M.R.O. 1—32,400—22-11-30.

MADRAS RECORD OFFICE.

Government of Madras.

Marine **DEPARTMENT.**

G.O. No. 165 Press ~~Mis.~~

Dated / 5. 18 58

Not to be folded or roughly handled

Fort Saint George, Marine Consultation, 4th May 1858.

No. 8. From J. T. MACLAGAN, Esq., Acting Secretary Marine Board; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 24th April 1858, No. 1818.

Sir,

With reference to the order of Government, marginally noted, I have the honor by desire of the Marine Board to acquaint you for the information of the Right Honorable the Governor in Council that on 24th March they communicated to Messrs: Arbuthnot and Co. the concurrence of Government in the decision already intimated to that firm with respect to an alleged sale of Coal at Bimlipatam, expressed their willingness still to take the Coals at the rate of Rupees 25 per Ton, and requested a speedy reply. On 8th April they received a letter from Messrs: Wilkins and Shaw, Solicitors, claiming payment for 441 Tons and 98lbs. of Coals at the rate of Rupees 35 per Ton, and Godown rent at the rate of one Rupee per Ton per mensem. The Board thereupon submitted to the Honorable Company's Solicitor the whole correspondence in the case and that Gentleman has now furnished the Board with a Copy of an opinion obtained from Mr. Advocate General Smyth, on the subject. Copies of the letter from Messrs: Wilkins and Shaw, of the Board's letter to the Honorable Company's Solicitor and of Mr. Advocate General's opinion are sent herewith.

Extract Minutes No. 110, *13th March* 1858.

This opinion together with the papers on which it is founded and a Minute by Mr. Franklin, copy of which is also forwarded herewith, have received the anxious consideration of each individual Member of the Board, they are unanimously dissatisfied with the decision to which the Advocate General has arrived, and unless they are ordered by Government to follow his advice and pay for the Coals at the rate of Rupees 35 per Ton, they are not inclined to do so. They believe notwithstanding the opinion of the Advocate General that even were Messrs: Arbuthnot and Co. to bring the case before a Court of Law, the positive evidence of Mr. Franklin, that the sending in of an Official Tender was a condition of the bargain, (a fact which has been admitted by Mr. William Arbuthnot to Mr. Franklin,) would be sufficient to overthrow any evidence that could be adduced to prove a Contract. Moreover they entertain very great doubts whether an action will be brought should they refuse to pay. The evidence that would be brought before the Court would they believe do more injury to Messrs: Arbuthnot and Co. than they could be compensated for by the success of their action, for it would be evident too that they were taking an undue advantage of a point of Law to enforce a Contract which they themselves allowed to lie dormant for nearly three months, until it suited their purpose to revive it, and it would exhibit the far from creditable proceeding in quoting Mr. Franklin's private Note with the omission of the important words "Will you let me have your offer officially. This is best or there may be discussion hereafter."

Under these circumstances I am directed by the Board to submit, for the consideration of the Right Honorable the Governor in Council, the expediency of again laying the papers before

the Advocate General with a request that he would reconsider the whole question with especial reference to the Minute of Mr. Franklin, or should Government have no objection they would be glad to lay the case before another Barrister, and they would suggest Mr. J. W. Branson being requested to give his opinion on the subject. But should Government agree with them that it is questionable whether an Action will be raised, and that if raised there is considerable reason to believe that the Court would decide against Messrs: Arbuthnot and Co. The Board would solicit the permission of Government to their replying to Messrs: Wilkins and Shaw, that they do not acknowledge the Contract, and that as Messrs: Arbuthnot and Co. have not chosen to accept their offer (made on 24th March) of Rupees 25 a Ton they now decline to purchase the Coals on any terms whatever.

From Messrs: WILKINS AND SHAW, Solicitors; to J. T. MACLAGAN, Esq., Acting Secretary Marine Board, dated 8th April 1858.

SIR,

We are instructed by Messrs: Arbuthnot and Co., with reference to a certain Contract for the sale of Coal entered into between the Government and them, to inform you, that the said Coal to the amount of 441 Tons was received by Mr. Mackinzie of Bimlipatam on behalf of Government on the 3rd of March 1858, and has since been stored in the Godowns of Messrs: Arbuthnot and Co., and that their charge for Godown rent, which Government has agreed to pay, is at the rate of one Rupee per Ton per mensem.

We annex a copy of Mr. Mackenzie's receipt. Messrs: Arbuthnot and Co. claim from Government Rs. 15,435 for the Coal at the rate of 35 Rupees per Ton. and 441 Rupees, the amount of Godown rent, making altogether 15,876 Rupees, which, they trust, will be paid without delay and the Coal removed, and they desire us to state that Godown rent will be continued to be charged at the like rate till the Coal is removed.

Sugar Works, 3rd March 1858.
BIMLIPATAM.

Received from the Chittivalsah concern on account of the Madras Government, Tons 441, 98 lbs. (Four hundred and forty one Tons and Ninety eight lbs.) of Coal.

(Signed) J. T. MACKENZIE,
Agent for Messrs: Arbuthnot and Co.

(True Copy)

(Signed) J. T. MACLAGAN,
Acting Secretary.

Fort Saint George, Marine Consultation, 4th May 1858.

From J. T. MACLAGAN, Esq., Acting Secretary to the Marine Board; to the Honorable Company's Solicitor, dated 9th April 1858, No. 1522.

SIR,

I have the honor by desire of the Marine Board to forward to you certain correspondence on the subject of a purchase of Coal at Bimlipatam alleged to have been made by the Board in December last from Messrs: Arbuthnot and Co., and to request the favor of your advising the Board what reply should be made by them to the letter No. XII from Messrs: Wilkins and Shaw. You will observe that letter contains the first intimation which the Board has received of the actual quantity of Coal which had been previously stated to be about 300 Tons and in letter No. VI to be 301 Tons *weighed and delivered*, and which now appears to be 441 Tons and 98 lbs.

I.	Arbuthnot and Co. to Secretary Marine Board, ...	1st	February	1858.
II.	Secretary Marine Board to Arbuthnot and Co., ...	2nd	do.	
III.	Arbuthnot and Co. to Secretary Marine Board, ...	3rd	do.	
IV.	Secretary Marine Board to Arbuthnot and Co., ...	3rd	do.	
V.	Private Note, Mr. William Arbuthnot to Mr. Franklin, ...	5th	do.	
VI.	Arbuthnot and Co. to Secretary Marine Board, ...	24th	do.	
VII.	Extract Minutes Consultation, No. 110, 13th March 1858, containing copies of letters, Secretary Marine Board to Government,	27th	do.	
VIII.	Acting Secretary Marine to Messrs: Arbuthnot and Co.,	24th	March	1858.
IX.	Private Note, Mr. William Arbuthnot to Mr. Franklin,	25th	do.	
X.	Acting Secretary Marine Board to Arbuthnot and Co.,	26th	do.	
XI.	do. do.	8th	April	1858.
XII.	Wilkins and Shaw to Acting Secretary Marine Board, ...	8th	April	1858.

COPY OPINION.

From the reply of the Secretary to the Marine Board to my inquiry made through the Honorable Company's Solicitor, I find that he cannot deny the Statement attributed to him by Messrs: Arbuthnot and Co. in their letter, dated 24th February 1858, *viz*, "that he would have "considered it a breach of faith had they, after the conversation that took place, sold the Coal "to any other purchaser."

This being the case, I think it only necessary to refer to Messrs: Arbuthnot & Co's letter to Mr. Franklin, dated 18th November, and Mr. Franklin's reply of the same date.

The former is a tender of Coals, quantity uncertain, at Rupees 35 a Ton, to be delivered, time not specified, to Messrs: Arbuthnot & Co's Agent at Bimlipatam on behalf of Government and to be stored at Government expense.

