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MADRAS RECORD OFFICE

Government of Madras

Marine

DEPARTMENT

G.O. No.	<i>109</i>	Press
~~B.R. No.~~		~~Mis.~~
Dated	<i>3rd May</i>	<i>1866</i>

Original

Not to be folded or roughly handled

*Proceedings of the Madras Government, Marine Department,
3rd May 1866.*

Read the following papers :—

No. 15. From the Superintendent of Marine, to the Chief Secretary to Government, Fort Saint George ; dated Madras, 18th April 1866, No. 1609.

I have the honor to submit the accompanying papers which Messrs. Binny & Co., as Agents to the British India Steam Navigation Company, request may be placed before Government for consideration.

2. The question is one which is fully set forth in the correspondence recorded in the Proceedings of Government of the 30th June 1865, No. 141. The Rangoon Mail Steamer *Madras* was taken over in March 1865 as a Transport under the 18th Section of the Contract, and during her period of service was required to tow a sailing vessel, for which, after she had left Madras on her final trip as a Transport in April, a claim of 1000 Rupees a day was preferred and refused.

3. I can see nothing to add to my letter of the 5th June 1865, No. 2213, recorded in the abovementioned Proceedings, except perhaps to reiterate the remark with reference to Mr. Mellish's opinion, that the ordinary purposes of a Steamer employed in this Presidency are to tow as well as to carry troops and stores. Our reliefs are almost invariably effected in this way during the fine season of the year in which the *Madras* was so engaged.

4. Messrs. Binny & Co. request that the papers may be returned.

From the Managing Agents, British Steam Navigation Company, to Messrs. BINNY and Co., Madras, dated Calcutta, 7th April 1866, No. 441.

You will be aware prior to your taking over the Agency of the Company, the *Madras* was employed towing the *Tubal Cain* between Madras and Rangoon, and as we consider this an extraordinary service not stipulated nor provided for in the contract, a bill was sent in to the Government of Madras for the services of the *Madras* at the rate of Rupees (1000) a day. The reply by that Government to our claim was, that they considered it met by the 18th Clause of Contracts, and that in their opinion we fell to receive no extra remuneration therefore ; such towing service being included in the rate of Rupees 27-8-0 gross ton per month, at which Government have the power at any time to avail of the Steamer for their own purposes only. We appealed against this decision to the Supreme Government, and in reply were informed that they saw no reason to interfere with the decision of the Government of Madras.

2. The Directors have laid the case before a leading Member of the English Bar, whose opinions, especially in mercantile matters, are thought remarkably sound ; and enclosed we beg to hand you the case, with opinion attached by Mr. Mellish, from which you will see he is of our opinion that the service was an extraordinary one not contemplated in the contract, and for which we consequently are entitled to separate remuneration. We have to request you will be so good as lay it before the Government of Madras, and we trust they, in re-considering the matter, may be inclined to alter their opinion.

3. Requesting you will give this your best consideration, &c.

P. S.—To enable you to understand the claim more fully, we beg to enclose copy of our letter to the Government of India, dated 9th September last, the enclosures we shall thank you to return after you have laid them before the Government.

(CASE.)

The British India Steam Navigation Company, limited, is a Company established for Steam Navigation in the East Indies, and has contracts with the Indian Government for carrying the Mails, Stores, &c.

2. By one of such contract, the Company is bound to run a Steamer once a month between Madras and Rangoon. A copy of this contract is sent herewith.

3. By the 18th Clause of this contract if the Government shall require any vessel of the Company employed under the contract for the conveyance of troops, or for other purposes, and

thereof shall give notice, then the Company shall permit the vessel to be taken up, used and employed exclusively by the said Government, for such time and on such terms as therein mentioned.

4. In the month of March last, the Government of Madras intimated to the Agents of the Company that they required the exclusive use of the *Madras* (the Steamer then employed in the service under the contract), and it was granted—the vessel being navigated by the Captain, Officers and crew belonging to the Steamer, but under the Orders of the Government. The notice given has not been sent from India, but it is presumed to have been a general notice making no mention of any intention to employ the Steamer in towing.

5. During the time the *Madras* was thus employed, she carried whatever freight or passengers Government required, and in addition, and while she was loaded with Government stores and passengers, she was called upon to tow the *Tubal Cain*, a large Government Transport from Madras to Rangoon and back again—the *Tubal Cain* being at the time loaded with Government stores and Troops.

6. The Agents of the Company considered, this an extra service not provided for by the contract, and being besides attended with considerable risk of injury to the vessel (and it is thought objected to it) that the Company should receive extra remuneration for it.

