

MADRAS RECORD OFFICE.

Government of Madras.

Police DEPARTMENT.

G.O. No.	287	Press
		Mis.
Dated	30.6	18.87

Not to be folded or roughly handled

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

No. 15. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras; to the Chief Secretary to Government, dated 27th June 1859, No. 1107.

I have the honor to acknowledge the papers noted in the margin.

Order of Government, dated 16th June 1859, No. 266, on letter from Acting Shipping Master to Government, dated 15th June 1859, No. 202, with papers therein referred to.

I submitted them for the consideration of the Advocate General and have since conferred with him thereon.

I have also had further communication with Major Wilson and have made known the result to the Advocate General.

I now forward a copy of the Advocate General's Opinion, and I have, &c.

COPY OPINION.

These papers were sent to my Chambers on the 17th Instant, but being engaged at Chepauk I did not then see them, and they were shortly afterwards taken away in order to be printed, and have only been returned to-day.

2. The Magistrate Major Wilson, and the Shipping Master Captain McKennie are at issue as to the proper construction of Section 207 of the Merchant Shipping Act 1854. Besides their printed letters, I have before me one from Major Wilson, dated 24th June, to the Government Solicitor, in which he more fully explains his views. He raises 2 questions, "1st has the Shipping Master a *right* to refuse his sanction to a discharge when both parties are anxious that it should "be granted"?—To this I reply that in my opinion the Shipping Master certainly has this right. The 2nd question is "Is it expedient that he should do so supposing him to have the power"? To this I reply that it must depend upon the circumstances of each particular case.

3. As a general rule, when, without any fault on either side, a Master and a Seaman are desirous to part and there is no reason to suppose that the Seaman, if discharged, is likely to become distressed, and that it will become necessary to send him home at the public expense, I am of opinion that under such circumstances the Shipping Master ought not to refuse his "Sanction," and that if he were to do so he would not be exercising a sound discretion, and that his refusal would not be "just."

4. The present however appears to be a case of a very different character, one where the motive for separation appears to be wilful determined and continued defiance of discipline on the part of the Seaman, and the Master's anxiety to get rid of a bad, if not dangerous character, and where the granting a discharge would be a direct encouragement to misconduct in this case, and in any future ones of a like nature.

5. I think the Shipping Master, in this view of the case has taken a correct view of the general policy of the Act and of his duty under Section 207 as applicable to this particular case.

6. I also agree with the Shipping Master that the policy of the Act as collected from Sections 205 to 213 inclusive, and as shewn by the instructions of the Board of Trade, is pointedly directed against permitting any Seaman being left abroad "except in cases of *necessity* and also unless due precautions are "taken for their return to their Native country" and I also agree with him that the fact of £ 16 wages being due to this Seaman, is a very slight guarantee against his becoming chargeable to the public; while the Shipping Master further shows that owing to the man's bad character and to his being a boatswain, a class not in demand here, he is very unlikely to meet with employment at this Port.

7. At the same time I must add (the rather because Captain McKennie seems disposed to take a different view of the Act from what I do) that if James Bowman were regularly discharged at Madras under the provisions of Section 107 and with the Shipping Master's sanction, I do not think that however distressed he might afterwards become he could legally claim to be relieved or sent home at the Public expense. The Section that applies is Section 213 which only refers to cases where a Seaman, has been discharged "*without full compliance*" with the previous Sections applicable to such a case.

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8. Upon the whole I am of opinion that the Shipping Master has correctly interpreted the general policy and the provisions of the Act with reference to the facts of the present case, and that he will be only doing his duty in doing as he proposes in para: 7, viz., seeing this Seaman sent back to his Ship before granting the Vessel's Port clearance.

25th June 1859.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

(True Copy.)

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

No. 16.

ORDER THEREON, 30th June 1859, No. 289.
Communicated to Major Wilson and the Acting Shipping Master.

(Signed) T. PYCROFT,
Chief Secretary.

Order thereon No. 289 of 30 June 59

Communicated to Major Wilson
& the Acting Shipping Master.

To Major W. I. Wilson
Magistrate of Police. }
The Acting Shipping Master. }
Dep. Secy