Marine (189) Department.

G.O., No. 656 Mar

Dated 12th June 1889

[Despatch Abstract.]

96/3

Bye laws

Approving certain ——— made by the Harbour Trust Board, Madras, under section 70 of Madras Act II of 1886, in supersession of those made by the Board that are at present in force and ordering their publication in the Fort St. George Gazette.

[illegible]

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11/1

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	320	Marine	8-V-96				
	171	"	10-V-94				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	956	Marine	13-X-99				
	16	"	16-1-00				
	507	"	12-12-04				

Government {1899} of Madras.

MARINE.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., No. 656, 12th July 1899.

JULY.

Bylaws

Approving certain — made by the Harbour Trust Board, Madras, under section 70 of Madras Act II of 1886, in supersession of those made by the Board that are at present in force, and ordering their publication in the *Fort St. George Gazette*.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following papers :—

From HERBERT BRADLEY, Esq., I.C.S., Chairman, Harbour Trust Board, Madras, to the Secretary to Government, Marine Department, dated 12th June 1899, No. 230.

In connection with a claim made against the Trustees of the Harbour for the value of 816 tons of coal alleged to have been delivered to them *ex* S.S. *Graffoe* in July 1896, the Board consulted the Honourable the Advocate-General as to its existing bylaws, the Honourble Mr. Justice Shephard having held that bylaw No. 8 is *ultra vires*, and did not protect the Trust against this claim.

2. The opportunity was taken to revise the whole of the bylaws, and I submit herewith, for the approval of Government, draft of amended bylaws as drawn by the Advocate-General, for publication in the *Fort St. George Gazette*, if approved by Government.

3. In this case Mr. Justice Shephard referring to section 70, Act II of 1886, stated in his judgment (copy annexed) that "The matter of storage must have been present in the minds of the legislature, because, as I have shown, they made provision for it in other parts of the Act. They provided for the rates of the storage. That being so, they deliberately leave out the word 'storage' when they authorize the Board to make rules."

He held that the concluding portion of bylaw No. 8 is a rule that it is not competent for the Board to make under section 70.

4. This "rule" provides that the Board will accept no responsibility in respect of such cargo as is mentioned in bylaw No. 7, including coal, but that the consignees or owners are at liberty to employ such servants as they may consider necessary for its protection.

5. The result was that, although the coal *ex* S.S. *Graffoe* was, as porteraged and stacked day by day, then and there made over to the watching peons employed by Messrs. Best & Co., this fact was ignored by the Court, and although Messrs. Best & Co.'s peons were, as a matter of fact, in charge of this and other stacks of their coal, it was held that, as a matter of law, it remained in charge of the Trustees.

6. The Advocate-General advises the Trustees that, in his opinion, an appeal to the Privy Council would be successful; but the litigation has already cost the Board about Rs. 40,000 and the Trustees are unwilling to continue it.

7. In the opinion (copy annexed) given by him on this matter, the Advocate-General said, "I do not think it would be worth while to take steps for the amendment of section 70. So long as the present judgments stand it seems to me that the only way of effectively securing the object which the Board have in view is by the insertion of an express provision in the Act itself exempting them from liability in respect of goods stored."

8. It appears to the Trustees, however, that if they are able to make bylaws for storage, and if the signature of a contract under which the person applying for storage space agrees to acquit the Board of all responsibility for the safety of his goods, is made one of the conditions under which applications are granted (*vide* amended bylaw No. 9), this contract under Mr. Justice Shephard's judgment will free the Board of all responsibility.

9. The Trustees would therefore request that the word *storage* may be inserted in section 70, Act II of 1886, as amended by Madras Act I of 1892 between the words "reception" and "removal."

The section would then run as follows:—The Board may from time to time make bylaws for the . . . . reception *storage* removal and porterage of goods brought within the premises of the Board . . . .

10. Should Government consider that this amendment of the Act will not protect the Board, the Trustees would request that the Act may be amended as suggested by the Advocate-General "by the insertion of an express provision in the Act itself" exempting the Trustees from liability for goods stored within the premises.

ORDER—No. 656, Marine, dated 12th July 1899.

It appears from the correspondence recorded above that the bylaw framed by the Harbour Trust Board under section 70 of the Harbour Trust Act, repudiating liability for loss on account of goods stored by the Board, is invalid, inasmuch as the section of the Act under which it is framed does not empower the Board to make bylaws for the "storage" of goods.

2. The Board accordingly proposes to amend section 70 of the Act by the insertion of the word "storage" in the fourth clause, and to frame a bylaw, under the section as thus amended, providing for the making of a contract by which the non-liability of the Trust for loss on goods stored will be admitted by the parties concerned.

3. It seems to His Excellency the Governor in Council that a simpler and better plan will be to leave the Act alone, and to have no bylaw specially providing for the storage of goods. The object in view can be attained by making the desired contract without the authority of a bylaw under the Harbour Trust Act. The right to do this, under the ordinary law, has been recognised by the High Court.

4. The bylaws as thus amended are approved and will be published in three successive issues of the *Fort St. George Gazette*:—

NOTIFICATION.

The following bylaws made by the Harbour Trust Board, Madras, under section 70 of Madras Act II of 1886, and approved by the Governor in Council are published for guidance. They supersede all bylaws made by the Board that are at present in force:—

Landing and Shipping.—Landing and shipping of cargo shall be carried on only on the days and within the hours allowed and appointed under section 72, Act VIII of 1878, or on other days and at other hours with the permission of the Collector of Sea Customs.

2. *Payment of Harbour dues.*—Harbour dues on goods shipped or landed, together with all cooly hire and charges for carrying, packing and storing and all godown rent or wharfage payable under these bylaws, shall be charged at the rates fixed by the Board under the provisions of Act II of 1886, and such dues on all goods, whether exports or imports, shall be paid previous to the removal of goods from the harbour premises to such person as the Board may depute to receive and grant receipts for the same. All applications for export or import of goods must be on forms approved by the Board, and such forms must in all cases be correctly filled in and signed by the shipper or consignee of the goods or by his agent.

3. *Documents to be produced by shippers and consignees.*—All necessary documents must be produced by shippers or consignees or their agents, at the time of the shipping or landing of goods, to the person authorized by the Board to call for and inspect the same whenever required by him.

4. *Porterage.*—All goods landed at the port of Madras shall without delay be moved from the places where the same may be landed to the places set apart for the reception thereof by persons authorized by the Board in that behalf, and the Board shall in due course deliver the same to the consignees upon payment by them of all costs and charges of receiving and of so moving such goods and of delivering the same, including all costs, charges and expenses of counting, sorting and weighing and other costs, charges and expenses whatsoever, incurred or payable under the directions and with the sanction of the Board.

5. *Opening of packages.*—No package shall be opened upon the harbour premises by the importer or owner for appraisement or examination without the permission of the Board.

6. *Workmen employed to open packages to be licensed.*—All workmen employed for opening packages on the harbour premises for appraisement or examination shall be licensed by the Board, and any workmen not so licensed found opening any package on the harbour premises shall, on conviction before a Magistrate, be liable to a fine not exceeding Rs. 20.

7. *Board not responsible when notice of landing not given within one month.*—The Board will not be in any way responsible for loss of or damage to goods landed on the harbour premises, of which notice of the loss has not been given within one month of landing.

8. *Coal, coke, patent fuel and timber to be landed at special places.*—Coal, coke, patent fuel, timber of all descriptions and firewood shall be landed only at such places as may be approved by the Board for that purpose from time to time. Any person contravening this bylaw shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rs. 50 for each offence.

9. *Timber and firewood.*—Timber or firewood shall not be discharged from any vessel lying inside the harbour, except into boats or lighters without the special sanction of the Deputy Port Conservator previously obtained. Any person contravening this bylaw shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs. 50 for each offence.

10. *Works of art, bullion, etc.*—The Board will not accept any responsibility in respect of any package containing any work of art or article of *virtu* if the value of the package with its contents exceeds Rs. 500, or in respect of any package containing specie, bullion, gold or silver articles, jewellery, precious stones or coral, unless six hours at least before the package is landed or shipped, written notice is given to the Board by the owner or consignee, and the package is specially delivered to the Board and a receipt therefor obtained. If any package containing any work of art or article of *virtu* the value whereof with its contents exceeds Rs. 500, or if any package containing any of the articles above referred to, is brought to any wharf or pier in the possession or occupation of the Board without written notice thereof as hereinbefore provided being given to the Board, the package, if for export, will be shipped, or if imported, will be removed to the Custom House, or the Board's sheds at the sole risk of the owner and will remain at his risk till cleared.

11. *Deposit of goods at places other than those set apart.*— Whoever deposits goods within the harbour premises, except at such places as may be set apart for the purpose by the Board shall be liable, on conviction before a Magistrate, to a penalty not exceeding Rs. 20.

12. *Goods to be deposited above high-water line.*—All goods landed on the sandy foreshore of the harbour shall be deposited by the boatmen above high-water line, and the Board will not receive any goods landed on the said foreshore which are not so deposited.

13. *Penalty for landing goods below high water line.*—The Deputy Conservator of the port shall from time to time demarcate the high-water line, and any boatman found depositing goods below this high-water line shall, on conviction before a Magistrate, be liable to a penalty not exceeding Rs. 20.

