Revenue (1897) Department.

PRESS SERIES.

G.O., Nos. 493-94

DATED 28th June 1897.

[Despatch Abstract.]

Harbour Trust Board, Madras

ordering, with remarks, that a letter be despatched to the Govt of India, requesting the opinion of the legal Adviser of that Govt on the subject [of in Vesting the —— with certain powers similar to those exercised by the Port Trust Board at Bombay.]

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BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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Government {1897} of Madras.

REVENUE.

Recd. } 1897. *Enclosures*

Regd. *Spare copies*

G.O., No. 493, 28th June 1897.

JUNE.

Harbour Trust Board, Madras.

Ordering, with remarks, that a letter be despatched to the Government of India requesting the opinion of the Legal Adviser of that Government on the subject of investing the — with certain powers similar to those exercised by the Port Trust Board at Bombay.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following letter from W. AUSTIN, Esq., I.C.S., Chairman, Harbour Trust Board, Madras, to the Honourable Colonel D. McNEIL CAMPBELL, R.E., Secretary to Government, Marine Department, dated 29th January 1897, No. 4654:—

I have the honour to acknowledge the receipt of G.O., No. 682, Revenue, dated 1st December 1896 (copy printed herewith for ready reference, together with the opinions of the Advocate-General, dated 26th August and 17th October 1896), communicated under G.O., No. 17, Marine, dated 6th January 1897, regarding the erection of sheds by the Trust for the storage of goods.

2. The Trustees note, with pleasure, that His Excellency the Governor in Council is of opinion that it is desirable for the Harbour Trust Board to undertake the storage of goods for the trade of Madras, in the same manner that the Bombay Port Trust has done for Bombay, and that the Harbour Trust Board should be allowed to provide the buildings necessary for such a service.

3. With regard, however, to the conditions under which it is proposed that this should be carried out, the Harbour Trustees must decline to undertake the work as "servants of the Sea Customs authorities," and submit that they are not authorised to do so, as a Statutory body under the provisions of Act II of 1886, amended by Act I of 1892, which latter Act specially empowers the Harbour Board under section 45, Act II of 1886, "to frame a scale of rates . . . . for the porterage of goods on, from or within any wharf, pier or dock in the possession or occupation of the Board;" and under section 70 to "make bye-laws for the reception, removal and porterage of goods brought within the premises of the Board, *and for the exclusive conduct of these operations by the Board or by persons employed by them.*" Under section 45 (*a*) the Board is further authorized to frame a scale of rates to be levied for the landing, shipping, wharfage, cranage, storage or demurrage of goods at any such wharf, &c., within the limits of the port, whether within or without the harbour, and the Trustees, under these circumstances, respectfully repudiate the position assigned to them by the Collector of Sea Customs, in his letter No. 2107 G., dated 21st April 1896, wherein he states that "*the Harbour Trust at present merely intervene as porterage contractors.*"

4. There does not appear to be any necessity to declare the sheds, which the Harbour Trust proposes to build, a *part of the Customs House*; all that is required is that they should be included "*within Customs limits*" as in Bombay. I may here remark, that, in London, goods are passed through the Customs House, and ships are entered at it; but neither goods nor ships are taken to it. The Customs House is in the city; the ships and goods remain "*within Customs limits*," which in London, Bombay and elsewhere, is all that is considered necessary for *Customs control*.

5. The Collector of Sea Customs cannot legally transfer his custody or control of dutiable or other goods to the Harbour Trust Board, and it is not desired that he should. His custody extends from the time dutiable goods are brought within port limits until duty is paid; it may be *actual*, or it may be *only constructive*; but, in either case, commences and ends with his lien for duty.

6. Dutiable goods are *constructively* in the *custody* of the Collector when on boardship within port limits; while in transit in charge of the dubashes from ship to shore; while in transit in charge of the Harbour Trust from the shore; and, as is the case, in many instances at present, while they remain outside the Customs House within the Board's premises, it being physically impossible to take many packages into the Customs House yards; and I may here remark that constructive custody, and

the lien of the Collector for duty, extends to goods which may even not be in existence, *i.e.*, to goods which may have been manifested for entry, but which may, from various causes, not be on board the steamer on arrival *within Customs limits*, but which would nevertheless, being manifested, have to be accounted for by the Master or Consignee.

7. Dutiable goods are *actually* in the custody of the Collector when they are in the Custom House. The Harbour Trustees are not aware under what section of the Sea Customs Act importers can be compelled to take all dutiable goods *into the Custom House*. As pointed out in my letter No. 3771, dated 4th December the Custom House at Bombay is not used for the storage of goods; while at Madras the sheds attached to the Custom House, and used for the storage of goods, have from long association come to be regarded as synonymous with the Custom House itself.

8. It would appear that any order to the effect that all goods shall be taken *into the Custom House*, *i.e.*, into the yards attached to the Custom House, would be arbitrary, and not in accordance with any specific section of the Sea Customs Act. If so, the rule could be varied, by directing that all goods should be taken into Harbour Trust premises *within Customs limits*, and they would then be practically *within Customs premises*, and in the Collector's custody *constructively*, while his lien for duty lasted, and under his control, though not in his *actual* possession.

Dutiable goods could not pass out of the constructive custody of the Collector until duty had been paid. It is unnecessary for him to hold *actual possession* as he does at present, under lock and key, of a portion, and only a portion of dutiable goods landed.

9. In order to encourage trade and commerce, and to meet the convenience of importers, while at the same time securing the interests of Government, the system of warehousing was adopted by the Legislature, and it appears to be an extension of this principle which has led the Government of India, and the local Governments of Bombay and Bengal in the interests and encouragement of trade and commerce, to permit goods to be taken charge of, and handled without the intervention of Customs officials, by the Port and Harbour Trusts at Bombay, Calcutta, Karachi and Rangoon; though from the time the ship enters port limits, to the time duty is paid, all goods intended for importation are constructively in the custody of the Collector of Sea Customs at each port.

10. The convenience which would accrue to the Customs authorities, and to the Mercantile public, by the introduction of a similar system at Madras is undoubted. Goods on arrival *within Customs limits*, even though still on boardship and in transit from ship to shore, are in the *constructive* custody of the Collector, and the interests of Government would in no way suffer by the goods being allowed to remain in his *constructive custody only*, and in the actual custody of the Harbour Board, which would provide conveniences and facilities for Customs examination, and for the Mercantile public, which are at present unknown in Madras, and the absence of which seriously inconveniences both importers and Customs officials.

11. It does not appear to the Trustees that there is any necessity for dual control, and they fail to see how their actual possession of goods can in any way effect the constructive custody, or actual lien of the Collector. There is no reason why the interests of the merchants and of Government should clash in any way. If under section 11 (*c*) of the Sea Customs Act the whole of Harbour Trust premises are declared wharves for landing cargo, all cargo landed would remain *within Customs limits*, in the actual custody of the Trust, but in the constructive custody of the Collector, so long as his lien for duty lasted. This is the course of business at Bombay, and the only one that can be satisfactorily carried into effect at Madras in the interests of trade.

Should Government see its way to take this view of the matter, the Trust and merchants would be left—unhampered by the detailed control of the Collector, and other Customs officials subordinate to him—to make whatever arrangements may be approved by Government, under the Harbour Trust Act, to meet the convenience of the mercantile public, and of the Customs authorities, and for the safe custody and

storage of goods. There is no reason why such a procedure should not work as smoothly in Madras as at other ports.

12. In this connection, the Trust would bring prominently to notice the opinion expressed by Mr. LeFanu in the concluding portion of paragraph 9 of his letter No. 3258, dated 20th November 1895, as follows:—"It may not, perhaps, be out of place here to express my personal opinion that I see no difficulty whatever in acceding to this request of the Chamber of Commerce; for, under the orders of Government, the Collector of Sea Customs is, by reason of his office, as such, also the Chairman of the Board, and it would, therefore, appear that it should be more easy to carry such an arrangement into effect at Madras than at other ports, where these two offices are not held by the same person;" and this must obviously be the case; for, the Collector and the Chairman being one and the same person at Madras, the Collector could see that no order of his, as Chairman, in any way clashed with the interest of Government, for which he is responsible as Collector.

13. With regard to responsibility for loss and damage: the Trustees would submit that the mercantile community would be in a very much better position under the arrangements proposed by the Chamber of Commerce, provided it is distinctly understood that while the custody of the Harbour Board is *actual*, that of the Collector is *constructive*, and only for so long as his lien for duty lasts; but under the arrangements proposed by the Collector, merchants would be in a worse position than now, for as pointed out by Government, the Board, as a servant of the Customs authorities, would not be responsible at all, except under the provisions of the Sea Customs Act, which would practically protect it altogether.

14. The Harbour Trust lien for dues would probably be disadvantageously affected under the circumstances stated in paragraph 2 of the G.O. under reply; but the Collector's lien for duty would be absolute from the time the goods came into the proposals of the Chamber of Commerce; and the Harbour Board's lien would also, under the Harbour Trust Act, be all that is required.

15. The trustees would submit that the arrangements proposed by the Chamber and by the Harbour Board *are* complete, and sufficient for the due realization of Customs revenue; that nothing further is needed, and that there is no legal difficulty to be overcome, but that the Harbour Trust Board *can* legally, and without detriment to Customs control, or to the actual lien upon and constructive custody of goods by the Collector, carry out the proposals of the Chamber of Commerce, under the powers vested in the trust by Act II of 1886 as amended by Act I of 1892.

16. It seems to the Trustees that a misapprehension has arisen, over the expression *Custom House*. The Advocate-General appears to assume that it is *necessary* for all goods to be taken *into the Custom House*, but the legality of such an order under the Sea Customs Act is not apparent—sections 86, 87 and 89 do not so enact. In paragraph 4 (3) he refers to the contingency: "*If* the buildings be declared part of the Custom House, under section 11 (*f*)" and goes on to say that *then* "the goods would be in the Custom House in the sole and absolute control of the Collector." This is what, it is understood, the Chamber of Commerce wishes to have *altered* as it is found unsatisfactory, and stands in the way of the Harbour Trust giving improved facilities at Madras, such as are customary, and work without difficulty or friction, at all other large Indian ports.

17. The difficulty appears to lie in the interpretation placed, in Madras, upon such expressions as "Custom House"—; "make entry," section 86—; "passed through the Custom House," section 167—36—; "entered at or brought to be passed through a Custom House," section 167;—37—; "passed out of any Custom House *or wharf*," section 167—39.

There are also certain expressions in the Sea Customs Act which seem to imply that goods must be taken *into the Custom House*; but, for the reasons given below, the Trustees would submit that this is not so.

