

751

No. 300. Read the following Proceedings of the Board of Revenue, dated 5th April 1871, No. 1,488:—

Read the following letters :—

From Messrs. BINNY & Co., Agents, British India Steam Navigation Company, (Limited), to the Acting Secretary to the Board of Revenue, dated Madras, 24th February 1871.

REFERRING to our recent correspondence regarding the dispute between the Acting Collector and the Company's Agents at Bimlipatam and Vizagapatam, we now have the honour to enclose copy of a letter addressed to Messrs. Hyslop & Co. by the Acting Collector.

2. We submit that, though the Board's Orders of the 5th January are complied with in letter, the spirit is altogether disregarded, and that the hindrance to the Company's business is just as great now as it was before the issue of the new order from the Acting Collector. It is simply impossible for the Company's Agents to send in immediately on the steamer's arrival the amount of their lien on each separate shipment, as there are frequently several thousand packages to land, and the time of the Agents is fully occupied in giving the steamers despatch and getting them away by their contract dates.

3. Messrs. Hyslop & Co. are fully prepared to furnish the Board with the tariff of their landing charges, and should this be done, we feel confident that the assertions, which have been made that the charges are exorbitant, will be completely refuted.

4. We have the honour to add that no such difficulties as those now complained of were experienced by the Company's Agents at Bimlipatam and Vizagapatam during the Collectorships of Mr. Fane and Mr. Minchin.

ENCLOSURE No. 1.

From the Acting Collector of Vizagapatam, to the Agents, British India Steam Navigation Company, (Limited), Bimlipatam, dated Vizagapatam, 11th February 1871, No. 138.

IN REPLY to your letter, dated 26th January last, I have the honour to inform you that the necessary orders on the subject of the Board's Proceedings, dated 5th January, were issued to the Superintendents of Vizagapatam and Bimlipatam on the 19th of that month.

2. In reference to the delivery of goods, I beg to refer you to my letter, dated 9th January, in which the course to be pursued by you and the Sea Custom Superintendents in this respect is clearly pointed out. Receipts for goods delivered at the Sea Custom-house, under Act XVII. of 1869, will be granted by the Superintendents, to whom a copy of this letter will be sent for their information and guidance.

3. In cases where the goods are subject to a lien on account of any charges under the heads specified in Section 54, Act XVII. of 1869, notice, in writing, must be given to the Superintendent of Sea Customs. This must be done in each case.

From Messrs. BINNY & Co., Agents, British India Steam Navigation Company,
(Limited), to the Acting Secretary to the Board of Revenue, dated Madras,
24th February 1871.

24th February 1871.

WE have the honour to enclose copies of a correspondence relating to the refusal of the Sca Customs Manager at Tellicherry to stop the delivery of goods

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Dated 21st April 1871
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No. 350-27-Attic/77

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Cont. of 1871

REVUE.

THE BOARD OF REVENUE,

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Dated April 27th.

Recd

20 97th April 1871, No. 750.

April.

907-62-293.

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 Case is presented. J. H.

758.

14. 20th Nov 1902
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298-299

landed from this Company's steamers until the production, by the consignees, of a written authority from the Agent at that Port.

2. We would again submit, as we have done in the Bimlipatam case, that the Collector is acting in a most arbitrary manner, and that his regulations are calculated to cause a serious obstruction to business.

3. We have the honour to enclose a copy of the Company's Bill of Lading, and you will observe from the paragraph [marked that, if the consignees fail to take delivery of their goods when the steamer is ready to discharge, the cargo may be landed at the merchants' risk and expense, and the Company is to have a lien on the goods for all such expense. Mr. Brown's landing charges are very moderate, as may be seen from his tariff which can be furnished should the Board desire it. We submit that it is far cheaper for the consignees to have their cargo landed in this way by the Agent than it is for them to send their own boats; and we trust that the Board may see fit to advise the Collector of Tellicherry not to place any unnecessary obstacles in the way of the Company's Agents.

ENCLOSURE No. 1.—Copy of Correspondence.

ENCLOSURE No. 2.—Copy of Bill of Lading.

MESSRS. BINNY & Co. complain that at Vizagapatam and Bimlipatam the Collector requires Messrs. Hyslop & Co., the Agents of the British India Steam Navigation Company, to give the Superintendent of Customs a written notice of lien, under Section 54, Act XVII. of 1869, in each case. They urge that this is impossible, because the Agents have frequently to land "several thousand packages."

2. Messrs. Binny & Co. also complain that at Tellicherry the Collector of Malabar refuses to stop the delivery goods until Mr. Brown, the Steamer Agent, gives a written authority for delivery. They point out that the British India Steam Navigation Company's Bill of Lading expressly provides that, unless the consignees take delivery directly the steam-ship is ready to discharge, the goods shall be landed at the consignees' expense, and the Company shall have a lien on the goods for landing and warehouse charges.

