

G.O., No. 221 *Mar*

DATED *24th March 1898*

[Despatch Abstract.]

Defalcations in the Landing and Shipping Dues Fund
of the port of Masulipatam. Passing orders in
respect of the conduct of ^{certain} ~~the~~ officers relative to the
and ^{requesting} ~~directing~~ the P. P. Officer to report on certain sug-
gestions for a revision of the arrangements under
which collections of Landing and Shipping Dues
are made.

10/3

Dr 24-3-98

24/3/98

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
7463	98	Mar	28-7-57				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
7833	98	416	13-5-58				

Government {1898} of Madras. MARINE.

Recd.

Enclosures

Regd.

1898.

Spare copies

G.O., No. 221, 24th March 1898.

MARCH.

Defalcations in the Landing and Shipping Dues Fund of the Port of Masulipatam

Passing orders in respect of the conduct of certain officers relative to the —, and requesting the Presidency Port Officer to report on certain suggestions for a revision of the arrangements under which collections of landing and shipping dues are made.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following paper:—

From the Presidency Port Officer, dated 2nd March 1898, No. 1859/88 G.

ORDER—No. 221, Marine, dated 24th March 1898.

In his letter No. 1859/272 G., dated 19th July 1897, the Presidency Port Officer reported that defalcations in the Landing and Shipping Dues Fund of the port of Masulipatam had been discovered, and that the clerk and the bill-collector were to be criminally prosecuted.

2. The result of the prosecution is now reported; the case having been carried to the District Sessions Court.

3. In his summing up the Judge describes the procedure adopted in the Landing and Shipping Dues office for the collection and accounting for dues. When goods are brought for shipment it is the duty of the clerk, after assessing the dues, to copy the items into the shipping register. Bills are then made out and entered in the bill register; the bills themselves being, of course, made over to debtors on payment. The money received is allowed to accumulate till a sufficient sum is collected to make up a remittance, when it is sent to the Treasury with the chellan book. The money is also apparently entered in the cash register as received.

4. The bill register is said to have a column showing date of payment. It is presumed that the cash register also shows this. The Port Officer, by comparing these dates with the entries in the shipping register, is enabled to check payments and become acquainted with outstandings. It is said that the Port Officer "places his initials in the shipping register against items which have been entered in the cash book." If this had been done regularly, outstandings could have been detected without difficulty.

5. The present Port Officer, Mr. Leverett, took charge in 1893, but did not notice anything wrong till 1896, when he discovered that bills of previous years were outstanding. He then ordered that no bills should be allowed to get into arrears for more than three months; but, beyond asking if bills had been collected, took no further steps till June 1897, when all outstandings were ordered to be collected "within three days." On the fourth day, the clerk admitted that the money had been duly collected, but accused the bill-collector of keeping it back. Subsequent inquiry proved that the bills had been paid and the money embezzled. The offence of omitting to make, as a public servant, entries of payments in official registers with intent to defraud was proved against the Landing and Shipping Dues clerk in the Sessions Court, and he was sentenced to two years' rigorous imprisonment with fine. The bill-collector has not been legally convicted, but in the opinion of the Sessions Judge there is a strong probability that there was an understanding between him and the clerk, that he knew that the money was being embezzled, and that he shared in the spoil.

6. The sum lost is Rs. 927-12-2, but Rs. 200 are covered by security. The loss will therefore be reduced to Rs. 727-12-2.

7. An appeal against the acquittal of the bill-collector is not advised and need not be preferred, but the services of the man should be dispensed with by the officer who appointed him.

8. The Presidency Port Officer considers that the conduct of the Port Officer is open to censure, and he attributes the laxity of control exhibited by this officer to his inexperience of office work and not to any wilful neglect of duty. His Excellency the Governor in Council observes that had the defalcations occurred in the first six or twelve months of the Port Officer's tenure of office, such a view of the case might have been accepted. But it appears from the evidence that for three years he found nothing amiss, and, even when he did discover that collections were in arrears, took no adequate steps to remedy matters. This embezzlement would not have been possible if the Port Officer had done his duty properly, and the Government is therefore of opinion that the least that can be ordered is that he should pay half the loss, viz., Rs. 363-14-1. The amount will be recovered accordingly in monthly instalments of Rs. 30. It is also apparent that the Landing and Shipping Dues Committee can have exercised no proper control over the accounts, and this fact will be brought to their notice by the Presidency Port Officer.

