Marine (1897) Department.

G.O., No. 778 Mar

DATED 4-September 97

[Despatch Abstract.]

Madras Harbour Trust Act II of 1886: Communicating to the Legislative Dept, for such further action as may be necessary a draft bill to amend the — with Statement of Objects and Reasons.

—

22 Sept 97

[M. 6. 500—23-8-97.]

Indexed. 19/9/97

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Marine (1897) Dept. Current No. 1443
Received 13.11.97

No 672 E dated 18th November 1897

Returned with thanks, as no longer required.

with compliments of Under Secretary,
18-11-97. R.D.

The original of G.O. No 778 Marine dt 4th Septr 1897 is furnished.

C. H. L. Burton
Under Secy to Govt
P.W. & Marine Dept

18/11/97.

The Under Secy to Govt
Revenue Dept

FURTHER PAPERS.

G.O.	No.	Department	Date.	G.O.	No.	Department.	Date.
	~~2728~~ 5862	Ma.:	16-9-97				

[40/500]

Marine DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " 1025 " 1897 , " 24th July 1897 , " Revenue Department.

ORDER. 778 Marine 4th September 1897

The accompanying draft Bill, with statement of Objects and Reasons, will be communicated to the Legislative Department for such further action as may be necessary.

4/9/97
M.

To ~~Legislative~~ The Leg. Dept. with copies of
G.O. 4909 Mis. Rev. dated 2nd. Dec. 1896.
" 493 " " 28th June 1897,
and with the draft Bill and
Statement of Objects and Reasons.

Issued 17/9/97

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Reminder

For C. No. 9123 of 1897.

MEMORANDUM.

Requested for reference the under-mentioned papers:—

A copy of G.O. 778, Marine, dated 4th September 1897.

Government Office,
Revenue Department,
10th Nov. 1897

To
The Under Secretary
P.W. Dept. (Marine)

~~Registrar.~~ Under Secretary
12/11/97

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	~~2720~~ 5862	Ma.	16-9-97				

[40/500]

Marine DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. of 189 , dated , from

" " " 189 , " , "

" " 1025 " 1897 , " 24th July 1897 , " Revenue Department.

ORDER. 778 Marine 4th September 1897

The accompanying draft Bill, with statement of Objects and Reasons, will be communicated to the Legislative Department for such further action as may be necessary.

4/9/97

M.

To ~~[illegible]~~
The Leg. Dept. with copies of
G.O. 4909 Mis. Rev. dated 2nd. Dec. 1896.
" 493 " " 28th June 1897.
and with the draft Bill and
Statement of Objects and Reasons.

Issued 1/9/97

BACK PAPERS.

Legislative DEPARTMENT.

Statement of Objects and Reasons.

It is provided in section 45 of Act II of 1886 that the Madras Harbour Trust Board shall frame a scale of rates for, inter alia, the storage or demurrage of goods at or on any "wharf, pier or dock" in the possession or occupation of the Board. A proposal has recently been made that a ? system similar to that obtaining in Bombay shall be adopted at Madras, whereby the Harbour Trust Board would receive into its premises and store therein, on behalf of the consignees, all goods landed at the port. The Board having at present no storage accommodation of its own, it proposes to rent the existing custom house premises, but these are outside Harbour Trust limits, and difficulty might occur in the recovery of harbour dues on goods stored therein. To provide for this difficulty it is proposed to amend section 45 of the Act in the manner shown in the following draft Bill. This will, in addition, enable rates to be levied for the storage or demurrage of goods at or on any land or buildings in the possession or occupation of the Board.

Draft Bill

BACK PAPERS.

A draft bill to amend Madras Act II of 1886

(The Madras Harbour Trust Act).

Whereas it is expedient to further amend Madras Act II of 1886 (The Madras Harbour Trust Act); it is hereby enacted as follows:-

1. Instead of the words "or dock" in section 45(c) of the said Act, the words "dock, land or building" shall be substituted.

(By order of His Excellency the Governor in Council).

R.S.

[signature] 4/8/97

Legislative DEPARTMENT.

The Hon Sir Henry Bliss K.C.I.E.

[G.]
1,000—14-6-97.

Marine DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., No.	dated		189 .	
Again G.O., No.	dated		189 .	
Current No.	of 189 , dated		, from	
" "	" 189 , "		, "	
" " 1025	" 1897, "	24th July 1897,	" the Rev. Dept.	

Draft Bill.

ORDER.

"I think the "Statt. of objects & reasons" shd. be prepared in the Dept. originating legislation, not in the Legve. dept. — If so, the Marine Dept. should prepare such a statt. & send it with the bill to the Legve. dept. — Better ask Mr. Forbes. He will know what the proper course is —

H.B.
29/7/97

The following draft Bill will be communicated to the Legislative Department for such further action as may be necessary.

A Bill to amend Madras Act II of 1886 (The Madras Harbour Trust Act).

Whereas it is expedient to further amend Madras Act II of 1886 (The Madras Harbour Trust Act); It is hereby enacted as follows:-

1. Instead of the words "or dock" in Section 45 (c) of the said Act, the words "dock, land or building" shall be substituted.

