STATEMENT OF CLAIMS OF THE BRITISH SUBJECTS INTERESTED IN OPIUM SURRENDERED TO CAPTAIN ELLIOT AT CANTON FOR THE PUBLIC SERVICE

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STATEMENT OF CLAIMS OF THE BRITISH SUBJECTS INTERESTED IN OPIUM SURRENDERED TO CAPTAIN ELLIOT AT CANTON FOR THE PUBLIC SERVICE

Trieste

From the Author.

STATEMENT

OF

CLAIMS OF THE BRITISH SUBJECTS

INTERESTED IN

OPIUM,

SURRENDERED TO CAPTAIN ELLIOT AT CANTON
FOR THE PUBLIC SERVICE.

LONDON:
PELHAM RICHARDSON, 23, CORNHILL.

1840.

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STATEMENT, &c.

THE British merchants interested in the opium delivered in the month of April, 1839, under warrant from the agents at Canton, to the order of Captain Charles Elliot, and by his order to Lin, the Imperial High Commissioner, conceive that they have a double claim to compensation for the property so delivered up: first, and immediately, against their own Government; and secondly, against the Government of China. The property was delivered to Captain Elliot by the consignees, upon the faith of a distinct guarantee of indemnity, entered into by him in his public character, as Her Majesty's Representative in China; and the merchants to whom that guarantee was made now ask for its fulfilment. This is their primary claim; and they further look, at least, to the justice and power of the British Government, to enforce their legitimate claims against a foreign state. The great amount and value of the property in question, estimated at not less than £2,400,000; the complicated interests which would be involved in its loss, both Indian and European; and the peculiar hardship, under the actual circumstances of the transaction, of suffering that loss to fall exclusively upon private traders; appear to make it imperative upon Parliament to give a fair consideration to this case, and not to suffer either popular prejudice or financial difficulties to prevent justice from being done.

The case obviously divides itself into two leading branches; the one regarding the claim as against the British Government, the other that as against the Chinese. It will be convenient to state them separately, and to consider the latter first.

I. The claim for compensation, as against the Chinese Government, may be assumed to depend entirely upon the three following questions:—

1. Whether the opium, of which the high commissioner obtained possession, was at the time liable to be confiscated according to the known laws of China?

2. Whether the manner in which he obtained possession of it was justifiable by those laws?

3. Whether, in either or both of the former cases, any circumstances appear upon the whole history of the transaction, which make the execution of the Chinese laws, in this particular instance, contrary to the principles of universal justice, and a sufficient ground for a claim of compensation?

It is conceived that abundant proof may be given of the negative of both the former propositions; and that, even on failure of such proof, the affirmative of the last proposition would be fully established.

For this purpose it is necessary to review the whole history of the opium trade in China, with a particular regard to those several points. The evidence which it is intended to adduce is almost entirely taken from public documents of the Chinese themselves.

It may be expedient, however, first to notice one preliminary objection. Opium was notoriously a contraband article in China; and the resident foreign merchants, who gave orders for its delivery, and the owners of cargoes sent into the Chinese waters for sale, cannot be denied to have been, so far, concerned as accessories in bringing it into that country. It may appear to some that any measures directed against such parties for the purpose of suppressing the contraband trade, were merited on their part, and therefore justifiable on the part of

the Chinese Government. To this it may be shortly replied, that a seizure or other penal measure must be supported, if at all, by the Chinese law, and not by any general notions of equity. What is now asserted is, that the measures of which the present claimants complain were *not* justified by the Chinese law. To show that there is nothing in such an assertion inconsistent with the nature of prohibitory regulations, let the case be supposed of French vessels being allowed to enter the Thames and trade with England, and French merchants to transact business connected with those vessels in London under particular conditions, one of which we will suppose to be, that if any French ship should bring into port a contraband article, that ship should be compelled to quit the British waters, and to lose the benefit of a future participation in the trade. It will not be imagined that in such a state of the law, without any ulterior sanctions, the English nation could justify a forcible imprisonment of all the French merchants resident in London, till they had obtained from the offending ship, and surrendered to the British Government, the whole of her contraband cargo. The present claim has arisen in China under circumstances of a like nature, but much stronger than these.