9. The circumstances of this case point to the necessity for a revision of the arrangements under which collections of landing and shipping dues are made. The Government considers that at all ports where Madras Act III of 1885 is in force the collections and the establishments should be placed under the Collector in his Customs department, and that all payments should be made in advance except in cases where merchants have made adequate deposits against which the dues can be debited. This system involves the maintenance of a separate ledger account with each such merchant, but the trouble would probably be less than under the present system, while it would afford much greater security. The difficulty of goods entered in the export manifests not corresponding with those actually shipped and of overcarried goods would remain; but this might be provided for by subsequent adjustments in the accounts of the merchants concerned.

10. The Presidency Port Officer will report on these suggestions in communication with the Accountant-General, and if they are feasible will draft such amendments of the rules for Masulipatam and other places as may be needed to carry them out.

(True Extract.)

Under Secretary to Government.

To the Presidency Port Officer.

„ Accountant-General.

Papers to be read in Proceedings:—

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

Current No. 286

of 1898 , dated 4th March , from the P.P.O.

" "

" 189 , " , "

" "

" 189 , " , "

ORDER.

In his letter No. 1859/272 G

dated 19th July 1897 the Presidency --

Port Officer reported that defalcations

in the Landing and Shipping Dues Fund

of the port of Masulipatam had been --

discovered, and that the Clerk and the

Bill Collector were to be criminally

prosecuted.

2. The result of the prosecution is now

reported; the case having been carried

to the District Sessions Court.

3. In his summing up the judge describes

the procedure adopted in the Landing

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goods are brought for shipment it is

the duty of the clerk, after assessing

the dues, to copy the items into the

Shipping Register. Bills are then made

out and entered in the Bill Register;

the bills themselves being of course

made over to debtors on payment. The

money

money received is allowed to accumulate till a sufficient sum is collected to make up a remittance, when it is sent to the Treasury with the chellan book. The money is also apparently entered in the Cash Register as received.

4. The Bill Register is said to have a column showing date of payment. It is presumed that the Cash Register also shows this. The Port Officer, by comparing these dates with the entries in the Shipping Register, is enabled to check payments and become acquainted with outstandings. It is said that the Port Officer "places his initials in the Shipping Register against items which have been entered in the Cash book". If this had been done regularly, outstandings could have been detected without difficulty.

5. The present Port Officer, Mr. Leverett, took charge in 1893, but did not notice anything wrong till 1896, when he discovered that bills of previous years were outstanding. He then ordered that no bills should be allowed to get into arrears for more than 3 months; but beyond asking if bills had been collected, took no further steps till June 1897, when all outstandings were ordered to be collected "within 3 days". On the fourth day, the clerk admitted that the money had been duly collected, but accused the Bill Collector of keeping it back.

Subsequent

Subsequent inquiry proved that the bills had been paid and the money embezzled. The offence of omitting to make, as a public servant, entries of payments in official Registers with intent to defraud was proved against the Landing and Shipping -- Dues clerk in the Sessions Court, and he was sentenced to 2 years rigorous imprisonment with fine. The Bill Collector has not been legally convicted, but in the opinion of the -- Sessions Judge there is a strong probability that there was an understanding between him and the clerk, that he knew that the money was --- being embezzled, and that he shared in the spoil.

6. The sum lost is Rs. 927.12.2, but Rs. 200 are covered by security. The loss will therefore be reduced to Rs. 727.12.2

7. An appeal against the acquittal of the bill collector is not -- advised, and need not be preferred, but the services of the man should be dispensed with by the officer who appointed him.

8. The Presidency Port Officer considers that the conduct of the -- Port Officer is open to censure, and he attributes the laxity of control exhibited by this officer to his inexperience of office work; and not

to

appears from the evidence that for ³years₁
~~he neglected to find out what was~~
~~going on, although he knew that col-~~
~~lections were not being properly~~

The amount will be recovered accordingly
in monthly instalments of Rs. 30.

he found nothing amiss,
and grew when he did
discover that collecting was
in arrears, took no adequate
steps to remedy matters -
This unheeding would not
have been horrible if the Govt
had done
his duty properly
and

This is also apparent that the Landing & Shipping Inco Committee can have no control over the accounts & this fact will be brought to their notice by the Comptroller of the Treasury.

10. The Presidency Port Officer will report on the ^{se} suggestions in communication with the Accountant -- General, and if they are feasible -- will draft such amendments of the -- rules for Masulipatam and other -- places as may be needed to carry -- them out.

