

(1) பக்கங்களின் எண்ணிக்கை 12

(2) புதுக்கித் திருப்பிய நாள் அக்டோபர்

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் 12

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

மெய்யப்பன் துறை

அரசாணை எண். 477 W அச்சகம்
மு. கோப்புத் தாள் எண். பலவகை

நாள் : 13 - 2 - 1890 198 .

அ.பா.
மடிக்கவோ கண்டபடி கையாளவோ கூடாது

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GOVERNMENT OF MADRAS.
FINANCIAL DEPARTMENT.

READ—the following papers:—

G.O., dated 14th October 1886, Mis. No. 574, Marine.

Read—the following papers:—

From T. E. MARSHALL, Esq., Acting Port Officer, Madras, to the Chief Secretary to Government, dated Madras, 11th August 1886, No. 7603.

I have the honor to submit the following correspondence *in re* certain deductions, amounting to Rs. (46-13-6) forty-six, annas thirteen, and pies six, made by this department from the freight bills of the B. I. S. N. Co.'s steamers *Rewa* and *Almora*, which arrived at this port with Government consignments from England in April last.

2. Messrs. Binny and Company, the local agents of the B. I. S. N. Company, objected to the deductions being made on the plea that the loss of the stores was attributable to a "peril of the sea," and at their request, the whole correspondence was submitted to the Government Solicitor, whose opinion, adverse to this department, will be found in his letter No. 318, of date 4th instant.

3. The reasons and arguments in favor of the deductions were fully set forth in this office letter to the Government Solicitor, No. 6927, of date 26th July 1886, and although the amount at stake is small, yet as there are very important principles involved in the case, it is submitted for the orders of Government, in advertence to G.O., Public Works Department, No. 2168 W., of date 16th September 1885.

4. In the event of Government desiring to consult the Advocate-General in the matter, I annex a separate memorandum of remarks upon the Government Solicitor's letter No. 318, of the 4th instant.

ENCLOSURES.

From T. E. MARSHALL, Esq., Acting Port Officer, Madras, to the Government Solicitor, dated Madras, 26th July 1886, No. 6927.

I have the honor to submit the following matter for your opinion thereon.

2. In April last, the steamers *Rewa* and *Almora* arrived at this port with Government consignments on board.

3. During the course of discharge certain packages were lost overboard, and this department in passing the freight bills deducted the value of the articles so lost.

4. To this action Messrs. Binny and Co., the local agents of the B. I. S. N. Company, have objected on the plea that the loss of the stores is attributable to a "peril of the sea"—*vide* their letters with enclosures marked A. to F.

5. The circumstances under which the casualties occurred are as follows.

6. The receiving officer for Government stores on board the *Rewa* reported as follows, under date 22nd April 1886: "While loading boat No. 142 with ordnance drums, one was lost in the sea. The drums were being lowered in an open basket, the sling resting on the gunwale of the boat and the boat rising to the sea tilted the basket and one fell overboard." This drum contained soft soap.

7. The receiving officer reported as follows again on the 30th idem: "Five casks cement were lost overboard whilst being lowered into boat No. 104 by striking against the side skid and slipping from the sling."

8. On the 6th of May 1886, the receiving officer on board the S.S. *Rewa* reported as follows: "A sling of two casks (of cement) were lowered on the gunwale of the boat No. 101, got unhooked, and one cask was lost overboard." Again on the same date the following report was made: "One cask of cement was lost overboard owing to the sling being lowered on to the gunwale of the boat, the sling opened out and it fell into the sea."

9. This department contends that these casualties cannot be attributed to a peril of the sea, as the weather was fine and normal, the wind and sea moderate, with little or no surf on, during the 26th and 30th April and the 6th of May last, and a peril of the sea can only be caused by the action of the sea and waves while in an abnormal state.

10. Further this department contends that presuming that the weather had been abnormal, Government are protected by the exceptions in the bill of lading, which do not cover any accidents in port, but only "during the voyage," vide these documents marked G. to H.

11. Further this department contends that the goods were not "delivered into boats alongside," as required by paragraph 12 of the Charter Party, which please find marked I. As the goods were lost out of the ship's slings, and therefore while in the possession of the ship, and *ergo* there was no delivery.