7. The Company taking this view of the case made a claim of Rupees 1000 per diem upon the Government of Madras for the time the Steamer was employed in towing, in addition to the Rupees 27-8-0 per ton, per month, payable for her use in carrying stores, Troops, &c., under the contract.

8. This charge the Government refuse to pay, upon the ground that in towing the *Tubal Cain* the Steamer was doing nothing beyond what she was required to do under the terms of the contract.

9. The view taken by the Madras Government has been adopted by the Governor General and Council, the Under Secretary of the Government of India having in reply to the Company's Agents in Calcutta written: "I am directed to inform you that after a careful consideration of the subject the Governor General in Council does not see ground for interfering with the decision arrived at by the Madras Government."

10. The Company consider that this decision is not well founded in law. It certainly is not just.

11. The rate of Rupees 27-8-0 per ton, per month, for the exclusive use of the Steamer was agreed on as a just remuneration, with reference to the capacity of the Steamers contemplated by the contract; but if the Government is to be at liberty to fill the Steamer, and then to make her tow as much more, perhaps twice as much more, freight as she can carry the remuneration agreed on is utterly inadequate.

12. The Company considers that the Government was not entitled, under the contract, to use a passenger Steamer for towing, without extra remuneration, and that if they are correct in this, the Government, on being satisfied thereof, and that their local advisers are in error, will review their decision and pay for this extra service.

13. Your opinion is requested on behalf of the Company, whether under the terms of the contract the Government is entitled to use the Company's Steamers in towing, as above stated, without remuneration beyond the rate of Rupees 27-8-0 per ton, per month.

I am of opinion that, under the terms of the contract, the Government is not entitled to use the Company's Steamers in towing vessels, in the manner above stated, at the remuneration of Rupees 27-8-0 per ton, per month. I think that the other purposes for which the Government are entitled to use the vessels, besides the conveyance of troops, under Clause 18, are other purposes similar to the conveyance of troops, that is to say, the ordinary purposes for which Steamer vessels, of the class of those in question are used, namely, the carriage of goods, passengers, mails, and specie, which are also the purposes mentioned in the clause, and that they do not include the towing of vessels, I think, which is an extraordinary service.

3 HARCOMB BUILDINGS,

13th February 1866.

(Signed) G. MELLISH

From the Managing Agents of the British India Steam Navigation Company (Limited), to the Under Secretary to the Government of India, Simla; dated Calcutta, 9th September 1865, No. 2108.

In the contract between the Government of India and the British India Steam Navigation Company, for the line between Madras and Rangoon, the Government empowered themselves, according to Clause 18, to take the steamer off that line and use her for their own purpose exclusively. The wording of that Clause is as follows:—"That if at any time during the continuance of this contract, the said Secretary of State, or the Government of Madras, shall require any Steam vessel of the said Company employed under the contract for the purpose of conveyance of troops, or for other purposes, and shall cause notice of such requirement to be given to the said Company by writing under the hand of any of the said Secretaries to the Government of India, or of Madras, then the said Company shall and will, as often as occasion shall require during the term of this contract, permit the said vessel to be taken up, used and employed exclusively by the said Government for any period of time during this contract on the terms following, that is to say, that all the coal which shall be consumed shall be supplied by the said Government, and the said Secretary of State in Council shall, moreover, pay to the said Company, by way of hire for the use of the vessel so employed by the said Government, at the rate of Rupees 27-8-0 per ton, per month, according to the gross registered tonnage of the said vessel for every month during which the same shall be so employed."

