

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	779	Press
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Dated	14-6-	1955

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 15th June 1858.

No. 33. Read the following Extract Minutes of Consultation in the Marine Department, dated 10th June 1858, No. 223.

Furnishing, for communication to the Administrator General, copy of a Despatch from the Honorable Court of Directors, and of its enclosures received from the Government of India, relative to the proper course to be pursued with reference to the collection of the Effects of deceased Seamen. } (Vide Marine Consultation, 15th June 1858, Nos. 3 and 4.)

No. 34. ORDER THEREON, No. 779; dated 14th June 1858.

Ordered to be communicated to the Administrator General for information and guidance.

(Signed) T. PYCROFT,
Chief Secretary.

MARINE DEPARTMENT,

No. 88 of 1857,

OUR GOVERNOR IN COUNCIL AT BOMBAY.

Para. 1.—We send herewith a No. in the Packet, a copy of a case laid before the Standing Counsel, with reference to the legality of the practice of the Administrator General at your Presidency, in the collection and disposal of the effects of deceased Seamen coming under the provisions of the 197th Section of the Merchant Shipping Act, 17th and 18th Vic., Chapter 104, with his opinion thereon.

2. The Board of Trade have been informed that instructions have been sent to your Government, desiring that the Administrator General will not interfere for the future with the effects alluded to. And we accordingly direct that you will immediately transmit to him a copy of the case and of Mr. Wigram's opinion, desiring him at the same time to regulate his practice for the future in this respect in accordance with the views of the Law therein expressed.

LONDON, }
The 9th December 1857. }

We are, &c.,
(Signed) ROSS D. MANGLES,
" F. CURRIE,
" C. MILLS,
AND OTHER DIRECTORS.

CASE FOR THE EAST INDIA COMPANY.

You are requested to refer to the accompanying copy of an Act of the Government of India, being Act No. VII. of 1849, entitled "an Act for the appointment of an Administrator General in Bengal."

The provisions of the foregoing Act, are by the following enactments contained in Act No. II. of 1850, of the Government of India, entitled "an Act to amend and extend to Madras and Bombay, Act No. VII. 1849," extended and made applicable to the Presidencies of Madras and Bombay respectively, *viz.* :

Section 1, Act No. VII. 1849, shall be extended and apply to the several Presidencies of Fort Saint George and Bombay, subject to the alterations hereafter contained, as if with reference to each of the said Presidencies, such Presidency were named therein, instead of Bengal and Fort William in Bengal, and the Governor of such Presidency in Council instead of the Governor General of India in Council, and the chief Town of such Presidency instead of Calcutta.

2. The Administrator General at Fort Saint George and Bombay, respectively, shall not cease to be Ecclesiastical Registrar of the Supreme Court there, by virtue of this Act, and the two Offices of Ecclesiastical Registrar and Administrator General may be held at Fort Saint George or Bombay, respectively, by the same person.

3. The altered rate of Commission receivable by the Administrator General at Fort Saint George and Bombay, respectively, under Act VII. 1849, and this Act shall not take effect until such alteration shall be directed by the Governor of Fort Saint George and Bombay in Council, respectively, until which several times the same rate of Commission may be lawfully taken there by the Administrator General as might have been taken by the Ecclesiastical Registrar before the passing of this Act.

4. It is and is declared to be a misdemeanour punishable by fine and imprisonment for any Administrator General in any of the Presidencies of Fort William in Bengal, Fort Saint George, and Bombay, to trade or traffic for his own benefit, or for the benefit of any other person or persons whomsoever, unless so far as appears to him expedient for the due management of the Estates administered by him, and for the sole benefit of the several persons entitled to the proceeds of such Estates respectively; but this exception is not to be construed to alter the Civil liabilities of the Administrator General as Trustee for the Estate administered by him.

By the 17th and 18th Vic., C. 104, the Merchant Shipping Act, 1854, within the provisions of which the Territories under the Government of the East India Company are expressly included. It is by Sections 196 and 197, enacted as follows, *viz.* :

196. If any Master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to

procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as hereinbefore respectively directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the Board of Trade, and shall pay and deliver the same accordingly, and such Master shall, in addition for every such offence, incur a penalty not exceeding treble the value of the money or effects not accounted for, or if such value is not ascertained, not exceeding £ 50, and if such money, wages, or effects are not duly paid, delivered, or accounted for by the Master, the owner of the ship shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly, and if he fails to account for and pay the same, he shall, in addition to his liability for the said money and value, incur the same penalty which is hereinbefore mentioned as incurred by the Master for the like offence; and all money, wages, and effects of any seaman or apprentice dying during the voyage, shall be recoverable in the same Courts and by the same modes of proceedings by which seamen are hereby enabled to recover wages due to them.

