

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 597	Press Mis.
305. 306	
Dated	17. 3 - 1865.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
17th March 1865.*

No. 305. Read the following Proceedings of the Board of Revenue, dated 11th January 1865, No. 155.

Read again letter from the Government Solicitor, dated 6th July 1864, in Board's Proceedings, 9th September 1864, No. 5,892.

Read also the following letter from J. R. BOYSON, Esq., Government Solicitor, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 24th October 1864, No. 569:—

1. I have the honor to acknowledge the Proceedings of the Board of Revenue noted in the margin, relative to the contemplated arrangement for enabling manufacturers of Rum in this country to bring their Spirits into the local market on payment of Import duty as equivalent to excise, and without the formality of literal importation by sea.
2. I have submitted them for the consideration of the Advocate General, with whom I have also conferred; and
3. I now forward a copy of his Opinion.

ENCLOSURE No. 1.

COPY—OPINION.

1. In construing an Act the main object, and often the main difficulty is to arrive at the intention of the framer, by the "framer" being meant not the draftsman, but the Legislature which passed the Act. That intention, however, must be gathered from the words which the Legislature has used, not from what the interpreter may casually have learnt from extraneous sources.
2. I must deal with this question as though it were before a Court of Justice.
3. I cannot think then that Act III. of 1864, expressly passed to amend the Madras Abkarry Laws beyond the limits of Act XIX. of 1852, can have, or could by the Legislature have been intended to have, any effect *within* the Town of Madras.
4. Section 11 of Act XIX. of 1852 provides for the treatment of liquors manufactured by the European process, when imported into Madras *by land*, whether for exportation or sale.
5. I did not, in my former opinion, notice the latter contingency, as the *sale* spoken of in the Section is a sale, not in the market, but to the officers of Government.
6. Where liquors are imported *by land* into Madras for sale, such sale could only take place in accordance with the provisions of Section 2, Act XXXII. of 1845, that is to say to the officers of Government (there being no Abkarry renter in Madras).
7. That then is the enactment which has hitherto prevented the sale of such liquors in the Madras market.
8. Section 23 of Act XIX. of 1852, however, confers on the Governor in Council the fullest power to alter the form of Licenses, "anything in Section 2 of Act XXXII. of 1845, to the contrary notwithstanding."
9. If then that Act had been now in existence, I conceive that it would have been competent to the Governor in Council to have permitted the sale in Madras of the liquors under discussion by such form of license as it should please him to issue.
10. That Act is, however, repealed by the Madras Act III. of 1864, which in Section 1 provides that all references to the repealed Acts in any *existing* Law shall be taken as references to the corresponding provisions of the Madras Act III. of 1864.
11. Act XIX. of 1852 was an "existing Law" when the Madras Act III. of 1864 was passed. In Section 11 of Act XIX. of 1852, reference is made to Section 2 of Act XXXII. of 1845. That Act having been abolished, we must look to the Section in the Madras Act III. of 1864, which corresponds to the Section referred to in the repealed Act. This is Section 12 of the Madras Act, which provides for the issue and form of licenses.

*Proceedings of the Madras Government, Revenue Department,
17th March 1865.*

12. It will be observed that there is nothing in this Section which answers to the prohibition contained in Section 2 of Act XXXII. of 1845 against the sale of "Liquors, &c." in the open market in Madras. The second clause of Section 12 refers clearly to the Mofussil, not the Presidency Town of Madras; because it refers to Abkarry renters (in the plural number), and speaks of their respective farms. There is no Abkarry renter in the Presidency Town; and the whole scope and provision of the Act refer to the Mofussil, and not the Capital of Madras.

13. It might be argued that the restriction against selling to other than the Government officers within the Town of Madras being gone from the face of the Statute Book, the liquor may now be sold in the Madras market; but I think it would be very unwise to act on any such inference, while there exists a simple and apt legal machinery for bringing about the same end; that is to say, provision of Section 28 of Act XIX. of 1852.

14. I think the liquor may be excised by the Collector of the District in which the distillery is situated, under Clause 3rd of Section 12 of Madras Act III. of 1864; and that when so excised, it may be imported into Madras (Town) and sold to the public under such form of license as the Governor in Council may see fit to issue, under Section 28 of Act XIX. of 1852.