Under the above Clause the Government of Madras intimated to our Agents there, that they would take the Steamer *Madras* "off" the contract line, and employ her for Government purposes only, and which they accordingly did in March and April last, and for which they paid the Company at the rate of Rupees 27-8-0 per ton, per month, as fixed in contract. In addition to employing her as a Transport between Madras and Rangoon direct, they intimated to our Agents in Madras that she would be required to tow the Government sailing Transport *Tubal Cain* which was filled with Government passengers and cargo, and on our Agents telegraphing to us for instructions as to the Steamer being disposed of in this manner, we replied to accede to the wishes of Government, whatever these might be. Nothing was at the time mentioned as to the conditions under which the *Madras* was to be used in towing, and we looked on it from the commencement as an extra service for which the Company would be remunerated in addition to the rate of Rupees 27-8-0 per ton, per month, arranged for in the contract for the use of the steamer as a Transport; but when our bills were sent in for the towing services, at the rate of Rupees 1000 a day, they were returned with an intimation that in the opinion of that Government the service had been provided for under Clause 18 of the contract above quoted. We presume it is under a general reading of the words "for the purpose of conveyance of troops, or for other purposes", that the Government of Madras has arrived at the conclusion that they were at liberty to use the steamer as a Tug vessel without any additional remuneration; but we would venture to say that such was not intended by Government when this Clause was framed and the contract entered into. We would humbly beg to state that the intention of these words is, that for all purposes to which a Mail and Passenger vessel is customarily employed, and built, and intended to be employed, Government might use the *Madras*. This Steamer was never intended to tow, and is not adapted for such, and the towing of the *Tubal Cain* was a great stress on her engines, and was by no means unaccompanied by danger. To none but Government would we have consented to allow this Steamer to tow at that season, and if at any time of the year we would agree to her towing, it would only be in consideration of such remuneration as would make up for the great strain on her engines and the risk involved. Clause 18 of the contract we never read as the Government of Madras now interpret it, and the only construction we put on it was, that Government reserved to themselves the power, in cases of emergency, to use the Steamer for the conveyance of Government passengers, Troops and Stores to the exclusion of the public traffic, and to take the Steamer off her contract line, and employ her elsewhere, and the introduction of the Clause indeed we looked on merely as a repetition of the Clause in the former contract with Government for same line, and as such took no particular note of it. The Clause in the former

4 *Proceedings of the Madras Government, Marine Department,*
3rd May 1866.

contract, dated 20th May 1861, and from which the Clause in the present contract is taken is as follows:—

"That if at any time or times during the continuance of this contract, the said Government of Madras, or the Commissioner, or in his absence, the officiating or Acting or Deputy Commissioner of Pegu at Rangoon shall resolve to withdraw any such vessel as aforesaid from the said line of communication between Madras (via the Northern Ports) and Rangoon, and from the performance of such service as aforesaid, and to employ such vessel for and on behalf of the said Secretary of State for India, solely and altogether as a Transport for the public service it shall be lawful for the said Government of Madras, &c., &c."

When the Madras and Rangoon line was undertaken by this Company, we had specially in view the very small trade existing between Madras and Rangoon, and accordingly we requested, and Government viewing it in same light, were so good as stipulate that the Steamer should have

Clause 20th of Contract.

all the Government freight and passengers in preference to other vessels, or even to Government vessels, that is to say, to the extent the Steamer could carry same, and unless the interests of the public service should require that passengers, and stores be despatched before the return of the Steamer to any port, we of course are not in a position to say how far the interest of the public service required that the *Tubal Cain* should be filled with passengers, &c., cargo which would otherwise have gone by the *Madras*; but the effect appeared to be that in consequence of the numbers of Troops and quantities of stores despatched on the two occasions the *Tubal Cain* was towed from Madras to Rangoon, Government requirements were so far met that when the Steamer was discharged from the special service, and commenced running on the regular Mail line, there were almost no Government passengers or cargo for her.

We came therefore before Government with our claim for towage of the *Tubal Cain* by the *Madras* as before narrated, and of which we trust they will see the justness, and order payment accordingly.

Begging that you will excuse us trespassing so far on your time and attention, &c.

Referred to the Acting Advocate General, for his remarks with reference to Mr. Mellish's opinion and the previous correspondence.

FORT SAINT GEORGE,
24th April 1866.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

No. 16. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 26th April 1866, No. 234.

I have the honor to acknowledge the Order of Government noted in the margin, (with enclosures) 'relative to the right of Government, under the British India Steam Navigation Company's contract, with the Secretary of State, for the conveyance by their Steamers, of Mails between Madras and Rangoon, to use such Steamers for towage purposes, and the claim preferred on the Company's behalf against Government for special remuneration for the services of their Steamer *Madras* in towing the *Tubal Cain*.'
2. I submitted the papers for the consideration of the Acting Advocate General; and
3. I now forward a copy of his opinion, and return the Order and enclosures above noted.

COPY—OPINION.

Upon a careful consideration of the papers submitted to me, my opinion agrees with those already given in India, as to the non-liability of Government for extra towage charge.
2. Mr. Mellish is no doubt a very high authority on Commercial Law. But the weight which would otherwise be due to his opinion, is, I think, lessened by two circumstances: first, the case submitted to him states that the notice under which the *Madras* was taken up "is presumed to have

3//
Proceedings of the Madras Government, Marine Department,
3rd May 1866. 5

been a general notice, making no mention of any intention to employ the Steamer in towing." Now this appears not to have been the fact. The letter from Mr. Franklin, 5th June 1865, No. 2213, shows that on her first trip back to Rangoon the Agents at Madras were expressly informed that she would be used for towing, and that a special arrangement was made in reference to that service as to the allowance for coal. Mr. Franklin's letter of the 31st March, No. 1135, to Messrs. Dymes gives them express notice on a subsequent occasion of the use to which the vessel would be put. It appears also from Mr. Franklin's statement that the Captain, though not the Agents, did at one time object to the employment of the Steamer for towing; but this objection was waived. The first intimation that any additional demand would be preferred is to be found in Messrs. Mackinnon's letter of the 1st April to Mr. Franklin.

