M.R.O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	969	Press / Mis.

360-62
Dated 30-6-1870 12

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
30th June 1870.

Read the following papers :—

No. 360. Proceedings of the Board of Revenue, dated 21st March 1870, No. 1,908.

Read the following letter from the Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 21st February 1870, No. 145.

I HAVE the honour to forward, for the information of the Board, copy of a letter* from the Government Solicitor, stating that a decree has been given in Suit No. 435 of 1869, wherein Messrs. Orr and Sons are the plaintiffs, in their favour for Rupees 2,000 and costs.

* A.

2. As advised by Mr. Prichard I propose to sell the precious stones and jewellery shortly, that the proceeds may be applied to the payment of the damages and costs.

3. I also send, for the Board's information, two accounts† of the trial from the Newspapers.

† B.

4. From a conversation with the Government Solicitor and the remarks of the Honourable Sir A. Bittleston and the Counsel for plaintiffs, it appears to have been admitted that Government has a right to detain dutiable articles sent by the Post, and levy duty thereon, but not to confiscate them; also that Government might issue an order that all parcels should be sent to the Collector of Sea Customs.

5. By paragraph 8 of Government Order‡ of May 15, 1869, No. 1,361, I was authorized to make occasional examination of the Mails, but considered it advisable not to do so while the Suit, just decided, was pending; nor do I now feel justified in taking any further proceedings in cases of dutiable goods being imported by post, until I receive instructions from the Board.

‡ Communicated in Board's Proceedings, dated 18th May 1869, No. 3,423.

6. I, however, consider it my duty to bring to the Board's notice that unless some steps are taken to realize duty on articles imported through the Post, the loss of revenue to the Government of India will be very considerable.

7. Many valuable dutiable articles can be, and are sent by Post, and the public will, of course, now avail itself of the privilege of doing so to the fullest extent. Clocks and watches, jewellery and plate, apparel and haberdashery, (under which head gold thread and lace are included) silk, woollen, and cotton piece goods, gold leaf, manufactures of metals and leather, soap and perfumery, shawls, stationery, tobacco, and opium, can all be sent by Post, and consequently will escape payment of duty unless some steps are taken, either to prevent their transmission by Post, or to secure the payment of duty. Goods should be either dutiable or free, and the question of whether they are to pay duty or not I think depend on the means of transit by which they are brought to India from foreign ports. Under the present system dutiable goods brought by Post are practically free, but if sent in a box as cargo by the very same steamer would have to pay duty.

§ See Mr. Wood's evidence in Court.

8. I understand from the Government Solicitor that the Advocate-General intends to address the Government on this important subject. I do not therefore think it necessary to offer any further remarks, and await the Board's instructions.

ENCLOSURE No. 1.

From the Government Solicitor, to the Collector of Sea Customs, Madras, dated 17th February 1870, No. 94.

I HAVE the honour to inform you that the Suit No. 435 of 1869, wherein Messrs. Orr and Sons are plaintiffs and yourself and the Government are defendants, came on for hearing this day before the High Court at Madras and that the Court made a decree in favour of the plaintiffs, for the sum of Rupees 2,000 and costs.

2. The Court, when pronouncing its decree, held that the practice of transmitting parcels, containing dutiable articles through the Post, was a legal one and recognized by the Postal authorities, and that there was no such concealment of the goods within the meaning of Section 24 of Act VI. of 1863 as would warrant their confiscation under the same Section.

3. I have returned to Mr. Fox, the Acting Deputy-Appraiser, the several articles of jewellery confiscated by you, as they are now the property of Government, the plaintiffs having been awarded the sum of Rupees 2,000 as damages for their confiscation; and I would suggest that the jewellery in question be sold, with all convenient speed, in order that the proceeds may be made applicable towards payment of Messrs. Orr and Sons' damages and costs.

ENCLOSURE No. 2.—Accounts of trial from a News paper.

THE Board resolve to submit this letter for such orders as the Government may deem proper.

2. It will be observed that the Government Solicitor reports that the Suit brought by Messrs. Orr & Co. was decided in their favour, on the ground that transmission of dutiable articles through the Post is legal, and that there was no such concealment of the goods within the meaning of Section 24, Act VI. of 1863, as to warrant confiscation.

