

MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No. 188	Press Mis.
Dated 11. 5. 1857	

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Marine Department,
from 11th to 17th May 1859.*

No. 5. Read the following Extract from the Minutes of Consultation in the Military Department, dated 29th April 1859, No. 1573.

(Vide Military Consultation, 29th April 1859, Nos. 142 to 144.)

(Forwards, for information to the Marine Department, copy of an Order passed on the claim preferred by Messrs. Binny and Co., on the part of the Owners of the Steamer "England.")

No. 6. ORDER THEREON, 11th May 1859, No. 188.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

No. 1573.

Extract from the Minutes of Consultation, 29th April 1859.

Read letter from the Superintendent of Marine.

Intimating with reference to his letter dated 23rd December 1858, No. 5114, that the Agents of the "England" Messrs. Binny, and Co. have now sent in the accompanying bill for the passage of 1 Officer, 1 Second Apothecary and 321 Details from Madras to Calcutta by that vessel, the aggregate sum being Rupees 9,208, and soliciting that the case may be referred to the Government Law Officers for their opinion as to whether the claim can be legally enforced.

Here enter 12th April 1859, No. 1542.

Referred to the Solicitor to Government, with a request that the Advocate General's opinion may be obtained on the claim alluded to.

18th April 1859.

From the Government Solicitor, Madras, 27th April 1859, No. 712; to the Secretary to Government, Military Department.

Order of Government of 18th April 1859, on the letter from the Superintendent of Marine to the Secretary to Government, Military Department, of 12th April 1859.

I have the honor to acknowledge the order of Government noted in the margin, with the papers that accompanied it.

2. I submitted same for the consideration of the Advocate General, and I have since conferred with him thereon.

3. I also obtained for him from the Superintendent of Marine all such further informations as he required.

4. I now forward a copy of his opinion and return the enclosures above noted.

Copy Opinion.

See Chitty on Contract, 641 (o) Planche v. Colburn 8 Bingh 14 (r) Chanter v. Leese 4 M. and W. 295-301.

Smith on Contract 335 Marticidele v. Smith, 12 B 389.

× Langford v. Tiler × Salk 113.

Hinde v. Whitehouse 7 East. 558.

× Barber v. Taylor × 5 M. and W. 527.

Addison on do. 169-173, Flight v. Booth 1 Bing. N. S. 377.

Shackleton v. Sutcliffe 12 Jur. 199.

Beers v. Lambert 7 Beav. 546.

Dykes v. Blake 4 Bing. N. C. 477.

Casamajor v. Shorte 2 Makeine 730.

Drewe v. Corp 9 Ks. 368.

Wright v. Howard 1 S. and S. 190.

Do. 271² Att. Genl. v. Day 1 Ves. Sr. 218.

264 Maclean v. Dunn 4 Bing. 722.

I think under the circumstances of this case, as compared with those of the cases of Langford v. Tiler and Barber v. Taylor, that the claim of Messrs. Binny and Co. ought to be resisted. Mr. Franklyn states, that on the 6th December he called on Messrs. Binny and Co. to say when the "England" would be ready—that they named the 13th, on which day he inspected the vessel, and saw she could not be ready for long after, and in fact on the 23rd Messrs. Binny and Co. only said she would be ready in a few days. I think under these circumstances, the object of the original contract having been to send the troops to Calcutta with quick despatch, Mr. Franklyn had a right to construe Messrs. Binny and Co.'s answer, the non-fulfilment of it, and the backwardness of the repairs as equivalent to a consent to rescinding the contract, more than a reasonable time having elapsed. The total unfitness of the vessel is of course a most material circumstance, the fact that she made a good or rather middling passage, in January by a different route, and in favorable weather, cant prove her fitness, especially in the teeth of her own Log—

to make the other passage which she engaged to do in November against unfavorable winds and currents. The great assistance rendered by Government must operate if in no other way in mitigation of damages—but I think it makes the action almost a discreditable one. I doubt if any thing can be made of the "England's" not having called at the various ports for the small detachments, I think Mr. Franklyn's notice of 18th December absolved her from doing so.

26th April 1859.

(Signed) T. S. SMYTH,
Advocate General.

Ordered that the Advocate General's opinion be communicated to the Superintendent of Marine, with authority to resist the claim preferred on the part of the Owners of the Steamer "England," as set forth in the foregoing correspondence.

(True Extract and Copies.)

T. Marshall
Ag. Secretary to Government.

To the Superintendent of Marine.

„ Government Solicitor.
„ Advocate General.

„ Marine Department. With 2 spare Copies.

*Marine 1859. Deptt.
No of Govt 17 May
Extract from Govt.
in the
Gtly Deptt.
29 April 1859
17 May
No 191
2 spare copies
No 191
Forward for info
to the Marine Dep
copy of an order passed
the claim preferred by Govt
Army etc, on part of the
Owners of the Steamer
England. No 188
To be recorded.
11 May 1859*

Exd. A. A. DeMonte.

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