M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1815 — Press / ~~Mis.~~

136-137

Dated 12 — 9 — 1861.

Not to be folded or roughly handled

Read again communication from the Board of Revenue, dated 21st June 1861, No. 3,214, and recorded in Proceedings 2nd July 1861, No. 1,307, respecting the claim of Messrs. BINNY & Co. for damage to a Bale of Shirtings while in the custody of the Sea Custom Collector :—

No. 136. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 8th July 1861, No. 591 :—

SIR,

Dated 2nd July 1861, No. 1,307, Revenue Department.

1. I have the honor to acknowledge receipt of the Proceedings of Government noted in the margin.

2. I submitted them for the consideration of the Advocate General, and

3. I now forward for the information and guidance of Government a copy of his opinion.

COPY OPINION.

1. Act XXV of 1836 declares the Custom House Godowns, &c., to be a Public Warehouse, where owners may lodge their goods, paying monthly rent for the same (Sections 14 and 17), owners not to be entitled to claim compensation for loss of or injury to such goods, unless occasioned by the wilful act or neglect of the Warehouse-keeper or his Officers (Section 17), such Warehouse-keeper being declared (Section 14) "responsible for all *duties connected with* the "*charge* of goods."

2. Messrs. Binny & Co. have, it seems, kept a Bale of Shirtings in this Public Bonded Warehouse from September 1860 to January 1861, paying rent to Government for the same. On removing it they find it "damaged and rendered unmerchantable by white ants in the "Bonded Warehouse," which I do not find denied by the Collector of Sea Customs. He, however, says that merchants' servants have constant access to the goods in bond, every precaution the Department can take is adopted for the preservation of Bonded goods. The Warehouse-keeper exercises a constant supervision over the *buildings;* and talks of the "small Establishment "allowed."

3. There cannot be one rule for Government, and another for private persons, and I apprehend that if any private gentlemen were to go to England for six months, leaving their carriages at Messrs. Simpson & Co., paying a monthly rent, as godown rent, and on their return were to find that their carriages were lost, or eaten by white ants, or spoiled by rain from a hole in the roof, they would not be quite satisfied to be told by Messrs. Simpson, "Gentlemen, your servants had free access to your carriages, we really took every precaution, "our establishment is very small, our godown-keeper exercised a constant supervision over our "buildings."

4. The Act Section 14, shows that the Warehouse-keeper has certain "*duties*" to perform "connected with the charge of goods," and that Government is the Bailee for hire, for its own profit, of goods in that Warehouse-keeper's charge. Whatever constant supervision he may have exercised over the *buildings*, it is clear he has not extended it to the *goods* in question. A Bailee for hire of goods must pay for them if lost, or for any damage sustained by *ordinary* neglect. The Act here limits the liability to "loss or injury" occasioned by "the *wilful* act *or neglect*," but I cannot avoid agreeing with the Chamber of Commerce, that for a man responsible for the "*duties* connected with the *charge* of goods," to let white ants destroy them, *is* "wilful neglect."

5. If the "small Establishment allowed" for the duties connected with the charge of goods be too small for its due discharge, the sooner it is increased the better.

6. The Governor General has very lately ruled that if Government undertake for profit to carry goods (Regimental clothing carried by the Banghy Department of the Post Office) they

must make good the value of goods damaged for want of complete protection from the rain, though the answers of the officials concerned was in substance much the same as that of the Collector of Sea Customs and the Secretary of the Revenue Board on the present occasion.

6th July 1861. (Signed) T. SYDNEY SMYTH,
Advocate General.

(True Copy.)
(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 137. ORDER THEREON, 12th September 1861, No. 1,815.

1. Under the opinion expressed by the Advocate General, the Government desire that the claim preferred by Messrs. Binny & Co. for a sum of Rupees 262-8-0, being the amount of compensation for damage by white ants to certain Shirtings lodged by them in the Bonded Warehouse, be admitted.

2. The Board of Revenue will make arrangements at once for the proper custody of goods in the Custom House Godowns. They will also take measures for encouraging as much as possible the establishment of private warehouses under Licenses.

3. The Board will revise the rates under Section 15 of Act XXV of 1836, so as to admit of a proper establishment being retained, and they will exclude from the list of goods received into the Government warehouses such articles as require special care. The buildings in use should be put into proper repair, and the floors covered with asphalte, and the warehouse-keeper should be held personally answerable hereafter for the proper care of the articles entrusted to his custody. This department of the Office should, in short, be carefully revised and placed on a proper footing of efficiency.

(Signed) J. D. SIM,
Secretary to Government.

Rev: Sept

No 1815

Proceedings of the Government of Madras
Dated 12th ~~July~~ Sept 1861

Read again the following
communication from the
Board of Revenue, records
in the Rev: Dept dated
2nd July 1861 No 1307

Submitting the opinion of
the Board of Rev: on the Sub:
joined claim preferred by
Messrs Binny & Co for Rs:
wage to a Bale of Shirtings
while in the Custody of the
Sea Custom Collector

Read also the following
letter from the Acting
Govt Solicitor

Dated 8th July 1861 entered 21st June 1861 No 5214

Dated 8th July 1861 No 591

Forwarding the opinion of
the Advocate General on
the subject of the claim above.

Under the opinion
expressed by the Advocate
General

General, the Government
desire that the claim
preferred by Messrs Binny
& Co for a sum of £
262-8-11 being the a=
mount of compensa=
tion for damage by
white Ants to certain
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house, should be ad=
mitted -

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proper custody of goods in
the Custom House godowns.
They will also take mea=
sures for encouraging
as much as possible
the establishment
of private warehouses
under

My dear Sir

Please letter

Encl copy of the Advt
Genl Opinion re
Binny & Co's damaged
Shirtings claim

Yrs Sincy

[illegible]

(1)

Claim by Messrs. Binny &c
for damaged goods—

Please submit, as
soon as
convenient
and Record in
a Letter Book
of Precedency—

S. D. S

14 Copies. Board of Revenue Capt. B
3 " Accountant General ✓
3 " Civil Paymaster ✓
3 " Government Solicitor ✓
1 " Messrs. Binny & Co. ✓

C. Sec. Dft. R III

Revenue 1861 Septr.
Pro: of Govt for Septr.

N: 1815.

Pro: of the Madras Govt.
D/ 12th September 1861.

~~Forwd to Board~~ 16th
Septr/61 R. 22/62.

Admitting the claim
of Messrs Binny & Co
for compensation for
damage by White ants
to certain Shirtings
lodged by them in the
Bonded Warehouse.

N: 136 & 137.

2-6
2-7-61