The reply is an acceptance of the tender, at the rate mentioned, of Coals to any amount not to exceed 500 or 600 Tons, to be delivered at Bimlipatam, no time for delivery specified, the Coals to be kept till required. Godown rent to be paid and the Coals to be paid for on delivery. The reply commences with a request that, to avoid any future discussion; the tender may be made in an official shape; but meantime it is accepted.

15 Oct 57

3/3rd Read 15/11/58

Under the authority vested in him by Section 42 of Act XXII of 1855, the Right Honorable the Governor in Council notifies that the port dues at the rates hereunder mentioned, will be levied under Act of 1858 at the several ports thereby under the operations of Act XXII of 1855

Madras		3	Annas	per Registered	ton
Juticoreen		1	"	"	"
Coringa and Cocanada		1	"	"	"
Masulipatam		1	"	"	"
Vizagapatam		1	"	"	"
Bimlipatam		1	"	"	"
Tranquebar		1	"	"	"
Negapatam		1	"	"	"
Cochin		1	"	"	"
Calicut		1	"	"	"
Tellicherry		1	"	"	"
Cannanore		1	"	"	"
Mangalore		1	"	"	"
Cuddalore		1	"	"	"

2 The limits of Madras and the Port Rules & rules thereat, which have already appeared under date 16th of June 1857, are republished, together with the notification of the 6th July following. The limits and Rules for the other ports follow

3 At the ports of Juticoreen, Cocanada, Masulipatam, Vizagapatam, Bimlipatam, Cochin & Calicut the Master Attendant shall be the conservator. At the other ports the Chief Officer of Customs shall be the Conservator.

4 To each port above named the provisions of Sections 37 and 40 are specially extended.

Chief Secretary to Government

50 Copies
each

25th Oct. 1858.

The limits of the Port of Madras are as follows:

To the North: A line running due East from the Pillar, which marks the extreme North Western limit of the said port, to 10 fathoms water.

To the South: A line running due East from the pillar which marks the extreme South Western limit of the said port, to 10 fathoms water.

To the East: A line running from North to South and connecting the Eastermost points of the two beforementioned lines defining the Northern and Southern limits of the said port, and

To the West: So much of the sea shore between the Northern and Southern limits of the said port as is within 50 yards of high water mark, spring tides.

50 copies separate for the Board

Gazette Extraordinary

Secretary to the Board

Port Rules for Madras

Rule 1 All vessels within the Port of Madras shall be bound to take up such berth as may be appointed for them by the Conservator of the Port, and shall change their berths or remove when required to do so by such authority.

Rule 2 All such vessels shall, on the requisition of such Conservator, if issued verbally or by signal, strike their yards and masts.

Rule 3 All such vessels shall, on the requisition of such Conservator, if issued verbally or by signal, veer, cable or slip, and stand to sea.

Rule 4 Vessels taking in or discharging any particular kind of Cargo within the Port of Madras, shall be bound to take up such berth as such Conservator may direct.

Rule 5 A free passage shall be kept between piers, jetties, landing places and moorings, and all vessels shall be bound to move, when required by such Conservator, to clear such passage.

Rule 6 All vessels within the Port of Madras shall anchor, moor and unmoor when and where required by such Conservator.

Rule 7 All vessels within the limits

of the Port of Madras shall be moored or warped from place to place as required by such Conservator, and no vessel shall cast off a warp that has been made fast to her to assist in warping or mooring, without being required to do so by such Conservator, or by the Commander or other Officer in charge of the vessel mooring.

Rule 8 No vessels shall use any Government moorings without permission of such Conservator.

Rule 9 No vessels within the limits of the Port of Madras shall bid pilots or hammer on board, or hail them at sports by candle or other Artificial light.

Rule 10 All vessels within the limits of the Port of Madras, shall, when at anchor between sunset and sunrise, have a good light hoisted at the starboard fore yard arm; and all such vessels under weigh at night shall shew a good light at the fore royal or other foremast head, and when under weigh, in tow of a steamer, shall in addition to the mast head light, shew a good light at each fore yard arm; the Steamer shewing the usual light prescribed by the Admiralty regulations

The limits of the port of Sulleoor are as follows

To the North. A line drawn from the South East end of Vanteroo to the boundary pillars on the mainland due west thereof.

To the South. The boundary three miles South of Devils Point.

The Sea Shores between them, whether of the mainland or the islands, to within 50 yards of high water mark, spring tides, together with the bank on the channel leading thereto.

To the West. The Sea shore of the mainland as above described.

To the East. The space enclosed by two lines running due East from their boundary pillars 6 7 fathoms on the North, and to 6½ fathoms on the South.

Port Rules for Juticorin

Rule 1. All Vessels within the port of Juticorin shall be bound to take up such berth as may be appointed for them by the Conservator, and shall change their berths or remove when required by such authority.

Rule 2 All Vessels within the entrance of the ~~harbour~~ harbour shall, if required, by the Conservator rig in their jib and driver or and strike their Masts and yards

Rule 3 All Vessels within the entrance of the ~~harbour~~ harbour shall remove any boat spar or other substance projecting from her side if required to do so by the Conservator.

Rule 4 All Vessels taking in or discharging ballast, or any particular kind of Cargo within the port of Juticorin, shall take up such berths as the Conservator may direct

Rule 5 A free channel shall be kept for ships moving up and down the ~~harbour~~ harbour and also free passages to piers, jetties, landing places, wharves, quays, docks and moorings; and all vessels shall be bound to move when required

Rule ..; to clear such Channels or passages.

Rule 6. All Vessels within the port Tuticorin shall anchor moor and unmoor when and where required by the Conservator.

Rule 7 All Vessels within the entrance of the ~~Roads~~ harbour shall be moored or warped from place to place as required by the Conservator, and no vessel shall cast off a warp that has been made fast to her to assist a vessel in mooring without being required to do so by the Conservator, or officer in charge of the vessel mooring.

Rule 8. The Cargo boat Rules published by Government under date the 23d April 1847 shall be in force at the port of Tuticorin

Rule 9 No Vessels within the limits of the port of ~~Negapatam~~ Tuticorin shall boil any pitch or dammer on board, or shall draw off spirits by Candle or other artificial lights

Rule 10 All Vessels in the Roadstead of Tuticorin shall, when at anchor between sunset and sunrise, have a good light hoisted at the Starboard fore yard arm; and all vessels under weigh at night shall show a good light

light at the fore Royal or upper fore head; and when under weigh in tow of a Steamer shall in addition show a light at the foreyard arm, the Steamers shewing the usual light prescribed by the Admiralty Regulations

The Limits of the Port of Cocanada which includes Coringa are as follows.

To the North. A line drawn from the boundary pillar 4 miles north of the Cocanada river due East to 10 fathoms water.

To the South. A line drawn due East from the boundary pillar on the N. E. point of the Mainland to seaward of the light House to 10 fathoms water.

The sea shore between them whether of the mainland or the islands to within 50 yards of high water mark, spring tides.

To the West. The Cocanada river to the junction of the Cocanada and Samulcottah Canal in one direction and to the Covoor lock on the Cocanada and Pauliah River Canal on the other, including Robertson's channel.

The Coringa river to the boundary of the French settlement of Yanam, including all creeks and channels leading thereto.

The several mouths of the Godavery river South of the light house within half a mile of the sea.

So much of the banks of the above named rivers and creeks as are within 50 yards of high water spring Tides.

To the East. A line connecting the Eastern extremes of the above described North and South limits

Spirits by Candle or other artificial Lights

Rule 10 All Vessels in the Roadstead of Vizagapatam, shall, when at anchor between Sunset and Sun rise, have a good light hoisted at the Starboard fore yard arm and all Vessels under weigh at night, shall have a good light at the fore Royal, or upper fore mast head; and when under weigh in tow of a Steamer shall in addition shew a light at each fore yard arm, the Steamer shewing the usual light prescribed by the Admiralty Regulations.

Port Rules for Cocanada

Rule 1. All vessels within the port of Cocanada shall be bound to take up such berth as may be appointed for them by the Conservator, and shall change their berths or remove when required by such authority.