C.S.

16-8-94

To W
cancel 15.3.58

✓ 82/4/1966

The Presidency Port Officer.
... Accountant General.

Defalcations - Landing
+ Shipping Dues. Masulipatam

W

221

Note for the Hon. Member.

The Hon. Sir Henry Bliss
H.C.P.E.

Indent read it to - vide the Port
Office's note on Rule VII as to boats
being unable to catch the steamer or
the steamer not waiting for all the cargo
Flagged J. *BS*
21/3/98

W
The Hon.
is right in
his opinion. The
goods within pounds
might have
been omitted without
altering the conclusion.
viz that the dues are in
excess of the goods shipped.
BS
23 March

Order to issue.
W 23.2.98

In submitting the accompanying
draft order for approval it is ex-
plained that the Hon. Member's sug-
gestions in the concluding portion
of his remarks are somewhat modi-
fied in the order. Goods are not
usually sent off "in excess of those
shipped". (All the goods sent off are
shipped) but owing to the circum-
stances explained by the Port Offi-
cer on page 2 of G.O. 57 Marine d/
10th February 1892, "Shipping bills",
on which dues are calculated, *contain*
a large margin. It is the dues that
are in excess, therefore, and not the
goods.

2. As regards imports, the "bills
of entry" on which dues are assessed,
often contain larger quantities than
those actually landed, owing to the
frequency with which goods are over-
carried from the port of Masulipatam.
The accounts would be closed sooner,
if merchants received credit for --
goods over carried, instead of waiting
~~until the goods are brought back~~
~~until the goods are brought back~~
till the goods are "brought-
back". However, the draft is so word-
ed that the Presidency Port Officer
and the Accountant General are left
free

free to make their own suggestions
as to the manner in which adjust-
ments in accounts should be carried
out.

W. H. Bliss
M. 11. 5. 98

OKM
15. 2. 98

Marine DEPARTMENT.

C. No. *286*

~~HIS EXCELLENCY THE GOVERNOR.~~

THE HON'BLE SIR HENRY BLISS, K.C.I.E.

~~THE HON'BLE MR. GROSE, C.I.E.~~

SUBJECT.

*Defalcations in the Landing &
Shipping Dues Fund of the port of
Maoulipatam.*

FOR ORDERS.

In his letter *N^o 1859* ^{*272*} *C* dated
19 July 1897 the Presidency Port Officer
reported that defalcations in the
Landing and Shipping Dues Fund
of the port of Maoulipatam had
been discovered, and that the Clerk
and the Pitt Collector were to be
criminally prosecuted.

The result of the prosecution is
now reported; the case having
been carried to the District
Sessions Court.

In his summary the judge
describes the procedure adopted
in the Landing and Shipping
Dues office for the collection and
accounting for dues. When
goods are brought for shipment
it is the duty of the clerk, after
assessing the dues,

(1) to copy the items into the Shipping Register.

(2) Bills are then made out and entered in the Bill Register; the bills themselves being of course made over to debtors in payment.

(3) The money received is allowed to accumulate till a sufficient sum is collected to make up a remittance, when it is sent to the Treasury with the Cheilan book. The money is also apparently entered in the Cash Register as received.

The Bill Register is said to have a column showing date of payment. It is presumed that the Cash Register also shows this. The Port Officer, by comparing these dates with the entries in the Shipping Register, is enabled to check payments and become acquainted with outstandings. It is said that the Port Officer "places his initials in the Shipping Register against items which have been entered in the Cash book." If this had been done regularly, outstandings could have been detected without difficulty.

The present Port Officer, Mr. Leverett,

took charge in 1893, but did not notice anything wrong till 1896, when he discovered that bills of previous years were outstanding. He then ordered that no bills should be allowed to get into arrears for more than 3 months, but beyond asking if bills had been collected, took no further steps till June 1897, when all outstandings were ordered to be collected "within 3 days." On the fourth day, the Clerk admitted that the money had been duly collected, but accused the Bill Collector of keeping it back. Subsequent inquiry proved that the bills had been paid and the money embezzled. The offence of omitting to make as a public servant, entries of payments in official registers with intent to defraud, was proved against the Landing and Shipping Dues Clerk in the Sessions Court, and he was sentenced to 2 years imprisonment with fine. The

Bill Collector has not been legally convicted, but in the opinion of the Sessions Judge there is a strong probability that there was an understanding between him and the Clerk, that he knew the money was being embezzled, and that he shared in the spoil.