14. *Boats and other craft to keep clear of pier ladders.*—Every person being a tindal or a member of the crew of any boat or other craft who fails to keep such boat or other craft clear of the pier ladders shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs. 20 for each offence.

15. *Boats, lighters and rafts not to make fast to pier wharves or jetties.*—No boats, lighters or rafts will be permitted to lie alongside of, or make fast to the pier, wharves or jetties, except when loading or unloading, or for the purpose of taking off or landing passengers or baggage. Every person infringing this bylaw shall, upon conviction before a Magistrate, be liable to a penalty not exceeding Rs. 20 for each offence.

16. *Tindal and crews to remain in boats and lighters.*—Tindals and the men composing the crews must remain in their respective boats and lighters when alongside the pier, wharves or jetties, and must obey the orders and directions of the Traffic Manager or his Deputy under a penalty upon conviction before a Magistrate, not exceeding Rs. 20 for each offence.

17. *Lighters, boats and rafts to be securely moored* 100 *yards from pier.*—Lighters, boats and rafts must be securely moored at a distance of not less than one hundred yards from the pier, when afloat and unemployed. Any person contravening this bylaw shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs. 20 for each offence.

18. *Lighters, boats and other craft to be beached only at places assigned.*—No lighters, boats or other craft, shall be brought ashore or beached for the purpose of repair, except at such places as may be assigned and pointed out by the Traffic Manager or his Deputy for that purpose. Any person contravening this bylaw shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs. 20 for each offence.

19. *Public excluded from Harbour permises, except on business—Sites set apart for coolies and boatmen to obtain food.*—The public will not be admitted to the Harbour Trust premises when traffic or work is going on. At such times those persons only who have business to transact

will be admitted. Certain sites will, from time to time, be set apart as occasion may require, by order of the Chairman at his discretion, to enable boatmen or coolies to obtain their food, and all persons bringing such food will be restricted to these sites and the pathways leading thereto and therefrom, which will be indicated by notice boards.

20. *Trespassers liable to a penalty.*—Any person found trespassing upon the harbour premises in the vicinity of cargo which is being landed or shipped, or which is stored therein or thereon, shall, on conviction before a Magistrate, be liable to a penalty not exceeding Rs. 20.

21. *Use of fire or naked lights prohibited.*—Any person kindling or making use of fire or naked lights without permission previously obtained from the Secretary or Traffic Manager, on the pier of jetties, or in any godown or enclosure or open space used for the time being for the storage or goods within the precints of the harbour premises, shall, on conviction before a Magistrate, be liable to a penalty not exceeding Rs. 100 for each offence. Any employé of the Board is empowered to put out such fire or naked lights. Any person smoking in or near any godown or enclosure used for the storage of cargo shall be deemed to have infringed this bylaw.

22. *Landing of explosives.*—No package containing gunpowder or other explosive shall be landed within the limits of the port of Madras without permission first obtained from the Collector of Sea Customs and from the Chairman, Harbour Trust Board, or in his absence from the Secretary of the Board, and in the landing or shipping thereof all rules or directions from time to time made or given by the Board, or by the Chairman or Secretary to ensure safety, shall be rigidly adhered to and observed; any person contravening this bylaw shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs. 100 for each offence.

23. *Prosecutions require sanction of the Chairman.*—All prosecutions, under the provisions of these bylaws shall be instituted by, or by order of, the Chairman of the Harbour Trust Board.

(True Extract.)

Under Secretary to Government.

To the Chairman, Harbour Trust Board.
" Superintendent, Government Press.

Rxd. T. K. Narayana Aiyangar.

Marine DEPARTMENT.

Read the following:—

Letter from the Chairman, Harbour Trust Board, Madras, No. 230, dated 12th June 1899.

Printed for Consideration by Law Visit 6 Members.

Byelaws of the Harbour Trust Board.

~~Circulated to~~

12 P

ORDER. R. No. 656 Mar. of 12-7-99

It appears from the correspondence recorded above that the Bye-law framed by the Harbour Trust Board under Section 70 of the Harbour Trust Act, repudiating liability for loss on account of goods stored by the Board, is invalid, inasmuch as the section of the Act under which it is framed does not empower the Board to make byelaws for the "Storage" of goods.

2. The Board accordingly proposes to amend section 70 of the Act by the insertion of the word "Storage" in the fourth clause, and to frame a bye-law, under the section as thus amended, providing for the making of a Contract by which the

[P. W. 42-A. 1,900—2-3-99.]

the non liability of the Trust for loss on goods stored will be admitted by the parties concerned.

3. It seems to His Excellency the Governor in Council that a simpler and better plan will be to leave the Act alone, and to have no byelaw specially providing for the storage of goods. The object in view can be attained by making the desired contract without the authority of a byelaw under the Harbour Trust Act. The right to do this, under the Ordinary law, has been recognised by the High Court.

4. The byelaws as thus amended are approved and will be published in three successive issues of the Fort Saint George Gazette:—

Notification

The following byelaws made by the Harbour Trust Board, Madras, under Section 70 of Madras Act II of 1886, and approved by the Governor in Council, are published for guidance. They Supercede all byelaws made by the Board that are at present in force:—

(H.E. Bye-laws attached)

R.F.

12.7.87

To The Chairman, Harbour Trust Board
" Superintendent, Government Press
" Port Master & Dock Master.

2/7/87

A

Existing Byelaws of the Harbour Trust Board

as Compared with the Proposed Byelaws

1	. . . . .	1	. . . . .
2	First Sentence (stet) Second Sentence:- all applications for export or import of goods must be on (a) forms accompanied by, forms approved by the Board and in use (b) for the time being, and such forms must in all cases be correctly filled in and signed by the owner (c), exporter, or Consignee of the goods or his agents.	2.	First Sentence (stet) Second Sentence:- all applications for export or import of goods must be on forms approved by the Board, and such forms must in all cases be correctly filled in and signed by the Shipper (1) or consignee of the goods or by (2) his agents
		3. (See infra)	
3.	all goods landed at the port of Madras shall be moved from the place (a) or places where the same may be landed, to the place (b) or places set apart for the reception thereof, by some (c) person or persons = authorised (d) in that behalf by the Board = who (e) shall in due course deliver the same to the Consignees &c.	4.	all goods landed at the port of Madras shall without delay be moved from the places where the same may be landed, to the places set apart for the reception thereof, by persons authorised by the Board in that behalf, and the Board shall in due course deliver the same to the Consignees &c.
4	. . . . .	—	———
5	all necessary documents must be produced by shippers or consignees or their agents at the time of the shipping or landing of goods, to the person or persons authorised by the Board to call for and inspect the same, whenever required by him or them.	3	all necessary documents must be produced by shippers or Consignees or their agents at the time of the shipping or landing of goods, to the person authorised by the Board to call for and inspect the same, whenever required by him.
		5	no package shall be opened upon the Harbour premises by the importer or owner for appraisement or examination without the permission of the Board.

The words underlined in Column 2 have been omitted

(a) at the Suggestion of the H.T. Bd.

(b) as being unnecessary as "forms not in use for the time being" would not be "forms approved by the Board"

(c) The word "Shipper" has been substituted for "owner, exporter"

The words in red ink in Column 4 are newly inserted

(1) as explained in (c) above

(2) perhaps for clearness.

The Words underlined in Column 2 have been omitted; those in red ink in Column 4 have been inserted or substituted.

Note - The bylaw lays down that "all" goods shall be porterage by the Board; but there are some classes of goods which are not in practice porterage by the Board, but by the owners &c. The Advocate General thinks that the bye-law need not be altered to make provision for this as such owners &c. would fall under "persons authorised by the Board in that behalf."

Omitted as unnecessary.

The words underlined in Column 2 have been omitted.

New bye-law introduced; reasons not given.

—	———	6	All workmen employed for opening packages on the Harbour premises for appraisement or examination shall be licensed by the Board, and any workman not so licensed found opening any package on the harbour premises shall, on conviction before a Magistrate, be liable to a fine not exceeding Rs 20.	New bye-law introduced: reasons not given.
—	———	7	The Board will not be in any way responsible for loss or damage to goods landed on the Harbour premises, of which notice of the loss has not been given within one month of landing.	——— do ———
6	- - - - -	—	———	Omitted as unnecessary.
7	Coal, Coke, patent fuel, timber of all descriptions and firewood shall be landed only at such place or places as may be approved by the Board for that purpose from time to time. Any person contravening this bye-law shall be liable to a penalty, upon Conviction before a Magistrate, not exceeding Rs 50 for each offence.	8	Coal, coke, patent fuel, timber of all descriptions and firewood shall be landed only at such places as may be approved by the Board for that purpose from time to time. Any person contravening this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rs 50 for each offence	The words underlined in Col: 2 have been omitted
8	Importers or owners desiring to store cargo of the descriptions mentioned in bye-law No 7 within the limits of the Harbour Trust premises must apply to the Secretary to the Board for such space as they may require. Such applications will be granted on such terms as the Board may approve. Wharfage will be payable for the plots so assigned at the rate fixed by the Board under the provisions of Act II of 1886. The Board while taking all reasonable precautions to ensure the safety of property stored upon its premises will accept no responsibility whatever in respect of such cargo as is mentioned in bye-law No 7, from the time when the same shall have been placed or stored on such plot or plots and such cargo shall from that time remain at the sole risk of the Consignee — — — — who shall however be entitled to employ such servants or others as may consider necessary for the due protection of such cargo.	9	Importers or owners desiring to store cargo of the descriptions mentioned in the last preceding bye-law within the limits of the Harbour premises must apply to the Secretary to the Board for such space as they may require. Such applications will only be granted by the Board on such terms and subject to such conditions as the Board may approve. Wharfage will be payable for the plots so assigned at the rate fixed by the Board under the provisions of act II of 1886. Importers or owners shall be entitled to employ such servants or others as they may consider necessary for the due protection of such cargo.	The words underlined in Col: 2 have been omitted, those in red ink in Col: 4 inserted or substituted. Section 70 of the Harbour Trust act authorises the Board to make bye-laws only for the reception, removal and porterage of goods, and not for storage. Hon'ble Justice Sheppard has held that the fourth sentence of present rule 8 (underlined in red ink) "cannot be called a bye-law for the reception or removal of goods". He has also held that the omission of the word "storage" in Section 70, while it occurs in other parts of the act, shows that the "intention of the legislature must have been "to leave the terms of any contract of storage, "so far as not provided for in the act, to "be settled in the ordinary way by contract "between the parties." The