3. The Collector infers, and the Board think correctly, from the decree that it was held that it would be legal to stop parcels and collect duty on dutiable articles; and he seeks instructions as to whether he should examine the Mails for that purpose.

4. The Board have already recorded their opinion that the interests of the revenue demand that some examination should be made; but the only mode in which this could be rendered effectual without a vexatious interference would be by exacting penalty in case of detection, and thus, by a few examinations, deterring parties from incurring risks.

5. As it has been decided that the law does not provide any penalty, the Board would not recommend examination merely for the purpose of levying duty on such articles as might come to notice. It is out of the question to examine the whole contents of the Mails at the port of landing, and if only occasional examinations were made, the incidence of the duty would be partial and unjust.

6. The general question of legislating on the subject having been referred to the Secretary of State, the Board do not now deem it right to enter into the question further.

No. 361. From the Advocate-General, Madras, to the Chief Secretary to Government, Fort Saint George, dated 23rd February 1870.

I HAVE the honour to state, for the information of His Excellency the Governor in Council, that I appeared on the 17th instant before Mr. Justice Bittleston on behalf of the Collector of Sea Customs and the Government of Madras, defendants in Original Suit No. 435 of 1869, brought against them by Messrs. Orr and Son.

2. I send herewith a report of the case which appeared in the *Madras Times*, and which gives a fairly accurate, although much condensed, account of what took place.

3. It will be seen that the decision turns upon the construction of the word "concealment." I cannot say that Sir Adam Bittleston's interpretation is not a reasonable and sound one, notwithstanding it differs from the conclusion at which I myself had arrived.

4. I beg to say, however, that I had not before me, when I was consulted, so clearly and fully as I ought all the materials which were available from what I may call the Post Office side of the question. The English and Indian Post Office Guides throw no little light upon the extent to which the public may use the Post Office; and I think if all the matter had been submitted to me, I should have expressed a less confident opinion as to the power of confiscation; while I am certain that if I had seen Messrs. Orr and Son's letter to the Collector of Sea Customs, dated 9th March 1869, expressing their readiness and willingness to pay the duty, and known that they had also stated this when the first letter was opened, I should have advised that to exact the duty and caution them against a repetition of their former course would have quite met the necessity of the case without any reference to the question of confiscation.

5. I also desire to add, that on hearing that a letter had been received from the Supreme Government, not coinciding with the action taken in regard to Messrs. Orr and Son, and on seeing in the Newspapers a report of certain proceedings of the Supreme Government on what may justly be called the abuse of the Post Office, referring the whole question to the Right Honourable the Secretary of State, it appeared to me very desirable that the action should be compromised, which I have good reason for believing it could have *then* been on the terms of the Government paying Messrs. Orr and Son's costs—at that time very trifling—and their receiving back their goods on payment of duty.

6. With this view I communicated with one of the Members of Government who, I understand, considered the question with his only other colleague then in Madras, and that it was thought better, on the whole, to let the action proceed, whatever might be the result, as the state of things would then be so thoroughly exposed as to enforce a remedy, if no remedy existed.

7. It was agreed by Counsel that 500 Rupees should be taken as Messrs. Orr and Son's profit on the goods which the Sea Customs Appraiser had valued at Rupees 1,500. Messrs. Orr and Son by their Plaint demanded 1,000 Rupees as their profit. They declined to receive back the goods; and thus, while the Government has to pay Rupees 2,000, the price which the articles will fetch at auction, probably not less than Rupees 1,500 is to be set off against the judgment amount.

8. There remain the costs which I think cannot be very heavy after taxation, as there was but little evidence in the case. Probably from 6 to 700 Rupees ought to cover the costs; but on this point I can scarcely offer an opinion.

9. Though not dissenting from the Judge on the point of construction, I cannot say that I go along with him in several of the observations which he threw out in the course of the case.

