

MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No.	149	Press Mis.
Dated	5 - 4 - 18	leo

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Marine Department,
for the month of April 1860.*

Read the following letters:—

No. 22. From J. J. FRANKLIN, Esq., Superintendent of Marine; to the Chief Secretary to Government, Fort St. George, dated 8th March 1860, No. 1223.

I have the honor to bring to your notice that the contract entered into by Mr. W. N. DeMattos, communicated in Proceedings of Government of the 4th January last, No. 6, provided for the delivery of 1,500 tons in all January and the like quantity in all February, and for the payment by way of fine to the contracting parties on behalf of the Right Honorable the Secretary of State for India, of one Pound sterling for every ton not so delivered.

Elliot Macnaghten.
Charles Mills.
W. U. Arbuthnot.

2. Mr. DeMattos has failed in delivering the coals by the time contracted for as shewn in the marginal note, from which it will be seen that he has incurred a penalty of £1,132 the stipulated indemnity for 1,132 tons of coals remaining due on the 29th February last, and although, I presume the Government will not do more than bring the circumstance to the notice of the Home Authorities, I hesitate to pass the bills for the balance due on the coal delivered until sanction is accorded.

Tons.
Delivered in Jany., —
„ „ Feby., 1860

The contract is forwarded for examination.

Referred for the opinion of the Advocate General.

20th March 1860.

(Signed) T. PYCROFT,
Chief Secretary.

From J. R. BOYSON, Esq., Government Solicitor, to the Chief Secretary to Government, dated Madras, 27th March 1860, No. 260.

I have the honor to acknowledge the Order of Government noted in the margin and the papers which accompanied it.

Order of Government, dated 20th March 1860, and made on letter from the Superintendent of Marine, to Government, of the 15th idem, No. 1223.

2. I submitted them for the consideration of the Advocate General.

3. I now forward a copy of his opinion and return the enclosures above referred to.

COPY OPINION.

By the terms of his contract Mr. DeMattos was bound to dispatch from Great Britain 1,500 tons of coal in August 1859, and 1,500 tons of coal in September 1859, and to deliver the same (after being weighed on shore) into store at Madras (screened if required) on or before the last days respectively of January and February 1860 [1859 is written down, but obviously by mistake.]

He has delivered, as appears from the letter of the Superintendent of Marine* no coal whatever in January 1860, and up to the 29th February only 1,868 tons.

* 8th March

Therefore, under the contract he is liable to pay £1,500 "as and by way of liquidated damages" for the 1,500 tons of coal due and deliverable in January but none of which was delivered—and further to repay to the Secretary of State the advance paid him per ton, in London, being $\frac{1}{3}$ rd of the contract price, i. e., 3) £2-14-9 = 18s. 3d. making in all £1-18-3 per ton that the contractor is strictly liable to pay, while the utmost he could claim here, had he fully performed his contract, would be the unpaid $\frac{2}{3}$ rd of the contract price, or £1-16-6 per ton.

This amount at least the £1,500 the Secretary of State (i. e., the Government of Madras acting for him) is clearly entitled under the contract to deduct here from any money due to the contractor.

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Such in my opinion are the strict legal rights of Government. How far it may be expedient to enforce them is for Government to determine. In doing so they would probably consider whether there is reason to believe that the coal was shipped in due time, and its non-arrival in time owing to contrary winds, &c., &c., for which it might be good feeling not to hold the contractor so strictly to his contract as to enforce the penalty against him.

A breach of contract there clearly has been—which may possibly be explained away by proof of the loss of the ship—in which case the contractor is only liable to repay the advance of 18-3 per ton, but until proof of loss is given, and *prima facie* the contractor is liable to have £ 1,500 or £ 1 per ton deducted now, here, from whatever is due to him here, and is also liable to repay 18s. 3d. to the Secretary of State.

March 22nd 1860.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 23.

ORDER THEREON, 5th April 1860, No. 149.

Resolved, that a copy of the Advocate General's opinion be forwarded to the Superintendent of Marine, in reference to his letter of the 15th instant. Mr. Franklin will, in advertence to the concluding paragraph of the opinion, state whether there are any circumstances connected with the transaction, which might lead the Government not to enforce the penalties incurred by Mr. DeMattos.

(Signed) T. PYCROFT,
Chief Secretary.

April 26th
My dear Mr. Pycroft
With your leave I have
the kindness to return
me the coal contract.
Which I sent them
submitting the question
of penalties
Yours truly
Mr. DeMattos

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F. D. G. H. L.
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Proceedings of the Madras Govt.
Read the following letters—
From the Superintendent
of Marine ————— Enter 15th Mar. '60 No. 1225
" the Govt. Solicitor ————— 27th do ————— 250.

Order. 5th April 1860. No. 149.
Resolved that a copy of the
Advocate General's opinion be
forwarded to the Superintendent
of Marine in reference to his let-
ter of the 8th March. Mr. Frank-
lin will, in accordance to the
concluding para of the opinion,
state whether there are any cir-
cumstances connected with the
transaction, which might lead
the Govt. not to enforce the pe-
nalties incurred by Mr. Serlattes.

The Suptd. of Marine }
" Govt. Solicitor }
Dated 14th April 1860