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(2) Date of repair 15-4-42

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MADRAS RECORD OFFICE.

Government of Madras.

REVENUE DEPARTMENT.

G.O. No. 2.	Press Mis.
Dated	4-1-1871.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th January 1871.*

No. 4. From the Government Solicitor, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated 28th September 1870, No. 504.

I HAVE the honour to acknowledge the receipt of the Order of Government, Dated 12th September 1870, No. 1,434, Revenue Department. noted in the margin, requesting the Advocate-General's opinion as to the validity of the Notification of the Governor-General, dated 9th June 1870, No. 1,133, prohibiting the exportation of Opium by sea or by land.

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him thereon; and I now forward a copy of his opinion.

OPINION.

THE Notification of the Governor-General of 9th June 1870, No. 1,133, so far as it affects exportation of Opium by sea, and is based on Section 23 of the Consolidated Customs Act, is effectual; but so far as it seeks to affect such exportation by land, it appears to me to be of no force or validity. The Notification purports to be issued by virtue of "every other power enabling" (the Governor-General) "in that behalf." But I am not aware of any power vested in the Governor-General by which he can effect such an object as the present by *Notification*.

2. Under Section 23 of 24 and 25 Victoria, Chapter 67, the Governor-General is vested with certain powers, in cases of emergency, to issue an Ordinance for the peace and good Government of India, which shall have the effect of law for six months.

3. Last year when it was deemed necessary to deal peremptorily with Salt, the Governor-General proceeded by *Ordinance* (see *Fort Saint George Gazette* for 19th October 1869), professing to issue it under the above Section of the Indian Council's Act. But in the present case, we have only a Notification, not an Ordinance.

4. But I am further of opinion that an Ordinance is not applicable to the present case, and it is a very serious question whether the Salt Ordinance of last year is not altogether illegal, and whether an Act must not be passed to legalize all collections made under it.

5. Section 23 of the Indian Council's Act is expressly confined to Ordinances for the *peace and good Government* of India in cases of emergency. It appears to me that a question of revenue and finance is not contemplated or included under such terms. If I am not well founded, the Governor-General might enhance the Income-tax by Ordinance to any amount he chose to name, with all the validity of law for six months; curiously enough in the double columns of the *Fort Saint George Gazette* appear an Ordinance for Salt and a Bill to enhance the Income-tax.

6. An Ordinance which professes to found itself on an Act, erroneously, cannot impose a new obligation or add a new exemption, *Wilkinson v Loudonsack*, 3 M. & S. 117. *The Earl of Auckland*, 30 L.J. Adm., page 121.

*Proceedings of the Madras Government, Revenue Department,
4th January 1871.*

7. I am of opinion, therefore, that no Ordinance can be of effect in respect to the prohibition of the exportation of Opium by land.

8. Nothing short of legislation, I conceive, can render the exportation of Opium by land illegal, now that Schedule B. of Act VI. of 1844 has been repealed. The opinion which I gave before on the effect of Act VIII. of 1863 on Act VI. of 1844 has been since confirmed by the High Court in the case of *Solomon Gosi Gill*.

9. I am of opinion that in the present position of things, Section 60 of the Post Office Act cannot be put in force against Opium transmitted by Post; and that if Opium be made contraband, it cannot be confiscated when being exported by land to a foreign territory under Section 24 of the Consolidated Customs Act. The words of Sections 23 and 24 are very wide, but they must be read *secundum subjectam materiem*; and must, therefore, be confined to cases of exportation and importation by sea.

26th September 1870.

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

(True Copy.)

(Signed) W. HUDLESTON,
Secretary to Government.

REVENUE DEPARTMENT.
FORT SAINT GEORGE,
4th January 1871.

No. 5.

No. 2.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCIAL DEPARTMENT.

Separate Revenue, No. 2.

Customs.

SIR,—Referring to the letter from your department, dated 9th June 1870, No. 1,132A., I am directed to forward, for the consideration of His Excellency the Governor-General in Council; the enclosed copy of an opinion that has been given here by the Advocate-General as to the validity of the Governor-General's Notification of 9th June 1870, No. 1,133, prohibiting the exportation of Opium by land from this Presidency.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) W. HUDLESTON,
Secretary to Government.

