

Government {1899} of Madras.
MARINE.

Recd.

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1899.

Enclosures

Spare copies

Letter, No. 97, 31st January 1899.

JANUARY.

Indian Ports Act (Act X of 1889)

Forwarding copies of Proceedings embodying correspondence on the subject of the interpretation of sections 46 and 47 of the —, and suggesting that the *proviso* to section 47 may, when an opportunity offers, be re-enacted as a separate section.

MARINE DEPARTMENT.

LETTER—from

W. B. DEWINTON, Esq.,

*Secretary to the Government of Madras,**Marine Department,*

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCE AND COMMERCE DEPARTMENT.

SIR,

In continuation of my letter No. 99, Marine, dated 7th February 1898, I am

* (1) G.O., No. 1004, Marine, dated 2nd
December 1898.(2) G.O., No. 96, Marine, dated 31st
January 1899.directed to forward the accompanying
copies of the Proceedings* of this Gov-
ernment embodying correspondence on the
subject of the interpretation of sections 46and 47 of Act X of 1889 (the Indian Ports Act), and to suggest that, as recommended
by the Advocate-General, the *proviso* to section 47 may, when an opportunity offers,
be re-enacted as a separate section, in order to make it clear that the concession allowed
by the proviso to vessels entering and leaving ports in the Madras Presidency, applies
to all vessels whether laden or unladen.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) W. B. DEWINTON,
Secretary to Government.FORT ST. GEORGE,
31st January 1899.

Exd. T. K. Narayana Aiyangar.

Government {1899} of Madras.
MARINE.

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G.O., No. 96, 31st January 1899.

JANUARY.

Indian Ports Act (Act X of 1889)

Communicating to the Presidency Port Officer the opinion of the Advocate-
General regarding the interpretation of sections 46 and 47 of the —, and ordering that
the correspondence be forwarded to the Government of India.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following paper:—

Opinion of the Advocate-General, Madras, dated 4th January 1899.

I am of opinion that this case is governed by section 47, and not by section 46 of the Indian Ports Act, 1889 (Act X of 1889), and that, in the circumstances stated by the Presidency Port Officer in his reference dated November 21st, 1898, the vessel in question was not properly chargeable with port dues at Tranquebar.

2. On a strict construction of the statute, it may certainly be argued with some force that inasmuch as section 46 of the Act applies in express terms to vessels in ballast, and as the proviso granting a special exemption in the case of a vessel entering a Madras port and leaving within 48 hours is a proviso to section 47 only, a vessel which enters a port "in ballast" cannot claim the benefit of the proviso to section 47. Such a construction, however, involves so obvious an anomaly, and is so clearly inconsistent with the intention of the legislature, that I think no judicial tribunal would adopt it, if the sections in question were reasonably capable of any other interpretation.

3. I think section 47 may fairly be read so as to avoid this anomaly and give effect to the intention of the legislature. The words "a vessel" as used in the proviso to section 47 must, of course, be construed as having the same meaning as the words "a vessel" in the earlier part of the section. The words there used are quite general, and, taking section 47 alone, there is nothing in the section which makes it necessary to construe the words "a vessel" as meaning a *laden vessel* and a laden vessel only. It is to be observed that section 46 applies to all ports subject to the Act, whereas the proviso to section 47 applies only to Madras ports; and the canon of construction *generalia specialibus non derogant* may therefore be said to be applicable. As regards any inconsistency between section 46 and the proviso to section 47 involved in the construction of the sections which, as I have suggested above, may reasonably be adopted, the rule is that "the later of two passages in a statute being the expression of the later intention, should prevail over the earlier." See *Maxwell on the Interpretation of Statutes*, Ed. 3, p. 216.

4. As, in my opinion, section 47 may fairly be construed as I have suggested, I do not think any amendment of the law is *necessary*. But when a convenient opportunity arises, I think the proviso to section 47 should be re-enacted as a substantive section instead of as a proviso to section 47.

(Signed) C. ARNOLD WHITE,
Advocate-General.

