M.R.O. 1—7[illegible]—6-6-37.

(1) Number of pages 79

(2) Date of repair 10-9-[illegible]

(3) Initials of the Reference [illegible] 13/9

MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No. 50 Press Mus.

Dated 16-2- 1894.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following papers:—

From H. M. WINTERBOTHAM, Esq., District Magistrate, Tanjore, to the Chief Secretary to Government, dated 23rd November 1893, Reference No. 1013-Magl.

I have the honour to submit, for the information of Government, copy of the ruling of the High Court in Criminal Revision Cases 290 to 297 of 1893, in which the High Court holds that Rules 1 and 20 to 23 framed by Government under section 6 of Act X of 1889 are *ultra vires*, void and of no effect, in so far as they purport to make it obligatory on boat owners (of licensed cargo-boats) to ply for hire.

2. Copy of the Session Judge's letter of reference is likewise forwarded.

3. The rules were published at pages 1 to 6 of the *Fort St. George Gazette* Supplement of 17th November 1891.

ENCLOSURES.

COPY of a draft letter to the Registrar of the High Court, Madras.

I have the honour to refer to the High Court for the exercise of their powers of revision certain summary convictions* passed by the First-class Sub-divisional Magistrate of Negapatam under Rules 1 and 23 of the boat rules sanctioned in G.O., No. 503, of 16th November 1891, professing to be passed under section 6, clause (*k*), of Act X of 1889. In these cases the owners of boats in the port of Negapatam were fined various sums for refusing to take out their boats to a certain steamer when called on by the Port officer to do so.

* Summary Trials Nos. 1, 3, 4, 5, 6, 9, 10, 11 of 1893.

2. I admit that (except in Summary Trial No. 4 of 1893 which I will deal with separately) the convictions are in accordance with the rules in question. But I refer them on the ground that the rules are themselves *ultra vires* and inconsistent with the Act under which they profess to be passed.

3. Section 6, clause (*k*) runs thus:—

"The local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules consistent with this Act as it thinks necessary for any of the following purposes, namely:—

* * * * *

(*k*) "For licensing and regulating catamarans plying for hire and flats and cargo, passenger and other boats plying, whether for hire or not and whether regularly or only occasionally, in or partly within and partly without any such port, and for determining the quantity of

cargo or number of passengers to be carried by any such vessel," and Rules 1 and 23 are to the following effect :—

"(1). Owners of boats shall be subject to the control of the Registering officer appointed by Government and shall carry out at all times all orders issued by him in connection with the plying of their boats and which are not inconsistent with any of these rules, and shall supply the tindal of each registered boat with a printed copy of these rules and of any orders issued by the registering officer, which copy shall be shown by such tindal to any passenger by such boat demanding to see the same."

"(23). No owner of a registered boat licensed to ply for hire, not being a steam launch, and no person in charge of such boat, shall refuse to let on hire such boat without having and assigning reasonable cause for such refusal to the satisfaction of the registering officer."

The question is—What is meant by "regulating" in section 6, clause (*k*)? I submit that the scope and intention of the word are indicated by the concluding words of the section "determining the quantity of cargo or number of passengers to be carried by such vessel." In other words to "regulate" means to make such regulations as are necessary in the interests of the public safety in regard to the seaworthiness of the boats and such like matters. It cannot include the power of compelling a boatman to ply for hire who is unwilling to do so.

4. In support of this view I would point out that the words of the Act are "to regulate the catamarans and boats," not to regulate the "*traffic*." The section also refers to boats plying *not* for hire and to boats plying for *occasional* hire. Under Rule 23 as it stands the owner of a boat *occasionally* plying for hire can be compelled to ply for hire regularly if the Port officer thinks fit. This appears to me plainly inconsistent with the Act. The use of the word "*occasionally*" implies that it is within the power of the owner of the boat to determine whether he shall ply or not.

5. Again I submit that under section 6 (*k*) rules can only be passed to affect boats which are actually "plying for hire." The owner or tindal of a boat who refuses to go out cannot be said to be plying for hire unless there is evidence that he refused to go out for a particular person while being ready and willing to go out for others. This is probably the case in Summary Trial No. 7 of 1893, and for that reason I have not included it in those referred. On this point I have considered the decisions under the Metropolitan Traffic Regulation Act, 1867 (30 and 31 Vic., Cap. 134), but they do not appear to help the matter much. In all the cases (*e.g.*, Clarke *v.* Stanford 6. 2 B. 357 ; Allen *v.* Tunbridge 6 c. p. 481) in which a hackney carriage has been held to be "plying for hire" it was standing in some public stand or in the premises of a railway company. That no doubt would be *primâ facie* evidence of plying, because if the carriage was not intended to be in use it would be in some mews or stable. In the case of a boat, however, the mere fact of its being on the beach, which is its natural "stable" when not in use, cannot raise the presumption that it is plying for hire.

6. It may be open possibly (though the word "*occasionally*" makes even this doubtful) for the Government to refuse to license boats that will not engage to be always ready to ply for hire and to forfeit the license if the condition be not complied with. But that would not make the refusal to ply on a particular occasion an offence under section 54 of the Act. The only consequence would be the forfeiture of the license.

7. In Summary Trial No. 4 of 1893 to which I invite their Lordships' special attention as showing how liable to abuse these rules are, a man has actually been fined 1 rupee for refusing to put to sea in an admittedly unseaworthy boat! If any one should have been fined it seems to me it ought to have been the Port officer or his subordinate who instituted this vexatious and frivolous complaint. The owner of the boat has been fined on the technical ground that he did not assign his reasons for refusal to the Port officer, who is the registering officer under the Act. But he did admittedly point out the unseaworthiness of the boat to the boat overseer, who is the Port officer's subordinate. It appears to me that that was a sufficient compliance with the terms of the rule. It can hardly be expected that a boat-owner should go and see the Port officer in person on every occasion of the kind, and if he assigned good cause to the Port officer's subordinate the latter ought to have reported it to his superior officer and taken his orders thereon.

(Signed) H. H. O'FARRELL,
Acting Sessions Judge.

Forwarded to the District Magistrate, Tanjore, for any explanation of the Magistrate concerned or remarks of his own and for submission to this Court of the records of the said cases.

TANJORE,
25th March 1893.

(Signed) H. H. O'FARRELL,
Acting Sessions Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 1st day of November 1893.

PRESENT.

The Honorable Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice,
and
The Honorable Mr. Justice SHEPHARD.

Criminal Revision Cases, Nos. 290 *to* 297 *of* 1893.

(Case Referred Nos. 132 to 139 of 1893.)

In No. 290, Thommayappa Chetty,
" 291, Ramasami,
" 292, Supparayan,
" 293, Kondimuthu Chetty,
" 294, Sadayandi,
" 295, Arokiam Chetty,
" 296, Arokiam Chetty,
" 297, Muthiyah,
} Accused in Summary Trial Nos. 1, 3 to 6 and 9 to 11 of 1893 on the file of the First-class Sub-Divisional Magistrate of Negapatam.

Cases referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the Acting Sessions Judge of Tanjore in his letter, dated 24th June 1893, No. 261.

Criminal Revision Cases, Nos. 319 *to* 325 *of* 1893.

(Criminal Revision Petitions Nos. 155 to 161 of 1893.)

In No. 319, Thommayappa Chetty,
" 320, Kondimuthu Chetty,
" 321, Sadayandi,
" 322, Rajappa Chetty,
" 323, Arokiam Chetty,
" 324, Arokiam Chetty,
" 325, Muthiyah,
} Petitioners (accused).

Petitions, under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the finding and sentence of the First-class Sub-Divisional Magistrate of Negapatam passed in Summary Trial Nos. 1, 5 to 7 and 9 to 11 of 1893.

These cases coming on for hearing on Wednesday, the 30th August 1893, upon perusing the letter of reference and the petitions and the records submitted therewith, upon hearing the arguments of Mr. W. Grant, counsel for the petitioners in Nos. 319 to 325 of 1893, and of the Acting Public Prosecutor in support of the conviction in all cases, and having taken time to consider till this day; the Court made the following—

ORDERS.

The Chief Justice.—The accused were convicted for refusing to take out their licensed boats to certain steamers when called by the Port officer to do so. The Acting Sessions Judge who refers this case admits that the accused were rightly convicted under certain boat rules made by the Local Government under the powers given by section 6 of Act X of 1889, but suggests that those rules are *ultra vires*. Clause (*k*) is the clause in the Act under which the Local Government acted, and Boat Rules 20 to 23 are the rules under which the convictions took place. It is contended on the part of the accused, that at the time the Port officer issued his orders they were not plying and that therefore the order of the Port officer was not a lawful one. I do not think that there is any power in the Local Government to make rules compelling owners of licensed boats to ply their boats at all times, and if they have a discretion to ply or not, the Port officer's orders to ply are not lawful orders. These Boat Rules 20 to 23 appear to be *ultra vires* and the convictions must be set aside and the fines, if paid, refunded.

In Summary Trial No. 4 of 1893 if the boat was unseaworthy as it is stated, I agree with the Acting Sessions Judge that the complaint was vexatious and frivolous and ought not to have been made.

Shephard, J.—I am of the same opinion. I think that the rules one and twenty-three, so far as they purport to make it obligatory on boat-owners to ply for hire, are *ultra vires*, and therefore void and of no effect. It is only with regard to boats plying for the hire that section 6 of the Act gives the Government authority to make rules.

(By the Court.)

(Signed) A. T. FORBES,
Deputy Registrar, Appellate Side.

To the Acting Sessions Judge, Tanjore (with records).
" First-class Sub-Divisional Magistrate of Negapatam
(through the District Magistrate of Tanjore).

Transferred to the Marine Department.

(Signed) A. BUTTERWORTH,
Under Secy. to Govt.

Endorsement—dated 8th January 1894, No. 9.

Copy forwarded to the Government Solicitor for the Hon'ble the Advocate-General's remarks, with reference to paragraph 2 of his opinion printed in G.O., dated 18th December 1890, No. 456, as to what the position of Government now is, and what procedure he advises should be adopted in the future.

(Signed) J. F. PRICE,
Chief Secretary.

To the Government Solicitor,
with copy of G.O., No. 456, dated 18th December 1890.
Copy to the Presidency Port Officer.