15. Though the point is not expressly referred to me, I may mention that, in my opinion, no difficulty exists as to the sale of "liquor" in the Mofussil market.

16. This depends upon the true construction of Clause 2nd of Section 12. Upon the best consideration I can give the matter, the necessity to sell in the Mofussil to officers of Government, or Abkarry renters does not appear to me to arise where the Spirit has been duly excised by the Collector. I think the two exceptions within hyphens in this clause apply to sale within the Mofussil, as well as exportation over sea. If not, this absurdity would arise; that methylated spirits, which are saleable under Act XVI. of 1863 would cease to be so, and could only be exported over sea.

17. In the view I take of the question submitted to me, it becomes unnecessary to consider the question proposed in paragraph 9 of the Revenue Board's Proceedings. I see no difficulty in dealing with Spirits imported by sea. Sections 163 and 168 of Act VI. of 1863 appear to me to provide for their treatment, and I need not settle how far I can agree with the opinion of the Advocate General of Calcutta; which I would remark was given upon the Stamp Act, not the Customs or Abkarry Acts.

(Signed) J. B. NORTON,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

1. Ordered that the above papers be submitted to Government with reference to Government Order, dated 10th June 1864, No. 992, Revenue Department, and with the Board's request that they may be authorized, under Section 28, Act XIX. of 1852, to issue Licenses for Distilleries on the European method in such form as may allow of the Spirits, when duly excised under the new Abkarry Act, being brought into the local market by land in the same manner as Spirits imported by sea on which Import duty has been paid, can be brought.

2. The effect will be to put excised Spirits, imported by land from (say) North Arcot, on the same footing as Foreign or Country Spirits imported by sea on payment of Import duty.

No. 306.

ORDER THEREON, 17th March 1865, No. 557.

Separate Revenue, No. 18

Abkarry.

1. The Governor in Council does not understand in what form the Board propose to issue Licenses. Act III. of 1864 (Madras) is inoperative within the limits of Madras, and can therefore impose no hindrance to the import of liquor

*Proceedings of the Madras Government, Revenue Department,
17th March 1865.*

manufactured after the European method in the Provinces into Madras, or its sale there after import, both of which must be governed by the Madras Abkarry Act XIX. of 1852.

2. Section 11 of the latter enactment applies specially to such liquor, and provides for its being dealt with in accordance with Section 2, Act XXXII. of 1845. This Act, it may be remarked, was made applicable to the Town and suburbs of Madras by Section 27 of Act XIX. of 1852. Section 12 of Act III. of 1864 now stands in the place of Section 2 of Act XXXII. of 1845, and it would therefore seem that when such liquor is imported into Madras by land, it can be disposed of in three ways.

I. Under Act XVI. of 1863, if methylated.

II. Exported over sea or sold to Government or Abkarry Renters, if not excised.

III. "Brought into the market for sale" if excised, at the Board's discretion.

3. In this view Act III. of 1864 (Madras) would present no obstacle to the Board's wishes.

4. If this view be incorrect there seems to be no alternative but to hold that Act III. of 1864 (Madras) cannot affect Act XIX. of 1852.

5. The Government do not see how the difficulties caused by the wording of Section 11, Act XIX. of 1852, can be got over by any form of license, or other expedient short of a new Law. The liquor apparently must be placed in charge of the Collector of Sea Customs, &c.; and it would be awkward to maintain that the provisions of the Section were rendered obsolete or annulled by a Law which is specially declared inapplicable to Madras.

6. The Government cannot help coming to the conclusion that a new Law is the proper remedy, and they wish to be informed what are the objections which the Board entertain to this course, the same opportunity being taken for the revision of Act XIX. of 1852, or the Madras Abkarry Act.