the Board being thus incompetent to make a bylaw for the storage of goods, the advocate general was asked to advise on the matter. He thinks that even if section 7 0 were amended by the insertion of the word "Storage" the Board it would not help the Board much. Mr. Justice Shepherd also has said that "even "if it were competent for the Board "to make a rule for the storage of coal, "I should have the greatest difficulty in holding that a rule claiming "for the Board or purporting to claim for "the Board immunity from action "could be deemed to be a rule for the "storage of coal."

The Board now proposes to get over this difficulty by

first amending sec: 70 by the insertion of the word "Storage" thereby obtaining authority to make bylaws for the storage of cargo.

Secondly inserting ~~on applicants~~, under the authority of the words "and Subject to such conditions" in the proposed bylaw, on applicants signing a Contract under which he agrees to acquit the Board of all responsibility for the safety of the goods

This is in accordance with the advocate generals opinion in para 3.

Only a transposition of words. No alteration

		11	The Board will not accept any responsibility in respect of any package containing any work of art or article of virtu if the value of the package with its Contents exceeds Rs 500, or in respect of any package containing Specie, bullion, gold or Silver articles, jewellery, precious Stones or Coral, unless six hours at least before the package is landed or Shipped, written notice is given to the Board by the owner or Consignee and the package is specially delivered to the Board and a receipt therefor obtained. If any package containing any work of art or article of virtu the value whereof with its Contents exceeds Rs 500, or if any package containing any of the articles above referred to, is brought to any wharf or pier in the possession or occupation of the Board without written notice thereof as herein before provided being given to the Board, the package, if for export, will be shipped, or if imported, will be removed to the Custom house, or the Board's Sheds, at the sole risk of the owner and will remain at his risk till cleared.	New bye-law proposed. Reasons not stated. The advocate General thinks that it is a "reasonable" byelaw and within the powers conferred by Section 70 of the act.
10	Whoever deposits goods within the Harbour premises, except at such ~~place or~~ places as may be set apart for the purpose by the ~~Harbour Trust~~ Board, shall be liable, on conviction before a Magistrate to a ~~fine~~ not exceeding Rupees 20.	12.	Whoever deposits goods within the Harbour premises, except at such places as may be set apart for the purpose by the Board, shall be liable, on conviction before a Magistrate, to a penalty not exceeding Rs 20	The words underlined in Column 2 omitted; the word in red ink in Column 4 Substituted. no material alteration	

11	- - - - - -	-	- - - - - - - - - -	Omitted as unnecessary.
—	——	13	All goods landed on the Sandy foreshore of the Harbour shall be deposited by the boatmen above high water line, and the Board will not receive any goods landed on the said foreshore which are not so deposited	New bye law inserted. Reasons not given
—	——	14	The Deputy Conservator of the port shall from time to time demarcate the high water line, and any boatman found depositing goods below this high water line shall, on conviction before a Magistrate, be liable to a penalty not exceeding Rs 20.	——— do ———
12	- - - - - -	15	- - - - - - - -	for the words. "Shall fail", the word "fails" has been Substituted.
13	- - - - - -	16	- - - - - - - -	a few words transposed. No further alteration
14	- - - - - -	17	- - - - - - - -	No alteration.
15	- - - - - -	—	———	Omitted as unnecessary
16	Lighters, boats and rafts must be securely moored at a distance of not less than one hundred yards from the pier, when afloat and unemployed. They will not be permitted to make use of the Harbour Trust mooring buoys around the Pier, except with the permission and under the direction of the Traffic Manager or his Deputy. Any person instrumental in contravening this bye-law shall be liable to a penalty upon conviction before a Magistrate, not exceeding Rs 20 for	18	Lighters, boats and rafts must be securely moored at a distance of not less than one hundred yards from the pier, when afloat and unemployed. Any person contravening this bye-law shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs 20 for each offence	The Sentence and words underlined in Column 2 omitted as unnecessary; a few words transposed.

17	. . . . .	19	. . . . .
18	. . . . .	20	. . . . .
19	. . . . .	21	. . . . .
20	. . . . .	22	. . . . .
21	. . . . .	23	. . . . .
22	. . . . .	24	. . . . .

N.S. 22 June 99

a
wo
n

——— do ———

The word "penalty" substituted for "fine"
The words "Harbour Trust" in "Harbour Trust Board" omitted.
a few words transposed.

No alteration.

READ the following :—

Letter from the Chairman, Harbour Trust Board, Madras, No.230, dated 12th June 1899.

Bye-laws of the Harbour Trust Board

Circulated to His Excellency the Governor.

FOR ORDERS

In exercise of the power conferred by section 70 of Act II of 1886, the ~~Madras~~ Harbour Trust Board, proposes the amendment of certain of its bye-laws. The attached statement compares the existing bye-laws with those now proposed.

2. By a decision of the High Court, confirmed on appeal, it is held that the fourth sentence of the present bye-law No.8, which provides for storage, is invalid. The section of the Act under which it is purported to be made, viz, section 70, authorises the Board to make bye-laws for the reception, removal and porterage of goods landed, but not for storage. Mr. Justice Shephard opines that the Legislature has deliberately omitted the word "storage" in section 70, and that the omission points to the conclusion that the intention was to leave the terms for storage to be settled in the ordinary way by contract between the parties.

3. The Harbour Trust Board therefore

marked A

× as amended by Act 1 of 1892

[P. W. 43. 1,000—28-2-19.]

therefore proposes that section 70 of of the Act be amended by the insertion of the word "storage".This would enable the Board to make bye-laws for the storage of goods.But Mr.Justice Shephard considers that even if the Board were competent to make a rule for the storage of goods,he should have the greatest difficulty in holding that a rule claiming for the Board or purporting to claim for the Board immunity from action could be deemed to be a rule for the storage of goods.

4. The Board, therefore, omits in the proposed new bye-law No.9, the provision repudiating liability which is contained in the old bye-law No.8, but, on the other hand,has inserted,in bye-law No.9, the words "subject to such conditions";the object being to make the signing of a contract exonerating the Board a necessary preliminary to the receipt of goods for storage.

5. The Advocate General is of opinion that as matters stand now,and having regard to the strong view expressed by Mr.Justice Shephard in his judgment, it would not be worth while to take steps for the amendment of section 70 proposed by the Board.So long as the present judgments stand,it seems to him that the only way of efficiently securing the object which the Board has in view is by the insertion of an express provision in the Act itself exempting it from liability in respect of goods stored.

Flag B

6. This opportunity has been taken by the Board to revise other portions of the bye-laws.The revisions are shown in Statement A. They have undergone the scrutiny of the Advocate-General who pronounces them to be legal. The reasons for the alterations in each case are not given,but there seems no prima facie objection to the proposals,

R.S. they may, it is suppt. be accepted -

Flag B

7. With regard to the Advocate General's opinion that the only way of efficiently securing the object which the Bd has in view is by the insertion of an express provision in the Act itself exempting it from liability in respect of goods stored, I invite attention to that portion of Mr Justice Shephard's Judgment underlined in red pencil on page 4, where he says " if it were " practicable it would lead " to this absurd result and " the Legislature would be " authorizing a public body " to make contracts, whether " Lawful time providing that

"they were not to be saved upon them" - the High Court thinks that any such provision as proposed by the Advocate General was obnoxious to the Legislature that the Legislature cannot exempt a public body from the liabilities which ordinary persons incur under contracts - The safest course seems to be therefore, to insert the word "storage" in Sec: 70, and to enable the Bd to make bye laws with regard to storage, & then adopt the new Bye law No 9 proposed. Which will enable the Bd to make such conditions as it pleases with regard to all contracts for storage. The Advocate General's opinion might be asked on this

V Beal
24.6.99

The proposal at A below seems to me the better and fairer way. The exemption from liability could be made a condition in each contract of storage. The party concerned then accepts the condition with his eyes open, and the ordinary law as to contracts remains untouched. I accept the proposal.

