Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 3481

DATED 8th July

[Despatch Abstract.]

Comm[r] to the Board of Revenue Pro:
Marine Receipt: comm[s] with remarks to certain
officers the opinion of the Advocate General
dealing with the law relating to the registration
of vessels.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	8249/97 1781 24-7-97			2nd	1st	R&J	26/7/97

Government {1897} of Madras.

MARINE.

SEC. GOVT. MADRAS. 15 JUL 97 REV. DEPT.

8M/4/7/97

Recd. } 1897. *Enclosures*

Regd. *Spare copies*

G.O., No. 532, 14th June 1897.

G.O. mis No 3481 d/8th July 97.

Communicated to the Board of Revenue with reference to para 5 of the G.O.

JUNE.

8M/7/7/97

air. 7/7/97 To the Board of Revenue (Sep: Revenue) Despd 14-7-97.

Registration of Vessels

Stating that it is not considered desirable to restrict the freedom of action of boat owners in the matter of licensed cargo boats leaving the port and trading to other ports and that shippers at Tuticorin and elsewhere must offer sufficient inducement to owners to keep their boats within port limits, and communicating with remarks to certain officers and to the Legislative Department of the Government of India, the opinion of the Advocate-General dealing with the law relating to the —.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following papers:—

From Commander H. A. STREET, R.I.M., Presidency Port Officer, Madras, to the Secretary to Government, Marine Department, dated 1st February 1897, No. 646/34 G.

In reply to Marine Department memo. No. 49 E., dated 26th January 1897, I have the honour to state that port dues would, in the usual course, be levied on unregistered vessels also, provided such a vessel is of 15 tons burthen or upwards. Vessels of a less burthen are not liable to port dues (see Part II of the schedule to the Indian Ports Act X of 1889). Where the tonnage is not known, it would be open to the Conservator to measure the vessel and determine her tonnage under the authority vested in him by section 41 (2) of the Act above cited.

From the Government Solicitor, Madras, dated 12th February 1897, No. 90.
From the Government Solicitor, Madras, dated 10th March 1897, No. 145.
From the Presidency Port Officer, Madras, dated 18th March 1897, No. 646/91 G.
From the Government Solicitor, Madras, dated 22nd April 1897, No. 258.

Endorsement by the Government Solicitor, Madras, dated 14th May 1894, No. 304.

Forwarded with enclosures, with reference to G.O., No. 72, Marine, dated 26th January 1897.

ENCLOSURE.

OPINION.

The answers to the two questions referred for opinion depend chiefly upon what is to be regarded as the law now in force in British India relating to registration of ships. The licensed boats referred to are, I presume, owned by Indian British subjects and fall within the definition of the word "ship," namely, "every description of vessel used in navigation not propelled by oars" (*vide* 57 and 58 Vict., Ch. 60, the Merchant Shipping Act, 1894, section 742, and India Act V of 1883, section 3). I understand from the Presidency Port Officer's demi-official to me, dated 14th April 1897, that the average tonnage of these licensed boats is 21 tons.

2. I am of opinion that part I of the said Merchant Shipping Act, 1894, which came into operation on the 1st of January 1895 (*vide* section 748) is in full force in British India and applies to the registration of ships, though the same be built and trading within the limits of the East India Company's charter only and be owned by Her Majesty's subjects whether European or Indian. Section 1 of the Statute which lays down the qualification for owning British ships refers in clause (*a*) to natural born British subjects, a phrase which, no doubt, is applicable as much to Indian as to European British subjects (*vide* Mayne's criminal law of India, page 268). Section 2 of the Statute provides that every British ship shall, subject to the two exceptions specified in section 3, be registered under that Statute, and clause (*e*) of section 745 only provides that ships registered under the English Statutes therein referred to (and not under any Indian enactment) shall be deemed to have been registered under the Merchant Shipping Act, 1894. So far as British India is concerned, the exception will be applicable only to ships not exceeding 15 tons burthen employed solely in navigation on the rivers or coasts of British India.