From the Government Solicitor, dated 27th January 1894, No. 42.

From Commander H. A. STREET, R.I.M., Acting Presidency Port Officer, to the Chief Secretary to Government, dated Madras, 28th November 1893, No. 633-386-G.

I have the honour to beg that the attention of the Government may be drawn to the opinion expressed by their Lordships the Chief Justice and Mr. Justice Shephard in a judgment * delivered on the 1st November 1893, on a reference by the Acting District Magistrate of Tanjore in connection with a complaint made by the Port Officer, Negapatam, against certain boatmen at that port to the Head Assistant Magistrate, and the decision of the latter officer on the same.

* Copy attached hereto.

2. The view taken by their Lordships so seriously affects the authority of Port officers in their position as registering officer under the Boat rules, that it appears necessary for the Boat rules to be amended, and I therefore beg to inquire whether this is to be done. Their Lordships, I would observe, state that it has to be shown

that the Government is, by section 6 of the Indian Ports Act, authorized to empower other persons to make rules such as the one which was disobeyed by the boatmen at Negapatam and which is specified in the judgment, and apparently have overlooked the fact that section 8 (1) of the same Act authorizes the Conservator to give directions (with respect to any vessel within the port) for carrying into effect any rule for the time being in force therein, and section 6 of the Act. Rule VIII* referred to by their Lordships is a Port rule framed under clause (*k*) of section (6) of the Indian Ports Act, and the directions given by the registering officer at Negapatam to the boatmen at that port were in accordance with the authority given to him under section 8 of the Indian Ports Act.

* VIII. CARGO BOATS, CLAUSE (*k*).

The plying of catamarans, flats, cargo, passenger and other boats, whether for hire or not and whether regularly or only occasionally, in, or partly within and partly without the port, and the quantity of cargo or number of passengers to be carried by any such vessel, shall be subject to such regulations as may be laid down from time to time by Government, and owners of such boats shall be subject to the control of the Conservator, and shall carry out at all times all orders issued by him in connection with the plying of their boats and which are not inconsistent with the regulations issued by Government.

ENCLOSURE.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the First day of November, One-thousand eight hundred and ninety-three.

PRESENT:

The Honorable Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice,
and
The Honorable Mr. Justice SHEPHARD.

Criminal Revision Case No. 273 *of* 1893.

(Case Referred No. 119 of 1893.)

1. Marian Chetty
and
2. Mariappen

} Accused in Calendar Case No. 5 of 1893 on the file of the Port Officer and Special 1st-class Magistrate of Negapatam.

Case referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the District Magistrate, Tanjore, in his letter, dated 2nd June 1893, Cur. No. 73-Magl.

Criminal Revision Case No. 318 *of* 1893.

Petition by the said accused under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment in the above case.

This case coming on for hearing on Friday the 27th October 1893, upon perusing the letter of reference and the records in the case and upon hearing the arguments of Mr. W. Grant, Counsel, and Mr. N. Narayana Aiyangar, Vakil for the accused; and of the Acting Public Prosecutor in support of the conviction; and the case having stood over for consideration till this day; the Court delivered the following

Judgment.—The act charged as an offence is the bringing a boat into the Negapatam river in disregard of a general order passed by the Port Conservator to the effect that boats should not be brought in while the flag W is flying. This act is said to be punishable under section 8 of the Ports Act. That section authorizes the Conservator to give directions for carrying into effect any rule passed under section 6 of the same Act, and goes on to make it penal to disobey any such lawful direction. It has therefore to be seen whether the Conservator was carrying into effect any valid rule passed under the Act. The rules to which we have been referred are those numbered V and VIII, being rules passed with reference to clauses (*f*) and (*k*) of section 6 respectively. In our opinion there is clearly no connection between the former of these rules and the direction which, in this case, has been disobeyed.

Rule VIII is a rule of wider scope, for it requires boat-owners to "carry out at all times all orders issued by the Conservator in connection with the plying of their boats and which are not inconsistent with the regulations issued by Government."

In order to put an interpretation on the Rule VIII and to see whether it covers the present case, we think that the rule must be read with the clause of the Act under which it is framed and the other clauses specifying the matter in respect of which rules may be made by the Government. It must be presumed that the Government intended to pass a rule which they were authorized to pass by the terms of clause (*k*) of the section, and a construction which has the effect of extending the operation of the rule to matters not covered by clause (*k*) ought, we think, if possible, to be avoided. Now when it is seen that, by clause (*a*) of the section, the Government is empowered to make rules for regulating the time at which vessels are to enter or leave any port, it seems tolerably clear that the rules to be framed under clause (*k*) were not intended to regulate the entry or exit of vessels in the matter of time. This being so, we do not think that the Rule VIII passed with reference to the latter clause can be taken to refer to such matters. Accordingly the direction of the Conservator not to bring boats into the river when a certain flag is flying cannot be a direction for carrying into effect the rule in question, and therefore no lawful direction was disobeyed. In referring to clause (*a*), we do not overlook the fact that boats may go out of the river without leaving the port. That may be so. We should still be disposed to think that the "regulation" intended by clause (*k*) was a regulation different in kind from that intended by clause (*a*).

There is, however, another reason why the conviction cannot be supported. The charge is not based immediately on an alleged breach of Rule VIII, indeed no rule at all is mentioned in the charge. The conviction can only be supported on the ground that the direction of the Conservator, which was disobeyed, was a direction lawfully given in pursuance of an authority lawfully conferred on him by Rule VIII or some other rule. To support the conviction, it has to be shown that the Government is, by section 6 of the Act, authorized to empower other persons to make rules such as the one which has been disobeyed in the present case. In our opinion the contention cannot rightly be maintained, and if Rule VIII or any other rule purports to give the Conservator authority to make such rules, that rule is to that extent *ultrâ vires* and therefore void. In the case of power being by statute given to the Government or other public body to make rules having the force of law, the maxim *Delegata potestas non delegatâm* must, we think, be applied. When the Legislature entrusts to some public body—it may be the Executive Government or a corporation—the duty of making rules, such public body cannot, in our judgment, relieve itself of the responsibility and depute other agencies to discharge the duty. The authority to make rules must remain in the hands to which it was entrusted. It is absurd to suppose that the Legislature intended this important authority to be exercised by any person whom the Government might choose to select. The rule laid down by the Conservator may be a perfectly reasonable one and it may be one which the Local Government may make under section 6. On this we offer no opinion. At present it is enough to say there is no such rule having the force of law, and therefore the conviction, as for breach of it, must fall to the ground. For these reasons we think the conviction should be set aside and the fine, if paid, refunded. We would add that in these cases where the charge in effect relates to an alleged breach of a rule passed under an Act, care ought to be taken to specify the particular rule said to have been infringed.

Ordered accordingly.

(Signed) A. T. FORBES,
Dy. Registrar, Appellate Side.

To the Presidency Port Officer, Madras, with reference to his letter No. 633–1470 M., dated 11th November 1893.

Reference, dated 9th January 1894, No. 21.

The Presidency Port Officer is requested to report in detail on the subject of paragraph 2 of his letter.

(By Order.)

(Signed) A. T. PRINGLE,
Asst. Secy. to Govt.

From Commander H. A. STREET, R.I.M., Acting Presidency Port Officer, to the Chief Secretary to Government, dated Madras, 16th January 1894, No. 633-G—20.

In compliance with the instruction contained in Marine Department Memorandum, No. 21, dated 9th January 1894, I have the honour to refer you to the decision of their Lordships the Chief Justice and Mr. Justice Shephard on the subject of the legal value of Rules 1 and 23 of the Boat rules. As these rules are "*ultra vires*" according to their Lordships, the control hitherto assumed over licensed boats by the registering officer in connection with Rules 1 and 23 of the Boat rules apparently cannot now be legally exercised.

ORDER—dated 10th February 1894, No. 50, Marine.

Of the two matters relating to the Marine Department in which rulings have recently been made by the High Court, one relates to the *Port* rules and the other to the *Boat* rules.

In regard to the former the opinion of the High Court is briefly as follows:—

Under section 6 (1) of Act X of 1889 (the Indian Ports Act), separate rules for various matters to suit the circumstances of particular ports can be framed by Government under the specific authority given by the Act. It is not in accordance with the general principle of the Act that there should be one set of rules for the whole Presidency and that it should be left to Port officers under section 8 to issue subsidiary rules to suit local requirements.

2. There can be little doubt that, when framing the large number of clauses to section 6 (1), the intention of the Legislature was to enumerate all probable contingencies in connection with any port in view to enabling the Government to issue authoritative rules to suit any and all of them; and it seems to be not only convenient but necessary that each port—at any rate each of the larger ports—should have its own set of rules under section 6 (1).

3. It may be found possible to devise a single set of standard Port and Boat rules which would be applicable to all ports; and to supplement these with special rules for each particular port. In any case the initiative of Port officers should be restricted to giving "directions for carrying into effect" the rules in accordance with section 8 (1) of the Act.

Section 6 (1) is so comprehensive that it should be possible to formulate under it rules sufficiently complete to reduce the necessity for action under section 8 (1) to a minimum.

4. The Presidency Port Officer will lose no time in submitting a further report on the subject after consulting the law officers of Government. It is very desirable that no unnecessary delay should be permitted to occur in the preparation of such draft rules as may be considered suitable and within the powers of Government to issue under the Act.

5. In regard to the Boat rules, the Presidency Port Officer will at once issue instructions to Port officers to suspend action under those rules which have been declared by the High Court to be *ultra vires*. If the Presidency Port Officer can show sufficient cause for requiring owners to ply their boats when called upon to do so by the registering officer, the Government will consider what steps should be taken to obtain the requisite authority for the issue of a rule to that effect. It would, however, be more satisfactory if the ports could be efficiently worked without such arbitrary power being entrusted to the registering officer.

The Presidency Port Officer will endeavour to make suitable arrangements to obviate the necessity of further action in the matter, and will report the result.

(True Extract.)

Chief Secretary.

To the Presidency Port Officer.
" District Magistrate, Tanjore.
" Judicial Department.
" Government Solicitor.

Exd. A. Raitt.

Govt. of {1894} Madras.

MARINE.

Issued

Recd. Encl.

G.O., 10th February 1894, No. 50.

FEBRUARY.

Port and Boat Rules.

