

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	942	Press Mis.
Dated	21. 4-	1866.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
21st April 1866.*

No. 334. Read the following Proceedings of the Board of Revenue, dated 16th April 1866, No. 2,631:—

Read again letter from the Collector of Sea Customs, dated 23rd February 1866, recorded in Board's Proceedings, 2nd March 1866, No. 1,468.

Read also the following letter from the Collector of Sea Customs, to the Secretary to the Board of Revenue, dated Madras, 3rd March 1866, No. 252.

In reply to Board's Proceedings, dated 2nd instant, I have the honor to enclose a Statement, showing the amount of Godown rent collected during the last ten years. The future annual receipts, I think, may be fairly estimated at about 14,000 Rupees.

Statement of Godown Rent.

Official year.	Amount. Rupees.
1856-57... ..	5,500
1857-58... ..	4,184
1858-59... ..	6,965
1859-60... ..	8,671
1860-61... ..	35,496
1861-62 †	13,593
1862-63... ..	8,355
1863-64... ..	10,268
1864-65... ..	16,714
From May 1865 to February 1866	11,301

* Large increase owing to the length of time merchants kept their goods in the Custom House, and the extent to which they availed themselves of the Bonded Warehouse.

† Bonded Warehouse abolished on the 1st April 1862.

MADRAS,
3rd March 1866.

(Signed) J. H. BLAIR,
Collector of Sea Customs.

1. Ordered that the above papers be submitted to Government, with the Board's recommendation that orders be at once passed for flooring all the Customs House yard and sheds with Asphalt.

2. The only way, apparently, by which the Government could free themselves from this liability to make good damage to goods lodged in the yard, would be by waiving all claim to "Godown rent," but this would be fatal to all order or system in the yard, the rent being the sole check against over-crowding and unreasonable delay in removing goods.

3. The Board submit, for the consideration of Government, that the "Godown rents" might very legitimately be formed into a fund for the maintenance and improvement of the Customs House, the yard, godowns, &c. It would be a great improvement to roof in the whole yard.

No. 335. ORDER THEREON, 21st April 1866, No. 942.

Miscellaneous.

Referred to the Department Public Works for the preparation of an estimate for flooring the sheds in question with Asphalt.

(True Extract.)

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

To the Public Works Department,
,, the Board of Revenue.

Exd. T. O'Connor.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 2nd March 1866.

Read the following letter from J. H. BLAIR, Esq., Collector of Sea Customs, to the Secretary to the Board of Revenue, dated Madras, 23rd February 1866, No. 219:—

1. I have the honor to report to the Board that Messrs. C. J. Robinson and Co., have claimed the value* of a bale of T Cloth ex "Cleadow" from London, rendered unmerchable by the attacks of white-ants, while in the Customs godowns.

* Rupees 710 8-0.

2. As the Board, in 1861, was desirous† of the then Advocate General re-considering his opinion on Messrs. Binny and Co.'s claim, for compensation for Shirtings damaged by white-ants in the Bonded Warehouse, I have obtained the opinion‡ of the Advocate General in this case. Mr. Norton agrees with the views expressed in 1861, and considers Government responsible for the damage.

3. I have ordered the sale of the bale of T Cloth, and will report the result.

4. The subject of flooring the yard with asphalt, has already been before the Board, in the correspondence marginally noted. In paragraphs 2 and 3 of the District Engineer's letter, dated 17th August 1860, No. 835, it is stated that, "As the roof of the Import sheds is "mainly constructed of iron, and the pillars of "brick in chunam, it is difficult to comprehend from what causes the white-ants infest the place." As white-ants usually come up through the floor, I do not see the force of this argument. The only remedy in my opinion, is to have the whole yard floored with asphalt. Colonel Horsley, in paragraph 2 of his letter, marginally noted, stated that "it is highly desirable to cover the flooring of the sheds with asphalt," and Colonel Lawford appears to have been of the same opinion.

Dated 31st August 1860, No. 4,389—vide Board's Proceedings, No. 4,246, dated 19th September 1860.

Vide paragraph 3 of Colonel Horsley's letter to Government, dated 27th February 1861, No. 10,405, in Board's Order, No. 1,357, dated 11th March 1861.

5. There is no establishment to shift goods morning and evening, which must in future be done, unless the yard is made impervious to white-ants, and even then goods will not be safe from damage.

6. To say nothing of the cleanliness and convenience of asphalt-flooring, the question seems to resolve itself into, which of three plans is cheapest. First, payment of damages; second, partial cure, by keeping a large establishment of coolies for moving packages constantly; third, prevention, by asphaltting the whole yard. If the last plan is adopted, the work should be commenced as soon as possible, and, until finished, a staff of coolies should be entertained for shifting and moving packages in the parts of the yard infested by white ants.

ENCLOSURE No. 1.

From J. R. BOYSON, Esq., Government Solicitor, to the Collector of Sea Customs, dated Madras, 19th February 1866, No. 89.

Referring to your letters of the 31st January last, No. 117, and 3rd February instant, No. 129, with their respective enclosures, and to your subsequent verbal communications with the Advocate General and myself, relative to the responsibility of Government for damage by white-

ants to certain goods whilst they were stored in the Custom House; I now forward you a copy of the Advocate General's written opinion, and return the original papers which you sent for reference.

