

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1375	Press Mis.
53-54	
Dated 13. 11. 1861	10

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
13th November 1861.

No. 53. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras; to J. D. SIM, Esq., Acting Chief Secretary to Government, Madras, dated 31st October 1861, No. 771.

Dated 28th October 1861, No. 1,314, Judicial Department.

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, and the papers which accompanied them.
2. I submitted them for the consideration of the Advocate General and now forward a copy of his opinion.
3. I likewise return the enclosures above noted.

COPY—OPINION.

I see no ground whatever for impugning either the decision of the Magistrates, or the evidence of the two Mates upon which it was founded; nor do I consider that Captain Bell's "Memorandum" can at all be taken as contradicting the evidence of the two Mates before the Magistrates.

Their evidence amounts to this that they filled up the boat-notes from seeing the number of the boat; that they filled up the cargo-book from the boat-notes; and could not have made a mistake. Captain Bell lays much stress on the fact that the Chief Mate, Mr. Wakeham, "relied on his book only;" and that the 3rd Mate, Mr. Webster "would not speak positively as to the particular boats or boatmen, or to any recollection of the number of boats apart from the entries in the cargo-book."

In my opinion they were quite right. Refreshing their recollection by referring to an entry made at the time, they spoke positively; apart from that, they declined to do so. This is the proper way of giving evidence; nor would any Court have expected them to speak from mere recollection, unassisted by a reference to the cargo-book.

When Captain Bell says that "the confidence of the two Officers of the "Loodians" in the correctness of their Memoranda did not appear to me to be sufficient evidence upon which to "charge the boat's crew," I can only say that my opinion is the reverse of his. As to one of the Mates stating before the Magistrates that the number was in black, and the other that it was in white—one that the number was at the bow, and the other at the stern—this, at most, only affects the accuracy of their recollection, which they had very properly refused to trust to when they had their cargo-book by which to refresh their recollection as to the number, the point on which the conviction depended. As to whether the number was on the bow or stern, every one knows that both are exactly alike in a Messallah boat, and the steering oar may be temporarily shifted to either end of the boat.

I see no ground whatever for questioning the veracity of the two Mates, or for interfering in any way with the Magistrates' decision. Captain Bell's Memorandum does not profess to be verbatim what either of the Mates stated, but only a Memo. or abstract of it, not signed as correct by either of the Mates, nor stated to have been made in their presence or read over to them.

Even if however all these matters were supplied, I could not consider Captain Bell's "Memo." as establishing any contradiction to the evidence of the Mates before the Magistrates.

(Signed) T. SYDNEY SMYTH,

Advocate General.

30th October 1861.

(True Copy.)

(Signed) JOHN MILLER,

Acting Government Solicitor.

No. 54. ORDER THEREON, 13th November 1861, No. 1,375.

A copy of the Advocate General's opinion will be forwarded to the Commissioner of Police.

(Signed) T. PYCROFT,

Chief Secretary.

Exd. F. Cartledge.

N^o: 1375 - 13 November 1961 - ²

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A copy of the Advocate General's opinion will be forwarded to the Commissioner of Police.

J. D. S.

The Commissioner
of Police - With
3 enclosures
returned.

dup. 14th