Remarking on certain rulings of the High Court relating to —, and directing the Presidency Port Officer to report further on the subject.

CURRENT No. 952

Heading.

No. 633 Gl
396

PRESIDENCY PORT OFFICE,
Madras, 28 November 1893.

1801

From
Commander H. A. Street, R. I. M.
Ag. ~~THE~~ PRESIDENCY PORT OFFICER,
MADRAS,

To
THE CHIEF SECRETARY TO GOVERNMENT,
MARINE DEPARTMENT,
FORT ST GEORGE.

SIR,

I have the honor to beg that the attention of the Government may be drawn to the opinion expressed by their Lordships the Chief Justice and Mr Justice Shephard in a judgment delivered on the 1st November 1893, on a reference by the Acting District Magistrate of Tanjore in connection with a complaint made by the Port Officer, Negapatam, against certain boatmen at that port to the Head Assistant Magistrate, and the decision of the latter officer on the same.

x copy attached hereto.

2. The view taken by their Lordships so seriously affects the authority of Port Officers in their position as Registering Officer under the Boat Rules, that it appears necessary for the boat rules to be amended; and I therefore beg to enquire whether this is to be done. Their Lordships

Lordships I would observe, state that it has to be shown that the government is by section 6 of the Indean Ports Act authorized to empower others persons to make Rules such as the one which was disobeyed by the boatmen at Negapatam and which is specified in the jeidgment, and apparently have overlooked the fact that section 8 (1) of the same Act authorizes the Conservator to give directions (with respect to any vessel within the port) for carrying into effect any rule for the time being in force therein, and section 6 of the Act. Rule VIIII referred to by their Lordships is a port rule framed under clause (K) of section (6) of the Indean Ports Act, and the directions given by the Registering Officer at Negapatam to the boatmen at that port were in accordance with the authority given to him under section 8 of the Indean Ports Act.

x vide copy attached

I have the honor to be
Sir,
Your Obedient Servant

H. A. Street
Commander R. I. M.
Acting Presidency Port Officer.

Jd.

Enclosure 467/3

28 NOV 94 M

In the High Court of Judicature at Madras.

Wednesday, the first day of November
One Thousand Eight hundred & ninety-three

Present:-

The Honourable Sir Arthur J. H. Collins, Kt, Chief Justice
and
The Honourable Mr Justice Shephard.

Criminal Revision Case No 273 of 1893.
(Case Referred No. 119 of 1893)

1. Marcian Chetty and
2 Mariappen — Accused in Calendar Case No. 5 of 1893 on the file of the Port Officer and Special 1st Class Magistrate of Negapatam

Case referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the District Magistrate, Tanjore, in his letter dated 2nd June 1893, Cur. No. 73/mgt.

Criminal Revision Case No. 318 of 1893.

Petition by the said Accused under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment in the above case.

This case coming on for hearing on Friday the 27th October 1893, upon perusing the letter of reference and the records in the case and upon hearing the arguments of Mr. W. Grant, Counsel and Mr. K. Narayana Aiyangar, Vakil for the accused; and of the Ag. Public Prosecutor in support of the conviction; and the case having stood over for consideration till this day; the Court delivered the following

Judgment:- The act charged as an offence is the bringing a boat into the Negapatam Lines in disregard of a general order passed by the Port Conservator to the effect that boats should not be brought in while the flag W is flying. This act is said to be punishable under section 8 of the Port Act. That section authorizes the Conservator to give directions for carrying into effect any rule passed under section 6 of the same Act and goes on to make it penal to disobey any such lawful direction. It has therefore to be seen whether the Conservator was carrying into effect any valid rule passed under the Act. The Rules to which we have been referred are those numbered V and VIII being rules passed with reference to clauses (f) and (k) of section 6 respectively. In our opinion there is clearly no connection between the former of these Rules and the direction which in this case has been disobeyed. Rule VIII is a rule of wider scope for it requires boat-owners to "carry out at all times all orders issued by the Conservator in connection with the

flying of their boats and which are not in-
consistent with the regulations issued
by Government".

In order to put an interpretation
on the Rule VIII and to see whether it
covers the present case, we think that
the Rule must be read with the clause
of the Act under which it is framed
and the other clauses specifying the
matters in respect of which Rules may
be made by the Government. It
must be presumed that the Government
intended to pass a Rule which they
were authorized to pass by the terms
of clause (k) of the section and a
construction which has the effect
of extending the operation of the Rule
to matters not covered by clause (k)
ought we think, if possible, to be avoided.

Now when it is seen that by clause (a)
of the section, the Government is
empowered to make rules for regulating
the time at which vessels are to enter
or leave any port, it seems tolerably
clear that the Rules to be framed under
clause (k) were not intended to
regulate the entry or exit of vessels
in the matter of time. This being so, we
do not think that the Rule VIII passed
with reference to the latter clause can
be taken to refer to such matters. —
Accordingly the direction of the Con-
-servator not to bring boats into
the River when a certain flag is flying
cannot be a direction for carrying
into effect the Rule in question and
therefore no lawful direction was
disobeyed. In referring to clause (a)
we

we do not overlook the fact that boats may go out of the river without leaving the port. That may be so. We should still be disposed to think that the "regulation" intended by clause (k) was a regulation different in kind from that intended by clause (a).

There is, however, another reason why the conviction cannot be supported. The charge is not based immediately on an alleged breach of Rule VIII — indeed no Rule at all is mentioned in the charge. The conviction can only be supported on the ground that the direction of the conservator, which was disobeyed, was a direction lawfully given in pursuance of an authority lawfully conferred on him.

by

11 Cox

by Rule VIII or some other Rule. To support the conviction, it has to be shown that the Government is by section 6 of the Act authorized to empower other persons to make rules such as the one which has been disobeyed in the present case. In our opinion the contention cannot rightly be maintained and if Rule VIII or any other Rule purports to give the Conservator authority to make such rules, that rule is to that extent ultra vires and therefore void. In the case of power being by statute given to the Government or other public body to make rules having the force of law, the maxim Delegata potestas non delegatum must not be thinly be applied. When the Legislature

entrusts to some public body - it may be
the executive Government or a corporation -
a duty of making rules, such public
body cannot, in our judgment, relieve
itself of the responsibility and depute
other agencies to discharge the duty.
The authority to make rules must
remain in the hands to which it
was entrusted. It is absurd to
suppose that the Legislature intended
this important authority to be exercised
by any person whom the Government
might choose to select. The rule laid
down by the Conservator may be a
perfectly reasonable one and it
may be one which the Local Government
may make under section 6. On this
we

1964

we offer no opinion. At present it is
enough to say there is no such rule
having the force of law and therefore
the conviction, as for breach of it
must fall to the ground. For these
reasons we think the conviction
should be set aside and the fine, if
paid, refunded. We would add that
in these cases where the charge in
effect relates to an alleged breach of
a rule passed under an act, care
ought to be taken to specify the particular
Rule said to have been infringed.

Ordered accordingly

A. Foster.

Dy: Registrar,
Appellate.

To

The Presidency Port Officer
Madras

With reference to his letter No. D. 633/1420 dt. 11th Nov

CURRENT No. 952

Marine (1893) Department.

From

The Presidency Port Officer,

Madras,

To

The Chief Secy. to Government,

Marine Department,

Fort St. George.

No. 633/386

Dated 28 November 1893.

Received

Enc: 2

No.

Subject.

Forwarding copy of Judgment of the High Court Judges and pointing out the necessity for certain amendment to the Boat Rules with a view to inform the status of Port officers in their capacity as registering officers.

Mar Sa 2208, 28-6-93

Ref 28 January/94 No 21

The P. P. O. is requested to report in detail on the subject of para: 2 of this letter.

/ from orders /

3/1/94

F.D.B. 2/1/94

Presidency Port Office

DESPATCHED 5 JAN 94 IN M.S

Copied 8/1

CHIEF SECRETARIAT 30 NOV 93 GOVERNMENT OF MADRAS

Enclosure

Copy of a draft letter to the Registrar of the High Court Madras.

Sir,

I have the honor to refer to the High Court for the exercise of their powers of revision certain summary convictions × Summary trials Nos. 1, 3, 4, 5, 6, 9, 10, 11 of 1893 passed by the 1st class Sub-Divisional Magistrate of Negapatam under Rules 1 and 23 of the boat rules sanctioned in Government Order No. 503 of 16 November 1891 professing to be passed under section 6 clause K of Act X of 1889. In these cases the owners of boats in the port of Negapatam were fined various sums for refusing to take out their boats to a certain steamer when called on by the Port officer to do so.

2 of

2. I admit that (except in Summary Trial 4 of 93 which I will deal with separately) the convictions are in accordance with the rules in question. But I refer them on the ground that the rules are themselves ultra vires and inconsistent with the Act under which they profess to be passed.

3. Section 6 clause k runs thus —

"The Local Government may in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes namely": —

× × × × × × ×

(K) "For licensing and regulating catamarans

N1 b5

catamarans plying for hire and flats and cargo, passenger and other boats plying, whether for hire or not and whether regularly or only occasionally, in or partly within and partly without any such port and for determining the quantity of cargo or number of passengers to be carried by any such vessel" and Rules 1 and 23 are to the following effect "(1) Owners of boats shall be subject to the control of the Registering Officer appointed by Government and shall carry out at all times all orders issued by him in connection with the plying of their boats and which

which are not inconsistent with any of these rules, and shall supply the tindal of each registered boat with a printed copy of these rules and of any orders issued by the Registering Office which copy shall be shown by such tindal to any passenger by such boat demanding to see the same.

(23) "No owner of a registered boat licensed to ply for hire, not being a steam launch, and no person in charge of such boat shall refuse to let on hire such boat without having and assigning reasonable cause for such refusal to the satisfaction of the Registering Office"

The

The question is what is meant by "regulating" in section 6 clause 4 ?

I submit that the scope and intention of the word are indicated by the concluding words of the section "determining the quantity of cargo or number of passengers to be carried by such vessel" — In other words to "regulate" means to make such regulations as are necessary in the interests of the public safety in regard to the seaworthiness of the boats and such like matters.

It cannot include the power of compelling a boatman to ply for hire who is unwilling to do so.