A.G.H.
1.7.99

A simpler & better plan, still, seems to be to leave the Act alone, & expunge the proposed Bye law No 9 as unnecessary. The Board can make a contract for storage without the sanction of any Act or Bye law, as exemplified by the Port Trust Elephant Ride sentence marked with blue pencil at the last page of this Judgment.

V Beal
26.6.99

Marine (1898) Department.

CURRENT No. 173

Order

From
The Chairman,
Harbour Trust Board,
Madras.

No. 230

Dated 12.6.99

Despatched

Received 15.6.99

Enclosures six 5

Spare copies

SUBJECT.

(a) Submitting for the approval of Government and publication in the Gazette Draft Amended Byelaws as drawn up by the Advocate General.

(b) Requesting that section 70 Act II of 1886 as amended by Act I of 1892 may be amended by the insertion of the word storage.

BACK PAPERS.

G. O.	No.	Department.	Date.
&c.	171	Marine	6-6-94
32		Marine	8-6-94

FURTHER PAPERS.

G. O.	No.	Department.	Date.

3

Draft proposed bye-laws.

Landing and Shipping

1. Landing and shipping of cargo shall be carried on only on the days and within the hours allowed and appointed under Section 72, Act VIII of 1878, or on other days and at other hours with the permission of the Collector of Sea Customs.

Payment of Harbour dues.

2. Harbour dues on goods shipped or landed, together with all cooly Hire and charges for carrying, packing and storing and all godown rent or wharfage payable under these bye-laws, shall be charged at the rates fixed by the Board under the provisions of Act II of 1886, and such dues on all goods, whether exports or imports, shall be paid previous to the removal of goods from the Harbour premises to such person as the Board may depute to receive and grant receipts for the same. All applications for export or import of goods must be on forms approved by the Board, and such forms must in all cases be correcely filled in and signed by the Shipper or Consignee of the goods or by his Agent.

Documents to be produced by shippers and consignees

3. All necessary documents must be produced by shippers or consignees or their agents, at the time of the shipping or landing of goods, to the person authorized by the Board to call for and inspect the same whenever required by him.

Porterage-

5-Sp

4. All goods landed at the Port of Madras shall without delay be moved from the places where the same may be landed to the places set apart for the reception thereof by persons authorised by the Board in that behalf, and the Board shall in due course deliver the same to the consignees upon payment by them of all costs and charges of receiving and of so moving such goods and of delivering the same, including all costs, charges, and expenses of counting, sorting and weighing and other costs charges and expenses whatsoever, incurred or payable under the directions and with the sanction of the Board.

Opening of Packages.

5. No package shall be opened upon the Harbour premises by the importer or owner for appraisement or examination without the permission of the Board.

Workmen employed to open packages to be licensed-

6. All workmen employed for opening packages on the Harbour premises for appraisement or examination shall be licensed by the Board, and any workmen not so licensed found opening any package on the Harbour premises shall, on conviction before a Magistrate, be liable to a fine not exceeding Rs 20.

Board not responsible when notice of landing not given within one month.

7. The Board will not be in any way responsible for loss of or damage to goods landed on the Harbour premises, of which notice the loss or has not been given within one month of landing

8. Coal, Coke, patent fuel, timber

of

Coal, Coke patent fuel and timber to be landed at special places.

6 S/

of all descriptions and firewood shall be landed only at such places as may be approved by the Board for that purpose from time to time- Any person contravening this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rupees 50-0-0 for each offence.

Storage of the above named description of cargo

8 Amk.

9. Importers or owners desiring to store cargo of the descriptions mentioned in the last preceding bye-law within the limits of the Harbour premises, must apply to the Secretary to the Board for such space as they may require- Such applications will only be granted by the Board on such terms and subject to such conditions as the Board may approve. Wharfage will be payable for the plots so assigned at the rate fixed by the Board under the provisions of Act II of 1886. Importers or owners shall be entitled to employ such servants or others as they may consider necessary for the due protection of such cargo.

Timber and ~~F~~ire wood

9 ~~10~~. Timber or ~~F~~ire wood shall not be discharged from any vessel lying inside the Harbour, except into boats or lighters without the special sanction of the Deputy Port Conservator previously obtained. Any person contravening this bye-law shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rupees 50 for each offence.

10 ~~11~~. The Board will not accept any

Works of Art, bullion &c.

responsibility in respect of any package containing any work of art or article of virtu if the value of the package with its contents exceeds Rs 500, or in respect of any package containing specie, bullion, gold or silver articles, jewellery, precious stones or coral, unless six hours at least before the package is landed or shipped, written notice is given to the Board by the owner or consignee, and the package is specially delivered to the Board and a receipt therefor obtained. If any package containing any work of art or article of virtu the value whereof with its contents exceeds Rs 500, or if any package containing any of the articles above referred to, is brought to any wharf or pier in the possession or occupation of the Board without written notice thereof as hereinbefore provided being given to the Board, the package, if for export, will be shipped, or if imported, will be removed to the Custom House, or the Board's sheds, at the sole risk of the owner and will remain at his risk till cleared-

Deposit of goods at places other than those set apart

12 ~~18.~~ Whoever deposits goods within the Harbour premises except at such places as may be set apart for the purpose by the Board shall be liable, on conviction before a Magistrate, to a penalty not exceeding Rs 20-

Goods to be deposited above high-water line

13 ~~15.~~ All goods landed on the sandy foreshore of the Harbour shall be deposited by the boatmen above high

Penalty for landing goods below high-water line

13 . The Deputy Conservator of the Port shall from time to time demarcate the high water line, and any boatman found depositing goods below this high-water line shall on conviction before a Magistrate, be liable to a penalty not exceeding Rs 20.

Boats and other craft to keep clear of pier ladders

14 . Every person being a tindal or a member of the crew of any boat or other craft who fails to keep such boat or other craft clear of the Pier ladders shall be liable, upon conviction before a Magistrate to a penalty not exceeding Rs 20 for each offence.

Boats, lighters and rafts not to make fast to pier wharves or jetties.

15 . No boats, lighters or rafts will be permitted to lie alongside of, or make fast to the Pier, wharves or jetties, except when loading or unloading, or for the purpose of taking off or landing passengers or baggage. Every person infringing this bye-law shall, upon conviction before a Magistrate, be liable to a penalty not exceeding Rs 20 for each offence.

Tindal and crews to remain in boats and lighters

16 . Tindals and the men composing the crews must remain in their respective boats and lighters when alongside the Pier, wharves or jetties, and must obey the orders and directions of the Traffic Manager or his Deputy unier a penalty upon conviction before a Magistrate, not exceeding Rs 20 for each offence.

Lighters, boats and rafts to be securely moored 100 yards from pier.

9 &

17 ~~16~~. Lighters, boats and rafts must be securely moored at a distance of not less than one hundred yards from the Pier, when afloat and unemployed. Any person contravening this bye-law shall be liable, upon conviction before a Magistrate to a penalty not exceeding Rs 20 for each offence.

Lighters boats and other craft to be beached only at places assigned-

18 ~~17~~. No lighters, boats or other craft, shall be brought ashore or beached for the purpose of repair, except at such places as may be assigned and pointed out by the Traffic Manager or his Deputy for that purpose. Any person contravening this bye law shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs 20 for each offence.

Public excluded from Harbour premises except on business

19 ~~18~~. The public will not be admitted to the Harbour Trust premises when traffic or work is going on. At such times those persons only who have business to transact will be admitted. Certain sites will from time to time be set apart as occasion may require, by order of the Chairman at his discretion, to enable boatmen or coolies to obtain their food, and all persons bringing such food will be restricted to these sites and the pathways leading thereto and therefrom, which will be indicated by notice boards.

Sites set apart for coolies and boatmen to obtain food

Trespassers liable to a penalty

20 ~~21~~. Any person found trespassing upon the Harbour premises in the vicinity of cargo which is being landed or shipped, or which is stored therein or thereon, shall, on

Use of fire or naked lights prohibited

10 &/-

conviction before a Magistrate, be liable to a penalty not exceeding Rs 20.

21 22. Any person kindling or making use of fire or naked lights without permission previously obtained from the Secretary or Traffic Manager, on the Pier or jetties, or in any godown or enclosure or open space used for the time being for the storage of goods within the precincts of the Harbour premises, shall on conviction before a Magistrate, be liable to a penalty not exceeding Rs 100 for each offence. Any employe of the Board is empowered to put out such fire or naked lights- Any person smoking in or near any godown or enclosure used for the storage of cargo shall be deemed to have infringed this bye-law.

Landing of explosives

22 23. No package containing gun powder or other explosive shall be landed within the limits of the Port of Madras without permission first obtained from the Collector of Sea Customs and from the Chairman Harbour Trust Board or in His absence from the Secretary of the Board, and in the landing or shipping thereof all rules or directions from time to time made or given by the Board, or by the Chairman or Secretary to ensure safety, shall be rigidly adhered to and observed; any person contravening this bye-law shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rs 100 for each offence.

Prosecutions require sanction of the Chairman.

11 $/

232. All prosecutions, under the provisions of these bye-laws shall be instituted by, or by order of the Chairman of the Harbour Trust Board.