Exd. F. R. Bantleman.

Financial 1871 Department.

From Government of

Fort St. George.

Dated 4th January.

R.

No. 2.

Enclosures.

6 spare copies.

D. No.

L. No.

Progs.

D.

No.

FORWARDING copy of an opinion given by the Advocate-General as to the validity of the Governor-General's Notification prohibiting the exportation of Opium by land from this Presidency.

No. 504

High Court House, Madras
20th September 1870.

From,

H. G. Prichard

To,

Govt. Solicitor, Madras.

R. A. Malysell Esq.

Acting Secy to Govt. Revenue Deptt.
Fort Saint George.

Sir,

Dated 12th
September 1870
No 1434
Revenue Deptt.

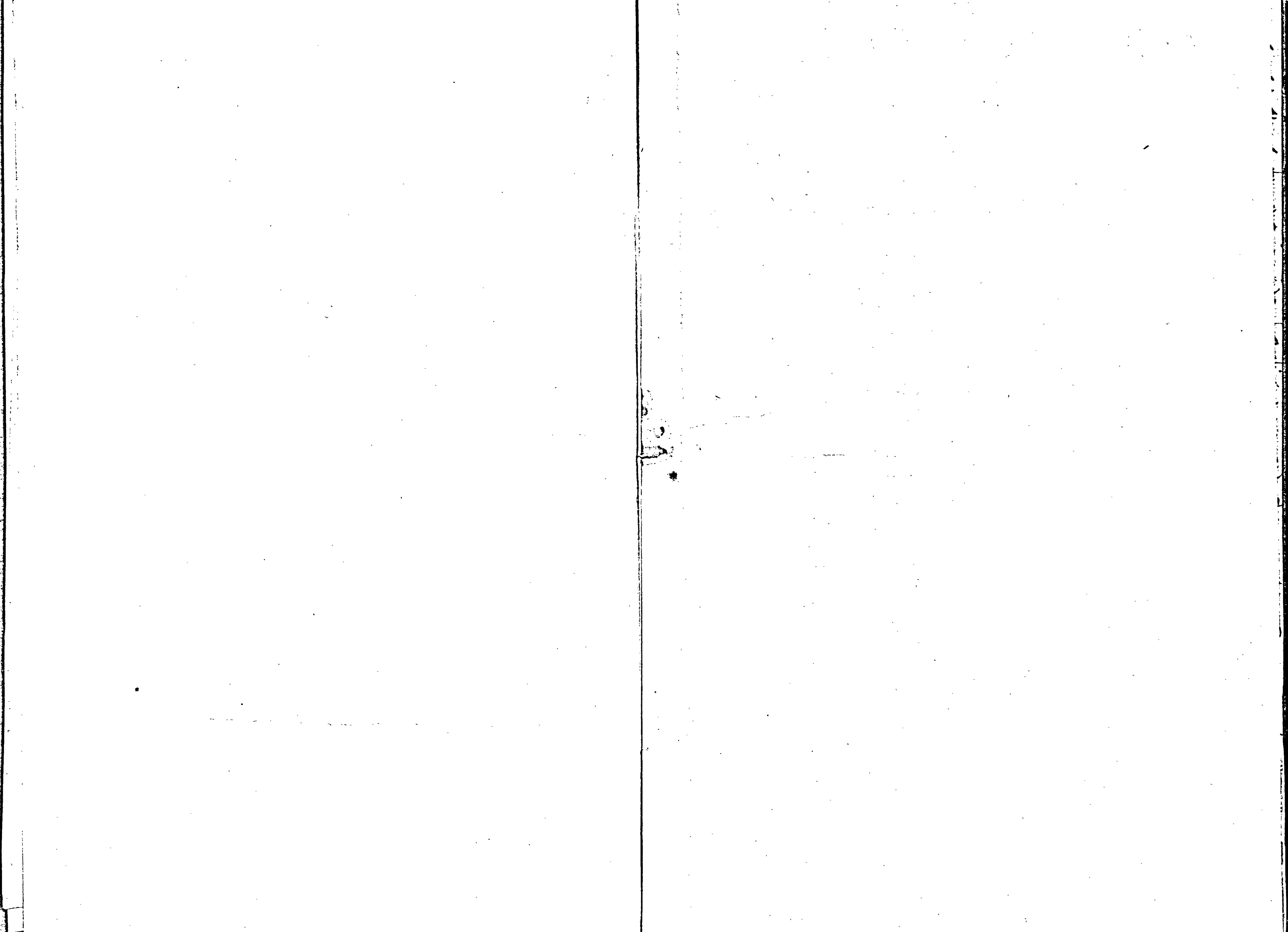
I have the honor to acknowledge the receipt of the Order of Government noted in the margin, requesting the Advocate General's opinion as to the validity of the Notification of the Governor General dated 9th June 1870 No 1133 prohibiting the exportation of opium by sea or by land.
2. I submitted the matter for the consideration of the Advocate General and have also conferred with him thereon; and
3. I now forward a Copy of his opinion.