(True Copy.)

(Signed) J. H. BLAIR,
Collector of Sea Customs.

COPY—OPINION.

1. I have carefully perused the letter from the Collector of Sea Customs, under date 31st January 1866, No. 117, together with its enclosures, as also the further information which I thought it necessary in this case to call for.

2. The case submitted to the Advocate General in 1861, when Messrs. Binny claimed compensation for Shirtings damaged by white-ants in the Bonded Warehouse, has scarcely any bearing upon the question now before me. In that case, the goods were bonded by the consignee in the Public Warehouse, under the provisions of Act VI. of 1863. Chapter on "Warehousing," Section 93, applies expressly to the case of warehoused goods.

3. In the present case the goods have never been warehoused, but placed by the Captain of the "Cleadow" in the custody of the Officer of Customs, under one of the Sections 52, 55 (I am not informed which), with a notice that the goods were to remain in such custody, subject to the Captain's alleged lien for a "general average."

4. The Section which must govern this case is the 188th.

5. I have no doubt that the injury in the present case has been caused by the "wilful neglect" of the Officers of the Customs.

6. No doubt white-ants are very insidious, sudden, and destructive in their attacks. But this is generally well known, and requires all the more watchfulness on the part of those who are bailees for hire of goods. Goods may easily enough be so disposed as to permit of the approach of the white-ants being watched. Thus they may be placed on vessels and free of the walls, so that they may be examined morning and night on every side, and if this be not done, it constitutes in my opinion, wilful neglect.

7. The responsibility of a bailee for hire is well defined at the Common Law. The Government here is a bailee for hire unquestionably. A rent is charged for the place in which the goods are stowed. The Board of Revenue appears in 1861 to have drawn a distinction between charging a rent, and working for profit. I confess I cannot see that the distinction makes any difference. I agree with the views expressed by the Advocate General in the case then before him. Whether for profit or not, the Government by charging a rent becomes a bailee for hire. But really it becomes superfluous to consider what are the liabilities of the Government at Common Law; since the amount of its responsibility is expressly defined and limited by the Legislative in Act VI of 1863. The only question as it appears to me is, whether or no permitting the goods bailed to be destroyed by white-ants is a "wilful neglect."

8. It may be suggested, that in this case there is no privity of contract between the Government, and the present applicants the consignees. When the consignee of goods bonds them, there is no doubt an express, or at least an implied, contract on the part of the Government to take care of the goods, and to be responsible for their loss, limited by the conditions expressed in the Customs Act. But here the contract originally is between the Captain and the Custom House Officer. The Captain when depositing the goods cannot be regarded as the agent of the consignee, for he is acting in direct opposition to him. But it appears to me that when the Captain and the consignee have adjusted their differences, and the Captain gives his permission to the consignee to receive possession of the goods, he makes over all rights which he himself possessed.

I think it is too clear for argument that the Captain at any rate would have a perfect right to claim from the Government any damages which the consignee could obtain from him for the non-delivery of the goods in a merchantable condition, such injury having accrued during the period when the goods were in the custody of the Custom House, and through the wilful act or neglect of the Custom House Officers. If, therefore, the consignee sued the Captain and recovered, the Captain would have his remedy over against the Government.

9. But when the claim for freight, general average, &c., as the case may be, is satisfied, I think the consignee stands in the Captain's shoes, and has a right to demand, from the Custom House Officers, the delivery of the goods in as good condition as when the Captain put them in charge of the Custom House Officers. If they be not so, and the injury is the result of the wilful act or neglect of the Custom House Officers, the Government is responsible.

10. I think that there arises an implied contract on the part of the Custom House Officers to deliver to the consignee in as good condition as the Captain himself delivered them. Section 188 seems to me to point to this, and to bear out this construction which in itself is only fair dealing and reasonable. It appears to me to make the Custom House Officers liable to any importer for all goods while they remain in the Custom House. The special case of warehousing has been previously provided for by Section 93.

(Signed) J. B. NORTON,
Advocate General.

17th February 1866.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

(True Copy.)

(Signed) J. H. BLAIR,
Collector of Sea Customs.

1. Before recommending to Government that the sheds be floored with asphalt, the Board desire to know what amount of godown rent has been collected during the last ten years, and at what sum the annual receipts may now be estimated.

2. It appears to the Board that these receipts might very properly be formed into a fund for the proper maintenance and improvement of the Customs House Yard and Sheds, Godowns, &c.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To the Collector of Sea Customs.

Exd. J. Wright.

Referred to
the D. N. W.
for the prepa-
ration of an
estimate for
flooring the
sheds in question
with asphalt

L. D.

21st April 1866

31. To the D. N. W. 230 p.m.
14. To the D. N. W. 230 p.m.

N^o 334-335

Rev. 1866. Department.
Proc of Govt for April

No. 1130.
PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 16th April 1866.
Despatch 13 June
Despatch 19 June
Despatch 21 June

Letter No. 3344/70

No. 2631.

From Supt. Engr
1. By 273 Dec 1866
C. 1. 361

Recommending that orders may be passed for
flooring all the Custom House yard and sheds
with asphalt.

21st April

With order

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