11 July 99

12.7.11

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

---C.S.No.99 of I897---

A.V.D.BEST and Another.

------- and -------

THE TRUSTEES OF THE HARBOUR OF MADRAS

-PRESENT-

THE HONORABLE Mr JUSTICE SHEPHARD

-JUDGMENT-

I have had an opportunity of considering this matter and therefore see no reason for delaying to give my Judgment.The Plaintiffs state that on the I0th of July I896 the Defendants for reward received from the Plaintiffs certain Coal.Of this coal, certain quantity was removed by the Plaintiffs.The remainder, 2769 tons,the Plaintiffs say was left in the care and custody of the Defendants and was stored by them on a place set apart by them on their premises at the Plaintiffs' request to be there kept for reward by the Defendants in their care and custody until the Plaintiffs should require delivery thereof.The plaint then goes on to say that certain other quantities of coal were delivered and that then the Plaintiffs called upon the Defendants to deliver the balance of 8I6 tons of coal.The plaint further goes on to say that the Defendants did not deliver,nor accounted for,the same.Then in the alternative the Plaintiffs charge that the Defendants are liable to pay the sum of Rs 20,400/- for damages resulting from the failure of the Defendants to take reasonable care and on account of the negligence of themselves and their servants, To this plaint two legal objections are taken. First of all it is stated in the written statement that a certain rule has been passed under Section 70 of the Madras Act II of I886 under which the Defendants are constituted.On that rule the Defendants rely as far as I can understand as an absolute answer to the plaint.They also rely on Section 87 of the same act and say that the suit is not maintainable.With regard to this

section

section; viz,Section 87,the question is whether it is applicable to a cause of action such as is disclosed in the plaint.It must be assumed that that cause of action really exists that is to say that the Plaintiffs did leave with the Defendants certain coal and that the Defendants stored it for them as paid warehousemen.It is argued on behalf of the Defendants that section 87 gives the Defendants absolute immunity from action in a case such as the present.The section is very difficult to construe.Fortunately,however,a part of it has already received an interpretation.The first paragraph of it, that paragraph which provides that notice should be given in certain cases is a provision which is not uncommon in English statutes and it has been held with regard to this provision that it does not apply in cases where the Plaintiff is suing on a specific contract made with the public body which relies upon the requirement of notice.The difficulty in the case lies in seeing to what class of cases the second paragraph of the section applies & that paragraph as far as I have learnt is not to be found in any English statute. It is quite clear that the general words in that second paragraph must receive some limitation.The last sentence of the section (which contains a not unusual provision,see e.g.Dangerous Epidemic Act III of 1897) provides that the Board,its Officers and servants shall not be liable in damages for any act bona fide done or ordered to be done by them in pursuance of this Act.That is one class of cases in which exemption from suit is absolutely given to the Board and its servants.Another class of cases is that in which damage has been sustained by any vessel in consequence of any defect in any of the moorings belonging to the Board.There again absolute exemption is given in special words by the section.It appears to me that having those two instances before me I can hardly be asked to say that the second paragraph of the section covers all causes of action which may be brought against the Board.There must be some limitation put upon the meaning of the words in the second paragraph of Section 87. There is another reason why some limitation must be put on the general words of the second paragraph and that is that the first paragraph provides that notice shall be given in a certain class of cases.Some attempt was made to shew that the word 'person' occuring

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in the Ist paragraph did not include the Board mentioned in the second paragraph.This argument I did not think can be accepted.It is clear I think that the word 'person' mentioned in the Ist paragraph includes among other persons the Board.Therefore we have it that there is a provision to the effect that notice is to be given in certain instances.It follows necessarily,if the Legislature contemplated notices to be given in certain actions against the Board,that there must be certain actions against the Board which are maintainable.For this reason again I think the 2nd paragraph must have an interpretation put upon it,more limited than would at first sight appear to be the right one.One of the difficulties which I feel in the case arises from the construction which has been put upon the Ist paragraph of the Section.It has been held,as I have said,with regard to that paragraph that it does not apply to cases where the action is on a contract.It may be asked to what cases then does the Ist paragraph apply.It appears to me that it may be taken to apply properly to those cases in which there is an act done or purporting to have been done in pursuance of the Act an act of such a character as not to deserve the immunity which the last clause of the section gives.That is to say,if the Officers or servants of the Board are charged with doing an act not <u>bona fide</u> done but purporting to have been done in pursuance of the act,then they will be entitled to notice.Then clearly according to the last clause there will be nothing to prevent the action being brought and they will be entitled to the notice provided for in the Ist paragraph.The question still remains to what cases the 2nd paragraph applies.It appears to me that the Legislature must be taken to have intended those cases in which there was an Act done or default made in pursuance of the Act.As an instance of a case to which that paragraph might apply I would refer to Section 57 of the Act,which in certain instances gives the power of distraint and arrest.That is a case to which it appears to me the 2nd paragraph might be applicable.It is argued that in the present case the Defendants in keeping the coal of the Plaintiffs were really acting under the statute and were not governed by any contract between themselves and the Plaintiffs.The fact however that the

Defendants

Defendants are working under provisions of a statute does not prevent them from making a contract and rightly or wrongly it is alleged in the plaint that they did contract with the Plaintiffs.That being so it appears to me that the ordinary consequences must follow, namely that the Defendants must incur liabilities which ordinary persons do incur under contracts.That the Defendants are at liberty to make contracts there can be no question.Whether they did make the contract or not in this particular case is a matter of fact.But assuming that they did make the contract with regard to this coal with the Plaintiffs then I consider that the 2nd Clause of this Section cannot be applicable,because if it were applicable it would lead to this absurd result and the Legislature would be authorizing a public body to make contracts,and at the same time providing that they were not to be sued upon them.That to my mind is an absurdity.Some meaning must be given to the words of the Section,which I admit is an extremely difficult one,in order to avoid the absurd result that would otherwise follow.I must therefore hold that whatever may be the meaning of this section it does not apply in case where the party aggrieved complains of a breach of contract on the part of the Board. (See Brabant v King I895 App cas,632).

The other question is whether the bye-law made under section 70 is a valid bye-law.According to the written Statement it was made under the following provision.Section 70 says the Board may from time to time 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 persons employed by them" What I understand to be admitted to be the course of business is that goods are brought to the shore by the consigness and then are placed in the hands of the Defendants.They are received by the Defendants and under certain circumstances may be retained by them under section 53 of the Act.The goods are received by the Defendants,and it is also competent to the Defendants to make arrangements for storing them.That is provided for in Section 6I of the Act which states that the works to be executed by the Board may include warehouses,sheds and other appliances for storing goods landed.There is also a provision in Section 45 enabling the Board to frame a scale

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of rates to be levied for the storage of goods.It appears that it is obligatory on the consignees to have their goods come through the hands of the Board inasmuch as they must be landed on the Board's premises. On the other hand it is optional with consignees to leave them in the Board's premises or not,an exception being made however as I have said,in the case where the Board is at liberty to retain the goods under Section 53.Section 70 says that the Board may make bye-laws for the reception,removal and porterage of goods.The rules which they made under this section are the 7th and the 8th.The 7th rule says that coal and other things of that sort shall be landed only at such place or places as may be approved by the Board for that purpose from time to time.That clearly is a rule for the reception of the goods.The 8th rule says that importers or owners desiring to store cargo of the descriptions mentioned in the last bye-law must apply to the secretary to the Board for such space as they may require.No objection is taken to that part of the rule,nor to the part which says "such applications will be granted on such terms as the Board may approve. "Then the rule ends with this."The Board while taking all reasonable precautions to ensure the safety of property stored upon its premises will accept no responsibility whatever in respect of such cargo as is mentioned in bye-law No.7 from the time when the same shall have been placed or stored on such plot or plots and such cargo shall from that time remain at the sole risk of the consignees or owners,who shall however be entitled to employ such servants or others as they may consider necessary for the due protection of such cargo" I am clearly of opinion that this cannot be called a bye-law for the reception or removal of the goods.As a matter of plain English that appears to me clear.Mr Grant argues that finding the words 'reception' and'removal' I ought to imply an intention to make provision for the storage of goods.I cannot think that that Legislature so intended.The matter of storage must have been present in the minds of the Legislature,because,as I have shown,they have made provision for it in other parts of the Act.They provided for the rates of the storage.That being so,they deliberately leave out the word storage when they authorize the Board to make rules.It seems to me therefore impossible to hold that

it

it was intended that the rule which they made in these words could include rules for ~ storage of coal and that on the contrary the intention must have been to have the terms of any contract of storage so far as not provided for in the Act, to be settled in the ordinary way by contract between the parties. Even if it were otherwise, even if it were competent for the Board to make a rule for the storage of coal. I should have the greatest difficulty in holding that a rule claiming for the Board or purporting to claim for the Board immunity from action could be deemed to be a rule for the storage of coal. It is enough to me however to say that I am clearly of opinion that the rule in question, viz, the latter part of Rule 8 cannot be called a byelaw for the reception or removal of the goods. Some attempt was made to shew that the general words at the end of the Section might cover the case. Applying the ordinary principles of interpretration I do not think that argument can be accepted. I have pointed out that in my view the word storage was deliberately omitted in the place where it might have been inserted in the clause.

