M.R.O. 1—77,006—8-6-37.

(1) Number of pages 34

(2) Date of repair 30-8-38

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	6757	Press Mis.
Dated	7-11-	1887.

Not to be folded or roughly handled

No 1482

Madras 14th September 1887.

GOVERNMENT OF MADRAS
16 SEP 87
REVENUE DEPARTMENT

From

Ernest Barclay,

Government Solicitor,

Madras.

W 5167

To,

The Secretary to Government,

Revenue Department,

Ootacamund.

Sir,

1. With reference to the claim of Messrs. Arbuthnot & Co in respect of the purchase by them on the 2nd November 1885 of 177 bales of Government Cinchona Bark I have now to request the orders of Government as to whether this claim is to be settled as that of Messrs. Wilson & Co was.

2. The facts of the case seem to be as follows. At an auction sale held by Messrs Oakes & Co on the 2nd November 1885 Messrs Arbuthnot & Co., purchased 177 bales of Government Cinchona Bark. This sale was announced by advertisement and hand bill which contained what purported to be a report by the Government Quinologist of the analysis made by him on the Bark to be sold, and one of the conditions of sale was that lots should be taken with all faults and errors of description, nothing, however, being said in the conditions about the analysis.

3. On the 3rd February 1886 Messrs. Arbuthnot & Co wrote to Messrs. Oakes & Co with copy of a letter to them dated 15th January 1886 from the London firm for whom they said they had purchased the bark, and also copy of a letter from Messrs. Lewis & Peat, Bark Brokers in London, and Messrs Arbuthnot & Co pointed out that the Bark was not what they understood they were buying according to the published Government analysis, which they say formed part of the

Catalogue

Catalogue of the sale, and they declined to accept the bark, sug-
-gested that Government should either instruct them to have the
bark sold on Government account or should name some one to whom it
could be delivered on behalf of Government, and requested cheque for
the purchase money.

4. In the letter from the firm from whom the Bark was said to
have been purchased it was said that the bark had been analysed --
with the result that the per-centage of crystallized sulphate of
quinine was totally different to that given by Government in their
Catalogue of sale, that the bark was not what the firm understood
they were buying and that as it was quite unsuited to their require-
-ments they must decline to receive it. The firm enclosed copies of
the analysis supported by a letter from, as they said, the most im-
-portant Bark brokers in London.

5. The letter from Messrs. Lewis & Peat the brokers, copy of which
was enclosed in the above stated that the samples of bark were care
-fully taken by them from the larger samples drawn by the London
Dock Company, and that such samples were analysed by Mr. S. W. Fich, and
Messrs Lewis & Peat then give the result of the analysis.

6. On the 10th March 1886 after a long correspondence with Messrs.
Oakes & Co, Messrs Arbuthnot & Co, forwarded copies of such corres
-pondence to the Chief Secretary to Government with a request for
a refund of the amount they had paid for the bark. The matter then
appears to have been referred for opinion to the then Acting Advo-
-cate General, Mr. Shephard, and in his opinion dated 1st April 1886
he says that from the Director's letter (116) of 25th February 1886,
he gathers that Messrs Arbuthnot & Co, had an opportunity of ins-
-pecting the bales and were not compelled to rely exclusively on
the description given in the advertisement and that, although they
took samples, the sale was not properly a sale by sample nor did
Messrs. Arbuthnot & Co, complain of the bulk being inferior to sample.
This they apparently do however for they claim in respect of 5 out
of

of 6 sorts of bark as will be seen later on. Mr Shephard advised
that under the circumstances viz that the buyers having bought spe-
-cific lots and found that the quality was not what was represented
in the auctioneer's description were not in a position to seek an
entire release from the bargain, because the sale was one of speci-
-fic goods in which the property had passed to the buyers on deli-
-very and they did not reserve to themselves the powers of reject-
-ing the goods on their inferior quality being discovered, and that
their right was to bring an action on the warranty, if warranty
existed. He further advised that the Quinologists report would, in
the absence of saving words constitute a warranty of quality, and
that, if it could be shewn to be incorrect, Government would be liable
in damages. With regard to the condition of sale that lots should be
taken with all faults and errors of description, Mr. Shephard ad
-vised that there was no warranty of the accuracy of the analysis
and that Government could not even be held liable in damages.