Under section 75 "The Chief Customs authority may from time to time make rules for the landing and shipping of passengers' baggage, and passing of the same *through* the Custom House." Baggage is rarely, if ever, physically passed

through the Customs House yards. Most of it is, at Madras, either passed on board-ship, or taken to the outer verandah of the Custom House, and removed therefrom when passed. At Bombay passengers' baggage is landed at a Port Trust Bhandar "*within Customs limits*," and passed therefrom by an Assistant Collector, who attends for the purpose; but not a single package is taken into the Fort to the Custom House to be physically *passed through* it.

In section 167—39 a penalty not exceeding Rs. 500 is fixed, "*If, without entry duly made, any goods are taken or passed out of any Custom House or wharf.*" From this it appears that if Customs regulations in the way of entry, and presumably assessment and payment of duty, if any, have been duly complied with, *goods may be passed from a wharf*, without being taken to, or into or through a Custom House. If this is legal in any case, it would, the Trustees submit, be legal in all cases, except where otherwise provided for in the Sea Customs Act.

Under Section 192, "If a person has become liable to any such fine, penalty or rate in respect of any goods, the Customs Collector may detain any other goods belonging to such person, *passing through the Custom House*, until such fine, penalty or rate is paid."

It cannot here be meant that the Collector may detain goods *only* when they are physically being passed through the Customs House, to which as at Bombay goods are never taken, and carried from one side to the other. For instance: at Madras, should an importer of kerosine oil or dynamite become liable to any penalty or fine, the Collector would, it is presumed, be within his rights by refusing to pass other kerosine oil or dynamite belonging to the same party, but he certainly would not insist upon either being *actually carried through the Custom House* to justify his doing so under this section; or if an importer had become liable to a fine under this section in respect of say Manchester goods, and had also imported a cargo of coal, the Collector could presumably detain the coal till the fine was paid, but it would not be neceseary that it should be carried into the sheds attached to the Custom House at Madras, or through the Custom House—the Collector's Office—at Bombay.

The terms, make entry; passing through the Customs House; entered at or brought to be passed through a Customs House, appear to refer to much the same proceeding, if not to the very same; that is, when goods are "entered at or brought to" "be passed," as it is put in section 167—37; and section 86 enacts that "the owner of any goods imported shall on the landing thereof from the importing ship, *make entry* of such goods for home consumption or warehousing."

This "*entry*" is not to be made, it will be observed, by carrying the goods into the Custom House, which is absolutely impossible at Bombay, but "*by delivery to the Customs Collector of a bill-of-entry* thereof in duplicate in such form and containing such particulars, in addition to the particulars specified in section 29, as may from time to time be prescribed by the Chief Customs authority." At Bombay upon such *entry* being made at the Custom House, in the Fort, and all other Customs regulations having been complied with, the goods themselves are *passed*, not through the Custom House, but from *within Customs limits* at the Port Trust premises, as "*out of Customs charge*," and may then be removed.

18. In the standing orders of the Board of Revenue, made under the provisions of section 9, and becoming law under section 204, expressions occur which may also be taken to mean that goods must be carried into the Custom House.

Rule 62. "*All goods* must be landed at appointed places *and regularly passed through the Custom House.*" It is to be observed here that no exception is made, and that if it is to be taken literally that "*all goods must be passed through the Custom house*" it is difficult to see under what exception coal is delivered from outside, if it—coming within the category of "*all goods*"—must be regularly *passed through* the Custom House. The explanation seems to be that it is the documents relating to coal which must be submitted at the Custom House, and a pass order obtained in due form. The same remarks apply to kerosine-oil in bulk as well as to many other descriptions of cargo, which cannot by any known means be physically carried into and out of the Custom House, or the yards attached to it.

It is also to be observed that under this very rule a distinction is made between goods passed through, and goods carried to, the Custom House; for clause 6 directs that under certain circumstances—those referred to in section 83—"the Master or Commander of such vessel as the case may be, or the officers of Customs, on his application *may carry such goods to the Custom House.*"

Rule 72. "Goods once assessed for duty, on a declared value, will not be permitted to be revalued, *after they have left the Custom House*"; and section 36—: "Except as provided in section 94 no amendment of a bill-of-entry or shipping bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed *after such goods have been removed from the Custom House.*"

The point is, under what section of the Act can owners be compelled to take them into the Custom House?

Rule 73. "If any article of foreign production, on which import duty has been once paid, is subsequently exported without drawback, and is re-imported, it shall be exempted from duty if the Collector of Customs is satisfied of the identity of the articles." There does not appear to be any reason why it should be easier to identify goods that have been stored in the Custom House yards, than to identify goods stored within Customs limits, in premises belonging to the Harbour Trust. On the contrary, as the present Custom House yards are totally inadequate to store packages, so that they can conveniently be seen, identification would appear easier—if visual observation is necessary—where they stored in the first instance in sheds with ample space; but it can hardly be contended that it is necessary that the external appearance of the packages should be familiar to, and recognised by, an officer of Customs.

Rule 74. "Goods relanded must be reported upon and identified as being the "same that had previously passed the Custom House for exportation." Here again to contend that actual familiarity with the external appearance of the packages is necessary, and that, to attain such, the goods must have been at some time in the Custom House, would appear a very unsatisfactory method of identification. The description contained in the documents would probably answer all purposes.

Rule 84. "Parties requiring to ship goods, with a claim to drawback, *must bring them to the Custom House*, at least 24 hours before it is intended to ship them."

This rule does not appear to apply to goods landed for home consumption, and the question of drawback has not been raised by the Chamber of Commerce.

19. The Trustees would submit that goods manifested for Madras are "*brought*" by the vessel, and that before they can be *cleared* or *passed* through the Custom House, certain formalities have to be gone through, to satisfy the Collector as to the nature and value of the goods; and this can most conveniently be done by the production of documents. If the Collector is not satisfied with such documentary evidence, he may order an examination; but for the purposes of this examination goods are not, in London, carried to the City, for examination at the Custom House, nor at Bombay are they taken to the Fort, to be there examined in the Custom House. In London the examination is made by Customs officials at the docks or wharves in the river, owned by private companies or individuals, and at Bombay at the Port Trust premises. Both docks and wharves in London, and the docks and bhandas in Bombay, are *within Customs limits*; but neither in London nor Bombay are they *declared part of the Custom House*. Moreover all goods, without exception, have to be *passed* through the Custom House; that is, a pass obtained by the production of the necessary documents; but even in Madras goods which are too large to pass under the entrance archway, or too heavy to carry into the Custom House yards, or which are considered dangerous or objectionable, are *not* taken into the Custom House, and yet there does not appear to have been any exception made in their favour, exempting them and compelling, say, Manchester bale and case goods to be taken into the Custom House, or the yards attached to it.

20. Goods must be taken somewhere for protection; they cannot be left upon an open sandy beach and as the "*Custom House*" with the yards attached, is the only place in Madras where they can, at present, be temporarily stored and conveniently

examined, they have been, it is understood, taken there, under the orders of the Board of Revenue; but there does not appear to be any reason why, if more convenient arrangements can be made, the order to take goods to the Custom House should not be cancelled, and a similar order substituted that they shall remain *within Customs limits* at such wharf, pier or jetty, according to their nature, as the Harbour Board may, with the approval of Government, direct in a bye-law framed under section 70, Act II of 1886.

21. Referring to section 204, it is enacted therein that "all rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law."

Under section 9 it is enacted, that the Chief Customs authority may, from time to time, with the sanction of the local Government, make rules *consistent with this Act*:

(*a*) prescribing and limiting the powers and duties of officers of Customs;
(*b*) regulating the delegation of their duties by such officers; and
(*c*) generally to carry out the provision of this Act.

If, therefore, no section of the Act empowers the Chief Customs authority to direct that *all* goods shall be taken *into the Custom House*, it would seem to have been the intention of the Legislature that no such power should be exercised, except as laid down in sections 83, 84, 85 and 88; and this for the very good reason that a Custom House is not a wharf, or warehouse, for landing and storing cargo, before it is passed for Home consumption, or otherwise disposed of; but *an office* where the Collector assesses duty, and from whence he controls the goods landed and temporarily stored *within Customs limits*, under his jurisdiction and control, and in his *constructive* custody so long as his lien for duty lasts.

It is merely an accidental circumstance that, at Madras, the sheds where goods are stored, are in the same block of buildings as the Custom House.

22. It is further to be observed that in the only sections of the Sea Customs Act—which provide for goods being actually taken *into the Custom House*—section 83 enacts that "If the owner of any goods (except such as has been shown in the import manifest as not landed) does not land such goods within such period as is specified in the bill of lading of such goods * * * the Master of such vessel or, on his application, the proper officer of Sea Customs, *may* then *carry such goods to the Custom House*, there to remain for entry. The Customs Collector shall thereupon take charge of, *and grant receipts for, such goods.*"

Again, in section 84, it is enacted that "at any time after the arrival of any vessel the Customs Collector *may*, with the consent of the Master of such vessel, cause any *small package* or *parcel* of goods to be *carried to* the Custom House, *there to remain for entry.*"

If, therefore, before goods can be *carried to the Custom House*—except such as are still uncleared four months after the arrival and entry of the vessel, under section 88—a request must be made by the Master, or his consent obtained; it is clear that the *entry of goods* is not the physical operation of placing them in the Custom House; for *after* goods have been *carried into the Custom House* at the request of the master, or to it with his consent, they then have still to await "*entry*" and have still to be *passed* through the Custom House, before they can be cleared.

23. With regard to the method of landing goods at Madras, there does not appear to be any necessity to make any alteration. The agents object to land under section 85, because they would then incur responsibility on behalf of the ship not contemplated in the bill of lading, and therefore beyond their authority.

But this is no reason why the dubashes, as agents for the consignees, should not continue to land goods as at present under section 83; and when the Harbour Trust has constructed a boat-basin with convenient wharves, and sheds adjacent, take such goods to those wharves—authorized landing places under section 11 (*c*) of the Sea Customs Act—and there make the goods over to the Harbour Trust, to remain in the *actual* custody of the Trustees, but in the constructive custody, and under the actual control, of the Collector until passed as *out of customs charge.*

24. That there must be some way of overcoming the difficulty, would appear certain, from the fact that *goods are not taken into the Custom House* at Bombay; but are handled *within Customs limits* by the Port Trust, and that there "*the sheds in which the goods are stored are under the sole control of the Port Trust,*" and "*except for a general supervision by the Customs Preventive department, the entire management of the sheds and the gates at the docks is conducted by the Port Trust,*" while on landing "*no goods are taken charge of by the Customs.*"

It is incomprehensible to the Trustees why an exactly similar procedure cannot be followed at Madras, without their becoming the servants of the Collector.