197. If any such seaman or apprentice, as last aforesaid, dies abroad at any place either in or out of Her Majesty's Dominions leaving any money or effects not on board his ship, the Chief Officer of Customs or the British Consular Officer at or nearest to the place, as the case may be, shall claim and take charge of such money and effects; and such Officer shall, if he thinks fit, sell all, or any of such effects, of any deceased seaman or apprentice delivered to him under the provisions hereinbefore contained; and every such Officer shall quarterly, or at such other times as the Board of Trade directs, remit to Her Majesty's Pay-master General, all monies belonging to, or arising from, the sale of the effects of, or paid as the wages of any deceased seamen or apprentices which have come to his hands under the provisions hereinbefore contained, and shall render such Accounts in respect thereof, as the Board of Trade requires.

The following communications from the Board of Trade have been received at the India House; viz.:

From T. W. FARRER, Esquire, to the Secretary to the Hon'ble East India Company, dated Office of Committee of Privy Council for Trade, Marine Department, Whitehall, the 14th July 1857.

SIR,

WITH reference to a letter from this Department of the 15th December 1856, requesting that you will move the Hon'ble Court of Directors to obtain from the Administrator General of Bombay, the balance of wages and effects of a seaman named John Wemyss who died at Mazagon Dock Yard on the 26th June 1856, I am directed by the Lords of the Committee of Privy Council for Trade to inform you that Mr. Francis Clark has informed my Lords that he has received from the Administrator General the sum of nineteen pounds, fourteen shillings and nine pence (£19-14-9) and he has been requested to pay the same into the Bank of England to the account of Her Majesty's Pay-master General for the Board of Trade. My Lords direct me to call the attention of the Hon'ble Court of Directors to the long delay which has taken place in remitting this money which was paid to the Administrator General so long ago as June 1856, and to request that they will have the goodness to cause such instructions to be given to the Authorities in India as will prevent a recurrence of the present irregularity, and ensure the balance due to the Estates of deceased Merchant Seamen being paid to the Registrar of Seamen, or Officer of Customs at Bombay, as required by the Act to be at once remitted to Her Majesty's Paymaster General. With reference to the amount remitted to Mr. Clark on account of the deceased John Wemyss, I am to observe that no Account has been forwarded, and I am to request that the Administrator General may be directed to transmit—

1st.—The Account of Wages rendered by the Master of the Vessel.

2nd.—The Account Sales of Effects.

3rd.—The Account of any expenses which may have been incurred, together with the vouchers for the same.

From T. W. FARRER, Esquire, to the Secretary to the Hon'ble East India Company, dated Office of Committee of Privy Council for Trade, Marine Department, Whitehall, the 20th July 1857.

SIR,

WITH reference to the letter to you from this Department of the 14th Instant, relative to the irregularity on the part of the Administrator General at Bombay, in demanding and receiving the wages and effects of deceased seamen, contrary to the Statute, I am directed by the Lords of the Committee of Privy Council for Trade to transmit to you to be laid before the Court of Directors of the East India Company, the accompanying copy of a letter, and its enclosures, from the Directors of the Peninsular and Oriental Steam Navigation

Company, relative to the retention by the Administrator General, of two-thirds of the money belonging to the Estate of William Sanders, a Steward in that Company's service, who died at Bombay on the 9th April 1856.

My Lords desire me to observe that the deceased being a seaman within the meaning of the Merchant Shipping Act 1854, the course pursued by the Administrator General is altogether contrary to the provisions of that Act, and this case affords another instance of the necessity of definite instructions being given by the Court of Directors to that Officer, as pointed out in the letter from this Department above referred to.

From T. D. D. VIDING, Esquire, for the Managing Directors, to T. W. FARRER, Esquire, Assistant Secretary, Marine Department, Board of Trade, S. W. Peninsular and Oriental Steam Navigation Company, Offices 122, Leadenhall Street, dated London, the 15th July 1857.

SIR,

I BEG to hand you annexed copy of a letter received by the widow of a Steward in the service of this Company from the Administrator General at Bombay, being desirous of knowing, whether that Officer has authority for acting as he proposes to in retaining possession of the remaining two-thirds of the Estate until the majority of the child.

The facts of the case are these: William Sanders, a Steward in the service of the Company, died at Bombay on the 9th of April 1856, and his effects and the balance of wages were on the 24th of the same month paid by the Company's Agent into the hands of the Administrator General of that Port.

A sum of £ 10 advanced on account of the balance to repay a Loan made to the poor woman by this Company was paid in the month of January, but the balance as appears by the letter annexed, did not become payable until June, a period of about 14 months after the decease of Sanders.