Rule 2. All vessels within the limits of Coringa shall, if required by the Conservator, rig in their jib and driver booms, and stow their masts and yards.

Rule 3. All vessels within the entrance of the river shall remove any anchor or spar or other substance projecting from her side if required to do so by the Conservator.

Rule 4 All vessels taking in or discharging ballast or any particular kind of cargo, within the port of Cocanada, shall take up such berth as the Conservator may direct.

Rule 5. A free channel shall be kept for ships moving up and down the Coringa river, and also free passage to

jetties, landing places, wharves, garays, docks and moorings, and all vessels shall be bound to move when required by the Conservator to clear such channel or passages.

Rule 6. All vessels within the port of Cocanada shall anchor moor and unmoor when and where required by the Conservator.

Rule 7. All vessels within the entrance of the river shall be moored or warped from place to place as required by the Conservator, and no vessel shall cast off a warp that has been made fast to her to assist a vessel in mooring, without being required to do so by the Conservator, or Officer in charge of the vessel mooring.

Rule 8. The Cargo boat rules published by Government under date the 23rd April 1867, shall be in force at the port of Cocanada.

Rule 9. No vessels within the limits of the port of Cocanada, shall boil any pitch or tarmer on board, or shall draw off spirits by candle or other artificial lights.

Rule 10

Rule 10. All vessels in the Roadstead of Cocanada shall, when at anchor between Sunset and Sunrise, have a good light hoisted at the Starboard fore yard arm, and all vessels under weigh at night shall shew a good light at the fore royal, or upper foremast head; and when under weigh in tow of a Steamer, shall in addition shew a light at each fore yard arm, the Steamer shewing the usual light prescribed by the Admiralty Regulations.

The limits of the port of [illegible] as follows.

To the North. The boundary [illegible] one mile North of the Northern point of the entrance to the harbour or back water.

To the South. The boundary [illegible] three miles south of the Southern point of the entrance to the back water.

The sea shores between them to [illegible] 50 yards of high water mark, spring tides.

To the East. The harbour and back water with all creeks and channels leading to that may be within the Honorable Company's territories, and so much of the shores thereof whether of the mainland, or the islands, as are within 50 yards of high water mark, spring tides.

To the West. The space enclosed by two lines, running due west from the boundary pillars, to 9 fathoms water.

Port Rules for Cochin

Rule 1 All vessels within the Port of Cochin shall be bound to take up such berths as may be appointed for them by the Conservator, and shall change their berths when required by such Conservator.

Rule 2 All vessels within the limits of the backwater shall, if required by the Conservator, rig in their jib and driver booms, and strike their masts and yards

Rule 3 All vessels within the limits of the backwater, shall remove any spar, or other substance projecting over the bank if required to do so by the Conservator

Rule 4 All vessels taking in or discharging ballast, or any particular kind of Cargo within the Port of Cochin, shall take up such berths as the Conservator may direct.

Rule 5 A free channel shall be kept for boats moving up and down the backwaters and also free passages to ferry jetties landing places, wharves, quays, docks and moorings, and all vessels shall be bound to remove when required by the Conservator, to such distance as may be necessary for such passages

Rule 6 All vessels within the port
of Cochin, shall anchor, moor, and unmoor, when
and where required by the Conservator

Rule 7 All vessels within the entrance
of the backwater, shall be moored or warped from place
to place as required by the Conservator, and no vessel
at Cochin shall have been made fast
to, be to assist a vessel in mooring, without being
required so to do by the Conservator or officer in
charge of the vessel mooring

Rule 8 The Cargo boat rules published
by Government under date the 23rd April 1847,
shall be in force at the port of Cochin.

Rule 9 No vessels within the limits
of the port of Cochin, shall hail any pilot
or steamer on board, or shall draw off vessels,
by Candle or other artificial lights

Rule 10 All vessels in the Roadstead
of Cochin, shall when at anchor between sunset
and sunrise, have a good light hoisted at the
starboard foreyard arm, and all vessels under
weigh at night, shall show a good light at the
fore Royal, or at the foremost head, and
when under weigh in tow of a steamer, shall in
addition show a light at each foreyard arm,
the steamer showing the usual light prescribed

by

by the Admiralty Regulations.

The limits of the port of Bideford are as follows.

To the North. The boundary pillar near the small hill north of the river.

To the South. The boundary pillar near the burial ground.

The Sea shore between them to extend 50 yards of high water mark, & spring tides.

To the West. The back water, and so much of the shores thereof as are within 50 yards of high water mark & spring tides.

To the East. The space enclosed by two lines running due East. from the boundary pillars to 10 fathoms water.

Port Rules for Bimlipatam

Rule 1. All Vessels within the port of Bimlipatam shall be bound to take up such berth as may be appointed for them by the Conservator, ~~or Harbour Master~~ and shall remove their berths, or remove, when required by such authority.

Rule 2 All Vessels within the entrance of the back water, shall if required by the Conservator, ~~or Harbour Master~~ rig in their fore and driver booms, and strike their masts and yards.

Rule 3 All Vessels within the entrance of the back water, shall remove any anchor or spar, or other substance projecting from her side if required to do so by the Conservator, ~~or Harbour Master~~

Rule 4. All Vessels taking in or discharging ballast, or any particular kind of cargo within the port of Bimlipatam, shall take up such berth as the Conservator ~~or Harbour Master~~ may direct

Rule 5. A free channel shall be kept for

The limits of the port of Vizagapatam are as follows.

To the North: the sea shore within 50 yards of high water marks spring tides, from the boundary pillar near Waltair, to the northern point of the entrance to the backwater.

To the South: the sea shore as above from the boundary pillar on the promontory called the Dolphins Nose, to the Southern point of the entrance of the backwater.

To the East: the anchorage be[illegible] E.S.E from the two boundary pillars [illegible] fathoms at low water.

To the West: the shore with[illegible] of high water spring tides, from [illegible] point of the entrance to the backwa[illegible] Doorga hill, and the basin to the South [illegible] of the entrance to the backwater, and the water enclosed by it.

for ships moving up and down the back water, and also free passage to piers, jetties, landing places, wharves, quays, docks, and moorings, and all vessels shall be bound to move, when required by the Conservator ~~or Harbour Master~~ to clear such fair passages.

All vessels within the port of Bimlipatam, shall anchor, moor, and unmoor, where required by the Conservator ~~Harbour Master~~.

All Vessels within the limits of the back water, shall be moored from place to place as required by the Conservator ~~or Harbour Master~~ and no vessel shall ~~[illegible]~~ off a warp that has been made fast to assist a vessel in mooring, without being ~~[illegible]~~ to do so by the Conservator ~~or Harbour~~ Master or officer in charge of the vessel mooring

Rule 8. The Cargo boat Rules published by Government under date the 23d April 1847, shall be in force at the port of Bimlipatam

Rule 9. No Vessels within the limits of the port of Bimlipatam, shall boil any pitch or tar on board, or shall draw off spirits by

Port Rules for Vizagapatam

Rule 1. All Vessels within the port of Vizagapatam, shall be bound to take up such berth as may be appointed for them by the Conservator ~~or Harbour Master~~ and change their berths, or remove, when required by such authority.

Rule 2. All Vessels within the entrance of the back water, shall if required by the Conservator, ~~or Harbour Master~~ rig out their jib and driver booms, and strike their topmasts and yards.

Rule 3. All Vessels within the entrance of the back-water, shall remove any boom, or spar, or other substance projecting from her sides, if required to do so by the Conservator ~~or Harbour Master~~.

Rule 4. All Vessels taking in or discharging ballast or any particular kind of Cargo within the port of Vizagapatam, shall take up such berth as the Conservator ~~or Harbour Master~~ may direct.

Rule 5. A free channel shall be kept

for ships moving up and down the backwater,
and also for passage to piers, jetties, landing
places, wharves, quays, docks, and moorings, and
all vessels shall be bound to move, when required
by the Conservator ~~or Harbour Master~~ to clear
such fairway passages.

