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2. Date of repair 23/12/77
3. Initials of reference
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MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No.	50	Press Mis.
<i>43-45</i> Dated	27-2-	1862.

Not to be folded or roughly handled

my

*Proceedings of the Madras Government, Marine Department,
24th February 1862.*

Read the following papers:—

No. 43. From P. GRANT, Esq., Magistrate and Justice of the Peace, Malabar; to
T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint
George, dated Calicut, 10th February 1862, No. 17.

E. Cullin, Esq.,
and
J. Castor, Esq., } Justices of the Peace at Cochin.

The Officers noted in the margin have re-
quested me to obtain for them the opinion of
the Law Officers of Government on the follow-
ing case, which I gave in their own words.

“The Barque “Emu,” Captain Jones, belonging to the Port of Sunderland arrived here*
“on her way to Suez in April last, having previously touched at Saint Helena and
* Cochin. “disposed of half of her cargo, consisting of coals, for sundry repairs of the ship,
“and to enable her to prosecute her voyage.”

“Unable to raise money in this Port for further repairs and provisions, the Commander
“resolved to dispose of the remaining portion of the cargo, and pay off his crew, which was
“accordingly done in May last; but two men, one a Boatswain and the other an ordinary Seaman
“were reserved for the protection of the Ship, and they are still borne on the original articles.”

“The vessel appears to be under certain liabilities in England, and the Commander, who
“professes to be unable to obtain any assistance from either the owners or Mortgagees, declares
“that he can no longer maintain the two Europeans retained for the protection of the Ship. The
“men claim from us their discharge and wages, stating that they have not the means to procure
“food.”

“The lien of these men on the Ship is indisputable, under the Merchant Shipping Act; and,
“under ordinary circumstances, the usual proceedings would have been adopted by us to enforce,
“payment of such wages, but if an order be made on the Commander, we are aware that he has
“not the means to meet the call.”

2. The question now propounded, is, whether in the present embarrassed state of the vessel,
Messrs. Cullin and Castor, can, in their capacity as Justices of the Peace, issue a Warrant for
the seizure of such of the Ship's stores as may suffice, when sold, to pay the wages of the two men
adverted to. The question is a legal one, and must be determined by those competent to decide
it. I request therefore that the opinion of the Law Officers may be obtained on it and furnished
to me at an early date.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
19th February 1862.

(Signed) T. PYCROFT,
Chief Secretary.

No. 44. From JOHN MILLER, Esq., Acting Government Solicitor; to the Honorable
T. PYCROFT, Chief Secretary to Government, Madras, dated 22nd February 1862,
No. 108

Dated 19th February 1862, Marine Department,
and, endorsed on Mr. P. Grant's letter to
Government of the 10th idem.

1. I have the honor to acknowledge the Order of
Government noted in the margin.

2. I have submitted the same for the consideration
of the Advocate General and now forward a copy of that
Officer's opinion.

3. I return the Order of Government above acknowledged.

COPY—OPINION.

“The Merchant Shipping Act 1854” gives no authority for Justices of the Peace, nor does
Act I of 1859 for Magistrates, to issue their Warrant for seizure of Ship's stores for payment of
Seamen's wages, but the lien of the Seamen upon the Ship is unquestionable, and looking to

Proceedings of the Madras Government, Marine Department,
27th February 1862.

Sections LV and LVI of Act I of 1859, the Magistrate's course plainly is to make an Order on Captain Jones for the wages due to the Seamen, and if necessary to levy the amount by distress and sale of his goods. It will then be for Captain Jones to consider whether he had not better sell any of the Ship's stores that may be available—as he did before with respect to the cargo for similar purposes.

MADRAS, 21st February 1862.

(Signed) T. SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 45.

ORDER THEREON, 27th February 1862, No. 50.

A copy of the Advocate General's opinion will be furnished to the Magistrate of Malabar.

(Signed) T. PYCROFT,
Chief Secretary.

27th

Calcut 10 February 1862

Sum

P Grant Esqre

Magistrate & Justice
of the Peace

T. Pycroft Esqre

Chief Secretary to Government
Judicial Department
Fort Saint George

Sir,

E. Cullen Esqre Justice
J. C. Carter Esqre of the
Court

The officers noted in the margin
have requested me to obtain for them the
opinion of the law officers of Government on
the following case, which I give in their own
words.

* Cullen

"The Barque 'Cuma' Captain Jones, belonging
to the Port of Sunderland arrived here on her
way to Suva in April last, having previously
touch'd at St Helena and disposed of half of her
cargo, consisting of coals for sundry repairs of
the ship, and to enable her to prosecute her
voyage."

