drunkenness or riot in his shop, or place of sale, or manufacture, or of harbouring thieves or persons of notoriously bad character, or of mixing or permitting to be mixed with the liquor made or sold by him any ingredient likely to add to its intoxicating quality, when such admixture shall not amount to the offence of adulteration under Section 272 of the Penal Code, or of offering such mixed liquor for sale, shall be liable to the forfeiture of his license, and to a fine not exceeding Rupees 200 for each offence.

Third.—Any person convicted before a Magistrate of having wilfully contravened any rule regarding the manufacture or sale of spirituous or fermented liquor, which may have been published by the Board of Revenue under

the authority given in Clause 2nd Section IV of this Act, or any person duly licensed under this Act convicted of having committed any breach of the provisions of his license for which no special penalty is prescribed under this Act, shall be liable to a fine not exceeding Rupees 100 for each offence.

XIV. Any person who shall manufacture spirituous or fermented liquor of any description without being duly licensed to do so, or who shall sell such liquors whether of country or foreign manufacture without due authority, or at any other place or places than those at which he is licensed to sell, or after the expiration of his license and before having obtained a new license, shall on conviction before the Magistrate be liable to the forfeiture of his license, if in possession, and also to a fine not exceeding Rupees 500 for each offence.

XV. Any person conveying spirituous or fermented liquor without a valid permit or materially differing from the quantity specified in the permit, any persons attempting the same, and any persons having in their possession without a valid permit more than one imperial quart of spirituous or fermented liquor, except such quantities of English and Foreign wine, beer and spirits as may be required for private consumption, shall, on proof thereof before the Magistrate, be liable to a fine not exceeding Rupees 500 for each offence.

XVI. *First.*—Magistrates are hereby authorized to issue search warrants for the discovery of unlicensed stills, or of spirituous or fermented liquors illicitly sold, manufactured, or deposited in any place, whenever information may be given to them, on oath, or obtained by them from proceedings holden in any investigation before them, or from any credible source, that such illicit manufacture, sale, or transport has taken place.

Second.—Provided always, that no such search warrant shall be executed except between sun-rise and sun-set; nor in the apartments of women of respectability and credit who do not ordinarily appear in public, except by women who shall be specially deputed by the Magistrate to execute such warrant.

XVII. Any Police Officer above the rank of Deputy Constable, may enter, inspect, and search, at any time, by day or by night, for any of the purposes contemplated in this Act, the

house or shop in which the sale or manufacture of spirituous or fermented liquor is carried on under this Act.

XVIII. Every person, holding a license for the sale or manufacture of spirituous or fermented liquors, shall keep such license at the house or shop specified in the license, and shall show the license on the demand of any Police Officer above the rank of Deputy Constable, who shall desire to see the same; and any licensed dealer, who shall refuse or be unable to produce his license on the demand of such Officer, shall on proof of the same before a Magistrate, be liable to a fine not exceeding 200 Rupees.

XIX. Any Police Officer may stop and detain any person having possession of or carrying in any public road, street, thoroughfare or place, or in any open shop, any spirituous or fermented liquors without a pass or otherwise liable to confiscation under this Act, and may seize the liquor, with the vessels, packages, and coverings in which the liquors are found, and the animals and conveyances used in carrying them.

XX. *First.*—Nothing in this Act shall be construed to restrict the home manufacture of fermented liquors for *bona fide* domestic consumption, or to authorize any public Officer conducting the sale of spirituous and fermented liquors on account of the Government, or any renter, to compel or require the owner or occupier of any private garden or ground to draw Toddy from Cocoa, Date, or other Palm trees; nor shall any such Officer or renter have any right of control or interference therewith, other than to prevent the sale of Toddy drawn therefrom by any unlicensed person, provided that the Board of Revenue shall be competent at any time to declare such home manufacture to be illegal within the limits of any particular town or District unless duly licensed under Section X of this Act.

Second.—No Renter of exclusive privileges shall be entitled to levy any personal tax, ground rent, quit rent, tope rent, or any tax payable by Toddy drawers and not connected with the exclusive privilege, of vending Toddy.

XXI. Any penalty imposed under this Act may in case of non-payment be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of the Officer by whom such penalty was imposed.

XXII. In case such penalty shall not be forthwith paid, any such Officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

XXIII. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Officer by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if a warrant of distress were issued, any such Officer may by warrant under his hand commit the offender to the Civil Jail there to be imprisoned, according to the discretion of such Officer for any term not exceeding two calendar months when the amount of penalty shall not exceed Rupees 50, for any term not exceeding four calendar months when the amount shall not exceed 100 Rupees, for any term not exceeding six calendar months when the amount shall not exceed Rupees 200, for any term not exceeding one year when the amount shall not exceed Rupees 500, and for any term not exceeding two years in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

XXIV. Nothing in this Act shall be taken to interfere with any of the provisions of Act XVIII of 1953, which shall remain in full force, any thing in this Act to the contrary notwithstanding.

XXV. In the construction of this Act the following words shall have the several meanings hereby assigned to them. The term "Spiritous Liquor" shall be taken as denoting all liquor produced by distillation, as Arrack, Brandy, Rum, &c. "Fermented" as denoting, liquors subject to fermentation as Wine, Beer, Toddy, &c. "Magistrate," as denoting the Magistrate of the District or other Officer exercising the powers of a Magistrate.

Enclosure in a letter from the
Sub Secretary to the Board of
Revenue to the Secretary to
Government P. D. dated
16th July 1863 No. 1350.

Rev: 1702/63.

An Act for amending the
Abkary Laws of the Madras
Presidency beyond the limits
of the Madras Abkary as
prescribed by Act XIX of 1852.

1192-1193

Recd

7th order. I have made an alteration in Sect VIII requiring the engagements to be in writing & on stamped paper - because if disputes are to be settled by oral evidence the Colon time will be needlessly occupied and because there is no reason why Colon should adjudicate patis -

With this alteration & the few verbal changes noted, perhaps I think accepts the draft & transfer it to the Legislative Dept. where the necessary steps will be taken to bring it before the Council

J. D. L.

18/7

Pro 11 June/63 at 272-273

Rev. 1863. Department.
Pro: of Govt for July

No. 1702.

From Sub-Secretary to the Board of Revenue,
To the Secretary to Government, R. D.

Dated 16th July 1863.

Despatched 17th

Received 18th

C: 18 sent to Sub-Secretary

N: 1396. 27 July

No. 4350.

Submitting with the Board's remarks revised
draft of an Abkerry Act consolidating and
amending the existing law on the subject.

N: 492

22 July/63 as received

2

Revenue Department
N: 1396.

Proceedings of the Madras Government
Under date the 27 July 1863.

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Submitting with the
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consolidating and amending
the existing law on the
subject. -

(Entered 16th July 1863
N: 4350.)

Sec: VII

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With this addition and
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gulations.

W

14. Office of the Secy of the Interior
5. Secy of the Interior

Received 1863 Deft
No. of Govt for 2 July

1863

To the Honorable Govt

July 27th 1863

— the sum of \$25 Aug 1863

— the sum of \$25 Aug 1863

— the sum of \$25 Aug 1863

Received of the
Honorable Govt
the sum of \$25
Aug 1863

1863-1863

Y. C.

92-93

1863-1863