M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2175 Press ~~Mis.~~

233-35
Dated 15-8- No 1868.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
15th August 1868.

Read the following :—

No. 233. Proceedings of the Board of Revenue, dated 27th March 1868, No. 2,240.

Read the following letter from the Collector of Sea Customs, to the Secretary to the Board of Revenue, dated Madras, 14th March 1868, No. 332.

1. With reference to paragraph 3 of my letter to the Board, No. 295, dated 9th instant, I have the honor to enclose original copy* of the Advocate General's further opinion on the subject.

* To be returned.

2. The Board will observe from paragraph 5 of Mr. Norton's opinion, that on the whole he considers the Collector may issue a Special Permit under the present Act, and that if so, Sections 58 and 194 will apply ; the former to confiscation and fine, the latter to fine only.

3. My proceedings in the cases of confiscations recently reported to the Board, and approved of by them are therefore in accordance with the provisions of the Customs Act.

4. *Paragraphs* 10 *and* 11 *of the Advocate General's opinion.*—I submitted to Mr. Norton the question whether the Board's decision in their Proceedings, No. 1,372, of the 25th ultimo did not form a precedent in all SIMILAR cases. In all the cases reported to the Board, the circumstances in each case exactly coincide, and in subsequent cases of the same description, which may occur, there is not likely to be any dissimilarity. The Advocate General's opinion, therefore, simply gives the aggrieved parties the privilege of appealing to the Board in *each* case from the Board to Government.

5. *Paragraphs* 8 *and* 9 *of Mr. Norton's opinion.*—I request the Board's orders in this matter. It seems to me that, under Section 23 of the Customs Act, the Governor General may prohibit or RESTRICT the importation of certain goods, that is, in the latter case orders can be passed. No one is to import more than a certain quantity of Tar, Turpentine, or other dangerous substance, but the restrictions necessary to be placed on the LANDING of any class of goods is a matter which should, I am of opinion, be settled by the Officer in charge of the Custom-house, acting under the orders of the Chief Customs Authority, under Section 46 of the Customs Act ; requesting the Board's early orders on the subject.

OPINION.

1. With reference to the further letter from the Collector of Sea Customs to the Government Solicitor, dated 9th March 1868, No. 294, I am of opinion that Section 194 would render a person, landing goods contrary to the provisions of the Act, liable to a penalty of 1,000 Rupees.

2. Section 58 also makes landing without the authority of the Officer of Customs punishable both by a penalty of 1,000 Rupees, and confiscation.

3. But both these Sections come round to the same point. What is the authority of the Collector of Sea Customs under Section 46 ?

4. I have carefully compared this Section with Sections 28 and 29 of Act No. VI. of 1844. The more I consider the matter the more doubtful I am whether the Collector has the power of issuing a restricted permit under the present Act. It would seem as though he could only refuse to issue the "Order" to land until he had got possession of the Port Clearance, &c., spoken of in that Section. In Section 28 of Act No. VI. of 1844, the words were he *further* may, &c., until Port

Clearance, &c., delivered. Then, it would seem as though the Legislature meant this to be an *additional* power given to the Collector of refusing to issue his order. If the present Act could be construed by a reference to the repealed Act, this might be strong evidence of the meaning of the Legislature. Though, on the other hand, it might be argued forcibly, that the exclusion of such word shewed an intention on the part of the Legislature to alter the Law.

5. I have very grave doubts; but, on the whole, I incline to the opinion that the Collector may issue a Special Permit under the present Act; and if so, Sections 58 and 194 will apply. The former only will justify *confiscation*.

6. But if this is not so, then those Sections do not apply to the case of Special Permits, though of course they apply to infractions of Clause 46; as for instance, if a Captain should break bulk before *any* order was issued.

7. It appears to me that there is one very simple way of avoiding all difficulty.

8. Section 23 provides that the Governor General may, from time to time, prohibit or restrict the importation of any particular class of goods.

9. The term "prohibit" I take to refer to a total exclusion of goods; the term "restrict" to a qualified permission to import. If, therefore, the Governor General were to notify in the Official Gazette that dangerous articles, such as he might specify, should not be landed without Special Permit, the question would be set at rest.

10. The Collector of Sea Customs requests my opinion upon another point, which, if I understand him correctly, is this; whether the Proceedings of the Board of Revenue, to which he refers, have not settled the question so as to act as a precedent for all future cases.

11. I think not, for Clause 6 refers only to a special adjudicature on *each case*; and the determination of the Board of Revenue, though final as to that particular case, is of no authority further than as deference would probably be paid to it, in any subsequent case, assuming, which is not very probable, that such case was in *all* particulars exactly similar to that previously adjudicated on.

12. In his demi-official letter, the Collector of Sea Customs asks if he is not empowered to confiscate under Section 41.

13. This Section applies only to dispensing with the presence of a Custom-house Officer. It is true that the Section says that the Custom-house Officer may permit this "on such conditions as he may see fit to impose." But these conditions cannot be such, as he has no power by the Act to impose. He is not empowered to make new law.

12th March 1868. (Signed) JOHN BRUCE NORTON,
Advocate General.

(True Copy.)

(Signed) H. J. BROCKMAN,
Government Solicitor.

The Collector is requested to ascertain the practice at Calcutta and Bombay in regard to landing dangerous goods without Special Permits, and to inquire whether the power of confiscation has ever been questioned, also whether any restrictive order under Section 23 has been issued by the Governor General.

No. 234. Proceedings of the Board of Revenue, dated 17th July 1868, No. 5,221.

1. The Board resolve and bring under the consideration of Government the difficulty experienced in preventing the admission into the Customs of explosive or highly inflammable and dangerous articles.

