

MADRAS RECORD OFFICE.


Government of Madras.

Marine DEPARTMENT.

G.O. No. 33

Press
~~Mis.~~

Dated 31-1-1859

Not to be folded or roughly handled

No. 12. From R. B. CHAPMAN, Esq., Under Secretary to the Government of India; to the Secretary to the Government of Fort Saint George, dated Fort William, the 6th January 1859, No. 41.

Home Dept. SIR,
Marine.

I am directed to transmit, for the information of the Right Honorable the Governor in Council, the accompanying copy of an opinion by the Advocate General at this Presidency, as to the legal position of Seamen belonging to Her Majesty's Indian Navy.

2. The question therein discussed has been referred to the Legislative Council for consideration, in connection with the Indian Merchant Shipping Act now before them.

OPINION.

I am of opinion that the recent Act for the better Government of India makes no alteration in the position of Seamen leaving Merchant Ships to enter into Her Majesty's Indian Navy, since the Proclamation. Such Seamen are not, I think, protected from a charge of desertion if in other respects their conduct in leaving or absenting themselves from their ship be such as to amount to desertion by reason of their having left their ship for the purpose of entering into the Indian Navy, although such Navy has since the Act and the Proclamation been transferred to Her Majesty.

The privilege of volunteering into the Navy, whereby Merchant Seamen are protected from a charge of desertion in leaving their ships, is one that rests upon the express provision of the Merchant Shipping Acts. The privilege has long existed and has been recognised by the several Merchant Shipping Acts that have been passed since the beginning of George the Second's reign. The language of these Acts has somewhat varied, but in all, words were used which would confine the privilege to Ships of the Royal Navy or of the Crown as distinct from Ships of War of the East India Company. The Act now in force, as its predecessors did, confers the privilege on Seamen entering "the Naval Service of Her Majesty."

These words before the recent transfer of the Government to the Crown certainly did not include the Indian Navy. There can be no doubt that the Ships' Officers and men of the Indian Navy are now "in the Naval Service of Her Majesty," but the question is whether they are in the service in the sense in which these words were used by the Parliament in 1854, when the Shipping Act was passed, and whether that Act can fairly be extended to any service which at any subsequent time might form part of Her Majesty's Naval Service? Had Section 214 of the Act stood alone, this question might have been a difficult one. But this Section is followed by several others, which clearly show that the Legislature contemplated the Royal Navy as it was then constituted, and did not mean its provision to extend to a new and distinct branch of Her Majesty's Naval Forces, such as the Indian Navy now is. For provision is made for payment of

- the Seamen's wages by Bill on the Accountant General of the Navy, (1):
(1) See Section 215. for a refund by the Admiralty to the owner of advances paid by him and
not duly earned (2): for payment by the Admiralty through the Ac-
(2) See Section 216. countant General of the Navy of any extra expense to which the owner
may on notice to the Secretary of the Navy prove he has been put by
engaging substitutes (3): and for providing for such payment out of the monies applicable to the
Naval Service of Her Majesty granted by Parliament for that purpose
(3) See Section, 217, 218. (4.) Hence it is clear that the provisions of the Act are limited to
the Naval Service paid by funds granted by Parliament: whereas under
(4) See Section 219. the recent Act for the Government of India, the pay and expenses
of Her Majesty's Naval Forces for the Service of India are to be de-
frayed out of the Revenues of India.

The same Section of the Act also while it expressly secures to the Indian Navy all the privileges and advantages it would have enjoyed if it had continued in the service of the East India Company, does not profess to extend to the Indian Naval Service the privileges of the Royal Navy.

Fort Saint George, Marine Consultation, 1st February 1859.

I therefore think that the claim preferred by Captain Campbell, i. n., for exemption from the jurisdiction of the Magistrates, of Seamen charged with desertion from Merchant Ships by reason of their having entered the Indian Navy, cannot be supported.

I recommended, on a previous occasion, and before the transfer of the Government to the Crown, that the privilege in question should be extended to the Indian Navy by Act of Parliament, and the transfer of the Naval Forces to Her Majesty may perhaps strengthen the grounds on which that recommendation was based.

(Signed) W. RITCHIE.

The 4th December 1858.

(True Copy.)

(Signed) R. B. CHAPMAN,

Under Secy. to the Govt. of India.

No. 13.

ORDER THEREON, No. 33; dated 31st January 1859.

To be communicated to the Government Solicitor and to the Superintendent of Marine, in advertence to Extract Minutes of Consultation, No. 449, dated 11th November 1858.

(Signed) T. PYCROFT,

Chief Secretary.

Marine. 1000. Sept 11
Sept 11 Feb 19
From the under Secy to the
Govt of India. 1st.

d/c

1/20/59

3 separate copies. 1st. 11/2/59

Shawminto for the information
of the Madras Govt copy of
an opinion by the Advocate
General at Calcutta, as to the
legal position of seamen &c.
Longue to the Indian Navy.
States that the Government
discusses has been referred
to the Govt. for consideration
in connection with
the Indian Merchant Ship.
being set now before them.

W. R. Ritchie

1/2/59
12/2/59
With an order
12/2/59

No. 33.

To be communicated to the Govt. Soli-
citor & to the Superintendent of Marine
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No. 449 dated 11th November 1858.

The Govt. Solicitor
" Superintendent of Marine } 1/2/59
To be 1/2/59
31 January 1859

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From

To

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I am directed to transmit for the information of the Right Hon^{ble} the Governor in Council, the accompanying copy of an opinion by the Advocate General at this Presidency, as to the legal position of seamen belonging to Her Majesty's Indian Navy.
2. The question therein discussed has been referred to the Legislative Council for consideration, in connection with the Indian Merchant Shipping Act now before them.

Dated Fort William, the 6th January 1839.

R. B. CHAPMAN, Esquire,
Under Secy. to the Govt. of India,

Wm. Charles Bayly

I have the honor to be,
Sir,
Your most obedient servant,

J. B. Chapman

Under Secy. to the Govt. of Ind.