

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	967	Press Mis.
<i>260-61</i> Dated	20-6-	18 20 19

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Revenue Department,
20th June 1870.*

No. 240. Read the following Proceedings of the Board of Revenue, dated 11th May 1870 :—

Read the following letter from the Acting Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 26th April 1870, No. 321.

I HAVE the honour to request that you will lay before the Board the following remarks in connection with the Advocate-General's "opinions" submitted with Mr. Prichard's letters, dated 9th March 1870, Nos. 124 and 125, in which Mr. Norton expresses his belief that there exists no authority to confiscate or levy duty on opium in this Presidency.

2. First,—As to the exportation of opium by sea. Schedule B. of Act. VI. of 1844, which by Section 5 is declared to be a part of the Act, prohibits this in cases where the opium is not covered by a pass. Act VII. of 1859 repealed Schedule B., Act VI. of 1844, *except as to salt and opium*. Thus reduced, the schedule was left intact by Act VI. of 1863 and XVII. of 1867, and so it remained until the passing of Act VIII. of 1868, an enactment which, in the opinion of the Advocate-General, totally abrogates it.

3. On reference to the Act in question it will be seen that it repeals categorically so much of Schedule B. as was not repealed before. But I desire respectfully to call the attention of the Board (1) to the terms of Section 1 of the Act which, in my opinion, so qualify this repeal as to render it practically null in the case of opium ; (2) to the preamble in which the object of the Act is set forth, and which strengthens the above conclusion.

4. Clause 4, Section 1, runs as follows : "Nor shall this Act affect any principle or rule of law, or established jurisdiction, form, or course of pleading, practice, or procedure, or existing usage, custom, privilege, restriction, exemption, office, or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognized, or derived by, in, or from any enactment hereby repealed."

5. It has been shown that the prohibition on the export of opium was in force up to the period at which Act VIII. of 1868 was enacted. The section just quoted provides that no existing "restriction" shall be affected by the Act, and provides this unconditionally, for the words "notwithstanding" * * * "hereby repealed" do not constitute a condition. No Act subsequent to Act VIII. of 1868 touches the question. Therefore to demonstrate that the prohibition on the export of opium still remains in force, it is only necessary to assume that a prohibition comes within the scope of the word "restriction." This can hardly be denied.

6. As if to remove any doubt which might be felt as to the proper construction of the qualifying clauses in Section 1, the preamble declares that the object of the Act is to repeal enactments which have ceased to be in force, otherwise than by express and specific repeal, or have by lapse of time and change of circumstances become unnecessary, or which merely repeal prior enactments. Not one of these conditions is fulfilled by the prohibition on the export of opium contained in Schedule B. Act VI. of 1844, and I suppose that the preamble is not misapplied

*Proceedings of the Madras Government, Revenue Department,
20th June 1870.*

when it is employed for the interpretation of an ambiguous sentence or word in the Act itself.

7. A note regarding the Act by the Assistant Secretary to Government, Legislative Department, dated 21st December 1867, shows that the Government of India contemplated the repeal of the unrepealed portion of Schedule B. Act VI. of 1844, "*except so far as it relates to salt and opium.*" It is more likely that the framers of the Act intended the clause quoted above in paragraph 4 to provide for the continuance of the prohibition than that in drawing up the Act they overlooked an essential point in connection with it which had only a few months before been under their notice.

8. A similar question was discussed in the Governor-General's Council in 1868, *vide* page 220, Proceedings of the Governor-General's Council 1868, Volume VII.

9. Recent occurrences have necessitated this application to the Board. On the 21st instant opium to the value of Rupees 4,000 was manifested for and brought to the Custom-house for export. The exporter had evidently learnt the purport of the Advocate-General's opinions, and was eager to seize the opportunity offered to him by a supposed temporary paralysis of the law. If his opium had been passed (and had it been passed at all it must have been passed free of duty,) I am given to understand that his example would have been followed by numerous others to the sensible detriment of Imperial Revenues, and I think such a consequence more than probable.

10. But, acting on the view as to the legality of the prohibition hereinbefore expressed, I detained the opium in question, and I have now to suggest that the Board will issue instructions to Mr. Blair, who returns tomorrow, as to its disposal, and also (in the event of my view of the case being considered unsound,) whether the opium is to be passed free through the Custom-house, until the requisite authority for pronouncing it contraband has been furnished.

11. Secondly,—As to the importation of opium both by land and sea, I would suggest, for the consideration of the Board, whether the clause in Act VIII. of 1868 "*nor shall this Act affect any duties leviable on salt or opium*" does not still retain in force the duties leviable under Schedule A. Act VI. of 1844. There is besides another enactment, Act XXIII. of 1859 which has never been repealed, and which lays down that salt and opium shall remain subject to the same rates of duty, or shall be prohibited without a Pass as the case may be "*as if this Act had not been passed.*"

BEFORE passing orders on this letter, the Board resolve to call the attention of Government to their Proceedings of the 15th March 1870, No. 1,775. The fact that a large quantity of opium has been manifested for at the Madras Custom-house, and is now under detention there, makes it desirable that the general question should be decided soon.

2. Mr. Wellesley argues from the Preamble and Section 1 of the repealing Act that it does not repeal the prohibition to export opium without a pass, which was enacted in Section B, Act VI. of 1844. It is quite clear from the portions of the Act that the Legislature did not *intend* to repeal any other than obsolete laws,

*Proceedings of the Madras Government, Revenue Department,
20th June 1870.*

but it is also certain that in some cases more was done than was intended. For instance, the Legislature repealed Act XXX. of 1858 through inadvertence, believing it was no longer acted upon, and were then obliged to re-enact its chief provisions by Act XXI. of 1868.

No. 241.

ORDER THEREON, 20th June 1870, No. 907.

Separate Revenue, No 17.

Customs.

RECORDED with reference to the
G. O., dated 11th June 1870, No. 853.

(True Extract.)

(Signed)

R. S. ELLIS,

Chief Secretary.

To the Board of Revenue.

Erd. E. C. Shunker.

Revenue 1870 (V. 1)

77-1135

Proceedings of the
Board of Revenue

Dated 11 May 1870

Despatch 11

Recd. 12

Encl. 1

Opium - Letter from
Collector of Sea Customs for-
warding certain observa-
tions on Advocate General's
opinion regarding exporta-
tion of, submitted to him
with remarks.

77-907
Recorded with
reference to the 4 V. 1
dated 11 June 1870
20 June 1870

Letter from Collector of Sea Customs

Colt. of 1870

REVENUE.

THE BOARD OF REVENUE.

Dated June, 20th.

Recd.

G. O., 20th June 1870, No. 907.

JUNE

Nos. 240-241.

Opium.—Proceedings, Board of Revenue,
recording observations on Advocate-General's
opinion regarding its exportation, recorded.