10. Thus, when he suggests that the Mails might have been opened at Bombay where the offence against the Custom's Act was complete, if any offence had been committed, and a search made for dutiable goods, and that the plaintiffs are not responsible for any omission on the part of the Government to protect its own rights, I cannot but think that practically such a course is impossible. The whole public would be put to very great inconvenience and delay, if the whole Mails were regularly stopped on their arrival at Bombay, with the view of detecting any letters or packages containing contraband or dutiable articles.

11. Nor do I think such a practice indispensable for the recovery of duties on dutiable goods brought by the Overland Bombay Post into this Presidency.

12. Mr. Justice Bittleston threw out, though it was not necessary for the decision of the case as it turned out, that when once the dutiable goods had been brought into Bombay, duty might be levied on them whenever the articles could be stopped, notwithstanding they might have been, and were not stopped at Bombay. I myself have always had some doubt on this point, whether it was the Collector of Sea Customs at Bombay or at Madras, or whether both or either might stop the letter and levy the duty, or, as I thought, confiscate. Indeed, the Collector of Sea Customs, at my suggestion, communicated with the Sea Customs Collector at Bombay, suggesting that the opinion of the law officers of Government should be obtained upon the whole case, but, I believe, without receiving any answer. Counsel for the plaintiffs argued that the goods were liable to duty at Bombay the moment they reached the shore, and that if the duty was not levied there, it could not be levied elsewhere. Mr. Justice Bittleston at once dissented from this argument; and, on the whole, I am inclined to think that inasmuch as Madras is the Presidency into which the goods are intended to be, and are, in fact, imported, as the letter is addressed to parties resident in Madras, and the goods are intended for sale here, duty is leviable here, although it would have been also leviable at Bombay.

13. But the practical inconvenience and uncertainty attending the attempt to levy the duty here, in the existing state of things, is obvious. The goods do not come into the Custom-house. The Collector of Sea Customs cannot exercise any immediate independent control over them, similar to that which he exercises in his own department: he receives no assistance from the Post Office authorities; and, indeed, from Mr. Percy's evidence, it seems doubtful whether the Post Office would *now* pay any attention to a requisition from the Collector of Sea Customs to detain any suspected letter. It is clear that the Postmaster will not take any initiative action under Section 60 of the Post Office Act. The Collector of Sea Customs must depend on such information as he can from time to time obtain: the

Proceedings of the Madras Government, Revenue Department,
30th June 1870.

majority of packets and letters containing dutiable goods will step through unobserved, and the State be deprived of its just dues.

14. Such a state of things, it is apprehended, was never contemplated, and will not be permitted to continue.

15. Counsel for plaintiffs, indeed, argued that the Government had, by its course of action, voluntarily elected to abandon its Custom-duties, with the view of fostering transmission of goods through the Post, and thus enabling the State the better to meet its subsidy to the P. & O. Co., for carrying the Mails; but such an argument is obviously unfounded, for, as Mr. Justice Bittleston observed, the Government is entitled to its Custom-duty as well as its Postal charge. Again, it is very improbable that the Government ever intended to waive its claim to duty, which may amount to a very large sum, in consideration of the payment of a Postage charge, which is always comparatively trifling.

16. This ability of persons, who are not above taking advantage of the facility now afforded, to evade the Government dues by sending their goods through the Post Office operates very unequally and unfairly. For instance, Messrs. Oakes & Co., whose business necessitates their importing bulky goods through the Custom-house, must pay $7\frac{1}{2}$ per cent. on their importations, before the goods can be removed. If they have a package worth Rupees 10,000, they must pay £75; while Messrs. Orr and Son can easily send a packet of the goods they trade in, of equal value, through the Post Office, and evade the payment of their £75, at $7\frac{1}{2}$ per cent.

17. It is true that Messrs. Orr and Son have not been guilty of smuggling. To constitute that offence there must be both an intention to defraud, and a breach of some law. In the present case, it has been held that they have not violated any law; but it is obvious that they intended to evade the payment of duties which they, of course, knew the State had a right to demand. No other inference can be drawn from what Mr. Wood admitted at the trial, that for the past twelve months they have been in the habit of receiving their goods through the Post Office, without ever declaring to the Collector of Sea Customs that the goods were liable to duty. It is true that when their first letter was stopped, they informed the Collector that they expected more goods by succeeding Posts; but they would not have done this had they not been found out, and with the sole view of protecting themselves from the possible consequences of their conduct under the present working of the Post Office. According to instructions which Mr. Percy informed the Court he had received from the Postmaster-General at Calcutta to pass all letters without any stoppage under Section 60 of the Post Office Act, it is hardly possible for the Collector of Sea Customs to interfere; and, indeed, Mr. Wood stated that he had on the very morning of the trial received a ring duty free through the Post.