25. The *constructive* custody of goods, and the actual lien of the Collector, has been sufficient, and is presumably considered legal in Bombay, and consistent with the *actual* custody being vested in the Bombay Port Trust *under the control of the Collector*. The Sea Customs Act applies to Bombay as well as to Madras, and there is little, if any, difference in the powers conferred upon the Trustees of Bombay, and the Madras Trustees, by their respective Acts, so far as the power of dealing with goods is concerned, except that in Madras the Harbour Board is specifically empowered, under Act I of 1892, to undertake the porterage of goods, which at Bombay the Port Trust appears to do as a matter of course, within its own premises, and without any specific authority.

26. The question of warehousing goods under warrant, is separate and distinct, and need not now be discussed.

No. 111E., Marine.

Transferred to the Revenue Department.

(Signed) D. McNEIL CAMPBELL, Col., R.E.,
Secretary to Government.

17th February 1897.

To the Revenue Department.

Read—the following letter from G. G. ARBUTHNOT, Esq., Chairman, Chamber of Commerce, Madras, to the Secretary to Government, Revenue Department, dated 26th February 1897:—

I have the honour to acknowledge receipt of Government Order of the Madras Government, No. 682, Revenue, dated the 16th December last, and G.O., No. 4909, Mis., dated the 2nd idem. While the Chamber is gratified to observe that the Government will have no objection to assimilating the practice in Madras to that in Bombay, it notes with regret the legal points raised by the Advocate-General. If the change can only be effected under the conditions thus laid down, it hardly seems to the Chamber worth while to make any alteration.

The Advocate-General is of opinion (*a*) that the Sea Customs Act, 1878, does not allow joint control of the Harbour Trust Board and the Collector of Sea Customs over dutiable goods, and (*b*) that the Harbour Trust Act, 1886, does not empower the Board to become the bailee of such goods (*i.e.*, dutiable goods in the control of the Collector of Sea Customs).

With regard to (*a*) admitting, for the sake of argument, this view to be correct, the Chamber submits that no joint control is contemplated. It is merely desired that the Harbour Trust Board should be permitted by Government to remove into its sheds cargo as landed and to deliver same upon pass orders from the Collector.

This procedure has been, and is still, in force in Bombay, as will be seen from a note appended to a letter from the Collector of Sea Customs of Bombay to the Collector of Sea Customs of Madras, dated the 27th July 1896, wherein he says: "It will be seen from the above that, except for disposal under section 88 of the Sea Customs Act, no goods are taken charge of by the Customs, that the department has nothing to do with landing, storage or delivery of goods, &c.," and in his letter of the 16th

August 1892, the Collector of Customs, Bombay, says that "except a general supervision by the Customs Preventive Department, the entire management of the sheds and gates at the docks is conducted by the Port Trust."

With regard to (*b*), the Chamber would call the attention of Government to section 60 of the Harbour Trust Act, which empowers the Board to execute such works as it determines to be necessary or expedient; to section 61, wherein the works authorized by section 60 include (*inter alia*) *warehouses and sheds for receiving and storing goods to be landed or to be shipped or otherwise*; and to section 53 which is as follows: "Such goods shall be retained in the warehouses and sheds of the Board or with the consent of the Chief officer of Customs in the Public Customs Warehouses at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned; and godown rent shall be payable by the party entitled to such goods for the time during which they may be so retained."

With all due deference to the Advocate-General, the foregoing sections, among others, clearly, in the view of the Chamber, contemplate the Harbour Trust Board acting as the bailee of goods landed, shipped, or otherwise, and the Chamber is unable to find anything in the Act which prevents dutiable goods in the control of the Collector of Sea Customs being, with the sanction of Government, dealt with as proposed.

The Chamber has been favoured with a copy of the letter which the Madras Harbour Trust Board addressed to Government on the 29th ultimo, and as the views therein enunciated—which have been approved by the Chamber's representatives on the Board—are identical with those entertained by all the members of the Chamber, it would be a work of supererogation for the Chamber to enunciate its views separately. If, however, the object of the proposal before Government is unattainable under the present Acts—which the Chamber ventures to doubt—then a simple way out of the difficulty offers itself in their amendment, and in view of the very great desirability of the change being brought about, the Chamber would strongly urge immediate legislative action, for the present state of affairs is as anomalous as it is unsatisfactory.

In view of the fact that the Sea Customs Act applies to the whole of British India, and that in ports like Calcutta, Bombay and Karachi, a system is in vogue which is illegal in the opinion of the Advocate-General of Madras, the matter may be deemed of sufficient importance to have the opinion of the adviser of the Government of India taken on the legal points raised.

Read—the following letter from W. AUSTIN, Esq., I.C.S., Chairman, Harbour Trust Board, Madras, to the Secretary to Government, Marine Department, dated 26th February 1897, No. 5174:—

I have the honour to acknowledge the receipt of G.O., No. 18, Marine, dated 6th January, regarding the proposed rental of the yards attached to the Custom House by the Harbour Trust Board.

2. In my letters Nos. 3771 and 4654, dated 4th December 1896 and 29th January 1897, respectively, the views of the Trustees are fully expressed in reference to the general question of the custody of goods within Harbour Trust premises, which, if declared wharves for landing cargo under section 11 (*c*) of the Sea Customs Act, would also be within Customs limits.

3. According to the opinion of the Advocate-General printed with G.O. No. 682, Revenue, dated 1st December, goods which are *in the Custom House*—by which term, it is understood, he means also the yards attached to it—are "in the sole and absolute control of the Collector," and, as pointed out in my letter No. 4654 above referred to, are moreover at present held by him *under lock and key*.

But in his letter No. 5130 G., dated 25th September, the Collector contends that "the goods in the Custom House are under Harbour Trust control and in their "custody from the time they are deposited to the time they are delivered."

It is clear therefore that the Collector did not, at that time, understand his legal position as custodian of those goods which are "*in the Custom House*," as laid down by the Advocate-General in the quotation given above; and the fact of goods being in the actual possession and custody of the Collector, when *in the Custom House*, is reiterated by the Advocate-General in his statement that "where goods are in the "Custom House or in a warehouse, his (the Collector's) custody is *actual*."

4. It is an open question whether, under the Harbour Trust Act, difficulty might not occur in the recovery of harbour dues on goods stored in the yards, attached to the Customs House, outside Harbour Trust premises.

A somewhat similar difficulty appears to have been experienced in Bombay: for section 43 of the Bombay Port Trust Act VI of 1879 (corresponding with section 45 of the Madras Harbour Trust Act) was amended by Bombay Act VI of 1883, which added the words "land or building" to that section.

5. A copy of Bombay Act VI of 1883 is submitted herewith for information, and should Government decide that the actual custody of goods may be undertaken by the Harbour Trust, while the constructive custody and control remains with the Collector, all uncertainty as to the legal position of the Trustees, in premises outside their own limits, could be overcome by amending Madras Act II of 1886 in the same manner.

Enclosure.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 25th August 1883 and the assent of His Excellency the Viceroy and Governor-General on the 3rd November 1883, and is published for general information:—

BOMBAY ACT No. VI OF 1883.

An Act to further amend the Bombay Port Trust Act, 1879.

(*Third publication*).

The assent of the Governor-General of India to this Act was first published by the Governor of Bombay on the 26th November 1883.

Whereas it is expedient to amend the Bombay Port Trust Act, 1879, in manner hereinafter appearing: It is enacted as follows:—

Amendment of section 43.

1. Instead of the words "or pier" in section 43 of the said Act, the words "pier land or building" shall be substituted.

(By order of His Excellency the Right Honourable the Governor in Council.)

Bombay Castle,
24th November 1883.

(Signed) C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay Act VI of 1879.	Madras Act II of 1886.
Section 43.—The Board shall frame a scale of tolls, dues, rents, rates, and charges, to be levied for each or any of the following matters (namely):—	*Section* 45.—The Board shall frame a scale of rates to be levied for each or any of the following matters, viz.:—
(*a*) for the landing, shipping, wharfage, cranage, storage, or demurrage of goods at,	(*a*) for the landing, shipping, warfage, cranage, storage or demurrage of goods at, and for the porterage of goods on, from, or within,
(*b*) for permission for vessels or boats to approach, or lie alongside, and	(*b*) for permission for vessels or boats to approach or lie alongside,
(*c*) for animals or vehicles carrying goods to or from, or entering upon or plying for hire at or on, any wharf, dock, pier *land or building* * in the possession of the Board.	(*c*) and for animals or vehicles carrying goods and merchandise to or from or entering upon or plying for hire at or on any wharf, pier or dock in the possession or occupation of the Board.

* As amended by Act VI of 1883.

Endorsement No. 201-E, Marine.

Transferred to the Revenue Department with reference to the order in that department, No. 4909 Mis., dated 2nd December 1896, and in continuation of Marine Department endorsement No. 111-E, dated 17th February 1897.

(Signed) D. McNEIL CAMPBELL, Col., R.E.,
Secretary to Government.

18th March 1897.

Read—the following letter from the Honourable Mr. G. G. ARBUTHNOT, Chairman, Chamber of Commerce, to the Secretary to Government, Revenue Department, dated Madras, 6th April 1897:—

In continuation of my letter of the 26th February 1897, I have now the honour to inform you that the Chamber has since been favoured with a copy of a letter (No. 5174, dated the 26th February) which the Harbour Trust Board addressed to Government requesting that Act II of 1886 (the Madras Harbour Trust Act) be so amended as to bring section 45 into conformity with section 43 of the Bombay Port Trust Act. The Chamber is in entire agreement with the Board, and in strongly supporting its request, it does so in the belief that with the Act amended as suggested, the Board will be in a position to warehouse goods on warrants. The Chamber attaches much importance to the Board being empowered to do this, as it would be a very great convenience to the trade of this port, especially in view of the probable passing of the Bill of Sales Act at an early date.

I beg to annex below, for the information of Government, copy of a letter from the Chamber's Solicitors expressing their opinion in the matter.

Enclosure.

Letter from the Solicitors of the Chamber of Commerce, Madras, dated the 20th March 1897.

We are in receipt of your letter of the 17th instant with copies of letters from the Harbour Trust Board and other papers relating to the s..rage of goods, and requesting to know whether the amendments to the Harbour Trust Act suggested by the Board will give the Trust authority to "warehouse goods on warrant."