7. The Government desire the Advocate General's opinion as to whether spirits distilled in this country after the European method, come nevertheless within the category of "Arrack or Rum or any other spirits manufactured to the east-ward of the Cape of Good Hope" in Section 7, or that of "Arrack, Rum or other Country Spirits" in Section 7 of Act XIX. of 1852; if they do, they can only be imported under passes from the Collector of Madras, but when so imported, the vend of any quantity exceeding one quart to a licensed dealer is a wholesale transaction. The Board's Proceedings, dated 9th April 1864, paragraph 2, render it doubtful whether the Board contemplate such sales. In the case of foreign spirits, one dozen quarts constitutes a wholesale vend.

8. With reference to the omission in Clause 2, Section 12, Act III. of 1864 (Madras), of the prohibition of sale to "the licensed retail-dealers of Madras contemplated by Section 7, Regulation I. of 1813," the Government observe that the latter Regulation was repealed by Section 1 of Act XIX. of 1852, and probably this was the reason why this stipulation was not reenacted with the other stipulations of Section 2, Act XXXII. of 1845.

9. The Government observe that, in paragraph 2 of their Proceedings above recorded, the Board state that the effect of their proposal will be to place excised spirits imported by land on the same footing as foreign or country spirits imported by sea, on payment of Import duty. The Board here allude apparently to Section 18 of Act VI. of 1863. The Government wish the opinion of the Advocate General as to how far Section 10, Act XIX. of 1852, will apply to such spirits imported by sea free of duty into Madras. The Board will also state how the sale of such liquor in Madras, free of all tax, is prevented.

10. The Government presume that the Board have issued fresh instructions to the Collector of Sea Customs in accordance with paragraph 5 of the Advocate General's opinion, dated 4th

*Proceedings of the Madras Government, Revenue Department,
17th March 1865.*

July 1864. The "local consumption" mentioned in Section 171 of Act VI. of 1863, must, the Government conclude, be held to be subject to the special Law of Madras Act XIX. of 1852, which is not repealed by Act VI. of 1863. On this point the Board should consult the Advocate General.

(True Extract.)

Signed J. D. SIM,
Secretary to Government.

To the Board of Revenue.
" the Government Solicitor.

Exd. S. T. Augustin.

No. 5,892.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 9th September 1864.

Read the following letter from J. R. BOYSON, Esq., Government Solicitor, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 6th July 1864, No. 374:—

1. I have the honor to acknowledge the Proceedings of your Board, dated the 17th ultimo, with enclosures, relative to the contemplated arrangement for enabling manufacturers of Rum in this country to bring their spirits into the local market on payment of Import duty as equivalent to excise, and without the formality of literal importation by sea.
2. I submitted the matter for the consideration of the Advocate General, and have also discussed it with him in conference with the Deputy Collector of Madras; and
3. I now forward a copy of his Opinion.

ENCLOSURE No. 1.

COPY—OPINION.

1. I have carefully considered the papers referred to me under the Order of Government, 10th June 1864, No. 992, in the Revenue Department, as well as the various Acts and Regulations bearing upon the point to be decided.

2. It has been observed that the solution of this question must await the passing of the new Abkary Law; but though that Act has now passed the local Legislative Council, and it may be assumed will shortly receive the assent of the Governor General, so that for the present purposes it may be regarded as Law, it really does not in any way affect the question submitted. It is an Act expressly applicable to the Abkary beyond the limits of Act XIX of 1852.

3. There is but one Section in it to which it is necessary now to refer, and that will be considered in its place by and bye.

4. In conference with the Government Solicitor, I have consulted the Deputy Collector of Madras generally, and especially with reference to his opinions, as set forth by Mr. Danbury, in his letter of 2nd April 1864, No. 139.

5. I am of opinion that it is very doubtful whether the proposal of the Collector of Sea Customs, as set forth in his letter of the 6th May 1864, No. 527, can be carried out, as the Law now stands: it certainly cannot without great complexity and inconvenience.

6. Section 11 of Act XIX of 1852 provides for the treatment and custody of spirituous liquors manufactured by the European method of distillation, when imported into the town and suburbs of Madras. But the end of that Section clearly shows that such spirits are to be exported.

7. Section 171 of Act VI of 1863 appears to me to have been framed with reference to Section 11 of Act XIX of 1852, and it permits such liquors to be removed from the Custom House "for local consumption" upon the payment of the Excise duty.