3. The Statute does not enforce registration of British ships by providing directly that non-registration shall amount to an offence, but seeks to enforce registration by providing that a British ship required by the Statute to be registered shall not be recognised as a British ship unless registered under the Statute, and by further providing that the same may be detained until the Master of the ship, if so required, produces the certificate of the registry of the ship. The consequences of a ship owned by a British subject not being recognised as a British ship are such as would subject the owner and the Master of such ship to serious inconveniences and in some cases to criminal prosecution. The following are some of the chief disabilities and penalties to which a British ship is clearly subject for want of registration:—

(*a*) Section 72 provides that a British ship which for want of registration is not recognised as a British ship shall not be entitled to any benefits, privileges, advantages or protection usually enjoyed by British ships, nor to use the British flag, or assume the British National character, but so far as regards the payment of dues, the liability to fines and forfeitures, and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship. Here it will be noted that she is prohibited from using the British flag or assuming the British National character. A reference to section 74 will show that by reason of liability, the Master of the ship will be liable to a fine not exceeding £100, as he cannot, by reason of the prohibition contained in section 72, hoist the proper national flag on a signal being made to her by one of Her Majesty's ships, and if she be of 50 tons gross tonnage or upwards, on entering or leaving any British port. Section 62 (1) of the Indian Ports Act No. X of 1889 also provides that if any vessel belonging to any of Her Majesty's subjects hoists within the limits of any port, any flag or colours, the use whereof is prohibited by the Merchant Shipping Act, the Master of the vessel shall be liable to a fine of Rs. 50 in addition to any other penalty that may be recoverable in respect of such offence. The important provisions of section 74 of the Merchant Shipping Act, 1894, relating to the hoisting of proper national colours did not exist in the Merchant Shipping Act, 1854, but were for the first time introduced in the Merchant Shipping Law by Statute 52 and 53 Vict., Ch. 73.

(*b*) The provisions in regard to sale and mortgages of British ships, extending from sections 24 to 46 (both inclusive) are applicable only to registered ships. It may be mentioned here that section 14 of the Indian Merchant Shipping Bill now before the Viceregal Legislative Council, proposes to repeal these sections in respect of native coasting British ships registered in British India.

(*c*) Part VIII (sections 502 to 509 both inclusive) of the Merchant Shipping Act, 1894, relating to the liability of ship-owners is applicable to the whole of Her Majesty's Dominions including British India. The limited liability of ship-owners under sections 502 and 503 in certain cases of loss of, or damage to goods, and in certain other cases of loss of life, injury or damage cannot enure to the benefit of a British ship which is not registered under the Statute (*vide* section 508).

4. The absolute power of detention of a British ship until the production of the certificate of registry which can of course be obtained only after registration was apparently introduced for the first time in the Merchant Shipping Act, 1854—*vide* section 2 (3). The corresponding provision in section 19 of the Merchant Shipping Act, 1854, was only to the effect that no officer of customs shall grant a clearance or transire to a British ship for the purpose of enabling her to proceed to sea *as a British ship*, unless the Master of such ship, upon being required, produces the certificate of registry, and that if such ship proceeds to sea *as a British ship* without a clearance or transire, such officer may detain her until such certificate is produced. It will be observed that the power of detention under section 19 of the Merchant Shipping Act, 1854, can be exercised only if a ship attempts to proceed to sea *as a British ship* without a clearance or transire; whereas under section 2 (3) of the Merchant Shipping Act, 1894, any ship required by the Act to be registered may be detained until the production of the certificate of the registry without any reference to her attempting to proceed to sea *as a British ship*. This power can be effectually exercised to enforce registration of any British ship which is not exempted under section 3 from registration. The procedure for detention of a ship, the officer by whom she may be detained, and the penalty for proceeding to sea without release from detention are set forth in section 692 of the Statute. There was no provision corresponding to this section in the Merchant Shipping Act, 1854, but it was apparently for the first time enacted by section 34 of the Merchant Shipping Acts Amendment Act, 1876 (Statute 39 and 40 Vict., Ch. 80).

5. For the foregoing reasons I am of opinion that the registration of the native boats in question except such as may fall under clause (1) of section 3 of the Merchant Shipping Act, 1894, can be enforced in the manner indicated above. Such of the boats as fall within the exception will have to be recognized *as British ships* though not registered.

