

MADRAS RECORD OFFICE.

Government of Madras.

Home DEPARTMENT.

G.O. No.	<i>449</i>	Press <u>Mis.</u>
Dated	<i>13. 9. 1857</i>	

Not to be folded or roughly handled

17

*Proceedings of the Madras Government, Marine Department,
from 10th to 16th September 1859.*

No. 11. Read the following letter from W. GREY, Esq., Secretary to the Government of India; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Fort William, the 13th August 1859, No. 1634.

Home Department.
Marine.

With reference to your letter, No. 285, dated the 28th Ultimo, with annexure, I am directed to forward the accompanying copy of an opinion* given by the Advocate General at this Presidency, on the case of apprentice J. W. Eaton, who in consequence of the sale of the Vessel to which he belonged, under a decree of the Vice Admiralty Court, was discharged and left destitute.

2. I am desired to signify the acquiescence of the Governor General in Council in the course pursued by the Madras Government, with regard to this apprentice.

3. A copy of your letter and its enclosure, together with the subsequent opinion given by Mr. Ritchie, will be forwarded to the Governments of Bengal and Bombay for information and guidance.

(OPINION.)

I think that the course recommended by Mr. Smyth is the right one, and that instructions should be given to Shipping Masters generally at the Ports of British India, to afford the assistance pointed out in the 13th and 14th paragraphs of Mr. Smyth's opinion to seamen and apprentices situated similarly to the apprentice J. W. Eaton.

2. I quite concur with Mr. Smyth in thinking that from the whole spirit of the Act, Parliament never contemplated or meant to allow the leaving behind at any Port in the British Dominions abroad, any seaman able and willing to proceed to sea, there being no fault on his part. I also agree with him that there is a difficulty in so construing the Act as to give full effect to that intention by reason of the obscurity of some of the expressions used. And if Section 211 had stood alone, and had been a new enactment, I should probably have thought with him that it did not apply to any Port in British India. But looking at some of the Sections which precede and follow that Section, and at the enactments which were in force when the Merchant Shipping Act was passed, I am of opinion that a seaman or apprentice left in distress at an Indian Port falls within the express provisions of Section 211, and that if relieved under that Section the expenses of such relief may be recovered from the owner for the time being, under Section 213, in cases where the Master has failed to comply with all the previous provisions of the Act.

3. The 211th Section is confined to seamen or apprentices ship-wrecked, discharged, or left behind "at any place abroad," and in distress "at any place abroad." But the expression *abroad* does not I think necessarily mean "in a foreign country" or "out of the British Dominions." The same expression is frequently used throughout the Act as including places within Her Majesty's Dominions. Thus in Section 207 the discharge of a seaman in any place situate in any British Possession abroad, and in Section 209 the leaving behind any seaman at any place abroad, in or out of Her Majesty's Dominions, are spoken of. The term therefore may be, and I think is, used in the same sense in Section 211, which is the next provision relating to a similar subject. But there is more difficulty as to the first words in the Section, which empower the Governors, Consular Officers, and other Officers of Her Majesty in *foreign* countries to provide for the subsistence and passage of the seamen in question. This expression standing alone would certainly tend to limit the operation of the clause to places out of Her Majesty's Dominions. But when the history of the clause is looked to, I think it is clear that such could not have been the intention of the Legislature:—and that although the expression used is singularly ill-adapted to convey the real meaning of the Legislature, it may still, looking at the whole context, be construed in a larger sense than that which it would *prima facie* bear.

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4. The Section itself is a re-enactment with a slight variation of the 82nd Section of the 11 George IV., Chapter 20, which itself is a re-enactment almost verbatim of the 31 George II., Chapter 10, Section . Now the Act of George II., certainly extended to the case of sailors in Indian Ports:—and the Governors of Fort William and Fort St. George would when it passed have answered the description of "Governors in foreign Ports" even if that term was used to denote places entirely out of Her Majesty's Dominions—as India in 1757 (with the exception of Bombay) was treated by Parliament as a foreign country. It was no longer so in 1830, when the Act of George IV. passed. But the expression "Governors, Ministers, Consuls, and other Officers of Her Majesty in foreign Ports" used in that Act was clearly not intended to apply only to foreign states properly so called, for in such States Her Majesty could have no Governors:—And it seems also clear from the preamble to the Section and the context that Parliament did not intend to narrow the operation of the provisions of the Act of George II., or exclude from its benefit any sea-faring persons originally entitled thereto. The word "foreign" Ports in that Act therefore must I think be taken to extend to all places out of the "Realm or the ordinary Dominions of Her Majesty strictly so called" whether actually British Possessions or not.

5. This interpretation of the word in that Act has been expressly adopted by Parliament in the 7 and 8 Victoria Chapter 112, Section 52, which provides that if any person shall be left behind &c., at any place beyond seas, in or out of Her Majesty's Dominions, and shall become distressed and shall be relieved under the provision of the 11 George IV., Chapter 20 Section 82, the expenses may be recovered, thus assuming that the latter provision extends to places within as well as to those out of Her Majesty's Dominions.

6. The 113th Section of the present Act is substituted for the 52nd Section of the Act of 7 and 8 Victoria, and contains a similar expression with reference to persons left behind at any place out of the United Kingdom "and relieved under the provisions of the present Act," *i. e.*, under Section 211. It seems to me clear therefore that Parliament by Section 213 of the present Act puts upon the words foreign Ports and abroad in Section 211 the same construction that it put by Section 52 of 7 and 8 Victoria, Chapter 112, upon the corresponding words in Section 82 of 11 George IV., Chapter 20, and that consequently the operation of Section 211 cannot be limited to places out of Her Majesty's Dominions, but applies to such cases as the present one: and that under Section 213 the expense of any relief properly given under that Section in an Indian Port, may be recovered from the owner of the Ship for the time being.