We assume the expression "warehouse goods on warrant" to mean that goods landed or about to be shipped may be deposited in the godowns or premises of the Harbour Trust Board, that warrants may be issued to the party so depositing the goods, which warrants represent the goods and are capable of being transferred, so as to enable the transferee to obtain possession of the goods so deposited.

The question to be determined, therefore, is, whether the issue by the Harbour Trust Board of warrants would be within the powers given them by the Legislature. In this connection we would observe that it is doubtful if the Legislature contemplated the Board becoming a warehouse company, which they virtually will be if they issue warehouse warrants.

The law on this point, however, is that "whatever may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held to be *ultra vires*." (See Ashburry Railway Company *v.* Riche —Law Reports 7, House of Lords, 653, and the Attorney-General *v.* The Great Eastern Railway Company—Law Reports Appeal Cases, Volume V, page 478).

The preamble of the Harbour Trust Act states that it is expedient to make provision for the regulation, conservancy and improvement of the harbour.

The harbour is defined to mean, *inter alia*, all buildings provided by the Trust Board for the purposes of the harbour.

Under section 70, the Board may, with the approval of the Governor in Council, make bye-laws for, *inter alia*, the convenient use of the warehouses vested in them. To warehouse goods on warrant would, we presume, be a convenient use to put the warehouses to.

It appears to us, therefore, that the issue of warrants may be regarded as fairly incidental to those things which the Legislature has authorized the Board to do under the Act, and we see no reason why, with the sanction of Government, bye-laws should not be passed authorizing the Board to issue warrants.

If bye-laws are passed to this effect and the amendments suggested by the Board are made to section 45 of the Act, the Trust would, in our opinion, have authority to warehouse goods on warrant.

* * * * *

Order—No. 493, Revenue, dated 28th June 1897.

Separate Revenue No. 56.

As there is some doubt whether the proposal of the Chamber of Commerce can be legally given effect to in its entirety, the opinion of the Legal Adviser of the Government of India will, as suggested by the Chamber, be obtained. Ordered that the following letter be despatched to the Government of India.

2. Government considers that the suggested amendment of section 45 of the Madras Harbour Trust Act is necessary and may be made at once. A Bill for the purpose will accordingly be prepared in the Marine Department.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Separate Revenue).
„ the Marine Department.
„ the Chamber of Commerce.

Exd. W. D'Mon.

50 Copies.

1897.

FINANCE AND COMMERCE DEPARTMENT.

From

The Government of Fort St. George.

Recd. } 1897. *Enclosures*

Rcgd. } *Spare copies*

Letter, No. 494, 28th June 1897.

JUNE.

Requesting the opinion of the Legal Adviser of the Government of India on the subject of investing the Harbour Trust Board, Madras, with certain powers similar to those exercised by the Port Trust Board at Bombay.

REVENUE DEPARTMENT.

From

The Honourable Mr. G. STOKES, I.C.S.,
Acting Secretary to the Government of Madras,
Revenue Department.

To

The SECRETARY to the GOVERNMENT of INDIA,
Finance and Commerce Department,

Dated Ootacamund, 28th June 1897.

Sir,

I am directed to request that the opinion of the Legal Adviser of the Government of India may be obtained on the following subject.

Separate Revenue No. 57.

2. The Committee appointed in 1895 to consider the question of harbour improvements strongly recommended a proposal made by the Chamber of Commerce to adopt at Madras a system similar to that in force in Bombay by which the Harbour Trust Board would receive into their sheds (when built) all cargo as landed, deliver the same upon pass orders from the Collector, warehouse goods on warrant, and, at the expiration of four months, deliver to the Collector, to be dealt with under section 88 of the Sea Customs Act, any goods not then warehoused or cleared through the Sea Customs office. The *landing* of goods by the Harbour Trust Board forms no part of the Chamber's proposal. The advantages claimed for the proposed arrangement are that (1) there will be no chance of dutiable goods, which in the absence of the contemplated arrangements will remain in the custody of owners, being tampered with by their owners in cases in which there may be delay in making out bills of entry owing to the manifests being incorrect or other causes; and (2) the Sea Customs Department will be saved the expense of guarding and watching the goods—a duty which, in the interests of the revenue, it undertakes at present. The Trustees will of course make a revenue by the fees which they will charge for the use of the sheds to be erected for the storage of goods as a part of the scheme for providing facilities for the trade of the port. They wish, therefore, to make it compulsory for all cargo to pass through their sheds.

3. The Board of Revenue which was called upon to report upon the proposal supported the recommendations of the Committee. But as a proposal made in 1892 similar to the one under consideration fell through owing to the unwillingness expressed by the leading firms of shipping agents in Madras to land cargo under section 85 of the Sea Customs Act, the only section under which the Trustees could take charge thereof, or to employ the Harbour Trust Board as their agents for landing, it was requested to state how it proposed to overcome the difficulty and whether the firms concerned were willing to land goods under the section referred to. It reported that the leading firms were decidedly opposed to entrust their landing to any agency outside their own control or to land goods under section 85 of the Sea Customs Act in their capacity as ships' agents, as the arrangement would tend to bind them to discharge all claims for shortage and damage preferred by importers. The Collector of Sea Customs, Madras, was, under the circumstances, of opinion that the only way out of the difficulty was for the Harbour Trust Board to undertake, by special agreements with the steamer agents, to meet all claims for damage or short delivery which might

be established by the owner of such cargo only as might be landed in good condition at any wharf belonging to the Trust and taken into its sheds and to pass a receipt to the Master for all such goods as were landed in their original or good condition, while all damaged packages should at once be taken to a separate strong room to be surveyed in order to fix responsibility. The Board of Revenue, however, considered that the course proposed by the Collector would not commend itself to the agents of vessels, as it would not relieve them from responsibility for damage occurring before the Harbour Trust Board took charge of the goods on the pier or beach, and gave it as its opinion that the landing of the goods under section 85 did not appear to be indispensably necessary. It accordingly suggested that goods might continue to be landed under section 83 by the agents of the consignees and after being landed be received by the Harbour Trust Board which should then accept all responsibility in regard to them, the sheds which might be constructed by the trustees for storing the goods being declared part of the Sea Custom House under section 11 (*f*) of the Sea Customs Act. Under this proposal the Harbour Trust Board would act as contractors for the safe custody of goods in charge of the Customs Collector the premises provided by the trustees being constituted a part of the Custom House and necessary steps being taken to make it so in fact as well as in name by posting Customs guards at its entrance and adopting other precautions. As the Board of Revenue entertained doubts as to whether the adoption of the proposal was not open to legal objection, the opinion of the Hon'ble the Advocate-General was obtained upon the matter. That officer stated that the proposed arrangement was objectionable. The gist of his opinion is as follows:—

The Collector's custody of dutiable goods is, in some cases, actual and in others constructive. He cannot delegate the power of control over them. If the premises of the Harbour Trust Board be declared to be part of the Custom House under section 11 (*f*), the owner of the premises would not be a bailee. The goods would be in the Custom House in the sole and absolute control of the Collector. The Sea Customs Act does not allow of joint control over goods in the Customs House and the Harbour Trust Act does not allow the Board to become bailees of goods.

4. This Government was, however, of opinion that it was desirable to allow the Harbour Trust Board to undertake the storage of goods for the trade of Madras in the same manner as the Bombay Harbour Trust does for Bombay. But as the Advocate-General had given it as his opinion that there could be no dual control over goods in the Custom House, the Government considered that the only way out of the difficulty would be to declare the Harbour Trust sheds as part of the Custom House and to allow the Harbour Trust Board to undertake the duty as servants of the Sea Customs authorities. In this case it was pointed out that while, on the one hand, the mercantile community would have no greater remedy against the Harbour Trust Board than they have now against the customs authorities for any loss or damage occurring after the goods had been placed in its custody for storage at its sheds, on the other hand, the Harbour Trust Board would have no lien for any fees due to it for storage and would not be able to detain the goods for such fees, which would have to be collected under section 99 of the Sea Customs Act and made over to it. In view to accurately settling the relations between the Sea Customs authorities and the Harbour Trust Board, this Government considered that definite rules laying down the conditions on which the Harbour Trust Board might be allowed to undertake the service should be drawn up and agreed to by the Sea Customs authorities and the Harbour Trust Board; but before taking final action, the Chamber of Commerce was requested to give its opinion as to whether the arrangement indicated above was desirable in the interests of the trade of the port.

5. The Harbour Trust Board refuses to undertake the operation on the conditions imposed by this Government and maintains that there is nothing illegal in the Bombay system being introduced in Madras. The only thing to be done is, in the opinion of the Trustees, to declare as wharves for landing cargo the whole of the Harbour Trust premises under section 11 (*c*) of the Sea Customs Act. They consider that, if this were done, all cargo landed would remain *within customs limits* in the *actual* custody of the Trust but in the *constructive* custody of the Collector so long as his lien for duty lasted and that the merchants and the Harbour Trust Board would be in a better

position than under the arrangement proposed by this Government in the last paragraph, the former in regard to their claim for damages and the latter as regards the realization of fees due to it, while the security of customs revenue would also be as good as it ever was. They also point out that as a statutory body under the provisions of (Madras) Act II of 1886 as amended by Act I of 1892, they are precluded from acting as "servants of the Sea Customs authorities"; that in Bombay goods are not taken to the Custom House itself but are landed within Customs limits by the Port Trust; that the sheds in which the goods are there stored are under the sole control of the Port Trust; that except for a general supervision by the Customs Preventive Department the entire management of the sheds and gates at the docks is conducted by the Port Trust; that no goods are taken charge of by the Customs authorities; that the use of the words "Customs House" in the Sea Customs Act, the rules framed thereunder and the standing orders of the (Madras) Board of Revenue have given rise to a misapprehension; that there is no provision in the law to compel a person to take the goods to the Customs House itself and that expressions such as "passed through the Customs House" "cleared through the Customs House," &c., relate to formalities to be gone through which are done only by means of documents.

6. The Chamber of Commerce agrees in the views of the Harbour Trust Board set forth above and asks that the opinion of the Legal Adviser of the Government of India may be taken on the legal points, seeing that the opinion of the Local Advocate-General is at variance with the practice followed in Calcutta and Bombay. The questions for decision are (1) whether the Harbour Trust Board can take charge of *all* dutiable goods landed under section 83 of the Sea Customs Act and store them in its sheds to be dealt with in the manner stated in paragraph 2 *supra* and (2) whether there is any legal necessity for the present Madras practice of taking all goods into the Customs House and keeping them there till duty is paid.