7. On the 15th April 1886 Messrs. Arbuthnot & Co, again wrote to
the Chief Secretary requesting instructions as to whether they re-
were to hand over the bark to some one whom Government would depute
to receive same or to sell it on Government account, and again re-
-questing a refund of the amount they paid for the bark.

8. With regard to Mr Shephard's statement that he gathered that
Messrs Arbuthnot & Co, had an opportunity of inspecting the bales
and were not compelled to rely exclusively on the description given
in the advertisement, it appears by a letter dated 21st April 1886
from Messrs Oakes & Co, to the Director of Government Cinchona that
samples of the bark were delivered to Messrs Arbuthnot & Co, on the
19th September 1885; but, apparently, this would not be of any use to
them, as they could not tell the quantity of crystallized sulphate
of quinine in the bark by inspection.

9. By G. O. No. 2673 Mis: dated 6th May 1886 Messrs. Arbuthnot & Co,
were informed that Government declined to accede to their request
that

that the amount paid by them for the bark should be refunded.

10. On the 19th October 1886 Messrs Wilson & Co, filed Suit No. 225 of 1886 against Government for recovery of Rs. 2866-7-8 being dama-ges on the sale of 60 bales of bark purchased by Messrs Wilson &Co on the 7th September 1885, the Plaintiffs alleging that by the Govern-ment Quinologist's Report on the analysis of such bark published by Government prior to the sale, Government gave a warranty as to the quality of the bark and made false representations as to such quality; but that the bark did not contain the amount of crystal-lized Sulphate of Quinine mentioned in such warranty and which -- Government represented the bark to contain; but, a much less quan-tity. In the written statement put in on behalf of Government in this suit it was denied that any warranty was given by Government in respect of the bark or that Government made any false representa-tion as to its quality, and Government pleaded the condition of - sale that the lots were to be taken with all faults and errors of description as exempting Government from liability. It was further pleaded that the analysis attached to the particulars of sales was a fair analysis of the whole of the bark, such analysis being an - analysis of a sample taken from the whole of the bark.

11. In November 1886 the papers in Messrs Wilson & Co's suit were laid by the Acting Government Solicitor before the late Advocate - General Mr. O'Sullivan, and in his opinion, dated 25th November 1886, that gentleman, after reciting the facts of the case, remarked that Mr Shephard, to whom the papers were sent upon a claim substantially similar to Messrs Wilson & Co made by Messrs Arbuthnot & Co, gave an opinion that there was no warranty of the accuracy of the analysis by reason of the third condition of sale, that this was founded up-on the conclusion, which he came to, that Messrs. Arbuthnot & Co., had an opportunity of inspecting the bales and were not compelled to rely exclusively on the description given in the advertisement Mr. O'Sullivan further said that from enquiries which he had made

from

from Mr Lawson and Mr. Hooper, he understood that the value of crown bark depended upon the quantity of crystallized sulphate of Quinine which it gave and that inspection would not enable a person to as-certain this. Mr. O'Sullivan further stated that he understood -- that reliable analysis could not practically be procured in Madras, and that an intending purchaser would have to send samples of the bark to London for analysis. Mr O'Sullivan then expressed the opini-on that in these circumstances Messrs Wilson & Co were entitled to rely upon the representation contained in the report as to the --- analysis notwithstanding the third condition of sale, and pointed out that Messrs Wilson & Co said in substance, and would, no doubt, - prove it, that they did rely upon it. Mr. O'Sullivan also pointed out, and this applies as much to Messrs. Arbuthnot & Co's claim as to Messrs. Wilson & Co's, that the present condition is as follows "Lots to be taken with all faults and errors of description and - analysis" and that this alteration would be used with more or less effect by the plaintiffs, and he advised that there was no substan-tial defence to the suit and that it should be adjusted. I should here mention that in a letter dated 29th November 1886 to the Acting Government Solicitor, Messrs Arbuthnot & Co stated that they had -- never obtained from the Chemical Examiner to Government any analysis upon any bark purchased by them at the auction sales of Government Bark held in Madras.

