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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 588 Press ~~Mis.~~

40-41

Dated 9. 9 1863.

9/10

40-41

Not to be folded or roughly handled

BK
14-7-39

Proceedings of the Madras Government, Financial Department,
9th September 1863.

No. 40. Read the following letter from R. W. LODWICK, Esq., Acting Deputy Auditor and Accountant General, Madras; to the Chief Secretary to the Government of Madras, dated 1st September 1863, No. 176.

I have the honor, with reference to Government Order, No. 528, dated 19th August 1863, to lay before His Excellency in Council, the accompanying copy of a letter from the Directors of the Madras Bank, No. 22-1,085, dated 28th ultimo, and to observe as follows:—

2. The commission charged by the Bank having been admitted in the Bank's daily accounts which are audited by my Department, it was necessary when the charge was stated to be illegal to call for a refund, and my doing so, it will be perceived, has led to the present letter.

3. The Bank, it will be seen, rest their case entirely on the words of Clauses 2 and 3 of the agreement with Government, contending that the purchase of Bills on account of Government in the open market is not a duty such as is usually transacted by Bankers for their customers.

4. I am respectfully of opinion with all deference to the views of my colleagues at the Board that a strained interpretation has been put on the meaning of the agreement.

5. In the first place, I would observe, that although it may not be the *general practice*, still it is frequently the rule for Houses of Agency to procure for persons Bills at the market rates and, secondly, that the words of the agreement must be read to signify the duties of the Bank in a general rather than in a strict sense, as for instance, that the Secretary is to procure Bills when called upon to do so, it being usual for Bankers to remit the money of their customers by *Bills* of some sort or other.

6. The Bank and Bankers are, I would submit, not at all on the same footing, for the former *receives a certain sum* for performance of its duties, while the latter do not receive any such remuneration, but are dependent for their profits on a certain commission which they charge on all receipts and payments.

7. In my way of looking at the matter, the Bank on undertaking the Government work took the place of the Sub-Treasurer, and is bound just as he was to act for Government to the best possible advantage in consideration of a sum paid it.* If then it decline to purchase Bills in the open market it debars Government from using its funds to the best advantage, and if it claim commission it demands a *double* remuneration for the work it performs. Could it ever have been the intention of Government on doing away with the Sub-Treasurership to place themselves in a worse position than before? I submit not. Yet if the Sub-Treasurer had been instructed by the Accountant General to send money by Bills he would have been bound to enter the market and the charge to Government would have been the actual market price; whereas if the claim of the Bank be allowed, Government must lose considerably on all remittances by Bills. In the former case while the pay of the Sub-Treasurer would have amounted to only 24,000 Rupees per annum, supposing 100 lacs remitted during the year at the moderate rate of 8 Annas per cent. discount, all round the profit to Government would have been a clear 26,000 Rupees;† whereas in the latter the Government would gain only 25,000 Rupees, the commission cost amounting to Rupees 25,000 on the sum remitted. On the other hand, if Bills were procurable only at par, the Government would lose the thousand Rupees all the same that being the difference between the Sub-Treasurer's pay per annum and the Bank's commission.

* 12,000 Rupees per annum and the privilege of using the cash balance of 15 lakhs.

† Gain on 100 lacs at 8 Annas discount, Rupees 50,000
Deduct Sub-Treasurer's pay ..... „ 24,000
Clear gain.. 26,000

8. It is no argument to state that the Sub-Treasurer would not be ordered to buy Bills. There was never anything to prevent his receiving such instructions, and although past Accountants General may not have availed themselves of Bills, it is quite legitimate to take for granted that had the Treasury remained on its former footing, the remittance of money by Bills might have been made as freely as now.

9. But I join issue with my co-directors on still another point, viz., the proper reading of the words quoted in Mr. McIver's 3rd paragraph. It seems to me that the agreement with the Bank does in those words most clearly indicate that remittances of Government money are not chargeable with commission. I would respectfully beg particular attention to the wording of the agreement in this particular portion, Clause 3.‡

‡ "And the Bank shall not charge any interest or commission on *the said account*," viz., "the Banking account and business" *i. e.*, "the Receipt, Collection, payment and *Remittance* of money" referred to in Clause 2,

10. To be guided by the practice of the other Banks is manifestly not the course for the Bank to pursue, for either the charge of commission is or is not legal. If it be illegal the fact of an abuse having existed in another Presidency will not, it seems to me, make the charge any the more valid here and must render all the Banks alike liable to refund sums charged as commission from the first.