7. In regard to the first question, the difficulty seems to arise out of the law as to the actual landing of goods. This is contained in sections 83, *et seq.* of the Sea Customs Act VIII of 1878. Section 83 points to the owner of the goods as the proper person to land them and provides that if he does not do so within a specified time, the master of the vessel may take the goods to the "Customs House" (not, it will be observed, to any wharf or other appointed landing place) where the "Customs Collector (not the owner or manager of any wharf) shall thereupon take charge of and grant receipts for such goods." Under section 84, special provision of a similar nature is made for the conveyance "to the Customs House" of "any small package or parcel of goods." It is presumed that this is intended to provide for the landing and custody of consignments of treasure, jewellery, &c., which it might not be safe to send to an ordinary wharf. Section 85 is evidently intended to provide for the case of such ports as Madras, which are not ports of final destination, but only of call and at which it is therefore necessary that cargo shall be got out of ships as soon as possible so as to allow them to proceed to their destination. It provides that the whole of the cargo destined for the place may be discharged into the custody of the ships' agents for delivery at the Customs House or any specified landing place or any landing place or wharf belonging to any Port Commissioners, Port Trust or other public body or company. It would therefore exactly suit the case under consideration but it is rendered nugatory by the refusal of the firms who are the chief ships' agents in Madras to take advantage of it and may therefore be left out of account. Under the circumstances, landing is effected in Madras under section 83 under which the owners have to land goods. The procedure followed is briefly as follows: when a vessel arrives, the agents are supposed to send notice to the consignees of goods enquiring if they will land their goods themselves or will have the work done for them, and on the consignees signifying their consent to have the work done for them boats are sent off and the goods landed accordingly. The firms who generally do most of the import trade appear to have a standing arrangement to this effect and to have granted permanent authority to land any goods that may arrive for them to the dubashes (that is, the native agents of the chief trading firms). If so, it would not be necessary to send to them for special consent and authority on each occasion. But there are numerous consignments to private persons, some in Madras, others up-country; and it is not possible to send notice to all such consignees and to receive their replies before ships

begin to discharge. It follows therefore by section 83 that all consignments intended for all such persons must by law be taken to the "Custom House" where the Customs Collector must take charge and give receipts for them. From this the inference would appear to be inevitable that so long as (1) the law remains as it is, and (2) the ships' agents refuse to act under section 85, the object of the Chamber of Commerce and of the Harbour Trust Board cannot legally be carried out. That is, the Harbour Trust Board can take charge of all cargo landed by owners themselves or with their consent and under their authority by others (the dubashes) on their behalf; but it cannot take charge of any goods not so landed. The Harbour Trust Board cannot therefore carry out its objects in their integrity. In this connection, I am to point out that the Bombay practice of the Port Trust taking charge of *all* goods landed would appear to be illegal.

8. If the view stated above is correct, it will, in the opinion of this Government, be necessary to resort to legislation to allow of the Chamber's proposal being carried out. Section 83 might easily be amended so as to allow of goods not landed by their owners being handed over, if Government should so order, to the Harbour Trust Board or other similar public body instead of to the Collector.

9. The second question seems to be complicated, rather than cleared up by the use of the phrase "within customs limits." It appears to have been invented by the Bombay Customs authorities (*vide* paragraph 2 of the report forming an enclosure to the letter from the Collector of Bombay, C. No. 11868, dated 21st August 1895, printed in G.O., No 682, dated 1st December 1896), but there appears to be no legal warrant for it. Nor is there any necessity for using it. Under sections 73 and 167 of the Sea Customs Act, all goods must be landed at wharves or other places duly appointed for the purpose. If therefore the whole of the possible landing places within the limits of the Port be declared to be wharves under section 11 (*c*) and (*d*), there will be no difficulty as regards the landing of goods. Once the goods are landed, the Harbour Trust Board can charge landing and wharfage (and cranage) fees under section 45 of Act II of 1881 (Madras). The owner can then proceed at once to remove his goods after duly entering them in the Customs House, having them examined, paying duty, &c. If he does not do so immediately, the Harbour Trust Board can then make him pay for storage, demurrage, &c., dues by rules framed under the same section and approved by Government. But the question is in whose custody will the goods in the Harbour Trust Board's wharves and sheds be? The Harbour Trust Board seems to consider that they will be in its sole custody. But this view seems open to question. The Calcutta wharf rules (page 16 of Grimley's Sea Customs Act) show that Government officers are there in charge of the gates. In Bombay, however, it appears that *all* goods landed at the docks are taken charge of by the Trustees' officers and "delivered to their owners or their agents by the Port Trustees' employés exclusively and the sheds in which the goods are stored are under the sole control of the Port Trust." This Government considers that if the Chamber's proposal is carried out in Madras it will be necessary to adopt the same precautions as in Calcutta. The Collector's custody would then consist in the maintenance of patrols for the due security of such goods as iron and timber which will not be placed in sheds, but be left to lie out in the open and in the actual affixing of locks to closed sheds. Whether these sheds and the open ground used for storing iron, &c., be declared part of the Customs House or not, seems to be of no importance. In either case, the Harbour Trust Board will be bound to provide proper accommodation for the officers of the Customs and for the storage of goods so that they can be properly examined. If they do not, the order constituting such places "wharves" for the landing of goods can be cancelled (section 205). If the sheds, &c., are not declared part of the Customs House, goods not cleared and not warehoused within four months must be removed to the Customs House itself, unless for the greater convenience of the trade, the Harbour Trust Board should prefer (as in Calcutta) to set apart a particular shed which would be declared part of the Customs House for this purpose. If that were done, such goods as must under sections 83 and 84 be taken to the "Customs House" might be deposited either in such shed or in the actual Customs House, as found convenient.

10. In view of the fact that the Sea Customs Act applies to the whole of British India and that in Bombay and Calcutta a practice is in force which is illegal in the opinion of the Advocate-General, Madras, I am to request that, as suggested by the Chamber of Commerce, the opinion of the Legal Adviser of the Government of India may be obtained as to whether the proposal contained in paragraph 2 of this letter may legally be carried out as the law stands at present; and, if not, to urge that the law (section 83 of the Sea Customs Act) should be amended as suggested in paragraph 8 *supra*.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) G. STOKES,
Ag. Secretary to Government.

Exd. Md. Pahilvan.

25 Copies.

Revenue Department.

NOTES CONNECTED WITH G.Os., Nos. 493, 494, REVENUE, DATED 28th JUNE 1897.

[Subject.—*Investing the Harbour Trust Board, Madras, with certain powers.*]

Letter from the Chairman, Harbour Trust Board, Madras, No. 4654, *dated* 29*th January* 1897, *and Endorsement of the Marine Department thereon, No.* 111*E., dated* 17*th February* 1897.

Letter from the Chairman, Chamber of Commerce, Madras, dated 26*th February* 1897.

Letter from the Chairman, Harbour Trust Board, No. 5174, *dated* 26*th February* 1897, *and Endorsement of the Marine Department thereon, No.* 201-*E., dated* 18*th March* 1897.

Letter from the Chairman, Chamber of Commerce, Madras, dated 6*th April* 1897.

To Secretary—

The following papers are submitted for consideration :—

(1) Letter from the Chairman, Harbour Trust Board, No. 4654 dated 29th January 1897 declining to undertake the storage of goods for the trade of Madras on the conditions enunciated in G.O., No. 682, dated 1st December 1896, and pointing out that in its opinion there is no legal disability for the Board to have the actual custody of the goods while the Customs Collector retains the goods in his *constructive* custody only which would sufficiently secure the interests of Government.

(2) Letter from the Chairman, Chamber of Commerce, dated 26th February 1897 expressing its concurrence in the views of the Harbour Trust Board and pointing out that under sections 60 and 61 of the Madras Harbour Trust Act, II of 1886, the Board is authorized to act as bailee of the goods and that there is nothing in the Act to prevent goods in the constructive control of the Collector being dealt with by the Harbour Trust Board as proposed. As the Sea Customs Act, VIII of 1878, is applicable throughout British India and as the Port Trust Act in various Provinces contains provisions similar to those in the Madras Harbour Trust Act, the Chamber desires that the opinion of the adviser of the Government of India may be taken on the subject seeing that the opinion of the Local Advocate-General is not in consonance with the practice followed in other Provinces.

(3) Letter from the Chairman, Harbour Trust Board, No. 5174 dated 26th February 1897 pointing out that under the opinion of the Advocate-General, viz., that goods in the Custom House are in the *actual* custody of the Collector, there may be some difficulty in the recovery of harbour dues on goods stored in the yards attached to the Customs House. The Chairman accordingly requests that section 45 of the Madras Harbour Trust Act may be amended so as to enable it to recover the dues without difficulty. It is pointed out that the Bombay Act, VI of 1879, was amended by Act VI of 1883 in a similar manner.

I think this amendment is necessary and may be made at once. A Bill for the purpose should be prepared in the Marine Department.

H. W. B[liss].
J. G[rose].

(4) Letter from the Chairman, Chamber of Commerce, dated 6th April 1897, supporting the request of the Harbour Trust Board to amend section 45 of Act II of 1886 and expressing its opinion that such an amendment would enable the Board to

warehouse goods on warrant, a matter to which the Chamber attaches great importance. It forwards the opinion of its solicitors in the matter which confirms the Chamber's opinion.

(5) Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 1524, dated 13th April 1897 submitting a draft notification for appointing wharves for the landing and shipping of goods at the port of Madras under the Sea Customs Act.

2. Before considering the several points raised in the above communications a brief summary will be given of the previous correspondence on the subject.

3. The Committee appointed in 1895 to consider the question of harbour improvements strongly recommended a proposal made by the Chamber of Commerce to adopt at Madras a system similar to that at Bombay by which the Harbour Trust Board would receive into their sheds all cargo as landed, deliver the same upon pass orders from the Collector, warehouse goods upon warrant, and at the expiration of four months deliver to the Collector any goods not then cleared through the Sea Customs office. The Board of Revenue to which the papers were forwarded for remarks supported the recommendations of the Committee. The Government, however, pointed out that the Harbour Trust Board could act only under section 85 of the Sea Customs Act and that a proposal made in 1892 similar to the one under consideration fell through owing to the unwillingness expressed by the leading firms of shipping agents in Madras to land cargo under section 85 or to employ the Harbour Trust Board as their agents for landing. The Board of Revenue was under the circumstances asked to report how it proposed to overcome the difficulty and whether the firms concerned were willing to land goods under section 85.