8. But that Act provides no machinery for the levy of any duty of excise. Sections 163, 169 have reference to the power of the Collector of Sea Customs to absolve from excise spirits which on exportation will pay the Customs duty when imported elsewhere; draw-back, &c.

9. Any excise leviable on these spirits must be under some other Act.

10. It appears to me that no excise can be levied on them under Act XIX of 1852. That Act provides no machinery for excise except with reference to spirits to be retailed; Section 6 provides that the Board of Revenue may issue Licenses and fix an "Excise duty not exceeding 3 Rupees and 8 Annas per Gallon," &c. The Revenue Board must by implication have all necessary powers for enforcing the excise, which it may express in the License.

11. But this appears to me to refer to the Licenses of Retail dealers only; and as I understand the matter, though it is no longer thought desirable that all spirits made by the European process should be sold to the Government, or that the Government should as heretofore

hold the sole means of supplying them to the public, it is not intended that Spirits of this character should be sold for local consumption otherwise than wholesale. The Deputy Collector was very urgent on this point in order to prevent what he much feared, the prevalence of smuggling.

12. The new Madras Abkary Act (III of 1854) Section 12 provides a machinery by which spirits may be excised at the Distillery, but the 2nd Clause provides that unless they be "exported" or "sold to Abkary Renters for retail sale within the limits of their respective farms," they "shall be sold only to Officers of Government on account of the public service."

13. Nor can the difficulty be got over by Section 28 of Act XIX of 1852, which perhaps might have been brought into operation with the view of so moulding the licenses of distilleries of spirits by the European process, as to carry out the provisions of Act VI of 1863. But Regulation I of 1820, and Act XXXII of 1845, referred to in Section 28 of XIX of 1852, are both repealed by the Madras Abkary Act No. III of 1854.

14. It is not often that when the state of circumstances to which earlier Acts applied have passed away, the provisions of those Acts can safely, or with convenience, or without undue straining be made to apply to the more modern state of facts.

15. I think that if the contemplated change is to be carried out, and spirits manufactured after the European process in distilleries beyond the operation of Act XIX of 1852 are to be sold to the public within the limits of the town and suburbs of Madras, the change should be effected by a short Act; which should place the sale under the control of the Collector of Madras, provide for the levy of an excise proportioned to the strength of the spirit,* and prohibit other than a wholesale trade in the articles.

* Mr. Ranbary says that the excise on Mr. Corbett's spirit would be Rupees 4-8-0 per Gallon.

MADRAS,
4th July 1864.

(Signed) J. B. NORTON,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

1. The Board understand the Advocate General to be of opinion that the new Abkary Act cannot be made applicable to *wholesale* trade within the local limits of Act XIX of 1852.

2. The Board have always viewed this last named Act as applicable solely to *retail* trade, and the object they have in view in regard to Country spirits is merely to place the wholesale trade under an Excise duty in the same position as the wholesale trade in Foreign spirits under the Import duty. In neither case could the spirits be retailed in Madras Town except in accordance with Act XIX of 1852.

3. The objections raised by the Deputy Collector had already come under the Board's consideration, and they believe them to be based on a misconception, and to be altogether groundless.

4. A merchant importing Foreign spirits on payment of Import duty can dispose of them wholesale to a licensed retailer. No further payment of Excise duty is required in such cases under Section 6, Act XIX of 1852.

5. The Board desire to put the manufacturers of Country spirits in the same position, substituting an equivalent Excise duty for the Import duty. They request the Advocate General to inform them whether the Law in his opinion precludes them from adopting this course.

6. On paragraph 6 of the Advocate General's opinion, the Board remark that Section 11, Act XIX of 1852 expressly provides for sale under the provisions of Act XXXII of 1845, as well as for exportation, and the first Section of the new Abkary Act declares that references in any existing law to Act XXXII of 1845, shall henceforward be taken as references to the corresponding

ing provisions of the new Act. No Clause 2nd, Section 12 of the new Act removes Country spirits distilled after the European method *and duly excised*, from the limitations imposed in accordance with the terms of Act XXXII of 1845, on similar spirits not so excised, viz., that they can only be disposed of by exportation over sea, or by sale to Government, or to Abkary Renters.