12. To dispose of Messrs Arbuthnot & Co's claim, the main facts in respect of which are much the same as those in respect of Messrs. Wilson & Co's, it is necessary to see what evidence there is on one side and another as to the quality of the bark purchased by Messrs. Arbuthnot & Co.

13. In a memo furnished by the Director of Government Cinchona to the Acting Government Solicitor with reference to Messrs Wilson &Co's bark, Mr. Lawson after explaining the system of collecting the bark, proceeded to say that when a large bulk weighing several tons of

bark

bark is heaped together, the latter portion which is baled is com-
-posed of smaller pieces than that first baled; but, that it would always, except under circumstances of grave neglect, be of the same character and equal value as that first baled, or at any rate only a slight deterioration should take place, and that, owing to a lar-
-ger portion of extraneous matters being mixed up with it, such -
as the dead outer bark and lichens rubbed off the bigger strips du-
-ring the process of handling them; but, he said that although the different kinds of bark are kept separate, portions of other kinds will generally be found mixed, but to an exceedingly small extent, and Mr. Lawson attributes this to the carelessness of the coolies in taking the bark in the field, or in shifting it in the drying -
shed; but, adds that the adulteration of one kind by another ought to be exceedingly small and such as no purchaser would think of -
objecting to. It is necessary to go somewhat fully into Mr. Lawsons statements on this subject, as, if Messrs Arbuthnot & Co's claim is to be resisted, Government will probably have to rely to some extent on Mr. Lawson as a Witness, and it is as well therefore to see the kind of evidence he can give. As a another example of this, Mr. -
Lawson further on in this memo says that in the September sale of 1885 143 bales of natural crown bark were sold, of this quantity 68 bales formed one batch and the remaining 75 formed another batch, and the samples sent out were selected from the second batch only, through the belief that the two had originally formed one and the same quality of bark, that Messrs. Wilson & Co bought their lot - from the first batch and therefore from that portion upon which no special analysis had been made. In other words a report of an analysis of one batch of bark was published for the information of intending purchasers; but it was not a report of an analysis of the bark which Messrs. Wilson & Co purchased, though the report purported to in -
-clude that bark. In conclusion Mr. Lawson says that it is impossible to say whether the two batches were identical in their alkaloidal

value

value as assumed by his office or whether they materially differed; or, perhaps it might be added, whether the bark was adulterated in the manner explained by Mr Lawson: apparently such was actually the case as I shall show.

14. In a letter dated 26th January last to Mr Morgan, Mr Lawson -
explained that what he intended to make clear in his Memo was that none of the bark which was actually bought by Messrs Wilson & Co had been analysed by Mr Hooper; but, was made up of lots consisting of the remainders of former sales and that they were not analysed because it was believed that the bark was of the same quality as that which had been analysed; but, that at such a distance of time and the bark being no longer in the possession of Government he -
could not speak positively on the subject. The natural question - occurs here whether Mr Lawson or Mr Hooper is in a position now to speak positively as to the analysis of the bark purchased by Messrs Arbuthnot & Co, which, like that purchased by Messrs Wilson & Co., is no longer in the possession of Government.

