

MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No. *483* Press
Mis.

Dated *27 10* 18*87*

Not to be folded or roughly handled

Proceedings of the Madras Government, Marine Department,
from 24th September to 4th October 1859.

No. 13. Read the following Despatch from the Right Honorable the Secretary of State for India; to His Excellency the Honorable the Governor in Council, Fort Saint George, dated India Office, London, 19th August 1859, No. 22.

1. Herewith is transmitted to you the copy of a letter and its enclosures from Mr. J. A. Burness, relative to a claim made by him to the sum of £ 92-19-2, being the alleged value of certain deductions stated to have been erroneously made, in lieu of screening, from the cargoes of coal delivered at Madras in 1857, under contract with the late Court of Directors per Ships "Sarah Kay," "Jane Ewing," and "Eunomia."

2. You will observe that Mr. Burness contends that as the authorities at Madras did not exercise the power reserved in the contract of screening the coal in question, they were not entitled to make an arbitrary deduction in lieu of screening; and also that he denies that any arrangement by which a deduction of three per cent. from the cargoes was to be made in lieu of screening (a custom which would appear to have been generally adopted at Madras) was entered into on this occasion between his Agent and the Master Attendant.

3. I have to request that you will cause enquiries to be made into the circumstances out of which Mr. Burness' demand has arisen; and that, with as little delay as practicable you will furnish me with your opinion as to the equity of his claim.

4. You will also supply the information requested in the last paragraph of Mr. Burness' letter relative to the disposal of the 45 tons of coal ex "Birch Grove" which were in dispute.

(Signed) C. WOOD.

To the Assistant Under Secretary of State, East India House, dated London, 1st November 1858.

On the 10th December 1856, I tendered to the Honorable East India Company for the supply of 3000 tons of steam coals for delivery into store at the Honorable Company's Depôt at Madras. This tender they were pleased to accept. By the 6th Article in said contract it states. "The price must include all charges whatever till the coals are delivered by the Contractor into store at Madras, weighed on shore, and screened there, if required by the Company's Officers, at the expense of the Contractor, through a screen of one inch mesh under the inspection of one party on behalf of the Company, and of another party on behalf of the Contractor, such screen to be found by the Company."

In fulfilment of this contract, I chartered the following vessels and loaded them with as much care as possible in order to avoid breakage and dust at port of discharge:—

The "Moses Taylor".....	360 $\frac{3}{4}$	Tons Buddles Hartley.
„ "City of Durham".....	553 $\frac{1}{2}$	„ Stewart's „
„ "Sarah Kay".....	518	„ Blaingwan Merthyr.
„ "Birchgrove".....	705	„ Brymbo.
„ "Jane Ewing".....	494	„ „
„ "Eunomia".....	630 $\frac{2}{5}$	„ Jonnasohn's Hartley.
3261 $\frac{2}{5}$ tons.		

The vessels arrived at Madras and were all delivered into Depôt according to contract. The Master Attendant gave certificates of delivery to each vessel as follows:—

	Tons. cwt. grs. lbs.			
"Moses Taylor".....	275	12	0	0
"City of Durham".....	551	2	1	9
"Sarah Kay".....	510	13	0	0
"Birchgrove".....	660	9	2	26
"Jane Ewing".....	476	19	1	18
"Eunomia".....	629	7	2	0

Marine Dept 3/11 of the cargo referred

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The "Moses Taylor," "City of Durham," and "Birchgrove" were paid by the Honorable East India Company at Madras on the exact quantity specified on the Certificates of delivery, signed by the Master Attendant, and neither cargo was screened nor was anything deducted in lieu of screening, though the cargo per "Moses Taylor" had been twice transhipped, and would necessarily contain more dust than any cargo not having been transhipped. The large deficiency in this vessel's cargo arose from her leaving part of her coals at Madeira where she put in for repairs.

The "Sarah Kay," "Jane Ewing," and "Ennomia" were also not screened, but on presenting the Certificates of delivery (signed by the Master Attendant) with the Invoices, a deduction was made from each vessel's cargo, *in lieu of screening* amounting as follows:—

	Tons. cwtls. qrs. lbs.			
The "Sarah Kay".....	15	5	2	15
„ "Jane Ewing,".....	14	6	0	20
„ "Ennomia,".....	17	5	3	19
	46	17	2	26

This is quite contrary to terms of the said contract for although the Honorable Company had the power of screening the coals, still as that was not exercised they had not the power to make an *arbitrary* deduction in lieu of screening.

Immediately on receipt of intelligence that such deductions had been made, I wrote to my Agents, protesting against it, which letter they sent copy of to your Honorable Company at Madras, whose reply is as follows:

No. 2500.

To MESSRS. STEPHEN CLARKE AND CO.

GENTLEMEN,

"I have the honor by desire of the Marine Board to acknowledge your letter of the 17th instant, forwarding copy of a letter from Mr. Burness, relative to the deduction of three per cent. on account of screening the cargoes of the "Sarah Kay," "Birchgrove," and "Ennomia."