7. The Advocate General in paragraph 12 of his opinion, puts a different interpretation on this Clause, which was somewhat modified in expression in the Legislative Council; but the above was certainly the intention of the framers of the draft, and the Board believe is a reasonable interpretation of the language of the Section as it now stands enacted.

8. Assuming that this is so, then it appears to the Board that Section 11 Act XIX of 1852, no longer precludes the wholesale trade in excised Country spirits even within the territorial limits of that Act.

9. The Board would also request the Advocate General's opinion on another point. They pointed out in Proceedings now before him that the inter-port trade in spirits is no longer free of duty, so that spirits imported at Madras from any other port in this Presidency are liable to Import duty at the same rate as Foreign spirits. The Advocate General of Calcutta has lately expressed a very unqualified opinion that goods carried coastwise are *exported* to all intents and purposes. Act XXXII of 1845 merely required that spirits manufactured in this country by the European method should be exported by sea, and although the new Abkary Act has made the restriction closer by wording it "*over sea*," still it appears to the Board that spirits might be sent from Ganjam to Calcutta or Rangoon, and thence brought into Madras market on payment of Import duty on the same footing as Foreign spirits. They would be glad to know the Advocate General's opinion on this point.

10. The Board admit that the Collector of Sea Customs cannot levy an excise under Act VI of 1863, but if they rightly assume that "the limits of the Madras Abkary as prescribed in Act XIX of 1852" are the *retail* trade within a certain local range, then the Collector of Madras might excise Country spirits for *wholesale* trade under the new Act, or the Collector of the District in which the distillery might be situated could levy the excise duty, and grant a permit for the conveyance of the liquor to Madras Town.

11. If the admission of these Country spirits under an excise to the wholesale trade on the same footing as Foreign spirits under the Import duty can be effected without a special law as proposed by the Advocate General, the Board think it desirable that legislation should not be attempted unless the whole question of the Madras Town Abkary is taken up at the same time, to which there are some objections at present.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. R. Boyson, Esq., Government Solicitor, Madras.

Copy to J. H. Blair, Esq., Collector of Sea Customs, Madras,
with copy of Government Order, dated 10th June 1864, No. 992,
and Board's Proceedings thereon, 17th June 1864.

to E. G. E. Fane, Esq., Collector of Madras,
with copy of Government Order, dated 10th June 1864, No. 992,
and Board's Proceedings thereon, 17th June 1864, and Board's
Proceedings 29th April 1863, No. 2,599, 18th June 1863,
No. 3,587, and 28th July 1863, No. 4,670.

Ed. J. Wright.

5

Revenue Department
No. 597

Proceedings of the Madras Government
Under date the 17th March 1865.

Read the following
Proceedings of the Board
of Revenue.

Requesting authority to
issue Licenses for Distilleries
on the European method in such
form as may allow of the spirits,
when duty expires, being brought
into the local market, by land.

(Presented 11th Jan^y
1865 No. 155.)

The Governor in
Council does not understand
in what form the Board
propose to issue licenses.
(Madras)
Act 3 of 1864 is inoperative
within the limits of Madras
and can therefore impose
no hindrance, to the im-
port, of liquor manu-
factured after the European
method in the provinces
into

MD
WJ
JH
JH

Received the Order
of the Board of Revenue
No. 597 dated 17th March
1865. Department
1864

No.
Rev-128/65

PROCEEDINGS OF THE BOARD OF REVENUE

2nd 204 September 1864

No 5592

Requesting further opinion of the Advocate
General on the subject of country spirits being
brought into the local Market on payment of
import duty.

into Madras - or its sale
thereafter in port - both of
which must be governed by
the ^{Abkary} Madras Act XIX of
1852.

Section XI of the
latter enactment applies
specially to such liquor
and provides for its being
dealt with in accordance
with section II Act XXXII of
1845. This act it may be
remarked, was made ap-
plicable to ^{the Town & Suburbs of} Madras by
section XXVII of Act XIX
of 1852. Section XII of Act
III of 1864 now stands in
the place of section II of
act XXXII of 1845 - and it
would therefore seem that
when

repealed since the
1st January 1865.

when such liquor is im-
ported into Madras by
land - it can be disposed
of in 3 ways.