11. I am quite willing to admit that the favorable state of the market was first made known to me by the Bank Secretary ; but I fail to see what bearing that has on the question at issue. As the paid servant of a Company which has engaged to transact Government business, I held that the Secretary was bound to give me such information, and therefore I looked upon his communication to me of this matter as one of his proper duties and acted on the information accordingly.

From JOHN McIVER, Esq., Secretary and Treasurer Bank of Madras; to the Acting Accountant General, Madras, dated Madras, 28th August 1863, No. 22-1,085.

I have the honor, by desire of the Directors, to acknowledge receipt of the Proceedings of Government, Financial Department, with Order thereon, 19th August 1863, No. 528, and Memorandum by you attached in which you demand a refund of Rupees 3,527-13, being amount of commission charged by the Bank, at various times, upon the purchase of Bills of Exchange and Hoondies on account of Government, the Advocate General having given it as is opinion, that the Bank, under its agreement with Government, is not entitled to make any charge of commission.

The Directors cannot concur in the Advocate General's opinion. Putting the responsibility which the Bank incurred by endorsing the Bills and Hoondies entirely out of view, and for which ¼ per cent. is quite inadequate a charge, the Directors hold they are entitled to commission on other grounds.

In the second Clause of the Bank's agreement with Government, it is stated that the Bank is to do such business for Government "as is usually transacted by Bankers for their customers." The purchase of Bills of Exchange and Hoondies in the open market is *not*, the Directors submit, a description of business that is "usually transacted by Bankers for their customers," the practice of Bankers is to give their own Bills to customers, at the advertised or current rates of exchange, while they purchase in the open market solely on their own account. If the usual mode of executing the orders of a customer had been pursued on the occasions referred to, it would have been considerably less profitable to Government, but much more advantageous to the Bank as the difference between the current rates of exchange, and the rates at which Mercantile Bills and Hoondies can be purchased in the market was at the time, and is generally, much greater than a quarter per cent.

The Directors would further refer to the third Clause of the agreement, which declares "that the Bank shall not charge any interest or commission on the said account, except under such arrangement as in the next following Clause;" this following Clause refers solely to the Government current account, and the Directors contend that the exemption from commission applies only to this account.

The Directors have taken steps to ascertain the practice of the Bank of Bengal in regard to such transactions as those under reference, and hereafter they are willing to adopt that practice, whatever it may be, in dealing with any such transactions in future, but for the reasons already stated they do not feel called upon to make the refund which you claim.

It will be in your recollection that the purchase of Bills in the market was an alternative suggested by me, as preferable in every view of the question, both as regards Government and the public, to shipping silver to Bombay as you proposed to do, and that in the then stringent state of our money market, the former course had a very beneficial effect in bringing into immediate circulation a large amount of silver which would otherwise have been deported from the Presidency at considerable expense to Government, at a time when every Steamer was bringing specie to meet the pressing wants of trade.

(True Copy.)
(Signed) J. MACKEY,
Acting 1st Assistant Accountant General.

No. 41. To the Secretary to the Government of India, Financial Department, dated Fort Saint George, 9th September 1863, No. 588.

I am directed to submit, for the consideration of the Honorable the President in Council, the annexed copies of a correspondence which has taken place on a question raised by the Acting Accountant General as to the right of the Bank of Madras to charge commission for purchasing on account of Government certain Bills for the remittance of Treasure to Bombay.

From the Acting Deputy Auditor and Accountant General, dated 8th July 1863, No. 56.
From the Government Solicitor, dated 11th August 1863, No. 572, with one enclosure.
From the Acting Deputy Auditor and Accountant General, dated 1st September 1863, No. 176, with one enclosure.

2. It will be seen that the Acting Advocate General is of opinion that the Bank is not entitled under the terms of the agreement between the Government and the Bank to charge such commission, but that the Directors of the Bank contest the correctness of that opinion.

3. Under the circumstances, the Governor in Council thinks it desirable that the question which has been raised should be settled by the Supreme Government, as it is one which is equally applicable to the transactions between the Government and the Banks of Bengal and Bombay.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

No. 176 FORT SAINT GEORGE,

DEPUTY AUDITOR AND ACCOUNTANT GENERAL'S OFFICE,

September 1st 1863.

From THE ACTING DEPUTY AUDITOR AND ACCOUNTANT GENERAL,

Madras.

To Chief
THE SECRETARY TO THE GOVERNMENT OF Madras -

SIR,

I have the honor with reference to Government Order No. 528 dated 19th August 1863, to lay before His Excellency in Council the accompanying copy of a letter from the Director of the Madras Bank No: 22/1085: dated 28th ult: & to observe as follows -

2- The commission charged by the Bank having been admitted in the Bank's daily accounts which are audited by my department it was necessary when the charge was stated to be illegal to call for a refund & my doing so it will be perceived has led to the present letter -

3- The Bank it will be seen rest their case entirely on the words of Clauses 2 & 3 of the agreement with Government contending that the purchase of Bills on account of Government in the open market is not a duty such as is usually transacted by Bankers for their customers

4- I am respectfully of opinion with all deference to the views of my colleagues at the Board that a strained interpretation has been put on the meaning of the agreement.

