

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	347	Press Mis.
Dated	4 . 10 .	18 ⁶⁰

Not to be folded or roughly handled

11/10/32

Proceedings of the Madras Government, Marine Department,
4th October 1860.

Read the following letters :—

No. 15. From W. GREY, Esq., Secretary to the Government of India, to the Secretary to the Government of Fort Saint George, dated Fort William, 31st August 1860, No. 1,815.

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 in Council will be good enough to state his opinion on the question.

OPINION OF THE ADVOCATE GENERAL,

I am of opinion that no Port Dues imposed under the authority of Act XXII 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 exempt from

See Trinity House versus Clarke, 4 M. and Sel. 288.

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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 authorized 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 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 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 servant 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. But where the Pilotage

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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 mooring, 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 receive the fees for those services. But where they are Government servants, and are paid exclusively by salary, with the express condition that they are not to receive the fees for the actual work done, I think the right to charge for such work will 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, no 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 legal claim to remuneration for them; and his employers the Government, who have 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 Madras Government), 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 can exist to asserting the right to those fees on the part of Government against the Commander or Owners of the Ship.

(Signed) W. RITCHIE.

The 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 payable 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, authorizing 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.

(Signed) W. RITCHIE.

The 24th August 1860.

Referred for the opinion of the Superintendent of Marine.

(Signed) T. PYCROFT,
Chief Secretary.

FORT SAINT GEORGE,
17th September 1860.

of his letter in reply

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4th October 1860.*

No. 16. From J. J. FRANKLIN, Esq., Superintendent of Marine, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 21st September 1860, No. 4,149.

I have the honor to acknowledge receipt of the letter from the Government of India, No. 1,815, dated 31st ultimo, referred to me on the 17th instant, and to submit the following observations thereon.

2. To effect the extensive reliefs of the past season it was necessary to engage several Transports, Steamers and sailing vessels, on monthly hire. The owners or Agents stipulated in their tenders that all Port and Pilot charges should be borne by Government, and even if they had not done so, the vessels would have been relieved from these charges under the instructions of Government marginally noted. On arriving at Rangoon claims were made for the usual Port and Pilot Dues, and payment declined under the Clause in the Charter party exempting them from such charges.

On this being reported to the Supreme Government, that authority ordered the levy to be made, as will be seen by their letter to the Commissioner of Pegu of the 11th June last, and it was on receiving copy of this that I applied to Government for sanction to certain Bills of this nature on the 14th August last, No. 3,702. It appears, however, from the opinion of the Advocate General at Calcutta that the Port Dues were not legally claimable. I would therefore solicit that the Supreme Government be moved to expunge the item marginally noted from the statement of charges to be credited to the Department of the Superintendent of the Irrawaddy Flotilla, leaving the sum of Rupees (1,511-10-0) one thousand five hundred and eleven and Annas ten, as the charges for Pilotage and removals.

Oriental's Bill for Port due, 25th December 1859... 413-10-0
Defiance do. do. 17th March 1860... 192- 0-0
Governor Higginson do. 17th March " ... 136-14-0

3. With regard to the general question of requiring monthly Transports to pay Port and Pilot charges, I think it but fair and reasonable that they should be exempt, because by sending them frequently to Ports where the charges are heavy, their expenses would be much increased, and that in a manner they could not calculate on before engagement. If a vessel is chartered to proceed to any particular Port or Ports, the attendant expenses can be ascertained, but when a Ship engages for general service these expenses can form no element in the calculation, and the owner or Agent in his behalf must therefore demand a higher rate to cover possible disbursements on this account.

4. The Supreme Government suggest whether in the interest of the Port it would not be advisable to make all Ships (except those of the Royal Navy) pay Port and Pilotage Dues. My opinion is that although strictly speaking this would be more equitable, it is hardly necessary to alter the law as now framed. The Government bear a portion of the expenses of a Port, and they may without injustice enjoy the privilege of sending their Ships in duty free.

5. With regard to the second suggestion that no Clause should be inserted in the Charter party of a Transport exempting her from Port or Pilot dues, so that while the Act itself would relieve her from the former, she would always be liable to the latter, I think for the reasons advanced in the 3rd paragraph of this letter that such charges should not be imposed on her. It is an expense incurred on account of Government, whose will it is that the vessel shall proceed to such and such a Port where Pilotage is necessary and should be borne by Government. Of course it is necessary that the Pilots should be paid. This could be arranged by directing the Commanders to satisfy such claims and submit their bills supported by vouchers of payment.

6. Any Pilotage or removal for the benefit of the Ship, and not required by Government, would of course form a charge on the owner.

No. 17. ORDER THEREON, 4th October 1860, No. 347.

The Government resolve, in reference to Mr. Secretary Grey's letter of the 31st August, to forward to the Government of India a copy of Mr. Franklin's letter of the 21st instant, and to express their concurrence with his views.

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4th October 1860.*

2. The Supreme Government will at the same time be requested, in reference to Proceedings, 30th ultimo, No. 305, to credit only Rs 1,511-10-0 to the Department of the Superintendent of the Irrawaddy Flotilla, and to expunge the items, aggregating Rupees 742-8-0 being Port Dues demanded at Rangoon from the Transports "Oriental," "Defiance," and "Governor Higginson."

Pilotage.....	1,511-10-0
Port Dues.....	742- 8-0
Rupees...	<u>2,254-2-0</u>

the Transports "Oriental," "Defiance," and "Governor Higginson."

(Signed) T. PYCROFT,
Chief Secretary.