I. Under Act XVI of 1863,
if ~~met~~ ^{refined}.

II Exported over sea or
or sold to Government
or Abkary renters, if
not excised.

III "Brought into the
markets for sale" if
excised, at the Board's
discretion.

In this view, ^{as}
Act III of 1864 ^(Madras) would
present no obstacle to
the

the Board's wishes.

If this view
be incorrect there seems
to be no alternative
but to hold that
(Madras)
act 3 of 1864 can
not affect act XIX
of 1852.

The Govern-
ment do not
see ~~however~~ how
the difficulties

caused

the same opportunity being
taken for the revision of
Act XIX 1852 or the Ma-
dras Abkary Act.

7
caused by the wording
of section XI Act XIX of 1852
can be got over by any
form of license - or other
expedient short of a new
Law. The Liquor apparently
must be placed in charge
of the Collectors of Sea Cu-
stoms &c; and it would
be awkward to maintain
that the provisions of the
section were rendered ob-
solete or annulled by a
Law which is specially de-
clared inapplicable to
Madras. The Govt cannot
help coming to the conclu-
sion that a new Law
is the proper remedy, and
they wish to be informed
what are the objections
which the Board enter-
tain to this course. The

The Government
desire the Advocate
General's opinion as to
whether spirits distilled
in this country after the
European method, come
nevertheless within the
category of "Arrack or
Rum or any other spirits
manufactured to the East-
ward of the Cape of Good
Hope" in section V, or that
of "Arrack Rum or other
Country spirits" in section
VII of Act XIX of 1852 - if
they do, they can only
be imported under pass-
es from the Collector of
Madras, but when so
imported, the vend
of

Exceeding
of any quantity one quart
to a licensed dealer is
a wholesale transac-
tion. The Board's pro-
ceedings dated 9 April
1864 para 2, render it
doubtful whether the
Board contemplate
such sales. In the
case of Foreign spirits,
one dozen Quarts con-
stitutes a wholesale
vend.

With reference
to the omission in clause
2 section XII Act 3 of
1864 ^(Madras) of the prohibition
of sale to the licensed
retail dealers of
Madras contemplated
by

by Section VI Regulation
I of 1813, the Govern-
ment observe that, the
latter regulation, was
repealed by section 1
of Act XIX of 1852, and
probably this was the
reason why this stipu-
lation was not re-enacted
with the other stipu-
lations of section 2 Act
32 of 1845.

The Government
observe that in para 2
of their proceedings above
recorded the Board state
that the effect of their
proposal will be to
place

place excised spirits
imported by land on the
same footing as Foreign
or Country spirits im-
ported by sea, on pay-
ment of Import duty.
The Board here allude to
apparently to Section 18
of Act VI of 1863.
The Government wish
the opinion of the
Advocate General as
to how far Section
X Act XIX of 1852
will apply to such
spirits imported
by sea free of duty
into Madras. The
Board will also
state how the sale of
such liquor in
Madras.

Madras - free of all
tax - is prevented.

The Government
presume that the
Board have issued
fresh instructions
to the collector
of Sea Customs in
accordance with para
5 of the Advocate
General's opinion - dated
4th July 1864 - The "local
consumption" mentioned
in Section 171 of Act VI
of 1863 - must - the Gov^t
conclude - be held to be subject
to the special law of Madras
Act XIX of 1852 which is not
repealed by Act VI of 1863. On
this point the Board should
consult the Advocate
General

General. -

J. S.

14 To the Board of Revenue
" & the Government Collector

22

4

Received of Mr. J. H. ...

1857

Chas. of the Church of St. Andrew
St. Andrew's Church

From the Good & Beautiful Institute
2125 Wilbur St. St. Louis 859
1830-32000 Office of the
995

622 No. 119-120
10-6-64

(Lafayette) orders on the
 Board (residents in
 adjoining) Adverse to South's
 position on the subject of
 them manufacturing
 in this country brought
 to the local markets.

Ms. A. 9.2. 5. 4. 3. 8. 6.

28. March, 1895