Rule 5. All vessels within the port
of Vizagapatam, shall anchor, moor, and unmoor,
when and where required by the Conservator ~~or
Harbour Master~~.

Rule 6. All Vessels within the entrance
of the backwater, shall be moored, or warped,
from place to place, as required by the Conservator,
~~or Harbour Master~~ and no vessel shall cast off
a rope that has been made fast to her to
assist a vessel in mooring, without being required
so to do by the Conservator, ~~or Harbour Master~~
or officer in charge of the vessel mooring.

Rule 7. The Cargo boat Rules published
by Government under date the 23d April 1847
shall be in force at the port of Vizagapatam

Rule 9. No Vessels within the limits
of the port of Vizagapatam, shall coil any
falls or hammer on board, or shall draw off

by Candle, or other artificial lights

Rule 10. All Vessels in the Roadstead
of Bimlipatam, shall when at anchor, between
sunset and sun rise, have a good light hoisted at
the star board fore yard arm, and all vessels
under weigh at night, shall show a good light at
the fore Royal, or upper foremast head, and
when under weigh in tow of a Steamer, shall in
addition show a light at each fore yard arm, the
Steamer showing the usual light prescribed by
the Admiralty Regulations.

The limits of the Port of Masulipatam are as follows.

To the North. a Line drawn due East from the boundary pillar near the Bungalow at Javesepoody. to 10 fathoms of water.

To the South a Line drawn due East from the Point Divi to 10 fathoms of water. The sea shore between them. to within 50 yards of high water mark, Spring tides. Also the Malaga Lanka river.

To the West. The Masulipatam back water and river to the Pier of the Port the Pettah Canal and Custom-house basin and the branches of the river known as the Toomalapalem Channel to the village of Malaga Lanka, and the Chinnapoor Canal to Chuchilloo Dibba, with so much of the shores thereof as are within 50 yards of high water mark, Spring tides.

To the East. A line drawn from the Eastern extremities of the above described North and South limits.

Port Rules for Masulipatam

Rule 1. All vessels within the port of Masulipatam, shall be bound to take up such berth as may be appointed for them by the Conservator, and shall change their berths, or remove, when required by such authority.

Rule 2. All vessels within the entrance of the back water, shall, if required by the Conservator, rig in their jib and dive booms and strike their masts and yards.

Rule 3. All vessels within the entrance of the backwater, shall remove any anchor, or spar, or other substance projecting from her side, if required to do so by the Conservator.

Rule 4. All vessels taking in or discharging ballast, or any particular kind of Cargo within the port of Masulipatam, shall take up such berth as the Conservator may direct.

Rule 5. A free channel shall be kept for ships moving up and down the backwater, and also free passages to piers, jetties & landing

[illegible] places, wharves, quays, docks, and moorings; and all vessels shall be bound to move when required by the Conservator to clear such channels or passages.

Rule 6. All vessels within the port of Masulipatam, shall anchor, moor and unmoor, when and where required by the Conservator.

Rule 7. All vessels within the entrance of the backwater, shall be warped or towed, from place to place as required by the Conservator, and no vessels shall cast off a warp that has been made fast to her to assist a vessel in mooring, without being required to do so by the Conservator, or officer in charge of the vessel mooring.

Rule 8. The Cargo boat rules published by Government under date the 30th April 1847, shall be in force at the port of Masulipatam.

Rule 9. No vessels within the limits of the port of Masulipatam, shall boil any pitch or dammer on board, or shall draw off spirits by Candle, or other artificial lights.

Rule 10

Rule 10 All vessels in the Roads of Masulipatam, shall, when at anchor between sunset and sunrise, have a good light burning at the Starboard fore yard arm, and all vessels under weigh at night shall shew a light at the fore Royal, or upper fore mast head, and when under weigh in tow of a Steamer shall in addition shew a light at each fore yard arm of the Steamer shewing the usual light prescribed by the Admiralty Regulations.

The limits of the port of Cuddalore are as follows.

To the North. The boundary pillar on the sea shore North of Store [illegible]

To the South. The boundary pillar near Poonear Moodelly's Choultry

The channels and sea shores between them to within 50 yards of high water mark, spring tides.

To the West. The backwater with the rivers and channels leading thereto as far as Poonear Moodelly's Choultry on the South, the Northern boundary pillar on the North, and half a mile from the sea on the West, with so much of the shores thereof, as are within 50 yards of high water mark, spring tides.

To the East. The space enclosed by two lines running due East from the boundary pillars to 10 fathoms water.

Port Rules for Cuddalore

Rule 1 All Vessels within the port of Cuddalore shall be caused to take up such berth as may be appointed for them by the ~~Harbour Master~~ and shall change their berths or remove when required by such authority

Rule 2 All Vessels within the entrance of the back water, shall if required by the Conservator ~~or Harbour Master~~ peg in their poles and driver booms, and strike their masts and yards

Rule 3 All Vessels within the entrance of the back water, shall remove any anchor, spar, or other substance projecting from her sides if required to do so by the Conservator ~~or Harbour Master~~.

Rule 4 All Vessels taking in or discharging ballast, or any particular kind of cargo within the port of Cuddalore, shall take up such berths as the Conservator ~~or Harbour Master~~ may direct

Rule 5 A free channel shall be kept

for ships moving up and down the back water,
and also free passage to piers, jetties, landing places,
wharves, quays, docks, and moorings, and all vessels
shall be bound to move when required by the
Conservator ~~Harbour Master~~ to clear such Channels
& passages.

Rule 6. All vessels within the port
of Cuddalore, shall anchor, moor, and unmoor, when
and where required by the Conservator ~~or Harbour~~
~~Master~~

Rule 7. All Vessels within the entrance
of the back water, shall be moored or warped
from place to place as required by the Conservator,
~~or Harbour Master~~ and no vessel shall cast off
a rope that has been made fast to her to assist
her to be in mooring, without being required to
do so by the Conservator, ~~or Harbour Master~~
or person in charge of the vessel mooring.

Rule 8. The Cargo boat Rules
published by Government under date the 23d
April 1847 shall be in force at the port
of Cuddalore.

Rule 9 No Vessels within the limits
of the port of Cuddalore, shall boil any
pitch

in addition shew a light at each foreyard
arm, the Steamers shewing the usual light
prescribed by the Admiralty Regulations.

Limits of the port of Trangnebar

To the North. The boundary pillar on the sea shore 500 yards North of the Northern bastion.

To the South. The boundary pillar on the sea shore 300 yards South of the entrance to the river. The sea shore between them to be the 50 yards of high water mark. Spring tides.

To the West. The river as far as the West end of the island, and so much of the banks thereof as are within 50 yards of high water mark spring tides.

To the East. The space enclosed between lines drawn due East from the boundary pillars to 9 fathoms water.

Port Rules for Tranquebar

Rule 1 All vessels within the port of Tranquebar, shall be bound to take up such berth as may be appointed for them by the Conservator, and shall change their berth when required by such authority.

Rule 2 All vessels within the entrance of the backwater, shall if required by the Conservator rig in their jib and driver booms, and strike their masts and yards.

Rule 3 All vessels within the entrance of the backwater, shall remove any anchor or spar, or other substance projecting from her side, if required to do so by the Conservator.

Rule 4 All vessels taking in or discharging ballast, or any particular kinds of Cargo within the port of Tranquebar, shall take up such berth as the Conservator may direct.

Rule 5 A free channel shall be kept for ships moving up and down the backwater, and also free passages to piers, jetties, landing places, wharves, quays docks and moorings, and all vessels shall be bound to move, when required

required to clear such channels or passages.

Rule 6. All vessels within the port of Tranquebar, shall anchor moor and unmoor, when and where required by the Conservator.