4 - In support of this view I would point out that the words of the Act

Act are "to regulate the calamarans and boats" not to regulate the "traffic". The section also refers to boats plying not for hire, and to boats plying for occasional hire. Under Rule 23 as it stands the owner of a boat occasionally plying for hire can be compelled to ply for hire regularly if the Port officer thinks fit. This appears to me plainly inconsistent with the Act. The use of the word 'occasionally' implies that it is within the power of the owner of the boat to determine whether he shall ply or not.

5— Again I submit that under section

section 6 (K) rules can only be passed to affect boats which are actually "plying for hire". The owner or tindal of a boat who refuses to go out cannot be said to be plying for hire unless there is evidence that he refused to go out for a particular person while being ready and willing to go out for others. This is probably the case in Cummary. Trial 7 of 1893 and for that reason I have not included it in those referred. On this point I have considered the decisions under the Metropolitan Traffic Regulation Act 1867 (30 and 31 Victoria c. 134) but they do not appear to help the matter much. In all the cases (e.g. Clarke v. Stanford

6.2.B.357. Allen v. Tunbridge

6.C.R. 481) in which a hackney carriage has been held to be 'plying for hire' it was standing in some public stand or in the premises of a railway company. That no doubt would be prima facie evidence of plying, because if the carriage was not intended to be in use it would be in some mews or stable. In the case of a boat, however, the mere fact of its being on the beach which is its natural "stable" when not in use cannot raise the presumption that it is plying for hire.

6- It may be open, possibly, (though (though the word "occasionally" makes even this doubtful) for the Government to refuse to license boats that will not engage to be always ready to ply for hire, and to forfeit the license if the condition be not complied with. But that would not make the refusal to ply on a particular occasion an offence under section 54 of the Act. The only consequence would be the forfeiture of the license

7- In summary Trial 4 of 1893 to which I invite their Lordships' special attention as showing how liable to abuse these rules are, a man has actually been fined 1 Rupee for refusing to put to sea in an admittedly unsa

unseaworthy boat! If any one should have been fined it seems to me it ought to have been the Port officer or his subordinate who instituted this vexatious and frivolous complaint. The owner of the boat has been fined on the technical ground that he did not assign his reasons for refusal to the Port officer who is the Registering officer under the Act. But he did admittedly point out the unseaworthiness of the boat to the Boat Overseer who is the Port officer's subordinate. It appears to me that that was a sufficient compliance with the terms of the rule. It can hardly be expected that a boat owner should go and see the Port officer in person on every occasion of the kind, and if he assigned good cause to the Port officer's subordinate, the latter ought to have reported it to his superior officer and taken his orders thereon. (signed) H. H. O'Farell
Ag Sessions Judge

Forwarded to the District Magistrate Tanjore for any explanation of the Magistrate concerned or remarks of his own and for submission to this Court of the records of the said cases.

(signed) H. H. O'Farell
Ag Sessions Judge

Tanjore
25th March 1893

(True copy)

RS

District Magistrate

Enclosure No. II

In a letter

From

The District Magistrate
Tanjore

To

The Chief Secretary to Govt
J.D. Madras.

Ref: No. 1013/Magl Dt 23.11.93.
Des. 25-11-93

Copy of the Sessions Judge's letter of reference

1893
May Govt Dec
Order No. 2
To
G.O. No. 5446 Pub

In the High Court of Judicature at Madras
Wednesday, the 1st day of November 1893.

Present:-

The Honorable Sir Arthur Edward Collins, Knight, Chief Justice
& The Honorable Mr. Justice Shephard

Criminal Revision Cases Nos. 290 to 297 of 1893.
(Case Refered Nos. 132 to 139 of 1893)

In No. 290 Thommayappa Chetty
" Do 291 Ramasami
" Do 292 Suppurayan
" Do 293 Kondimuthu Chetty
" Do 294 Sadayandi
" Do 295 Arokiam Chetty
" Do 296 Arokiam Chetty
" Do 297 Muthiya

Accused in Summary Trial Nos. 1, 3 to 6 & 9 to 11 of 1893 on the file of the 1st Class Sub Divisional Magistrate of Negapatam.

Cases refered for the orders of the High Court under section 438 of the Criminal Procedure Code, by the Acting Sessions Judge of Tanjore, in his letter dated 24th June 1893, No. 261.

Criminal Revision Cases Nos. 319 to 325 of 1893.

Criminal Revision Petitions Nos. 155 to 161 of 1893.

In No. 319 Thommayappa Chetty — Petitioner (accused)
" Do 320 Kondimuthu Chetty — Petitioner (accd.)
" Do 321 Sadayandi — Petitioner (accd.)
" Do 322 Rajappa Chetty — Petitioner (accd.)
" Do 323 Arokiam Chetty — Petitioner (accd.)
" Do 324 Arokiam Chetty — Petitioner (accd.)
" Do 325 Muthiyah — Petitioner (accd.)

Petitions, under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the finding & sentence of the 1st Class Sub Divisional Magistrate of Negapatam passed in Summary Trial Nos. 1, 5 to 7 and 9 to 11 of 1893.

There

These cases coming on for hearing on Wednesday the 30th August 1893, upon perusing the letter of reference, and the Petitions and the records submitted therewith, upon hearing the arguments of Mr W. Grant, Counsel for the Petitioners in Nos 319 to 325 of 1893 and of the Ag. Public Prosecutor in support of the conviction in all cases, and having taken time to consider till this day; the Court made the following

Orders :-

The Chief Justice :- The accused were convicted for refusing to take out their licensed boats to certain steamers when called by the Port Officer to do so. The Ag Sessions Judge who refers this case admits that the accused were rightly convicted under certain boat rules made by the Local Government under the powers given by section 6 of Act X of 1859, but suggests that those rules are ultra vires. Clause K is the Clause in the Act under which the Local Government acted and boat rules 20 to 23 are the rules under which the convictions took place. It is contended on the part of the accused, that at the time the Port Officer issued his orders they were not plying and that therefore the order of the Port Officer was not a lawful one. I do not think that there is any power in the Local Government

to

to make rules compelling owners of licensed boats to ply their boats at all times and if they have a discretion to ply or not the Port Officers Orders to ply are not lawful orders. These boats rules 20 to 23 appear to be ultra vires and the convictions must be set aside and the fines if paid refunded.

In summary Trial No. 4 of 1893 if the boat was unseaworthy as it is stated I agree with the Acting Sessions Judge that the Complaint was vexatious and frivolous and ought not to have been made.

Shephard, J:- I am of the same opinion. I think that the rules, one and twenty-three, so far as they purport to make it obligatory on boat owners to ply for hire are ultra vires and therefore void and of no effect. It is only with regard to boats plying for hire, that section six of the Act gives the Government authority to make rules.

By the Court
(Signed) A. T. Forbes
Deputy Registrar
Appellate Side

To The Ag Sessions Judge
(with records)
Tanjore
The 1st Class Sub Magistrate of Negapatam
(thro' the District Magistrate of Tanjore)

/True Copy/

Head Assistant

for District Magistrate

Enclosure 1.

In a letter

From

The District Magistrate
Tanjore

To

The Chief Secretary to Govt
J.D. Madras

Ref: No 1013 / Magl Dd 23.11.93
Des. 25.11.93

Copy of the Ruling of the High Court in Criminal Revision Cases 290 to 297 of 1893.

1893
Mag Jud Dept
Bundle No
No 290
G. No

District Magistrate's
TANJORE, ~~COLLECTOR'S~~ OFFICE,
23 November 1893.

Ref: No. 1013 / Magl ~~Camp,~~

From

N. M. Winterbotham Esquire,
District Magistrate ~~Collector,~~
TANJORE,

To

The Honorable Mr. T. F. Price
Chief Secretary to Government,
Judicial Department,
MADRAS.

Sir,

I have the honor to submit for the information of Government copy of the Ruling of the High Court in Criminal Revision Cases 290 to 297 of 1893, in which the High Court holds that Rules 1 and 20 to 23 framed by Government under section 6 of Act X of 1889 are ultra vires, void and of no effect, in so far as they purport to make it obligatory on boat owners (of licensed cargo-boats) to ply for hire.

2. Copy of the Sessions Judges' letter of reference is likewise forwarded.

3. The Rules were published at pages 166 of the Fort St. George Gazette Supplement of 17th November 1891.

I have the honor to be,
Sir,
Your most obedient servant,
N. M. Winterbotham
District Magistrate.

G.O. 5034: 18-11-93
Marine

990

Marine
503: 16-11-91 Encs

Encls not rec'd

From

The District Magistrate
Tanjore

To

The Chief Secretary
to Govt. J.D.
Madras.

No. 23. } Nov. 1893.
Rec'd } Nov. 25

Ref: No. 1013
Magt

Enc: 2.

CHIEF SECRETARY'S
27 NOV 93
DIRECTOR OF Mines

Subject

Submitting for the information of Govt Copy of High Courts Ruling in C.R.C. Nos 296 & 297 of 1893 holding that the Rules framed by Government under Sec: 6 of the Indian Ports Act X of 1889 are ultra vires

by End V

503+23. 16-11-91 Fwd Marine

100

Transfered to the Marine Department.

A Butterworth
Under Secretary

Endt: dy No 1013 Jany 94 Mag.

Copy forwarded to the Govt: Solicitor for the Hon: the Advocate General's remarks with reference to para: 2 of his opinion printed in G.O. 18.12.90, No. 456, as to what the position of Govt now is, and what procedure he advises in the future.

(from orders)

JDB
21/11/94.

To the Govt Solicitor
with copy 1 G.O.
Copy to the P.P.Gr.
Send him a printed copy of the correspondence - Get a clean draft with the Endt: all ready for signature.

13/1/94
466
18.12.90.

Marine Current 990.

It is proposed, in the first instance, to refer this paper to the Govt: Solicitor for the Advocate General's remarks with reference to para: 2 of his opinion printed in G.O. 18.12.90, No. 456, which is as follows:-

"2. The rules appear to be within the powers conferred by the Act and therefore, in my opinion, no fresh local Enactment is necessary".

JDB.
18/12

There does not seem to be much use in this as all that the A.G. can say is that now under the light of the judgment of the H.C. he thinks legislation appears necessary

JD
21/12/93

Anyhow we ought to get his opinion, as to what our position is now, and he should advise as to our procedure, in the future.

to
26 Dec.