15. I now come to what Mr Lawson says with regard to the bark pur
-chased by Messrs Arbuthnot & Co. In a letter dated 3rd February -
1887 to Mr Morgan, Mr Lawson after giving further particulars of -
the bark sold to Messrs Wilson & Co says "The bark bought by Messrs
" Arbuthnot & Co formed no part of the sixty eight or seventy five
" bales, all these having been disposed of in the September's sale;
", but, nevertheless they formed a portion of the accumulations which
" had been going on during the past years. Mr Lawson encloses a form showing 1st the number of bales of each kind of bark which - Messrs Arbuthnot & Co bought, 2nd the value of the bark according to Mr Hooper's analysis, 3rd the number of units of sulphate of quinine which each kind ought to have produced according to Mr. Hooper's - analysis, 4th the analysis as given by Messrs. Arbuthnot & Co's agents 5th the number of units of sulphate of quinine which could be con-
-tained in each kind according to Messrs Arbuthnot & Co's agents - and 6th the estimated loss of units viz 3513. Mr Lawson then states

that the value of the unit at the end of October (1885?) went as — high as 8d, but at the end of the year it fell to 5d to 5½d and that Messrs Arbuthnot & Co could never have obtained more that 6d, so that, under any circumstances, they must have lost money, and he suggests that if Messrs. Arbuthnot & Co are to be paid anything it should be £ 82-16-6 the value of 3313 units at 6d per unit.

16. I presume from the above, though with some doubt, that Mr. Hooper did analyse the bark purchased by Messrs Arbuthnot & Co and that he or Mr. Lawson has some record of such analysis. But, at the time — when this letter of Mr. Lawson's was written, Messrs Arbuthnot & Co were seeking to set aside their purchase altogether and to recover their purchase money on the ground of a breach of warranty, and Mr. Lawson does not apparently dispute that they had sustained a loss on their purchase through the difference between the quality of the quinine they bought and that shown in the report of analysis published; but he does not admit that there was a breach of warranty. Mr O'Sullivan has advised however that in Messrs Wilson & Co's case (which so far as I am aware does not differ in this respect from Messrs Arbuthnot & Co's) that they were entitled to rely upon the representation contained in the report as to the analysis, or, in other words, that it did amount to a warranty.

17. On the 4th April last Messrs Wilson & King Solicitors on behalf of Messrs Arbuthnot & Co addressed the Acting Government Solicitor regarding Messrs Arbuthnot & Co's claim and stated that their clients were informed that Government had recognized Messrs. Wilson & Co's claim and had paid the sum claimed by them, that their clients believed they were entitled to reject the bark sold to them altogether, in which case their claim against Government would be a very heavy one; but, that to avoid litigation, they were willing to claim only the difference between the value of 177 bales of bark containing the percentage of crystallized sulphate of quinine which the Government Quinologist represented the bark purchased to contain and the actual value of the 177 bales on the first public sale after their arrival in London. The Acting Government Solicitor subsequently saw Mr King on this subject and he then repeated that his clients were willing to claim only the difference between the price which the 177 bales would have realized on the first public sale after their arrival in London if the bark had contained the percentage of crystallized sulphate of Quinine which the Government Quinologist represented the bark purchased to contain, and the actual value at the first public sale after arrival in London of the 177 bales. On the 13th April the Acting Government Solicitor wrote Messrs Wilson & King recapitulating these terms and requesting that, in order to more clearly ascertain the nature and amount of the claim, they would furnish him with detailed particulars of the amount claimed on such basis, a copy of the Brokers' report of the analysis and a copy of the account sale, and inquiring the date when the 177 bales arrived in London, the date of the first public sale thereafter and the date of sale of the 177 bales.

18. On the 17th ultimo Messrs Wilson & King wrote to the Acting Government Solicitor with particulars of Messrs Arbuthnot & Co's claim amounting to £ 199-2-2 the difference they say between the amount actually paid at the auction sale at Madras for the bark and the value of the bark (containing a lower percentage of sulphate of quinine than was stated in the Government Quinologists's analysis) calculated in proportion to that sum. Messrs Wilson & King then state that the bark arrived in London in December 1885, that 54 of the bales were sold on the 29th July and the remainder on the 30th November 1886, and they enclose Broker's report showing that the value in January 1886 was 4½d per unit per lb. and the original analyses by Mr. Rich: these papers I now enclose together with a summary I have prepared of their contents and I shall be obliged by the return of the original papers.