Rule 7. All vessels within the entrance of the backwater, shall be moored or warped from place to place as required by the Conservator, and no vessels shall cast off a warp that has been made fast to the bank or a vessel in mooring, without being required to do so by the Conservator, or officer in charge of the vessel mooring.

Rule 8 The Cargo boat Rules published by Government under date the 23rd April 1877 shall be in force at the port of Tranquebar

Rule 9. No vessels within the limits of the port of Tranquebar, shall boil any pitch or tarr on board, or shall draw off spirits by candle or other artificial lights.

Rule 10 All vessels in the Roadstead of Tranquebar, shall when at anchor between sunset and sunrise, have a good light hoisted at the starboard fore yard arm, and all vessels under weigh at night, shall shew a good light at the fore Royal, or upper foremast head: and when under weigh in tow of a steamer, shall in

The limits of the Port of Negapatam

To the North. The boundary pillar on the sea shore 1000 yards North of the entrance to the river

To the South. The boundary pillar on the [illegible] off Banja Coopum. The sea shore between them to within 50 yards of high water mark spring tides.

To the West. The river to a distance of 836 yards West of the Southern boundary pillar, and the banks thereof, to within 50 yards of high water mark, spring tides.

To the East. The space enclosed by two lines drawn due East from the boundary pillars to 8 fathoms water.

Port Rules for Negapatam.

Rule 1 All vessels within the port of Negapatam, shall be bound to take up such berth as may be appointed for them by the Conservator, and shall change their berths, remove, when required by such authority.

Rule 2 All vessels within the limits of the backwater, shall if required by the Conservator, rig in their jib and dolphin booms and strike their masts and yards.

Rule 3. All vessels within the limits of the backwater, shall remove any anchor or spar, or other substance projecting from her side, if required to do so by the Conservator.

Rule 4. All vessels taking in or discharging ballast, or any particular kinds of Cargo, within the port of Negapatam, shall take up such berths as the Conservator may direct.

Rule 5. A free channel shall be kept for ships moving up and down the backwater, and also free passages to piers, jetties, landing places, wharves, quays, docks and moorings, and all vessels shall be moved

to

to moor, when required to clear such Channels or passages.

Rule 6. All vessels within the port of Negapatam, shall anchor, moor and unmoor, when and where required by the Conservator.

Rule 7 All vessels within the entrance of the Breakwater, shall be moored or warped from place to place, as required by the Conservator, and no vessel shall cast off a warp that has been made fast to her to assist a vessel in mooring, without being required to do so by the Conservator, or officer in charge of the vessel mooring.

Rule 8 The Cargo boat Rules published by Government under date the 23d April 1847 shall be in force at the port of Negapatam.

Rule 9 No vessels within the limits of the port of Negapatam, shall boil any pitch or dammer on board, or shall draw off spirits by candle or other artificial lights.

Rule 10 All vessels in the Roadstead of Negapatam, shall when at anchor between sunset and sunrise, have a good light hoisted at the starboard fore yard arm, and all vessels under weigh at night, shall shew a good

good light at the fore Royal, or upper fore-mast head; and when under weigh in tow of a Steamer shall in addition shew a light at each foreyard arm, the Steamer shewing the usual light prescribed by the Admiralty Regulations.

Port Rules for Calicut

Rule 1 . All vessels within the port of Calicut shall be bound to take up such berth as may be appointed for them by the Conservator and shall change their berths or remove when required by such authority.

Rule 2 . All vessels taking in ballast or any particular kind of Cargo within the port of Calicut shall take up such berth as the Conservator may direct.

Rule 3 . A free passage shall be kept to piers, jetties, landing places, wharves, docks and moorings and all vessels shall be bound to move when required by the Conservator to clear such passages.

Rule 4 . All vessels within the port of Calicut shall anchor, moor and unmoor when and where required by the Conservator.

Rule 5 . The Cargo boat Rules published by Government under date the 23d. April 1847 shall be in force at the port of Calicut.

Rule 6 . No vessels within the limits of the port Calicut shall boil any pitch or Tammer on board or shall draw off spirits by candle or other artificial light.

Rule 7 . All vessels in the Roadstead of Calicut shall when at anchor between sunset and

and sunrise have a good light hoisted at the Star board fore yard arm and all vessels under weigh at night shall shew a good light at the fore Royal or upper foremast head and when under weigh in tow of a steamer shall in addition shew a light at each fore yard arm, the Steamer shewing the usual light prescribed by the Admiralty Regns.

The limits of the port of Calicut are as follows.

To the North. The boundary pillar one mile and a half North of the Custom House.

To the South. The boundary pillar two miles South of the Custom House.

The Sea Shores between them to the 50 yards of high water mark, spring tides.

To the East. The harbour or back water, and the Kalai River as far as the junction of the Conollys Canal with all creeks and channels leading thereto, and so much of the shores thereof, whether of the mainland, or the islands, as are within 50 yards of high water mark, spring tides.

To the West. The space enclosed by two lines running due West from the boundary pillars in 9 fathoms wat

The limits of the port of Tellicherry are as follows.

To the North: the boundary pillar one and a half mile North of the Custom house.

To the South: the boundary pillar one and a half mile South of the Custom house.

To the East: the sea shore between them to within 50 yards of high water mark spring tides.

To the West: the space enclosed by two lines running due West from the boundary pillars to 9 fathoms water.

Port Rules for Tellicherry

Rule 1 All vessels within the port of Tellicherry shall be bound to take up such berth as may be appointed for them by the Conservator ~~or Harbour Master~~ and shall change their berths or remove when required by such authority.

Rule 2 All vessels taking in or discharging ballast or any particular kind of cargo within the port of Tellicherry shall take up such berth as the Conservator ~~or Harbour Master~~ may direct.

Rule 3 A free passage shall be kept to piers jetties landing places slipways docks and moorings and all vessels shall be bound to move when required by the Conservator ~~or Harbour Master~~ to clear such passage.

Rule 4. All vessels within the port of Tellicherry shall anchor moor and remain when and where required by the Conservator ~~or Harbour Master~~.

Rule 5 The Cargo boat Rules published by Government under date the 23rd April 1847 shall be in force at the port of Tellicherry.

Rule 6 No vessels within the limits of the port of Tellicherry shall boil any pitch or dammer on board or shall draw off spirits by

by candle or other artificial lights.

Rule 9 All vessels in the Roadstead of Tellicherry shall when at anchor between sunset and sunrise have a good light hoisted at the star board fore yard arm and all vessels under weigh at night shall shew a good light at the fore Royal or upper foremast head and when under weigh in tow of a steamer shall in addition shew a light at each fore yard arm, the steamer shewing the usual light prescribed by the Admiralty Regulations.

pitch or dammar on board, or shall draw off Spirits by candle or other artificial lights.

Rule 10 All Vessels in the Roadstead of Cuddalore, shall when at anchor between sunset and sun rise, have a good light hoisted at the star board fore yard arm; and all Vessels under weigh at night, shall shew a good light at the fore Royal, or upper foremast head, and when under weigh in tow of a Steamer, shall in addition shew a light at each fore yard arm, the Steamer shewing the usual light prescribed by the Admiralty Regulations.

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Port Rules for Cannanore.

Rule 1 All vessels within the port of Cannanore shall be bound to take up such berth as may be appointed for them by the Conservator ~~or Harbour Master~~ and shall change their berths or remove when required by such authority.

Rule 2 All vessels taking in or discharging ballast or any particular kind of cargo within the port of Cannanore shall take up such berth as the Conservator ~~Harbour Master~~ may direct.

Rule 3 A free passage shall be kept to piers jetties landing places wharves quays docks and moorings and all vessels shall be bound to move when required by the Conservator ~~or Harbour Master~~ to clear such passages.

Rule 4 All vessels within the port of Cannanore shall anchor moor and unmoor when and where required by the Conservator ~~or Harbour Master~~.

Rule 5 The Cargo boat rules published by Government under date the 23rd April 1847 shall be in force at the port of Cannanore.

