

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.

279

Press
Mis.

Dated

14-8-1860

Not to be folded or roughly handled

*Proceedings of the Madras Government, Marine Department,
14th August 1860.*

No. 15. Read the following letter from J. J. FRANKLIN, Esq., Superintendent of Marine, to the Chief Secretary to Government, Fort Saint George, dated 13th August 1860, No. 3,704.

Referring to the Proceedings of Government of the 8th instant, No. 273, I have the honor to inform you that I have just learned from the Accountant General that there are five lacs of Treasure to bring back from Negapatam. I have to solicit therefore that the Commander of the "Dalhousie" may be instructed accordingly.

No. 16. ORDER THEREON, 14th August 1860, No. 279.

In continuation of the Order of the 8th instant, No. 273, Commander Hopkins is directed to return to Madras from Negapatam, after taking on board the Treasure awaiting shipment at that place.

(Signed) T. PYCROFT,
Chief Secretary.

OPINION OF THE ADVOCATE GENERAL.

XXII
I AM of opinion that no Port Dues imposed under the authority of Act XXXV of 1855, and the special Acts passed in pursuance of that Act (such as Act XXX of 1857 for Calcutta and XXXV of 1857 for Moulmein and Rangoon) can be legally claimed from Transports taken up by the Government and chartered to it for a definite period under Charter parties, which vest the whole dominion and control over the Vessels for those periods in the Government as long as such Vessels are employed by the Government under such Charter parties. I think that all such Vessels fall within the express terms of Section LX of Act XXII of 1855, as being Vessels "in the service of Her Majesty or the East India Company." Probably the exemption of Vessels of or in the service of Her Majesty alone would not have included such Vessels. For in 1855 when the Act was passed, Vessels of the Indian Government would not have been included in that description, and under the 21st and 22nd Vict. Cap. 106, though all enactments relating to the East India Company shall be taken to apply to the Secretary of State in Council—enactments referring to Her Majesty generally, are not made to apply to Her Majesty's Indian Government. But the exemption as it stands clearly includes the case of a Vessel in the service of Her Majesty's Indian Government—and a Transport chartered, as above described, is clearly I think a Vessel in such service.

2. Even independently of the Act, I should have been disposed to come to the same conclusion with respect to the liability of such Vessels to Port Dues properly so called in any Ports of British India. A Vessel similarly chartered by any branch of Her Majesty's Government in England (*e. g.* the Post Office,) is

See *Trinity House versus Clarke*,
4 M. and Sel. 288. exempt from Light Dues imposed by Royal Charter or Act of Parliament, not expressly naming the Crown : and I think that a similar principle is applicable to Vessels chartered by Her Majesty's Indian Government in regard to similar dues in British India.

3. The foregoing remarks are intended to apply to all Port Dues strictly so called, *i. e.* to all dues for entering a Port and for taking advantage of the accommodation therein afforded by buoys, quays, or other conveniences for Shipping supplied by the Government—they apply also to the particular fees chargeable under the authority of Act XXII of 1855 alone, as that Act does not extend to any such Vessel. But they do not apply to the fair and reasonable charges for services rendered by individuals to the Vessels themselves, such as pilotage, mooring, unmooring, or hauling in or out of Dock. As to such services the persons rendering them are entitled to a fair remuneration, whatever be the character of the vessels availing themselves of such services : and although the scale of fees authorised under the Act of 1855 does not of itself apply, yet so far as the fees established according to that scale are fair and reasonable, fees at those rates may be properly charged—subject to the remarks in the 5th and following paragraphs.

4. A distinction somewhat similar to that last pointed out was brought to the notice of the Government of India in March 1856, in the case of Her Majesty's

* Captain O'Callaghan.

Ship *Encounter*. There the Commander* of the *Encounter*, a Ship of the Royal Navy, objected to the payment of Light House duties and other dues of that kind, on the ground that Her Majesty's Ships of War were expressly exempted by the general Law from such charges; though he fully admitted the liability to all charges for work

See Opinion of 17th March 1856, sent through Mr. Sandes, to the Foreign Department.

actually done, such as pilotage, mooring, &c. I considered that he was clearly entitled to the exemption claimed, and that the distinction was well founded: and I believe that that view was then and has since been acted on by the Government.