(By order of His Excellency the Governor in Council).

[signature] 28/7/97

The Ch. H.T. Bd.
" Leg. Dept. with copy of G.O. 4909
493
" Rev. Dept.

R.S.

To

[G 73]

2,000—25-11-96.

To

The Secretary to Govt. Leg. Dept.

With reference to the remarks of the Hon. Member overleaf, will you please indicate the correct procedure. I observe that on the last occasion, the matter was dealt with in the Legislative Dept. vide

G.O. 27 Leg. of 4 May 1891
" 42 " " 20 July "

John Campbell Clerk R.E.
Secty to Govt

K.S

2/8/97

Legislative DEPARTMENT.

OFFICE NOTE No. 1761

Dated 23rd August 1897.

From

THE [redacted] SECRETARY, to Government Legislative Department

To

THE SECRETARY Public Works DEPARTMENT.

With reference to your office Note of the 2nd instant the undersigned has the honour to state that the correct procedure is for the executive department concerned to draft a Bill together with the statement of objects and reasons, as soon as legislation on the subject is decided finally and then transfer the bill and statement to the Legislative Department with the necessary papers. The Legislative Department will then make any necessary alterations of a formal nature that the Bill may require.

Secretary to Government

BACK PAPERS.

Marine Department

Government (1897) of Madras.

REVENUE.

Current number 1025

Recd. } 24-7- } 1897.

Regd.

Enclosures

Spare copies

G.O., No. 493, 28th June 1897.

JUNE.

Harbour Trust Board, Madras.

Ordering, with remarks, that a letter be despatched to the Government of India requesting the opinion of the Legal Adviser of that Government on the subject of investing the — with certain powers similar to those exercised by the Port Trust Board at Bombay.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following letter from W. AUSTIN, Esq., I.C.S., Chairman, Harbour Trust Board, Madras, to the Honourable Colonel D. McNEIL CAMPBELL, R.E., Secretary to Government, Marine Department, dated 29th January 1897, No. 4654:—

I have the honour to acknowledge the receipt of G.O., No. 682, Revenue, dated 1st December 1896 (copy printed herewith for ready reference, together with the opinions of the Advocate-General, dated 26th August and 17th October 1896), communicated under G.O., No. 17, Marine, dated 6th January 1897, regarding the erection of sheds by the Trust for the storage of goods.

2. The Trustees note, with pleasure, that His Excellency the Governor in Council is of opinion that it is desirable for the Harbour Trust Board to undertake the storage of goods for the trade of Madras, in the same manner that the Bombay Port Trust has done for Bombay, and that the Harbour Trust Board should be allowed to provide the buildings necessary for such a service.

3. With regard, however, to the conditions under which it is proposed that this should be carried out, the Harbour Trustees must decline to undertake the work as "servants of the Sea Customs authorities," and submit that they are not authorised to do so, as a Statutory body under the provisions of Act II of 1886, amended by Act I of 1892, which latter Act specially empowers the Harbour Board under section 45, Act II of 1886, "to frame a scale of rates . . . . for the porterage of goods on, from or within any wharf, pier or dock in the possession or occupation of the Board;" and under section 70 to "make bye-laws for the reception, removal and porterage of goods brought within the premises of the Board, *and for the exclusive conduct of these operations by the Board or by persons employed by them.*" Under section 45 (*a*) the Board is further authorized to frame a scale of rates to be levied for the landing, shipping, wharfage, cranage, storage or demurrage of goods at any such wharf, &c., within the limits of the port, whether within or without the harbour, and the Trustees, under these circumstances, respectfully repudiate the position assigned to them by the Collector of Sea Customs, in his letter No. 2107 G., dated 21st April 1896, wherein he states that "*the Harbour Trust at present merely intervene as porterage contractors.*"

4. There does not appear to be any necessity to declare the sheds, which the Harbour Trust proposes to build, a *part of the Customs House*; all that is required is that they should be included "*within Customs limits*" as in Bombay. I may here remark, that, in London, goods are passed through the Customs House, and ships are entered at it; but neither goods nor ships are taken to it. The Customs House is in the city; the ships and goods remain "*within Customs limits*," which in London, Bombay and elsewhere, is all that is considered necessary for *Customs control*.

5. The Collector of Sea Customs cannot legally transfer his custody or control of dutiable or other goods to the Harbour Trust Board, and it is not desired that he should. His custody extends from the time dutiable goods are brought within port limits until duty is paid; it may be *actual*, or it may be *only constructive*; but, in either case, commences and ends with his lien for duty.

6. Dutiable goods are *constructively* in the *custody* of the Collector when on boardship within port limits; while in transit in charge of the dubashes from ship to shore; while in transit in charge of the Harbour Trust from the shore; and, as is the case, in many instances at present, while they remain outside the Customs House within the Board's premises, it being physically impossible to take many packages into the Customs House yards; and I may here remark that constructive custody, and

the lien of the Collector for duty, extends to goods which may even not be in existence, *i.e.*, to goods which may have been manifested for entry, but which may, from various causes, not be on board the steamer on arrival *within Customs limits*, but which would nevertheless, being manifested, have to be accounted for by the Master or Consignee.