I have the honor to be,
Sir,

Your most Obedt. Servant,

H. G. Prichard

Government Solicitor.



Memorandum for order on H. 2970

1. In the G.O. under date 12 Sept 1870 the Govt disposed of a letter from the Colls of Sea Customs asking how opium surreptitiously carried out by post should be dealt with. They explained that the Notification of the Governor General prohibiting the export of opium had rendered it contraband and that therefore any opium addressed beyond the Presidency might be dealt with under the Post Office Act.

2. The papers were, however, referred for the opinion of the Advocate General, and Mr. Norton now reports his decided opinion that the Govt. had no power

We had better send the Advocate General's opinion on Opium to the

L.S.
Yes N. G. A.

1870-12 September 1870 H. 2970-141

Rev. 1870.

Oct 11/70

of new.

H. 2970.

The Govt. Secretaries

to

The A. S. Secy to Govt. Revenue Dept.

Dated 25th Dec 1870 3 September

No 507.

Enclosure 1

Forwarding Copy of Act. Rules printed to the validity of the notification of the Governor General prohibiting the exportation of opium by sea or by land.

Oct 11/70 4/10/70

power to issue the Notification
forbidding the export of opium
by land, and even questions
his authority to pass an ordi-
nance as had been proposed
by this Govt, as he considers
that an ordinance may only
be passed on a matter re-
lating to the "peace & good
government of India" which
would not include making
the export of opium illegal.

It is, however, to be observed
that an ordinance has
already been passed raising
the price of salt, increased
taxation would, therefore,
appear to be included
by the Govt of India under
"good government"

3. The Govt of India appear
to have issued the Notification
on the advice of Mr. Stokes,
the

11
The Secretary to the Legis-
lative Council (see encls.
sures to Madras G. O. of
16th August 1870 No. 1275) so
that we have now a conflict
of legal authorities.

4. It is believed that
a paper is now in circulation
with a memo suggesting that
the possession of opium and
other drugs should be dealt
with by law. Mr. Hunter
Blair who has gone care-
fully into the matter has
referred the undersigned
that the quantity of Malwa
opium retained for home
consumption has more-
than doubled during
the

the last year or two. This
retained opium pays no
duty, and he estimates
the duty on the quantity
retained beyond what is
required, at considerably
over a lac. He believes the
whole of this quantity is
surreptitiously exported, and
no small portion of it from
Madras Port.

Orders are requested.

[Signature]

[Signature]

Memo
Validity of the
Notice published
for station of Officers
by Secretary General

enc

2770

20th 2-4 Aug 71

228 228 228

200
7 copies sent



To

Revenue Department
14th July 1871

N. 2

The Secretary to the Govt of India
Financial Department

Sir,

Referring to the letter
from your department dated
9th June 1870, No. 1132 A, I
am directed to forward for
the consideration of His
Excellency the Governor
General in Council the en-
closed copy of an opinion
that has been given
here by the Advocate
General, as to the vali-
dity of the Governor
General's notification
of

of 9th June 1870, No 1133, pro-
hibiting the exportation of
opium by land from this
Presidency.

[Signature]

Lish-

[Signature]

1574

To Govt of British
Colonies & of the
Provinces of the
Empire of the
East India
Company.

2

Resolutions

List