

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	463	Press ~~Mis.~~
³⁸⁷⁻⁸⁹ Dated	19-2-	18 68.

Not to be folded or roughly handled

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

Read the following :—

No. 387. Proceedings of the Board of Revenue, dated 20th December 1867,
No. 8,213.

Read the following letter from the Acting Superintendent of Police, South Arcot,
to the Inspector General of Police, dated Cuddalore, 3rd October 1867,
No. 153 :—

Letter from the Joint Magistrate, dated 1st
October 1867, No. 138.
D 1—Division Inspector's diary, dated 24th
September 1867.

1. 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 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 Virdachellum Inspector's report, being manufactured in
the different villages of the talook.

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 prose-
cutions 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 Magistrate's 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 Inspector General for detecting nineteen
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 prisoner.

From the Joint Magistrate of South Arcot, to the Acting Superintendent of Police, South Arcot,
dated Virdachellum, 1st October 1867, No. 133.

1. 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.

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

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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 offences 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 up 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 shewn 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, *mala in se*, but merely opposed to a Government monopoly, and therefore *mala prohibita*, 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 the 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 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 demi-official, 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. 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.

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

Forwarded to the Collector of South Arcot for early report.

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

Read again Board's Proceedings, dated 20th December 1867, No. 8,213.

Also the following letter from the Collector 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 a report a letter from the Acting Superintendent of Police of the 3rd October regarding the disposal of charges for infringement of the Salt Laws by the magistry who, it is stated, adopt different courses in applying the provisions of 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 engaged in 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 liable to confiscation under Section 3 of the same enactment, and there can be no Act, as Mr. Hathaway observes, subjecting the accused to the penalties of the Salt Law.

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

I do not, however, agree with Mr. Hathaway in the view he takes of the effect of chatty boiling for the purpose of procuring salt from earth. It appears that the system is one which is in distinct breach of the Salt Laws, and, as stated 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 accused may be made amenable to the penal provisions of the law,* and the prosecution of such persons invariably follows

on 8, Regulation No. V., (A. D. 1805,) 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

and reasonably to include the manufacture of earth-salt by boiling in chatties, and was so regarded by previous Joint Magistrates prior to Mr. Hathaway's

It may be true, as observed by the Acting Police Superintendent, that the 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 take place; but with whatever result and under whatever provision of the laws of the kind be dealt with, it clearly affords to the Police no ground for engaging 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, in the prospect of the trifling reward payable to themselves for the discovery of offences, and thus the duty of the Police would seem clear and undoubted, whatever mode of disposal of cases of the kind.

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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.)

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

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

W. 463. 3

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WOK

R. P.

14/2/68
Copied to the Judicial Dept.

L. K.
19th Feb 1868