MR. G. 1—32,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1851 Press ~~Mis.~~

255-256

Dated 27.11.1863 ~~19~~ .

314

Not to be folded or roughly handled

No. 255. Read the following letter from JOHN ROBERT BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated Madras, 24th November 1863, No. 828.

I have the honor to acknowledge the Proceedings of Government noted in the margin, as to certain questions arising out of the nuisance from the damaged cargo in the hold of the wrecked ship "Punjab."

Dated 18th November 1863, Judicial Department.

2. I submitted them for the consideration of the Advocate General with whom I have also conferred on the subject, and

3. I now forward a copy of his opinion.

COPY—OPINION:

Two matters, it appears to me, are mixed up in the Municipal Commissioners' letter of November 6th, 1863, which have no necessary connexion.

1st. The very exceptional case of the wrecked Barque "Punjab."

2nd. The general question of prohibiting the importation of damaged grain or provision.

The Law as it stands is quite strong enough in my opinion to provide for such a case as that of the "Punjab."

The rice was fermenting and causing a serious nuisance, probably not unattended with danger to the health of the troops in Fort Saint George when the Government Solicitor consulted me as to the legality of measures for the immediate abatement of the nuisance. It was proposed to bring out a field piece and blow a hole in the ship's side for the purpose of letting in the water; and this was only delayed because it was questionable whether the remedy might not be worse than the complaint, and that rice and stench might be let *out* by the same orifice that let in the water. It was also thought that the process of decomposition would be very rapid when fermentation had once set in, and it was determined to wait awhile. I understand that decomposition was very rapid, and that the nuisance speedily abated itself. I advised that communication should be held with the purchaser of the vessel, as there was time for such a step, and I understand that he consented to any such measures as might be eventually necessary. But I should have been quite prepared to advise any steps necessary for preserving the health and well being of the Garrison even if he had opposed them. Of course the damage done must not be greater than the occasion demands, and the amount must always depend on the special circumstances of each case.

But *salus populi suprema lex*, and *privatum in commodum publico bono pensatur*. And therefore though the individual suffers *damnum*, he has no redress because it is *damnum absque injuriâ*: a loss not occasioned by a wrong. So houses may be pulled down or bulwarks ruined on private property for public defence, and so a private individual may justify pulling down his neighbour's house to arrest a conflagration.

I am of opinion therefore that extreme measures might have been resorted to, as the Law stands, in the case of the "Punjab;" and that they may be so in case of future wrecks.

The Magistrate acted I know not under what authority in ordering the rice on board the ship to be "forfeited." If, as I presume, he acted under Section 99 of the Municipal Act, it is clear he exceeded his jurisdiction; for he has no jurisdiction under that Act in the surf in the midst of which the ship was lying. Nor indeed was his order for the "forfeiture" of the portion landed justifiable under either the 97th or 98th Sections, for they only apply to persons who *keep* or who *offer for sale*, in any place used for such purpose, unwholesome provisions. I am far from seeking to cast any blame upon the Magistrate, who appears to have acted promptly enough and *bonâ fide* in the matter.

The Criminal Procedure Code (CXX) clothes the Magistrate with very extended powers for the abatement of nuisances. But that Code has not as yet been extended to the town of Madras.

I am not disposed to recommend any Legislation on account of an isolated case. So far as the abatement of nuisances is concerned, the Law is sufficient as it stands. As to any "immediate confiscation of damaged grain, &c., on board wrecked vessels," it must be borne in mind that where vessels are wrecked and the goods they contain become damaged, it arises from accident, and not from any wilful intention on the part of the owner to import unwholesome provisions.

As to legislating for the prohibition of the importation of damaged grain, it appears to me that the Municipal Act which provides for the forfeiture of such articles as soon as they are offered for sale or even warehoused, is wide enough for all practical purposes.

(Signed) JOHN BRUCE NORTON,
Advocate General.

MADRAS, 21*st November* 1863.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

Since writing the above I am informed that the stench has again become most offensive in consequence of the bags being brought up from the hold and placed on deck, with the view of removing them into the sea. All parties appear anxious to get rid of the cargo as soon as possible. It is quite useless to the purchaser to bring it ashore. In the temper of the parties it does not appear that there will be any necessity for recourse to extreme measures. I think the Municipal Commissioners might send coolies and boats at the public charge to get rid of the rice as quickly as possible by throwing it into the sea at some distance from the shore. They should communicate their intention to the owner.

(Signed) JOHN BRUCE NORTON,
Advocate General.

24th November 1863.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 256. ORDER THEREON, 27th November 1863, No. 1851.

The opinion of the Advocate General will be communicated to the Municipal Commissioners, whose attention will be drawn to the suggestion made in the postscript.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

2

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Governm^t
Solicitor.

Here enter 24th November 1863 No. 828.

Order thereon 27th November 1863 No. 1851.

The opinion of the
Advocate General will be
communicated to the Mu=
nicipal Commissioners
whose attention will be
drawn to the suggestion
made in the postscript.

To The Municipal Commis=
sioners for the Town of
Madras
dated 27th

Bishop's Letter.

Judicial 1863. Department.

No. 1051.

PROCEEDINGS OF GOVERNMENT.

Fet. 1072/62

Dated 27 November 1863

Communicating to the Municipal Commissioners the opinion of the Advocate Genl. as to the steps to be taken to stop the nuisance arising from the damaged Cargo in the wrecked Ship "Punjab".—

255 & 256