Rule 6 No vessels within the limits of the port of Cannanore shall boil any pitch or dammer on board or shall draw off any pitch by

by candle or other artificial lights.

Rule 9 All vessels in the Roadstead of Cammanore shall when at anchor between sunset and sunrise have a good light hoisted at the star board fore yard arm and all vessels under weigh at night shall shew a good light at the fore Royal or upper foremast head; and when under weigh the low of a steamer shall in addition shew a light at each fore yard arm, the Steamer shewing the usual light prescribed by the Admiralty Regulations.

The limits of the port of Cammanore are as follows.

To the North: the boundary pillar one mile North of the Fort.

To the South: the boundary pillar two miles South of the Fort.

To the East: the sea shore between them to within 50 yards of high water marks, spring tides.

To the West: the space enclosed by two lines running due West from the boundary pillars to 9 fathoms water

45 97

The Limits of the port of Mangalore are

To the North - The boundary pillar on the sea shore about 740 yards from Sultans battery

To the South - The boundary pillar on the sea shore about 1000 yards below the Marine yard. The sea shore between the pillars to within 50 yards of high water mark spring tides.

To the East - The back water between Sultans battery and the Marine yard and so much of the shores thereof as are within 50 yards of high water mark spring tides.

To the West - The space enclosed between two lines running due West from the boundary pillars to 9 fathoms water.

Port Rules of Mangalore

Rule 1 All vessels within the port of Mangalore shall be bound to take up such berth as may be appointed for them by the Conservator, and shall change their berth or remove when required by such authority.

Rule 2 All vessels within the entrance of the backwater shall, if required by the Conservator rig in their jib and driver booms and strike their masts and yards.

Rule 3 All vessels within the entrance of the backwater shall remove any boom or spar or other substance projecting from her side if required to do so by the Conservator.

Rule 4 All vessels taking in or discharging ballast or any particular kind of Cargo within the port of Mangalore shall take up such berth as the Conservator may direct.

Rule 5 A free channel shall be kept for ships moving up and down the backwater, and also free passages to piers jetties landing places, wharves, quays, docks and moorings and all vessels shall be bound to move when

when so required by the Conservator to clear such Channels or passages.

Rule 8 All vessels within the port of Mangalore shall anchor moor and unmoor when and where required by the Conservator.

Rule 9 All vessels within the entrance of the backwater shall be moored or warped from place to place as required by the Conservator, and no vessel shall cast off a warp that has been made fast to her to assist a vessel in mooring without being required to do so by the Conservator or officer in charge of the vessel mooring.

Rule The Cargo boat Rules published by Government under date the 23rd April 1847 shall be in force at the port of Mangalore.

Rule 9 No vessels within the limits of the port of Mangalore shall boil any pitch or dammer on board or shall draw off spirits by Candle or other artificial lights.

Rule 10 All vessels in the Roadstead of Mangalore shall when at anchor between sunset and sunrise have a good light hoisted at the starboard foreyard arm and all vessels under weigh at night shall shew a good

good light at the fore Royal or after fore foremast head and when under weigh in tow of a steamer shall in addition shew a light at each foreyard arm the steamer shewing the usual light prescribed by the Admiralty Regulations.-

No. 564

From

I. I. Franklin Esqre.
Secretary Marine Board

To

T. Pycroft Esqre.
Chief Secretary to Government
Fort Saint George

Sir,

I have the honor by desire of the Marine Board to forward the accompanying copies of the limits and Port Rules for the several ports of the Madras Presidency to be brought under the provisions of Act XXII of 1855, and to recommend that they be published as suggested in the concluding para of their letter of the 1st instant No. 457.

2 The Board would likewise suggest that 150 copies of the notification forwarded with the above cited letter should if approved, be struck off for the use of the department, together with 50 copies of the limits and Rules for each port, printed separately.-

5°

I have the honor to be,
Sir,
Your most obedient Servant

Madras
Marine Board Office
6th. February 1838

Secretary

the Advocate General with a request that he would reconsider the whole question with especial reference to the Minute of Mr. Franklin, or should Government have no objection they would be glad to lay the case before another Barrister, and they would suggest Mr. J. W. Branson being requested to give his opinion on the subject. But should Government agree with them that it is questionable whether an Action will be raised, and that if raised there is considerable reason to believe that the Court would decide against Messrs: Arbuthnot and Co. The Board would solicit the permission of Government to their replying to Messrs: Wilkins and Shaw, that they do not acknowledge the Contract, and that as Messrs: Arbuthnot and Co. have not chosen to accept their offer (made on 24th March) of Rupees 25 a Ton they now decline to purchase the Coals on any terms whatever.

From Messrs: WILKINS AND SHAW, Solicitors; to J. T. MACLAGAN, Esq., Acting Secretary Marine Board, dated 8th April 1858.

SIR,

We are instructed by Messrs: Arbuthnot and Co., with reference to a certain Contract for the sale of Coal entered into between the Government and them, to inform you, that the said Coal to the amount of 441 Tons was received by Mr. Mackinzie of Bimlipatam on behalf of Government on the 3rd of March 1858, and has since been stored in the Godowns of Messrs: Arbuthnot and Co., and that their charge for Godown rent, which Government has agreed to pay, is at the rate of one Rupee per Ton per mensem.

We annex a copy of Mr. Mackenzie's receipt. Messrs: Arbuthnot and Co. claim from Government Rs. 15,435 for the Coal at the rate of 35 Rupees per Ton. and 441 Rupees, the amount of Godown rent, making altogether 15,876 Rupees, which, they trust, will be paid without delay and the Coal removed, and they desire us to state that Godown rent will be continued to be charged at the like rate till the Coal is removed.

Sugar Works, 3rd March 1858.
BIMLIPATAM.

Received from the Chittivalsah concern on account of the Madras Government, Tons 441, 98 lbs. (Four hundred and forty one Tons and Ninety eight lbs.) of Coal.

(Signed) J. T. MACKENZIE,
Agent for Messrs: Arbuthnot and Co.

(True Copy)

(Signed) J. T. MACLAGAN,
Acting Secretary.

From J. T. MACLAGAN, Esq., Acting Secretary to the Marine Board; to the Honorable Company's Solicitor, dated 9th April 1858, No. 1522.

SIR,

I have the honor by desire of the Marine Board to forward to you certain correspondence on the subject of a purchase of Coal at Bimlipatam alleged to have been made by the Board in December last from Messrs: Arbuthnot and Co., and to request the favor of your advising the Board what reply should be made by them to the letter No. XII from Messrs: Wilkins and Shaw. You will observe that letter contains the first intimation which the Board has received of the actual quantity of Coal which had been previously stated to be about 300 Tons and in letter No. VI to be 301 Tons *weighed and delivered*, and which now appears to be 441 Tons and 98 lbs.

I.	Arbuthnot and Co. to Secretary Marine Board, ...	1st	February	1858.
II.	Secretary Marine Board to Arbuthnot and Co., ...	2nd	do.	
III.	Arbuthnot and Co. to Secretary Marine Board, ...	3rd	do.	
IV.	Secretary Marine Board to Arbuthnot and Co., ...	3rd	do.	
V.	Private Note, Mr. William Arbuthnot to Mr. Franklin, ...	5th	do.	
VI.	Arbuthnot and Co. to Secretary Marine Board, ...	24th	do.	
VII.	Extract Minutes Consultation, No. 110, 13th March 1858, containing copies of letters, Secretary Marine Board to Government,	27th	do.	
VIII.	Acting Secretary Marine to Messrs: Arbuthnot and Co.,	24th	March	1858.
IX.	Private Note, Mr. William Arbuthnot to Mr. Franklin,	25th	do.	
X.	Acting Secretary Marine Board to Arbuthnot and Co.,	26th	do.	
XI.	do. do.	8th	April	1858.
XII.	Wilkins and Shaw to Acting Secretary Marine Board, ...	8th	April	1858.

COPY OPINION.

