M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 570 Press ~~Mis.~~

296.297

Dated 23-3-~~19~~1864

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 23rd March 1864.

No. 296. Read the following Proceedings of the Board of Revenue, dated 11th March 1864, No. 1,519 :—

Read the following letter from the Acting Collector of Sea Customs, dated Madras, 2nd March 1864, No. 229.

1. I have the honor to acknowledge Proceedings of the Board, dated February 24th 1864, No. 1,216, forwarding for report a letter from Messrs. Walker & Co., on the subject of Port Clearance having been granted to the "Canning" before delivery of all her cargo.

2. On the 5th February Messrs. Arbuthnot & Co. applied to clear the "Canning," giving the usual guarantee to pay all charges against the ship for duties, &c.; they also stated they would make arrangements with Consignees of some cargo, chiefly Iron still on Board, which they wished to retain as ballast, and promised to land on the ship's return from Pondicherry.

3. Port Clearance was therefore granted, as usual in such cases, under the provisions of paragraph 4, Board's Proceedings of June 2nd, 1863, No. 3,243. That Port Clearance cannot be refused, though a portion of the cargo has not been delivered or accounted for to the Consignees

4. This report would have been sent in at once ; but I delayed it till receipt of the Board's Proceedings of February 22nd 1864, No. 1,150, which only reached me to-day.

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1. Ordered to be submitted to Government, with reference to their Order, dated 22nd February 1864, No. 317, Revenue Department.

2. The question of the power possessed by the Collector of Sea Customs to refuse Port Clearance on the application of private parties has been repeatedly raised ; and the Board have in their Orders been guided by the Opinion of the late Advocate General Mr. George Norton, dated 30th January 1840, of which copy is annexed, and which is quite in consonance with the Board's views on the matter.

3. To adopt any other rule would be to place the Collector in a most anomalous and untenable position, and would lead to endless confusion.

4. Act VI of 1863 has made no change in the law in this respect ; and the Board consider that Mr. Blair is in no respect to blame for the course he adopted in the present instance.

5. He will however be requested to establish a notice board in his office, on which the fact of applications for Port Clearance shall be notified, as soon as each application is received, for the information of all concerned.

6. Owners of cargo still on board will then have every facility for adopting legal measures to restrain the Commanders of vessels from sailing without reasonable excuse until the goods are landed.

OPINION.

1. I am still decidedly of the same opinion that no authority whatever exists for the Collector of Sea Customs stopping the Port Clearance of any vessel on account of any portion of the cargo not having been, according to his judgment, duly delivered or accounted for to the Consignee. The object and language of the Regulations do not appear to import the delegation of any such authority ; nor am I aware of any case of the actual exercise of such authority ; for I do not consider any one of the instances referred to as evincing such exercise of it. I do not conceive that the proposed Regulation (No. 4) would give any such authority.

2. The case of the denial of a Port Clearance to a Captain bound by law to receive a Post Office packet from Government, and refusing to receive it, rested on its own circumstances ; and was in my opinion within the purview of the Port Regulations. If the Collector had the authority he seeks as expedient, it appears to me that it would be necessary that he should have exclusive

jurisdiction to try and decide the rights of the parties demanding and of those neglecting or refusing delivery; he would have to consider the legality of claims to stop in transit, and of excuses as from loss, and the facts and the causes of such alleged losses, and other like legal questions, and probably legal claims of intervening parties occasionally. In short it appears to me it would be necessary to make him a Judge without a Court or any law to go by. I look upon the accounting for cargo, as far as that accounting affects the right to a Port Clearance, to be an accounting between the Captain (or owner) and Government in respect of duties or obligations owing from the former to the latter.

30th January 1840. (Signed) G. NORTON, *Advocate General.*

No. 297. ORDER THEREON, 23rd March 1864, No. 510.

Messrs. Walker & Co. will be informed that as the Agents of the vessel guaranteed payment of all claims of Government for Customs duties, &c., the Acting Collector acted rightly in not refusing a Port Clearance.

(True Extract.)

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

To Messrs. Walker & Co.
To the Board of Revenue.

Exd. S. T. Augustin.

No. 1,519.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th March 1864.

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6. Owners of cargo still on board will then have every facility for adopting legal measures to restrain the Commanders of vessels from sailing without reasonable excuse until the goods are landed.

(A true Copy and Extract.)

Secretary.

To J. D. Sim, Esq., Secretary to Government, R. D.

Copy to J. H. Blair, Esq., Acting Collector of Sea Customs, Madras.

Exd, J, Wright.

OPINION.

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30th January 1840. (Signed) G. NORTON, Advocate General.

Rec 22 February/61 No. 308-309.

Regd 1864. Department.
Res: of Govt for March

No. 707.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 11th March 1864.
Dep 17 do
Rec 18th

No. 1,519.

Submitting with remarks report of the Acting Collector of Sea Customs on letter from Messrs Walker and Co. regarding the grant of Port Clearance to the "Canning" before delivery of all her cargo.

No 510-23 Bricks
Bth au Order