The sum lost is Rs 927.12.2, but Rs 200 are covered by security. The loss will therefore be reduced to Rs 727.12.2.

An appeal against the acquittal of the bill collector is not advised, but his dismissal is recommended.

The conduct of the Port Officer is considered by the Pres. Port Officer to be open to censure, but he also thinks the other members of the Committee to be equally culpable. He attributes the laxity exhibited by the Port Officer to his inexperience of office work and not to any wilful neglect of duty, and trusts the Government will not take a very serious view of his error.

The Presidency Port Officer is in communication with the Accountant General on the subject of a regular audit of the Landing and Shipping Dues accounts at all ports, and has carefully considered

This is further person who applied the man (Clerk or Port Officer?) to attend to. No Port order is needed. Hrs

If this business had occurred in the first six months or year of the Port Officer's tenure of office, there would be something in the case - but for years he neglected to find out what was going on, although he knew that collections were not being properly made. I think the best that can be ordered is that he should resign the office. Hrs

It seems to me that in all these cases the first thing to do is to arrange that all collections are made by the C.O., i.e., the Customs people, not by the Port Officer. The latter has no proper collecting agency or treasury. The Customs people have - there is no allowing bills to be

the existing rules in view to preventing embarrassment in future. As regards the latter, nothing more seems necessary than regular check of the books by the Port Officer, & his neglect to do this made the Com. very unpleasant horrible. Hrs 10.2.98

paid in arrears, which has led to the fraud & which might from the fact have been (indeed, was) known to give an opening for fraud. The proper rule would be to insist on payment in advance, except in cases in which regular merchants have deposited an advance against which the dues can be debited. This system would entail the necessity of keeping a separate ledger account against each such merchant, but I don't know that this is more trouble than the present system, while it would afford much greater security. The difficulty of goods being sent off in sleep of those shipped & of overcarried goods would remain - but I should say this might be provided for by credit to the merchants' acct. of the dues on goods brought back etc. - The P.O. should report on these suggestions in connection with the A.C. if they are feasible should draft such amendments of the rules (at all ports & other places) as will be needed to carry them out. Hrs 11/3/98

Marine (189⁸) Department.

CURRENT No. 286

From

*The Presidency Port Office,
Madras*

Order

No. $\frac{1859}{88}$ 4

< Dated 2nd March 1898

Received

Registered

} H. 3. 98

Enclosures /

Spare copies

SUBJECT.

*Requesting the orders of Govt
in connection with the recent
defalcations at Masulipatam*

BACK PAPERS.

No.	Date.
687 mark	25-7-97 ✓
32 mark	22-1-96 ✓
552 Public	5-7-55 ✓
23 mark	17-1-94 ✓
229 mark	30-6-93 ✓
318 mark	26-8-92 ✓
57.58 mark	10-2-92 ✓

FURTHER PAPERS.

IN THE COURT OF SESSION OF KISTNA DIVISION,



14.-JAN.-1893
SESSIONS CASE No. 49 OF 1897.

(Preliminary Register case No. 3 of 1897, on the file of the Head Quarter Deputy Magistrate, Kistna, committed by M. R. Ry. Jayanti Ramayya Garu)

Prisoner's Name :—

Konakolla Nagabhushanam.

(defended by Mr. I. Venkatarreddi Naidu).

Offence:—

Omitting to make, as a public servant, entries of certain payments in certain official Registers with intent to defraud punishable under section 477 A, I. P. C.

Opinion of the Assessors:—

Not guilty.

Finding of the Court:—

Guilty under section 477 A, I. P. C.

Sentence:—

2 years' rigorous imprisonment and to pay a fine of Rs. 500, in default, to undergo 6 months' further rigorous imprisonment.

Prosecution Witnesses :—

Jurors :—

Defence Witnesses :—

1. George Leverett.
2. Manepalli Mallayya alias Malli-
kharjanudu.
3. Kamarazu Venkatappiah.
4. Palakurti Lakshminarayana.
5. Gudiseva Subbaya.