19. Assuming, as I must after the opinion of the late Advocate Gene

-ral

-ral, that the insertion in the hand bills of sale and the advertise-
-ment of the Government Quinologist's report of analysis of the
Bark to be sold amounted to a warranty and that Messrs Arbuthnot
& Co were entitled to rely on the report, it appears to me that the
claim put forward by them now is in proper form. The bales of bark
were specific articles for they were marked and the contract was
not to buy any 177 bales of bark, but these specific marked bales -
According to the evidence of Mr. Rich's analyses the warranty was
broken as the bark was not of the quality represented, inasmuch as
it did not contain the quantity of quinine which the report said it
did, and under these circumstances the buyers are entitled to com-
-pensation from Government for the loss caused by the breach of --
warranty. The question therefore is what is the amount of such loss
and that is I think fairly shewn by the enclosed papers, the amount
claimed I understand being the difference between the cost of the
Bark when purchased by Messrs Arbuthnot & Co and the amount it would
have realized of the quality advertized by Government and if sold
in January 1886; but, it will be observed that the bark was, accord-
-ing to what Messrs. Wilson & King say, sold partly in July and -
partly in November 1886 and may of course have realized at those--
times better or worse prices. But, what Messrs. Arbuthnot & Co apla-
-rently claim is, to be put in the same position as if the bark had
been of the quality represented, and it seems to me that they are -
entitled to this and that they took the risk of the rise or fall of
the market by holding till July and November. In a case of breach
of contract by non-delivery of goods the proper measure of damages
is the difference between the contract price and that which the
goods would have realised had they been delivered; but, here the
breach of contract is the failure to deliver bark of the quality
contracted for and the proper measure of damages is the amount that
will make good the loss occasioned by such failure.

20. The only other point on which I need remark is the evidence.

On

On behalf of Messrs. Arbuthnot & Co there will be the evidence of
Mr. Rich as to the quality of the Bark and of the London Brokers as
to the value of bark of the quality which was sent home. Messrs.
Arbuthnot & Co could of course prove that the bark they bought at
Messrs. Oakes & Co's sale on 2nd November 1885 was sent home, and
the London Brokers will prove that that same bark was submitted to
Mr. Rich for analysis and it will be observed that the analyses --
identify the bark by the marks on the bales. Against this there is,
so far as I am aware, only the evidence of Mr. Lawson who admits that
the bark bought by Messrs. Arbuthnot & Co "formed a portion of the
accumulations which had been going on during the past years" and of
Mr. Hooper who apparently analysed this bark; but, whose report on
such analysis is directly contradicted by the analyses of Mr. Rich.
Which analyses are the more likely to be correct I am, of course,
quite unable to say as I am almost entirely without information as
to when Mr. Hooper made his analyses and how he connects same with
the bark bought by Messrs. Arbuthnot & Co. Unless the evidence on -
these points is very much more satisfactory than that which was --
forthcoming in the case of Messrs. Wilson & Co, I am afraid the pros-
-pects of success in resisting the claim of Messrs. Arbuthnot & Co
would not be very encouraging.

21. I must apologise for the length of this letter but the case of
Messrs. Arbuthnot & Co is so closely similar to that of Messrs. Wil-
-son & Co that I was obliged to go into that case to a great extent
to arrive at a conclusion with regard to Messrs. Arbuthnot & Co's
claim. I now await the instructions of Government as to whether or
not the present claim is to be settled, and, if so, whether any and
what items of same are disputed.

I am, Sir,

Your Obedient Servant,

Ernest Barclay

Government Solicitor.

ABSTRACT.

Encl 8

(1887 .

REVENUE DEPARTMENT.

No. 756

From The Govt. Solicitor, Madras

Dated 14th
Received 16th } Septr.
Enclosures 8

No. 482.

SUBJECT.

Requesting orders as to whether the claim of Messrs Arbuthnot & Co in respect of the purchase by them of 177 bales of Cin. Bark is to be settled as that of Messrs. Wilson & Co ans.

No. 535

Madras 10th October 1887.

From,

Ernest Barclay,

Government Solicitor,

Madras.

To,

The Secretary to Government,

Revenue Department,

Madras.

Rob 11/10.

