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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. / ~~B.P. No.~~	1713	Press / Mis.
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Not to be folded or roughly handled

MARINE DEPARTMENT.

4th July 1876. No. 245.

MERCHANT SHIPPING ACT.

Read the following letter from A. O. HUME, Esq., C.B., Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce (Commerce and Trade), to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Simla, 15th June 1876, No. 361 :—

I am directed to forward, for the information and guidance of the Customs Officers under the Government of Madras, the accompanying copy of a correspondence* having reference to the Merchant Shipping Act, 1875.

* Letter from Colonial Secretary, Colombo, No. 4, dated 4th February 1876, and enclosures.
Letter from Solicitor to Government, No. 251, dated 22nd March 1876, and enclosure.

2. I am at the same time to point out, with reference to the doubt raised in the last sentence of the Officiating Advocate-General's opinion, dated 20th March 1876, as to whether a penalty stated in pounds sterling is leviable in India where pounds sterling are not a legal tender, that the Advocate-General appears to have overlooked the provisions of the Statute† 37 and 38 Vic., Cap. 27, which lay down a general rule for all cases of this description, and are clearly applicable to fines as well as to other forms of punishment. The Statute, as will be seen from the definition of the term "colony" given in Section 2, came into force in British India on the 30th June 1874.

† *Vide Gazette of India*, dated 16th January 1875, pp. 35 and 36.

From the Hon. A. N. BIRCH, Colonial Secretary, Ceylon, to the Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce, dated Colombo, 4th February 1876, No. 4.

I am directed by the Governor of Ceylon to transmit, for submission to the Governor-General and Viceroy of India in Council, the enclosed copy of a circular despatch received from the Secretary of State for the Colonies, having reference to the Merchant Shipping Act, 1875, together with a copy of a letter from the Principal Collector of Customs in this Colony.

It will be the duty of this Government in future to cause an immediate report to be sent to the Board of Trade of the arrival in any of our ports of British vessels carrying grain or other cargoes specified in the Act in contravention of the Act and in such a manner as to endanger human life.

And as it would appear that vessels not unfrequently arrive from Chittagong with cargoes of grain in bulk which are not secured from shifting by boards or bulkheads, and as it is believed that these shipments are so made with the cognizance of the Indian Customs Authorities, I am directed to request you to have the goodness to bring this letter, and its enclosures, under the consideration of the Governor-General and Viceroy for any action he may see fit to adopt in view of the duty imposed on this Government by the Secretary of State.

From the EARL OF CARNARVON, Secretary of State for the Colonies, to the Officer administering the Government of Ceylon, dated London, 22nd October 1875, Circular No. 2.

11th August 1875.

With reference to my predecessor's circular despatch of the 3rd December 1873, I transmit, herewith, for your information and for general publication in the Colony under your Government, a copy of a letter from the Board of Trade, enclosing a copy of "The Merchant Shipping Act, 1875."

2. I request that, in accordance with the desire expressed by the Board of Trade, you will furnish me with an immediate report of any case in which grain, &c., is shipped in British vessels in contravention of the Act and in such a manner as to endanger human life.

3. I shall be obliged if you will favor me with any observations which may occur to you with reference to the application of the several provisions of this Act to the Colony under your Government.

From T. GRAY, Esq., Secretary to the Board of Trade, to the Under Secretary of State for the Colonies, dated London, 11th August 1875.

I am directed by the Board of Trade to enclose a copy of "The Merchant Shipping Act, 1875," and to request your attention to the 3rd Section of this Act relating to the carriage of grain and other seeds or nuts in British ships.

I am to suggest that a copy of this Act should be sent to the Governors of all Colonies from which grain is shipped.

I am further to suggest that instructions may be given to cause an immediate report to be sent to the Board of Trade of any case in which grain, &c., is shipped in British vessels in contravention of the Act and in such a manner as to endanger human life.

From the Hon. W. D. WRIGHT, Principal Collector of Customs, to the Honorable the Colonial Secretary, Ceylon, dated Colombo, 18th January 1876, No. 8.

With reference to your letter, No. 11, of the 11th instant, referring for my report a circular despatch from the Secretary of State, with a copy of "The Merchant Shipping Act, 1875," I have the honor to state that it is not the practice in this Island to ship cargoes of grain in bulk, but vessels from Chittagong bring such cargoes every season, *i.e.*, November to May, to the port of Galle. The Collector there informs me that two vessels, *viz.*, the *Gunni Osman* and *Malacal Bahar*, which left Chittagong on the 3rd November and 11th December, respectively, brought cargoes of grain in bulk, and though they were not secured from shifting by boards, bulkheads or otherwise, he is not prepared to state that human life was thereby endangered. He also remarks that, as the vessels are filled up to the hatchways, there does not seem to be much danger from the cargo shifting.

2. I desire to be informed whether a report is to be sent in of all the Chittagong vessels as they arrive. If so, I would suggest that some intimation of the course that it is intended to adopt should be given to the Indian Government, for it is my impression that the shipments are made with the cognizance of the Customs, an officer being on board during the time of loading.