1. Vemuri Ramakristna Row. 1. John William Maiden.
B. A. (Brahmin).
2. Devarakonda Kitchiah 2. Tadepalli Garudachelam.
(Brahmin).
3. Prasangi Swamy.
4. Palakurti Sreeramulu.
5. Agastyarazu Nagarazu.
6. Mir Hyder Sahib.
7. Simakurti Lakshmi Kris-
tna Sarvayya.
8. Simakurti Nama Sivayya.
9. Mamidi Dhamayya.
10. Mohamed Jaffir.
11. Iyyanki Venkatramayya.
12. Simakurti Subbarayudu.

The accused, K. Nagabhushanam, is charged with an offence under section 477 A,

Q. P. C.

2. I shall first state the facts which are either admitted, or are proved by the prosecution and not seriously denied by the accused. The accused was a clerk in the Landing and Shipping Dues Office, Masulipatam, which office is under the supervision of the Port Officer. A bill collector, who will hereafter be referred to by his name Malliah, a peon and a bar-light keeper complete the staff of the office. For the purpose of this case, the staff may however, be considered as composed of the accused and Malliah. When goods are brought for shipment, it is the duty of the accused to assess the dues and copy the items into the Shipping Register, Exhibit A. Bills are then made out and entered in the Bill Register Exhibit B, maintained from 1892 to 1897. The bills are then taken to the Port Officer for signature, and afterwards handed to Malliah by the accused for collection. The money collected is given to the accused, who keeps it until it has accumulated to a decent sum and then remits it to the Treasury. The chellan book Exhibit C is sent to the Treasury with the remittance. Exhibit C extends from June 1894 to June 1897, and, with the single exception of the chellan for November 1895, all the chellans are signed by

the accused. The Cash Register, Exhibit VIII, is then compared with the Shipping Register and the Port Officer places his initials in the Shipping Register against items which have been entered in the cash Register. In the Bill Register B, there is a column in which the dates on which bills are collected are to be entered. The Present Port Officer took charge in 1893, but did not notice any thing which he considered irregular until October 1896. He then, with a view to introducing a balance system between the Shipping Bill and Cash Registers, called for the old books. He then discovered that bills of previous years were still, according to the books, outstanding. He thereupon passed the order No 43, Exhibit E, to the effect that no bills should be allowed to get into arrears beyond three months without the fact being brought to his notice. This order was signed by the accused and Malliah in token of their having read it and understood it. Beyond asking the accused if he had collected the bills, the Port Officer took no further steps till June 1897. Up to that time the accused never offered any explanation, nor did he make any accusations against any one. The accused in fact does not seem to have been asked to explain, and his promises to collect seem to have been accepted without cavil. On the 15th June 1897, the Port Officer passed the order, Exhibit F. This order is as follows:—"The attention of the Landing and Shipping dues' staff is called to order 43. K. Nagabhushanam will collect all outstanding bills within three days from to day, after which a list is to be brought to the Port Officer for necessary action." This order was signed by the accused on the date it was issued. Four days later the accused went to the Port Officer and stated that Malliah, on being spoken to, alleged that the bills had already been collected and the money paid to him. The accused denied having received the money and asked the Port Officer to make an enquiry. The latter sent the accused and the marine clerk to all the merchants to ascertain whether the bills apparently outstanding had been paid or not. It may be mentioned that bills, when paid, are handed over to the merchants. Two paid bundles of bills, Exhibits G. and L, were brought back, and on reference to the Register it was found that they had not been entered as paid. These bills show that Rs. 927 and odd had been collected. This amount has neither been credited in the registers nor remitted to the Treasury. The money, in short, has been embezzled, and the circumstances are such that it must have been embezzled either by the accused or Malliah, or by both. The bills in Exhibits G and L are of the years 1895 and 1896, and the charge against the accused is, that he, with intent to defraud, wilfully omitted between the years 1894 and 1896 to enter these bills as paid in the various Registers which he as clerk was bound to maintain correctly.

3. The defence is generally that the only evidence that the money collected under these bills was paid to the accused is the evidence of Malliah, whose evidence is, *prima facie*, tainted; that as a matter of fact the money was not so paid; and that there was a division of labour between the accused and Malliah, the former attending to landing and the latter to shipping business, thus relieving the accused of all responsibility with regard to the latter. Evidence has been adduced to show that the accused is a man of good character, and that one item of Rs. 59-6-1 must have been embezzled by Malliah. The accused wishes the Court to infer that he is a meek and unsuspecting man and that all these years he has been imposed upon by Malliah.