5. Some difficulty indeed may exist in recovering these charges for pilotage, mooring, &c., as the peculiar remedies given by the Act are not applicable. Moreover the persons rendering the service are generally Government servants, who are bound to do the work upon fixed salaries, and do not themselves retain any part of the fees—although individuals doing the work are entitled to charge the Commander and Owners of the Ships for it, even where as between the Government and the Shipowner, the former are by virtue of their Charter party liable to bear such charges, yet the right of the Government, as employer of the individual, must depend upon the particular Charter party or contract under which that ship is hired.

6. Thus in the case of the Rangoon Pilots, who as pointed out by Colonel Phayre are not Government servants, and receive remuneration for each ship piloted by them, though as I infer such remuneration is not paid to them direct by the Master or Owners, but by the Government who receives it from the ship as a portion of the Port dues with which the ship is charged, no doubt can exist I think as to the right of such Pilots to recover the Pilotage charge from the Commander or Owners of those Transports, even when the local Government of one of the Presidencies has expressly stipulated with the Owners that no Pilotage charges should be made. The Pilot is not bound by such a contract:—but is entitled to a reward for his services from the ship to which he renders them, and the owners of the ship are left to recover the sum thus paid from the local Government under the special contract—and even where the Pilot is a servant of Government, still if he be allowed to receive and retain the Pilotage fees on his own account, the same liability will I think attach to the ship, together with the same right of recovery over from the local Government if the contract provided that such charges should not fall on the ship, but not otherwise.

In Calcutta the Pilotage fees form no part of the Port Dues or Fees regulated by Act XXII of 1855—and I infer from Section 44 of that Act that it was intended that in all the Indian Ports such charges should be left apart from the Port Dues and Fees. Wherever the charge for Pilotage is a separate one, the amount of which the Pilot is entitled to receive, although being a Government

ant he may be bound to account for it to the Government, such charge will, I think, attach in the first instance to Transports taken up by a local Government. Where the Pilotage fees are not receivable by the Pilots at all (they being Government servants paid by a fixed salary), but by the Marine Authorities at the Port. I think the rule stated in the next two paragraphs as to Port Fees will apply.

7. As to other fees, chargeable for service rendered in the Port, such as bringing, unmooring, hauling into dock, and the various duties generally performed by the Harbour Masters and their Assistants, and regulated by the Act, the liability will attach in the first instance to the Transports themselves where the Harbour Master or persons employed are not Government servants, or even I incline to think where, being Government servants, they are the persons to give the fees for those services. But where they are Government servants, they are paid exclusively by salary, with the express condition that they are not to give the fees for the actual work done, I think the right to charge for such work must depend upon the nature of the contract between the Ship and the Local Government. Where the contract distinctly throws such expenses upon the Government, as Charterers, or the latter guarantee the Ship against any such expenses, the claim can in this class of cases be preferred against the Ship, or its Owners or Commander. For the individual performing the service has, *ex hypothesi*, no claim to remuneration for them; and his employers the Government, who alone, in any case right of recovery, have in the particular case precluded themselves by the special contract from exercising such right. The circumstance that the contract was entered into by one branch of the Government (*e. g.* the Marine Department), while the claim to these fees accrued to another branch, can make no difference in this respect: For in point of law both the contract and the claim would be treated as those of the Secretary of State in Council.

8. But where in such a case the contract or Charter party does not distinctly throw the burden of such charges upon the Government as Charterers, no objection exists to asserting the right to those fees on the part of Government against the Commander or Owners of the Ship.

(Signed) W. RITCHIE.

16th August 1860.

WHERE the work of pilotage, mooring, &c. is done by servants of the Government who receive from Government not a fixed salary but the whole or a proportion of the fees due to Government for their services, I think that it will be in the option of Government to allow these persons for the future to prefer their claim against the Master or Owners of the Ship, for the whole or the proportion due to such persons of the fees.