Again, Mr. Mellish was not informed, and could not have known, that the customary mode of effecting Transport service in the Indian seas was by towage.

3. Considering therefore, the importance of settling the question as to the rights of Government under Section 18, and also the very extravagant amount demanded, I think the former Resolutions as to resisting the claim should be adhered to.

(Signed) J. D. MAYNE,
Acting Advocate General.

26th April 1866.

(True Copy).

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

No. 17.

ORDER THEREON, 3rd May 1866, No. 109.

Under the Opinion given by the Acting Advocate General, the Governor in Council directs that the Superintendent of Marine will inform the Agents of the British India Steam Navigation Company that the Government adhere to their previous decision: declining to admit the claim advanced on account of towage service rendered by the Steamer *Madras* in March 1865.

(True Extract).

Chief Secretary.

Exd. R. H. Lee.

N^o 1609

Madras

Marine Suppl^y Office
18th April 1866

From

J J Franklin Esquire
Superintendent of Marine

To

The Honorable A J Arbuthnot
Chief Secretary to Government
Marine Department
Fort Saint George

Sir

I have the honor to submit the
accompanying papers which Messrs Pinney
& Co, as Agents to the P. & O. Company,
request may be placed before Government
for consideration.

2

The question is one which is
fully set forth in the correspondence
recorded in the Proceedings of Government
of the 30th June 1865, N^o 141. The Rangoon
mail Steamer 'Madras' was taken over in
March 1865 as a transport under the
18th Section of the Contract, and during
her period of service was required to tow

N^o 1609

Madras

Marine Supdt's Office

18th April 1866

From

J J Franklin Esquire
Superintendent of Marine

To

The Honorable A J Arbuthnot
Chief Secretary to Government
Marine Department
Fort Saint George

Sir

I have the honor to submit the
accompanying papers which Messrs Binny
& Co, as Agents to the B. I. S. N. Company,
request may be placed before Government
for consideration.

2

The question is one which is
fully set forth in the correspondence
recorded in the Proceedings of Government
of the 30th June 1865, N^o 141. The Rangoon
mail Steamer 'Madras' was taken over in
March 1865 as a transport under the
18th Section of the Contract, and during
her period of service was required to tow

a sailing vessel for which, after she had left Madras on her final trip as a transport in April, a claim of 1000 Rupees a day was preferred and refused.

3 I can see nothing to add to my letter of the 5th June 1865, No 2213, recorded in the above mentioned Proceedings, except perhaps to reiterate the remarks with reference to Mr. Mellish's opinion, that the ordinary purposes of a steamer employed in this Presidency are to tow as well as to carry troops and stores. Our reliefs are almost invariably effected in this way during the fine season of the year in which the Madras was so engaged.

4 Messrs. Pinney & Co request that the papers may be returned.

I have the honor to be

Sir

Your Most Obedt. Servant

~~W. B. A. D. M.~~
Superintendent of Marine

N^o 234.

Madras April 26th 1866.

From John Robert Boyson
Government Solicitor - Madras.

To The Hon^{ble} A. J. Pruthnot
Chief Secretary to Government
Madras.

Sir,

Dated 24th April 1866
and made on Letter
from Superintendent of
Marine to Government
of 18th April 1866. N^o 1609.

I have the honor to acknowledge the order of Government noted in the margin (with enclosures) relative to the Right of Government, under the British India Steam Navigation Company's Contract with the Secretary of State for the conveyance by their Steamers, of Mails between Madras and Rangoon, to use such Steamers for Tonnage purposes; - and the claim preferred on the Company's behalf against Government, for Special Remuneration for the Services of their Steamer "Madras" in towing the "Yabal Cain".

2. I submitted the papers for the consideration of the Acting Advocate General; - and.

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

I have the honor to be,

Sir,
Your most obedient Servant,

J. R. Boyson
Gov^t Sol^r

For Mr. George.
24 April 1866

A. J. Pruthnot
Chief Secretary

Referred to the Acting Advocate
General for his remarks, with
reference to Mr. Pruthnot's opinion
and the previous correspondence.

