

897 + 945 + 1042
Marine (1896) Department.

G.O., No. 661 *mar*

DATED 28. Sept. 1896

[Despatch Abstract.]

Messrs Volkart Brothers informed that as at present advised, the Government is not prepared to admit their claims for ^{payment of} freight due on certain loss of iron lost overboard.

Messrs Volkman Bros.
are informed, that, as
at present advised, the
Government is not pre-
pared to admit their
claim.

R.S.

28/8/06

To Messrs. A. & K. Bros. (order only without other correspondence)
The P.P.O. (with copy of adv. Genl's opinion)

ben
7/10/90

Claim for payment of freight

Marine
P.W. DEPARTMENT.

Read the following:—

From Messrs. Volkart Brothers, Madras, Agents, S.S. "La
Serena", dated 18th August 1896.

From the Presidency Port office, Madras, No 278 G, dated
2nd September 1896.

From the Government Solicitor, Madras, No 463, dated
21st September 1896.

FOR ORDERS.

Submitted that the
proposal made in the
previous note for orders
be now acted on, viz, that
Messrs. Volkart Brothers
be told that, as at present
advised, the Government
is not prepared to admit
their claim; a copy of the
opinion of the Advocate
General being at the
same time communicated
to the Presidency Port
offices for information.

+Flag D

gms
BS
26/9/96

95/8/96
M

ES

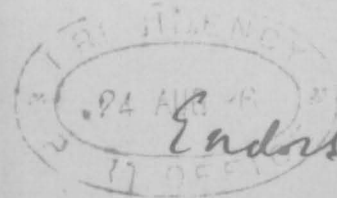
CH 1896

Marine (1896) Department.

CURRENT No. 897

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945/56



Endorsement

Order

N. H. E. of 21 August 1896

Referred to the
Presidency Port Officer for
report.

From

Volker Brothers
agents, S. S. "La Serena"

No. -

Thos. Campbell Colonel R E
Secretary to Govt.
Marine Dept.

Dated 18th August 1896

Received 20th August 1896

Enclosures

Spare copies

To
The Presidency Port Officer -
to be returned.

Ch

SUBJECT.

11 bundles and 35 bars of iron

Requesting orders for freight
being paid to them for —
which were lost over board
when the ship discharged cargo.

Agent
S. J. de Seena

Sir,

for the 11 Bundles and 35
bars of iron lost overboard

causing the sling to slacken, when all the bars & bundles fell out into the sea. And as the boat was not close to the ship at the time.

A number of }
bars & bundles }
Iron. Boat at 14.5.

This we believe shows clearly that the loss of the goods is solely due to the careless handling by the Public Works dept. Coolies who let go the sling after they had had it in their hands. The ship's responsibility is usually considered to cease as soon as the goods have been swung overboard, and are level with the ship's deck, and there cannot therefore be any doubt that in this case the ship is not responsible for the loss as the goods were already lowered so much that they were within reach of the boatmen.

The Presidency Port Officer, on our application to pass orders for payment of freight due to us, amounting to Rs 1376-15-6, made a deduction of Rs 248-5-4, for the 11 bundles & 35 bars lost.

Madras,

lost overboard, and although all particulars of the case were explained to him he declined to alter his opinion.

We shall thank you to give the matter your kind consideration, and have the honor to remain,
Sir,

Your most obedient servants.

PER. PRO. VOLKART BROTHERS.

McLoughlin
Agents, S. S. da Serena.

Marine (1896) Department.

CURRENT No. 945

Order Endorsement

No. 458 E 8/14 Sept 1896

Referred to the Govt.
Solicitor for the opinion
of the Advocate General.

From,

The Presidency Port Office,
Madras.

No. 2789.

10/9/96

W

To the Govt. Solicitor with
papers in original to be
returned.
L.F. 10/9/96

Dated 2^d September 1896.

Received 4th September 1896

Enclosures one.

Spare copies

SUBJECT.

Informing that under
the circumstances explained
the ship is responsible
for the 11 Bundles and 35
bars of iron lost overboard

BACK PAPERS.

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FURTHER PAPERS.

G.O.	No.	Department.	Date.
728	1042	96	

8 Heading

No. 2789

PRESIDENCY PORT OFFICE,
Madras, 2nd September 1896.