Several other questions were argued, viz, question as to the meaning of the rule and question as to its reasonableness. These questions it seems to me unnecessary to enter upon. It is enough to hold that this rule is a rule which it is not competent, for the Board to make under section 70.

The answer therefore that I give to these two issues is in both cases in favour of the Plaintiffs.

(Intled) H.H.S.

2-9-97.

(A true copy)

(Sd) J.R.Atkinson,

Asstt.Registrar.

HARBOUR TRUST
MADRAS 12 JUN 9
SECRETARY'S OFFICE

(True Copy)

Secretary,

Harbour Trust Board.

Section 70 of the Madras Harbour Trust Act 1885 (Act II of 1886) is as follows.-

" The Board may, from time to time, make bye-laws-

for the guidance of persons employed by them under this Act;

for the safe and convenient use of the wharves, quays, jetties, sheds, warehouses, tramways, and other works constructed by them or vested in them under this Act; for the use of the public landing-places constructed by or vested in them;

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 persons employed by them;

for keeping clean the harbour and basins and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

for the mode of the payment of the rates leviable under this Act;

for regulating, declaring and defining the wharves, quays, Jetties, stages and piers vested in the Board on which goods shall be landed from vessel and shipped on board vessels;

and generally for carrying out the purposes of this Act"

Section

Section 71 empowers the Board to alter or cancel the bye-laws and Section 72 provides that they shall not have effect until approved of by the Governor -in-Council and published for three weeks successively in the Fort St. George Gazette.

A copy of the Bye-laws at present in force and made by the Trustees under Section 70 and approved of by the Governor in Council on the 10th May 1894 is herewith left and counsel's attention is particularly directed to the 7th and 8th which are as follows

Coal,Coke,patent fuel and timber to be landed at special places

"7 Coal,Coke,patent fuel,timber of all descriptions and firewood shall be landed only at such place or places as may be approved by the Board for that purpose from time to time.Any person contravening this Bye-law shall be liable to a penalty,upon conviction before a Magistrate,not exceeding Rupees fifty (Rs 50) for each offence

Storage of the above named description of cargo.

"8 Importers or owners desiring to store cargo of the description mentioned in Bye-law No.7,within the limits of the Harbour Trust premises must apply to the Secretary to the Board for such space as they may require.Such applications will be granted on such terms as the Board may approve.

Board's liability

Wharfage will be payable for the plots so assigned at the rate fixed by the Board under the provisions of Act II of 1886.The Board while taking all reasonable precautions to ensure the

safety

safety of property stored upon its premises will accept no responsibility whatever in respect of such cargo as is mentioned in Bye-law No.7,from the time when the same shall have been placed or stored on such plot or plots and such cargo shall from that time remain at the sole risk of the consignees or owners who shall however be entitled to employ such servants or others as they may consider necessary for the due protection of such cargo".

In the year 1897 the firm of Messrs Best & Co filed C.S.No.99 of 1897 against the Trustees of the Harbour of Madras praying for delivery of 816 tons of coal or in default payment of the sum of Rs 20,400/-the value thereof being a portion of a shipment of coal consigned to Messrs Best & Co ex S.S. "Graffoe" which Best & Co allege was left by them in the care and custody of the Board and was stacked and stored by the Board but which the Board had on demand failed to deliver to them.

A copy of the plaint is herewith left.

The Defendants appeared to the suit and filed a written statement copy of which is also herewith left.

The Defendants,as Counsel will observe,from their written statement, claimed exemption from responsibility for any undelivered portion of coal, assuming that any was undelivered,under the 7th and 8th Bye-laws framed under

section

Section 70 of the Harbour Trust Act
and also pleaded non-liability by vir-
tue of Section 87 of the Act, a copy of
the issues settled are herewith left.

The parties went to trial on the
3rd and 4th issues only, viz., "Third.
"Are the Defendants exempt from re-
"sponsibility for any undelivered por-
"tion of coal either under the Bye-laws
"in force under Section 70 of the Mad-
"ras Harbour Trust Act or under and by
"virtue of Section 87 of that Act?
Fourth. Is the 8th Bye-law ultra vires?
because if these issues were found in
favour of the Defendants there was an
end of the suit.

Mr Justice Shephard found both is-
sues in favour of the Plaintiffs and
against the Defendants, a copy of his
Judgment which was confirmed on appeal
is herewith left and the suit is now
being heard on its merits.

Mr Justice Shephard was of opinion,
as Counsel will see on perusing his
Judgment, that it was not competent for
the Board to make a Bye-law under Sec -
tion 70 for the storage of goods al-
though it was competent for them to make
a Bye-law for the reception, removal and
porterage of goods. The portion of the
Bye-law objected to and which the learn-
ed Judge ruled it was not competent for
the Board to make is as follows.-

"The Board while taking all reason-
"able precautions to ensure the safety
"of property stored upon its premises,
will

"ll accept no responsibility whatever
"in respect of such cargo as is mention-
"ed in Bye-law No.7 from the time when
"the same shall have been placed or
"stored on such plot or plots and such
"cargo shall from that time remain at
"the sole risk of the consignees or
"owners who shall however be entitled
"to employ such servants or others as
"they may consider necessary for the
"due protection of such cargo".It was
contended that in-asmuch as the Board
had the power to make Bye-laws for the
reception and removal of goods the
Court should imply an intention to make
provision for storage also,but this
contention was over-ruled.

Assuming it had been found that the
Board had power to frame bye-laws for
the storage of goods the 8th bye-law
which is now objected to is not,it is
submitted an unreasonable one.The Har-
bour Trust Board have no godowns suit-
able for the storage of coal,coke,fuel
or timber and it is only to suit the
convenience of consignees that they al-
low these goods to remain on the Beach
instead of being taken away immediately
they are landed,charging a small rental
for the use of the land and there ap-
pears to be nothing unreasonable in
their stipulating that if parties leave
their cargo on the Beach they must do
so at their own risk.

We also send for Counsel's infor-
mation copy of a plaint filed by Messrs

Wiele

Wiele & Klein against the Trustees in the Madras Court of Small Causes No.17613 of 1897 and the judgment of the first Judge of the Small Cause Court following the decision of the High Court in Best Vs Harbour Trust Board with regard to the protection afforded by section 87.

In consequence of the finding of the High Court that the 8th bye-law is invalid and that section 87 of the Harbour Trust Act afforded the Board no protection to suits of this nature the Board wish their bye-laws revised with a view to protecting themselves from liability as far as they legally can.

The Harbour Trust Act does not in any way affect the powers given by law to the Chief Officer of Customs as section 51 expressly provides that nothing in the Act shall affect any power vested in the Chief Officer of Customs under any law for the time being in force. The powers vested in the Chief Officer of Customs are to be found in Act VIII of 1878 The Sea Customs Act.

The Local Government has under section 11 of this Act (Act VIII of 1878) power to appoint ports, wharfs and Customs houses where goods are to be landed and in accordance with that power the Government have issued Notifications and for the purposes of this case Counsel may assume that the wharfs &c, appointed by the Notifications are vested in the Board. The

The procedure adopted when goods are exported from or imported to the Port of Madras is shortly as follows.-

As soon as a vessel arrives and she has discharged the Customs requirements with regard to delivering manifest &c, the cargo is landed either by the Agents of the ship or by the consignees at places appointed by the Collector under Section II and under the authority of section 73.

The Board has nothing whatever to do with the landing of cargo.

On the goods being landed the owner has to deliver to the Customs Collector a bill of entry thereof in duplicate under Section 86.

On delivery of such bill the duty (if any) leviable on his goods is assessed under Section 87 and the owner may then proceed to clear them on payment of the duty.

In the event of the goods not being dutiable the same procedure is adopted with the exception of course of the payment of duty.

As soon as the duty has been received by the Collector of Sea Customs he has no further interest in the goods & his powers are at an end. The Harbour Trust authorities have however their dues to receive under the scale of rates authorised by Section 45 Harbour Trust Act.

Section 45 is as follows.-

Section 45 Levy of rates

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 and for the porterage of goods from or within.

(b) for permission for vessels or boats to approach or lie alongside.

(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, and may frame a scale of rates for the landing of goods at any place within the limits of the port whether within or without the Harbour, any such scale of rates shall be submitted to the Governor-in-Council for sanction and after receiving such sanction shall be published in the Fort St George Gazette, and such rates shall thereupon be leviable by the Board. The said scale may, from time to time, subject to the like sanction and publication, be altered, diminished, or increased by the Board".

In accordance with the authority given by the foregoing section a scale of rates has been framed by the Trustees and sanctioned by the Government on the 8th May 1896, a copy thereof is herewith left.

Exhibit A 320 mad 8-5-96

Counsel will notice that under section 49 the rates in respect of goods to be landed is payable immediately on the landing of goods, and in respect of

goods

goods to be removed from the premises of the Board or to be shipped for export before the goods are shipped or removed and that the Board under Section 48 has a lien for these rates.In the event however of the consignee or owner not paying the rates,the only remedy the Board has is to sell the goods or such portion thereof as may be sufficient to pay the rates at the expiration of two months from the time when the goods were placed in their custody (Vide Sec.55).

Counsel will observe that the 3rd Bye-law as it at present stands apparently contemplates that all goods landed at the Port of Madras shall be porteraged by some person or persons authorised in that behalf by the Board.