No. 18. To the Secretary to the Government of India, dated Fort Saint George, 4th October 1860, No. 348.

I am directed to acknowledge Mr. Secretary Grey's letter, 31st August, No. 1,815, requesting an expression of the views of this Government on the expediency of subjecting to the payment of Port Dues Government vessels or vessels chartered by Government.

2. This Government referred to the Superintendent of Marine for his opinion. A copy of his letter in reply is herewith submitted. This Government, I am directed to state, concur in Mr. Franklin's views.

3. Mr. Franklin points out that, from the opinion of the Advocate General at Calcutta, communicated with the letter under reply, it would appear that Port Dues are not legally claimable from vessels chartered by Government. I am therefore to solicit in reference to my letter of the 30th August last, No. 306, that only Rupees 1,511-10, one thousand five hundred and eleven Rupees and ten Annas, instead of Rupees 2,254-2, may be credited to the Department of the Superintendent of the Irrawaddy Flotilla, and that the items aggregating Rupees 742-8, being Port Dues demanded at Rangoon from the transports "Oriental," "Defiance," and "Governor Higginson," may be expunged from the Memo. appended to that letter.

Pilotage.....	1,511-10-0
Port dues.....	742- 8-0
Rupees...	<u>2,254-2-0</u>

Superintendent of the Irrawaddy Flotilla, and that the items aggregating Rupees 742-8, being Port Dues demanded at Rangoon from the transports "Oriental," "Defiance," and "Governor Higginson," may be expunged from the Memo. appended to that letter.

(Signed) T. PYCROFT,
Chief Secretary.

Marine).
proceedings of the Madras Govt.
to the following letters—
from the Govt. of India—Inter 31st Augt.
260 N^o 1815.
the Superintendent
of Marine—21st Sept.
260 N^o 4149.

Order—4 October 1860. No. 3147.

The Govt. resolve, in reference
to Mr. Secretary Grey's letter
of the 31st Ult., to forward
to the Govt. of India a co-
py of Mr. Franklin's letter
of the 21st Inst., & to express
their concurrence with
his views.

2. The Supreme Court. will
 at the same time be
 requested, in reference
 to Proceedings, 30th Ult.
 No: 308, to credit only
 Rs. 1,511.10... to the Dept.
 of the Superintendent
 Pilotage — 1,511.10... of the Stra-
 Port Dues — 442.8... waddy Flo-
 . Rs. 2,294.2... tilla, & to
 exchange the items, ag-
 gregating Rs. 442.8...;
 being Port dues demand-
 ed at Rangoon from
 the transports, "Orien-
 tal", "Defiance", and
 "Governor

"Governor Higginson."

JH

The Suptd.
 of Marine
 Meet. Genl.
 Udy. Auditor Genl.
 Udy. Sect.

(Suptd. 10-)

Letter from the Secy. to the
Govt of India dt 31st August
1860 No 1815
Pro: 30th Aug^t 1860 No 57259
Con 24th Nov^r 1857 No 11412

Marine 1860 Departs

To
The Superintendent of
Marine

The Chief Secretary
to Government
Fort St George

Dated 21st 20
Recd-21st 23 September 1860

No 4149
No 321

Acknowledges receipt
of the letter from the Govt
of India No 1815 dated
31st ultimo referred to him
on the 17th instant and
submits observations thereon
relative to the Port and
pilots chargeable to ships
engaged by Government at
these ports.

With an Order.

16 & 17-

C 28 Sep
R 3 Oct

Sept 10th

Marine. 6/1

No 348.

The Secretary to the Govt. of India.

Sir-

I am directed to ac-
knowledge Mr. Se-
cretary Grey's letter,
31st Ult^o No 1815, re-
questing an expres-
sion of the views of
this Govt. on the ge-
neral expediency
of allowing exemption
from payment of Port
dues to vessels charter-
ed by Govt.

2. This Govt. referred
to the Superinten-
dent of Marine for
his opinion. A copy
of his letter in reply
is

is herewith submitted
This Govt, I am directed
to state, concur in
Mr. Franklin's views.

3. Mr. Franklin points
out that, from the o-
pinion of the Advocate
General at Calcutta,
communicated with
the letter under reply,
it would appear that
Port dues are not legal-
ly claimable from Ves-
sels chartered by Govt.
I am, therefore, to solicit
in reference to my
letter of the 30th Augt.
last N^o. 306, that only

R^y. 1511.. 10 One Thou.

Pilotage — 1511.. 10... and Five
Port dues — 742.. 8...

R^y. 2254.. 2 .. Hundred
&

Eleven Rupees & Ten
Annas, instead of
-R^y. 2254.. 2.., may
be credited to the Dept.
of the Superintendent
of the Irrawaddy Flo-
tilla, & that the items,
aggregating R^y. 742.. 8..,
being Port dues demand-
ed at Rangoon from
the transports, "Orien-
tal", "Defiance", & "Gover-
nor Hodgkinson" may
be expunged from the
Memo. appended to that
letter.

To Mr. George
4 October 1860

JF

10-
Maine 1800 Depuette

1800 348

2
The Secretary to the first
of June

Letter 4 October 1800.

Replies 21 4th December
1800 348 440-

Acknowledging Mr.
Secretary Grey's letter
31st March 1815 regarding
my own expression of the
views of the Govt on the
expediency of subjecting
to the payment of toll
other Govt vessels or
or vessels chartered by
Govt and submitting the
opinion

opinion of the subject of
Maine on the subject.

12
21/10/69
21/10/69

15p/18