No. 10.

Forwarded with reference to the Order of Government, No. 1004, Marine, dated 2nd December 1898.

4th January 1899.

(Signed) ERNEST BARCLAY,
Government Solicitor.

ORDER—No. 96, Marine, dated 31st January 1899.

Communicated to the Presidency Port Officer for information and guidance with reference to G.O., No. 1004, Marine, dated 2nd December 1898.

2. The correspondence will be forwarded to the Government of India in connection with the Bill now before the Governor-General's Council in view to the question of re-enacting the *proviso* to section 47 as a separate section of the Indian Ports Act.

[Here enter No. 97, Marine, dated 31st January 1899.]

(True Extract.)

(Signed) W. B. DEWINTON,
Secretary to Government.

To the Presidency Port Officer.
" Government Solicitor.

Exd. T. K. Narayana Aiyangar.

Read the following:—

*put with
Govt. opinion*

From the Government Solicitor, Madras, No. 10, dated 4th
January 1899.

Interpretation of Indian Ports Act.

Circulated to

His Excellency the Governor.

ORDER.

No. 96 Mar 23/1.99

38

A.H.
18.1.99

Communicated to the President
Port officer for information and
guidance with reference to G.O. 1004
Marine, dated 2nd December 1898.

2. The correspondence will be
forwarded to the Government of
India, in view to the question of re-
enacting the proviso to Section 47 as
a separate Section of the Indian
Ports Act in connection with the Bill
now before the Governor General's
Council.

Mag. S.

The Presy. Port. officer.
" Govt. Solicitor.

26/1/99

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(H.E. No. 97 Mar. 31st January 1899)

To

The Secretary to the Govt. of India,
Finance & Commerce Dept.

Sir,

In continuation of m

A.H.

Marine (1899) Department.

CURRENT No. 35

Order

From The Govt Solicitor

No. 10

Dated 4-1-99

Received 6-1-99

Enclosures

Spare copies

SUBJECT.

Informing that the vessel in question was not properly charged the with Port dues at Tranquebar.

ter No 99, Marine, dated 7th February 1899, I am directed to forward the accompanying copies of the Proceedings of the Government embodying correspondence on the subject of the interpretation of Sections 46 and 47 of Act X of 1889, the Indian Ports Act, and to suggest that, as recommended by the Advocate General, proviso to Section 47 may, when an opportunity offers, be reenacted as a separate Section, in order to make it clear that the Concession allowed by the proviso to vessels entering and leaving ports in the Madras Presidency, applies to all vessels whether laden or unladen.

I have &c.

[Signature]
M. C. S.

With reference to the opinion of the Advocate General, it is submitted that the presumption is that Section 47 does refer to laden vessels only. A vessel must either be laden or unladen. If it is unladen it is assessed under Section 46 at the fourth rate, and if it is laden it is assessed under Section 47 at a different rate - viz. one half. The mistake is in making the proviso a part of Section 47. It should be a separate Section, as proposed by the Advocate General.

[Signature]
M. C. S.

S.

S.

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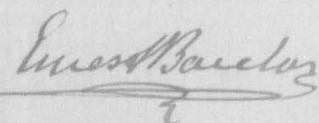
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"prevail over the earlier" See Maxwell on the interpretation of Statutes ed 3 p 216.

4. As, in my opinion, Section 47 may fairly be construed as I have suggested, I do not think any amendment of the law is necessary. But when a convenient opportunity arises, I think the proviso to Section 47 should be re-enacted as a substantive Section instead of as a proviso to Section 47.

C. Arnold White
Advocate General.

Madras,
4th January 1899.

True Copy



Government Solicitor.

(1899) Department

From

Ernest Barclay
Government Solicitor
Madras

To

The Secretary to Government
Marine Department
Madras

No 10.

Dated 4 January 1899
Recd

28

Forwarded with reference to
the Order of Government No 1007,
dated 2 December 1898.

Marine - Ernest Barclay
Government Solicitor