3. There is also another class of vessels, called a *dhony*, which during the north-east monsoon frequently comes from ports on the Continent to this Island laden with coral stones in bulk. This species of cargo is not provided for in the Act. In the course of many years I know of only one accident, and that happened in the inner harbour of this port (Colombo), when the *dhony* drifted against another, immediately sprung a leak and sunk.

4. I know of no objection to the provisions of this Act being made applicable to ships registered at, and trading with, ports in this island.

From C. SANDERSON, Esq., Solicitor to the Government of India, to the Under Secretary to the Government of India, Financial Department, dated Fort William, 22nd March 1876, No. 251.

With reference to your letter, No. 1388, of the 8th instant, I have the honor to forward you, herewith, a copy of the opinion of the Officiating Advocate-General upon the question therein referred to.

2. The letter from the Colonial Secretary, Colombo, No. 4, dated the 4th February 1876, with enclosures, which accompanied your letter, are, as requested, herewith returned.

Opinion by G. C. PAUL, Esq., Officiating Advocate-General, dated 20th March 1876.

By the 10th Section of the Statute 38 and 39 Vic., c. 88, it is provided as follows: This Act may be cited as the Merchant Shipping Act, 1875, and shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and the said Acts and this Act may be cited collectively as the Merchant Shipping Acts 1854 to 1875.

2. The second Part of the Merchant Shipping Act, 1854, applies to the whole of Her Majesty's dominions, but Section 108 contained in that Part provides that nothing in that Act shall repeal or affect an Act passed in the Session of Parliament holden in the 3rd and 4th Vic., c. 56, entitled an Act further to regulate the trade of ships built and trading within the limits of the East India Company's Charter.

3. Under the provisions of the last-mentioned Statute, Act X of 1841 was passed by the Council of the Governor-General, and a proclamation was issued which refers to all ships built or to be built within the limits of the Charter of the East India Company being owned by Her Majesty's subjects as therein described. Those ships, therefore, for the registration of which provision is made by Act X of 1841, amended by Act XI of 1850, are not within the scope of the second Part of the Merchant Shipping Act, 1854, so long as they are confined to the limits of the East India Company's Charter. Ships other than those for the registration of which provision is made by Act X of 1841, as amended by Act XI of 1850, owned by British subjects if registered in India, must be registered under the Merchant Shipping Act, 1854.

4. With reference to the description of ship which is to be considered a British ship, provision is made in Section 18 of the Merchant Shipping Act, 1854. Mr. Ritchie, former Advocate-General, in an opinion dated 6th March 1857, advised that natives of all classes born within territories which at the time of their birth were, and have since continued to be, in the possession and under the Government of the East India Company, and that natives whose fathers were so born, although they themselves have been born out of those territories, are to be deemed natural-born subjects, and are entitled to own and to be registered as owners of British ships under the Merchant Shipping Act, 1854, subject to the qualification contained in Section 18 as to those who have taken the oath of allegiance to any Foreign State. This opinion has been followed in practice, and ships owned by natives of India falling within the above definition of British subjects have been registered as British ships under the Merchant Shipping Act, 1854, in ports in India. It will be observed that under the provisions of the Merchant Shipping Act, 1854, a foreign-built ship owned by persons who owe allegiance to the British Crown, and are subject to British law, may be a British ship.

5. Under the above circumstances, I am of opinion that 38 and 39 Vic., c. 88, applies to British Indian ships registered under the Merchant Shipping Act, 1854, and does not apply to British Indian ships registered, or which may be registered under Act X of 1841, as amended by Act XI of 1850, so long as these ships are within the limits of the Company's Charter. Being of opinion that the above Statute applies generally as advised, I would point out that, with regard to certain of its provisions, further machinery will have to be provided by the Board of Trade; and with regard to the punishment of offences under it, I do not think that any competent authority in India can take cognizance of such offences by enforcing penalties, the measure of which is in pounds.

ORDER.—Communicated to the Revenue Department, to all Collectors of Coast Districts, and to the Master Attendant, Madras.

(True Extract.)

W. Lavernh Col
Offg Under Secy Dept
pr Chief Secretary.

To the Revenue Department
,, all Collectors of Coast Districts.
,, the Master Attendant, Madras.

Exd. J. Wright.

No. 2898
Revenue 1875 Depart

Govt. of [1876] Madras.

MARINE.

To

The REVENUE DEPARTMENT,

&c., &c., &c.

Dated July, 4th.

Issued — 13

Recd. 17 July

G.O., 4th July 1876, No. 245.

JUNE.
Nos. 4-5.

Dr. Mrs

Merchant Shipping Act.—Letter from Government of India forwarding correspondence regarding the Merchant Shipping Act of 1875, communicated to the Departments and Officers concerned.

No 1713
Communicated to the Bd. of Rev.

21 July 1876

7 Folio Board of Rev. Dec 26 July