4. It must be at once admitted that any statements by Malliah must be received with extreme caution, and that it would be unsafe to act upon them unless materially corroborated. Malliah himself admits that he knew that money collected by him and paid to the clerk was not credited. His explanation for not reporting the matter to the Port Officer cannot be accepted as a satisfactory explanation. He admits that, when he mentioned the matter to the accused, the latter told him to mind his own business. It may be safely inferred that Malliah knew money was being embezzled, and that in all probability he shared in the spoil.

5. Malliah was charged with having embezzled the sum of Rs. 59-6-1 referred to in para 3. He was convicted by the Deputy Magistrate but the conviction was set aside on appeal. The defence evidence is mainly intended to show that, in respect of this item, Malliah was really guilty and that the accused knew nothing about it. Even if this were satisfactorily proved, it would not avail the accused much. This item is only one among many. The proof depends mainly on whether the accused was or was not in Masulipatam on the 27th November 1895. The accused's case is that he was then at Ellore on leave, and it is conceded that he was on leave somewhere about that time. The exact date is however of extreme importance. Reliance is mainly placed on Exhibit IX, a post card said to have been written from Ellore to the accused by the 7th defence witness, S. L. Krishna Saraviah, inviting him to a name giving ceremony. This ceremony, according to the 8th defence witness, S. Nama Sivayya, took place on the 29th November. The 9th defence witness, father-in-law of the accused, says the accused left Masulipatam, on the 24th, and that on Friday the 22nd, he informed him he had got leave. This witness also alleges that there was another post card received 4 or 5 days before Exhibit IX. This post card, however, is not produced, and the 7th defence witness was not asked about it. Exhibit IX reached Masulipatam on the 24th November, and we are asked to believe that the accused started at once though the ceremony was not till the 29th November, even according to the defence evidence. The sum of Rs. 59-6-1 was collected on the 23rd November, and should in ordinary course have been paid to the accused by Malliah. In the chellan for November collections up to the 26th only are entered. The main thing in the accused's favour is that the chellan is written and signed by Malliah. There is, however, no evidence as to who actually made the remittance on the 27th, which is the most important point of all. The amount collected on the 23rd November was not remitted, though a currency note for Rs. 50, which formed part of the payment of Rs. 59-6-1 was paid in, having been made to take the place of hard cash to that amount. We have it that the accused was going to a ceremony for which some expenditure on his part would be necessary. Under the circumstances, it is quite as possible that he embezzled this particular amount, as that Malliah did, and he may have made Malliah write the chellan in order to divert suspicion from himself. Otherwise, the accused has to prove that he went on leave before the 27th and handed all the money collected in the month over to Malliah. This latter circumstance he has not attempted to prove, nor do I find any suggestion of it any where. With regard to the accused being on leave it is a curious feature of the defence, that no attempt is made to prove his being on leave by appealing to any official record of leave. The accused relies entirely upon evidence which he himself might have manufactured. There is no sufficient evidence to throw the guilt upon Malliah exclusively, so far as this item is concerned.

6. The case against the accused rests mainly upon his position in the office and upon his conduct. His assertion that the landing and shipping business was divided between himself and Malliah, and that his responsibility was only partial is not borne out by anything on the record. The Registers show he attended to both Landing and Shipping. Admittedly, collections under both heads were paid to him. The Port Officer has not personally observed what work was actually done by the accused in the office. He swears, however, that he considered the accused responsible for every thing, and it is clear that the accused never gave the Port Officer any occasion to understand otherwise. This appears from his own deposition, Exhibit K, given in the case against Malliah. Portions of all the registers and the bills in Exhibits G and L are, no doubt, in the handwriting of Malliah. Such clerical work as was done by Malliah is however, asserted by himself and the Port Officer to have been done to assist the accused and under the latter's directions, and, considering that Malliah's recognized duty was to collect money, which would entail frequent absences from the office, this assertion is in accordance with probabilities. In Exhibit I the accused admitted that he was the head of

the office, and that he kept all the Office Registers with him. It may be taken as proved that the entire responsibility for the correct keeping of the Registers rests with the accused. It may also be observed here that what is important in this case is not what has been entered in the Registers, but what has been omitted.