6. The question now to be considered is what is the effect of the Merchant Shipping Act, 1894, upon the India Acts relating to the registration of ships, namely, Act X of 1841, as amended by Act XI of 1850 and subsequent Acts and Act XIX of 1838. The last-mentioned Act need

not to be considered here. That Act relates only to coasting vessels belonging to Her Majesty's subjects residing within the Presidency of Bombay, and registration under that Act is compulsory and enforced by the imposition of a fine. Under Act X of 1841 and the subsequent enactments amending the same, registration of ships built and trading within the limits of the East India Company's charter, namely, all places and seas eastward of the Cape of Good Hope to the Straits of Magellan is only optional, and compulsory only in the sense that if not so registered it will not be recognized *as a British ship*. Act X of 1841 was passed under the powers delegated to the Governor-General in Council by sections 3 and 4 of Statute 3 and 4, Vict., Ch. 56. The operation of the said Statute was saved by section 108 of the Merchant Shipping Act, 1854 (Statute 17 and 18 Vict., Ch. 104). By virtue of this saving clause in the Merchant Shipping Act, 1854, it was supposed, rightly or wrongly, that registration of ships built and trading within the limits of the East India Company's charter was regulated only by Acts X of 1841 and XI of 1850, and not by the Merchant Shipping Act, 1854, part II, of which relating to the registration of British ships was applicable to the whole of Her Majesty's dominions (*vide* note 1, page 76 and note 6, page 94 of Maclachlan's Treatise on the Law of Merchant Shipping, 4th edition, 1892), and page 109 of the abstract of proceedings of the Viceregal Legislative Council for 1892). Sections I to VII of Statute 3 and 4 Vict., Ch. 56, were repealed by Statute Law Revision (No. 2) Act, 1874, and the preamble of the said Statute was repealed by the Statute Law Revision (No. 2) Act, 1888, but the India Acts passed under that Statute are in effect saved by section 1 of the said two Statute Law Revision Acts. There is no saving clause in the Merchant Shipping Act, 1894, corresponding to section 108 of the Merchant Shipping Act, 1854. Section 2 of the former statute expressly declares that every British ship which is defined in section 1 shall be registered under *that Statute* unless exempted from registry, and that if it be not registered under *that Statute*, it shall not be recognised *as a British ship*. It seems, therefore, impossible *to recognise as a British ship* even in a portion only of Her Majesty's dominions, namely, the British Indian possession, a ship owned by a British subject which is not registered under the Merchant Shipping Act, 1894, though she may have been registered under Act X of 1841 or Act XI of 1850, and to confer upon her the benefits, privileges, advantages or protection usually enjoyed by British ships, or to allow her to use the British flag, or assume the national character even within the limits of the charter of the East India Company, or to exonerate her from the consequences and penalties prescribed under the Merchant Shipping Act, 1894, in the case of a British ship not registered under that Statute or under any of the previous *English* Merchant Shipping Statutes—*vide* section 745 (*d*) clause (*e*). Having regard to section 51 of Statute 3 and 4 Will IV, Ch. 85, there can be no doubt that Acts passed by the Indian Legislature are completely subordinate to and controlled by Statutes of the British Parliament. India Acts X of 1841 and XI of 1850 in so far as they relate to ships owned by Native princes or States or the subjects of such princes or States are altogether outside the scope of the Merchant Shipping Act, 1894, and are therefore in no way affected thereby. But in so far as they relate to ships owned by British subjects, they are controlled by the Merchant Shipping Act, 1894. I do not say that the said Acts in so far as they relate to ships built and trading within the limits of the charter of the East India Company and owned by British subjects for whom the Governor-General in Council has power to legislate, are repealed by implication by the Merchant Shipping Act, 1894; for the India Acts are not necessarily inconsistent with the Merchant Shipping Act, 1894. The India Acts and the Merchant Shipping Act, 1894, can, in law, stand together, and a ship built in India may be registered under both, though there may be nothing to be gained by registering her under the India Acts. But registration under the India Acts cannot exempt a ship from registration under the English Statute. In short registration under the India Acts is only optional, but registration under the Merchant Shipping Act, 1894, is practically compulsory. This is evidently the view taken in the Indian Merchant Shipping Bill which has been pending in the Viceregal Legislative Council since 1892 (*vide* sections 9 and 10 of the Indian Merchant Shipping Bill published in the supplement to the *Fort St. George Gazette* of the 3rd of March 1896). That Bill also provides that ships registered under the India Acts shall cease to be recognized *as British ships* unless re-registered under the proposed Act within one year after the date on which the chapter relating to registration of ships comes into force (*vide* section 8 of the Indian Merchant Shipping Bill).