5- In the first place I would observe that although it may not be the general practice still it is frequently the rule for Houses of Agency to procure for persons bills at the market rates and secondly that the words of the agreement must be read to signify the duties of the Bank in a general rather than in a strict sense as for instance that the Secretary is to procure Bills when called upon to do so it being usual for Bankers to remit the money of their customers by bills of some sort or other -

6- The Bank & Bankers are I would submit not at all on the same footing for the former receives a certain allowance for performance of its duties while the latter do not receive any such remuneration but are dependent for their profits on a certain commission which they charge on all receipts & payments

7- In my way of looking at the matter the Bank on undertaking the Govt work took the place of the Sub Treasurer & is bound just as he was to act for Government to the best possible advantage in consideration of a sum paid it * - If then it decline to purchase Bills in the open market it debars Govt from using its Funds to the best advantage & if it claim commission it demands a double remuneration for the work it performs - Could it ever have been the intention of Govt on doing away with the sub treasurership to place themselves in a worse position than before? I submit not - Yet if the Sub Treasurer had been instructed by the Accountant General to send money by bills he would have been bound to enter the market & the charge to Govt would have been the actual market price whereas if the claim of the Bank be allowed Govt must lose considerably on all remittances by Bills - In the former case while the pay of the Sub Treasurer would have amounted to only 24,000 Rs: per annum supposing 100 lakhs remitted during the year at the moderate rate of 8 as: per cent disct: the profit to Govt would have been a clear 26,000 Rs: x whereas in the latter the Govt would gain only 25,000 Rs: the commission cost amounting to Rs: 25,000 on the sum remitted - On the other hand if bills were procurable only at par the Govt would lose the thousand Rs: all the same that being the difference between the Sub Treasurers pay per annum & the Banks commission -

* 12,000 Rs: per annum & the principle of paying the calculated amount of 15 Lakhs.

x Gain on 200 Lakhs Rs: 25,000
as per Sub. Sec. 57,000
Deduct Sub Treas: pay. 24,000
clear gain 26,000

8- It is no argument to state that the Sub Treasurer would not be ordered to buy bills. There was never anything to prevent his receiving such instructions & although past Accountants General may not have availed themselves of bills it is quite legitimate to take for granted that had the Treasury remained on its former footing the remittance of money by bills might have been made as freely as now -

9- But I join issue with my Co directors on still another point viz: the proper reading of the words quoted in Mr Mac Ivor's 3d para - It seems to me that the agreement with the Bank does in those words most clearly indicate that remittances of Govt money are not chargeable with commission - I would respectfully beg particular attention to the wording of the agreement in this particular portion Cl: 3.x

10- To be guided by the practice of the other Banks is manifestly not the course for the Bank to pursue for either the charge of Commission is or is not legal - If it be illegal the fact of an able pairing entitled in another Presidency will not make the charge any the more valid here & must render all the Banks alike liable to refund sums charged as commission from the first -

11. I am quite willing to admit that the favourable state of the market was first made known to me by the Bank Secretary but I fail to see what bearing that has on the question at issue - As the paid servant of a company which has engaged to transact Govt business I held that the Secretary was bound to give me such information & therefore I looked upon his communication to me of this matter as one of his proper duties & acted on the information accordingly -

I have the honor to be,

Sir,

Your most obedient Servant,

P. W. Woodruth

Ag. Dy. Audr. and Acct. General.

x "and the Bank shall not charge any interest or Commission on the said account." viz "the Banking account & business" i.e "the Rect collection payment & Remittance of money" referred to in Cl: 3 -

No. FORT SAINT GEORGE,

DEPUTY AUDITOR AND ACCOUNTANT GENERAL'S OF

186

From

THE ACTING DEPUTY AUDITOR AND ACCOUNTANT GENERAL,

To Madras.

THE SECRETARY TO THE GOVERNMENT OF

SIR,

I have the honor with reference to Government Order No.

186 , to

Rec'd 19 Augt 63 - P 528 Financial Department

Ans. Thursday 20 Augt 63 No

From

The Chief Judge & Judges of the Supreme Court

To The Chief Judge & Judges of the Sudder Dewanny Adawlut

Dated 18th Augt 1863

Received 19th Augt 1863

Subject Commission charged by the Bank of Madras on Bills purchased

Sir

I have the honor to forward herewith for your information a letter No 528 dated 19th Augt 1863 from the Bank of Madras with enclosure as noted in the margin.

