

[3 Mad. 17.]

APPELLATE CRIMINAL—FULL BENCH.

The 5th April, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, MR. JUSTICE INNES,
MR. JUSTICE KERNAN, AND MR. JUSTICE MUTTUSAMI AYYAR.

Spontaneous salt, mere possession of, no offence—Spontaneous salt, salt-earth and earth-salt, meaning of.

“Spontaneous salt” is salt which produced naturally requires no process of manufacture to render it suitable for human consumption.

To collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, or to be found in the act of conveying it home from the place in which it is collected, are not *per se* acts prohibited by Regulation I of 1805, Section 18.

Semble : In districts to which the Salt Excise Act, 1871, is extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise is an offence.

On the 21st July 1880 the District Magistrate of Madura submitted to the High Court the records of three cases (in which the Third Class Magistrate of Pamban had convicted persons [18] under Regulation 17 of 1840 of having been in possession of spontaneous salt, and sentenced them to pay small fines or to imprisonment in default of payment) on the ground that the convictions were illegal and contrary to the High Court's ruling, dated 19th July 1878, *viz.*, “that salt spontaneously generated from the earth (*e.g.*, found in a disused salt-pan) is not salt manufactured from *salt-earth*, and therefore not *earth-salt* within the meaning of Madras Act II of 1878.”

The records of thirty-six other cases were also submitted by the same Magistrate and the records of one case by the District Magistrate of Chingleput, in which persons had been convicted in a similar manner of similar offences.

The question being of considerable importance was referred to a Full Bench.

The Government Pleader (Mr. *Handley*) on behalf of the Salt Commissioner was heard in support of the conviction.

The following **Judgments** were delivered :—

Turner, C.J., (Kernan and Muttusami Ayyar, JJ., concurring)—I understand by the term “spontaneous salt” salt which is produced naturally, and which is comparatively free from any impurity so as to require no process of manufacture to render it suitable for human consumption.

I also understand that the questions raised in the cases before us are whether persons who collect this salt for their domestic consumption, or who are found in possession of this salt for that purpose, or who are found in the act of conveying such salt from the place in which it is collected to their houses, are, on the mere proof of such collection, possession, or conveyance, liable to conviction for an offence under the provisions of Regulation I of 1805, Section 18.

By Regulation IV of 1802, Section 4, the Government declared that “having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included according to the custom and practice of the country under the several heads of salt and

saltpetre, &c.," the permanent assessment of the land-tax would be made independently of the articles therein recited.

The object of this enactment was to make it clear that the Government intended to reserve to itself the right to avail itself of, [19] or dispense with, certain sources of revenue, and, among others, "the article included according to the custom and practice of the country under the heads of salt and saltpetre"; and that the dues receivable by Government from those sources of revenue were not to be regarded as compounded for by the sum assessed as land revenue. We have been referred to no authority that, according to the custom or practice of the country, any revenue was levied on spontaneous salt collected, conveyed or possessed for their domestic consumption by persons living in the neighbourhood of the sources of this salt.

The impossibility of preventing an evasion of the impost and the cost of estimating and collecting it would, we should have conceived, have dissuaded any Native Government from looking to it as a source of revenue.

Mr. J. Grant, in his Political Survey of the Northern Circars, A.D. 1786, estimated the revenue from "salt farms" at a lakh and-a-half of rupees. Mr. White, in a minute, dated 25th March 1873, complained of the heavy and increased duties collected at the different chowkies on salt manufactured in the Circars as having materially affected the trade in the article carried on by the Brinjaries and other merchants. He pointed out that the revenue as well as the internal trade had suffered in consequence, and urged that relief should be afforded by the abolition or diminution in the number of such exactions.

In Buchanan's work on Mysore, Canara, and Malabar, frequent allusions are made to the manufacture of salt, and it appears the revenue was ordinarily received in the shape of land-tax on the salt-pans, though in South Canara it is stated the manufacturer received an advance from Government and paid a tax on the outturn.

From these authorities, and from the Regulation of 1805, I gather that at the time the Regulation was introduced the revenue from salt was raised either by taking a portion of the manufactured article from the Mirasi manufacturers or in the form of a land-tax on salt-pans, or of a tax collected from the manufacturer, as well as of transit or octroi duties. Regulation I of 1805, which was enacted for the whole of the Presidency except the Provinces of Malabar and Canara, after reciting the reservation in the earlier Regulation, placed the manufacture [20] and sale of salt under a special officer, and prohibited the manufacture or sale and the transport, export, or import of salt, except on account or with the express sanction of Government. It appropriated to the Government the whole of the existing manufactories of salt, but provided that the Mirasi manufacturers, if willing to continue their works under the conditions declared, should receive their shares in cash instead of in kind.

It commuted for money-payments all Inam and other allowances theretofore enjoyed or paid in kind. It prohibited the establishment, in the future, of salt-pans or work of any description for the manufacture of salt, except on account or with the permission of Government, and, subject to the same exception, the importation of foreign salt. Having thus secured to the Government the sole supply of salt manufactured and imported, and having prohibited the sale of salt except under the provisions of the Regulation, it abolished the obnoxious transit duties, and provided for the collection of revenue by empowering the Government to fix a price on salt manufactured and sold within the territories.