18. Mr. Justice Bittleston intimated that he thought the Government had power to protect itself under Section 5 of the consolidated Customs Act 1863. But I do not think it is so. There is always considerable risk, as, indeed, is shown in the present case, in attempting to apply the provisions of an Act to a state of circumstances which has arisen since the passing of the Act, and which was never

contemplated by its framers. It is very true that the local Government might frame rules "for the landing, shipping, and clearing of parcels forwarded by Her "Majesty's or other Mails or by other regular packets and passenger vessels." But this would be a very awkward, and perhaps inefficacious method of providing for packages not imported at any Port in the Madras Presidency. Further, it appears to me that no rules which this Government could frame would meet all possible contingencies. None but officers of Sea Customs could enforce such rules; and many letters containing dutiable articles, imported by the regular Overland viâ Bombay, never reach Madras or any sea port at which I believe there are Custom-house Officers.

19. Put the case of a letter addressed to Cuddapah. How could any rules for securing the duties be enforced there? Put the case of Bangalore, where a Foreign Territory is administered under British rule; or the case of Hyderabad, where the administration is Native. The difficulties become evidently multiplied. Letters might be addressed to persons in such localities, for the purpose of being re-directed and transmitted to their originally ultimate destination expressly to evade the Customs-duties.

20. It appears to me that legislation is unavoidable: a new state of things has sprung up not contemplated or provided for when Act VI. of 1863 was passed. And I think that the proper remedy is to require a declaration from all parties transmitting or receiving dutiable goods through the Post Office, just the same as is done with respect to dutiable goods transmitted through the Custom-house. It might be made an offence against the Post Office Act to send letters or packages containing dutiable goods through it, without such a declaration. But it appears to me more logical to constitute it an offence against the Sea Customs Act.

21. I merely throw this out without developing any precise scheme, as I understand the whole subject is now before the Secretary of State, who will determine what is the proper remedy, and in what direction to apply it.

No. 362. ORDER THEREON, 30th June 1870, No. 969.

Separate Revenue, No. 30.
Customs.

RESOLVED that the foregoing papers be submitted for the information of the Government of India, with reference to their letter, under date 19th August 1869, No. 2,689, Financial Department, and that it be explained that this Government deemed it advisable to bring the question to an issue by permitting the Suit against the Collector of Sea Customs to proceed.

2. Though the High Court have upheld the right of the Collector of Sea Customs to examine the Mails, it is held that he has no power of confiscation when dutiable articles are imported through the Post. As the only object of such examination is to prevent the Post being taken advantage of for the purpose of defrauding the revenue, and as the mere levy of duty will certainly fail of such effect, the Board of Revenue will instruct the Collector to desist from further

Proceedings of the Madras Government, Revenue Department,
30th June 1870.

interference, and to await the orders of the Home Government to whom the whole question has been submitted by the Government of India.

(True Extract.)

(Signed) R. S. ELLIS,
Chief Secretary.

To the Board of Revenue.
,, the Government Solicitor.

Exd. F. R. Bantleman.

COURT OF HIGH COURT.
REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated June, 1870.

Read.

(E. O., 30th June 1870, Nos. 999

JUNE.

1105. 999—999.

Jewellery imported by Post—Proceedings Board of Revenue and letter from Advocate-General Regarding the Suit instituted by Messrs. Orr & Co. in connection with their confiscation, with orders thereon.