I have the honor to be
Sir
Your most obedient humble Servant
(Signed) W. Morris
Secy to Govt

Fort St George
The 20th August 1863

40 - 41

№ 22/1085

Bank of Madras
Madras 28th August 1863

To
The Acting Accountant General
Madras

Sir, I have the honor, by desire of the Directors, to acknowledge receipt of the Proceedings of Government, Financial Department, with order thereon 19th August 1863 № 528, and Memorandum by you attached in which you demand a refund of Rs. 3527 - 13 - 0 being amount of Commission, charged by the Bank, at various times, upon the purchase of Bills of Exchange and Hoondies on account of Government. The Advocate General having given it as his opinion, that the Bank, under its agreement with Government, is not entitled to make any charge of Commission.

The Directors cannot concur in the Advocate General's opinion. Putting the responsibility which the Bank incurred by endorsing the Bills and Hoondies entirely out of view, and for which 1/4 % is quite inadequate a charge, the Directors hold they are entitled to Commission on other grounds.

In the second clause of the Bank's agreement with Government, it is stated that the Bank is to do such business for Government "as is usually transacted by Bankers for their customers". The purchase of bills of Exchange and Hoondies in the open market is not, the Directors submit, a description of business that is "usually transacted by Bankers for their customers" — the practice of Bankers is to give their own bills to customers at the advertised or current rates of Exchange, while they purchase in the open market solely

on their own account. If the usual mode of executing the orders of a Customer had been pursued on the occasions referred to, it would have been considerably less profitable to Government, but much more advantageous to the Bank as the difference between the current rates of Exchange, and the rates at which Mercantile Bills and Hoondies can be purchased in the market was at the time, and is generally, much greater than a quarter per cent.

The Directors would further refer to the third clause of the Agreement, which declares "that the Bank shall not charge any interest or Commission on the said account, except under such arrangement as in the next following clause". This following clause refers solely to the Government current Account, and the Directors contend that the exemption from Commission applies only to this Account.

The Directors have taken steps to ascertain the practice of the Bank of Bengal in regard to such transactions as those under reference, and hereafter they are willing to adopt that practice, whatever it may be, in dealing with any such transactions in future, but for the reasons already stated they do not feel called upon to make the refund which you claim.

It will be in your recollection that the purchase of Bills in the market was an alternative suggested by me, as preferable in every view of the question, both as regards Government and the public, to shipping silver to Bombay as you proposed to do,

and that in the then stringent state of our Money market, the former course had a very beneficial effect in bringing into immediate circulation a large amount of silver which would otherwise have been deported from the Presidency at considerable expense to Government, at a time when every Steamer was bringing specie to meet the pressing wants of trade.

I have the honor to be
Sir
Your Obedient Servant
(Signed) John M. Lauer.
Secretary and Treasurer

(True Copy)

No 1 to Asst. Acct. Genl.

Encl. to Govt. of India Fin. Dept. No. 588

dupd. 16

13

Financial Department.

No. 588.

To

The Secretary to the Government
of India.

Financial Department.

Sir,

From the Ag. Dy. Auditor and Accountant General dated 8th July 1863 No. 256.
From the Govt. Solicitor dated 11th August 1863 No. 272. with one Enclosure.
From the Ag. Dy. Auditor and Accountant General dated 1st September 1863. No. 176 with one enclosure.

I am directed to submit for the consideration of the Honorable the President in Council the annexed copies of a correspondence which has taken place on a question raised by the Ag. Accountant General as to the right of the Bank of Madras to charge commission for purchasing on account of Government certain Bills for the remittance of treasure to Bombay.

2. It will be seen that the Acting Advocate General is of opinion that the Bank is not entitled under

under the terms of the agree-
ment between the Govern-
ment and the Bank to
charge such Commission,
but that the Directors of
the Bank contest the cor-
rectness of that opinion.

3. Under the circum-
stances, the Governor in
Council thinks it desira-
ble that the question
which has been raised
should be settled by the
Supreme Government, as
it is one which is equally
applicable to the transac-
tions between the Govern-
ment and the Banks
of Bengal and Bombay.

Fort St George
9th Sept 1803

Finl: 1863. Departt

No 588

To

The Secretary to the
Govt of India

Fin. 681 of 63
755-
819

Fd 9 "September/63

The question raised by the Accountant Genl as to the right of the Bank to charge commission for purchasing certain Bills for the remittance of Treasure to Bombay submitted for the decision of the Govt of India -

40 & 41