M.R. O. 1—20,000—16-11-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1061 Press ~~His.~~

171-173

Dated 14. 7. 1864. ~~19~~

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Not to be folded or roughly handled

R... ...g papers :—

... ...m J. SILVER, Esq., Collector and ...he Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint Ge... ...ted Tenkasy, 25th June 1864, No. 246.

I ha... ... copy of a let... ...lo me the favo... ... the Advocate General on the ... ...nderwood's letter.

2. I do not think that in case of a dispu... ...as that derwood, bet... ...f goods and the M... could ... ...apacity of Magistrate detain the Master of th... that appears to me to be of the nature of a Civil action... and as regards the second point, I consider that Mr. U... Deputy Collector in charge of Sea Customs, has only ... demands are discharged : and if so, he cannot refuse Port Clearance... ...lad, howe... ...authoritative opinion on the subject.

... U...DERWOOD, Esq., Deputy Collector ... ...LVER, Esq., Collector and Magistrate of Tinnevelly, dated Tuticorin, 15...

I have the ho... ...ng the following facts to your notice, and ... ...bliged ... ...inion how cases of the kind mentioned should be deal... ...d the law on the

... ... this place have established it a... ...which is accepted by Masters of vessels, and generally entered in their Charter Party, that vessels loading at the port with cotton, &c., the measurement of the cubic contents of the bale or article is t... the shore; accordingly when a merchant has any cotton to ship, the Master of the ... the merchant, or the Agents appointed by them, attend at the screws from whence ...ke place, and each party taking five bales, the average cubic content... sured is struck, and an agreement arrived at between the Master ... ...ure-ment the bales are to be taken.

3. I think you will understand the explanation better thus :—In ... p... ...l Agent measure 5 bales each, the average measure... ...hich bei... the shipment of the 100 is made on the measurement arrived at.

4. The 100 bales are then forwarded on board with a Boat ... the merchan... which is calculated the measurement as agre... the parties.

... Boat Notes are received by the officer on board taking in ... ...n, the ba... on board, and the Boat Note returned to the Agent with the remark ... by the board.

... Bills of Lading being mad... ...varded w... ... to the Master of the vessel for signatur... Master should then si... ...ing, and keep the Boat Notes.

7. Some Masters of vessels, after having agreed to the measur... ... receiving the bales on board re-measur... and declare the measurement to be in excess of that ...hey agreed to accept them at, and refuse to sign the Bills of Lading unless the excess measurement is agreed to.

8. The measurement on board of course is *ex parte*, there being no person present to look after the int... ...he merchant.

9. It is, however, an acknowledged fact that bales will necessarily measure a little more on board than they do on shore, but Masters of vessels make the measurement so much more that the difference in tonnage that would be required to be paid is often very large.

The Master of the vessel has stowed the bales away, endeavouring to force the Agent to give him the exc surement, and on his refusing declines to sign the Bill of Lading or give him back the te.

11. The Age nas acted in good faith. The Ma merchant have agreed to take the bales at a certain measurement. The Agent trusting in the Master, ships his bales. The Master on board re-measures them, declares the measurement to be greatly in excess, stows them away, refuses to sign the Bills of Lading, or give up the Boat Notes.

12. The Master in thus acting has rece perty on e gives no receipt.

Further, it must be remembered that the Lading is negotiable, and the keeping back of course might greatly hamper the merchant in his business transactions. Boat are not negotiable.

14. The Master has the merchant altogether in his power once h s the goods on board. If asked to restore the goods, the Master simply repli the vessel. The merchant having neither Bill of Lading or Boat Note, has no guarantee for the goods shipped by himself. Surely the Master has no right to decide on board what measurement he will take the goods at, after having consented on shore to take them at a certain measurement; and if on board he is of a different opinion as to the measurement of the goods, he has no right to stow the goo ls away sist on his measurem merchant.

This a subject of great importance to the merchants her protection for acts of this nature, and desire to know whether, in my position of Magistrate, on a complaint being made, I would be justified in detaining the Captain until he gave an acknowledgment of some kind as having the goods on board, leaving alone the actual freight to be paid on the dispute of the measurement to be adjusted between the Agents and ship-owners at Home; or whether, in my capacity as Deputy Collector in charge of Sea Customs, I would be justified in stopping the Port Clearance of the vessel, until the parties have come to a settlement between themselves, or by arbitration?

16. The Master of the vessel, I am of opinion, could be prevented from sailing until he had given an acknowledgment of some kind for the goods received on board by him. It is an unjustifiable act for the Master to keep the Boat Notes; vouchers which have been merely handed over to him to compare with the Bill of Lading he is required to sign, and to refuse either to sign the Bill, or give back the Boat Notes.

(True Copy.)

(Signed) J. SILVER,
Collector and Magistrate.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
5th July 1864.

(Signed) J. D. SIM,
Secretary to Government.

From J. R. BOYSON, Esq., Government Solicitor, Madras:

SIM, Esq., Acting Chief Secretary to Government, Madras, dated 8th July 1864.

I hav Order of Government noted in the margin with its enclosure, relative to the authority of a Magistrate to detain the Master of a vessel, and Collector of Sea Customs clearance of such vessel, pending settlement of differences between the Master and the shipper, regarding measurement of packages received on board.

2. I submitted the matter for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosure above noted.

COPY—OPINION.

I am of opinion that the Collector's view is right. Reprehensible and unjustifiable as the Master's conduct may possibly be, he and his owners are responsible civilly to the parties injured, and it is not for the Magistracy to interfere on the ground of the Master's conduct being criminal. The greatest injury might be done to the owners and even to the shippers by the detention of the ship until the case could be heard.

2. The Deputy Collector has no power to refuse a Port clearance on such grounds as he suggests.

(Signed) J. B. NORTON,
Advocate General.

7th July 1864.

(True Copy.)

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

No. 173. ORDER THEREON, 14th July 1864, No. 1061.

The Advocate General's Opinion will be communicated to the Magistrate of Tinnevelly.

(True Extract.)

Secretary to Government.

To the Magistrate of Tinnevelly.
" Revenue Department.

Exd. J. Tulloch.

Proceedings of the Madras Govt.

Read the following letters —

From Magistrate of Tinnevelly — Enter 2 July 64 No. 248

" the Govt. Solicitor — 387.

Order — 14 July 1864 No. 1061.

The Advocate Genl's opinion will be communicated thro' the Magistrate of Tinnevelly.