7. The responsibility of the accused having been thus defined, it remains to consider his conduct. When asked in the Lower Court whether he was aware that the bills were outstanding for years together, the accused said he was not. In this Court, however, he admitted that he had noticed that bills for 2 or 3 years remained unpaid, and that he spoke to Malliah about it. Beyond speaking to Malliah he, however, did nothing. He says he trusted Malliah. One point taken by the accused's pleader is that inasmuch as prior to October 1896 the Port Officer did not think 6 months too long for a bill to be outstanding, the accused may not have thought a delay of 2 or 3 years very serious. That, however, he thought it at least worthy of some notice is shown by his own admissions. After the office order Exhibit E was issued in October 1896, it is reasonable to suppose that the accused, if really innocent, would have taken some steps. As is, however, clear from the evidence, he took no action whatever. The order directs that any bills more than three months in arrears are to be brought to the notice of the Port Officer. The accused knew perfectly well that at the date of the order, there were, according to the Registers, many bills outstanding for more than three months. He, however, kept quiet, and the reasonable inference is that he hoped the matter would blow over. He, at all events, took care to do nothing to hasten an enquiry. In January 1897, Malliah went on leave. When he took leave, he prepared a list showing the amounts collected by him and the bills outstanding. He sent the money and the bills to the accused through the customs Head Clerk, G. Subbiah. All this is not disputed. On the contrary, the accused takes credit for having entered in the Register the amount sent him by Malliah. Now, whether the accused suspected Malliah before or not, his suspicions must have been aroused when he received what Malliah alleged to be all the outstanding bills. He must have noticed that some bills, which according to the Register were still outstanding were not included among the bills sent by Malliah. They could not be so included because they were already paid and were actually in the hands of the merchants. The accused, however, still kept quiet. The conduct of Malliah in daring to send all the outstanding bills he had in his possession to the accused, and the conduct of the accused himself point strongly to an understanding between Malliah and the accused. At length in June 1897, the order, Exhibit F, was issued. This order was peremptory and addressed to the accused personally. It was impossible for him to put off the evil day any longer. He accordingly went to the Port Officer, stated that Malliah laid the blame on him, and asked for an enquiry. Much is made of this request by the accused for an enquiry. Obviously however, it was the last card he had to play.

8. The accused's pleader contends that the evidence, at the most, merely shows that the accused was negligent, and the assessors have found the accused not guilty on the ground that the evidence is not sufficient. The evidence discloses however not only negligence, but a wilful concealment of facts which the accused was bound to reveal to the Port Officer, particularly after the issue of the order, Exhibit E. The sole question then, is whether the conduct of the accused can be reasonably held to be consistent with innocence. So to hold would, it seems to me, be an outrage upon common sense. The only reasonable inference from the evidence is that this accused, probably abetted by Malliah, embezzled the money paid under the bills in Exhibits G and L, and omitted to make entries of payment in the registers, in order, if possible, to conceal his crime. I therefore find the accused guilty of the offence under section 477 A, I. P. C. with which he is charged, and sentence him to undergo rigorous imprisonment for

two years, and to pay a fine of Rs. 500 in default to undergo 6 months' further rigorous imprisonment.

15th December 1897.

J. H. MUNRO,
Acting Sessions Judge.

Exmd.

M. D. F.

The charge against the accused under section 409 is, with the consent of the Court, withdrawn under section 240 C. P. C.

15th December 1897.

J. H. MUNRO,
Ag. Sessions Judge.

Exmd.

M. D. F.

No.1859/88g

Presidency Port Office,
Madras, 2nd March, 1898.

From

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

To

The Secretary to Government,
Marine Department,
Chepak.

Sir,

In continuation of this office letter, No.1859/272 G, dated 19th July 1897 and with reference to G.O., No.681, Marine, dated 29th July 1897, I have the honour to inform you, for the information of Government, that K. Nagabhushanam -clerk on the Landing and Shipping Dues Establishment at Masulipatam- has been found guilty of embezzlement of Landing and Shipping Dues and sentenced by the Sessions Judge of the District to undergo rigorous imprisonment for two years and to pay a fine of Rupees 500, and in default to undergo 6 months further rigorous imprisonment. A charge of embezzlement of Landing and Shipping Dues had also been made against Malliah, the Bill Collector of the same establishment, and he was convicted by the District Magistrate, but on appeal the conviction was set aside by the Sessions Judge who, however, in giving his judgment in the case against K.Nagabhushanam, states that the conduct of Malliah points strongly to an understanding between him and K.Nagabhushanam, and that it may be safely inferred that Malliah knew money was being embezzled and that in all probability he shared in the spoil.

