

# MADRAS RECORD OFFICE.

Government of Madras.

*Marine* DEPARTMENT.

G.O. No. 2397

Press  
~~Mis.~~

Dated

19. 6. 18 58

Not to be folded or roughly handled

*20/6/58*

*Fort Saint George, Marine Consultation, 22nd June 1858.*

No. 16. From Messrs. ARBUTHNOT & Co.; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Madras 3rd June 1858.

SIR,

1. We have received from the Acting Secretary to the Marine Board a letter in which, by desire of that Board, he forwards to us Extract of Minutes of Consultation under date the 25th May, having reference to our claim for Coals sold to Government.

2. In this Extract we find with equal regret and surprise that the Right Honorable the Governor in Council, after acknowledging the validity of our claim as confirmed by the Advocate General's professional opinion, goes on to express his conviction "that what has occurred on the present occasion will shew the Marine Board the necessity of great caution in their future transactions with Messrs. Arbuthnot & Co."

3. It is not difficult to understand the inuendo contained in these last words, but we are entirely at a loss to imagine what act of ours has led the Right Honorable the Governor in Council to form and to express so unfavorable an opinion of us.

4. Throughout the discussion between the Marine Board and ourselves not the slightest imputation was cast by that body on our perfect good faith in the whole transaction. The only question was whether an inadvertence on our part in omitting a single formality should entitle the Government to inflict on us a loss of upwards of Rupees 4,000.

5. Our case was a very simple one. We made a bargain, which we believed to be concluded, and forthwith proceeded to carry out our part of it. On the 18th November we received in writing Mr. Franklin's acceptance of our offer, and on the same day we wrote to the Manager of our Sugar Works to reserve what Coal he required for his own use and to hand over the balance to our Agent at Bimlipatam, whom we also on the same day instructed to receive and Store them on account of Government, as agreed on with Mr. Franklin. Unfortunately we omitted to send the Official Tender which Mr. Franklin had recommended us to do, and which would have put all further discussion out of the question. By this inadvertence we exposed ourselves to the risk of losing our sale of the Coal. But even supposing this had been the result, and that the legal question had been decided against us, surely there would have been no imputation on our good faith when it appeared that we had actually performed our part of the Contract.

6. Under the full persuasion that all was settled we made no further communication to the Marine Board until we heard from our Agent at Bimlipatam that he had actually weighed and stored upwards of 300 Tons Coal for Government. As that was the minimum quantity we had engaged to deliver we thought it well to notify to the Marine Board that the delivery was on the point being completed. It was then for the first time that we learned that the bargain was repudiated.

7. We at first endeavoured without success to prevail upon the Marine Board to acknowledge their Contract and we had the regret to find that a reference to Government produced no better result. Being assured of the justice of our cause and being advised that we had law as well as justice on our side, we felt that to abandon our claim would be to admit the correctness of the Marine Board's reasoning, and to yield in a weak and pusillanimous manner a position which we had a right to hold, and the highest legal authority, not on the Bench, has pronounced in our favor.

8. On reviewing the whole of the transaction it is to us so incomprehensible that any part of our proceedings should have exposed us to the imputation cast on us by the Right Honorable the Governor in Council, that we are driven to the supposition that some representation has been made to Government of which we are in ignorance and which we are consequently unable to meet.

9. We therefore most respectfully ask to be informed distinctly what it is that has produced in the mind of the Right Honorable the Governor in Council the unfavorable impression evinced in his instructions to the Marine Board in order that we may have the opportunity of explaining, or disproving, as the case may be.

*Fort Saint George, Marine Consultation, 22nd June 1858.*

No. 17.

ORDER THEREON, No. 237; dated 19th June 1858.

The Government observe that the intimation made to the Marine Board in the 2nd para: of Extract Minute of Consultation, 25th Ultimo, was intended for the guidance of the Board only, and not for communication to other parties.

2. The Government have no explanation to seek from Messrs. Arbuthnot and Co. They are at present fully informed of all the circumstances of the case. Although, in deference to the opinion of their Legal Adviser, they must consider the claim of Messrs. Arbuthnot and Co. to be good in law, they cannot but regard it as questionable in equity. They believe that the offer made by Mr. Franklin in his note to Mr. W. Arbuthnot of the 18th November last, was virtually, if not in strict legal form a conditional offer, and was so understood by both parties at the time. The Governor in Council cannot but think that as Mr. W. Arbuthnot did not fulfil the required condition, his firm should have taken the consequences of his neglect, and as they have not thought fit to do so, the Government have found it necessary to instruct the Marine Board in all future transactions with them, to omit no legal formality or precaution, the want of which may subject Government to such a charge as that which they have just ordered to be paid.

3. The Government resolve to call the particular attention of the Board to the order recently circulated in respect to the communication of official papers. It is observed that the Board had not received that order when they furnished Messrs. Arbuthnot and Co., with the whole of the Extract Minute of Consultation, Marine Department, 25th Ultimo, No. 197.

(Signed) T. PYCROFT,

*Chief Secretary.*

N<sup>o</sup>. 237

Extract from the Minutes of Consultation

Dated 19<sup>th</sup> June 1858.

Read the following letter from  
Messrs. Arbuthnot & Co.  
[Here enter 3<sup>rd</sup> June 1858]

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Wm

I think a general order to all Dep<sup>ts</sup> should be issued more stringently than has already been done, forbidding all transmission of documents & addresses to other parties & deferring such communication made on the responsibility of the party issuing it & to contain all the information required within itself.

including instructions - get full of line when necessary and the Government is not responsible for communication to other parties.

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ment 25<sup>th</sup> Ultimo No. 197.

J.P.

To  
The Marine Board with  
Copy of Messrs. A. & Co's letter  
para 1 and 2. to Messrs. Arbuthnot & Co. Dated 19<sup>th</sup> Dec<sup>r</sup>.

Remarck

Thos. Esplan

received by the U.S. Treasury

Jan 13

Received from the  
State for India state  
24th February 59

March 1850. Department.

Cons 22 June

No. 237

Extract Mins. Cons.

Dated 14 June 1850.

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