Persons purchasing salt at the place of manufacture, store, or other authorized place, and paying the established price, were to be free from the payment of any further demand, and to receive a Rowannah or pass. The 12th Section of the Regulation (which section was subsequently repealed) declared that salt should not be conveyed or transported by land or water without a pass from the proper officer in the form of pass prescribed by the section which stated *inter alia* the place at which the salt had been purchased; and the 18th Section enacted that any person engaging in any clandestine or fraudulent transaction with respect to Rowannahs or passes, smuggling or conniving at the smuggling of salt, making, purchasing, obtaining, or weighing salt in an illicit manner, should, on conviction, be liable to fine, &c.

It is noticeable that nowhere in the Regulation is mention made of salt collected or produced as distinguished from manufactured, except in Section 9, wherein "foreign salt" is declared to include "salt of every description made or produced without the limits," &c.

On the other hand, it will be observed that landholders and Tahsildars who are required to give information of any salt *made* [21] in the lands of which they have charge, and Police Officers who are similarly ordered to give information of any salt *manufactured* otherwise than as provided for in the Regulation, are not required to give information respecting salt *collected*.

Throughout the Regulation no mention is made of the collection of salt or of salt collected in those places, in which express mention of such salt could not have been avoided, if the intention to prohibit its collection had been intended.

Thus, in Section 3 the manufacture but not the collection is prohibited, and salt manufactured, sold, conveyed, &c., but not salt collected, is declared liable to confiscation.

In Section 4 the manufacture and sale of salt is to be conducted by the Collector, &c. Registers are to be kept of the quantities manufactured or sold, and advances are to be made for the manufacture, but nothing is said about collection or salt collected.

The same observation applies to Section 8, authorizing the Collector to determine the place of manufacture, to limit the quantity manufactured, and to suspend the manufacture; to Section 11 declaring the prices to be fixed of salt *manufactured* and sold, and to Section 14, which declares the measures to be taken to prevent the illicit manufacture, sale, transit, import or export of salt.

Having regard to the language of the Regulation, I cannot but think that the circumstance that in some parts of the territories spontaneous salt might be collected was not present to the minds of those by whom the Regulation was framed; or that, if it was present to their minds, yet, having no intention of raising a revenue from such salt otherwise than as it had theretofore been obtained on its way to the market, they were content to lay an embargo on the sale by the general prohibition of sale which would apply to salt of all descriptions.

However this may be, seeing that the collection of spontaneous salt is nowhere prohibited by the Regulation, it cannot be held that in places to which the Excise Act of 1871 has not been extended, a person, by collecting it, can be convicted for having obtained salt in an illicit manner. The provisions of the Earth-Salt Act of 1878 do not apply to spontaneous salt, for in that [22] Act salt-earth is defined to be "earth impregnated with salt," and earth-salt "salt manufactured from salt-earth."

Nor is the obtaining of salt-earth an offence unless it be obtained with intent to defraud the revenue, nor is the possession of it an offence unless it be for the purpose or with the intention of manufacturing it into earth-salt.

Although under a section since repealed the Regulation prohibited the conveyance of salt of any description without a pass, the violation of the prohibition only subjected the offender to the confiscation of the salt, and did not constitute an offence made punishable in Section 18.

It may be doubted whether confiscation was at any time enforced against a person found carrying a small quantity to his house for his own consumption.

The Salt Excise Act, 1871, defined the word "manufacture" as including the preparation and collection of salt; requires persons to procure a license for the manufacture of salt; and imposes penalties on persons who might manufacture or attempt to manufacture salt without a license.

The Act contemplates that salt will be collected in quantities and carried to a place of storage, and provides that on its removal from the place of storage an excise duty shall be paid on it. It also declares a person liable to imprisonment and fine who shall evade payment of the duties thereby imposed, or who shall fraudulently obtain or possess salt, whether such salt be the property of Government or not.

In the districts to which this Act is extended the collection of spontaneous salt without a license is thus prohibited, and persons found in the act of obtaining it, or in possession of it under circumstances which show they intended to evade payment of the excise, would probably be held liable to conviction.

Innes, J.—I regret that I am not in perfect accord with the rest of the bench. The main question for consideration in reference to these cases is whether spontaneous salt is within the purview of the Regulation I of 1805. The Government had been engaged in introducing the permanent settlement of the land revenue, and had by Section 4, Regulation XXV of 1802, declared that "Government hath reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or [23] permanently, the branch of the public resources arising from the manufacture and sale of salt, saltpetre, &c."; and the permanent assessment of the land-tax was accordingly made exclusively of salt, saltpetre, &c.

Regulation I of 1805 recites in Section 1 what had so taken place, and declares that the Governor has been pleased to enact the Regulation deeming it expedient that the Government should avail itself of the exclusive privilege thus reserved to itself for the improvement of its finances.

The existence of the vast tracts in which salt is spontaneously formed could have been no secret to the Government at that period, and it is difficult to conceive that, in framing the Regulation, their attention was not directed to the necessity for regulating the collection and sale of salt spontaneously formed.