But I think that in order to enable these persons to prefer their claim individually a General Order should be passed applicable to the Pilots, Harbour Masters,

&c. thus situated at each Port, authorising them to receive the pilotage, mooring, and other such like fees (or such proportion as the Government may allow) directly from the Master or Owners of all Transports chartered to Government, and to retain the amount so received for their own benefit. I presume that such persons would not be willing in such cases to look to the Transport alone for payment of their fees but would desire to keep their hold upon Government in case of failure of the Master or Owners to pay. But the mere circumstance that Government guarantees the amount of remuneration to be received by these Pilots, &c. from Transports for services done by them personally, will not prevent the claim from being enforceable as an individual claim of the Pilots, &c.; provided they, and not the Government, are made the proper recipients in the first instance of the fees from the Master or Owners.

The 24th August 1860.

(Signed) W. RITCHIE.

No. 18/5

FROM

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

TO

*The Secretary to the Govt. of
Fort St. George*

SIR,

Dated Fort William, the 31st August 1860.

HONR DEPT. A REPRESENTATION having been received from the Commissioner of Rangoon complaining in the interests of that Port of the exemption from payment of Port dues given to a vessel chartered by the Madras Government for service between Madras and Rangoon, the general question of the liability of vessels so circumstanced to pay Port dues, was submitted to the Advocate General, and I am now directed to transmit a copy of Mr. Ritchie's opinion in order that the views of the ~~Madras~~ Government may be expressed upon the general expediency of allowing such exemptions.

2. When the charges and receipts of a Port form part of the general expenditure and revenues of the State, it is doubtless immaterial how the matter is arranged, but where there is a separate Port Fund by means of which the Port is intended to be made self supporting, which has been the object of recent legislation, it is obvious that the exemption of Government vessels from the payment of Port dues, &c. is an exemption in favor of the general revenues at the expense of the local interests of the Port, and the Governor General in Council is therefore much disposed to think that the best plan would be to make all Government vessels of every class (except ships of the Royal Navy) liable to the payment of port and pilotage dues in every Indian Port.

3. This however would require an alteration of the law, and if it should not be thought expedient to have recourse to fresh legislation, the next best plan would be to prohibit the insertion in the charter parties of vessels taken up by Government of any clause exempting them from port and pilotage dues. They would then under the Act be exempt from port dues strictly so called, but they would be liable to pay at each port for pilotage or other work actually done.

4. I am desired to request that after communication with such authorities as he may deem it advisable to consult, *his Excellency the Governor* will be good enough to state his opinion on the question.

I have the honor to be,

SIR,

Your most obedient servant,

W. Grey
Secy. to the Govt. of India.

Exd.—U. A. Lawlor.

Mar. 1860-8
25-3/5

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In continuation of the Order
of the 8th Instant N^o: 273, ^{and}
Commander Hopkins is
directed to return to Madras
from Negapatam, after
taking on board the Treas-
ure awaiting shipment
at that place.



The Commander of the
Str. "Dalhousie".
" Suptt. of Marine.
" Sub. Treasurer.
" Acct. Genl.
" Collr. of Tanjore.

Sept-14

Marine 1800 Sept 11

2007

L.O. 119347
 L.S. 348

The Dean, All the good
of India. Dec^r 1815.

87. 31st Aug -
7. 15th Sept

1860.

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Christiansburg

Continued a copy of
the 1st of October 1811
from the examination of
the monument of the 1st of October 1811

For record Charles J. H.

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General Washington
Jacks & Company

1818
P. J. D. M.

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Wm. H. W. H.

Chief Secretary.

Fort St. George
Sept. 1860.

The Superintendent

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2/17/77

Aug. 17

That the Commander of the "Palawan"
may be instructed accordingly
Hence the honor to be

one of the Superin-
tendents of Marine.

Wm. H. H.

Chief Secretary.

C. George.
Sept. 1850.

~~Superintendent~~
Superintendent of Marine

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of Marine.
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Referred.