Sir,

With reference to my letter of the 14th ultimo No. 482 - regarding Messrs Arbuthnot &co's claim in respect of Cinchona pur- -chased by them from Government, I beg to inform you that I have - received a letter from Messrs Wilson and King, Messrs Arbuthnot &co's Solicitors, calling attention to their letter of 17th August last - and requesting an early reply thereto.

I am, Sir,

Your Obedient Servant

Ernest Barclay

Government Solicitor.

Saon

ABSTRACT.

Soon

(1887.)

REVENUE DEPARTMENT.

No. 8090.

From The Govt: Solicitor
Madras.

Dated 10 } Oct. 1887.
Received 11 }

Enclosures —

No. 535.

SUBJECT.

Informing that he has rec'd a letter from Messrs. Arbuthnot & Co's Solicitors calling attention to their letter of 1st Jany: last and requesting an early reply thereto.

P.D. 13/1055

No 48. Ootacamund. 18th October 1887.

From
M. A. Lawson Esq.
Govt Botanist & Director.
Govt Cinchona Plantations
Nilgiris

To The Secretary to Government.
Revenue Department.
Ootacamund.

Sir. With reference to your official Memo, No 257 of the 14th October 1887. Revenue. I have the honor to inform you that there can be no doubt as to the accuracy of the analyses of the samples of the bark which were sold: but, as I have in former letters shewn, there is no possibility of guaranteeing that the samples taken from the crude bark can be absolutely relied upon.

The analyses published prior to the sale of 177 bales of Cinchona bark by Messrs Oakes & Co for Government, on the 2nd November 1885, were believed, at the time, to be fair & sufficient analyses of the barks to which they purported to relate; & with the reservation mentioned in the last paragraph, they are still believed to be so by the Government Quinologist, with the exception of one lot, viz the Wodabetta Natural Crown, which may

has been placed at too high a figure, owing to the sample which he received being richer than the bulk. The only indication of this however is that the amount of Sulphate of quinine in the lot stands higher than the ordinary her centage usually found in the Crown barks.

The analyses in every case has related to one particular kind of bark, & never to several kinds which has been mixed; but separate analyses are not usually made of the same kinds when taken from different plots on the same estate.

A full examination of Messrs Arbuthnot & Co's claims has been given by me in my letter dated the 3rd February 1887 to Mr William Morgan, the then Acting Government Solicitor.

I have the honor to be
Sir
Your most obedient
Servant
M. L. Lawson Director
Govt Botanist
Govt Cinchona Plantations

4. The points for determination now seem to be
(a) Whether Mr ... Lawt

Revenue Misc Dep't.

Revenue (1887.88) Cinchona

No 8557.

From
The Govt Botanist
& Director
Cinchona Plantations
Ootacamund

RECEIVED
REVENUE DEPARTMENT

To
The Secretary to
Government.
Revenue Department.
Fort St George.

No 48. 15/10

Dated 18 October 1887

Acknowledged — do —

Received 20 —

Subject 17/10/87

Analyses of Cinchona bark.

I have the — Informo that the published Price to the Sale of 177 Bales on the 2d November 1885 were believed at the time & still are to be fair & sufficient analyses of the bark to which they purported to relate, & shows how the bark analysed was connected with that sold.

Rec 5:20.8m
5.11.10

REVENUE, DEPARTMENT.

Current No. 8090 & 7516.

From Govt Solicitor, Madras.

Dated 10th October 1887.

FOR ORDERS.

These papers relate to a claim by Messrs Arbuthnot & Co for damages for a breach of Warranty in respect of 177 bales of Cinchona bark purchased by them from Govt at an auction held by Messrs Parker & Co on the 2nd Nov. 1885.

2. The case is very similar to that of Messrs Wilson & Co, disposed of in G.O. No. 1298, of 1st March 1887 in which Govt at first proposed to defend the suit but afterwards ordered a compromise to be entered into, on its being shown that there had really been no analysis of the bark prior to the purchase, & that subsequent analyses by the Government Chemologist agreed closely with those relied on by the Pltffs.

