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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.
B.P. No.

482

Press
Mis.

Dated 21.4.1874 196 .

Not to be folded or roughly handled

CONFIDENTIAL.

Read again Proceedings Board of Revenue, dated 13th March 1874, recorded in G. O., 17th idem, No. 356.

No. 157. Read also the following letter from H. G. PRICHARD, Esq., Government Solicitor, to C. G. MASTER, Esq., Acting Secretary to Government, Revenue Department, Fort St. George, dated Madras, 21st March 1874, No. 165:—

I HAVE the honour to acknowledge the receipt of the order of Government, dated 17th March, instant, No. 356, Revenue Department, together with its enclosures, requesting the Advocate-General's opinion relative to the recovery of fines, through the Civil Courts, imposed by the Collector of Sea Customs on certain opium-smugglers.

2. I submitted the matter for the consideration of the Advocate-General, and I now forward herewith a copy of his opinion.

—
OPINION.

WITH reference to the observations of the Board of Revenue of 13th March 1874, referred for my consideration by Government order of 17th March, No. 356, I have the honour to observe that I see no objection to asking the Ceylon Government, as suggested by the Board, whether they can collect the fines under any existing law, and generally inviting them to reciprocal action in the matter of the punishment and repression of smuggling. Any Act passed by the Ceylon Legislature would, of course, have only a prospective effect. I am not, for the reasons stated in my former opinion, sanguine as to the Ceylon Government being able to assist us in the matter otherwise than by legislation; and I should hesitate in advising the Government to endeavour to enforce these penalties, or to request the Ceylon Government to enforce them, as debts due to the Crown in the Civil Court. It is true that a judgment recovered in the Civil Courts of one country can be sued upon in the Courts of another: "The principle on which the judgments of foreign and Colonial Courts are supported and enforced is, that where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt or *assumpsit* to enforce the judgment may be maintained," (Williams Saunders, 1, 118; Williams v. Jones, 13, M. and W. 628); and it might by analogy be inferred that a penalty imposed by one Government might be similarly enforced as a debt due to that Government in the Civil Courts of another Government. I am not aware, however, that this has ever been done, and the practice would certainly seem in pronounced evasion of the principle strongly enforced in the Text Books and recognized by the Courts, that penal laws are, as a general rule, matters of local jurisdiction, and that neither such laws nor the sentences imposed under them will be recognized in the Courts of another country.

In the absence of any precedent for such a proceeding, the Government would probably be reluctant to venture upon it; moreover, in the present case the fines were imposed under the very summary powers conferred by the "Consolidated Customs Act, 1863," on the Collector of Sea Customs, without any opportunity being given for the accused parties to defend themselves, and even, I believe, without any notice to them of the proceedings pending against them. If the Ceylon Courts were asked to enforce these penalties, and were competent to do so, it is almost certain that the question of the legality of the fine would be raised before them, and they could scarcely refuse the accused parties the opportunity of raising a defence. The Government would thus find itself committed to a troublesome and not very dignified litigation, conducted under every disadvantage as to expense and convenience. It would, therefore, in my opinion, be more

*Proceedings of the Madras Government, Revenue Department,
21st April 1874.*

prudent simply to lay the circumstances before the Ceylon Government, and invite its co-operation in any way that the legal advisers of that Government consider most feasible. There ought, of course, to be an Imperial Act regulating the enforcement of Customs law between the various dependencies of the Crown, or, at any rate, between dependencies so closely situated as India and Ceylon.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

20th March 1874.

No. 158. ORDER THEREON, 21st April 1874, No. 482.

Separate Revenue, No. 8.

<i>Customs.</i>

THE Right Honourable the Governor
in Council resolves accordingly to
address the Government of Ceylon as
suggested by the Advocate-General.

(Here enter, 21st April 1874, No. 483.)

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.

With reference to the observations of the Board of Revenue of 13th March 1874, referred for my consideration by Government Order of 17th March N^o 356, I have the honor to observe that I see no objection to asking the Ceylon Government, as suggested by the Board whether they can collect the fines under any existing law, and generally inviting them to reciprocal action in the matter of the punishment and repression of smuggling. Any Act passed by the Ceylon Legislature would of course, have only a prospective effect. I am not, for the reasons stated in my former opinion, sanguine as to the Ceylon Government being able to assist me in the matter otherwise than by legislation - and I should hesitate in advising the Government to endeavour to enforce these penalties, or to request the Ceylon Government to enforce them, as debts due to the Crown, in the Civil Court. It is true that a Judgment, recovered in the Civil Courts of one Country, can be sued upon in the Courts of another. "The principle on which the Judgments of foreign and Colonial Courts are supported and enforced" is that, where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum on which an action of debt or assumpsit to enforce the Judgment may be maintained;" (Williams v. Saunders. 1. 118. Williams v. Jones 13. M. & W. 628.) And it might by analogy be inferred that

Govt. of 1874
REVENUE.