Boat Rules.

H. E. the Governor.

O. M. No 144/93
25-1-94.

The Govt. Solicitor

is requested to submit an early reply to Endt. No. 9 of the 8th Inst. 1894, on the subject of the Boat-Rules.

H.B.
24/1/94

H.B.
24/1

The Govt. Solicitor

DESPATCHED
25 JAN 94
IN M.S.

Rejected

Port-a-Boat Rules

Original

Want to H.E. on 7th

64 x 5

This opinion should not be printed.

In the matter of the Indian Ports Act X of 1889, Section 6 (K) and the Rules passed thereunder.

OPINION.

1. I respectfully dissent from the view taken by the High Court as to the validity of the Rules, but as that Court has decided that - Rules 20 to 23 are ultra vires that decision must be given effect to by the cancellation of those Rules.

2. If the provisions contained in those Rules be deemed necessary for the protection and benefit of the public, it seems to me that the only course is to get Section 6 (K) of the Indian Ports Act 1889 so amend-ed as to empower Government to frame such Rules.

(Signed) J. H. Spring Branson

Advocate General.

Madras.

27th January -

1894 .....

(True Copy

Government Solicitor.

64

Marine (1894) Department

From

Ernest Barclay
Government Solicitor
Madras

To

The Chief Secretary
to Government
Madras

No 42.

Dated 27 January 1894
Recd 28th } Do
Regd 29th }

Forwarded with reference
to Endorsement of Govern
ment. No 9. dated 8 Janry
1894. Marine.

Ernest Barclay

Government Solicitor

Marine Deptt.

C. No. 953. 107.

FOR ORDERS.

It is submitted that the judgment practically amounts to this. Under Section 6 (1) of the Act separate rules for various matters to suit the circumstances of particular ports can be framed by Govt. under the specific authority given by the Act. It is not permissible to frame one general set of rules for all ports and to leave it to Port Officer under Section 8 to issue subsidiary rules to suit local requirements which are specially provided for by the various clauses of Section (6) (1).

This, it is submitted, is not only strictly in accordance with the Act, but is quite reasonable. Instead of a general set of rules as at present each port should have its own regulations Some now have extra rules to suit local needs. It may be inferred that this was the intention of the Legislatu when framing the many clauses of Sectic 6 (1).

The Presidency Port Officer does not explain in what way the authority Port Officers as Registering Officers under

*G.O. 24.9.89, cNo.406.

under the Boat Rules is seriously affected by the decision of the High Court. Th Boat Rules were framed by Govt. under Section 6(k) of Act X of 1889 and both the Govt. of India and the local Advocate General declared them to be within the powers of the Local Govt. In any case the Port Officers' initiative should be re - stricted to the purposes of Section 8 of the Act.

It is submitted that the Presidency Port Officer should be called upon to report in detail on the subject of para 2 of his letter.

It appears from the judgment that the learned judges were not aware of Act V of 1891, Section I, which amplifies Section 6 (1) (a) of Act X of 1889.

F.S.B. 11/12

14/12/93

G.O. 16.11.91, No. 503.

G.O. 14.6.89, No. 252.

" 18.12.90, - 466.

Port and Boat Rules.

Yes - & when he sends in his report, we can see if we can meet him in the way of framing new rules. But we shall have to get legal opinion as to how far the new rules when drafted are consistent with the Act.

H.E. the Governor

26 Dec.

Mem p. 50—10—2-94

TH DECEMBER 1893, No. , MARINE.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following paper:—

From H. M. WINTERBOTHAM, Esq., District Magistrate. Tanjore, to the Chief Secretary to Government, dated 23rd November 1893, Reference No. 1013-Magl.

I have the honour to submit, for the information of Government, copy of the ruling of the High Court in Criminal Revision Cases 290 to 297 of 1893, in which the High Court holds that Rules 1 and 20 to 23 framed by Government under section 6 of Act X of 1889 are *ultra vires*, void and of no effect, in so far as they purport to make it obligatory on boat owners (of licensed cargo-boats) to ply for hire.

2. Copy of the Session Judge's letter of reference is likewise forwarded.

3. The rules were published at pages 1 to 6 of the *Fort St. George Gazette* Supplement of 17th November 1891.

ENCLOSURES.

COPY of a draft letter to the Registrar of the High Court, Madras.

I have the honour to refer to the High Court for the exercise of their powers of revision certain summary convictions* passed by the First-class Sub-divisional Magistrate of Negapatam under Rules 1 and 23 of the boat rules sanctioned in G.O., No. 503, of 16th November 1891, professing to be passed under section 6, clause (*k*), of Act X of 1889. In these cases the owners of boats in the port of Negapatam were fined various sums for refusing to take out their boats to a certain steamer when called on by the Port officer to do so.

* Summary Trials Nos. 1, 3, 4, 5, 6, 9, 10, 11 of 1893.

2. I admit that (except in Summary Trial No. 4 of 1893 which I will deal with separately) the convictions are in accordance with the rules in question. But I refer them on the ground that the rules are themselves *ultra vires* and inconsistent with the Act under which they profess to be passed.

3. Section 6, clause (*k*) runs thus:—

"The local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules consistent with this Act as it thinks necessary for any of the following purposes, namely:—

* * * * *

(*k*) "For licensing and regulating catamarans plying for hire and flats and cargo, passenger and other boats plying, whether for hire or not and whether regularly or only occasionally, in or partly within and partly without any such port, and for determining the quantity of cargo or number of passengers to be carried by any such vessel," and Rules 1 and 23 are to the following effect:—

"(1). Owners of boats shall be subject to the control of the Registering officer appointed by Government and shall carry out at all times all orders issued by him in connection with the plying of their boats and which are not inconsistent with any of these rules, and shall supply the tindal of each registered boat with a printed copy of these rules and of any orders issued by the registering officer, which copy shall be shown by such tindal to any passenger by such boat demanding to see the same."

"(23). No owner of a registered boat licensed to ply for hire, not being a steam launch, and no person in charge of such boat, shall refuse to let on hire such boat without having and assigning reasonable cause for such refusal to the satisfaction of the registering officer."

The question is—What is meant by "regulating" in section 6, clause (*k*)? I submit that the scope and intention of the word are indicated by the concluding words of the section "determining the quantity of cargo or number of passengers to be carried by such vessel." In other words to "regulate" means to make such regulations as are necessary in the interests of the public safety in regard to the seaworthiness of the boats and such like matters. It cannot include the power of compelling a boatman to ply for hire who is unwilling to do so.

4. In support of this view I would point out that the words of the Act are "to regulate the catamarans and boats," not to regulate the "*traffic*." The section also refers to boats plying *not* for hire and to boats plying for *occasional* hire. Under Rule 23 as it stands the owner of a boat *occasionally* plying for hire can be compelled to ply for hire regularly if the Port officer thinks fit. This appears to me plainly inconsistent with the Act. The use of the word "*occasionally*" implies that it is within the power of the owner of the boat to determine whether he shall ply or not.

5. Again I submit that under section 6 (*k*) rules can only be passed to affect boats which are actually "plying for hire." The owner or tindal of a boat who refuses to go out cannot be said to be plying for hire unless there is evidence that he refused to go out for a particular person while being ready and willing to go out for others. This is probably the case in Summary Trial No. 7 of 1893, and for that reason I have not included it in those referred. On this point I have considered the decisions under the Metropolitan Traffic Regulation Act, 1867 (30 and 31 Vic., Cap. 134), but they do not appear to help the matter much. In all the cases (*e.g.*, Clarke *v.* Stanford 6. 2 B. 357; Allen *v.* Tunbridge 6 c. p. 481) in which a hackney carriage has been held to be "plying for hire" it was standing in some public stand or in the premises of a railway company. That no doubt would be *primâ facie* evidence of plying, because if the carriage was not intended to be in use it would be in some mews or stable. In the case of a boat, however, the mere fact of its being on the beach, which is its natural "stable" when not in use, cannot raise the presumption that it is plying for hire.

6. It may be open possibly (though the word "*occasionally*" makes even this doubtful) for the Government to refuse to license boats that will not engage to be always ready to ply for hire and to forfeit the license if the condition be not complied with. But that would not make the refusal to ply on a particular occasion an offence under section 54 of the Act. The only consequence would be the forfeiture of the license.

7. In Summary Trial No. 4 of 1893 to which I invite their Lordships' special attention as showing how liable to abuse these rules are, a man has actually been fined 1 rupee for refusing to put to sea in an admittedly unseaworthy boat! If any one should have been fined it seems to me it ought to have been the Port officer or his subordinate who instituted this vexatious and frivolous complaint. The owner of the boat has been fined on the technical ground that he did not assign his reasons for refusal to the Port officer, who is the registering officer under the Act. But he did admittedly point out the unseaworthiness of the boat to the boat overseer, who is the Port officer's subordinate. It appears to me that that was a sufficient compliance with the terms of the rule. It can hardly be expected that a boat-owner should go and see the Port officer in person on every occasion of the kind, and if he assigned good cause to the Port officer's subordinate the latter ought to have reported it to his superior officer and taken his orders thereon.

(Signed) H. H. O'FARRELL,
Acting Sessions Judge.

Forwarded to the District Magistrate, Tanjore, for any explanation of the Magistrate concerned or remarks of his own and for submission to this Court of the records of the said cases.

(Signed) H. H. O'FARRELL,
Acting Sessions Judge.

TANJORE,
25*th March* 1893.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 1st day of November 1893.

PRESENT.

The Honorable Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice,
and
The Honorable Mr. Justice SHEPHARD.

Criminal Revision Cases, Nos. 290 *to* 297 *of* 1893.

(Case Referred Nos. 132 to 139 of 1893.)

In No. 290, Thommayappa Chetty,
" 291, Ramasami,
" 292, Supparayan,
" 293, Kondimuthu Chetty,
" 294, Sadayandi,
" 295, Arokiam Chetty,
" 296, Arokiam Chetty,
" 297, Muthiyah,
} Accused in Summary Trial Nos. 1, 3 to 6 and 9 to 11 of 1893 on the file of the First-class Sub-Divisional Magistrate of Negapatam.

Cases referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the Acting Sessions Judge of Tanjore in his letter, dated 24th June 1893, No. 261.

Criminal Revision Cases, Nos. 319 *to* 325 *of* 1893.