7. Dutiable goods are *actually* in the custody of the Collector when they are in the Custom House. The Harbour Trustees are not aware under what section of the Sea Customs Act importers can be compelled to take all dutiable goods *into the Custom House*. As pointed out in my letter No. 3771, dated 4th December the Custom House at Bombay is not used for the storage of goods; while at Madras the sheds attached to the Custom House, and used for the storage of goods, have from long association come to be regarded as synonymous with the Custom House itself.

8. It would appear that any order to the effect that all goods shall be taken *into the Custom House*, *i.e.*, into the yards attached to the Custom House, would be arbitrary, and not in accordance with any specific section of the Sea Customs Act. If so, the rule could be varied, by directing that all goods should be taken into Harbour Trust premises *within Customs limits*, and they would then be practically *within Customs premises*, and in the Collector's custody *constructively*, while his lien for duty lasted, and under his control, though not in his *actual* possession.

Dutiable goods could not pass out of the constructive custody of the Collector until duty had been paid. It is unnecessary for him to hold *actual possession* as he does at present, under lock and key, of a portion, and only a portion of dutiable goods landed.

9. In order to encourage trade and commerce, and to meet the convenience of importers, while at the same time securing the interests of Government, the system of warehousing was adopted by the Legislature, and it appears to be an extension of this principle which has led the Government of India, and the local Governments of Bombay and Bengal in the interests and encouragement of trade and commerce, to permit goods to be taken charge of, and handled without the intervention of Customs officials, by the Port and Harbour Trusts at Bombay, Calcutta, Karachi and Rangoon; though from the time the ship enters port limits, to the time duty is paid, all goods intended for importation are constructively in the custody of the Collector of Sea Customs at each port.

10. The convenience which would accrue to the Customs authorities, and to the Mercantile public, by the introduction of a similar system at Madras is undoubted. Goods on arrival *within Customs limits*, even though still on boardship and in transit from ship to shore, are in the *constructive* custody of the Collector, and the interests of Government would in no way suffer by the goods being allowed to remain in his *constructive custody only*, and in the actual custody of the Harbour Board, which would provide conveniences and facilities for Customs examination, and for the Mercantile public, which are at present unknown in Madras, and the absence of which seriously inconveniences both importers and Customs officials.

11. It does not appear to the Trustees that there is any necessity for dual control, and they fail to see how their actual possession of goods can in any way effect the constructive custody, or actual lien of the Collector. There is no reason why the interests of the merchants and of Government should clash in any way. If under section 11 (*c*) of the Sea Customs Act the whole of Harbour Trust premises are declared wharves for landing cargo, all cargo landed would remain *within Customs limits*, in the actual custody of the Trust, but in the constructive custody of the Collector, so long as his lien for duty lasted. This is the course of business at Bombay, and the only one that can be satisfactorily carried into effect at Madras in the interests of trade.

Should Government see its way to take this view of the matter, the Trust and merchants would be left—unhampered by the detailed control of the Collector, and other Customs officials subordinate to him—to make whatever arrangements may be approved by Government, under the Harbour Trust Act, to meet the convenience of the mercantile public, and of the Customs authorities, and for the safe custody and

storage of goods. There is no reason why such a procedure should not work as smoothly in Madras as at other ports.

12. In this connection, the Trust would bring prominently to notice the opinion expressed by Mr. LeFanu in the concluding portion of paragraph 9 of his letter No. 3258, dated 20th November 1895, as follows:—"It may not, perhaps, be out of place here to express my personal opinion that I see no difficulty whatever in acceding to this request of the Chamber of Commerce; for, under the orders of Government, the Collector of Sea Customs is, by reason of his office, as such, also the Chairman of the Board, and it would, therefore, appear that it should be more easy to carry such an arrangement into effect at Madras than at other ports, where these two offices are not held by the same person;" and this must obviously be the case; for, the Collector and the Chairman being one and the same person at Madras, the Collector could see that no order of his, as Chairman, in any way clashed with the interest of Government, for which he is responsible as Collector.

13. With regard to responsibility for loss and damage: the Trustees would submit that the mercantile community would be in a very much better position under the arrangements proposed by the Chamber of Commerce, provided it is distinctly understood that while the custody of the Harbour Board is *actual*, that of the Collector is *constructive*, and only for so long as his lien for duty lasts; but under the arrangements proposed by the Collector, merchants would be in a worse position than now, for as pointed out by Government, the Board, as a servant of the Customs authorities, would not be responsible at all, except under the provisions of the Sea Customs Act, which would practically protect it altogether.

14. The Harbour Trust lien for dues would probably be disadvantageously affected under the circumstances stated in paragraph 2 of the G.O. under reply; but the Collector's lien for duty would be absolute from the time the goods came into the actual custody of the Harbour Board, should Government approve of and sanction the proposals of the Chamber of Commerce; and the Harbour Board's lien would also, under the Harbour Trust Act, be all that is required.

