

Marine (1897) Department.

G.O., No. 637 *mar*

DATED 17. July 1877

[Despatch Abstract.]

[Despatch Abstract.]

Delegation of Powers. The Advocate General re-
quested to state whether he is aware of any authority
for the statement in the Instructions of the Board of
Trade issued under the English Merchant Shipping Act of
1854 that certain duties "Can be delegated by the Govt
of the Colonies or Possession to any of their Officers"
and to favour the Govt with his opinion as to whether
the Govt or the Advocate General can delegate his powers
under the Act of 1854.

20.7.91

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
-	4532	Mar.	9-7-97				
	532	"	14-6-97				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	770-71	Mar.					

Marine Department

Delegation of powers under
the English Merchant Shipping
Act.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following

No. 637 Mar 21/97 July 1897
The Hon Mr Henry (Hon) C. J. E.

It is observed that
is stated in para 2 on page
5 of the Instructions of the
Board of Trade issued under
the English Merchant Shipping
Act of 1854 that certain duties
"can be delegated by the Govern-
ment of the Colony or Possession
to any of their officers". The Ad-
vocate General will be request-
ed to be so good as to quote the
authority for this statement
and to favour the Government
with his opinion as to whether

State whether he is aware of
any

or, with ref to para 7 of his opinion
of May 10, 1897. The Govt. Secy

His Excellency the Governor can
delegate his powers under the
Act of 1894 which has super-
seded that of 1854

2. With ref to S. 745 (1)(a) of the
Statute of 1894 it is presumed
that the B. of Trade's Instructions
issued under the Statute of
1854 remain in force

2. Attention may be drawn
to Section 745 (1) (a) which reads
as follows -

"A... has been referred to the
conveyance should have emanated from the
Colonial

my enactment hereby repealed
shall continue in force as if it
had been made or granted
under this Act"

13/7/97

In

R.S.

Note for the Hon. Member

This reference has been
drafted in accordance with
instructions, but it will be seen
from the Advocate General's
"opinion" under No. 723, C. 100,
dated herewith, that the word
"Governor" occurring in English
Statutes passed after 1st January
1890 shall, as respects India,
mean the Governor-General.

The Governor of Madras would well, let us find out the legal
position with reference to the G. S. in
this case to have no powers
under the Statute of 1894.

13/7/97

M

R.S.

Marine (1897) Department.

CURRENT No. 563

From,

The Presidency Port Office,
Madras

Order

No. 498
131 4

Dated 14 April 1897 (?)

Received

Registered

Enclosures

Spare copies

SUBJECT.

Inquiring whether the Regulations
framed under the English
Merchant Shipping Act 1854
in respect to distressed
seamen are to be considered
to be in force, since the
Act has been re-enacted

FURTHER PAPERS.

At the Bow-street Police Court on Friday, before Mr. Vaughan, Captain Robert Frederick Harris, master of the steamship Doune Castle, appeared to an adjourned summons charging him with having failed, without reasonable cause, to receive and afford a passage to a distressed seaman. Mr. Howard Smith supported the summons on behalf of the Board of Trade; Mr. R. D. Muir defended. The case being, it was alleged that when the

At the Bow-street Police Court on Friday, before Mr. Vaughan, Captain Robert Frederick Harris, master of the steamship Doune Castle, appeared to an adjourned summons charging him with having failed, without reasonable cause, to receive and afford a passage to a distressed seaman. Mr. Howard Smith supported the summons on behalf of the Board of Trade; Mr. R. D. Muir defended. The case being heard it was alleged that when the

behalf of the Board of Trade; Mr. R. D. Muir declared that in the previous hearing it was alleged that the captain was Doune Castle was at Port Louis, Mauritius, and that the vessel was requested by Mr. A. S. Upton, deputy superintendent of the mercantile marine, to receive on board a distressed seaman, named Harold Scouler, and that he refused to do so. The hearing was adjourned that evidence might be obtained to show that Scouler was a British seaman, and therefore came within the scope of the Act. Formal evidence to this effect was now given.

Mr. Muir said that on the last occasion he had raised the point that under the Merchant Shipping Act of 1894 the Board of Trade had no power to send home distressed seamen, the regulations required by the Act not having been made. To this point he had nothing to add, but he would bring forward a further point—that Mr. Upton, the deputy-superintendent, had no power to order the defendant to receive a distressed seaman on board his vessel. Such power, if existing, being, according to Section 191 of the Act, vested in the governors of British possessions and others, and therefore, in this case, lying with the Governor of Mauritius.

Mr. Smith said he admitted that the governor was the proper person to make such an order, but he could delegate his authority, and, though there was no direct evidence to show that Mr. Upton was acting as the governor's *locum tenens*, it was a natural inference from the fact of his discharging these duties.