3. The facts of the case are fully stated in the letter of the 14th ult. from the Govt Solicitor (Cur. No. 7516 of 1887).

4. The points for determination now seem to be
(a) Whether Messrs Lawrie &

& Hooper are in a position to prove that the analyses of the bark, published prior to the auction, really was a fair & sufficient analysis of the 177 bales sold, in which case, looking to the Notes recorded in Mssrs Wilson & Co's case, the claim should be resisted — and

(b) If not, on what basis should a compromise be offered, in other words, what is the measure of damages applicable to the case.

5. From an examination of the papers the Govt. solicitor procures (para 16) "I am left with some doubt, that Mr. Hooper did analyse the bark purchased by Messrs Arbuthnot & Co, & that he, or Mr. Lawson, have some record of such analyses." Looking at paras 13 to 15 and para 20 it seemed very doubtful if the analyses were better than in Messrs Wilson & Co's case. It is submitted that a very definite statement on this point is required from Mr Lawson. To render this cardinal point more clear & definite Mr Lawson was asked by O.M. to state how far he & the Quinologists could prove that the analyses were fair & sufficient analyses of the bark to which they pertained to relate & how far he could connect the bark analysed with that sold. His

Vide paras 17, 18 & 19 of the Govt. Solr's letter of the 14th Sept/87.

bales to the terms on which a compromise might be agreed to — 27.

In Messrs Wilson & Co's case Govt. gave a refund of the whole of the purchase money. In the present case Messrs Arbuthnot & Co at first made a similar claim viz: for Rs 18,447; but subsequently proposed a settlement on the basis of the deficiency shown by their brothers analyses as compared with the analyses of the Govt. Quinologists. The Govt. solicitor is evidently not clear as to the terms proposedly Messrs Arbuthnot & Co. In para 18 of his letter he says "the claim amounts to £ 199.2.2, the difference they say between the amount actually paid at the auction sale at Rs 1/8 per lb of the bark and the value of the bark (containing a lower percentage of sulph. of quinine than was stated in the Govt. Quinologists analyses) calculated in pro portion & that claim again in para 19 he says "it appears to me that the claim put forward by them now is in proper form. + x + x the amount claimed I understand being the difference between the cost of the bark purchased by Messrs Arbuthnot & Co & the amount it would have realised if of the quality ascertained by Govt. and if sold in January 1886" viz. when the value of the unit of sulph. of quinine was 4½d.

I submitted that the principle

is doubly wrong - because
firstly it involves a reference
to the value of the unit of quinine
in London in January 1886 instead
of its value in Madras in Nov.
last the time of sale; and 185
secondly it omits all account of
the lots of Ceylon bark in which the
London analysis showed no less
than 2133 units of Sulph. of Quinine
more than that shown by the
Govt. Quinologists examination.
This submitted that the bark was
bought solely for the sake of the
number of units of Sulph. of Quinine
contained in it. According to the
Govt. Quinologists analyses that
number was 49,860 and which
Co paid for this Rs 18,447, that
is, 5.900 annas for every unit.
According to the London analysis,
however, the number of units
was 45,537; and assuming
that analysis to be correct, there
was a net deficiency on all the lots
taken together of 4,313 units.
The price agreed upon by the parties
to the sale was shown above to
be 5.900 annas per unit; and
the price of the deficient 4,313
units is, therefore, Rs 1590·7·3.
to which Sum (with interest) Messrs
Arbuthnot & Co seem to be entitled
if entitled to any compensation at all.
Their claim to be paid in sterling
& to receive gabboon Re. 1, fire
remains &c - seems to be
inadmissible -

R.S.B.
21/10.

FOR ORDERS.

H. W. Lancaster's letter of 3rd Feb 7/87
with G.O. Pris. No. 1298, d/s. 1st March/87-
Confidential.

Revenue Department.

Current No.

From

Dated 188 .

FOR ORDERS.