As the arrangement proposed by Mr. Standen is very unsatisfactory to Mrs. Sanders, especially as her boy is not three years of age, and as it is a course, the Directors believe, different to that pursued by the Board of Trade, they would be obliged by your bringing the question before the Board in case they may have the power to interfere in the matter, should they think it desirable.

From JAMES H. STANDEN, Esquire, Administrator General, to Mrs. SANDERS, 32, Grosvenor Street, Commercial Road East, No. 181, dated Bombay, Administrator General's Office, the 11th May 1857.

MADAM,

I BEG to inform you that by this Mail, I have remitted to Francis Clark, Esquire, East India House, the sum of Company's Rupees 19-13-10, the equivalent of £2-1-3 being the balance of your one-third share of the Estate of your deceased husband. I have instructed Mr. Clark to pay the same over to you upon your signing receipts in duplicate for the said amount.

The share of your child will be retained in my Office until he attains majority.

It may be observed that similar representations to the foregoing from the Board of Trade, were in the year 1855, addressed to the Court of Directors in reference to the Estate of a Surgeon in the Merchant Service dying at Singapore in 1853, and to that of a Seaman who died at Moulmein in 1852, and whose Estate was forwarded by the Police Magistrate there to the Administrator General of Bengal. The Act however of the 14th and 15 Vic., C. 102 (under the 33rd Section) of which it was supposed by the Board of Trade that the remission of such Estates was regulated, did not appear to be applicable to the Territories within the Company's Charter, and it was not considered necessary to do more than call the attention of the Authorities in India, to the provisions of the Merchant Shipping Act of 1854, with reference to their future proceedings.

You are requested to advise upon the reply to be given to the Board of Trade, and generally upon the proper course to be pursued in reference to the future remittance of the effects of Seamen dying in the Territories under the Government of the East India Company.

OPINION.

In each of the cases mentioned in the letters from the Board of Trade, the deceased Seamen appear to have been within the provisions of the Merchant Shipping Act 1854, and to have died after that Act was in force; and I think that in such cases the proper course for the

Administrator General is not to interfere with the effects of the deceased, but to leave the same to be collected, and disposed of by the Chief Officer of Customs, as provided by the 197th Section of the Act of 1854.

In such cases, there is a degree of conflict between the provisions of the Indian Acts of 1849 and 1850, and the provisions of the Imperial Act of 1854. But as the former depend for their efficacy on the Act III. and IV. Wm. IV. C. 85, Section 43, and are liable to be controlled by all subsequent Acts of the Imperial Legislature.

The provisions of the Act of 1854, (which is expressly made applicable to the Territories under the Government of the East India Company) must prevail, and it was plainly the intent of that Act to enable the effects of the deceased to be collected without the intervention of the Administrator.

I am therefore of opinion that the proper course will be to call the attention of the Administrator General to the above view of the Acts, and to inform the Board of Trade in reply to their letters that this has been done.

(Signed) LOFTUS WIGRAM,
Lincoln Inn.

2nd November 1857.

(True copy)

Sigd R. B. Chapman
Under Secy. to the Govt. of India.

Marine Department.

No. 223.

Extract from the Minutes of Consultation
Dated 11th June 1858.

Read the following letter

No. 761.

FROM

R. B. CHAPMAN, Esquire,
Under Secy. to the Govt. of India,

TO

*The Secy to the Govt of
Fort St George*

Dated the 8th May 1858.

SIR,

HOME DEPT.
MARINE. I AM directed to forward for the information of the *R Hon the Pinf*
the accompanying copy of a Despatch, No. 88, dated the 9th December last,
from the Hon'ble Court of Directors, to the Government of Bombay, and of
its enclosures, relative to the proper course to be pursued with reference to the
collection of the effects of deceased Seamen, and to request that under the
orders of *His Lordship* you will be good enough to issue the
necessary instructions to the Administrator General at *Madras* on the
subject.

I have the honor to be,

FORT WILLIAM, }
The 8th May 1858. }

SIR,
Your most obedient Servant,

Signd R B Chapman
Under Secy. to the Govt. of India.

Order.

*Resolved that a copy of the
foregoing papers be furnished to the Judicial
Department for communication to the
Administrator General.*

[True Extract and Copy.]

[Signed] J. Pycroft
Chief Secretary.

To the Judicial Department.
W. H. Bell
Comarceek

Entered in Feb 22/6/50

And by Lord 15 March
Admission 1858 Report

Ernest Mendenhall
show in the Museum 8/5/50

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With an order

no 779

General the communication
administrator General for
the and guidance.

Dr. J. H. Cooper
M. J. H. Cooper
1858

JP

Copy & communication from. Sept 14/5

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