From

Commander A. A. Steut, R.N.,
PRESIDENCY PORT OFFICER,

Madras,

To

THE SECRETARY TO GOVERNMENT,

PUBLIC WORKS (MARINE) DEPARTMENT,

Madras.
Chepak

SIR,

In reply to Marine Department Reference No. 415 & dated 21st August 1896, I have the honor to acquaint you for the information of Government, that as the articles specified in Messrs. Volkart & Brothers' letter were lost overboard from the ship's sling and while it was possible for the officer of the vessel superintending their discharge to have had the sling load raised or lowered as might be necessary to ensure the articles being safely placed in the boat, I am of opinion that the loss could have been avoided and therefore directed the value of the lost articles to be deducted from the freight bill.

2. The statement that the boatmen contributed to the accident by catching hold of the sling in no way, in my opinion, lessens the responsibility of the Ship. In fact it shows, that they

*herewith returned

They must have been permitted by the ship's officer superintending the discharge to do so, for as I have pointed out, he could have had the load raised had he thought proper and thus frustrated the action of the boatmen.

3. Messrs. Volkart Brothers' contention that the responsibility of the vessel ceased from the time the articles were on level with the vessel's deck is not one which would hold good, I believe, in a Court of Law. The general belief is, that the ship is responsible as long as the articles are in the ship's sling, and the load can be raised or lowered at the discretion of the ship's officer.

I have the honor to be,

Sir,
Your obedt. servant,

H. A. Thet
Commander, R. I. M.,
Presidency Port Officer

28

Marine
P. W. DEPARTMENT.

Claim for payment of
freights.

Read the following:—

Letter from Messrs Volkart Bros., Agents S. S. La Senena
dated Aug. 18, 1896.

" the Presy Port Officer No. 278 Cal Sept 2^d 1896.

FOR ORDERS.

The circumstances under which the articles were lost are clearly stated in the Preventive Officer's report. The only question is whether the responsibility of

* Flag A.

Before positively agreeing to sustain the claim, I think that, as a legal question is involved, it will be safest to send the papers to the Adv. Genl for opinion. It would be unwise to fight the matter in the Court on whether responsibility continued so long as the ship was under the control of the ship's officers, i.e. until its contents had been emptied into the boat below.

W.S.
8/9/96

2. The matter seems to be

they must have been permitted -

one for the Courts to decide.
Messrs Volkart Brothers might
be told that, as at present advised,
the Government is not prepared
to admit their claim.

5/9/96
W

C.S.

FOR ORDERS.

Marine (1896) Department.

CURRENT No. 1042

Order

From

The Govt. Solicitor

No. 463

Dated 21-9-96

Received 25-9-96

Enclosures 2 one and cno.

Spare copies 945 retd

SUBJECT.

11 bundles & 35 bars of
iron

Forwarding the Advocate General's
Gaining his opinion
reg: the — which were
lost overboard from
the ships ships.

C.A.W.
22-9-96

BACK PAPERS.

FURTHER PAPERS.

O P I N I O N

+ No. If there
was any such
species proven
Pres: would
be sure to
quote it
his.

(a) Leggett on
"Bills of Lading"
Carver on
"Carriage by
Sea".

4. Messrs Volkart Brothers refer to the Preventive officer's report, presumably for the purpose of showing that the loss was due to the negligence of the boatmen, who are treated by them as the servants of the Public Works Department. As Messrs Volkart Brothers do not repudiate liability on the ground that the loss was entirely due to the act of the boatmen, I assume that that is not their contention. The burden of proving such an allegation lies upon those who make it. I doubt if contributory negligence can be successfully pleaded, for, as public carriers, the owners of the ship were absolutely responsible for the safety of the goods so long as those goods remained in their hands as carriers. The loss occurred while the goods were under their control, and need not have occurred if those responsible for the discharge of cargo had performed their duty with due care.

Madras
19th September 1896.

J.H. Spring Branson
Advocate General.

(True Copy)

Ernest Barclay
Government Solicitor.

(1896) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Secretary to Government
Marine Department
Madras

N° 463

Dated 21st September 1896
Received

Enclos 2

Forwarded with enclosures
with reference to the Endorsement
of N° 458 E. dated 14th
September 1896. Marine Department.

Ernest Barclay
Government Solicitor

Marine (1896) Department.

CURRENT No. 897.

Endorsement
Order

H. 5 E. a/2, 18th August 1896

Referred to the Presidency
Post office for report.

(W) Smer. C.

M

From

Messrs. Volkart Brothers

Agents S.S. "La Serena".

No. -

Dated 18th August 1896

Received 20th August 1896

Enclosures -

Spare copies -

4.

The Presidency Post office

to be returned.

W. 20/8/96

SUBJECT.

11 bundles and 35 bars of iron

Requesting that orders may be
issued for freight being paid
to them for — which were lost
overboard when the ship dis-
charged cargo

Removed from R.P.
661 main 26/9/96

BACK PAPERS.

FURTHER PAPERS.