From the reply of the Secretary to the Marine Board to my inquiry made through the Honorable Company's Solicitor, I find that he cannot deny the Statement attributed to him by Messrs: Arbuthnot and Co. in their letter, dated 24th February 1858, *viz*, "that he would have "considered it a breach of faith had they, after the conversation that took place, sold the Coal "to any other purchaser."

This being the case, I think it only necessary to refer to Messrs: Arbuthnot & Co's letter to Mr. Franklin, dated 18th November, and Mr. Franklin's reply of the same date.

The former is a tender of Coals, quantity uncertain, at Rupees 35 a Ton, to be delivered, time not specified, to Messrs: Arbuthnot & Co's Agent at Bimlipatam on behalf of Government and to be stored at Government expense.

The reply is an acceptance of the tender, at the rate mentioned, of Coals to any amount not to exceed 500 or 600 Tons, to be delivered at Bimlipatam, no time for delivery specified, the Coals to be kept till required. Godown rent to be paid and the Coals to be paid for on delivery. The reply commences with a request that, to avoid any future discussion; the tender may be made in an official shape; but meantime it is accepted.

No. 8. From J. T. MACLAGAN, Esq., Acting Secretary Marine Board; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 24th April 1858, No. 1818.

Sir,

With reference to the order of Government, marginally noted, I have the honor by desire of the Marine Board to acquaint you for the information of the Right Honorable the Governor in Council that on 24th March they communicated to Messrs: Arbuthnot and Co. the concurrence of Government in the decision already intimated to that firm with respect to an alleged sale of Coal at Bimlipatam, expressed their willingness still to take the Coals at the rate of Rupees 25 per Ton, and requested a speedy reply. On 8th April they received a letter from Messrs: Wilkins and Shaw, Solicitors, claiming payment for 441 Tons and 98lbs. of Coals at the rate of Rupees 35 per Ton, and Godown rent at the rate of one Rupee per Ton per mensem. The Board thereupon submitted to the Honorable Company's Solicitor the whole correspondence in the case and that Gentleman has now furnished the Board with a Copy of an opinion obtained from Mr. Advocate General Smyth, on the subject. Copies of the letter from Messrs: Wilkins and Shaw, of the Board's letter to the Honorable Company's Solicitor and of Mr. Advocate General's opinion are sent herewith.

Extract Minutes No. 110, *13th March* 1858.

This opinion together with the papers on which it is founded and a Minute by Mr. Franklin, copy of which is also forwarded herewith, have received the anxious consideration of each individual Member of the Board, they are unanimously dissatisfied with the decision to which the Advocate General has arrived, and unless they are ordered by Government to follow his advice and pay for the Coals at the rate of Rupees 35 per Ton, they are not inclined to do so. They believe notwithstanding the opinion of the Advocate General that even were Messrs: Arbuthnot and Co. to bring the case before a Court of Law, the positive evidence of Mr. Franklin, that the sending in of an Official Tender was a condition of the bargain, (a fact which has been admitted by Mr. William Arbuthnot to Mr. Franklin,) would be sufficient to overthrow any evidence that could be adduced to prove a Contract. Moreover they entertain very great doubts whether an action will be brought should they refuse to pay. The evidence that would be brought before the Court would they believe do more injury to Messrs: Arbuthnot and Co. than they could be compensated for by the success of their action, for it would be evident too that they were taking an undue advantage of a point of Law to enforce a Contract which they themselves allowed to lie dormant for nearly three months, until it suited their purpose to revive it, and it would exhibit the far from creditable proceeding in quoting Mr. Franklin's private Note with the omission of the important words "Will you let me have your offer officially. This is best or there may be discussion hereafter."

Under these circumstances I am directed by the Board to submit, for the consideration of the Right Honorable the Governor in Council, the expediency of again laying the papers before

Fort Saint George, Marine Consultation, 4th May 1858.

The above are the points which appear to me to warrant an expectation that the Government would have a fair chance of resisting the claim if Messrs. Arbuthnot & Co. venture to bring such a case into a Court of Justice, and I lay them before the Board that they may be submitted to Government with such recommendation as may be decided on.

(Signed) JOHN J. FRANKLIN.

(True Copy.)

(Signed) J. T. MACLAGAN,
Acting Secretary.

No. 9.

ORDER THEREON, No. 165; dated 1st May 1858.

In the above letter the Marine Board represent, with reference to the order of Government, 13th March 1858, No. 110, that on the 24th March they communicated to Messrs: Arbuthnot and Co. the concurrence of Government in the decision already intimated to that firm with respect to an alleged sale of Coal at Bimlipatam, expressed their willingness still to take the Coals at the rate of Rupees 25 per Ton, and requested a speedy reply. On 8th April they received a letter from Messrs: Wilkins and Shaw, Solicitors, claiming payment for 441 Tons and 98lbs. of Coals at the rate of Rupees 35 per Ton, and Godown rent at the rate of one Rupee per Ton per mensem. The Board thereupon submitted to the Honorable Company's Solicitor the whole correspondence in the case, and that Gentleman has now furnished the Board with a copy of an opinion obtained from Mr. Advocate General Smyth on the subject. The Board forward copies of the letter from Messrs: Wilkins and Shaw, of their own letter to the Honorable Company's Solicitor and of the Advocate General's opinion.

2. This opinion, they continue, together with the papers on which it is founded and a Minute by Mr. Franklin, copy of which is also forwarded, have received the anxious consideration of each individual member of the Board, and they are unable to acquiesce in the decision at which the Advocate General has arrived. They believe that even were Messrs: Arbuthnot and Co. to bring the case before a Court of Law, the positive evidence of Mr. Franklin, that the sending in of an Official Tender was a condition of the bargain, would be sufficient to overthrow any evidence that could be adduced to prove a Contract.

3. Under these circumstances the Marine Board submit, for the consideration of the Right Honorable the Governor in Council, the expediency of again laying the papers before the Advocate General, with a request that he would re-consider the whole question with especial reference to the Minute of Mr. Franklin.

4. The Right Honorable the Governor in Council resolves, as suggested by the Board, to forward the enclosures to the letter to the Advocate General, and to request his further opinion on the case in reference to the remarks of the Board, and to the Minute which Mr. Franklin has recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

I learn from Mr Fraser that Messrs Arbuthnot & Co have not yet commenced to remove the Coals from Bimlipatam but will do so at once

Ex. Min: A° 110
13 March 1858

No. 1818

From J. T. Maclagan Esq^re
Acting Secretary Marine Board

To

T. Pycroft Esq^re
Chief Secretary to Government
Fort Saint George

Sir,

With reference to the Order of Government marginally noted, I have the honor by desire of the Marine Board to acquaint you for the information of the Right Honorable the Governor in Council that on 24^th March they communicated to Messrs Arbuthnot & Co. the concurrence of Government in the decision already intimated to that firm with respect to an alleged sale of Coal at Bimlipatam expressed their willingness still to take the Coals at the rate of Rupees 25 per ton, and requested a speedy reply. On 8^th April they received a letter from Messrs Wilkins and Shaw Solicitors claiming payment for 441 Tons and 98th of Coals at the rate of Rupees 35 per ton, and godown rent at the rate of one Rupee per ton per mensem. The Board thereupon

thereupon submitted to the Kimbl Company's Solicitor the whole correspondence in the case and that Gentleman has now furnished the Board with a copy of an opinion obtained from Mr. Advocate General Smyth on the subject. Copies of the I letter from Messrs Wilkins and Shaw, of the Board's II letter to the H. C. Solicitor and of Mr. Advocate Generals III opinion are sent herewith.