12. Finally this department contends that the stores in question were lost by the laches of the shipowner and his servants in not providing derricks or other appliances of a suitable size so as to plumb the centre of a lighter when goods are suspended over the ship's side, whereas the goods while being lowered were scraping against the side of the vessels, and were lowered on to the gunwale of the lighter instead of into the boat.

13. I would point out that the authority for deducting the value of all stores from the freight due either short delivered or injured is conveyed in paragraph 13 of the Charter Party.

14. In conclusion I enclose, for your perusal, copy of the Proceedings of Government in the Public Works and Marine Departments marginally noted bearing on the subject of claims upon ships bringing out Government consignments to this country.

15. I would solicit an early reply to this communication, as Messrs. Binny and Co's. bills for remaining freight are detained unpaid in this office and, moreover, should your reply declare against the contentions of this department, it is my intention to submit all the papers to Government in the Marine Department for orders.

From W. MORGAN, Esq., Acting Government Solicitor, to the Acting Port Officer, Madras, dated Madras, 4th August 1886, No. 318.

I have the honor to acknowledge receipt of your letter No. 6927, dated 26th July 1886, and have carefully considered same and the several enclosures thereto, which latter I return herewith.

2. With regard to the loss of the one drum of soft soap ex *Rewa* on the 23rd April 1886, I observe according to the Government receiving officer's report, that the accident arose owing to the boat rising to the sea, while the sling (containing the basket with the drum in question) was resting on the gunwale of the boat, and the ship's account is that the loss occurred owing to an "accident of the sea, the boat coming up in contact with the sling."

3. It will therefore be seen that according to either version of the accident, the immediate cause of the loss of the drum was the action of the sea in causing the boat to rise against the sling.

4. It therefore becomes necessary to refer to the contract between the ship and Government, in order to see whether any loss arising from such action of the sea would come within any of the exceptions in the Bill of Lading or Charter Party, which protect the ship from liability.

5. Material portions of the bill of lading provide that the consignment is to be delivered in the like good order and condition (as received), at the aforesaid port of Madras (. in the like good order and condition (as received), at the aforesaid port of Madras (. all and every other dangers and accidents of the seas, rivers, and navigation of what nature and kind soever during the said voyage always excepted) unto the Governor in Council there resident, or to his or their assigns, &c.

6. Before considering whether the loss is one which would be covered by this exception, it will be more convenient to deal with the contention raised by you as to the term "during the voyage." The loss arose, it must be remembered, before the goods quitted the ship's slings, and during what may be considered as the act of delivery, and in my opinion the "voyage" would be held to include the whole period from the time of the receipt of the goods up to the time that the actual delivery was effected in the manner prescribed by the contract, and the mere fact of the ship lying at anchor in port does not, I think, imply that the voyage is completed; I am

therefore of opinion that all the exceptions as to dangers and accidents of the sea were in force in respect of the stores lost ex *Rewa* and *Almora* at the time that such loss occurred.

7. A good test as to the meaning of the term "dangers and accidents of the sea" can be obtained if we consider whether or no such an accident as actually occurred, could have been insured against as an "accident of the sea." Mr. Bailey in his work on "perils of the sea" holds with reference to this question of insurance that the "clause as to 'danger and accident of the sea' protects the ship from all losses caused by the action of wind and water acting on the property insured under extraordinary circumstances either directly or immediately without the intervention of other independent active external causes." Sir Joseph Arnould describes the clause in question as including "all kinds of Marine casualties and every species of damage done to the goods at sea by the violent and immediate action of the winds and waves, as distinct from that included in the ordinary wear and tear of the voyage, or, directly referable to the acts and negligence of the assured as its proximate cause."

8. I am of opinion that the accident in question was owing to the violent and immediate action of the sea and cannot fairly be attributed to the negligence or default of the vessel, that it could have been insured against as an "accident of the sea," and that it would fall within the exception in the bill of lading above referred to, and that therefore the vessel would not be liable for same.

9. I do not think that I can go into the question of the extent of the violence of the sea as it is one of degree only, and under the bill of lading the exception covers "dangers and accidents of the sea" . . . of what nature and kind soever.

10. If the accident could fairly be attributed as contended by you to any act of negligence on the part of the ship's servants, then the above exception would not exempt the ship from liability. On this point, however, I must point out that the receiving officer who was on board to represent Government's interests, fails to specify any direct act of negligence on the part of the ship's servants.

