M.R.O. 14—13,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1300 Press Mis.

367, 368

Dated 22 — 7 — 1865

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
22nd July 1864.

No. 367. Read the following Proceedings of the Madras Government in the Judicial Department :—

Communicating the opinion of the Advocate General, on the points raised by the Deputy Collector, Mr. Underwood, between the shipper of goods and the Master of a Vessel. } (Here enter 14th July 1864, No. 1,061.)

No. 368. ORDER THEREON, 22nd July 1864, No. 1,300.

Separate Revenue, No. 54.
Customs.

Ordered to be communicated to the Board of Revenue for their information.

(True Extract.)

(Signed) C. G. MASTER,
Deputy Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

Proceedings of the Madras Government, Judicial Department,
14th July 1864.

Read the following papers :—

No. 171. From J. SILVER, Esq., Collector and Magistrate of Tinnevelly; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Tenkasy, 25th June 1864, No. 246.

I have the honor to forward copy of a letter to my address from my Deputy Collector at Tuticorin, and I request you will do me the favor to obtain for me the opinion of the Advocate General on the points raised in the concluding paragraphs of Mr. Underwood's letter.

2. I do not think that in case of a dispute, such as that described by Mr. Underwood, between the shipper of goods and the Master of a vessel, Mr. Underwood could in his capacity of Magistrate detain the Master of the vessel, for the case is one that appears to me to be of the nature of a Civil action, adjudicable by a Civil Court; and as regards the second point, I consider that Mr. Underwood, in his capacity of Deputy Collector in charge of Sea Customs, has only to see that all Government demands are discharged: and if so, he cannot refuse Port Clearance. I should be glad, however, to have an authoritative opinion on the subject.

From W. E. UNDERWOOD, Esq., Deputy Collector and Magistrate, Tuticorin; to J. SILVER, Esq., Collector and Magistrate of Tinnevelly, dated Tuticorin, 15th June 1864, No. 97.

I have the honor to bring the following facts to your notice, and shall be obliged if you will give me your opinion how cases of the kind mentioned should be dealt with, and the law on the point.

2. The merchants in this place have established it as a rule of the port, which is accepted by Masters of vessels, and generally entered in their Charter Party, that vessels loading at the port with cotton, &c., the measurement of the cubic contents of the bale or article is to be from the shore; accordingly when a merchant has any cotton to ship, the Master of the vessel and the merchant, or the Agents appointed by them, attend at the screws from whence the shipment is to take place, and each party taking five bales, the average cubic contents of the 10 bales measured is struck, and an agreement arrived at between the Master and Agent at what measurement the bales are to be taken.

3. I think you will understand the explanation better thus:—In every 100 bales to be shipped, the Master and Agent measure 5 bales each, the average measurement of which being struck the shipment of the 100 is made on the measurement arrived at.

4. The 100 bales are then forwarded on board with a Boat Note from the merchant, on which is calculated the measurement as agreed to by the parties.

5. The Boat Notes are received by the officer on board taking in the cotton, the bales tallied on board, and the Boat Note returned to the Agent with the remarks, if any, by the officer on board.

6. The Bills of Lading being made out by the Agent are forwarded with the Boat Notes, as vouchers to the Master of the vessel for signature. The Master should then sign the Bill of Lading, and keep the Boat Notes.

7. Some Masters of vessels, after having agreed to the measurement struck on shore, on receiving the bales on board re-measure them, and declare the measurement to be in excess of that which they agreed to accept them at, and refuse to sign the Bills of Lading unless the excess measurement is agreed to.

8. The measurement on board of course is *ex parte*, there being no person present to look after the interests of the merchant.

9. It is, however, an acknowledged fact that bales will necessarily measure a little more on board than they do on shore, but Masters of vessels make the measurement so much more that the difference in tonnage that would be required to be paid is often very large.

10. The Master of the vessel has stowed the bales away, endeavouring to force the Agent to give him the excess measurement, and on his refusing declines to sign the Bill of Lading, or give him back the Boat Note.

