

MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No.	284	Press
		~~Mis.~~
Dated	28.6.1857	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Marine Department,
from 25th June to 1st July 1859.*

No. 7. Read the following letter from THOMAS SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 17th June 1859.

I have the honor to forward a letter from Captain McKennie, in his capacity of Shipping Master requesting advice how to deal with the case of an Apprentice of the Barque "Chieftain" lately sold under a Decree of the Vice Admiralty Court, whereby the Apprentice was discharged and left destitute.

2. I also forward my opinion upon the case.

3. It appears to me that the case is one not provided for by the Merchant Shipping Act 1854; but that in accordance with the spirit of that Act, and the apparent intention of the Home Legislature, the Apprentice ought to have a passage provided for him.

4. I have to request you will submit the matter to the Honorable the Governor in Council, both for his decision in the present case, and also with a view to his considering whether it may be desirable to refer to Calcutta, in order that some uniform rule may be laid down for the guidance of all Shipping Master in similar cases.

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From J. McKENNIE, Esq. Assistant Master Attendant and Shipping Master; to J. R. BOY-SON, Esq., Government Solicitor, dated Madras 4th June 1859, No. 196.

I have the honor to inform you that Captain S. Gunton of the Barque "Chieftain" applied to me for permission to leave behind a lad named John William Eaton an Apprentice of that Ship on the grounds that the Vessel has been sold here under Decree of Her Majesty's Vice Admiralty Court of Madras, whereby himself and the Crew are discharged from the Ship, and that he is not at present in a position to provide for the lad as required by Section 205 of the Merchant Shipping Act of 1854. Under these circumstances I beg you will be pleased to favor me with your opinion as to whether the lad is to be provided with a passage home as a distressed British Seaman or otherwise, since the whole of his Shipmates have been paid off from the proceeds of the Sale.

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OPINION.

1. Section 205 of the Merchant Shipping Act 1854, has nothing whatever to do with the present case. That Section refers only to cases when British Ships are transferred or disposed of *out of* Her Majesty's Dominions; whereas Madras was clearly *in* these Dominions, even before Her Majesty assumed the direct Government of India.

2. Section 207, Clause 3, shows what Certificate the Master must obtain, if he wishes not to commit a misdemeanor.

3. Sections 209 and 210, also shew what the Master is to do as regards J. W. Eaton's wages, which however I know have been paid already.

4. Sections 211 and 212, respecting the sending home of distressed Seamen at the Public expense, and the obligation of Masters of British Ships to give them a passage home, do not meet cases like the present, for they refer only to cases of such Seamen found in distress "*in foreign Countries,*" or "*abroad.*"

5. Section 113, contemplates the case of Seamen "discharged or left behind at *any place out of the United Kingdom,*" which would clearly include Madras, and becoming distressed, and being relieved *under the provisions of this Act*; but *how*, in such cases, such Seamen are to be relieved *under this Act*, I feel very great difficulty in saying. I cannot find that the Act anywhere says that a Seaman left at a Port in the British Dominions is to be sent home at the Public expense, in like manner as a Seaman left behind at a Foreign Port.

6. Section 113, moreover, is confined to the case of British Seamen "discharged or left behind," say at Madras "*without full compliance on the part of the Master with all the provisions in that behalf in this Act contained,*" and it is very difficult to say, in the present case what is thereby meant.

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7. I take it to refer to Section 107, Clauses 1 and 3, but I much doubt if either of them were intended for a case like the present, which seems to me not provided for by the Act.

8. Clause 1, refers to discharges, which may be by mutual consent, or by reason of such misconduct on the Seaman's part as the Shipping Master or other Government Officer thinks good ground for his sanctioning such discharge, but neither of these cases resemble the present one.

9. Clause 3, refers to cases where from accident or ill-health, as I conceive, or from desertion or disappearance, the Seaman is unable to proceed to Sea. J. W. Eaton is unable to continue the voyage for which he shipped, but the inability arises from no fault of his or of the Master, but solely because the Vessel has been seized and sold under a Decree of the Vice Admiralty Court; and J. W. Eaton's is *not* a case of "inability to proceed to Sea," he is perfectly able to do so.

10. Therefore I am of opinion that the Act does not make express provision for a case like the present. I shall however state what I conceive to be the spirit of the Act, and the intent and meaning of the Legislature in a case like the present.