7. This appears also to be the view adopted by the Board of Trade. See the printed forms sent out by the Board in 1858. The form of an order under Section 211, headed "Order of a Consul at a foreign Port or Governor or other Officer in *British Possessions* abroad for the conveyance of distressed British Seamen." See too the instructions of the Board of Trade sent out in 1855, paragraph 42, headed "C. C. 14 Colonial Officer's Instructions."

8. The mere circumstance that a Vessel has been sold by the owner or his Agent will not justify the purchaser, or the original Master, as long as he continues in command of the Vessel in discharging a Seamen or apprentice in an Indian Port without a full compliance with all the provisions of the Merchant Shipping Act:—And in case where a Seamen or apprentice has been discharged against his will after such a sale, and without a compliance with the provisions of the Act (see Section 207, Clauses 1 and 3), and being left in distress is relieved under Section 211, the purchaser or the owner for the time being may in my opinion be sued for the expenses under Sections 2 and 3 while the Master, if he discharge the Seaman or apprentice, and if he do not obtain the sanction of the Shipping Master under Clause 1, or a Certificate under Clause 3 of Section 207, will be liable to the penalties of that Section notwithstanding the change in the ownership and the orders of the new owners. A new Master appointed by the new owner, who after appointment discharges the Seamen or apprentice without the proper sanction or consent, will I think be equally liable to these penalties as the original Master.

9. The Shipping Master ought to withhold his sanction to the discharge until satisfied that the Seamen or apprentice will be provided for.

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10. If the party discharging the seaman or apprentice be not the Master but the new owner, who discharges the former Master as well as the crew, no person can be held liable to the specific penalties of that Section, but the expenses incurred in relieving the seaman and apprentice so discharged may I think be recovered from him.

11. These observations (in paragraphs 8, 9, and 10) apply to a private sale, but do not apply to sales which take place under such circumstances as amount to a constructive total loss of the vessel:—Thus where a vessel sustains such injury that it will cost more to repair her than she will be worth when repaired, and the Master sells her:—or where in a Court of Admiralty a Decree is pronounced against her for a larger sum than she is worth, and a sale consequently takes place, such a sale will relieve the owner from the obligation to enable the crew to complete their original voyage, and the purchaser will take free from any charge of the expenses incurred to relieve the crew. But neither a sale by the Master on the alleged ground of necessity, nor a sale by Decree of the Vice Admiralty Court (not being a condemnation of the vessel) of itself constitutes a total loss of the vessel: and it must depend on the circumstances which in each case precede and occasion the sale (and in the case of Admiralty proceedings on the nature of the suit and order for sale) whether the purchaser is freed from the obligation attaching to her in the hands of her former owner or not.

(Signed) W. RITCHIE,

5th August 1859.

(True copy.)

(Signed) J. D. GORDON,

Offg. Under Secy. to the Govt. of India.

ORDER THEREON, 13th September 1859, No. 449.

No. 12.

Ordered to be communicated, in reference to the Orders of the 28th June last, No. 284, to the Superintendent of Marine, for communication to the Shipping Master, and also to the Advocate General for his information.

(Signed) T. PYCROFT,

Chief Secretary.

Exd. A. P. W. Begbie.

No 449 - 13 September 1859

Ordered to be communicated,
in reference to the Orders of
the 28th June last. No 284, to the
Superintendent of Marine for com-
munication to the Shipping Mas-
ter, & also to the Advocate General
for his information.

No: 17 July 59 No 7 @ 9

The Supt. of Marine. }
" Advocate Genl. } Supd. 13th

Pro 134. 18 Sept 1859
Marine 1859 Sept 14

For the day to the Secy of Marine
1859

27/13
29 Aug 59

Pro 177
No. 50 June 1859

With reference to this boat of the
No 385 of 28th with auctioneer,
forwarded copy of an opinion
given by the Advocate General
at St. William, on the case of
Christopher McCullum, who in
consequence of the state of the
market is in fact the delinquent,
under sentence of the Secy. of Ma-
rine. (must be a delinquent) and
left about 1850, was a witness to
the requirements of the Govt of India
in the course of service by the
Marine Fund, with regard to the
operation. States that the
Govt. to the said auctioneer with
particular opinion, with the
with an Order.

LL

MLL

Forwarded to the Govt of
Marine and Shipping, for
information and further use.

23. 4/15.
29th

11-1/10
1859

No. 1634.

FROM

W. GREY, ESQUIRE,
Secy. to the Govt. of India,

TO

T. PYCROFT, ESQUIRE,
Chief Secy., Govt. of Fort St. George.

SIR,

Dated Fort William, the 13th August 1859.

HOME DEPT.
MARINE. WITH reference to your letter No. 285, dated the 28th ultimo,
with annexure, I am directed to forward the accompanying copy of an opinion*
* Dated 5th instant. given by the Advocate General at this Presidency, on the
case of Apprentice J. W. Eaton, who in consequence of the
sale of the vessel to which he belonged, under a decree of the Vice Admiralty
Court, was discharged and left destitute.

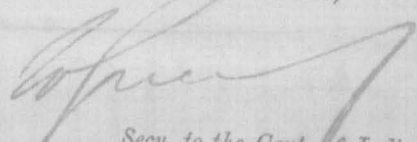
2. I am desired to signify the acquiescence of the Governor General in
Council in the course pursued by the Madras Government, with regard to this
apprentice.

3. A copy of your letter and its enclosure, together with the subsequent
opinion given by Mr. Ritchie, will be forwarded to the Governments of Bengal
and Bombay for information and guidance.

I have the honor to be,

SIR,

Your most obedient servant,


Secy. to the Govt. of India.

Encl.—M. A. Mendes.