3. From the correspondence it appears that Mr. Brown landed a case of Rice from the *Satara* on the 1st February; that the consignees offered Mr. Brown the freight, but refused to pay him landing charges at two Pies a bag, on the ground that the charge was unusual (as it was Mr. Brown having, in this case, landed goods on his own responsibility for the first time); that Mr. Brown thereupon declined to give authority for delivery; that the Superintendent of Sea Customs, nevertheless, collected the freight from the consignees, and delivered the cargo to them; and that the Collector decided that, under Section 52, Act VI. of 1863, amended by Act XVII. of 1869, the Superintendent can only refuse delivery whilst a stated amount, which the Captain has notified to be a lien on the goods, remains unpaid. Mr. Brown complains of the collection of freight (upwards of Rs. 3,000) by the Superintendent, and states that, as he had not received the Bills of Lading at the time, he could not have given delivery orders, and did not know the correct amount of freight.

4. In the Bimlipatam case, it is clear that the Collector considers the charges of the Agents too high. His requirement that a separate written notice of lien shall be given on each package in time to stop its delivery to the consignee is one which he must know cannot possibly be complied with, and its intention is apparently to refuse even such protection to the Agents as they are entitled to by law. The Board resolve to direct Mr. Melville, after a general notice of lien has been given by the Agents, to allow them a reasonable time to put in a list showing the exact lien on each package.

5. With regard to the contention whether the Agents' landing charges are reasonable or not, they offer to submit a list for the inspection of the Board. They will be requested to do so, and if the list is approved of, after consulting the Collector, the public will be sufficiently protected, and the Collector must then allow free goods to be handed over to the Agents without being taken to the Custom-house. The Agents' argument that, as they have to arrange for boats beforehand, and keep an establishment employed to land goods, they must charge more for landing a package than the proportionate share of the boat-hire, is unanswerable.

6. Next with regard to the Tellicherry case. The Superintendent's action in collecting freight was clearly *ultra vires*. The charge for landing seems to have been reasonable. It was impossible for the Agent to put in a "stated amount" of lien before the goods were delivered to the consignees, because he did not even receive the Bills of Lading in time.

7. The Board are of opinion that here, as at Bimlipatam and all other Ports, a reasonable time must be allowed for the Agents (as Agents of the Master or Commander) of a coasting steam vessel to put in the notice of the Company's lien.

8. The public will be better served by facilitating than by embarrassing the operations of the Steam Navigation Company and its Agents.

9. The Board resolve to submit these Proceedings to Government with the request that, as uncertainty with regard to the law as to the powers of officers of Customs to retain goods, on which there is a lien, gives rise to continual correspondence and complaints, they will take the opinion of the Advocate-General, first, as to whether Customs officers can retain goods landed from the coasting steamers of the British India Steam Navigation Company for a lien notified by the Agents of the Company for freight and landing charges; and, second, as to whether Customs officers can refuse delivery to consignees until a reasonable time has been given to the Agents to give notice of their lien and its exact amount.

10. A somewhat similar question is answered in the opinion recorded in Board's Proceedings, 26th June, 1868, No. 4,762, but the law has been altered since then by Regulation XVII. of 1869, and the argument is modified in the present case by the stipulation in the Company's Bills of Lading, which is described in paragraph 2.

REFERRED to the Government Solicitor for the opinion of Acting Advocate-General, as desired by the Board.

18th April 1871.

(Signed) W. HUDLESTON,
Secretary to Government.

*Proceedings of the Madras Government, Revenue Department,
27th April 1871.*

No. 301. From E. BARCLAY, Esq., Acting Government Solicitor, Madras,
to the Secretary to Government, Revenue Department, Fort Saint George,
dated Madras, 19th April 1871, No. 166.

I HAVE the honour to acknowledge the receipt of the Order of Government,
dated 18th April instant, together with its enclosures, requesting the Acting
Advocate-General's opinion as to the powers of Customs officers to retain goods
landed from the coasting steamers of the British India Steam Navigation Company
for a lien notified by the Agents of the Company for freight and landing charges,
and also to refuse delivery to consignees until a reasonable time has been given to
the Agents to give notice of their lien and its exact amount.

2. I submitted the matter for the consideration of the Acting Advocate-
General; and I now forward herewith a copy of his opinion, and return the enclo-
sures forwarded with the order of Government above noted.

OPINION.