As a matter of fact the Board does not porterage any coasting cargo landed on the Beach through the surf with the exception of coal and coke,neither do they porterage explosives,kerosine oil and animals but allow the consignees or owners to do their own porterage.

With regard to goods shipped from the Port of Madras,there is a uniform rate charged of I2 annas per ton of 50 c.ft.or 20 cwt,or 210 imperial gallons,(vide scale I sub-scale i) in addition to this charge,the charge specified in scale 3 of cranage is made when the goods are shipped from the pier.

We send for Counsel's information

copy

copy of certain suggested alterations to the present Bye-laws by the Chairman and draft of certain new Bye-laws proposed by him as also copy of Secretary's letter to Messrs Wilson and King dated 22nd July 1898 relating thereto.

Counsel is requested to revise, alter and vary the existing Bye-laws and draft any fresh ones he thinks advisable with a view to protecting the Trust from all claims so far as such can be done by bye-laws and where bye-laws cannot be effective, to advise in-what way the Act should be amended.

Notes on proposed New Bye-laws.

2. This corresponds with existing bye-law 2.The words "or accompanied by" have been struck out as suggested.The words" and in use for the time being" have been struck out as unnecessary.Forms not "in use for the time being" would not be forms "approved by the Board".

3. This corresponds with existing bye-law 5.

4. This reproduces existing bye-law 3 with some verbal alterations.The bye-law contemplates that all goods landed at the Port should be porteraged by persons authorised in that behalf by the Board.I understand that with regard to coasting cargo (except coal and coke) and also with regard to explosives,kerosine oil,and animals,the Board allow the consignees or owners to do their own porterage.In such cases the consignees or owners are persons authorised by the Board in that behalf." No alteration of the bye-law seems necessary.

5. This is taken from the first part of the suggested additional new bye-law marked "C" and referred to in the Secretary's letter of July 22nd 1898.I have omitted the second part of the suggested additional bye-law as it seems to me to be "unreasonable".If the new bye-law as it stands,will serve no useful purpose it should be omitted altogether.

6. This is taken from the suggested additional bye-law marked "(b)".

7. This is taken from the suggested additional bye-law marked "(e)".

8 & 9. See opinion herewith.

11. This is taken from the suggested additional bye-law marked "(a)". I think it is a " reasonable" bye-law and within the powers conferred by S.70 of the Act.

The remaining proposed new bye-laws reproduce the existing bye-laws with some slight verbal alterations.

Existing bye-laws 4,6,11,& 15,and the second sentence of existing bye-law 16 have been omitted as unnecessary.

(Signed) Arnold White.

High Court

Nov.11th 1898.

OPINION

1. In this case I am inclined to think that the judgments of Mr: Justice Shephard and of the Appellate Court to the effect that bye-law No.8 is ultra vires and invalid, were wrong, and that the judgment of the Appellate Court would not be upheld if the case were taken to the Privy Council. It seems to me that the reasons given by Mr: Justice Shephard for the conclusion at which he arrived, would have been perfectly sound if the Board were under a legal obligation to act as warehousemen or storers of goods. Mr: Justice Shephard indicates the distinction between the position of the parties with regard to goods <u>landed</u>, and goods <u>left on the Boards premises after landing</u>. He points out that it is obligatory on the consignees to <u>land</u> their goods on the Board's premises but it is optional with consignees to leave them on the Boards premises after landing. Consignees being thus under an obligation to land their goods on the Board's premises, there is a correlative obligation on the Board to receive the goods when landed, but there is no obligation on them to act as warehousemen of the goods after they have been landed. Section 45 of the Act empowers the Board to frame a scale of rates to be levied for, amongst other things, the storage of goods upon their premises, and rates are in fact levied for coal stored whilst the storing of goods is clearly contemplated by Section 61(2), but there is nothing in these Sections, or in any other Section

Section of the Act, which can be said to impose on the Board the obligation to store goods after landing when requested to do so. It seems to me that it is difficult to support Mr: Justice Shephard's judgment, except upon the assumption (an assumption which has no foundation) that the Board are under this obligation. The case of the Board therefore is clearly distinguishable from cases like G.W.R. Co. v Goodman 12 C.B.313 and Williams-v-G.W.R. Co. 10 Exch. 15 in which a bye-law which purported to exempt the Company from responsibility for passengers' luggage was held to be invalid. In these cases the Railway Act expressly imposed a liability on the Company in respect of passengers' luggage, and the bye-law in question was held to be invalid on the ground that it was inconsistent with the express provisions of the Act. The Harbour Trust Act imposes no liability on the Board in respect of goods stored, and importers are under no obligation (except in the special circumstances referred to in Section 53) to store their goods on the Boards premises. It is impossible to lay down any general rule which will determine when a bye-law is unreasonable (see the observations of Lord Russell C.J. in Burnett v Berry (1890) 1 QB at p 643). Each case has to be decided on its own special facts. But it seems to me, having regard to the object and scope of the Act, bye-law 8 is not unreasonable.

2. I have indicated above the view which I am inclined to

take with reference to the decision of the Appellate Court But if an appeal to the Privy Council is in contemplation, I should be glad of an opportunity of considering the matter further in consultation with Mr: Nelson.

3. As pointed out by Lindley M.R. in London Association &c. v London and India Docks Joint Committee (1892) 3 Ch at p 259, a bye-law is not an agreement but a law binding on all persons to whom it applies, whether they agree to be bound by it or not. An invalid bye-law cannot, of course, be made the basis of contractual rights; but it is perfectly competent for the Board to make it an express term of every contract of storage that they should be under no liability in respect of the goods stored; and it might be worth the consideration of the Board whether it would be desirable to insist on special contracts to this effect.

4. As matters stand now and having regard to the strong view expressed by Mr: Justice Shephard in his judgment, I do not think it would be worth while to take steps for the amendment of Section 70. So long as the present judgments stand, it seems to me that the only way of effectively securing the object which the Board have in view, is by the insertion of an express provision in the Act itself exempting them from liability in respect of goods stored.

5. I send herewith draft proposed new bye-laws with notes thereon. As matters stand, it seems to me impossible to devise any form of bye-law which would give the Board any effective

effective protection with reference to goods stored which would not be liable to be impugned on the same grounds as those on which existing bye-law 8 has been held by the Courts here to be invalid.

Signed Arnold White

Madras 10th November 1898.

(True Copy)

HARBOUR TRUST
MADRAS 12 JUN 99
SECRETARY'S OFFICE

Secretary,
Harbour Trust Board.

R TRUST BOARD, MADRAS.

11. Excepting ships' boats, no boat, lighter, raft, catamaran, or other vessel whatsoever used for the conveyance by water of human beings or property, will be allowed to approach e alongside of the beach, or any wharf, pier, jetty or dock within the limits of the Harbour mises, without a license from the Harbour Trust Board in that behalf. Any person rumental in contravening this bye-law shall be liable to a penalty, upon conviction before a gistrate, not exceeding Rupees twenty (Rs. 20) for each offence. Applications for such nses shall be made to the Secretary of the Board.

ts, lighters, rafts and catamarans to be licensed.

12. Every person being a tindal or a member of the crew of any boat or other craft who shall fail to keep such boat or other craft clear of the Pier ladders shall be liable, upon conviction before a Magistrate, to a penalty not exceeding Rupees twenty (Rs. 20) for each offence.

Boats and other craft to keep clear of pier ladders.

13. No boats, lighters, or rafts will be permitted to lie alongside of, or make fast to, the Pier, wharves or jetties, except when loading or unloading, or for the purpose of taking off or landing passengers or baggage. Every person nfringing this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not xceeding Rupees twenty (Rs. 20) for each offence.

Boats, lighters and rafts not to make fast to pier wharves or jetties.

14. Tindals and the men composing the crews must remain in their respective boats and lighters when alongside the Pier, wharves or jetties, and must obey the orders and directions of the Traffic Manager or his Deputy, under a penalty, upon conviction before a Magistrate, not exceeding Rupees twenty (Rs. 20) for each offence.

Tindals and crews to remain in boats and lighters.

15. Mooring buoys will be provided and maintained off the Pier, and Tindals and the men composing the crews of all boats, lighters, and other craft, must make fast their craft thereto when ordered to do so by the Traffic Manager or his Deputy, and not approach the wharves, jetties or the Pier, until permitted to do so, under a penalty, upon conviction before a Magistrate, not exceeding Rupees twenty (Rs. 20) for each offence.

Tindals and crews to make fast to mooring buoys when ordered to do so.

16. Lighters, boats, and rafts, must be securely moored at a distance of not less than one hundred yards from the Pier, when afloat and unemployed. They will not be permitted to make use of the Harbour Trust mooring buoys around the Pier, except with the permission and under the direction of the Traffic Manager or his Deputy. Any person instrumental in contravening this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rupees twenty (Rs. 20) for each offence.

Lighters, boats and rafts to be securely moored 100 yards from pier.

17. No lighters, boats, or other craft, shall be brought ashore or beached for the purpose of repair except at such place or places as may be assigned and pointed out by the Traffic Manager or his Deputy for that purpose. Any person contravening this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rupees twenty (Rs. 20) for each offence.