11. Looking to Section 107, Clause 1, I am clearly of opinion that, if Eaton had been discharged, under Clause 1, for misconduct, with the sanction of the Shipping Master, he could *not* be relieved or sent home under Section 113, as, in *that* case, there *would* have been "full compliance on the part of the Master "with all provisions in that behalf in this Act contained."

12. I am also of opinion, from the whole spirit of the Act, that it never contemplated, or meant to sanction or allow, the leaving behind at any Port in the British Dominions any Seaman able and willing to proceed to Sea, there being no fault on his part; and I think a very grave responsibility attaches to any British Master who does so; and that, at the very least, it would be held incumbent on him to prove to the satisfaction of a Court of Justice, that the act was unavoidable on his part, and that he had used his utmost exertions to provide for such Seaman an engagement, or passage in some homeward bound Ship.

13. I am also of opinion that it was the intention of the Legislature in Section 113, though not very clearly expressed I think, that if any British Seamen, without fault on his part, were left behind at any place out of the United Kingdom and became distressed, he should be relieved and sent home at the Public expense, if no engagement could be provided for him.

14. I therefore come to the conclusion that the Shipping Master, and especially Captain Gunton, should do their best to provide an engagement for J. W. Eaton, in some homeward bound Ship. If he refuses to accept what the Shipping Master thinks a proper engagement, I do not think he has any further claim; but if no such engagement can be found for him, I think he should be sent home at the Public expense.

15. I have only seen Captain McKennie's letter to-day.

15th June 1859.

No. 8.

ORDER THEREON, 28th June 1859, No. 284.

Resolved that a copy of the Opinion of the Advocate General be forwarded to the Government of India, and that authority be requested to lay down a rule for the guidance of Shipping Masters in similar cases.

Meanwhile resolved that the boy J. W. Eaton be sent home at the Public expense, if the Shipping Master and Captain Gunton are unable to provide an engagement for him in some homeward bound Ship.

(Signed) T. PYCROFT,
Chief Secretary.

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No. 9. To THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT, dated Fort Saint George, 28th June 1859, No. 285.

SIR,

I am directed to forward to you copy of the papers, noted in the margin, relative to the case of an Apprentice, J. W. Eaton, of the Barque "*Chieftain*."

From the Advocate General, 17th June 1859.
Opinion, 15th do. do.

2. The Vessel was sold under a Decree of the Vice Admiralty Court; and her Crew thereupon paid up out of the proceeds of the sale, and discharged. The Apprentice was also discharged and left destitute, the Captain declaring that he was not in a position to provide for him.

3. The Advocate General, whose opinion was sought, states that the case is one not provided for by the Merchant Shipping Act of 1854, but that in accordance with the spirit of the Act and the apparent intention of the Home Legislature, the Apprentice ought to have a passage provided for him.

4. I have to solicit that the Supreme Government may be moved to decide and to prescribe a rule for the guidance of Shipping Masters in similar cases, and I have to state that meanwhile the Boy J. W. Eaton, will be sent home at the Public expense if it should not be found practicable to procure an engagement for him in some homeward bound Vessel.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. A. P. W. Begbie.

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Order thereon N^o 284 d/28 June/59.

Resolved that a copy of the Opinion of the Advocate General be forwarded to the Govt. of India, & that authority be requested to decide on the case submitted to Govt. with the above letter, & to prescribe a rule for the guidance of Shipping Masters in similar cases.

Wm. H. Mainie.
The Advocate General.
Govt. Solicitor.
Shipping Master.

Meanwhile resolved that the boy Mr. Eaton be sent home at the public expense if the Shipping Master and Capt. Ganton are unable to provide an engagement.

Sept 30th

Marine.

N^o 205.

The Secretary to the Govt. of India.

Home Dept

Sir,

From the Advocate General, 17th June 1859.
Opinion, 15th do.

I am directed to forward to you copy of the papers, noted in the margin, relative to the case of an apprentice, J. W. Eaton, of the Barque Chieftain.

2. The Vessel was sold under a decree of the Vice Admiralty Court; & her Crew thereupon paid up, out of the proceeds of the sale, & discharged. This Apprentice was also discharged. He left destitute, the Captain declaring that he was not in a position to provide for him.

3. The Advocate General, whose opinion was sought, states that the case is one

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him in some home

bound vessel.

Fort St George, }
28 June 1859.

JP

Oct of 8th July

Proof sent 1 July.
Marine 1859 defects

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broken

of 20 June 1859

Refers to 2/13th August
1859 28th 411-