11. The onus of proof in seeking to establish negligence would, it must also be remembered, in the first place lie on Government, and in order to support your contention as to want of proper ship's tackle and appliances, it would be necessary for Government to prove that insufficient, unusual or improper tackle was used for the delivery of the cargo in question, and also that by the use of the appliances you refer to in your letter, the accidents in question could have been avoided. Of course the vessel is bound to supply proper and sufficient tackle, and the question of what would comply with this requirement might be a matter of considerable evidence and argument; but I do not understand you to state that any of the usual ship's tackle was wanting on these occasions, and if this is so, and the vessel has used the ordinary and customary tackle in use in this port, it would go far to show that there had been no negligence in this respect.

12. With reference also to the state of the sea, it would be necessary for you to adduce substantial proof that the sea was perfectly smooth on the days you refer to, and that neither the ship nor the boat rolled.

13. It appears, however, to me somewhat difficult to conceive that the sea could have been perfectly smooth seeing that your own receiving officer admits that the boat rose to the sea, which would imply that there was a certain amount of sea on at the time of landing the cargo.

14. It must further be borne in mind that in the absence of any stipulation respecting the mode of delivery of the cargo, the law implies that each party shall use reasonable care and diligence in performing his part of the delivery, the merchant is to be ready to receive his consignment in the usual manner and the shipowner by his master and crew to deliver in the usual manner; having regard to these conditions, I don't think Government could successfully maintain that there had been anything unusual in the manner of making delivery in respect of the stores in question. Would not the accident have been avoided had some of the boatmen guided the basket into the centre of the boat as soon as it was in reach, and is there not some negligence upon their part in allowing it to rest on the gunwale of the boat.

15. With regard to paragraph 11 of your letter under reply the ship's agents admit that the goods lost were not delivered at all, but maintains that no liability attaches to the ship therefor in consequence of the goods having been lost owing to an "accident of the sea" and, as I have already observed, if the loss was so caused, the ship would not be liable for the loss.

16. With reference to the 13th paragraph of your letter, there can be no doubt that Government would be authorized to deduct the value of any loss sustained from the freight payable here, subject however to the exception that the loss was not covered by any of the exceptions in the bill of lading exempting the ship from liability.

17. With regard to the Government Proceedings forwarded with your letter under reply, I cannot, I feel bound to confess, follow the reasoning of the concluding paragraph thereof, owing possibly to my not having before me full information as to the particular case therein referred to; but anyhow, I am of opinion that in the case of the losses, the subject of your letter under reply, the state of the weather at the time has considerable importance and weight in enabling one to come to a decision as to whether or no the ship is liable for same.

18. Hitherto you will have noticed that I have only dealt especially with the question of liability as to the loss to the one drum *ex Reuca*. I will now, therefore, reply to your letter with regard to the loss of the other stores.

19. I notice that the report as to the five casks of cement of the receiving officer is dated the 30th April 1886, or 8 days after the accident (according to the ship's report) took place. The report does not give any account as to why the 8 casks whilst being lowered, struck against the ship's side, nor does the receiving officer allege any act of negligence on the part of the ship's servants to account for the accident; while, on the other hand, the ship's officer's report asserts that the loss was caused by the rolling of the ship, and if this be correct and there was no negligence on the part of the ship's servants, I am of opinion that the loss would be covered by the exception to the bill of lading and the ship would therefore not be liable.

20. With regard to the loss of two casks of cement referred to in the 8th paragraph of your letter, I think you must be mistaken as to the name of the steamer and that it was the *Almora* and not the *Reuca*. According to the receiving officer's report, one cask was lost owing to the sling getting unhooked, and the other cask owing to the sling being lowered on to the gunwale of the boat; but no information is given as to whether the ship's crew were guilty of any negligence in the manner of the landing of these casks, while the S.S. *Almora's* officer states that the boats rose on a swell and the sling striking the gunwale, the casks became unhooked. I feel no difficulty in holding that in this case also Government could not maintain an action against the ship unless, as I have mentioned with regard to the other cases, it can be shown that the accident did not occur owing to any unforeseen action of the sea, or unless any precise acts of negligence against the ship's servants can be shown to have contributed to the loss.