4. The Board of Revenue thereupon reported that the leading firms were decidedly opposed to entrust their landing to any agency outside their own control or to land the goods under section 85 of the Sea Customs Act in their capacity as ships' agents. The Collector of Sea Customs was under the circumstances of opinion that the only way out of the difficulty was for the Harbour Trust Board to undertake by special agreements with the steamer agents to meet all claims for damage or short delivery which might be established by the owner of such cargo only as might be landed in good condition at any wharf belonging to the Board and taken into its sheds and to pass a receipt to the master for all such goods as were landed in their original or good condition while all damaged packages should at once be taken to a separate strong room to be surveyed in order to fix responsibility. The Board of Revenue, however, considered that the above procedure would not commend itself to the agents of vessels as it would not relieve them from responsibility for damage occurring before the Harbour Trust Board took charge of the goods on the pier or on the beach. The Board of Revenue accordingly suggested that goods might continue to be landed under section 83 by the agents of the consignees and after being landed be received by the Harbour Trust Board which should then accept all responsibility in regard to them, the sheds which might be constructed by the Harbour Trust Board for storing the goods being declared part of the Sea Customs House under section 11 (*f*) of the Sea Customs Act. Under this proposal, the Harbour Trust Board would act as contractors for the safe custody of goods in charge of the Customs Collector in the same way as the Collector of Customs now treats it as port-erage contractors, the premises being constituted as part of the Sea Customs House and necessary steps taken for guarding it by posting Customs guards at its entrance. As the Board of Revenue entertained doubts as to whether the proposal was legally unobjectionable the papers were forwarded to the Honourable the Advocate-General for opinion. On receipt of his opinion it appeared that some of the points were not made clear and the papers were retransmitted to him for opinion on certain questions definitely set out.

5. The following is the gist of the opinions of the Advocate-General given on the subject:—

(i) Importation of goods is complete as soon as they are brought within the limits of the port with the intention of unlading them.

(ii) Importation of dutiable goods creates a debt by the consignee to Government to the extent of the duties leviable upon the goods and the Government has a lien on the goods for the unpaid duty.

(iii) The Collector's custody of dutiable goods extends throughout the period during which the lien attaches. In some cases the custody is *actual* and in others *constructive*.

(iv) The Collector is in no sense a bailee. He holds charge of the goods as the servant of Government to enforce its lien and to collect the duty. This duty cannot be delegated to any other authority.

(v) If the premises of the Harbour Trust Board be declared part of the Custom House, the owner of the buildings (the Harbour Trust Board) would in no sense be a bailee. The goods will be in the Custom House in the sole and absolute control of the Collector.

(vi) The Sea Customs Act does not allow of joint control over goods in the Custom House and the Harbour Trust Act does not allow the Board to become bailees of goods.

6. The Government, however, was of opinion that it was desirable to allow the Harbour Trust Board to undertake the storage of goods for the trade of Madras in the same manner as the Bombay Harbour Trust does for Bombay. But as the leading firms of shipping agents were averse to land cargo under section 85 of the Sea Customs Act and as the Advocate-General had given it as his opinion that there could be no dual control over goods in the Custom House, the Government considered that the only way out of the difficulty would be to declare the Harbour Trust sheds as part of the Custom House and to allow the Harbour Trust Board to undertake the duty as servants of the Sea Customs authorities. In this case it was pointed out that while on the one hand the mercantile community would have no greater remedy against the Harbour Trust Board for any loss or damage occurring after the goods had been placed in the custody of the Harbour Trust Board for storage at their sheds, on the other hand the Harbour Trust Board would have no lien for any fees due to them for storage and would not be able to detain the goods for such fees, which would have to be collected under section 99 of the Sea Customs Act and made over to the Harbour Trust Board. In view to definitely settling the relations between the Sea Customs authorities and the Harbour Trust Board, the Government considered that definite rules would have to be laid down, but before taking final action the Chamber of Commerce was asked to give its opinion as to the suitability of the arrangements to the trade of the port.

7. The Harbour Trust Board refuses to undertake the operation on the conditions imposed by Government, and points out that there is nothing illegal in the Bombay system being carried out here. The only thing to be done is, in the opinion of the trustees, to declare as wharves for landing cargo the whole of the Harbour Trust premises under section 11 (*c*) of the Sea Customs Act. It considers that if this were done all cargo landed would remain *within Customs limits* in the *actual* custody of the Trust but in the *constructive* custody of the Collector so long as his lien for duty lasted and that merchants and the Board would be in a better position than under the arrangement proposed by Government in the last paragraph, the former in regard to their claim for damages and the latter as regards the realization of fees due to it, while the security of Customs revenue would also be in as good a position as it ever was. It also points out that in Bombay goods are not taken to the *Custom House*, that they are handled within *Customs limits* by the Port Trust, that the sheds in which the goods are stored are under the sole control of the Port Trust, that except for a general supervision by the Customs Preventive Department the entire management of the sheds and gates at the docks is conducted by the Port Trust and that no goods are taken charge of by the Customs authorities. The Board points out at considerable length that the use of the words *Custom House* in the Act, the rules framed thereunder and the Standing orders of the Board of Revenue has given rise to a misapprehension, that there is no provision in the law to compel a person to take the goods to the *Custom House* and that expressions such as "passed through the Custom House", "cleared through the Custom House etc.," relate to formalities to be gone through which are done only by means of documents.

I submit the Board is right.
G. S[TOKES].
12-5-97.

8. The Chamber of Commerce agrees in the views of the Harbour Trust Board above set forth and considers that the opinion of the adviser of the Government of

India may be taken on the legal points seeing that the opinion of the Local Advocate-General is at variance with the practice followed in Calcutta, Bombay and Karachi.

This is, I submit, not the main question. There is no doubt that the Harbour Trust Board can in its capacity as corporation or as servants of the Sea Customs authorities undertake the storage of goods. The question may, I think, be more accurately stated to be whether there is any legal necessity for the present Madras practice of taking all goods into the Custom house and keeping them there till duty is paid. The Advocate-General, Mr. Branson, held that the Madras practice is necessary and legal, and Government tried to get round the opinion, but Harbour Trust Board won't accept the position and both they and the Chamber of Commerce want the legal question referred to the advisers of the Government of India. This, I submit, is a very good suggestion. I have never had any doubt myself that Mr. Branson's opinion was wrong; for if, for no other reason if it be not, the arrangements at Bombay and Calcutta are illegal, a not very likely contingency: but I do not see how Government can now throw it over without the opinion of higher authority.

G.S.
12-5-97.

9. The main question for decision is whether the Harbour Trust Board can, *in its capacity as a corporation and not as servants of the Sea Customs authorities*, undertake the storage and custody of goods for the trade of Madras.

The object of the Madras Harbour Trust Act, 1886, is to make provision for the regulation, conservancy and improvement of the Harbour of Madras. Under section 45, the Harbour Trust Board shall frame a scale of rates to be levied for each or any of the following matters:—

For the landing, shipping, wharfage, cranage, *storage* or demurrage of goods at and for the porterage of goods on, from or within any wharf, pier, or dock in the possession or occupation of the Board.

Under section 48, the Board has a lien on goods for the amount of all rates leviable under the Act in respect of any goods and may seize and detain the same until such rates are fully paid. Sections 49 to 57 provide for the recovery of fees in case of default.

Under section 60, the Board may execute such works as they determine to be necessary or expedient for the purposes of the said harbour and such works may include—

(1) wharves, jetties, landing places;
(2) *warehouses*, *sheds*, engines and other appliances for carrying, receiving and *storing goods* landed.

Under section 70 the Board is authorized to make bye-laws for the reception, removal and porterage of goods brought within the premises of the Board, and for the exclusive conduct of these operations by the Board or by persons employed by them.

10. If the storage and custody of goods subject to the *control* of the Collector of Customs can be regarded as incidental to or consequential upon the operations for the carrying on of which the Harbour Trust Board is authorized to levy rates, or construct works and make bye-laws, there can be no legal objection to the Board undertaking the storage of goods in its *independent capacity*, provided the premises of the Harbour Trust Board are declared to be within *Customs limits*.

Mr. Branson seems to say there can be.

G.S.
12-5-97.

In this connection it may be observed that the term "Custom House" is not defined in the Sea Customs Act. But in clause (*f*) of section 11, the Local Government is given the power to declare what shall for the purposes of the Act be deemed

to be a Custom House and the limits thereof. The Act does not state whether by the term "Custom House" is meant "walled buildings" or merely "territorial limits". But the practice in the Madras port and in other ports such as Bombay, etc., appear to favour the latter view. For instance, the foreshore on either side of the pier at this port is declared to be a Custom House for the storage of iron. Moreover, as pointed out by the Harbour Trust Board, there are places for the landing of timber, coal, etc., which do not admit of being brought under a roofed building and which have not been declared to be a part of the Custom House. So that the only interpretation that can reasonably be put upon the term "Custom House" seems to be that it is any place or places the limits of which are defined and within which all goods imported or exported must be brought and allowed to remain pending payment of duty and clearance for home consumption or shipment. This view receives confirmation from the fact that in Bombay and Calcutta though the *Custom House* proper covers only a small area, *customs limits* are defined to include extensive areas.

It means "territorial limits" and is the same as Customs limits almost.

G.S.
12-5-97.

There can, it is submitted, be no question that the physical custody of goods, which it is proposed to transfer to the Harbour Trust Board, is precisely the operation contemplated in the Harbour Trust Act for the levy of fees for which the Board may prescribe a rate. If the view above set forth as to the interpretation to be put upon the expression "Custom House" be accepted and the whole of the Harbour Trust premises be declared to be wharves for landing cargo under section 11 (*c*) of the Sea Customs Act [In this connection attention is invited to the notification contained in paragraph 3 of Chairman's letter in G.O., No. 35, Marine, dated 11th January 1897 (G.O., No. 587, Revenue, dated 2nd February 1897).] all goods landed will be *within customs limits* and in the actual custody of the Harbour Trust Board and in the constructive custody of the Sea Customs Collector. The latter will thus retain his lien for duty which is all that is desired, while the Harbour Trust Board will be able to realise its due from the consignees. "The right of the Government to the duties does not arise from the possession of the goods, nor is it confined to the goods". But in the case of the levy of the rates, etc., due to the Harbour Trust Board, possession is all important, and the Board will find it difficult to recover its dues after goods have passed out of its possession. Neither in the Sea Customs Act nor in the Harbour Trust Act is there any direction that goods shall be delivered into the sole and actual custody of the Collector.

Mr. Branson distinctly says there can be no dual control.