20th June 1865 No. 58. 62

Received 18th April 1866

have
The Superintendent of Marine
to the Hon^{ble} Chief Secretary
to Gov^t Madras Sept 1st
For Mr. George.

20th April 1866
No. 116

116. 1866. 2. 10. 3

Submitted as requested by the
Agent B. G. M. for the an-
notation, given the accompanying
copy, papers on the subject of
claim for Tonnage, Service, Re-
ward by the Government of Madras
when taken over in 1865 as a transport which
was referred

To the Govt. Solicitor.

with a copy of the contract.

1865. 11th 58. 4. 62.

Received 23rd April 1866.

Received 23rd April 1866.

116

Gov^t Sol^r

15.

Referred

1834

March 26. 1834

John Robert Brown

Government School - Boston

Dear Sir

I have the honor to acknowledge the receipt of your letter of the 21st inst.

and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Yours, &c.
John Robert Brown

at home the hour to be

John Robert Brown

1834

1834

1834

1834

March 26. 1834
John Robert Brown
Government School - Boston
Dear Sir
I have the honor to acknowledge the receipt of your letter of the 21st inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Yours, &c.
John Robert Brown

Copy Opinion.

Upon a careful consideration of the papers submitted to me my opinion agrees with those already given in India, as to the nonliability of Government for extra towage charge.

2. Mr. Mellish is no doubt a very high authority on Commercial law. But the weight which would otherwise be due to his opinion is I think lessened by two circumstances. First, the case submitted to him states that the notice under which the "Madras" was taken up "is presumed to have been a general notice, making no mention of any intention to employ the Steamer in towing". Now this appears not to have been the fact. The letter from Mr. Franklin 5th June 1865, N^o 2213, shows that on her first trip back to Rangoon the Agents at Madras were expressly informed that she would be used for towing, and that a special arrangement was made in reference to that service as to the allowance for coal. Mr. Franklin's letter of the 31st March N^o 1135 to Messrs. Dymes gives them express notice on a subsequent occasion of the use to which the vessel would be put. It appears also from Mr. Franklin's statement that the Captain, though not the Agents, did at one time object to the employment

Received 1866. Sept.
From the Govt. Secy. Madras.
to the Chief Secy. to Govt.

Dated 26th April
1866

Enclosure N^o 126

Forwarded Copy of Mr. Mellish's opinion relative to the right of Govt. under the 13. g. 8. Navigation Company's contract with the Secy. of State for the consequence by their steamer of between Madras & Rangoon, tow such steamer for towage purposes, & the claim preferred on the Company's behalf against Govt. for special remuneration for the service of their steamer "Madras" in towing the "Subal" in.

122 May

18

3. Considering therefore the importance of settling the question as to the rights of Government under S. 18, and also the very extravagant amount demanded, I think the former resolutions as to resisting the claim should be adhered to. -

1867 John D. Mayne
Actg. Adm. Genl.
April 26. 1866.

True Copy
L. R. Boyson
Gov^t Sol^r.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers:-

From the Superintendent of Marine } Res. dated 18 April 1866 No. 1609.

Gov. Solicitor.

26

234

Order thereon 3rd May 1866 No. 109.

Under the opinion given by the Acting Advocate General, the Governor in Council directs that the Superintendent of Marine will inform the Agents of the British India Steam Navigation Company that the Government will adhere to them

Re

Right of Government, under the British India Steam Navigation Company's Contract with the Secy. of State for the Conveyance by their Steamers between Madras & Bangalore, to use such Steamers for the carriage of passengers, & the claims preferred on the Company's behalf against Govt. for special remuneration for the service of their Steamers, "Madras" in towing the "Mudal Bann" (Copy)

Advocate General's opinion

encl. No. 1

In letter from Govt. to Chief Secy. to Govt. No. 234 dated 26th April 1866.

From 3rd May 1866 No. 109.

Marine 168841

No. 126

11-126

their previous decision
declining to admit the
claim advanced on account
of Triage Service rendered
by the Steamer "Madras"
in March 1865.

[Handwritten signature]

In letter from Govt. to Chief
Secy. to Govt. 11-234 dated 26th
April 1866.

[Faint handwritten notes]

To Dept of Marine } despatch
with & Encl. returned -

Chenue 1868. Department.

No. 109

PROCEEDINGS OF GOVERNMENT.

File No 226

Dated 3rd May 1868.

During the absence of
Messrs to inform the Agents
of the British India Steam
Navigation Company that the
Government adhere to their pro-
posed decision regarding to
admit the steam advanced
on account of foreign service
performed by the Steamers
"Mascot" in March 1865.