7. I should here point out that, until the said Indian Merchant Shipping Bill is passed into law, and thereby several of the provisions of the Merchant Shipping Act, 1894, are repealed or modified, so far as British India is concerned, by virtue of the powers vested in the Viceregal Legislative Council by sections 735 and 736 of the Statute (*vide* the definition of "Legislature of a British possession" in section 18 of the Interpretation Act, 1889, Statute 52 and 53, Vict., Ch. 56), it will be found extremely difficult to work the Statute in British India in respect of registration of country craft. In the meanwhile it will be expedient to make certain regulations or rules under section 90 of the Statute providing for the issue of certificates terminable at the end of six months or any longer period from the granting thereof for ships not exceeding 60 tons burthen. With reference to the definitions of "a British possession" and "Governor" as given in the said Interpretation Act, 1889 (52 and 53 Vict., Ch. 63), section 18, the rules under section 90 will have to be issued by the Governor-General with the approval of a Secretary of State. The simplest course will probably be to provide for the issue of such terminable certificates on the basis of a certificate of registry under the India Acts, such terminable certificates to

remain in force until the expiration of one year from the date on which the chapter relating to registration of ships in the Indian Merchant Shipping Bill comes into operation. The advantage of this will be that country coasting vessels not exceeding 60 tons burthen may continue to be registered, and the tonnage marked in accordance with the rules framed under section 3 of Act XI of 1850. Such registration will be rendered practically compulsory inasmuch as the terminable certificates contemplated by section 90, which are to take the place of certificates of registry under that Statute, will be issued as proposed only on the basis of a certificate of registry under Acts X of 1841 and XI of 1850. Registration of ships exceeding 60 tons burthen will, however, have to be made only in the manner and according to the rules prescribed by the Merchant Shipping Act, 1894, until the Indian Merchant Shipping Bill is passed into law.

8. In connection with the question of registration of British ships, I may mention that native boats which are not "ships" are not governed by the Merchant Shipping Act, 1894, though they are optionally registrable under India Acts X of 1841 and XI of 1850 which apply to ships and vessels of whatever tonnage.

9. Though I have expressed my opinion on the question of registration of ships referred to me, yet I fail to see what bearing it has upon the complaints made by Messrs. Adamson, Mactaggart & Co., and Messrs. A. and F. Harvey & Co. of Tuticorin, as to the serious detention caused to steamers touching that port owing to the licensed cargo boats being allowed to trade between Tuticorin and other local ports and not being always available for discharging cargo from steamers. In paragraph 3 of the Presidency Port Officer's letter to Government, Marine Department, dated 19th January 1897, No. 646/16 G., it is stated that a boat, if registered under Acts X of 1841 and XI of 1850, could not ply for hire in a port. There is certainly no authority for this assumption. Registration of a ship does not disqualify her to ply for hire within a port, provided she is duly licensed in accordance with the rules framed under clause (*k*) of section 6 of the Indian Ports Act, 1889. In the same paragraph there is a misapprehension of the ruling of the High Court, dated 5th April 1893, quoted in G.O., No. 188, Marine, dated 7th June 1893. That ruling does not at all lay down that any license is required for a boat plying from port to port. It only decides that a licensed boat plying for hire in a port must comply with the terms of the license as regards the number of passengers to be carried, though its destination may be another port, inasmuch as it has to ply with the passengers within the port before going outside the limits of the port. If the cargo boats make profit by trading from port to port, it does not seem likely that registration fee would deter their owners from registering the boats or re-registering them whenever there is a change of a tindal or master. The cargo boats, if registered and their tonnage marked according to the rules framed under section 3 of India Act XI of 1850, the maximum fee will be only that fixed by section 4 of the said Act. So far as registration of ships is compulsory, it makes no difference whether they are cargo or passenger boats plying for hire within the port or whether they trade from port to port or do both; and I entirely fail to see how by insisting upon registration whether under India Act XI of 1850 or the Merchant Shipping Act, 1894, owners of licensed boats would be deterred from trading from port to port and be induced to ply for hire within the port only.