(Criminal Revision Petitions Nos. 155 to 161 of 1893.)

In No. 319, Thommayappa Chetty,
" 320, Kondimuthu Chetty,
" 321, Sadayandi,
" 322, Rajappa Chetty,
" 323, Arokiam Chetty,
" 324, Arokiam Chetty,
" 325, Muthiyah,
} Petitioners (accused).

Petitions, under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the finding and sentence of the First-class Sub-Divisional Magistrate of Negapatam passed in Summary Trial Nos. 1, 5 to 7 and 9 to 11 of 1893.

These cases coming on for hearing on Wednesday, the 30th August 1893, upon perusing the letter of reference and the petitions and the records submitted therewith, upon hearing the arguments of Mr. W. Grant, counsel for the petitioners in Nos. 319 to 325 of 1893, and of the Acting Public Prosecutor in support of the conviction in all cases, and having taken time to consider till this day; the Court made the following—

ORDERS.

The Chief Justice.—The accused were convicted for refusing to take out their licensed boats to certain steamers when called by the Port officer to do so. The Acting Sessions Judge who refers this case admits that the accused were rightly convicted under certain boat rules made by the Local Government under the powers given by section 6 of Act X of 1889, but suggests that those rules are *ultra vires*. Clause (*k*) is the clause in the Act under which the Local Government acted, and Boat Rules 20 to 23 are the rules under which the convictions took place. It is contended on the part of the accused, that at the time the Port officer issued his orders they were not plying and that therefore the order of the Port officer was not a lawful one. I do not think that there is any power in the Local Government to make rules compelling owners of licensed boats to ply their boats at all times, and if they have a discretion to ply or not, the Port officer's orders to ply are not lawful orders. These Boat Rules 20 to 23 appear to be *ultra vires* and the convictions must be set aside and the fines, if paid, refunded.

In Summary Trial No. 4 of 1893 if the boat was unseaworthy as it is stated, I agree with the Acting Sessions Judge that the complaint was vexatious and frivolous and ought not to have been made.

Shephard, J.—I am of the same opinion. I think that the rules one and twenty-three, so far as they purport to make it obligatory on boat-owners to ply for hire, are *ultra vires*, and therefore void and of no effect. It is only with regard to boats plying for hire that section 6 of the Act gives the Government authority to make rules.

(By the Court.)

(Signed) A. T. FORBES,
Deputy Registrar, Appellate Side.

To the Acting Sessions Judge, Tanjore (with records).
" First-class Sub-Divisional Magistrate of Negapatam
(through the District Magistrate of Tanjore).

Transferred to the Marine Department.

(Signed) A. BUTTERWORTH,
Under Secy. to Govt.

Endt

Copy forwarded to the Govt Solicitor for the Hon. the advocate Genl's remarks with refce to para 2 of his opinion printed in G.O. dy 18.12.90, No. 456, as to what the position of Govt now is, and what procedure he advises should be adopted in the future.

/ by order /

Sd/ A. Butterworth.
Under Secy to Govt

Revised proof

Mar No. 503 10/2/91 13/1/92

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

G.O. No. 290

READ—the following paper:—

From H. M. WINTERBOTHAM, Esq., District Magistrate, Tanjore, to the Chief Secretary to Government, dated 23rd November 1893, Reference No. 1013-Magl.

I have the honour to submit, for the information of Government, copy of the ruling of the High Court in Criminal Revision Cases 290 to 297 of 1893, in which the High Court holds that Rules 1 and 20 to 23 framed by Government under section 6 of Act X of 1889 are *ultra vires*, void and of no effect, in so far as they purport to make it obligatory on boat owners (of licensed cargo-boats) to ply for hire.

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I have the honour to refer to the High Court for the exercise of their powers of revision certain summary convictions* passed by the First-class Sub-divisional Magistrate of Negapatam under Rules 1 and 23 of the boat rules sanctioned in G.O., No. 503, of 16th November 1891, professing to be passed under section 6, clause (*k*), of Act X of 1889. In these cases the owners of boats in the port of Negapatam were fined various sums for refusing to take out their boats to a certain steamer when called on by the Port officer to do so.

* Summary Trials Nos. 1, 3, 4, 5, 6, 9, 10, 11 of 1893.

2. I admit that (except in Summary Trial No. 4 of 1893 which I will deal with separately) the convictions are in accordance with the rules in question. But I refer them on the ground that the rules are themselves *ultra vires* and inconsistent with the Act under which they profess to be passed.

3. Section 6, clause (*k*) runs thus:—

"The local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules consistent with this Act as it thinks necessary for any of the following purposes, namely:—

* * * * *

(*k*) "For licensing and regulating catamarans plying for hire and flats and cargo, passenger and other boats plying, whether for hire or not and whether regularly or only occasionally, in or partly within and partly without any such port, and for determining the quantity of

cargo or number of passengers to be carried by any such vessel," and Rules 1 and 23 are to the following effect :—

"(1). Owners of boats shall be subject to the control of the Registering officer appointed by Government and shall carry out at all times all orders issued by him in connection with the plying of their boats and which are not inconsistent with any of these rules, and shall supply the tindal of each registered boat with a printed copy of these rules and of any orders issued by the registering officer, which copy shall be shown by such tindal to any passenger by such boat demanding to see the same."

"(23). No owner of a registered boat licensed to ply for hire, not being a steam launch, and no person in charge of such boat, shall refuse to let on hire such boat without having and assigning reasonable cause for such refusal to the satisfaction of the registering officer."

The question is—What is meant by "regulating" in section 6, clause (*k*)? I submit that the scope and intention of the word are indicated by the concluding words of the section "determining the quantity of cargo or number of passengers to be carried by such vessel." In other words to "regulate" means to make such regulations as are necessary in the interests of the public safety in regard to the seaworthiness of the boats and such like matters. It cannot include the power of compelling a boatman to ply for hire who is unwilling to do so.

4. In support of this view I would point out that the words of the Act are "to regulate the catamarans and boats," not to regulate the "*traffic*." The section also refers to boats plying *not* for hire and to boats plying for *occasional* hire. Under Rule 23 as it stands the owner of a boat *occasionally* plying for hire can be compelled to ply for hire regularly if the Port officer thinks fit. This appears to me plainly inconsistent with the Act. The use of the word "*occasionally*" implies that it is within the power of the owner of the boat to determine whether he shall ply or not.

5. Again I submit that under section 6 (*k*) rules can only be passed to affect boats which are actually "plying for hire." The owner or tindal of a boat who refuses to go out cannot be said to be plying for hire unless there is evidence that he refused to go out for a particular person while being ready and willing to go out for others. This is probably the case in Summary Trial No. 7 of 1893, and for that reason I have not included it in those referred. On this point I have considered the decisions under the Metropolitan Traffic Regulation Act, 1867 (30 and 31 Vic., Cap. 134), but they do not appear to help the matter much. In all the cases (*e.g.*, Clarke *v.* Stanford 6. 2 B. 357 ; Allen *v.* Tunbridge 6 c. p. 481) in which a hackney carriage has been held to be "plying for hire" it was standing in some public stand or in the premises of a railway company. That no doubt would be *primâ facie* evidence of plying, because if the carriage was not intended to be in use it would be in some mews or stable. In the case of a boat, however, the mere fact of its being on the beach, which is its natural "stable," when not in use, cannot raise the presumption that it is plying for hire.

6. It may be open possibly (though the word "*occasionally*" makes even this doubtful) for the Government to refuse to license boats that will not engage to be always ready to ply for hire and to forfeit the license if the condition be not complied with. But that would not make the refusal to ply on a particular occasion an offence under section 54 of the Act. The only consequence would be the forfeiture of the license.

7. In Summary Trial No. 4 of 1893 to which I invite their Lordships' special attention as showing how liable to abuse these rules are, a man has actually been fined 1 rupee for refusing to put to sea in an admittedly unseaworthy boat! If any one should have been fined it seems to me it ought to have been the Port officer or his subordinate who instituted this vexatious and frivolous complaint. The owner of the boat has been fined on the technical ground that he did not assign his reasons for refusal to the Port officer, who is the registering officer under the Act. But he did admittedly point out the unseaworthiness of the boat to the boat overseer, who is the Port officer's subordinate. It appears to me that that was a sufficient compliance with the terms of the rule. It can hardly be expected that a boat-owner should go and see the Port officer in person on every occasion of the kind, and if he assigned good cause to the Port officer's subordinate the latter ought to have reported it to his superior officer and taken his orders thereon.

(Signed) H. H. O'FARRELL,
Acting Sessions Judge.

Forwarded to the District Magistrate, Tanjore, for any explanation of the Magistrate concerned or remarks of his own and for submission to this Court of the records of the said cases.

TANJORE,
25th March 1893.

(Signed) H. H. O'FARRELL,
Acting Sessions Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 1st day of November 1893.

PRESENT.

The Honorable Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice,
and
The Honorable Mr. Justice SHEPHARD.

Criminal Revision Cases, Nos. 290 *to* 297 *of* 1893.

(Case Referred Nos. 132 to 139 of 1893.)

In No. 290, Thommayappa Chetty,
" 291, Ramasami,
" 292, Supparayan,
" 293, Kondimuthu Chetty,
" 294, Sadayandi,
" 295, Arokiam Chetty,
" 296, Arokiam Chetty,
" 297, Muthiyah,
} Accused in Summary Trial Nos. 1, 3 to 6 and 9 to 11 of 1893 on the file of the First-class Sub-Divisional Magistrate of Negapatam.

Cases referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the Acting Sessions Judge of Tanjore in his letter, dated 24th June 1893, No. 261.

Criminal Revision Cases, Nos. 319 *to* 325 *of* 1893.

(Criminal Revision Petitions Nos. 155 to 161 of 1893.)

In No. 319, Thommayappa Chetty,
" 320, Kondimuthu Chetty,
" 321, Sadayandi,
" 322, Rajappa Chetty,
" 323, Arokiam Chetty,
" 324, Arokiam Chetty,
" 325, Muthiyah,
} Petitioners (accused).

Petitions, under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the finding and sentence of the First-class Sub-Divisional Magistrate of Negapatam passed in Summary Trial Nos. 1, 5 to 7 and 9 to 11 of 1893.