As to the first of the two points submitted to me, I have no doubt that, under
Act XVII. of 1869, Customs officers not only can, but are bound to, retain goods
landed by the Agents of the British India Steam Navigation Company in accord-
ance with the terms of their Bills of Lading for a lien notified by the Agents of the
Company for freight and landing charges. I may also remark, with regard to the
5th paragraph of the Board's Proceedings under reference, that the Collector of
Sea Customs has nothing whatever to do with the rate of the Company's charges.
If unreasonable the remedy of the consignees is to pay under protest, and sue for
the excess.

2. As to the second question the Agent of the Company is clearly entitled
to a reasonable time to furnish particulars of landing charges.

(Signed) J. D. MAYNE,
Acting Advocate-General.

19th April 1871.

No. 302.

ORDER THEREON, 27th April 1871, No. 751.

Separate Revenue, No. 16.
Customs.

THE opinion of the Acting Adv-
ocate-General will be communicated to
the Board of Revenue.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Acting Secretary to Government.

To the Board of Revenue.
.. the Government Solicitor.

Exd. F. R. Bantleman.

Opinion..

As to the first of the two points submitted to
me I have no doubt that under Act XVII of
1869 Customs officers not only can, but are
bound to, retain Goods landed by the Agents
of the British India Steam Navigation Com-
pany in accordance with the terms of their
bills of lading for a lien notified by the
Agents of the Company for freight and land-
charges. I may also remark, with regard to
the 5th paragraph of the Board's proceedings
under reference, that the Collector of Sea Customs
has nothing whatever to do with the rate of the
Company's charges. If unreasonable the remedy
of the Consignees is to pay under protest and
sue for the excess.

2. As to the second question the Agent of the
Company is clearly entitled to a reasonable
time to furnish particulars of landing charges.

(Signed) John D. Mayne
Actg. Adv. Genl.
Apr: 19th/41.

/True Copy/
E. Barclay

Actg. Government Solicitor

10300-302

Reference in letter from
the West India Association
to the Secretary to Government
in the month of April 1871, No. 166.

Copy of the letter to the Secretary to Government

Recd: 1255/71

166.

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Madras 19th April 1871.

From,

Ernest Barclay

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2. I submitted the matter for the consideration of the Acting Advocate General and
3. I now forward herewith a copy of his opinion

Madras 19th April 1871.

From,

Ernest Barclay

A. G. Govt. Solicitor. Madras.

W. H. Baddeley Esq

Secretary to Govt. Revenue Dept.

Fort Saint George.

Sir,

I have the honor to acknowledge the receipt of the Order of Government dated 18th April instant, together with its enclosures, requesting the Acting Advocate General's opinion as to the powers of Customs Officers to retain goods landed from the Coasting Steamers of the British India Steam Navigation Company for a lien notified by the Agents of the Company for freight and landing charges, and also to refuse delivery to Consignees until a reasonable time has been given to the Agents to give notice of their lien and its exact amount.

2. I submitted the matter for the consideration of the Acting Advocate General and

3. I now forward herewith a Copy of his opinion

Rev- 1871. *Dr. H.*
Board of Revenue,

MADRAS.

Rev- 1255/71 *H.* 1218.

PROCEEDINGS, 5TH APRIL 1871, No. 1,488.

Dated 17th April 71

1. B. H. S.

Encl.

O. B.

Received 18th April 71APRIL.
No. 1,488.

Goods landed from Coasting Steamers.—
Reasonable time to be allowed to Agents of British India Steam Navigation Company to furnish Sea Customs Superintendents with a written notice of exact amount of Company's lien on—, for freight and landing charges. Agents desired to submit a list of such charges. Government requested to obtain opinion of Advocate-General as to powers of Customs Officers to retain goods on which there is a lien.

S. C. M. 757-27 April 71

Approved

1.166.
Approved by the S. C. M. for the opinion of the S. C. M. as advised by the S. C. M. 18th April 1871.

opinion and return the enclosures forwarded
with the Order of Government above noted.

I have the honor to be,
Sir,

Your most Obedt. Servant,

James Barclay
Att. Gen. & Solicitor.

New York 1871. Nov 4th
 Dear Mr. Andrews,
 No. 1255.
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 To the New-England Society.

dated 19th Dec 2023 April

John D. D.

Enclosure to Geo. Briggs
10 May 68

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Officers to retain goods.

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for freight & landing charges

Wm Lloyd Garrison

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14 Sept 68

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[Handwritten signature]

The Journal of the Association
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Recd. M. 11/12/71
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Cont. of 1871 30th Nov.

REVENUE.

THE BOARD OF REVENUE.

to, to, to,

Dated April, 27th.

Recd. Encl.

G. O., 27th April 1871, No. 751.

APRIL.
 Nos. 300-302.

Powers of Customs officers to retain goods
 landed from coasting steamers.—Opinion of the
 Acting Advocate-General on this subject, commu-
 nicated to the Board of Revenue.