Mr. Vaughan said that he could make no such inference; he must have strict proof.

Mr. Smith said if that were so his case must fall.
Mr. Vaughan accordingly dismissed the summons,
awarding the defendant 5l. 5s. costs.

In reply to Mr. Muir, the magistrate said that in his opinion there was no evidence to show that Captain Harris would have refused to take the man if asked to do so just before sailing. — *London Shipping*

*Gazette Weekly Summary, of
26th March, 1897.*

No. 498/ 1314

Presidency Port Office,
Madras, 14 April, 1897.

From

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

M A D R A S,

To

The Secretary to Government,
Marine Department,

C H E P A K.

Sir,

I have the honor to acquaint you, for the information of Government, that no regulations framed under the English Merchant Shipping Act 1894 have yet been received. Under the English Merchant Shipping Act 1854 (which is now repealed) the Board of Trade issued certain regulations in 1875 (vide accompanying pamphlet which please return), *Port Officials in this Presidency, who exercise the functions of a Shipping Master in respect to Masters and Seamen, have hitherto been guided by these Regulations, but it seems open to doubt whether any further action based on these Regulations will be valid in a legal point of view, since the act on which they are based has been repealed.

2. As an instance in point I enclose a cutting from the Shipping Gazette Weekly Summary of London, dated 26th March 1897, from which it will be seen that proceedings against the Captain of the S.S. "Doune Castle" for failing to convey a distressed seaman home fell through on the ground that no regulations were issued under the Merchant Shipping Act 1894, and further that the order of conveyance should have emanated from the Governor of the Colony.

Colony (Mauritius) under section 191, of that act, and not from the Deputy Superintendent, Mercantile Marine, Port Louis.

3. Distressed Seamen are from ^{time} to time sent home from Madras and occasionally from the coast ports, by the Shipping Masters at these ports, under the Board of Trade's Regulations of 1875, and it will lead to considerable inconvenience if, on technical grounds, shipmasters insisted on an order of H. E. the Governor in every case of a distressed seaman being required to be sent home. To meet the case, I beg to enquire whether it would not be advisable to publish a Notification in the Port St. George Gazette to the effect that H. E. the Governor is pleased to depute to Port Officials in this Presidency at present performing the functions of a Shipping Master the powers conferred by section 191 of the English Merchant Shipping Act 1894 in regard to the carrying out of the Distressed Seamen Regulations. These officials are the Deputy Port Conservator, Madras, Port Officers Gopalpur, Bimlipatam, Vizagapatam, Coconada, Masulipatam, Negapatam, Pamban, Tuticorin, Cochin, Calicut, Tellicherry, and Mangalore, and the Port Conservators Calingapatam, Cuddalore, and Porto Novo.

I have the honor to be,

Sir,

Your Obedient Servant,

H. A. Theet

Commander, R.I.M.,

Presidency Port Officer.

Marine R. W. DEPARTMENT.

Read the following:—

Regulations under the English Merchant Shipping Act
From the Presidency Port Officer, Madras, No. 498/131 G., dated 14th

April 1897.

The Hon. Mr. P. S. I. C.

FOR ORDERS.

I don't see how we can argue from the Mauritius case. The weak point there was that no proposal was available.

In our case, the Port Officers have hitherto been guided by the "Instructions" issued by the H. E. of Madras. These are still in force, unless they have been expressly superseded or annulled (vide S. 745 (1)(a) of the Act of 1894) - They say (para 5) para 2) that the duties under the Act can be devolved by the Govt. on British possession to any fit officers. The question therefore is Has this Govt. ever devolved any duties under the old Act to any one? I don't know - The P.P.O. should be asked - If it has so devolved duties, nothing further is now left.

The P.P.O. might also at the same time be asked if he can give the authority for the H.E. at p. 5 para 2 of the "Instructions" as to the power of Govt. to devolve duties, he I can't find it anywhere.

Whether the proposed notification may be drawn up delegating to port officials the powers of the Governor in regard to distressed Seamen, and ~~make~~ ^{make} a reference may be made to Home Government as to whether it is proposed to issue any Regulations under the English Merchant Shipping Act, 1894, similar to those issued under the Act of 1854.

2. It would perhaps be necessary to obtain legal advice as to whether the powers in question can be delegated as proposed.

26/4/97
M.

FOR ORDERS.

Marine Department.

Memorandum.

From the Presidency Port Officer, Madras, No. 498/131 G., dated 14th April

1897.
No 300 E. d/29-April 1897

It is observed that Port Officers in India have hitherto been guided by the "Instructions" issued by the Board of Trade under the Merchant Shipping Act of 1854. These are still in force unless they have been expressly superseded or cancelled. Vide Section 745(1)(a) of the Act of 1894.