21. I need not recapitulate my other remarks with regard to the question of liability that I made in respect of the loss of the one drum, as they apply with equal force (if at all) to the question of liability in respect of the loss of the other stores, and may only here express myself of opinion that according to the information at present before me, I cannot advise Government to deduct from the amount of the unpaid freight the value of the stores referred to in your letter.

22. I would suggest that receiving officers should receive specific instructions to observe (so far as is possible) and take a note of the exact nature of each accident, so as to enable them to form an opinion as to whether the same could have been avoided by the ship's officers, or by the boatmen (who for the purpose of landing must be looked upon as the servants of Government), at the same time informing the officer in charge of the landing of the purport of such note. The note should, I think, be forwarded to you the same day, so that an immediate claim may be made upon the ship's agents.

23. These documents should also be sent to me in all cases in which my opinion is required, and it would also be as well in each case to mention whether delivery has been accepted and a receipt given by the receiving officer or not; where damage to the cargo may reasonably be expected from the accident, no receipt should be given.

NOTES by the Acting Port Officer on the Government Solicitor's letter, No. 318, of date 4th August 1886, to the Port Officer, Madras.

Paras. 2 and 3.—The Government Solicitor attributes the loss of the drum of soft soap to the "action of the sea," but this department has already explained to him that the sling and its contents should never have been lowered on to the gunwale of the boat, as the very moment the contents touched the gunwale, the sling would be unhooked. Paragraph 12 of the Charter Party requires that the stores should be delivered "into" lighters, failing this, there can be no "delivery."

Paras. 5 and 6.—This department contends that the "exceptions" in the bill of lading hold good during the voyage only; and not after the vessel has arrived at her port of destination. The words "during the voyage" appear to have been specially introduced into the Government bill of lading form now in use, as they did not appear in the older forms. They are not more over usually inserted in mercantile forms of bill of lading. The "commencement of a voyage" has always been understood to mean the hour of her departure from her port of loading, and the "completion of the voyage," when the ship has arrived at her port of destination. Vide Abbott's Law of Merchant ships and seamen, Part IV, chapter 5.

Para. 7.—The quotation made here from a work on "perils of the sea," I would respectfully urge bears out the definition of the same as furnished by this department, viz., that a "peril of the sea" can only be caused by the action of the wind, sea, and waves while in an abnormal state. Here the loss was not caused by any extraordinary or abnormal action of wind and sea upon the property hanging in the ship's slings. The day was fine, and wind and sea normal.

Para. 8.—In this paragraph, the Government Solicitor makes the strong assertion "that the accident in question was owing to the violent and immediate action of the sea." I am at a loss

to know how, and where, the Government Solicitor has obtained this information, as such a statement has not been made by Messrs. Binny and Co., or the officers of the ship, much less admitted by this department.

Para. 10.—The Government Solicitor seeks to throw the responsibility of affixing the blame for the accident on the receiving officers, who are landmen, and whose duty on board is simply to grant receipts for Government stores, under G.O., Marine, No. 307, dated 9th August 1884. But the very fact set forth by the receiving officer, viz., that the stores were lowered on to the gunwale of the boat, causing the sling to unhook, clearly implies negligence.

Para. 11.—It is a well-known fact, and one easily proved, that the derricks on board the *Reuca* do not plumb the side as they ought to, so that goods can be lowered into the centre of a boat.

Paras. 12 and 13.—The Government Solicitor requires the sea at the port of Madras to be perfectly smooth, a physical impossibility, as on the calmest day a long rolling swell tumbles into the harbour.

Para. 14.—The operation of discharging cargo by means of steam winches is so rapid, that while the boat's crew are stowing away the contents of one sling in the boat another sling is waiting for them over the side, and it was owing to the boatmen seizing hold of the basket containing the drums of soap that prevented all but one falling into the sea. Had the contents of the sling not been allowed to touch the gunwale of the boat, the accident would not have happened.

Para. 19.—The discrepancy pointed out is a clerical error in furnishing copies. From the original report it will be seen that the casks of cement were landed on the 20th April, and that the report was received the same day in the office of the 2nd Assistant Master Attendant. These five casks of cement were being lowered down with insufficient plumb, scraping against the skid over the ship's side, as they were being lowered. The receiving officer states that they slipped from the sling after striking against the skid, thus clearly indicating that they were loosely slung as all five casks tumbled out simultaneously; the wind and sea being normal.