To

THE BOARD OF REVENUE.

Dated April 21st.

Recd.

Encl.

G. O., 21st April 1874, No. 482.

APRIL.
Nos. 157 & 158.

Opium smugglers resident in Ceylon.—Orders that the Ceylon Government be asked to afford assistance in recovering the fines imposed by Collector of Sea Customs on certain — and to take action generally for the punishment and repression of smuggling.

a penalty, imposed by one Government might be similarly enforced, as a debt due to that Government, in the Civil Courts of another Government. I am not aware, however, that this has ever been done, and the practice would certainly seem in pronounced evasion of the principle strongly enforced in the Treaties and recognized by the Courts, that penal laws are, as a general rule, matters of local jurisdiction, and that neither such laws nor the sentences imposed under them, will be recognized in the Courts of another Country.

In the absence of any precedent for such a proceeding the Government would probably be reluctant to venture upon it: moreover in the present case the fines were imposed under the very summary powers, conferred by the "Consolidated Customs Act 1863" on the Collector of Sea Customs, without any opportunity being given for the accused parties to defend themselves, and even, I believe, without any notice to them of the proceedings pending against them. If the Ceylon Courts were asked to enforce these penalties, and were competent to do so, it is almost certain that the question of the legality of the fine would be raised before them, and they could scarcely refuse the accused parties the opportunity of raising a defence. The Government would thus find itself committed to a troublesome and not very dignified litigation, conducted under every disadvantage as to expense and convenience. It would, therefore, in my opinion be more prudent simply to lay the circumstances before the Ceylon Government and invite its co-operation in any way that the legal advisers of

of that Government consider most feasible. There ought, of course, to be an Imperial Act, regulating the enforcement of Customs law between the various dependencies of the Crown, or at any rate between dependencies so closely situated as India and Ceylon.

/Signed/ J. S. Cunningham
Adv. Genl.
20th 3-/4.

/True Copy/
H. G. Richard
Government Solicitor.

Confidential.

N^o 165.

Madras, 21st March 1874.

From

H. G. Prichard
Government Solicitor,
Madras,

To

C. G. Master Esq^{re}
Actg. Secretary to Government,
Revenue Department,
Fort St. George.

Sir,

1. I have the honor to acknowledge the receipt of the Order of Government dated 17th March instant N^o 356, Revenue Department, together with its enclosures, requesting the Advocate General's opinion relative to the recovery of fines through the Civil Courts, imposed by the Collector of Sea Customs on certain Opium Smugglers. -

2. I submitted the matter for the consideration of the Advocate General, and I now forward herewith a copy of his opinion. -

I have the honor to be,
Sir,

Your most Obedient Servant,
H. G. Prichard
Government Solicitor. -

Enclosure in letter from
the Government Solicitor
of Madras, to the Acting
Secretary to Government,
Revenue Department, Fort St. George,
dated 21st March 1874.
N^o 165. -

FM

Confidential

Revenue Dept.

No 482

Proceedings of the Madras Government.
Under date the 21st April 1874.

Read again Pro. Board
of Revenue dated 13th March 1874
recorded in G. O. 17th idem,
No 356.

Read also the following
letter from the Government
Solicitor..

(H.E. 21st March 1874, No 165)

Forwarding copy of Adv. Genl's opinion
relative to recovery of fines, through
the first courts, imposed by Collection
of Sea Customs on certain opium
smugglers.

The Right Honble the Governor
in Council resolves accordingly
to address the Govt of England
as suggested by the Advocate
General.

(H.E. 21st April 1874, No 483)

The Colonial Secretary, Madras

C. M.

The Board of Revenue
des. in M.S. 21st April '74

M
10/4

10/4

Forwarded copy of the Minute
General opinion, relative to the
recovery of fines through the
first courts imposed by the
Collector of Sea Customs on
certain opium smugglers.

No 165.
Enclosure 1.

Revenue Dept. Secy
No 933
The Government Officer
Madras.
The Secy. to Govt.
Revenue Department
Trichy, Mysore,
Date 27th Feb
Recd 23rd March.

Recd 25 April '74
C. M. Secy to Govt.
Revenue Dept.

O. G. O. Confidential

Recovery of fines inflicted
on Opium Smugglers between
Canton & British Presidency

Rev. Sep 1874

Des in No. 3

6 Copies printed

Copy sticked to next page
1. Sent to Govt for file

C. 10th April 1874 R. 21st April 1874