15. The trustees would submit that the arrangements proposed by the Chamber and by the Harbour Board *are* complete, and sufficient for the due realization of Customs revenue; that nothing further is needed, and that there is no legal difficulty to be overcome, but that the Harbour Trust Board *can* legally, and without detriment to Customs control, or to the actual lien upon and constructive custody of goods by the Collector, carry out the proposals of the Chamber of Commerce, under the powers vested in the trust by Act II of 1886 as amended by Act I of 1892.

16. It seems to the Trustees that a misapprehension has arisen, over the expression *Custom House*. The Advocate-General appears to assume that it is *necessary* for all goods to be taken *into the Custom House*, but the legality of such an order under the Sea Customs Act is not apparent—sections 86, 87 and 89 do not so enact. In paragraph 4 (3) he refers to the contingency: "*If* the buildings be declared part of the Custom House, under section 11 (*f*)" and goes on to say that *then* "the goods would be in the Custom House in the sole and absolute control of the Collector." This is what, it is understood, the Chamber of Commerce wishes to have *altered* as it is found unsatisfactory, and stands in the way of the Harbour Trust giving improved facilities at Madras, such as are customary, and work without difficulty or friction, at all other large Indian ports.

17. The difficulty appears to lie in the interpretation placed, in Madras, upon such expressions as "Custom House"—; "make entry," section 86—; "passed through the Custom House," section 167—36—; "entered at or brought to be passed through a Custom House," section 167;—37—; "passed out of any Custom House *or wharf*," section 167—39.

There are also certain expressions in the Sea Customs Act which seem to imply that goods must be taken *into the Custom House*; but, for the reasons given below, the Trustees would submit that this is not so.

Under section 75 "The Chief Customs authority may from time to time make rules for the landing and shipping of passengers' baggage, and passing of the same *through* the Custom House." Baggage is rarely, if ever, physically passed

through the Customs House yards. Most of it is, at Madras, either passed on board-ship, or taken to the outer verandah of the Custom House, and removed therefrom when passed. At Bombay passengers' baggage is landed at a Port Trust Bhandar "*within Customs limits*," and passed therefrom by an Assistant Collector, who attends for the purpose; but not a single package is taken into the Fort to the Custom House to be physically *passed through* it.

In section 167—39 a penalty not exceeding Rs. 500 is fixed, "*If, without entry duly made, any goods are taken or passed out of any Custom House or wharf.*" From this it appears that if Customs regulations in the way of entry, and presumably assessment and payment of duty, if any, have been duly complied with, *goods may be passed from a wharf*, without being taken to, or into or through a Custom House. If this is legal in any case, it would, the Trustees submit, be legal in all cases, except where otherwise provided for in the Sea Customs Act.

Under Section 192, "If a person has become liable to any such fine, penalty or rate in respect of any goods, the Customs Collector may detain any other goods belonging to such person, *passing through the Custom House*, until such fine, penalty or rate is paid."

It cannot here be meant that the Collector may detain goods *only* when they are physically being passed through the Customs House, to which as at Bombay goods are never taken, and carried from one side to the other. For instance: at Madras, should an importer of kerosine oil or dynamite become liable to any penalty or fine, the Collector would, it is presumed, be within his rights by refusing to pass other kerosine oil or dynamite belonging to the same party, but he certainly would not insist upon either being *actually carried through the Custom House* to justify his doing so under this section; or if an importer had become liable to a fine under this section in respect of say Manchester goods, and had also imported a cargo of coal, the Collector could presumably detain the coal till the fine was paid, but it would not be necesseary that it should be carried into the sheds attached to the Custom House at Madras, or through the Custom House—the Collector's Office—at Bombay.

The terms, make entry; passing through the Customs House; entered at or brought to be passed through a Customs House, appear to refer to much the same proceeding, if not to the very same; that is, when goods are "entered at or brought to" "be passed," as it is put in section 167—37; and section 86 enacts that "the owner of any goods imported shall on the landing thereof from the importing ship, *make entry* of such goods for home consumption or warehousing."

This "*entry*" is not to be made, it will be observed, by carrying the goods into the Custom House, which is absolutely impossible at Bombay, but "*by delivery to the Customs Collector of a bill-of-entry* thereof in duplicate in such form and containing such particulars, in addition to the particulars specified in section 29, as may from time to time be prescribed by the Chief Customs authority." At Bombay upon such *entry* being made at the Custom House, in the Fort, and all other Customs regulations having been complied with, the goods themselves are *passed*, not through the Custom House, but from *within Customs limits* at the Port Trust premises, as "*out of Customs charge*," and may then be removed.

18. In the standing orders of the Board of Revenue, made under the provisions of section 9, and becoming law under section 204, expressions occur which may also be taken to mean that goods must be carried into the Custom House.

Rule 62. "*All goods* must be landed at appointed places *and regularly passed through the Custom House.*" It is to be observed here that no exception is made, and that if it is to be taken literally that "*all goods must be passed through the Custom house*" it is difficult to see under what exception coal is delivered from outside, if it—coming within the category of "*all goods*"—must be regularly *passed through* the Custom House. The explanation seems to be that it is the documents relating to coal which must be submitted at the Custom House, and a pass order obtained in due form. The same remarks apply to kerosine-oil in bulk as well as to many other descriptions of cargo, which cannot by any known means be physically carried into and out of the Custom House, or the yards attached to it.