G.S.
12-5-97.

In Bombay, the Port Trust does precisely for the Collector what it is proposed to make the Harbour Trust Board do in Madras. Reference is solicited, in this connection, to page 3 of the notes under G.O., No. 3996, dated 5th October 1896.

G.S.
12-5-97.

For orders as to whether the Government of India may be addressed in view to the opinion of its legal adviser being obtained, or whether in the light of the remarks contained in this paragraph, the opinion of the Acting Advocate-General may be asked for.

11. If it be held that the Harbour Trust Board cannot carry on the operations of custody and storage in its independent capacity, it is respectfully submitted, it cannot undertake the work as the servants of the Sea Customs authorities, as such a measure would be foreign to the object for which the Harbour Trust Board Act was passed.

12. In his letter No. 5174, dated 26th February 1897, the Chairman, Harbour Trust Board, states that it is an open question whether, under the Harbour Trust Act, difficulty might not occur in the recovery of harbour dues on goods stored in the yards attached to the Custom House outside Harbour Trust premises. He suggests that section 45 of Act II of 1886 may be amended so as to remove the difficulty. In his letter dated 6th April 1897, the Chairman of the Chamber of Commerce supports this request and points out that the amendment proposed

I submit this should be done.

G.S.
12-5-97.

Yes.

H.W.B. 17-5-97.

will enable the Board to warehouse goods on warrant. Submitted that a short Act amending section 45 of Act II of 1886 may be passed similar to Bombay Act VI of 1883.

A.K. 10-5-97.

To the Honourable Member and Circulate—

I submit that the reasoning and arguments put forward now are correct and that Government might accept them but for the opinion of the late Advocate-General. If it be decided not to put aside that opinion then the matter should be referred to the legal advisers of India. In any event the Harbour Trust Act needs amendment as pointed out.

G. Stokes. 12-5-97.

The object sought to be attained is stated on page 2 *supra* and is that the Harbour Trust Board should be enabled to receive into their sheds (when built) all goods as landed; to retain them there and not to allow their removal except under the Collector's pass orders; to warehouse goods upon warrant; and at the end of four months to deliver to the Collector to be dealt with, under section 88 of the Sea Customs Act, any of such goods as have not been cleared or warehoused within four months of date of entry of the vessel which brought them.

The question seems to me to be complicated, rather than cleared up, by the use of the phrase "within customs limits." This phrase seems to have been invented by the Bombay Customs people (*vide* paragraph 2 of the Bombay Preventive Service Superintendent's letter printed on page 6 of G.O., No. 682, dated 1st December 1896), but I can find no legal warrant for it. Nor is it in any way, that I can see, necessary to use it. The law [sections 73 and 167 (31) of the Act] is that all goods must be landed at wharves or other places duly appointed for the purpose, and it is therefore proposed to declare the whole of the possible landing places within the limits of the port to be wharves under section 11 (*c*) and (*d*)—[*vide* Board's Proceedings (Separate Revenue) Mis. No. 1524 dated 13th April 1897]. I can see no objection to this, for it is merely to make legal what is, in fact, the existing and only possible practice. If goods are not to be landed within the limits proposed, they can't be landed within the port at all. Once the goods are landed, the Harbour Trust Board can charge landing and wharfage (and cranage) dues under section 45 of Act II of 1886 (Mad.). The owner can then proceed at once to remove his goods after duly entering them in the Custom House, having them examined, paying duty, etc. If he does not do so immediately, the Harbour Trust Board can then make him pay for storage, demurrage, etc., dues by rules framed under the same section and approved by Government.

So far all seems clear. The first difficulty that seems to arise is in whose custody will the goods in the Harbour Trust Board's wharves and sheds be? The Harbour Trust Board seems to think that they will be in their sole custody. But I doubt this. The Calcutta wharf rules (page 165 of Grimley's Sea Customs Manual) show that Government officers are there in charge of the gates, and so, I consider, it should be here. I admit that the risk of leaving the goods in the sole charge of the Harbour Trust Board will not be great, for the law provides an adequate penalty [section 167 (36) and (39)] for the removal of goods which have not been fully dealt with by the Customs officers. But it is best to be on the safe side and not to omit in Madras precautions which are taken in Calcutta. The Collector's custody would consist in the maintenance of patrols for the due security of such goods as iron and timber, which will not be placed in sheds but be left to lie out in the open, and in the actual affixing of locks to closed sheds. Whether these sheds and the open ground used for storing iron, etc., be declared part of the Custom House, or not, seems to me to be of no importance. In either case, the Harbour Trust Board will be bound to provide proper accommodation for the officers of Customs and for the storage of goods so that they can be properly examined. If they do not, the order

constituting such places "wharves" for the landing of goods can be cancelled (section 205). If the sheds, etc., are not declared part of the Custom House, goods not cleared and not warehoused within four months must be removed to the Custom House itself, unless for the greater convenience of trade, the Harbour Trust Board should prefer (as in Calcutta) to set apart a particular shed, which would be declared part of the Custom House, for this purpose. If that were done, such goods as must under sections 83 and 84, be taken "to the Custom House" might be deposited either in such shed or in the actual Custom House, as found convenient. In either case, the Custom House itself should be the "Public Warehouse" for the receipt and custody of wines and spirits and beer.

Granting all this, there remains, it seems to me, a considerable difficulty which arises out of the law as to the actual landing of goods. This is contained in sections 83 *et seq.* of the Act. Section 83 points to the owner of the goods as the proper person to land them, and provides that, if he does not do so within a specified time, the master of the vessel may take the goods "to the Custom House" [not, it will be observed, to any wharf or other appointed landing place], where the Customs Collector [not the owner or manager of any wharf] "shall thereupon take charge of, and grant receipts for such goods". Under section 84, special provision of a similar nature is made for the conveyance "to the Custom House" of "any small package or parcel of goods." This is, I presume, intended to provide for the landing and custody of consignments of treasure, jewellery, etc., which it might not be safe to send to an ordinary wharf. Section 85 is evidently intended to provide for the case of such ports as Madras, which are not ports of final destination but only of call, and at which it is therefore necessary that cargo shall be got out of ships as soon as possible, so as to allow them to proceed to their destination. It provides that the whole of the cargo destined for the place may be discharged into the custody of the ships' agents for delivery at the Custom House or any specified landing place or any landing place or wharf belonging to any . . . . Port Trust. It would, therefore, exactly suit the case under consideration, but is rendered nugatory by the refusal of the firms who are the chief ships' agents in Madras to take advantage of it, and may therefore be left out of account.

We are therefore thrown back on section 83 (for section 84 may be neglected for present purposes), under which it is for the owners to land goods. Whatever owners may do by themselves they may do by their agents; and it is explained (*vide* Mr. Austin's letter No. 5130-G., dated 25th September 1896, in GO., Mis. No. 4909, dated 2nd December 1896), that in Madras when a vessel arrives, the agents send to consignees asking if they will land their goods themselves or will have the work done for them and that on the consignees signifying their consent to have the work done for them boats are sent off and the goods landed accordingly. The same statement is made, but with less detail, in the Collector's letter printed on page 10 of G.O., No. 682, dated 1st December 1896.

Now, it is quite possible, and even probable, that the firms who generally do most of the import trade have a standing arrangement to the above effect and have granted permanent authority to land any goods that may arrive for them to the dubashes (that is, the native agents of the chief trading firms), who seem to have a monopoly of the landing business at Madras. But I do not hesitate to say that the detailed statement made in the Collector's letter of 25th September 1896 cannot possibly be true. Ships come in to Madras early in the morning and begin discharging *as soon as moored*, say, by 7 A.M. How can notice possibly be sent round to consignees and replies be received from them? It is not possible. As I say, the firms who do most of the import work *may* have given a standing consent and authority. If so, it would not be necessary to send to them for special consent and authority on each occasion. But there are numerous consignments to private persons, some in Madras, others up-country. How can notice be sent to such persons? Of course it cannot be. I know also from personal experience that notice is not sent as stated. It follows, therefore, by section 83, that all consignments intended for all such persons must by law be taken "to the Custom House", where the Customs Collector must take charge of and give receipts for them; and it is certain, so far as I can see, that so long as (1) the law remains as it is and (2) the ships' agents refuse to act under section 85, the object of the Chamber of Commerce and of the Harbour Trust Board cannot

Marine (1897) Department.

CURRENT No.

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"	119-20	D	26-2-96 "
R.	3996	D	15-10-95 Rev.

FURTHER PAPERS.

G.O	No	Department.	Date.
	861		9-10-97

Order

From

The Chairman,
Harbour Trust Board,
Madras.

No. 4654.

Dated 29*th Jany.* 1897.

Despatched 2*nd Feby.*

Received „

Spare copies : three.

SUBJECT.

CUSTODY OF GOODS LANDED.

Replying to G. O. No. 682, Revenue, dated 1st December 1896.

BACK PAPERS.

G. O.	No.	Department.	Date.

FURTHER PAPERS.

G. O.	No.	Department.	Date.

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No. 4654

Harbour Trust Office,
Madras, *29th January 1897.*

From

WARE AUSTIN, Esq., I. C. S.,
Chairman, Harbour Trust Board,
Madras.

To

The Hon'ble Col. D. McNEIL CAMPBELL, R. E.,
Secretary to Government,
Marine Department.

Sir,

I have the honour to acknowledge the receipt of G. O., dated 1st December 1896, No. 682, Revenue, (copy printed herewith for ready reference, together with the opinions of the Advocate-General, dated 26th August and 17th October 1896) communicated under G. O., Marine, No. 17, dated 6th January 1897, regarding the erection of sheds by the Trust for the storage of goods. ✓

2. The Trustees note, with pleasure, that His Excellency the Governor in Council is of opinion that it is desirable for the Harbour Trust Board to undertake the storage of goods for the trade of Madras, in the same manner that the Bombay Port Trust has done for Bombay, and that the Harbour Trust Board should be allowed to provide the buildings necessary for such a service.