Originally.
Lucifer Matches, Sulphuric Acid, Gunpowder, Crackers, Fire-arms, Tar, and Pitch.

Since added.
Ammunition, Chemicals, Earth-oil or Mineral Naptha, Fireworks, Fulminating Powder, Gun-cotton, Kerosene oil, Nitroglycerine, Phosphorus, and Turpentine.

2. Under the rules in force at Madras, the landing of certain articles *without a Special Permit* is prohibited under pain of confiscation.

3. A notice containing this among other rules is sent to the Commander of every vessel on arrival; and further, the general permit to land cargo contains an intimation that the articles above specified are not to be landed without a special order.

4. To the enforcement of the penalty, exception is invariably taken on several grounds.

5. The legality of the measure has been impeached; but the Advocate General though entertaining "very grave doubts," on the whole inclined to the opinion that the course is legal under Sections 46 and 58 of the Consolidated Customs Act No. VI. of 1863.

6. Exception is also taken on the ground that the rule has not been published in the Official Gazette, in accordance with Section 4 of the Act; but it is the opinion of the Advocate General that a rule of this character is beyond the scope of that Section.

7. The operation of the rule is also occasionally harsh. The articles are sometimes landed by the Commander's negligence, and his liability to the Consignees has recently been declared by a decision of the Small Cause Court to determine when the goods have left the ship's side.

8. The great ground of objection to the present system lies in the dubiousness of its legality. The Advocate General has grave doubts, and though he inclines on the whole to the opinion that it is legal, still it is not expedient in a matter of this nature that there should be any reasonable room for doubt or uncertainty.

9. The Advocate General has suggested a simple and easy method of removing all difficulties, namely, the moving the Governor General in Council to exercise the power reserved to His Excellency in Section 23, and to restrict, or rather prohibit, the importation of the specified articles without a Special Permit from the Collector of Customs.

10. This seems to the Board the best course for adoption, and they would recommend it to Government, quoting paragraphs 7, 8, and 9 of Mr. Norton's opinion, dated 12th March 1868, in support thereof.

No. 235. ORDER THEREON, 15th August 1868, No. 2,175.

Separate Revenue, No. 14.
Customs.

1. Before passing orders on these Proceedings, the Government request the Board to ascertain and report whether any restrictions are placed upon landing combustible articles, other than Gunpowder, at Bombay and Calcutta.

Proceedings of the Madras Government, Revenue Department,
15th August 1868.

2. Any instances of accident to life or property, which may have occurred in Madras owing to the irregular landing of such articles, should also be reported.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

No. 5,221.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th July 1868.

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(A true Extract.)

Acting Secretary.

To the Acting Secretary to Government, Revenue Department,
with copy of Board's Proceedings, dated 27th March 1868, No. 2,240.

Exd. J. Wright.

6a RD

To

The Secy to the Govt of India

Sir,

I am directed to forward for submission to the Govt of India the accompanying Copy of the Bd of Revenue with its enclosure, and to request that, under the circumstances therein brought to notice, an Order may be issued by His Excelly the Viceroy under Section 23 of Act VI of 1863 restricting the importation of all combustible articles to the extent of requiring them to be landed under a special permit from the Collr of Customs.

I have &c

(Sd) [illegible]

Secy to the Govt of Bombay

Pol Dept

No 2468

Dated 17th July 1868.

Recd 22 July 1868

with 1 Enc.

No. 5,221.

Bringing to notice the difficulty experienced in preventing admission into the Customs of explosive or highly inflammable and dangerous articles and recommending that the Governor General be addressed to exercise the power reserved in him in Section 23 of the Act.

Read

Pol Dept 1868.

No 2468

Proceedings of the Board of Revenue,

Dated 17th July 1868.

Recd 22 July 1868

with 1 Enc.

No. 5,221.

Bringing to notice the difficulty experienced in preventing admission into the Customs of explosive or highly inflammable and dangerous articles and recommending that the Governor General be addressed to exercise the power reserved in him in Section 23 of the Act.

Read

Pol Dept

No 2468

17 July 68 No 5221

Do the words italicised in Bds Lr: "without a Special permit" mean that combustibles special in Madras land Madras? If so, I think we ought to know what has happened in the way of accident to life or property because all the Govts will add a statement of this sort to prevent our troubling the Govt: Govt in such a matter. We are going to build a place for the special deposit of combustibles, and in the papers recently circulated, it is known that Coys of vessels that carry combustibles on shore under a permit with other cargo. How does Mad. fact accord with Bds statement that combustibles can't be landed without a special order?

Secy

No 2175

Forwarded with papers which have reference with the application in 2nd letter.

Revenue Department.

No 2175

Proceedings of the Madras Government
Under date the 15th August 1868.

Read the following Pro:
of the Board of Revenue.

Bringing to notice the difficulty experienced in preventing admission into the Customs of explosive or highly inflammable and dangerous articles and recommending that the Governor General be addressed to exercise the power reserved in him in section 23 of the Act.

(Here enter 17th July 1868 No 3221)

Before passing orders on these Proceedings the Govt request the Board to ascertain and report whether any restrictions are placed upon landing combustible articles, other than Gunpowder, at Bombay and Calcutta.

Any instances of accident to life in fitting block may have occurred in Madras owing to the irregular landing of such articles should also be reported.

Pub

14 Copies To the Bd of Revenue Despr 17.

27/3

Revenue 1868 Despt
Prs of Govt for Augt

No 2175

Pro of the Madras Govt
Dt 15 August 1868.

Pro Board of Revenue
Dt 13 October 1868 No 3260

No 233 @ 25