It is also to be observed that under this very rule a distinction is made between goods passed through, and goods carried to, the Custom House; for clause 6 directs that under certain circumstances—those referred to in section 83—"the Master or Commander of such vessel as the case may be, or the officers of Customs, on his application *may carry such goods to the Custom House.*"

Rule 72. "Goods once assessed for duty, on a declared value, will not be permitted to be revalued, *after they have left the Custom House*"; and section 36—: "Except as provided in section 94 no amendment of a bill-of-entry or shipping bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed *after such goods have been removed from the Custom House.*"

The point is, under what section of the Act can owners be compelled to take them into the Custom House?

Rule 73. "If any article of foreign production, on which import duty has been once paid, is subsequently exported without drawback, and is re-imported, it shall be exempted from duty if the Collector of Customs is satisfied of the identity of the articles." There does not appear to be any reason why it should be easier to identify goods that have been stored in the Custom House yards, than to identify goods stored within Customs limits, in premises belonging to the Harbour Trust. On the contrary, as the present Custom House yards are totally inadequate to store packages, so that they can conveniently be seen, identification would appear easier—if visual observation is necessary—where they stored in the first instance in sheds with ample space; but it can hardly be contended that it is necessary that the external appearance of the packages should be familiar to, and recognised by, an officer of Customs.

Rule 74. "Goods relanded must be reported upon and identified as being the "same that had previously passed the Custom House for exportation." Here again to contend that actual familiarity with the external appearance of the packages is necessary, and that, to attain such, the goods must have been at some time in the Custom House, would appear a very unsatisfactory method of identification. The description contained in the documents would probably answer all purposes.

Rule 84. "Parties requiring to ship goods, with a claim to drawback, *must bring them to the Custom House*, at least 24 hours before it is intended to ship them."

This rule does not appear to apply to goods landed for home consumption, and the question of drawback has not been raised by the Chamber of Commerce.

19. The Trustees would submit that goods manifested for Madras are "*brought*" by the vessel, and that before they can be *cleared* or *passed* through the Custom House, certain formalities have to be gone through, to satisfy the Collector as to the nature and value of the goods; and this can most conveniently be done by the production of documents. If the Collector is not satisfied with such documentary evidence, he may order an examination; but for the purposes of this examination goods are not, in London, carried to the City, for examination at the Custom House, nor at Bombay are they taken to the Fort, to be there examined in the Custom House. In London the examination is made by Customs officials at the docks or wharves in the river, owned by private companies or individuals, and at Bombay at the Port Trust premises. Both the docks and wharves in London, and the docks and bhandas in Bombay, are *within Customs limits*; but neither in London nor Bombay are they *declared part of the Custom House*. Moreover all goods, without exception, have to be *passed* through the Custom House; that is, a pass obtained by the production of the necessary documents; but even in Madras goods which are too large to pass under the entrance archway, or too heavy to carry into the Custom House yards, or which are considered dangerous or objectionable, are *not* taken into the Custom House, and yet there does not appear to have been any exception made in their favour, exempting them and compelling, say, Manchester bale and case goods to be taken into the Custom House, or the yards attached to it.

20. Goods must be taken somewhere for protection; they cannot be left upon an open sandy beach and as the "*Custom House*" with the yards attached, is the only place in Madras where they can, at present, be temporarily stored and conveniently

examined, they have been, it is understood, taken there, under the orders of the Board of Revenue; but there does not appear to be any reason why, if more convenient arrangements can be made, the order to take goods to the Custom House should not be cancelled, and a similar order substituted that they shall remain *within Customs limits* at such wharf, pier or jetty, according to their nature, as the Harbour Board may, with the approval of Government, direct in a bye-law framed under section 70, Act II of 1886.

21. Referring to section 204, it is enacted therein that "all rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law."

Under section 9 it is enacted, that the Chief Customs authority may, from time to time, with the sanction of the local Government, make rules *consistent with this Act*:

(*a*) prescribing and limiting the powers and duties of officers of Customs;
(*b*) regulating the delegation of their duties by such officers; and
(*c*) generally to carry out the provision of this Act.

If, therefore, no section of the Act empowers the Chief Customs authority to direct that *all* goods shall be taken *into the Custom House*, it would seem to have been the intention of the Legislature that no such power should be exercised, except as laid down in sections 83, 84, 85 and 88; and this for the very good reason that a Custom House is not a wharf, or warehouse, for landing and storing cargo, before it is passed for Home consumption, or otherwise disposed of; but *an office* where the Collector assesses duty, and from whence he controls the goods landed and temporarily stored *within Customs limits*, under his jurisdiction and control, and in his *constructive* custody so long as his lien for duty lasts.

It is merely an accidental circumstance that, at Madras, the sheds where goods are stored, are in the same block of buildings as the Custom House.

