

Proceedings of the Madras Government, Revenue Department,
30th March 1871.

No. 463. Read the following Office Memorandum from the Under-Secretary to the Government of India, Financial Department, dated Fort William, 20th February 1871, No. 1,061:—

WITH reference to office memorandum from the Legislative Department Government of India in departmental acceptance of recommendation in paragraph 5 of the memorandum under reply to legislate, with a view to remove the doubt suggested by the Advocate-General at Madras, regarding the operation of the consolidated Customs Act 1863, and to take the opportunity of providing for the other matters noted in that paragraph.

(Signed) J. WESTLAND,
Under-Secretary to the Government of India.

COPY to Government, Madras, with copy of the Legislative Department's memorandum.

(By Order)
(Signed) J. WESTLAND,
Under-Secretary to the Government of India.

ENCLOSURE No. 1.

Office Memorandum from the Secretary to the Government of India, Legislative Department, to the Financial Department, dated Fort William, 28th January 1871, No. 144.

In reply to the endorsement from the Financial Department, No. 377, dated the 19th instant, forwarding, for consideration, a communication from the Government of Madras, submitting an opinion of Mr. Advocate-General Norton 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 that Presidency, the undersigned is directed to state that this department, after a careful re-consideration of its office memorandum, No. 291*, dated 3rd June 1870, is satisfied of the soundness of the opinions expressed in the 3rd, 4th, and 5th paragraphs of that memorandum.

2. The learned Advocate-General does not appear to have considered the cases of *Crespigny v. Wittenoom*—2 Ter. Rep. 790, 793, per Buller and Grose, J.J.; *Chinna Aiyar v. Mahomed Fakr-u-din Sahib*—2 Madras High Court, Rep. 322, per Holloway, J.; and the remarks of Mr. Dwarries on *Statutes*, 2nd edition, page 661. This department apprehends that the law on the subject is correctly stated by Mr. Justice Holloway (3 Madras High Court, Rep. 8), where that learned Judge says that a preamble may be used to restrict the enacting words, where those words are doubtful, but that where the enacting words are plain, they cannot be restrained by the preamble. The *subjecta materia* of Act VI. of 1863 is not, as the Advocate-General implies, merely exportation and importation by sea, for Sections 149—160 deal with the interportal coasting trade.

3. As to the validity of the Ordinance relating to salt, this department dissents from Mr. Norton. The words in the Indian Council's Act, Section 23, "peace and good Government," are clearly sufficient to include questions of revenue and finance. It appears to this department that these words are equivalent to the "good order and civil Government" of 13, Geo. III., Cap. 63, Section 36, and it was under this Section that the Government of India imposed and levied taxes during the sixty years between 1773 and 1834.

Editor p 661: This Department apprehends that the law on the subject is correctly stated by Mr. Justice

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4. Although this department dissents from Mr. Norton's opinion, and considers that no legislation respecting either of the matters above noticed is absolutely necessary, yet any doubt seriously entertained by the legal adviser of a Local Government must always be held to render legislation expedient.

to legalize the transfer, endorsement of Warrants for goods deposited in the bonded ware-houses in Bombay. Provision might also be made that goods on which drawback is allowed should be easily identifiable, and that three-fourths (instead of seven-eighths) should be the amount of drawback. These amendments, which have long since been suggested, are obviously desirable, and the proposed Bill would consist of only three short Sections.

(Signed) W. STOKES,
Secretary to the Government of India.

No. 464.

ORDER THEREON, 30th March 1871, No. 582.

Separate Revenue, No. 19.

Customs.

ORDERED to be communicated to the Board of Revenue with copy of Government Proceedings, dated 4th January 1871, No. 2, Revenue Department, and to the Government Solicitor, with reference to his letter, dated 23rd September 1870, No. 504.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue,
the Government Solicitor.

Government of India.

Legislative Department.

Fort William the 28th January 1871.

Office Memorandum.