2. The total sum embezzled is stated to be Rupees 927-12-2, but as the Port Officer holds a security for Rupees

Let. 3
1898

88
12-1-98

104
10-1-98

Forwarded to the
Port Officer, Masulipatam
with reference to his letter
No. 26 of 20th December 1897.
520

Nishia Sessions
Court
Masulipatam
10th January 98

Chivannu
10-1-98
of Sheristadar.

* Vide copy of
Judgment here-
with forwarded.

Let. 1
10-1-98

Rupees 200 from K. Nagabhushanam, the total loss will be Rupees 727-12-2. The case against the Bill Collector Malliah has fallen through, and the Public Prosecutor, Kistna District, has informed the Port Officer, Masulipatam, that he is unable to advise an appeal being made against the acquittal of Malliah, so beyond dismissing him with effect from the 29th June 1897 and declaring him incapable of serving Government in future, apparently nothing more can be legally done in his case, nor can his security be confiscated.

3. The procedure at Masulipatam in connexion with the assessment of Landing and Shipping Dues as explained in para 2 of the Session Judge's judgment is in accordance with the Rules which were prepared in 1892 by the Port Officer in communication with this office, and after being amended by the Collector of the District submitted to Government for approval, by the latter officer - vide Proceedings published with Government Orders Nos. 57-58, Marine, dated 10th February 1892. The reasons for allowing collections on shipments to be made after goods had been shipped are given in No. II of the Rules, and in due course a Bill Collector for the purpose of collecting these dues was sanctioned by Government ^{vide} G.O. No. 318, dated 26th August 1893; but in G.O., No. 229, dated 30th June 1893, the Landing and Shipping Dues Committee were desired to consider the advisability of altering Nos. 2 & 3 of the rules in force so as to ensure prepayment of the dues in all cases, and the reply of the Committee communicated to Government in this office letter, No. 947/13 G, dated 10th ~~Jan~~ ^{July} 1894 was, to the effect that, "as hitherto no difficulty had been experienced in collecting the dues, re-consideration is unnecessary and further that any alterations would cause complications and great inconvenience to the Shipping Community"; with this reply Government appeared satisfied for no further reference on the subject, appears to have been made.

4. The omission of the Clerk to enter the bills as

as paid in the various registers occurred according to the Session Judge's remarks between the years 1894 & 1896 does not appear to have been discovered until October 1896 by Mr. Leverett, the present Port Officer, who had been appointed to the port in 1893. No report to this office with respect to any irregularity was made until the 28th June 1897, when the Port Officer reported that he had discovered that funds had been embezzled.

5. I presume that the Port Officer considered that as the irregularity discovered in 1896 was connected only with bills being outstanding, it was unnecessary to report the matter to this office, and that the instructions he then issued would suffice. In not insisting on obedience to order he had passed respecting outstanding bills, and in being content with simply asking the Clerk whether he had collected the bills, the Port Officer's action is open to censure, but at the same time the other members of the Committee of management are equally to blame for they should have satisfied themselves that the collections on shipments were being paid as promptly as circumstances permitted, and that the order issued on the subject had received due attention. I attribute the laxity exhibited by the Port Officer to want of previous training in office work and not to any wilful neglect of duty. The mistake he made was, in trusting too much to his subordinates in connection with the keeping of the accounts, and in not obtaining the assistance of the other members of the committee in dealing with matters with which they would be, from their business training ^{more} "Au fait" than himself. In all other matters connected with his office, I have found Mr. Leverett a capable, hard working and intelligent Officer; so I trust that Government will not take a very severe view of an error which, in my opinion, is due more to inexperience than anything else.

6. Since the embezzlement was reported, I have

considered carefully the rules now in force at Masulipatam and at other ports to which Act III of 1885 has been applied in view of introducing such changes in them as may be necessary to prevent as far as possible embezzlement in future, & I have addressed the Accountant General on the question of having Landing and Shipping Dues accounts audited yearly by the Examiner of Local Fund Accounts.

7. The orders of Government are necessary in respect to the manner in which the sum lost by embezzlement is to be treated and to the dismissal of K. Nagabhushnam and the confiscation of his security; also with regard to the Bill Collector, Mulliah, who is still under suspension. The Port Officer reports that he had been informed that K. Nagabhushanam had preferred an appeal against the Sessions Judge's judgment in his case.

I have the honor to be,

Sir,

Your Obedient Servant,

R. I. M.

Commander, R. I. M.

Presidency Port Officer.