There is no express mention of spontaneous salt in the Regulation, but the language used may be large enough to embrace the object of regulating the collection and sale of it.

The provisions of Sections 2, 4, 5, 6, 7, 8, 10, 11 and 12 seem to me to deal exclusively with manufactured salt.

Sections 9 and 13 are wide enough in their language to embrace spontaneous salt imported into the Madras territories, but not salt spontaneously formed within these territories.

Section 14 is not confined as to the description of salt intended to manufactured salt, and might embrace spontaneous or earth-salt. It requires the authorities to assist in suppressing illicit dealings in salt and in the seizure of salt illicitly manufactured, sold, *conveyed*, imported or transported.

Section 18 renders punishable any person engaging in any clandestine or fraudulent transaction with respect to Rowannahs or passes, smuggling or conniving at the smuggling of salt, making, purchasing, obtaining, selling, or weighing salt in an illicit manner.

I have not yet noticed Section 3 of the Regulation. This section expressly prohibits the manufacture or sale of salt, and the transit, export or import of it, except on account of Government or with their express sanction.

Sections 2 and 4 commencing with the words "the manufacture *and* sale" seem to confine the meaning of these sections as to the sale of salt to manufactured salt, but the language of Section 3 is [24] disjunctive, and is susceptible of a wider construction, and I see nothing to limit the application of the word "sale" to the sale of manufactured salt alone.

Having regard to the policy of the Regulation, and the obvious intention to keep out of the market all salt of every description which had not contributed to swell the Government revenue, I cannot think it was intended to be so confined. It is apparent, as already noticed with regard to Section 9, that spontaneous salt cannot be altogether beyond the purview of the Regulation, and I think that Section 3 was aimed at salt of every description.

According to this view I should hold the *sale* of every description of inland salt other than that manufactured and sold under the control of Government to be illegal and punishable under Section 18, and this would embrace the sale of spontaneous salt and earth-salt. The further provisions of this 3rd Section render the *conveyance*, export or import of salt directly or indirectly "otherwise than is provided for in this Regulation" *illicit*.

Where, therefore, salt has been conveyed, the conveyance has been illicit if it was conveyed otherwise than as expressly provided for.

The only authorized mode of conveyance was with the accompaniments of Rowannahs or passes showing that the salt had been properly obtained through a Government officer (Section 12); and though that section is repealed, we have still to see whether there is any provision in the Regulation authorizing the conveyance of salt not purchased from Government. The conveyance of salt purchased from Government is throughout the Regulation recognized as lawful, but as to the conveyance of salt under any other circumstances, the Regulation is silent; in other words, it does *not* provide for, or recognize the conveyance of any inland salt, but salt made and purchased from Government. This being so, the conveyance of all other salt falls within the implied prohibition of the latter portion of Section 3. Such salt is liable to confiscation, and the conveyance of it must be deemed to be *illicit* as it is prohibited. But the act of conveying it is not thereby necessarily *punishable*, though the salt so conveyed is liable to seizure and forfeiture.

It is suggested that the Regulation was not intended to apply to cases where the salt has been picked up in small quantities for [25] domestic purposes. But I do not see that the Regulation recognizes any such distinction, nor do I think that it could conveniently have done so.

The seizure of salt illicitly conveyed must necessarily be left to the lowest executive subordinates who, if salt conveyed for domestic purposes were exempted from seizure, could scarcely be trusted to discriminate between what was so conveyed and what was intended for the market.

I hold, therefore, that the conveyance, *i.e.*, the removal from one place to another of all inland salt of any description not manufactured and sold under the control of Government officers, is in itself *illicit* within Regulation I of 1805, and the party conveying is punishable if it be shown that he has *obtained* the salt illicitly before proceeding to convey it, as for instance by purchase.

The person who merely conveys is, it seems, not punishable under Regulation I of 1805 standing alone, but if he sells, he is punishable (Section 18), and he who purchases from him is punishable (Section 18); and if after conveying he possesses the salt for himself, he is punishable because (Section 18) he has obtained the salt in an illicit manner, *viz.*, by conveyance which is prohibited.

As to possession, it may be said that spontaneous salt cannot from its nature be in a man's possession without having been conveyed, nor earth-salt without its having been conveyed or manufactured, and that therefore the very possession shows that it was "obtained in an illicit manner" (Section 18), and would thus be punishable.

But the person found in possession is not necessarily the person who conveyed the spontaneous or earth-salt, or the person who manufactured the earth-salt; and it is the person who was instrumental in the conveyance or manufacture who alone would have acted illicitly, and the mere possession being consistent with innocence, the burden of proof would not be upon the possessor to show how he came by the salt. It therefore rests with the prosecution in the case of the possession of spontaneous or earth-salt to show something more than mere possession. The prosecution must show not merely that the accused person has obtained the salt, but that he has obtained it in an illicit manner; as, for instance, by conveying it or causing it to be conveyed to [26] him or by purchase, to bring him within the penal terms of Section 18, Regulation I of 1805.

Possession, where an intent to defraud the revenue is shown, is also now an offence punishable under Section 18, Regulation I of 1805, by virtue of the provisions of Act II of 1878.