22. It is further to be observed that in the only sections of the Sea Customs Act—which provide for goods being actually taken *into the Custom House*—section 83 enacts that "If the owner of any goods (except such as has been shown in the import manifest as not landed) does not land such goods within such period as is specified in the bill of lading of such goods * * * the Master of such vessel or, on his application, the proper officer of Sea Customs, *may* then *carry such goods to the Custom House*, there to remain for entry. The Customs Collector shall thereupon take charge of, *and grant receipts for, such goods.*"

Again, in section 84, it is enacted that "at any time after the arrival of any vessel the Customs Collector *may*, with the consent of the Master of such vessel, cause any *small package* or *parcel* of goods to be *carried to* the Custom House, *there to remain for entry.*"

If, therefore, before goods can be *carried to the Custom House*—except such as are still uncleared four months after the arrival and entry of the vessel, under section 88—a request must be made by the Master, or his consent obtained; it is clear that the *entry of goods* is not the physical operation of placing them in the Custom House; for *after* goods have been *carried into the Custom House* at the request of the master, or to it with his consent, they then have still to await "*entry*" and have still to be *passed* through the Custom House, before they can be cleared.

23. With regard to the method of landing goods at Madras, there does not appear to be any necessity to make any alteration. The agents object to land under section 85, because they would then incur responsibility on behalf of the ship not contemplated in the bill of lading, and therefore beyond their authority.

But this is no reason why the dubashes, as agents for the consignees, should not continue to land goods as at present under section 83; and when the Harbour Trust has constructed a boat-basin with convenient wharves, and sheds adjacent, take such goods to those wharves—authorized landing places under section 11 (*c*) of the Sea Customs Act—and there make the goods over to the Harbour Trust, to remain in the *actual* custody of the Trustees, but in the constructive custody, and under the actual control, of the Collector until passed as *out of customs charge.*

24. That there must be some way of overcoming the difficulty, would appear certain, from the fact that *goods are not taken into the Custom House* at Bombay; but are handled *within Customs limits* by the Port Trust, and that there "*the sheds in which the goods are stored are under the sole control of the Port Trust,*" and "*except for a general supervision by the Customs Preventive department, the entire management of the sheds and the gates at the docks is conducted by the Port Trust,*" while on landing "*no goods are taken charge of by the Customs.*"

It is incomprehensible to the Trustees why an exactly similar procedure cannot be followed at Madras, without their becoming the servants of the Collector.

25. The *constructive* custody of goods, and the actual lien of the Collector, has been sufficient, and is presumably considered legal in Bombay, and consistent with the *actual* custody being vested in the Bombay Port Trust *under the control of the Collector*. The Sea Customs Act applies to Bombay as well as to Madras, and there is little, if any, difference in the powers conferred upon the Trustees of Bombay, and the Madras Trustees, by their respective Acts, so far as the power of dealing with goods is concerned, except that in Madras the Harbour Board is specifically empowered, under Act I of 1892, to undertake the porterage of goods, which at Bombay the Port Trust appears to do as a matter of course, within its own premises, and without any specific authority.

26. The question of warehousing goods under warrant, is separate and distinct, and need not now be discussed.

No. 111E., Marine.

Transferred to the Revenue Department.

(Signed) D. McNEIL CAMPBELL, Col., R.E.,
17th February 1897. Secretary to Government.

To the Revenue Department.

Read—the following letter from G. G. ARBUTHNOT, Esq., Chairman, Chamber of Commerce, Madras, to the Secretary to Government, Revenue Department, dated 26th February 1897:—

I have the honour to acknowledge receipt of Government Order of the Madras Government, No. 682, Revenue, dated the 16th December last, and G.O., No. 4909, Mis., dated the 2nd idem. While the Chamber is gratified to observe that the Government will have no objection to assimilating the practice in Madras to that in Bombay, it notes with regret the legal points raised by the Advocate-General. If the change can only be effected under the conditions thus laid down, it hardly seems to the Chamber worth while to make any alteration.

The Advocate-General is of opinion (*a*) that the Sea Customs Act, 1878, does not allow joint control of the Harbour Trust Board and the Collector of Sea Customs over dutiable goods, and (*b*) that the Harbour Trust Act, 1886, does not empower the Board to become the bailee of such goods (*i.e.*, dutiable goods in the control of the Collector of Sea Customs).

With regard to (*a*) admitting, for the sake of argument, this view to be correct, the Chamber submits that no joint control is contemplated. It is merely desired that the Harbour Trust Board should be permitted by Government to remove into its sheds cargo as landed and to deliver same upon pass orders from the Collector.

This procedure has been, and is still, in force in Bombay, as will be seen from a note appended to a letter from the Collector of Sea Customs of Bombay to the Collector of Sea Customs of Madras, dated the 27th July 1896, wherein he says: "It will be seen from the above that, except for disposal under section 88 of the Sea Customs Act, no goods are taken charge of by the Customs, that the department has nothing to do with landing, storage or delivery of goods, &c.," and in his letter of the 16th

August 1892, the Collector of Customs, Bombay, says that "except a general supervision by the Customs Preventive Department, the entire management of the sheds and gates at the docks is conducted by the Port Trust."