These cases coming on for hearing on Wednesday, the 30th August 1893, upon perusing the letter of reference and the petitions and the records submitted therewith, upon hearing the arguments of Mr. W. Grant, counsel for the petitioners in Nos. 319 to 325 of 1893, and of the Acting Public Prosecutor in support of the conviction in all cases, and having taken time to consider till this day; the Court made the following—

ORDERS.

The Chief Justice.—The accused were convicted for refusing to take out their licensed boats to certain steamers when called by the Port officer to do so. The Acting Sessions Judge who refers this case admits that the accused were rightly convicted under certain boat rules made by the Local Government under the powers given by section 6 of Act X of 1889, but suggests that those rules are *ultra vires*. Clause (*k*) is the clause in the Act under which the Local Government acted, and Boat Rules 20 to 23 are the rules under which the convictions took place. It is contended on the part of the accused, that at the time the Port officer issued his orders they were not plying and that therefore the order of the Port officer was not a lawful one. I do not think that there is any power in the Local Government to make rules compelling owners of licensed boats to ply their boats at all times, and if they have a discretion to ply or not, the Port officer's orders to ply are not lawful orders. These Boat Rules 20 to 23 appear to be *ultra vires* and the convictions must be set aside and the fines, if paid, refunded.

In Summary Trial No. 4 of 1893 if the boat was unseaworthy as it is stated, I agree with the Acting Sessions Judge that the complaint was vexatious and frivolous and ought not to have been made.

Shephard, J.—I am of the same opinion. I think that the rules one and twenty-three, so far as they purport to make it obligatory on boat-owners to ply for hire, are *ultra vires*, and therefore void and of no effect. It is only with regard to boats plying for the hire that section 6 of the Act gives the Government authority to make rules.

(By the Court.)

(Signed) A. T. FORBES,
Deputy Registrar, Appellate Side.

To the Acting Sessions Judge, Tanjore (with records).
" First-class Sub-Divisional Magistrate of Negapatam
(through the District Magistrate of Tanjore).

Transferred to the Marine Department.

(Signed) A. BUTTERWORTH,
Under Secy. to Govt.

ENDORSEMENT—dated 8th January 1894, No. 9.

Copy forwarded to the Government Solicitor for the Hon'ble the Advocate-General's remarks, with reference to paragraph 2 of his opinion printed in G.O., dated 18th December 1890, No. 456, as to what the position of Government now is, and what procedure he advises should be adopted in the future.

(Signed) A. J. REID,
Chief Secretary.

To the Government Solicitor,
with copy of G.O., No. 456, dated 18th December 1890.
Copy to the Presidency Port Officer.

TH DECEMBER 1893, No. , MARINE.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following paper:—

From Commander H. A. STREET, R.I.M., Acting Presidency Port Officer, to the Chief Secretary to Government, dated Madras, 28th November 1893, No. 633-386-G.

I have the honour to beg that the attention of the Government may be drawn to the opinion expressed by their Lordships the Chief Justice and Mr. Justice Shephard in a judgment* delivered on the 1st November 1893, on a reference by the Acting District Magistrate of Tanjore in connection with a complaint made by the Port Officer, Negapatam, against certain boatmen at that port to the Head Assistant Magistrate, and the decision of the latter officer on the same.

* Copy attached hereto.

2. The view taken by their Lordships so seriously affects the authority of Port officers in their position as Registering officer under the Boat Rules, that it appears necessary for the boat rules to be amended, and I therefore beg to inquire whether this is to be done. Their Lordships, I would observe, state that it has to be shown that the Government is, by section 6 of the Indian Ports Act, authorized to empower other persons to make rules such as the one which was disobeyed by the boatmen at Negapatam and which is specified in the judgment, and apparently have overlooked the fact that section 8 (1) of the same Act authorizes the Conservator to give directions (with respect to any vessel within the port) for carrying into effect any rule for the time being in force therein, and section 6 of the Act. Rule VIII referred to by their Lordships is a Port rule† framed under clause (*k*) of section (6) of the Indian Ports Act, and the directions given by the Registering officer at Negapatam to the boatmen at that port were in accordance with the authority given to him under section 8 of the Indian Ports Act.

† *Vide* copy attached.

ENCLOSURE.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the First day of November, One-thousand eight hundred and ninety-three.

PRESENT:

The Honorable Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice
and
The Honorable Mr. Justice SHEPHARD.

Criminal Revision Case No. 273 *of* 1893.

(Case Referred No. 119 of 1893.)

1. Marian Chetty,
and
2. Mariappen

} Accused in Calendar Case No. 5 of 1893 on the file of the Port Officer and Special 1st-class Magistrate of Negapatam.

Case referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the District Magistrate, Tanjore, in his letter, dated 2nd June 1893, Cur. No. 73-Magl.

Criminal Revision Case No. 318 *of* 1893.

Petition by the said accused under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment in the above case.

This case coming on for hearing on Friday the 27th October 1893, upon perusing the letter of reference and the records in the case and upon hearing the arguments of Mr. W. Grant, Counsel, and Mr. N. Narayana Aiyangar, Vakil for the accused; and of the Acting Public Prosecutor in support of the conviction; and the case having stood over for consideration till this day; the Court delivered the following

Judgment.—The act charged as an offence is the bringing a boat into the Negapatam river in disregard of a general order passed by the Port Conservator to the effect that boats should not be brought in while the flag W is flying. This act is said to be punishable under section 8 of the Ports Act. That section authorizes the Conservator to give directions for carrying into effect any rule passed under section 6 of the same Act, and goes on to make it penal to disobey any such lawful direction. It has therefore to be seen whether the Conservator was carrying into effect any valid rule passed under the Act. The rules to which we have been referred are those numbered V and VIII, being rules passed with reference to clauses (*f*) and (*k*) of section 6 respectively. In our opinion there is clearly no connection between the former of these rules and the direction which, in this case, has been disobeyed.

Rule VIII is a rule of wider scope, for it requires boat-owners to "carry out at all times all orders issued by the Conservator in connection with the plying of their boats and which are not inconsistent with the regulations issued by Government."

In order to put an interpretation on the Rule VIII and to see whether it covers the present case, we think that the rule must be read with the clause of the Act under which it is framed and the other clauses specifying the matter in respect of which rules may be made by the Government. It must be presumed that the Government intended to pass a rule which they were authorized to pass by the terms of clause (*k*) of the section, and a construction which has the effect of extending the operation of the rule to matters not covered by clause (*k*) ought, we think, if possible, to be avoided. Now when it is seen that, by clause (*a*) of the section, the Government is empowered to make rules for regulating the time at which vessels are to enter or leave any port, it seems tolerably clear that the rules to be framed under clause (*k*) were not intended to regulate the entry or exit of vessels in the matter of time. This being so, we do not think that the Rule VIII passed with reference to the latter clause can be taken to refer to such matters. Accordingly the direction of the Conservator not to bring boats into the river when a certain flag is flying cannot be a direction for carrying into effect the rule in question, and therefore no lawful direction was disobeyed. In referring to clause (*a*), we do not overlook the fact that boats may go out of the river without leaving the port. That may be so. We should still be disposed to think that the "regulation" intended by clause (*k*) was a regulation different in kind from that intended by clause (*a*).

There is, however, another reason why the conviction cannot be supported. The charge is not based immediately on an alleged breach of Rule VIII, indeed no rule at all is mentioned in the charge. The conviction can only be supported on the ground that the direction of the Conservator, which was disobeyed, was a direction lawfully given in pursuance of an authority lawfully conferred on him by Rule VIII or some other rule. To support the conviction, it has to be shown that the Government is, by section 6 of the Act, authorized to empower other persons to make rules such as the one which has been disobeyed in the present case. In our opinion the contention cannot rightly be maintained, and if Rule VIII or any other rule purports to give the Conservator authority to make such rules, that rule is to that extent *ultrâ vires* and therefore void. In the case of power being by statute given to the Government or other public body to make rules having the force of law, the maxim *Delegata potestas non delegatum* must, we think, be applied. When the Legislature entrusts to some public body—it may be the Executive Government or a corporation—the duty of making rules, such public body cannot, in our judgment, relieve itself of the responsibility and depute other agencies to discharge the duty. The authority to make rules must remain in the hands to which it was entrusted. It is absurd to suppose that the Legislature intended this important authority to be exercised by any person whom the Government might choose to select. The rule laid down by the Conservator may be a perfectly reasonable one and it may be one which the Local Government may make under section 6. On this we offer no opinion. At present it is enough to say there is no such rule having the force of law, and therefore the conviction, as for breach of it, must fall to the ground. For these reasons we think the conviction should be set aside and the fine, if paid, refunded. We would add that in these cases where the charge in effect relates to an alleged breach of a rule passed under an Act, care ought to be taken to specify the particular rule said to have been infringed.

Ordered accordingly.

(Signed) A. T. FORBES,
Dy. Registrar, Appellate Side.

To the Presidency Port Officer, Madras, with reference to his letter No. 633–1470 M., dated 11th November 1893.

Ref dg. 1.14, dt. 21
The P.P.O. is requested to report in detail on the subject of para 2 of his letter. /by order/
[illegible]

RULES OF THE PORT OF Negapatam

(*Under Section* 6 *of the Indian Ports Act X of* 1889.)

(I Entering or leaving Port, Clause (*a*).

(*a*) All sea-going vessels, on entering or leaving the port between sunrise and sunset, shall fly their national flag, and when entering port, each vessel shall show her number.

* (*b*) No vessels shall enter or leave the harbour between the hours of 6 P.M. and 6 A.M. without special authority from the Conservator of the Port.

* Applies only to the ports of Cochin and Mangalore.

II. Berths of Vessels, Clause (*b*).

All vessels within the port shall take such berths as may be assigned them by the Conservator, and shall change their berth, or remove, when required by him.

III. Striking yards and Masts, Clause (*c*).

All vessels within the port shall strike their yards and top-masts on being required to do so by the Conservator whether by signal or otherwise.

IV. Taking in or discharging Ballast or any particular kind of Cargo, Clause (*e*).

(*a*) All vessels taking in or discharging ballast or any particular kind of cargo such as ammunition or other explosives, kerosene oil and timber within the limits of the port shall do so only at such stations as may be set apart from time to time by the Conservator.