Para. 20.—The two casks of cement were being landed *ex Almora* not *Reuca*. These two casks were lost at different times by being lowered on to the gunwale of the boat; the wind and sea being normal.

(Signed) T. E. MARSHALL,
Acting Port Officer.

From the Acting Government Solicitor, Madras, dated 1st October 1886, No. 437.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 30th September 1886:—

OPINION.

With reference to the question referred to me by the order of Government, dated the 26th August 1886, No. 1448-C, I think the Marine Department had *prima facie*, a right to make the deductions which were made from the freight bills of the British India Steam Navigation Company's Steamers *Reuca* and *Almora*. The loss of the goods consigned to the Government occurred in the course of delivering the goods to the consignee at the Port of Madras. It did not in my view occur "during the voyage" and is not therefore covered by any of the exceptions in the bill of lading. The shipowner has not delivered the goods according to contract, and the onus of proof that, notwithstanding the non-delivery, he is entitled to the stipulated freight, seems to be upon him if he sues to recover the amount so deducted.

(Signed) P. O'SULLIVAN,
Advocate-General.

Order—dated 14th October 1886, Mis. No. 574, Marine.

The Advocate-General's opinion will be communicated to the Port Officer, Madras.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Port Officer, Madras, with three enclosures.

G.O., dated 27th June 1889, Mis. No. 1699 W., Public Works.

Read—the following Despatch from the Right Honorable Lord CROSS, Her Majesty's Secretary of State for India, to His Excellency the Right Honorable the Governor in Council, Fort St. George, dated India Office, London, 30th May 1889, No. 13, Financial (Stores):—

I enclose, for your Excellency's consideration, copy of an application, with enclosures, from Messrs. Gellatly and Co., for the refund of Rs. 196, stated to have been deducted at Madras from the freight of the S. S. *Navarino*, being the value of one iron beam and three pieces of angle iron, forming a portion of five spans of girder-work for bridges on the Pontinghi ghât and Potinghi-Koraput roads, demanded per Madras Public Works indent, dated 30th August 1886.

2. The girder-work was shipped per S. S. *Navarino*, which sailed from London on the 1st September 1887, and was transferred at Calcutta into the S. S. *Chindwara* for shipment to Bimlipatam.

3. If, upon inquiry, the circumstances should, in the opinion of your Government, justify the admission of the claim, the amount should be refunded to the agents of the ship at Madras, and I request that your decision in the matter may be communicated to me, to enable me to reply to Messrs. Gellatly and Co. If their claim be considered inadmissible, the grounds upon which it is negatived should be fully stated.

4. It is not considered that the cost of preparing the declaration, forwarded in Messrs. Gellatly's letter, should in any circumstances be borne by Government.

ENCLOSURES.

Dock House, Billiter Street, London, E.C.,
24th April 1889.

Sir,

With reference to the shipment of bridge work, &c., per S.S. *Navarino*, from London to Bimlipatam, under our contract dated 3rd August 1887, we beg to inform you that the authorities in Madras have deducted the sum of Rs. 196 from the freight for one iron beam and three pieces of angle iron, which unfortunately were lost overboard during discharge through an accident of the sea. A declaration was obtained from the master of the steamer *Chindwara* into which the goods were transhipped at Madras, stating the circumstances under which the accident happened. We trust this document will enable you to refund us the amount deducted, and that you will take the necessary steps to prevent similar deductions in future. The cost of preparing this declaration was Rs. 49, which we shall be glad to receive.

We are, &c.,

(Signed) GELLATLY, HANKEE, SEWELL, & Co.

The Director-General of Stores, India Office.

Enclosure 1 in above.

I, John Nash, at present of Calcutta, master mariner, and commander of the British India Steam Navigation Company's steamer *Malda* make oath and say as follows:—

1. That in the month of October 1887, I was employed as the commander of the steam-ship *Chindwara* belonging to the British India Steam Navigation Company, Limited, and at that time plying between Calcutta and Bombay, touching at intermediate coast ports.

2. That I left the port of Calcutta in command of the said vessel, on a voyage to Bombay, *via* the coast ports, on Saturday, the 22nd day of October 1887, having on board, amongst other cargo, certain iron, mentioned in the through bill of lading hereto annexed, and marked A, for the port of Bimlipatam.