Lighters, boats and other craft to be beached only at places assigned.

18. The public will not be admitted to the Harbour Trust premises when Traffic or work is going on; at such times those persons only who have business to transact will be admitted. Certain sites will from time to time be set apart as occasion may require, by order of the Chairman at his discretion, to enable boatmen or coolies, to obtain their food, and all persons bringing such food will be restricted to these sites and the pathways leading thereto and therefrom, which will be indicated by notice boards.

Public excluded from Harbour premises except on business.

Sites set apart for coolies and boatmen to obtain food.

19. Any person found trespassing upon the Harbour premises in the vicinity of cargo which is being landed or shipped or which is stored therein or thereon shall, on conviction before a Magistrate, be liable to a penalty not exceeding Rupees twenty (Rs. 20).

Trespassers liable to a penalty.

20. Any person kindling or making use of fire or naked lights, without permission previously obtained from the Secretary or Traffic Manager, on the Pier or jetties, or in any godown or enclosure or open space used for the time being for the storage of goods within the precincts of the Harbour premises, shall, on conviction before a Magistrate, be liable to a fine not exceeding Rupees one hundred (Rs. 100) for each offence. Any employé of the Harbour Trust Board is empowered to put out such fire or naked lights. Any person smoking in or near any godown or enclosure used for the storage of cargo shall be deemed to have infringed this bye-law.

Use of fire or naked lights prohibited.

21. No package containing gunpowder or other explosive shall be landed within the limits of the Port of Madras without permission first obtained from the Collector of Sea Customs and from the Chairman, Harbour Trust Board, or in his absence from the Secretary of the Board; and in the landing or shipping thereof all rules or directions from time to time made or given by the Board, or by the Chairman, or Secretary, to ensure safety, shall be rigidly adhered to and observed; any person contravening this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rupees one hundred (Rs. 100) for each offence.

Landing of explosives.

22. All prosecutions, under the provisions of these bye-laws, shall be instituted by, or by order of, the Chairman of the Harbour Trust Board.

Prosecutions require sanction of the Chairman.

J. F. PRICE,
Chief Secretary.

BYE-LAWS MADE BY THE HARBO

MARINE DEPARTMENT.

NOTIFICATION.

Ootacamund, May 10, 1894.

No. 39.—The following bye-laws made by the Harbour Trust Board, Madras, under section 70 of Madras Act II of 1886, and approved by the Governor in Council, are published for guidance. They supersede all bye-laws made by the Board that are at present in force :—

Landing and Shipping.

1. Landing and shipping of cargo shall be carried on only on the days and within the hours allowed and appointed under section 72, Act VIII of 1878, or on other days and at other hours with the permission of the Collector of Sea Customs.

Payment of Harbour dues.

2. Harbour dues on goods shipped or landed, together with all cooly-hire and charges for carrying, packing and storing, and all godown rent or wharfage payable under these bye-laws, shall be charged at the rates fixed by the Board under the provisions of Act II of 1886, and such dues on all goods, whether exports or imports, shall be paid previous to the removal of goods from the Harbour premises to such person as the Board may depute to receive and grant receipts for the same. All applications for export or import of goods must be on, or accompanied by, forms approved by the Board and in use for the time being, and such forms must in all cases be correctly filled in and signed by the owner, exporter, or consignee of the goods or his agents.

Porterage.

3. All goods landed at the Port of Madras shall be moved from the place or places where the same may be landed, to the place or places set apart for the reception thereof, by some person or persons,—authorised in that behalf by the Board,—who shall in due course deliver the same to the consignees, upon payment by them of all costs and charges of receiving and of so moving such goods, and of delivering the same, including all costs, charges, and expenses, of counting, sorting and weighing, and other costs, charges and expenses whatsoever, incurred or payable under the directions and with the sanction of the Board.

Coolies and Porters to wear badges.

4. All coolies or porters employed for the purpose of working cargo within the precincts of the Harbour Trust premises shall wear a distinctive badge approved by the Board; such badges will be issued daily by the Traffic Manager or his deputies, on application, and must be returned daily, all badges lost being paid for by the person to whom issued. Any person found working or attempting to work as a cooly or porter, within the Board's premises without such badge, shall be liable upon conviction before a Magistrate to a penalty not exceeding Rupees ten (Rs. 10) for each offence.

Documents to be produced by shippers and consignees.

5. All necessary documents must be produced by shippers or consignees or their agents, at the time of the shipping or landing of goods, to the person or persons authorized by the Board to call for and inspect the same, whenever required by him or them.

Godown Rent and Wharfage: 3 days free.

6. Three clear days, exclusive of Sundays and Chamber of Commerce Holidays, from date of landing, will be allowed free of godown rent or wharfage, for the removal of all cargo; after which period, godown rent or wharfage as the case may be, will be charged, at the rates fixed by the Board under the provisions of Act II of 1886.

Coal, coke, patent fuel and timber to be landed at special places.

7. Coal, coke, patent fuel, timber of all descriptions and firewood shall be landed only at such place or places as may be approved by the Board for that purpose from time to time. Any person contravening this bye-law shall be liable to a penalty, upon conviction before a Magistrate, not exceeding Rupees fifty (Rs. 50) for each offence.

Storage of the above named description of cargo.

8. Importers or owners desiring to store cargo of the descriptions mentioned in bye-law No. 7, within the limits of the Harbour Trust premises must apply to the Secretary to the Board for such space as they may require. Such applications will be granted on such terms as the Board may approve. Wharfage will be payable for the plots so assigned at the rate fixed by the Board under the provisions of Act II of 1886. The Board, while taking all reason-

Board's liability.

Harbour Trust Office,

MADRAS, 12th June 189[illegible].

No. 230

From

Herbert Bradley Esq I.C.S.,

Chairman, Harbour Trust Board,

MADRAS.

To

W.B.deWinton Esq,

Secretary to Government,

Marine Department.

Sir,

In connection with a claim made against the Trustees of the Harbour for the value of 816 tons of coal alleged to have been delivered to them ex S.S."Graffoe" in July 1896: the Board consulted the Hon'ble the Advocate General as to its existing bylaws The Hon'ble Mr Justice Shephard having held that bylaw No.8 is ultra vires,and did not protect the Trust against this claim.

2. The opportunity was taken to revise the whole of the bylaws and I submit herewith for the approval of Government draft of amended bylaws as drawn by the Advocate General,for publication in the Fort St.George Gazette if approved by Government.

3. In this case Mr Justice Shephard referring to section 70 Act II of 1886 stated in his judgment (copy annexed) that "The matter of storage must have been present in the "minds of the Legislature,because,as I have shown,they made "provision for it in other parts of the Act.They provided "for the rates of the storage.That being so they deliberate-"ly leave out the word storage when they authorise the Board "to make rules"

He held that the concluding portion of bylaw No.8 is a rule that it is not competent for the Board to make

under sec

4.

Mar 25/778/92

4. This "rule" provides that the Board will accept no responsibility in respect of such cargo as is mentioned in by-law No.7 - including coal - but that the consignees or owners are at liberty to employ such servants as they may consider necessary for its protection.

5. The result was that although the coal ex S.S."Graffoe" was as porteraged and stacked day by day then and there made over to the watching peons employed by Messrs Best & Co, this fact was ignored by the Court, and although Messrs Best & Co's peons were as a matter of fact in charge of this and other stacks of their coal it was held that as a matter of law it remained in charge of the Trustees.

6. The Advocate General advises the Trustees that in his opinion an appeal to the Privy Council would be successful; but the litigation has already cost the Board about Rs 40,000 and The Trustees are unwilling to continue it.

7. In the opinion (copy annexed) given by him, on this matter the Advocate General said "I do not think it would be "worth while to take steps for the amendment of section 70. So "long as the present judgments stand it seems to me that the "only way of effectively securing the object which the Board "have in view is by the insertion of an express provision in "the Act itself exempting them from liability in respect of "goods stored"

8. It appears to the Trustees however that if they are able to make bylaws for storage, and if the signature of a contract under which the person applying for storage space agrees to acquit the Board of all responsibility for the safety of his goods, is made one of the conditions under which applications are granted vide amended bylaw No.9, this contract under Mr Justice Shephard's judgment will free the Board of all responsibility.

9. The Trustees would therefore request that the word storage may be inserted in section 70 Act II of 1886 as amended by Madras Act I of 1892 between the words "reception" and "removal".

The

The section would then run as follows.- The Board may from time to time make bylaws for the . . . . reception storage removal and porterage of goods brought within the premises of the Board . . .

IO. Should Government consider that this amendment of the Act will not protect the Board, the Trustees would request that the Act may be amended as suggested by the Advocate General "by the insertion of an express provision in the Act itself" exempting the Trustees from liability for goods stored within the premises

I have the honour to be,

Sir,

Your Obedient Servant,

Secy.

Chairman,

Harbour Trust Board.

Enclosures.

I. Judgment.

2. Copy of instructions to the Advocate General on revising and settling the bylaws.

3. Draft of proposed bylaws as drawn by the Advocate General.

4. Notes of the Advocate General on the bylaws so settled and

5. The Advocate General's opinion on the existing bylaws and more especially on bylaw No.8 which was held by the High Court to be "ultra vires" and on the desirability of amending the Act.

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