This opinion together with the papers on which it is founded and a III Minute by Mr. Franklin copy of which is also forwarded herewith have received the anxious consideration of each individual member of the Board, they are unanimously dissatisfied with the decision to which the Advocate General has arrived, and unless they are ordered by Government to follow his advice and pay for the coals at the rate of Rupees 35 per ton, they are not inclined to do so. They believe notwithstanding the opinion of the Advocate General that even were Messrs Arbuthnot & Co. to bring the case before a Court of law the positive evidence of Mr. Franklin that the sending

in

Minute by Mr. Franklin

The Advocate General having expressed an unfavorable opinion on the question about the Coals which Messrs Arbuthnot & Co. maintain that I purchased in November last, I wish to shew that there are some points on our side which he takes no note of, while another tending to an opposite direction has undue weight attached to it.

In the first place Mr Smyth entirely overlooks the fact, that the Coals were represented to be at Bimlipatam. In the conversations which took place previous to the correspondence, they were said to be there: in the recorded note from Mr. W. Arbuthnot they were referred to as "the Coals they had at Bimlipatam". No hint was given that they were elsewhere. It was well known that the Coals were required immediately and that as time advanced, less would be given. Had it been stated that they were some where else, the questions would naturally have arisen, "where are they" and "when can they be delivered

which

procured

which would have spoiled their sale. They were therefore stated to be at Binnu-
-lipatam, where, in fact, they were not: and if they had been there the dispute would never have occurred; for Mr. W. Arbuthnot would, by return of post have received a reply to the inquiry, he mentioned in his note as being about to make, regarding the quantity; he would then have submitted his tender formally; it would have been formally accepted; and the Coals would have been used at a time when the supplies and demand were such as to warrant so high a price being paid. But as they tendered what were not in existence; namely Coals at Bimlipatam, and which it seems were not there till 3½ months after-
-wards, I cannot conceive how a claim for their payment can be enforced.

Now again, Mr Smyth, in the 3d para: of his opinion omits a word which very materially alters the question. He says (alluding to Mr W. Arbuthnot's note) "that the "former is a tender of Coals - quantity "uncertain - at Rupees 35 a ton, to be

"be delivered - time not specified - to Messrs Arbuthnot & Co's Agent at Bimli-
"patam." But this is not all, nor does it appear to one fairly stated on behalf of Government. The note is an offer of Coals at Bimlipatam, deliverable to their Agent there. In such case it was to be supposed that the delivery would be a mere matter of form; to enable the Firm to obtain payment.

I have further to observe that Mr Advocate General entirely sets aside the fact of there having been a Con-
-versation previous to the note, not-
-withstanding that Messrs Arbuthnot & Co expressly say in the 2d para: of their letter of the 24th February last, that in Consequence of that Conversation, they had taken the necessary steps towards giving effect to the engagement they conceived to be already existing previous to the notes of the 18th November. This at once shews that the condition which was most specially insisted on the in our interviews; which I adverted to in my note; and which was suppressed when Messrs Arbuthnot & Co first fur-
-nished me with what purported to be my Communication on the subject, was systematically kept out of view. I am prepared solemnly to affirm that

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received

that Mr. W. Arbuthnot was informed by me more than once — and I have no doubt that gentleman will admit the fact in a witness box — that the purchase would not be Con=cluded without the submission of a formal tender in the usual way. A verbal contract has, I believe, equal force with a written one. Messrs. Arbuthnot & Co. evidently considered from that portion of their letter above referred to, that I was bound by the verbal contract I had entered into; and so I should have been, had the condition stipulated for been fulfilled. They state that it was because they considered me bound by that Con=versation, that they omitted to send the official tender. It will be for Mr. W. Arbuthnot to say whether I did not in our interviews insist on this. He has already admitted to me verbally that such was the case.

These are points which are most important for the case on our side, but which the Advocate General appears to think un=worthy of notice.

But great stress is laid on

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on the fact of my admitting that I considered it would have been a breach of faith if the coals had been sold to a third party. It is hard to conceive on what grounds the Advocate General should have expressed an opinion favorable to Messrs Arbuthnot & Co's claim in consequence of this. A member of the same Firm in the month of January, before the present discussion arose, entered into a precisely similar arrangement with me for the purchase of a Cargo of Coals to be landed at Cocanada. He offered them in conversation. I agreed to take them at Rupees 25 a ton, provided a tender in the usual way was forwarded. Such was done, but it is inconceivable to believe that the law would have bound me to their purchase, had not the official tender been sub=mitted: and yet it would have been a breach of faith to have sold them to any one else pending the negotia=tion with me.

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preceed

The above are the points which appear to me to warrant an Ex=
=pectation that the Government would have a fair chance of recreating the Claim if Mssrs A & Co venture to bring such a case into a Court of justice & lay them before the Board that they may be submitted to Government with such re=
=commendation as may be decided on.

/ Signed / Jno S. Franklin

/ True Copy /
J Maclagan
Ag Secretary

Marine Dept

No 1446

The Secretary Marine Board

Dated 24th April 1888

Sir

I am directed by the Lords Commissioners of the Admiralty to transmit herewith for the information of the Marine Board a letter from Messrs Thos Gray Hewitt & Co of Sunderland dated the 23rd instant stating that they have received a letter from Captain Wm Hogarth of the Steamship "Ida" of Sunderland complaining of the conduct of the Pilot who took charge of that vessel on the 21st instant in the River Tyne

I am Sir
Your obedient Servant
[illegible]

Marine Dept
No 1446.

Transmit to Engd/25th July 1888
Part 13

Ida/88
No 1446.

Marine Department.

No. 165

Extract from the Minutes of Consultation.
Dated 1st April 1858.

Read the following letter from the Marine Board.

Fort St. George 24th April 1858.
No. 1818

In the above letter the Marine Board represent, with reference to the Order of Government 13th March 1858. No. 110, that on the 24th March they communicated to Messrs. Arbuthnot & Co. the concurrence of Government in the decision already indicated to that firm with respect to an alleged sale of Coal at Bimlipatam, & expressed their willingness still to take the Coals at the rate of Rupees 25 per ton, and requested a speedy reply. On 8th April they received

received a letter from Messrs Wilkins and Shaw Solicitors claiming payment for 441 Tons and 98 lbs of Coals at the rate of Rupees 35 per ton, and godown rent at the rate of one Rupee per ton per mensem. The Board thereupon submitted to the Honorable Company's Solicitor the whole correspondence in the case, and that Genl. Heman has now furnished the Board with a copy of an opinion obtained from Mr. Advocate General Smyth on the subject. The Board forward copies of the letter from Messrs Wilkins and Shaw, of their own letter to the Hble. Company's Solicitor and of the Advocate General's opinion.—

2.— This opinion, they continue, together with the papers on which it is founded and a Minute by Mr. Franklin, copy of which is also forwarded ~~herewith~~, have received the anxious consideration of each individual member of the Board — and they are unable to acquiesce in the decision at which the Advocate General has arrived. They believe that even were Messrs Arbuthnot & Co. to bring the case before a Court of law, the positive evidence of Mr. Franklin that the sending in of an Official tender was a condition of the bargain (a fact which has been admitted by Mr. William Arbuthnot to Mr. Franklin) would be sufficient to overthrow any evidence that could be adduced to prove a contract.—

3.— Under these circumstances the Marine Board submit for the consideration of the Right Hble the Governor in Council the expediency of again laying

laying the papers before the Advocate General, with a request that he would reconsider the whole question with especial reference to the Minute of Mr. Franklin.—

4.— The Right Honorable the Governor in Council resolves as suggested by the Board to forward the enclosures to the letter to the Advocate General, and to request his further opinion on the case in reference to the remarks of the Board, and to the Minute which Mr. Franklin has recorded.—

J.P.

In original to be returned

H. Comble — Company's Solicitor with Enclosures to Marine Board's letter — to be returned.— } Disp.d 1st May

F. Warden

C 28 Apl R 30

H. C. Doll

Marine 185 Department

No. 165

Extract Mins. Cons.

Dated 1st May 1858

Madras:—Printed at the Government Press.

Marine Letter to Engd 21/26 July No 24 of 1858

Part 13

Replied to from the Secy of State for India dated 24th February No 7 of 1859

849

412 No 152
" " 175