11. The Agent here has acted in good faith. The Master and merchant have agreed to take the bales at a certain measurement. The Agent trusting in the Master, ships his bales. The Master *ex parte* on board re-measures them, declares the measurement to be greatly in excess, but still receives and stows them away, refuses to sign the Bills of Lading, or give up the Boat Notes.

12. The Master in thus acting has received valuable property on board for which he gives no receipt.

13. Further, it must be remembered that the Bill of Lading is negotiable, and the keeping this back of course might greatly hamper the merchant in his business transactions. Boat Notes are not negotiable.

14. The Master has the merchant altogether in his power once he receives the goods on board. If asked to restore the goods, the Master simply replies they are stowed away at the bottom of the vessel. The merchant having neither Bill of Lading or Boat Note, has no guarantee for the goods shipped by himself. Surely the Master has no right to decide on board what measurement he will take the goods at, after having consented on shore to take them at a certain measurement; and if on board he is of a different opinion as to the measurement of the goods, he has no right to stow the goods away, and insist on his measurement without the consent of the merchant.

15. This is a subject of great importance to the merchants here, and I fancy there must be protection for acts of this nature, and desire to know whether, in my position of Magistrate, on a complaint being made, I would be justified in detaining the Captain until he gave an acknowledgment of [illegible] kind as having the goods on board, leaving alone the actual freight to be paid on the dispute of the measurement to be adjusted between the Agents and ship-owners at Home; or whether, in my capacity as Deputy Collector in charge of Sea Customs, I would be justified in stopping the Port Clearance of the vessel, until the parties have come to a settlement between themselves, or by arbitration?

16. The Master of the vessel, I am of opinion, could be prevented from sailing until he had given an acknowledgment of some kind for the goods received on board by him. It is an unjustifiable act for the Master to keep the Boat Notes; vouchers which have been merely handed over to him to compare with the Bill of Lading he is required to sign, and to refuse either to sign the Bill, or give back the Boat Notes.

(True Copy.)

(Signed) J. SILVER,
Collector and Magistrate.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
5th July 1864.

(Signed) J. D. SIM,
Secretary to Government.

No. 172. From J. R. BOYSON, Esq., Government Solicitor, Madras; to J. D. SIM, Esq., Acting Chief Secretary to Government, Madras, dated 8th July 1864, No. 387.

I have the honor to acknowledge the Order of Government noted in the margin with its enclosure, relative to the authority of a Magistrate to detain the Master of a vessel, and of a Collector of Sea Customs to stop Port clearance of such vessel, pending settlement of differences between the Master and the shipper, regarding measurement of packages received on board.

Dated 5th July 1864, and made on letter from Collector and Magistrate of Tinnevelly to Government of the 25th June 1864, No. 246.

Proceedings of the Madras Government, Judicial Department,
14th *July* 1864.

2. I submitted the matter for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosure above noted.

COPY—OPINION.

I am of opinion that the Collector's view is right. Reprehensible and unjustifiable as the Master's conduct may possibly be, he and his owners are responsible civilly to the parties injured, and it is not for the Magistracy to interfere on the ground of the Master's conduct being criminal. The greatest injury might be done to the owners and even to the shippers by the detention of the ship until the case could be heard.

2. The Deputy Collector has no power to refuse a Port clearance on such grounds as he suggests.

(Signed) J. B. NORTON,
Advocate General.

7th July 1864.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 173. ORDER THEREON, 14th July 1864, No. 1061.

The Advocate General's Opinion will be communicated to the Magistrate of Tinnevelly.

(True Extract.)

Secretary to Government.

To the Magistrate of Tinnevelly.
,, Revenue Department.

Ed. J. Tolloch.

Rec'd 1864. Oct.
Pro: of Govt for Public
Wks. 1869

Proceedings of the
Madras Govt &c.
the Ind. L. Dept.

Dated 14th July
Received 19th " 1864
No. 1061

Communicating the
opinion of the Board
of Revenue on the points
raised by the Collector
of Godavery between the Ship
per of Goods and the Master
of Vessels

No 1300. 22d July

William Rider

1300 No. 1300.

Ordered to be com-
municated to the Board
of Revenue for their opin-
ion.

Fort St. George
22d July 1864

Board of Rev Recd 25th July

No 367 & 368.