3. That the said vessel *Chindwara* arrived at and anchored off Bimlipatam aforesaid on Tuesday, the 26th day of October 1887, and immediately proceeded to discharge her cargo for that port, and continued at Bimlipatam discharging cargo till the 28th day of October 1887.

4. That during the said 26th, 27th and 28th days of October, the said vessel and her officers and crew were employed in discharging from the said vessel into boats brought from the shore for that purpose the cargo comprised in the said bill of lading marked A as aforesaid, which said cargo was Government property, and in the course of such discharge three pieces of angle or tee iron and one iron cross girder, the property of Government, were accidentally lost overboard on Thursday, the 27th day of October 1887, in manner hereinafter mentioned.

5. That the said 27th day of October 1887 commenced with a fresh breeze, with a moderate sea running, but in the course of the forenoon the sea increased, and considerable difficulty was experienced in discharging the said cargo, which was composed in part of heavy iron girders and long and unwieldy pieces of angle or tee iron, and the boats alongside the said vessel to receive the said cargo were rising and falling very much on the sea, and with such suddenness that it was extremely difficult to prevent the boats coming up and hitting the slings in which the said iron was being lowered from the ship.

6. That in the course of the forenoon of the said 27th day of October 1887, while three long pieces of angle or tee iron were in the course of being lowered in a sling from the ship out of the fore hatch to the boat intended to receive the same, the said boat suddenly rose up on the sea and came in contact with the said sling of iron, and the force with which the said boat hit the said iron and canted one end of the same upwards caused the said three pieces to slip out of the sling the same were in, and to fall into the sea, where the same sank and could not be recovered.

7. That in the course of the same forenoon, as an iron cross girder of large dimensions and great weight which had been slung out of the after hatch was being lowered into a boat alongside the said vessel *Chindwara* the boat into which the same was being lowered rose up in like manner suddenly, and came in contact from below with the said iron girder, and the force with which the said boat came into contact with the same, together with the heavy rolling of the said vessel, caused the sling which held the said iron girder to be caught in the gangway and become slack, by reason of which the said iron girder slipped out of the sling in which it then was, and fell into the sea, where it sank and was lost beyond possibility of recovery.

8. That on the 27th day of October 1887, I certified to the loss of the said three pieces of iron and one cross girder by two several certificates, copies of which are hereto annexed, and marked respectively B and C.

9. That the loss of the said three pieces of angle or tee iron and of the said girder was due and owing wholly to the roughness of the sea at Bimlipatam aforesaid at the time the same were being so landed, and was caused in manner hereinbefore mentioned, and through no act, neglect, or default of the officers or crew of the said steamer *Chindwara* who used all due care and caution in the handling of the said goods.

(Signed) JOHN NASH.

Sworn, at Calcutta aforesaid, by the said John Nash, the 22nd day of March 1889, before me,—

(Signed) J. C. ORR,
Notary Public.

Enclosure 2 in above.

27th October 1887.

"Chindwara."

Certified that $\uparrow$, three angle iron pieces were lost overboard by accident of the sea in the following manner:—

Whilst the sling was being lowered into the boat, the boat, caught by a heavy swell, suddenly rose, lifting the sling of the angle iron on the gunwale, thereby slackening the sling, and the vessel rolling at the time consequently caused the contents to fall into the sea.

(Signed) JOHN NASH,
Commander.

(Signed) J. SMITH, 4th Officer,
Discharging Officer.

Enclosure 3 in above.

27th October 1887.

"Chindwara."

Certified that $\uparrow$, one iron beam was lost overboard by accident of the sea in the following manner:—

Whilst the sling was being lowered into the boat, the boat, caught by a heavy swell, drifted from the ship's side, and the vessel rolling heavily at the time caused the sling to catch on the gangway and slack up, and consequently the beam slipped out.

(Signed) H. CAMPBELL, 2nd Officer,
Discharging Officer.

(Signed) JOHN NASH,
Commander.

Order—dated 27th June 1889, Mis. No. 1699 W., Public Works.

Communicated to the Superintending Engineer, I Circle, for report.

(True Extract.)

(Signed) R. R. E. DRAKE-BROCKMAN, Lt.-Col., R.E.,
Ag. Joint Secy. to Govt., P.W.D.