The laws of China are promulgated from time to time by the public edicts of the emperor, and appear to receive their validity and sanction from his will. It must be observed, however, that the practice of the empire seems to favour, if the principles of its constitution do not require, free deliberation and consultation before any change is made in the laws; and the principle, that reasonable notice of new enactments (especially those of a penal nature) ought to be given to the classes or persons sought to be affected by them, is very fully recognized, and may be considered as an established maxim of Chinese policy.* The only information concerning these laws, which foreigners have the means of acquiring, is derived from the acts and edicts of the provincial government of

* See post, pp. 10, 14, 63, &c.

Canton; and these are communicated through the medium of the Hong merchants.

The importation of opium, and its use, were not prohibited by the laws of China before the reign of the Emperor Keaking, who succeeded to the throne in the year 1796. It was until then regarded as a medicine, and admitted under duty.* But either in the first or in the fourth year of that emperor, (for Chinese authorities are not exactly agreed as to the date,) its introduction and use were prohibited under penalties, on account of its injurious effects on the health and morals of the people.† "It was strictly prohibited," say the Viceroy of Canton and his colleagues, the Lieutenant-governor and Hoppo, in their report of September, 1837,‡ "and dealing in or using it was forbidden, and fixed punishments were appointed to every violation of the law." This law was frequently afterwards amended, and its penalties increased in severity;§ and it was recorded (as the Privy Councillor Choo Tsun‖ informs us in his memorial hereinafter mentioned) upon the penal code of China. It is important to ascertain what were the offences contemplated, and the penalties imposed, by this law and its amendments; and upon this point there is good evidence to show that the only classes of offenders originally contemplated were the dealers in the drug and the consumers; and among these respective classes the law of Keaking took no notice of any different degrees of criminality. The penalties of smoking (as we learn from Heu Naetse,¶ of whom much will be said hereafter) were originally corporal chastisement, and exposure in the pillory: by subsequent legislation, previous to

* See Memorial of Heu Naetse, Appendix I., A. Report of Viceroy Tang, Appendix II., B.

† Report of Viceroy Tang, Appendix II., B. Report of Leangchang Keu, Appendix I., E.

‡ Appendix II., C.

§ Viceroy's Report, Appendix II., B.

‖ Choo Tsun's Report, Appendix I., B.

¶ Appendix I., A.

1838, smokers who refused to discover the dealer, were made liable to the additional penalty of a hundred blows, and transportation for three years.* The statement† that the offence was in any case punishable with death does not appear to be correct. The penalties of dealing in the drug are in 1838 stated as follows, and apparently on the best authority, by Paou Tszelin,‡ an officer of the sacrificial court at Pekin.—"I have searched the regulations of the penal board, and find that the penalty for dealing in opium is banishment and slavery; the accessories are liable to 100 blows and banishment from the province for three years." In the year 1828 a case occurred which is recorded by Leangchang Këu,§ deputy governor of the province of Kwangse, in a report transmitted to the emperor in 1838; and which at once guides us as to the date of an important modification of the law, and exemplifies the strictness of construction which made such a modification necessary. It appears that in that year an opium broker and keeper of a smoking shop, named Pwan-a-Tao, was seized and brought to justice; but in his case, and in the previous case of one Yehangshoo, in 1823, "as there were no laws established relative to the opening of smoking shops, it was only decided that their crimes deserved banishment to the army, and that law was enforced accordingly." It seems probable that these cases suggested the propriety of making further distinctions between the several classes of persons who might be engaged in offences against the opium laws; and we are informed of the fact that such distinctions were made, and how far they carried the penalties, and what description of persons they embraced. These facts appear in the same report of Leangchang Keu, and also in a memorial of Hwang Tseotsze,‖ an officer of the imperial household, presented to the emperor in 1838. The latter officer states that, at the date

* See Hwang Tseotze's memorial, Appendix I., D.
† Heu Naetse; contradicted by Hwang Tseotsze, *ibid.*
‡ Appendix I., H.
§ Appendix I., E.
‖ Appendix I., D.