2. It is stated in para 2 on page 5 of the "Instructions" that the duties under the Act can be deputed by the Government of a British possession to any of its officers. The undersigned is directed to inquire whether this Government has ever deputed any duties under the old Acts to any one. If it has so deputed duties, nothing further seems needed.

3. The undersigned is also directed to inquire whether the Presidency Port Officer can give the authority for the statement in para 2, page 5 of the Instructions, as to the power of the Governments to depute duties.

To

The P.P.O. with book of

"Instructions" to be

returned with reply.

2/4/97

29/4/97

Marine (1897) Department.

CURRENT No. 805

From

*The Presidency Court office,
Madras*

Order

No. $\frac{498}{202}$ G

Dated 1st June 1897

Received

Registered

5-697

Enclosures one per packet post.

Spare copies

SUBJECT,

*Replying to Government
Memo No. 300 E, dated 29 April 97,
regarding conveyance of
distressed seamen, appointments
of officers &c &c under
Merchant Shipping Act.*

No. 493/202 g

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

M A D R A S,

The Secretary to Government,
Marine Department,

С Н Е Р А К.

With reference to para 1 of Marine Department Memorandum No. 500 E dated 29th April 1897, I have the honor to state that although section 745 (1) of the Merchant Shipping Act of 1894 provides that any regulations &c. under the Act of 1854 shall continue in force unless expressly superseded by regulations framed under the new Act, yet the Magistrate who tried the case against the Master of the S.S. "Doune Castle" took a different view, holding that the order given to the Master for the conveyance of the distressed seaman in question was not valid at law in as much as it was not issued under regulations framed under the new Act; hence my referring the matter for the views of Government.

2. With respect to para 2 of the Government Memorandum, I have been unable as yet to trace whether any duties under the old Acts were ever formally deputed to any one by the Government of Madras. The Port Officials referred to at the end of my letter No.498/131,G, of 15th April 1897 have all been formally appointed "Shipping Masters" under the Indian Act 1 of 1859, and in dealing with European Seamen they have been guided, as a matter

No. The Magistrate
said there was no evidence
that Jones had been delegated
by the Governor. Thus
assuming that the Governor
could delegate
R.A.

P. 3009

of course, by the Board of Trade Instructions of 1875 which are intended for General guidance.

3. I am unable to answer the query contained in para 3 of the Memorandum and return herewith the pamphlet of instructions as directed.

I have the honor to be,
Sir,

Your Obedient Servant,

N. Atchee

Commander, R.I.M.,
Presidency Port Officer.

Inam P.W. DEPARTMENT.

READ the following:—

From the Presy. Port Officer, Madras, No. 498/202 G., dated 1st June 1897.

*Regulations under the
English Merchant Shipping
Act.*

His Excellency the Governor.

FOR ORDERS.

The Hon. Mr. Christie, J.E.

The following are the points brought forward:—

- (1) Notwithstanding proviso (a) to Section 745(1) of the Act of 1894 the master of a vessel may, in the absence of regulations under this Act, refuse to receive distressed seamen.
- (2) No formal delegation of duties to officers of this Government seems to have been made under the old Acts and therefore they would appear to have no delegated powers under the existing Act.
- (3) No authority for the statement at page 5 para 2 of the "Instructions" as to power to depute duties can be traced.

The P.P.O. is quite wrong in regard to the former case which the Master of the "Dorcas Castle". His case was dismissed because there was no proof that Mr. Upton in the Mauritius acted as the delegate of the Gov. No alone under S. 191 of the Act of 1894 had the power to make the order.

I think we had better ask the Govt. of Bengal, Bombay & Madras how they get over the difficulty that, notwithstanding the S. 191 of the Act of 1894, the S. 191 of the Act of 1894 is still in force under S. 745(1) (a) of the new Act of 1894, then seems to be no authority given to Govt. to depute their powers to subordinates. I can't think that in the case of subordinates, a Govt. can do so. Better perhaps ask the Adv. Genl. the question first - may be wrong as to authority to depute powers.

As far as I can see, the Adv. Genl. has thrown some light on the question at issue -

3/6/97

+ And yet, I cannot remember ever having either exercised or delegated the power in question.

I doubt whether the Government can delegate powers conferred upon him by law, unless the law gives him authority to delegate. But, the question 3. he referred to the Advocate Genl. as proposed by the Hon. Sir H. B. P. The Presidency Port Officer explains that Port Officers have been appointed "Shipping Masters" under Act I of 1859 and have hitherto been

*in the
the
11-6-97
13-7-97*