From Major D. McNEIL CAMPBELL, R.E., Superintending Engineer, I Circle, to the Chief Engineer, Public Works Department, dated Dowlaisweram, 20th August 1889, No. 206 V.Z.

With reference to G.O., No. 1699 W, dated 27th June 1889, I have the honor to forward, herewith, a report from the Executive Engineer, Vizagapatam Division.

2. I am unable to ascertain from the records of this office by whom the deduction on account of the lost pieces of iron work was made, and the Executive Engineer knows nothing about it.

3. In a letter No. 301 V.Z., dated 29th November 1887, from the then Superintending Engineer Mr. G. T. Walch to the Executive Engineer, Vizagapatam, it is stated that "claim for the loss should of course be made against the British India Steam Navigation Company as the loss appears to have been due to carelessness of its servants." In reply to this, the Executive Engineer submitted a certificate of loss signed by the commander of the Steamer *Chindwara*, by which the iron work have been conveying, at the same time stating that as there were no witnesses to prove carelessness on the part of the company's servants, he had refrained from lodging any claim as he considered it would be useless under the circumstances.

4. I quite agree with the Executive Engineer, and am of opinion that in the face of the declaration made by the commander of the steamer and with no witnesses to prove carelessness, it would be absolutely useless to make any claims against the company, and that if the sum of Rs. 196, being the value of the lost pieces, has been deducted, it should be refunded.

5. I am supported in this opinion by a letter No. 363, dated 8th November 1887, to Executive Engineer, Vizagapatam, from the Port Officer, Bimlipatam, in which he writes: "The landing of the iron work was a very hard and risky task and most of the boats have sustained very serious damage." He also encloses a certificate from the commander and says: "You will then see that it is considered as an accident of the sea, and I have my doubts about the company being responsible for the loss."

ENCLOSURE.

From C. J. USSHER, Esq., Executive Engineer, Vizagapatam Division, to the Superintending Engineer, I Circle, dated Camp Itikavalsa, 26th July 1889, No. 909.

In returning the enclosures received with your endorsement No. 149 V.Z., dated 10th July 1889, I have the honor to state that, until the receipt of the papers, I was not aware that any deduction had been made on account of the lost pieces of iron work.

2. In connection with this subject, I beg to refer to this office letter No. 2110, dated 19th March 1888, in which I expressed the opinion that it would be useless to lodge any claim against the British India Company.

From Captain W. L. C. BADDELEY, R.E., Under Secretary to Government, Public Works Department, to the Examiner, Public Works Accounts, dated 2nd September 1889, No. 3900 C.

Can you please state the circumstances in which the deduction was made.

From Major C. H. P. CHRISTIE, R.E., Examiner, Public Works Accounts, to the Secretary to Government, Public Works Department, dated Chepauk, 1st October 1889, No. 1406.

From the accounts I observe that the deduction in question was made in the Civil department, and shown in the civil exchange accounts for May 1889. I think that the Accountant-General, Madras, will be in a position to furnish the information required by you.

No. 4483 C.

Referred to the Financial Department.

(Signed) E. R. E. DRAKE-BROCKMAN, Lt.-Col., R.E.,
Ag. Joint Secy. to Govt., P.W.D.
5th October 1889.

Referred to the Accountant-General for report.

(Signed) J. F. PRICE,
Chief Secretary.

11th October 1889.

From T. W. RAWLINS, Esq., Accountant-General, to the Chief Secretary to Government, dated Fort St. George, 27th November 1889, No. 4247.

With reference to your endorsement, dated the 11th October 1889, referring, for report, letter from Her Majesty's Secretary of State, No. 13, dated 30th May 1889, now returned with its enclosures, relative to the deduction of Rs. 196 made in the freight bill for Government stores consigned per S. S. *Navarino*, I have the honor to state that the deductions having been made by the Presidency Port Officer, Madras, at the time when he countersigned the bill for payment, I made a reference to that officer and now beg to forward a copy of his reply, No. 844 M., dated 13th November 1889, explaining the circumstances under which he considers the agents of the S. S. *Navarino* liable for the stores originally shipped by that vessel, but lost while being landed from the S. S. *Chindwara*.