(*b*) Ballast and rubbish shall not be thrown overboard within the limits of the port without the special permission of the Conservator.

V. Keeping Free Passages, Clause (*f*).

A free passage shall be kept to all landing places, wharves and anchorages in accordance with such directions as may be issued on the subject by the Conservator, and all vessels shall move when required by the Conservator to clear such passages.

VI. Anchoring and Mooring, Clause (*g*).

(*a*) All vessels within the port shall be anchored or moored in such manner as may be directed by the Conservator.

(*b*) The anchors of all steamers and square-rigged vessels must be buoyed, and care taken that the buoys "watch."

VII. Mooving and Warping, Clause (*h*).

(*a*) All vessels within the port shall be moved or warped from place to place as required, and by such means or appliances as may be ordered by the Conservator.

(*b*) No vessel shall cast off a warp that has been made fast to her to assist a vessel moving without being required to do so by the officer in charge of the vessel moving.

VIII. Cargo Boats, Clause (*k*).

The plying of catamarans, flats, cargo, passenger and other boats, whether for hire or not and whether regularly or only occasionally, in, or partly within and partly without the port, and the quantity of cargo or number of passengers to be carried by any such vessel, shall be subject to such regulations as may be laid down from time to time by Government, and owners of such boats shall be subject to the control of the Conservator, and shall carry out at all times all orders issued by him in connection with the plying of their boats and which are not inconsistent with the regulations issued by Government.

IX. Fires and Lights, Clause (*l*).

(*a*) No vessel shall be fumigated except at a place appointed by the Conservator for that purpose.

(*b*) Pitch or dammer shall not be heated on board vessels within the port, but in a boat alongside or astern; nor shall spirits be drawn off on board such vessels by candle or other unprotected artificial lights.

(*e*) Vessels while loading cotton shall not have any unprotected lights in the hold or on deck.

(*d*) When gunpowder, ammunition or other explosives in excess of 100 lb. weight are being shipped on board, or being discharged from any vessel within the limits of the port, neither fires, lights nor smoking are under any circumstances to be permitted on board.

X. Signal Lights, Clause (*m*).

The master of any vessel arriving within the port with ammunition, explosives, or over 100 lb. in weight of gunpowder on board as cargo, shall display a red flag B of the commercial code at the fore during daylight, and between sunset and sunrise shall exhibit, when at anchor, a red light over the usual anchor light, for such time as the ammunition, explosives or gunpowder may be on board within port limits.

XI. Number of Crew, Clause (*n*).

All vessels within the port shall have on board a sufficient number of crew to perform any duties which may become necessary for the safety of the vessel in regard to veering or heaving in cable, bracing up the yards, striking masts and yards, &c., in case of emergency arising.

XII. Employment of Persons engaged in cleaning or painting vessels, &c., Clause (*o*).

No person shall be employed in cleaning or painting a vessel or in working in the bilges, boilers or double bottom of a vessel in the port either before or after the hours which may be fixed from time to time by the Conservator for such purposes.

XIII. Action to be taken by the master when there is disease or sickness or a dead body on board his vessel while such vessel is within the limits of the port— (clause (*p*))—

Part I.—Regulations in cases of cholera, small-pox or other epidemic diseases common in India—

(*a*) The master of every vessel on board of which there is, either among the passengers or crew, any case of cholera, small-pox or other epidemic disease common in India, shall report such case or cases to the pilot or other boarding officer at the earliest opportunity, or, in the absence of a Harbour Master or other boarding officer, or if the vessel be at anchor within port limits when such disease first breaks out, shall hoist a signal which shall be during the day, Flag R of the Commercial Code at the main and during the night, two white lights, one over the other, at the fore.

This is a square red flag with a yellow Saint George's Cross.

(*b*) Where the disease or diseases in question or limited to one or two cases, the vessel will not be prohibited from taking up the usual place of anchorage within port limits and the passengers need not be detained on board pending the inspection of the Health Officer; but the master of the vessel will be held responsible that no passenger suspected of having such disease is allowed to depart before this inspection.

(*c*) Where cases have been more numerous than one or two, or when from their occurring on pilgrim or emigrant ships, or for other special reasons, further precautions may be deemed advisable, the vessel shall take up such position as the Conservator of the Port may direct; and none of the passengers shall be allowed to leave until the Health Officer has made his inspection.

(*d*) Vessels coming under this last rule shall be thoroughly cleansed and fumigated under the directions of the Health Officer.

Part II.—Regulations where a death has occurred—

(*a*) On a death occurring during the day on board of a vessel in the port, the ensign and house flag are to be immediately lowered half-mast and kept in such position from sunrise to sunset as along as the body remains on board. Should a death occur between sunset and sunrise, one red light is to be hoisted at the peak, half-mast.

(*b*) The master of the vessel will cause the death of any person on board to be made known at once to the Conservator, either by letter or otherwise, and shall also forward to the Conservator a written report as soon as possible after the occurrence, in which all the circumstances attending the death are to be fully detailed.

(*c*) No dead body is to be removed from the ship without the permission of the Conservator. Unless the special permission of the Conservator to its interment on shore shall have been obtained, a dead body shall be buried in the sea, outside the limits of the port and in not less than 9 fathoms water, in such manner as shall ensure its sinking at once and remaining below water.

Note.—Every person committing a breach of any of the above rules and for the punishment of disobedience to which express provision has not been made in Act X of 1889, will be liable to fine which may extend up to one hundred rupees under the provisions of section 54 of that Act.

2. At such of the ports specified where there is no Health Officer or pilot, the duties of those officials as laid down in the rules now published shall be carried out by the Conservator of the Port.

No. 633 G / 20

Presidency Port Office,

Madras, 16 January 1894.

Heading.

Boat Rules

From Commander H. A. Street, R. I. M.,
Ag: The PRESIDENCY PORT OFFICER,
Madras,

To

The CHIEF SECRETARY TO GOVERNMENT,
MARINE DEPARTMENT,
Fort St George.

Sir,

In compliance with the instruction contained in Marine Department, Memorandum, No 21, dated 9th January 1894, I have the honor to refer you to the decision of their Lordships the Chief Justice and Mr. Justice Shephard on the subject of the legal value of rules 1 and 23 of the Boat Rules. As these rules are "ultra vires" according to their Lordships, the control hitherto assumed over licensed boats by the Registering Officer in connection with rules 1 and 23 of the Boat Rules apparently cannot now be legally

vide proof attached.

legally exercised.

I have the honor to be,
Sir,
Your Obedient Servant,

H. A. Theet
Commander R. I. M.
Acting Presidency Port Officer.

CURRENT No. 38

E.O. 4068 24-9-89 S.C.
456-57 D 18-12-90 A.C.
252 D 14-6-89 S.C.

Marine (1894) DEPARTMENT.

From

THE PRESIDENCY PORT OFFICER,

Madras,

To

THE CHIEF SECY. TO GOVERNMENT,

MARINE DEPARTMENT,

Fort St. George.

No. 633/20 G

Dated 16 January 1894
Received 17
Regd 18

No.

GOVT. SECRETARIAT 17 JAN 4 GOVERNMENT OF MADRAS

Subject.

Informing that under the decision of the High Court, the Registering Officer cannot legally exercise the provisions of Rules 1 and 23 of the Boat Rules.

[5]

Marine DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated 18 , No.

Again G.O., dated 18 , No.

Current No. of 18 , dated from

Current No. of 18 , dated from

ORDER:- to 7-2-94-A-50

W 8 Feb

Of the two matters relating to the Madras Marine Department in which ~~orders~~ have made recently been ~~passed~~ by the High Court one relates to the Port Rules and the other to the Boat Rules -

~~No now existing~~ In regard to the former the opinion of the High Court is briefly ~~in a few words~~ as follows:-

Under section 6 (1) of act X of 1889 the Indian Ports Act- separate rules for various matters to suit the circumstances of particular ports can be framed by Govt under the specific authority given by the Act. It is not in accordance with the general principle of the Act that there should be one set of rules for the whole Presidency and that it should be left to Port Officers under section 8 to issue subsidiary rules to suit local requirements.

2. There

2. There can be little doubt that when framing the large number of clauses to Section 6 (1) the intention of the Legislature was to enumerate all probable contingencies in connection with any port to enable the Govt. to issue authoritative rules to suit any and all of them; and it seems to be not only convenient but necessary that each port - at any rate each of the larger ports- should have its own set of rules under section 6(1).

3. It may be found possible to devise a single set of standard port and boat rules which would be applicable to all ports; and to supplement these with special rules for each particular port. In any case the initiative of Port Officers should be restricted to giving 'directions for carrying into effect' the rules in accordance with Section 6 (1) of the Act.

Section 6(1) is so comprehensive that it should be possible to formulate under it rules sufficient to reduce the necessity for action under section 8/1/ to a minimum.

4. The Presidency Port Officer will lose no time in submitting a further report on the subject after consulting the law officers of Govt. It is very desirable that no unnecessary delay should be permitted to occur in the preparation of such draft rules as may be considered suitable and within the powers of Govt. to issue under the Act.

5. In regard to the Boat Rules, the Presidency Port Officer will at once issue instructions to Port Officers to suspend action under those rules which have been declared by the High Court to be ultra vires. If the Presidency Port Officer can show sufficient cause for requiring owners to ply their boats when called upon to do so by the Registering officer, the Govt. will consider what steps should be taken to obtain the requisite authority for the issue of a rule to that effect. It would, however, be more satisfactory if the ports could be efficiently worked without such arbitrary power being entrusted to the Registering Officer.

The Presidency Port Officer will endeavour to make suitable arrangements to obviate the necessity of further action in the matter, and will report the result.

TO The Presidency Port Officer.

Dt. Sagl. Jour 6/
Jud! Dept 1
Govt Solicitor 3

despd 23/1/94 DB.

31/1/94

DB 6/2/94

Port + Boat Rules

H.C.
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FURTHER PAPER, No. of 19

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ENCLOSURES.

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21. 11. 29 D ✓

Mains DEPARTMENT.

G.O. DATED 10. 2. 94

No. 50.

INDEXED.

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Returned for signature. 23/2

Despatched in print. 23/2

[Despatch Abstract.]

Port Boat Rules

Remarking on certain rulings of the High Court relating to ___ d duesting the P.B.O to report further on the subject