10. The inconvenience pointed out was formerly met by certain rules framed under clause (*k*) of section 6 of Act X of 1889, but which rules in November 1893 were held *ultra vires* by the High Court in the case reported in I.L.R. 17, Madras Series, page 397, on the ground that under clause (*k*) of section 6, the Local Government had authority to make rules only with regard to boats plying for hire and not to compel boat-owners to ply for hire; consequently the said rules were deleted, and revised rules were published in August 1894 which seem to be the rules now in force. India Act IV of 1842 which was enacted for the better management of boats and catamarans in the Madras roads, and which by India Act IX of 1846 was practically extended to the other ports in the Madras Presidency, contained several useful provisions which were well suited to local requirements. Section 13 of the Act provided a penalty for demanding hire in excess of that fixed in schedule B of the Act and section 14 provided a penalty for refusing to let on hire. Relying upon the validity of the rules framed under clause (*k*) of section 6 of the Indian Ports Act, 1889, which contained provisions similar to those enacted in Act IV of 1842 and Act IX of 1846, the local Legislative Council repealed by Madras Act I of 1893, the said two Acts and three other subsequent Acts amending the same (*vide* Abstract of Proceedings of the Madras Legislative Council for 1891, page 13, and Abstract of Proceedings of the Madras Legislative Council for 1893, page 5). Subsequent to the passing of the said repealing Act, the Madras High Court passed the decision already mentioned. It will thus be seen that the repeal of the said two useful Acts was by no means a wise step and has been the cause of the inconveniences now complained of.

11. The legality of some of the other rules, especially the one enabling Government to fix rates of hire from time to time, seems as questionable as the rules which have been declared *ultra vires*. If it be considered desirable to restore the said two Acts to the Statute book, Madras Act I of 1893 will have to be repealed and the said two Acts with the three subsequent Acts amending the same, expressly revived [*vide* Madras General Clauses Act, 1891, section 9 (*a*)].

12. In conclusion I may also suggest that rules for licensing and regulating boats should purport to be issued not only under the Indian Ports Act, section 6, clause (*k*), but also under

section 79 of the Sea Customs Act VIII of 1878. This latter section provides for licensing and registering a boat *to ply* as a cargo boat within the limits of a port and for the cancellation of such licenses under rules to be framed in that behalf. If the rules are issued under the combined authority of the above sections in the two Acts, they can be given a wider scope than under either of the two sections. I observe that the Lieutenant-Governor of Bengal has issued similar rules under the combined provisions of section 79 of the Sea Customs Act and the Indian Ports Act (*vide* Appendix A, page 129) of Mr. Grimley's Sea Customs Law of India. I may draw special attention to Nos. 16 and 18 of the said rules as having a bearing upon the matter under consideration.

MADRAS,
10th May 1897.

(Signed) V. BHASHYAM AIYANGAR,
Acting Advocate-General.

ORDER—No. 532, Marine, dated 14th June 1897.

In January last certain local merchants at Tuticorin complained to Government that, in consequence of licensed cargo boats being permitted to leave the port and trade beyond port limits, serious detention was caused to steamers. Inquiry has accordingly been made into the circumstances, as well as in regard to the legal aspects, of the case.

2. The Government is advised that the inconvenience complained of is in some measure due to the mercantile community leaving the supply of boats in the hands of contractors, who pay much below the authorized rates of hire, and do not regularly employ all the boats in turn. The unemployed boats are thus driven to trade beyond port limits. The higher receipts from such trading must also, it is thought, influence the action of boat owners.

3. As regards the provisions of the law, it would appear that there is no bar to licensed cargo boats leaving the port and trading to other ports, and His Excellency the Governor in Council does not consider it desirable to take any steps to restrict the freedom of action of boat owners in this matter. Shippers at Tuticorin and elsewhere must, if they wish to secure a regular supply of cargo boats, offer sufficient inducement to owners to keep their boats within port limits.

4. The opinion of the Advocate-General will be communicated to the Presidency Port Officer, and the Government of India in the Legislative Department. It deals minutely with the law relating to the registration of vessels, and may be of use in connection with the revised Indian Merchant Shipping Bill * now before the Viceregal Legislative Council.

* *Vide* Supplement to the *Fort St. George Gazette*, dated 3rd March 1896.

5. Paragraphs 10, 11 and 12 of the Advocate-General's opinion will also be referred for the remarks of the Presidency Port Officer and the Board of Revenue (Separate Revenue).

(True Extract.)

C. R. Barlow

Under Secretary to Government.

To Messrs. Adamson, Mactaggart & Co., } with extract paras. 1, 2 and 3 of
„ Messrs. Harvey & Co., } order only (in MS.)
„ the Presidency Port Officer.
„ the Revenue Department.
„ the Legislative Department.
„ the Government of India, Legislative Department, with C.L.

Exd. T. K. Narayana Aiyangar.

When given for copying ____
When copied ____ } 189
When examined ____
When signed ____

READ AGAIN G.O., No. DATED
189

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT.							
CITTINGS WITH DITTO.							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only