In reply to the Memorandum from the Principal Department, No. 377, dated the 19th instant, forwarding for consideration a communication from the Government of Madras submitting an opinion of Mr. Advocate General Norton as to the validity of the Governor General's Notification of 9th June 1870, No. 1133, prohibiting the exportation of opium by land from that Presidency, the undersigned is directed to state, that this Department after a careful reconsideration of its Office Memorandum No. 291, dated 3rd June 1870, is satisfied of the soundness of the opinions expressed in the 3rd, 4th and 5th paragraphs of that Memorandum.

2. The learned Advocate General does not appear to have considered the cases of Crespigny vs. Williamson 2 Term Rep. 790, 793 per Butler and Gress, J. J. Shinwa & Syau vs. Mahomed Fakh-u-din 2 Mad. High Court Rep. 322 per Holloway, J. and the remarks of Mr. Durrant, on Statutes, 2nd Edition p. 661. This Department apprehends that the law on the subject is correctly stated by Mr. Justice

(Copy herewith sent for facility of reference)

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may (as ~~Ad. St. W. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~)
Judge lays down that a preamble may be used to
restrict the enacting words, where those words are
doubtful, but that where the enacting words are
plain, they cannot be restrained by the preamble.
The Subject-Matter of Act XI of 1863 is not (as
the Advocate General implies) merely exportation
and importation by sea; for sections 149-160 deal
with the interportal coasting trade.

3. As to the validity of the Ordinance re-
lating to salt, this Department dissents from Mr.
Norton. The words in the Indian Councils' Act
Sec. 23 "peace and good Government" are clearly
sufficient to include questions of revenue and finance.
It appears to this Department that these words are
equivalent to the "good order and civil Government"
of 13 Geo. 3 Chap. 63, Sec. 36, and it was under this
section that the Government of India imposed and
levied taxes during the sixty years between 1773
1834.

Although this Department dissents from
Mr. Norton's opinion and considers that no legisla-
tion respecting either of the matters above noticed
absolutely necessary; yet any doubt seriously
entertained by the legal adviser of a local Government

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must always be held to render legislation imperative.
5. If the Government of India in the Financial
Department should therefore determine on legislation,
the opportunity might be taken of dealing with the
question of so amending Act XI of 1863 as to
legalize the transfer by Endorsement of warrants
for goods deposited in the Bonded Warehouses in
Bombay. Provision might also be made that goods
on which drawback is allowed should be easily identi-
fiable, and that threefourths (instead of seven eighths)
should be the amount of drawback. These amend-
ments, which have long since been suggested, are obviously
desirable; and the proposed Bill would consist of only
three short sections.

Sd/ Whitley Stokes
Secy to the Govt of India

To
The Financial Department.

(True Copy)

Enwalling
Registrar. - Financial Department

Ans

Government of India.
Financial Department.
J. M. Williams.

The 20 February 1871.

Office Memorandum.

The undersigned, in office Memorandum from the
Legislative Department, No. 116, dated the 28th Jan 1871,
the undersigned is directed to say that the Government
of India in this Department accepts the recommendation
made in para. 6 of the Memorandum under reply to Legi-
late with a view to remove the doubt suggested by the
Adocate General at Madras regarding the operation
of the consolidated Customs Act 1863, and to take
the opportunity of providing for the other matters noted
in that paragraph.

Edw. J. Westland

Under Secy. to the Govt of India

To The Legislative Department.

Copy to Madras with copy of the Legislative
Department's Memorandum. - By Order

Westland

Under Secy. to the Govt of India

Revenue 1871 Recd.

Mem. the Secy of the
Legislative Dept.

Letter 20.
Recd.

Recd. 637/71

No. 9302. Madras 14/3/71

Govt. of 1871 Madras.

REVENUE.

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THE BOARD OF REVENUE.

de, de, de.

Dated March 30th.

Recd.

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G. O., 30th March 1871, No. 582.

MARCH.

Nos. 463-464.

Opium.—Letter from Government of India regarding the Notification prohibiting its exportation by land from the Madras Presidency, communicated to Board of Revenue and Government Solicitor.

rev 30.3.1871

Govt. of 1871 Madras.

REVENUE.

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THE BOARD OF REVENUE.

de, de, de.

Dated March 20th.

Recd.

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MARCH.

Nos. 463-464.

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per 30.3.1871