It is submitted that it is very doubtful
whether it would be safe to attempt to
litigate. Mr. Lawson is not a case in which
he was very positive and confident on
behalf of his case but when Mr. Morgan
came to undergo cross he went all
to pieces -
It is suggested that a compromise
on the principle put forward by
the Ld. C. should be agreed and
that Messrs Arb & Co write and accept it
they can be left to do : it is not
likely that they will get much more

Mr. 22/10

I do not think that we ever warranted
our analysis to be absolutely correct. Our
representation amounted to no more than
this that we took a sample from each bale, all of
which consisted substantially of the same kind of
bark, & that such sample contained a certain
no of grains. I don't believe that purchasers
attempt any more beyond that or that the Courts
would hold that we did. If so, & if we prove that the samples were fairly taken
the bales of the same description (the year of gathering was not represented on
the places) & the analysis correct as to the sample, we ought I think to succeed.
But I am willing to meet Messrs Arbuthnot's desire for a settlement for
many reasons. The compromise may be suggested on the terms proposed but
I am by no means sure that the claim, if sustainable at all, is overstated. I am
inclined to think that the sale of each lot was a separate bargain & that we
cannot set off a profit gained on the Cinchona bark against a loss sustained on the

I fear this is just what we
cannot prove. This is the
London practice, but I
think we can only prove we took
the analysed samples from a
heap from which also the
bags were filled. R.S.B.
27/10.

descriptions. Secondly the measure of damages is correctly stated by Mr Barclay at the end of S.9. The purchaser was with a view to send home for sale & in the ordinary course the bark was put on the London market in Jan.y 85. If the purchasers were justified in assuming that such a bale contain was warranted to contain 80 man units but did not they would be entitled to damages equal to the difference of price caused at that time by the deficiency such damages according to the statement annexed to Mr Barclay's letter come to £2049-5-4. I would authorize him to make the best terms he can up to 2050 £

PPH
26 Oct

Special

Messrs Arbuthnot's claim to Compensation in connection with Cinchona Sales.

FOR ORDERS.

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Confidential

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read C. No. 7516 & 8090 dy. 14th Sept.r & 18th Oct.r 1887 respectively from the Secretary to Govt. Lab.r

Read also C. No. 8857, dy. 18th Oct.r 1887 from the Secretary to Govt. Chinchona Plantations.

Ins.r G. No. 67-57 dy. 7/11/87.

The Government consider that the publication of the analyses prior to the auction sale mentioned in Mr Stirling's letter of more than a Separation that samples of bark had been taken from each of the lots or parcels advertised for sale, or from a heap from which such lots were taken and which consisted of substantially the same kind of bark throughout, and that each of the samples contained a certain number of units of Sulphate of Quinine.

Mr Stirling's letter read above proves that the analyses were fair & sufficient & can be accurately connected with the bark to which they purported to relate

PPH
5 Nov

24-10-87 R.C. 27/11
27-10-87 " 28/10

In these circumstances the Govt believe that any suit against them would in all probability be unsuccessful. 2. They are, however, willing to meet Messrs Mc-Intosh & Co's desire for a compromise and are prepared to adopt as a basis the plan suggested by Mr Barclay at the end of para 19 of his letter. The statement attached to Mr Barclay's letter shows the difference that the value of the five lots of bark therein referred to was Rs 2,049-5-4 greater according to the Govt analysis than according to Mr Riche's analysis on which Messrs McIntosh & Co rely. This calculation leaves out of account altogether the lot of renewed bark in which Mr Riche's analysis showed no less than 2133 units of sulphate of quinine more than the amount given by the Govt analysis. In any equitable compromise the Govt consider that they should receive credit

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for this excess.

With these remarks the Govt authorise the Govt Solr to compromise the claim on the best terms he can obtain not exceeding Rs 2000.

RMS
31/10.
3/11.

To the Govt Solicitor
with 8 Encs
& Govt Borneo 12-11-10
Govt

Wm. Arbuthnot's Clo's claim
re Chinchona sold.

DISPOSED
No. 757
GOVT ORDER

7.c.w. 98/97

Despatched