"Unable to raise money in this Port for
further repairs and provisions, the Commander
resolved to dispose of the remaining portion of
the cargo, and pay off his crew, which was
accordingly done in May last. but two men,
one a Boatswain and the other an ordinary
seaman

seaman

"seaman, were reserved for the protection of the
"Ship, and they are still bound in the original
"articles."

The vessel appears to be under certain con-
ditions in England, and the Commander, who
professes to be unable to obtain any assistance from
either the owners or mortgagees, declares that he
"can no longer maintain the two Europeans re-
tained for the protection of the ship. The men
claim from us their discharge & wages, stating
that they have not the means to procure food."

The claim of these men on the ship
is indisputable, under the Merchant Shipping
Act; and, under ordinary circumstances, the usual
proceedings would have been adopted by us to
enforce payment of such wages, but if an
order be made on the Commander, we are aware
that he has not the means to meet the call.

2nd The question now propounded, is,
whether in the present embarrassed state of
the vessel, Messrs. Cullen & Foster, can, in
their capacity as Justices of the Peace, issue
a Warrant for the seizure of such of the
ship's stores as may suffice, when sold,
to pay the wages of the two men adverted
to. The question is a legal one, and must
be determined by those competent to decide
it. I request therefore that the opinion
of

3 AM
of the two officers may be obtained and
furnished to me at an early date.

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

James
Magistrate
and
Justice of the Peace.

4/11/11

Copy Opinion..

The Merchant Shipping Act 1854 gives no authority for Justices of the Peace, nor does Act I of 1859 for Magistrates, to issue their Warrant for seizure of Ship's Stores for payment of Seamen's wages, but the lien of the Seamen upon the Ship is unquestionable, and looking to Sections LV and LVI of Act I of 1859, the Magistrates course plainly is to make an Order on Captain Jones for the wages due to the Seamen, and if necessary to levy the amount by distress and Sale of his goods. It will then be for Captain Jones to consider whether he had not better sell any of the Ship's Stores that may be available — as he did before with respect to the Cargo for similar purposes.

/Signed/ J. Sydney Smyth
Adv. General C.

February 21st 1862.

/True Copy/
M. M. M.
Actg. Gov. S. C.

did of March

720.55 10.2.50

No 49

Marine

Respectfully that the
opinion of the Law Officer of
Government may be obtained
on matters referred by the
Hon. Secy of the Admiralty
to the Legal Officer of the
Admiralty, and the Secy of the
Admiralty may take the
opinion of the Law Officer
of the Admiralty.

Respectfully

19th February 1862

Respectfully for the opinion
of the Advocate General.

Legal Secretary

Actg. Secy in charge

Received by the Admiralty 22 February 1862.

Actg. Secy

6A

No. 108.

Madras, February 22nd 1862.

From John Miller Esq^r
Actg. Government Solicitor Madras.
To The Honorable J. Pycroft Esq^r
Chief Secretary to Government.
Madras.

Sir,
Dated 19th February 1862. Marine Department, and endorsed on M. P. Grant's letter to Government of the 10th idem.

1. I have the honor to acknowledge the Order of Government noted in the margin.
2. I have submitted the same for the consideration of the Advocate General and now forward a copy of that Officer's opinion.
3. I return the Order of Government above acknowledged.

I have the honor to be,
Sir,
Your most Obedient Servant,
John Miller
Actg. Gov. Solr.

The legality of the proposed
the order by which to grant
and order under the
Power of the Privy Council
for the purpose of a
order for the purpose of
claim of certain of the

Advocate General's opinion
in No. 108.

From
The Actg. Gov. Solicitor
John Miller Esq^r
Chief Secretary to Govt.
Madras.

Dated February 22nd 1862.

Mar 1862
No 55

No 19 Feb 1862

sent by branch

Marine 1862. Jeph
Hony
The Acty. Govt. Solicitor
Madras.
To the Chief Secretary to Govt.
Madras

Dated 22nd February
Recd 24th

No. 108. - letter
12 Enclosures
No. 55

Forwards with reference to the
Order of Government dated
19th February 1862 Marine
Department enclosed on
Mr. P. Grant's letter to Govt.
of the 10th idem, copy advocate
General's opinion Re the legality
or otherwise of the issuance of Warrant
by the Justices of the
Peace at Cochin for the seizure
of a ship's stores for sale to
meet the claims of certain of
her crew.

With an Order.

Sist.

soon

Proceedings of the Madras Govt.

Read the following letters—

From the Magistrate
of Malabar — Enter 10th Feb. '62 No. 17.
" the Govt. Solicitor — 22nd do — " 108

No. 50 - 27 February 1862

A copy of the Advocate Genl's
opinion will be furnished to
the Magistrate of Malabar.

J.P.
8th 2^d 1862

The Magistrate of
Malabar. } respd 27th