With regard to (*b*), the Chamber would call the attention of Government to section 60 of the Harbour Trust Act, which empowers the Board to execute such works as it determines to be necessary or expedient; to section 61, wherein the works authorized by section 60 include (*inter alia*) *warehouses and sheds for receiving and storing goods to be landed or to be shipped or otherwise*; and to section 53 which is as follows: "Such goods shall be retained in the warehouses and sheds of the Board or with the consent of the Chief officer of Customs in the Public Customs Warehouses at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned; and godown rent shall be payable by the party entitled to such goods for the time during which they may be so retained."

With all due deference to the Advocate-General, the foregoing sections, among others, clearly, in the view of the Chamber, contemplate the Harbour Trust Board acting as the bailee of goods landed, shipped, or otherwise, and the Chamber is unable to find anything in the Act which prevents dutiable goods in the control of the Collector of Sea Customs being, with the sanction of Government, dealt with as proposed.

The Chamber has been favoured with a copy of the letter which the Madras Harbour Trust Board addressed to Government on the 29th ultimo, and as the views therein enunciated—which have been approved by the Chamber's representatives on the Board—are identical with those entertained by all the members of the Chamber, it would be a work of supererogation for the Chamber to enunciate its views separately. If, however, the object of the proposal before Government is unattainable under the present Acts—which the Chamber ventures to doubt—then a simple way out of the difficulty offers itself in their amendment, and in view of the very great desirability of the change being brought about, the Chamber would strongly urge immediate legislative action, for the present state of affairs is as anomalous as it is unsatisfactory.

In view of the fact that the Sea Customs Act applies to the whole of British India, and that in ports like Calcutta, Bombay and Karachi, a system is in vogue which is illegal in the opinion of the Advocate-General of Madras, the matter may be deemed of sufficient importance to have the opinion of the adviser of the Government of India taken on the legal points raised.

Read—the following letter from W. AUSTIN, Esq., I.C.S., Chairman, Harbour Trust Board, Madras, to the Secretary to Government, Marine Department, dated 26th February 1897, No. 5174:—

I have the honour to acknowledge the receipt of G.O., No. 18, Marine, dated 6th January, regarding the proposed rental of the yards attached to the Custom House by the Harbour Trust Board.

2. In my letters Nos. 3771 and 4654, dated 4th December 1896 and 29th January 1897, respectively, the views of the Trustees are fully expressed in reference to the general question of the custody of goods within Harbour Trust premises, which, if declared wharves for landing cargo under section 11 (*c*) of the Sea Customs Act, would also be within Customs limits.

3. According to the opinion of the Advocate-General printed with G.O. No. 682, Revenue, dated 1st December, goods which are *in the Custom House*—by which term, it is understood, he means also the yards attached to it—are "in the sole and absolute control of the Collector," and, as pointed out in my letter No. 4654 above referred to, are moreover at present held by him *under lock and key*.

But in his letter No. 5130 G., dated 25th September, the Collector contends that "the goods in the Custom House are under Harbour Trust control and in their "custody from the time they are deposited to the time they are delivered."

It is clear therefore that the Collector did not, at that time, understand his legal position as custodian of those goods which are "*in the Custom House*," as laid down by the Advocate-General in the quotation given above; and the fact of goods being in the actual possession and custody of the Collector, when *in the Custom House*, is reiterated by the Advocate-General in his statement that "where goods are in the "Custom House or in a warehouse, his (the Collector's) custody is *actual*."

4. It is an open question whether, under the Harbour Trust Act, difficulty might not occur in the recovery of harbour dues on goods stored in the yards, attached to the Customs House, outside Harbour Trust premises.

A somewhat similar difficulty appears to have been experienced in Bombay: for section 43 of the Bombay Port Trust Act VI of 1879 (corresponding with section 45 of the Madras Harbour Trust Act) was amended by Bombay Act VI of 1883, which added the words "land or building" to that section.

5. A copy of Bombay Act VI of 1883 is submitted herewith for information, and should Government decide that the actual custody of goods may be undertaken by the Harbour Trust, while the constructive custody and control remains with the Collector, all uncertainty as to the legal position of the Trustees, in premises outside their own limits, could be overcome by amending Madras Act II of 1886 in the same manner.

Enclosure.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 25th August 1883 and the assent of His Excellency the Viceroy and Governor-General on the 3rd November 1883, and is published for general information:—

BOMBAY ACT No. VI OF 1883.

An Act to further amend the Bombay Port Trust Act, 1879.

(*Third publication*).

The assent of the Governor-General of India to this Act was first published by the Governor of Bombay on the 26th November 1883.

Whereas it is expedient to amend the Bombay Port Trust Act, 1879, in manner hereinafter appearing: It is enacted as follows:—

Amendment of section 43.

1. Instead of the words "or pier" in section 43 of the said Act, the words "pier land or building" shall be substituted.

(By order of His Excellency the Right Honourable the Governor in Council.)

Bombay Castle,
24th November 1883.