5

Rec. 5th
Issue 30th June 1870

THE MADRAS TIMES. SATURDAY, FEBRUARY 19, 1870.

of Spain and Turkey forbade the transmission through those countries of jewels by clause 141 letters intended for those countries could not contain jewelry. The British Government stated this prohibition with regard to letters for Spain and Turkey but there was no such prohibition as to the Indian Empire. With regard to the first parcel which had been confiscated Government had had no notice up to the time it was opened that it contained dutiable articles. But with regard to the other two parcels the Post Master had been made aware of their contents before they arrived. The jewelry was sent by sea. The articles reached their sea destination either at Madras or at Bombay. In this case it was clear that the parcels reached their sea destination in Bombay. The Collector of the Madras Sea Customs had no jurisdiction except as to parcels delivered by sea at Madras. The duty on these parcels could only be levied by the Collector of Sea Customs in Bombay. The mere fact that the jewelry had come out by post did not shew that they were smuggled. There was no obligation on the part of Messrs. Orr and Co., to pay any duty if government did not choose to ask for the same. Mr. Mayne submitted that the plaintiffs under the circumstances of the case could not be charged with smuggling.

His Lordship wished to know whether smuggling was defined in the Act and if an intention to smuggle would not be sufficient to constitute the offence.

Mr. Mayne said that to constitute smuggling there must be an act of disobedience to some known rule in order to evade paying duty. In this case there had been no violation of any rule of law and there had been no intention to evade payment of duty, as express notice of the second and third parcels was given to the Post Master.

Mr. Norton then produced the following evidence.

Samuel Thomas Wood deposed. I am of the Firm of Messrs. Orr and Co., Jewellers. I could not say how long we have received jewelry through the Post. It may be for about twelve months. We never offered to pay nor did we pay any duty for what we received.

Cross-examined by Mr. Mayne. I never was asked to pay any duty.

Morris Percy, deposed. I am the Post Master of Madras. The practice with regard to English Mails coming by Bombay is that the letters are sorted between Suez and Bombay and are made up in parcels and made up by the Sea Post Office and directed. They are landed at Bombay and then sent on to the Railway Station en route to Madras. They are not opened or interfered with or touched at Bombay. They are not opened till they reach the Madras Post Office.

Cross-examined by Mr. Mayne. I have detained other parcels containing dutiable goods in the same manner as these. Duty has not been demanded. I made them over to the Customs authorities. It is not the practice at present to detain and examine registered parcels. I do not take any steps to ascertain whether parcels passing through contain dutiable goods. I am in this course acting under the orders of the Director General of Post Offices. I was present when the two first parcels were opened.

By the Court.—I was present when the parcels were opened. Mr. Robert Orr who was present on the first two occasions told the Custom's House officer in my presence that he was willing to pay whatever duty might be demanded of him.

Mr. Norton then addressed the Court for the defendant. Messrs. Orr and Co. seemed to think it hard that a different course was pursued with regard to themselves from that which had been pursued with regard to other persons. There was no proof that the parcels belonging to other persons had not been confiscated. Even if it were so; if a different course had been meted out with regard to others, it appeared to Mr. Norton that there was a great distinction between a young gentleman who got out a locket or received some small thing from a friend, from jewellers who had an extensive business and who in effect were depriving Government of a part of the revenue to which they were entitled. With regard to the intention of Messrs. Orr and Co. to evade paying any duty, that was to be judged of by their conduct. When his Lordship found that according to Mr. Wood's statement Messrs. Orr and Co. had for a year received arti-

The Judge here observed that Mr. Mayne would admit that in addition to what was paid to the Post office the Government was entitled to duty.

Mr. Mayne replied that no doubt Government was entitled to duty if they chose to ask for it. Government had chosen to waive the right to examine and detain parcels. According to Mr. Percy's evidence the Government rather than delay letters and put the public to inconvenience, had determined that they should not be detained.

Sir Adam wished to know whether the parcels bore on them any description of the articles they contained.

Mr. Mayne said that in these days when banghy parcels were robbed, to put a description of the articles contained in it on a registered parcel, would be to offer an inducement to a Post Office peon to run away with the post bag. Mr. Mayne repeated that there was no concealment on the part of Messrs. Orr and Co., such as section 24 of Act VI of 1863 contemplated.