2. The G.O., dated 14th October 1886, quoted in the Presidency Port Officer's letter, does not appear to have been communicated to this office.

3. It is for Government to determine whether the amount recovered should be refunded to the agents at Madras.

ENCLOSURE.

From the Presidency Port Officer, Madras, to the Accountant-General, Madras, dated Madras, 13th November 1889, No. 844 M.

In returning herewith, together with its enclosures, reference of Government in the Financial Department, dated 11th October 1889, in respect to the deduction of Rs. 196 from the freight bill of the S.S. *Navarino*, on account of cost of Public Works stores short-landed by that vessel at Bimlipatam in October 1887, I have the honor to state that the deduction in question was made in accordance with the opinion of the Advocate-General, recorded in G.O., Marine, Mis. No. 574, dated 14th October 1886. It will be observed from paragraphs 4 and 7 of the declaration of the commander of the S.S. *Chindicara*, into which the goods were transhipped at Madras, that the loss of the stores occurred *during discharge*. The loss of the goods did not occur "*during the voyage*" (see bill of lading), and is not, therefore, covered by any of the exceptions mentioned therein.

2. The receipted bill of lading of the S.S. *Navarino*, referred to in this office letter, No. A-110, dated 26th April 1889, is herewith forwarded for being recorded with the paid bill for freight.

From the Government Solicitor, Madras, dated 14th January 1890, No. 19.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 10th January 1890:—

(In the matter of reference on No. 1514—1953 of 1889, Financial Department).

OPINION.

1. The applicability of the exceptions contained in the Bill of Lading depends upon the construction of the words "*during the said voyage*" used therein.

2. In *Brown vs. Tanner* * Sir W. Page Wood, L.J., said: "In the text books (which are fully borne out by the authorities) the freight is said to be due when the '*voyage is ended*.' But this expression does not afford a sufficiently definite rule. When was the voyage ended in such a case as the present? In *Cato vs. Irving* † Parker, V.C., determined that the voyage was not ended on the mere arrival of the ship in port. He says 'the right to the freight does not accrue until the goods are not only conveyed to their destination, but are also delivered.' And it is singular that no distinct authority seems to carry the point further."

3. The words "*during the said voyage*" make the exceptions mentioned in the Bill of Lading applicable until "*the voyage is ended*" and the liability of the company as a carrier upon the Bill of Lading has ceased.

4. Until delivery, the Master is liable as a carrier upon the contract, ‡ and the exceptions in the Bill of Lading are co-extensive with that liability. §

‡ Hyde vs. The Trent and Mersey Navigation Co. 5 Tonn Rep., 398.
§ Hongkong Shanghai Banking Corporation vs. Baker, 6 Bom. H. C. R. (O. C. J.) 71 affirmed on appeal, 7 B., 180 and followed in *Hassanbhai Visram vs. British India Steam Navigation Co.* 1 L. R. 13 Bom. 571.

losses were caused by any "danger or accident of the sea," or were due to the negligence of the company's servants alone.

6. Under the circumstances mentioned in the declaration made by the commander of the steamer, and by the Port Officer, Bimlipatam, in his letter, No. 363, dated the 8th November 1887, addressed to the Executive Engineer, Vizagapatam, and in the absence of all proof that there was any negligence on the part of the company's servants, I think that the losses were covered by the exceptions contained in the Bill of Lading, and that the deduction ought not to have been made.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

ORDER—dated 4th February 1890, No. 66, Financial.

The Advocate-General's opinion will be communicated to the Presidency Port Officer, who will arrange for refunding to the local Agents the amount under dispute.

(True Extract.)

J. GROSE,
Ag. Chief Secretary.

To the Presidency Port Officer.

" Accountant-General.
" Public Works Department, with papers returned.
" Marine Department
Copy to the Government Solicitor.

Exd. A. Raitt.

Gobt. of {1890} Madras.

FINANCIAL.

Order thereon no: 477 H &
13th Feb 1890

Issued

Recd.

Encl.

Recorded

1201 RR. 4. 13

G.O., 4th February 1890, No. 66.

FEBRUARY.

Stores.

Communicating to the Presidency Port Officer Advocate-General's opinion relative to the deduction of a certain amount made in the freight bill for Government — consigned per S S. *Navarino*, with the request to refund to the local Agents of that vessel the amount under dispute.