"As noticed by Mr. Burness the Board have the right of screening in every case, but this is not done, except when the coals appear extremely small, and a custom has arisen in Madras, when coals are not of a large size to offer the Agents of shippers the option of having three per cent. deducted, a custom which saves much time and expense to all parties concerned.

"The late Master Attendant found it necessary to claim the right of screening in the above cases, and it would appear that the right was waived in consideration of the deduction of three per cent. Under these circumstances the Board regret that they cannot recommend any further payment being made on this account."

MADRAS,
Marine Board Office,
19th June 1858.

I have, &c.,
(Signed) J. B. CROWTHER,
Assistant Secretary.

Messrs. Stephen Clarke and Co., again wrote to your Honorable Company stating that no arrangement had ever been entered into between the Master Attendant and themselves relative to any deduction in lieu of screening, to which they receive reply as follows.

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No. 2569.

To MESSRS. S. CLARKE, AND CO.

GENTLEMEN,

"I have the honor by desire of the Marine Board to acknowledge the receipt of your letter, dated 23rd June 1858, referring to the deduction of three per cent. on account of screening in the cargoes of coal vessels consigned to your Firm, and have to inform you in reply, that the arrangements regarding the mode of receiving the coal, rested with the Master Attendant and the Agents of the Sellers. The custom of deducting three per cent. in lieu of screening was very generally adopted and the Board of course supposed that this was an understood matter between yourself and the late Captain Biden who exercised his judgement as to the necessity of screening or not."

MADRAS,
Marine Board Office,
26th June 1858.

I have, &c.
(Signed) J. J. FRANKLIN,
Secretary.

You will here observe that your Honorable Company states "the custom of deducting 3 per cent in lieu of screening was very generally adopted, and the Board, of course, supposed that this was an understood matter between my Agents and Captain Biden, who exercised his judgement as to the necessity of screening or not," thereby shewing that it is your Honorable Company that has fallen into the error of supposing such an arrangement to have been made between Captain Biden and my Agents, whereas nothing of the kind was entered into. I, therefore, enclose Invoice of said quantity, (deducted *ultra vires*) at my contract price 39-8 per ton amounting to £92-19-10 which I hope you will find correct.

I enclose certificate of the "Birchgrove" shewing that there were 45 tons in dispute, and it was agreed that, if on weighing out there was found to be a surplus, I was to have the benefit of it. If this cargo has been used, I would feel obliged by your informing the quantity.

(Signed) J. BURNESS.

LONDON, 1st November 1858.

The Honorable the East India Company; to JAMES BURNESS.

For deductions made at Madras from the following Invoices in lieu of screening:—

Per "Sarah Kay,".....	15	5	2	15
„ "Jane Ewing,".....	14	6	0	20
„ "Ennomia,".....	17	5	3	19
	46	17	2	26

@ 39s. 8d. per ton £92-19-10.

(COPY.)

MASTER ATTENDANT'S OFFICE,
MADRAS, 22nd August 1857.

Received from H. M. Durant of the Barque "Birchgrove" (660-9-2-26) six hundred and sixty tons, nine hundred weight, two quarters and twenty-six pounds of unscreened coal, including dust, which has been landed from the above vessel. Forty-five tons in dispute, and it is agreed, if this surplus or any portion of it is found on clearing out the coal godowns such shall be credited to the "Birchgrove."

(Signed) CHRISTOPHER BIDEN,
Master Attendant and Marine Storekeeper.

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from 24th September to 4th October 1859.

No. 13A.

ORDER THEREON, 27th September 1859, No. 483.

Resolved that a copy of the above Despatch and its accompaniments be furnished to the Superintendent of Marine, who will report on Mr. Burness' claim at an early date, and supply the information called for in the concluding paragraph of the Despatch.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. A. P. W. Begbie.

list

Marine.

Proceedings of the Madras Govt.

Read Despatch from the
Secretary of State for India - Enter 19 Augt N^o 22 of 1859.

Order 27 September 1859. N^o 483.

Resolved that a copy of the
above Despatch & its accom-
paniments be furnished
to the Superintendent of
Marine, who will prepare
full reports on the claims
preferred by Mr. Burness.

That relating to the deduc-
tions made on deliveries
in lieu of Screening, will
be forwarded by the

Superintendent to the
Govt. Solicitor, who will

obtain the opinion of the
Advocate General thereon,
& submit both to Govt.

But the Superintendent
will report direct to Govt.
regarding the surplus Coal
of the Cargo by the "Birchgrove"
referred

+ Who will report
on Mr Burness'
claim at an
early date, and
supply it in para-
-tion called for
in the concluding
para of the Despatch

JP

To the Supt of Marine - Dated 3/10

the late
to in Captain Bidens
Certificate of the 22nd Aug
1857.

2. Both these officers will
observe that the Secretary
of State has requested an
early reply to the present
Despatch.

The Superintendent of Marine.
" Govt. Solicitor

13-13A-

Order on
Marine Dispatch No 22

Let of Marine

Further from the Secy of State for India d/23^d Sept. 24 of 1852 -
Further from the Secy of Marine d/3^d December 1853 of 1852 -

No of Genl & Act
Marine 1859 Depts

No 483

Proceedings of Genl

of 24 Sept 1854