His Lordship in delivering judgment said that in this case the only question was whether the Collector of Sea Customs had authority to confiscate the jewelry which came to Madras in registered packets. That question depended upon whether the case came under section 24 of Act VI of 1863. It was not on the part of the plaintiffs disputed that at the time of landing the jewels were subject to a customs duty, nor was it denied that after receipt that Messrs. Orr and Co. were willing to pay the duty which was chargeable. The course however which was adopted was to confiscate the property. That course might be justified if Messrs. Orr and Co. could he brought under section 24 of Act VI of 1863. By this section any goods subject to a duty if concealed, were liable to be confiscatad together with the goods in which they are concealed. It was not pretended in the present case that there was anything special in the mode of packing, nor was the external appearance of the parcels calculated to produce any impression that they contained articles different from the things they really contained. It had been shewn that it was the practice to import valuable things through the Post and that the practice was recognized. It also appeared clear from the Post Office Act that the Legislature had taken care to provide means for the enforcement of duty. It provided for the detention by a competent authority of any parcel which might be suspected. The Legislature and the Post Office did not consider it illegal, to transmit valuable articles by means of registered letters. This was what had been done. The question was whether there was any concealment. It seemed to his Lordship that some concealment other than that which is necessary for transmitting an article in a legitimate mode should be proved. To say that an article put in a cover and in a case such as is recommended by the Post Office is smuggled, would be inconsistent with the section and especially where the Post Office authorities are not deprived of the means of ascertaining the contents of the parcel; it would be inconsistent with the meaning of the words of the section to say that the article is smuggled. The meaning of the section was clearly indicated by the words in the Section. It was provided that the article and the goods in which the article is concealed should be confiscated. There must be something more than merely putting in a case. There was no unusual packing in the cases referred to. No doubt Messrs. Orr and Co. had for a period of twelve months received articles in this way and no doubt they had found by experience that, by getting out articles in this way they could get them out free of duty. But so long as it was clear that the use of the Post Office in this way was a legitimate one and had been contemplated by the Post Office Act, the confiscation by the Collector was a mistake. The decree therefore would be for the amount that had been agreed upon by the plaintiffs and defendants, viz. Rupees 2,000 with costs.

6a

REVENUE DEPARTMENT.

No. 566.

From The Advocate General

Dated 23rd February 1870

FOR ORDERS.

There is nothing to show that I can see but by the title & by the nature of the business put in the recommendation that measures be adopted to prosecute the Customs Revenue. The opinion of the Government Advocate should be sent, a short abstract of which should be sent with their letter to Calcutta.

J. D. S.

Revenue Department.

7a

W. 969.

Proceedings of the Madras Government.

Under date the 30th June 1870.

From the Advocate General. —

Forwarding Report relative to the suit filed by Messrs. Orr & Co. against the Collr. of Sea Customs and the Govt. of Madras, on account of certain Jewellery transmitted thro' the Post Office. —

(R. & O. 23rd February 1870.)

Read the following papers

Proceedings of the Board of Revenue.

Submitting letter from Collr. of Sea Customs, Madras, stating that a Decree has been passed in Suit No. 435 of 1869 instituted in High Court by Messrs. Orr & Sons, on account of confiscation by him of certain parcels of Jewellery imported by them through Post in favor of Plaintiffs, and enquiring whether he is to examine Mails as authorized by Govt. for purposes of levying Duty on dutiable articles. —

(R. & O. 21st March 1870 No. 1908.)

N.

A. D. L.

M A

1. Resolved that the foregoing papers be submitted for the information of the Government of India, with reference to their letter under date 19th August 1869 No. 2689, Financial Department, and that it be explained that this Government deemed it advisable

ordinarily be to bring the question to an issue by permitting the Suit against the Collector of Sea Customs to proceed.

2. Though the High Court have upheld the right of the Collector of Sea Customs to examine the mails, it is held that he has no power of confiscation when dutiable articles are imported through the post. As the only object of such examination is to prevent the post being taken advantage of for the purpose of defrauding the revenue, and as the mere levy of duty will certainly fail of such effect, the Board of Revenue will instruct the Collector to desist from further interference and to await the orders of the Home Government to whom the whole question has been submitted by the Govt. of India.—

14 To the Govt of Bombay Revenue Department
— Govt Collectors

Sd/- [illegible] Ball