(Signed) C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay Act VI of 1879.	Madras Act II of 1886.
Section 43.—The Board shall frame a scale of tolls, dues, rents, rates, and charges, to be levied for each or any of the following matters (namely):—	*Section* 45.—The Board shall frame a scale of rates to be levied for each or any of the following matters, viz.:—
(*a*) for the landing, shipping, wharfage, cranage, storage, or demurrage of goods at,	(*a*) for the landing, shipping, warfage, cranage, storage or demurrage of goods at, and for the porterage of goods on, from, or within,
(*b*) for permission for vessels or boats to approach, or lie alongside, and	(*b*) for permission for vessels or boats to approach or lie alongside,
(*c*) for animals or vehicles carrying goods to or from, or entering upon or plying for hire at or on, any wharf, dock, pier *land or building* * in the possession of the Board.	(*c*) and for animals or vehicles carrying goods and merchandise to or from or entering upon or plying for hire at or on any wharf, pier or dock in the possession or occupation of the Board.

land or building

* As amended by Act VI of 1883.

Endorsement No. 201-E, Marine.

Transferred to the Revenue Department with reference to the order in that department, No. 4909 Mis., dated 2nd December 1896, and in continuation of Marine Department endorsement No. 111-E, dated 17th February 1897.

(Signed) D. McNEIL CAMPBELL, Col., R.E.,
Secretary to Government.

18th March 1897.

Read—the following letter from the Honourable Mr. G. G. ARBUTHNOT, Chairman, Chamber of Commerce, to the Secretary to Government, Revenue Department, dated Madras, 6th April 1897:—

In continuation of my letter of the 26th February 1897, I have now the honour to inform you that the Chamber has since been favoured with a copy of a letter (No. 5174, dated the 26th February) which the Harbour Trust Board addressed to Government requesting that Act II of 1886 (the Madras Harbour Trust Act) be so amended as to bring section 45 into conformity with section 43 of the Bombay Port Trust Act. The Chamber is in entire agreement with the Board, and in strongly supporting its request, it does so in the belief that with the Act amended as suggested, the Board will be in a position to warehouse goods on warrants. The Chamber attaches much importance to the Board being empowered to do this, as it would be a very great convenience to the trade of this port, especially in view of the probable passing of the Bill of Sales Act at an early date.

I beg to annex below, for the information of Government, copy of a letter from the Chamber's Solicitors expressing their opinion in the matter.

Enclosure.

Letter from the Solicitors of the Chamber of Commerce, Madras, dated the 20*th March* 1897.

We are in receipt of your letter of the 17th instant with copies of letters from the Harbour Trust Board and other papers relating to the storage of goods, and requesting to know whether the amendments to the Harbour Trust Act suggested by the Board will give the Trust authority to "warehouse goods on warrant."

We assume the expression "warehouse goods on warrant" to mean that goods landed or about to be shipped may be deposited in the godowns or premises of the Harbour Trust Board, that warrants may be issued to the party so depositing the goods, which warrants represent the goods and are capable of being transferred, so as to enable the transferee to obtain possession of the goods so deposited.

The question to be determined, therefore, is, whether the issue by the Harbour Trust Board of warrants would be within the powers given them by the Legislature. In this connection we would observe that it is doubtful if the Legislature contemplated the Board becoming a warehouse company, which they virtually will be if they issue warehouse warrants.

The law on this point, however, is that "whatever may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held to be *ultra vires*." (See Ashburry Railway Company *v.* Riche —Law Reports 7, House of Lords, 653, and the Attorney-General *v.* The Great Eastern Railway Company—Law Reports Appeal Cases, Volume V, page 478).

The preamble of the Harbour Trust Act states that it is expedient to make provision for the regulation, conservancy and improvement of the harbour.

The harbour is defined to mean, *inter alia*, all buildings provided by the Trust Board for the purposes of the harbour.

Under section 70, the Board may, with the approval of the Governor in Council, make bye-laws for, *inter alia*, the convenient use of the warehouses vested in them. To warehouse goods on warrant would, we presume, be a convenient use to put the warehouses to.

It appears to us, therefore, that the issue of warrants may be regarded as fairly incidental to those things which the Legislature has authorized the Board to do under the Act, and we see no reason why, with the sanction of Government, bye-laws should not be passed authorizing the Board to issue warrants.

If bye-laws are passed to this effect and the amendments suggested by the Board are made to section 45 of the Act, the Trust would, in our opinion, have authority to warehouse goods on warrant.

* * * * *

Order—No. 493, Revenue, dated 28th June 1897.

Separate Revenue No. 56.

As there is some doubt whether the proposal of the Chamber of Commerce can be legally given effect to in its entirety, the opinion of the Legal Adviser of the Government of India will, as suggested by the Chamber, be obtained. Ordered that the following letter be despatched to the Government of India.

2. Government considers that the suggested amendment of section 45 of the Madras Harbour Trust Act is necessary and may be made at once. A Bill for the purpose will accordingly be prepared in the Marine Department.

(True Extract.)

for Ag. Secretary to Government.

To the Board of Revenue (Separate Revenue).
" the Marine Department.
" the Chamber of Commerce.

Exd. W. D'Mss.

50 Copies.