3. With regard, however, to the conditions under which it is proposed that this should be carried out, the Harbour Trustees must decline to undertake the work as "servants of the Sea Customs authorities", and submit that they are not authorised to do so, as a Statutory body under the provisions of Act II of 1886, amended by Act I of 1892, which latter Act specially empowers the Harbour Board under Section 45, Act II of 1886, "To frame a scale of rates * * * for the porterage of goods en, from or within any wharf, pier or dock in the possession or occupation of the Board"; and under Section 70 to "make bye-laws for the reception, removal and porterage of goods brought within the premises of the Board, *and for the exclusive conduct of these operations by the Board or by persons employed by them.*" Under Section 45 (*a*) the Board is further authorised to frame a scale of rates to be levied for the landing, shipping, wharfage, cranage, storage or demurrage of goods at any such wharf, &c., within the limits of the Port, whether within or without the Harbour, and the Trustees, under these circumstances, respectfully repudiate the position assigned to them by the Collector of Sea Customs, in his letter No. 2107 G, dated 21st April 1896, wherein he states that "*the Harbour Trust at present merely intervene* "*as porterage contractors.*"

Side Para of Letter dated 29-1-97

Para of Proceedings

vide page 10 of Rev Proc. with G.O. 17 Marine dy 6-1-97 Flag T

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4. There does not appear to be any necessity to declare the sheds, which the Harbour Trust proposes to build, a *part of the Custom House*; all that is required is that they should be included "*within Customs limits*" as in Bombay. I may here remark, that, in London, goods are passed through the Custom House, and ships are entered at it; but neither goods nor ships are taken to it. The Custom House is in the City; the ships and goods remain "*within Customs limits*," which in London, Bombay, and elsewhere, is all that is considered necessary for *Customs control*.

5. The Collector of Sea Customs cannot legally transfer his custody or control of dutiable or other goods to the Harbour Trust Board, and it is not desired that he should. His custody extends from the time dutiable goods are brought within Port limits until duty is paid; it may be *actual*, or it may be *only constructive*; but, in either case, commences and ends with his lien for duty.

6. Dutiable goods are *constructively* in the *custody* of the Collector when on boardship within Port limits; while in transit in charge of the Dubashes from ship to shore; while in transit in charge of the Harbour Trust from the shore; and, as is the case, in many instances at present, while they remain outside the Custom House within the Board's premises, it being physically impossible to take many packages into the Custom House yards; and I may here remark that constructive custody, and the lien of the Collector for duty, extends to goods which may even not be in existence, *i. e.*, to goods which may have been manifested for entry, but which may, from various causes, not be on board the steamer on arrival *within Customs limits*, but which would nevertheless, being manifested, have to be accounted for by the Master, or Consignee.

7. Dutiable goods are *actually* in the custody of the Collector when they are in the Custom House. The Harbour Trustees are not aware under what section of the Sea Customs Act importers can be compelled to take all dutiable goods *into the Custom House*. As pointed out in my letter No. 3771, dated 4th December, the Custom House at Bombay is not used for the storage of goods; while at Madras the sheds attached to the Custom House, and used for the storage of goods, have from long association come to be regarded as synonymous with the Custom House itself.

8. It would appear that any order to the effect that all goods shall be taken *into the Custom House, i. e.*, into the yards attached to the Custom House, would be arbitrary, and not in accordance with any specific section of the Sea Customs Act. If so, the rule could be varied, by directing that all goods should be taken into Harbour Trust premises *within Customs limits*, and they would then be practically *within Customs premises*, and in the Collector's custody *constructively*, while his lien for duty lasted, and under his control, though not in his *actual* possession.

Dutiable goods could not pass out of the constructive custody of the Collector until duty had been paid. It is unnecessary for him to hold *actual possession* as he does at present, under lock and key, of a portion, and only a portion, of dutiable goods landed.

9. In order to encourage trade and commerce, and to meet the convenience of importers, while at the same time securing the interests of Government, the system

of warehousing was adopted by the Legislature, and it appears to be an extension of this principle which has led the Government of India, and the local Governments of Bombay and Bengal in the interests and encouragement of trade and commerce, to permit goods to be taken charge of, and handled without the intervention of Customs officials, by the Port and Harbour Trusts at Bombay, Calcutta, Karachi and Rangoon; though from the time the ship enters Port limits, to the time duty is paid, all goods intended for importation are constructively in the custody of the Collector of Sea Customs at each Port.

10. The convenience which would accrue to the Customs authorities, and to the Mercantile public, by the introduction of a similar system at Madras is undoubted. Goods on arrival *within Customs limits*, even though still on boardship and in transit from ship to shore, are in the *constructive* custody of the Collector, and the interests of Government would in no way suffer by the goods being allowed to remain in his *constructive custody only*, and in the actual custody of the Harbour Board, which would provide conveniences and facilities for Customs examination, and for the Mercantile public, which are at present unknown in Madras, and the absence of which seriously inconveniences both importers and Customs officials.

11. It does not appear to the Trustees that there is any necessity for dual control, and they fail to see how their actual possession of goods can in any way effect the constructive custody, or actual lien, of the Collector. There is no reason why the interests of the Merchants and of Government should clash in any way. If under Section 11 (*c*) of the Sea Customs Act the whole of Harbour Trust premises are declared wharves for landing cargo, all cargo landed would remain *within Customs limits*, in the actual custody of the Trust, but in the constructive custody of the Collector, so long as his lien for duty lasted. This is the course of business at Bombay, and the only one that can be satisfactorily carried into effect at Madras, in the interests of trade.

Should Government see its way to take this view of the matter, the Trust and Merchants would be left—unhampered by the detailed control of the Collector, and other Customs officials subordinate to him—to make whatever arrangements may be approved by Government, under the Harbour Trust Act, to meet the convenience of the Mercantile public, and of the Customs authorities, and for the safe custody and storage of goods. There is no reason why such a procedure should not work as smoothly in Madras as at other ports.

12. In this connection, the Trust would bring prominently to notice the opinion expressed by Mr. LeFanu in the concluding portion of para. 9 of his letter No. 3258, dated 20th November 1895, as follows:—"It may not, perhaps, be out of place here "to express my personal opinion that I see no difficulty whatever in acceding to this "request of the Chamber of Commerce; for, under the orders of Government, the "Collector of Sea Customs is, by reason of his office, as such, also the Chairman of "the Board, and it would, therefore, appear that it should be more easy to carry such "an arrangement into effect at Madras than at other Ports, where these two offices are "not held by the same person"; and this must obviously be the case; for, the Collector and the Chairman being one and the same person at Madras, the Collector could see

that no order of his, as Chairman, in any way clashed with the interest of Government, for which he is responsible as Collector.

13. With regard to responsibility for loss and damage: the Trustees would submit that the Mercantile community would be in a very much better position under the arrangements proposed by the Chamber of Commerce, provided it is distinctly understood that while the custody of the Harbour Board is *actual*, that of the Collector is *constructive*, and only for so long as his lien for duty lasts; but under the arrangement proposed by the Collector, merchants would be in a worse position than now, for as pointed out by Government, the Board, as a servant of the Customs authorities, would not be responsible at all, except under the provisions of the Sea Customs Act, which would practically protect it altogether.

14. The Harbour Trust lien for dues would probably be disadvantageously affected under the circumstances stated in para. 2 of the G. O. under reply; but the Collector's lien for duty would be absolute from the time the goods came into the actual custody of the Harbour Board, should Government approve of and sanction the proposals of the Chamber of Commerce; and the Harbour Board's lien would also, under the Harbour Trust Act, be all that is required.

15. The Trustees would submit that the arrangements proposed by the Chamber and by the Harbour Board *are* complete, and sufficient for the due realization of Customs revenue; that nothing further is needed, and that there is no legal difficulty to be overcome, but that the Harbour Trust Board *can* legally, and without detriment to Customs control, or to the actual lien upon and constructive custody of goods by the Collector, carry out the proposals of the Chamber of Commerce, under the powers vested in the Trust by Act II of 1886 as amended by Act I of 1892.

16. It seems to the Trustees that a misapprehension has arisen, over the expression *Custom House*. The Advocate-General appears to assume that it is *necessary* for all goods to be taken *into the Custom House*, but the legality of such an order under the Sea Customs Act is not apparent—Sections 86, 87 and 89 do not so enact. In para. 4 (3) he refers to the contingency: "*If* the buildings be declared part of the Customs House, under Section 11 (*f*)" and goes on to say that *then* "the goods would be in the Custom House in the sole and absolute control of the Collector." This is what, it is understood, the Chamber of Commerce wishes to have *altered* as it is found unsatisfactory, and stands in the way of the Harbour Trust giving improved facilities at Madras, such as are customary, and work without difficulty or friction, at all other large Indian ports.

17. The difficulty appears to lie in the interpretation placed, in Madras, upon such expressions as "Custom House"—; "make entry," Section 86—; "passed through the Custom House," Section 167—36—; "entered at or brought to be passed through a Custom House," Section 167—37—; "Passed out of any Custom House *or wharf*," Section 167—39.

There are also certain expressions in the Sea Customs Act which seem to imply that goods must be taken *into the Custom House*; but, for the reasons given below, the Trustees would submit that this is not so.

Under Section 75 "The Chief Customs authority may from time to time make "rules for the landing and shipping of passengers' baggage, and passing of the "same *through* the Custom House." Baggage is rarely, if ever, physically passed through the Custom House yards. Most of it is, at Madras, either passed on board ship, or taken to the outer verandah of the Custom House, and removed therefrom when passed. At Bombay passengers' baggage is landed at a Port Trust Bhandar "*within Customs limits*," and passed therefrom by an Assistant Collector, who attends for the purpose; but not a single package is taken into the Fort, to the Custom House to be physically *passed through* it.

In Section 167—39 a penalty not exceeding Rs. 500 is fixed, "*If, without "entry duly made, any goods are taken or passed out of any Custom House or wharf.*" From this it appears that if Customs regulations in the way of entry, and presumably assessment and payment of duty, if any, have been duly complied with, *goods may be passed from a wharf*, without being taken to, or into or through, a Custom House. If this is legal in any case, it would, the Trustees submit, be legal in all cases, except where otherwise provided for in the Sea Customs Act.

Under Section 192, "If a person has become liable to any such fine, penalty "or rate in respect of any goods, the Customs Collector may detain any other goods "belonging to such person, *passing through the Custom House*, until such fine, penalty "or rate is paid."

It cannot here be meant that the Collector may detain goods *only* when they are physically being passed through the Custom House, to which as at Bombay goods are never taken, and carried from one side to the other. For instance: at Madras, should an importer of Kerosine Oil, or Dynamite, become liable to any penalty or fine, the Collector would, it is presumed, be within his rights by refusing to pass other Kerosine Oil or Dynamite belonging to the same party, but he certainly would not insist upon either being *actually carried through the Custom House* to justify his doing so under this section; or if an importer had become liable to a fine under this section in respect of say Manchester goods, and had also imported a cargo of coal, the Collector could presumably detain the coal till the fine was paid, but it would not be necessary that it should be carried into the sheds attached to the Custom House at Madras, or through the Custom House—the Collector's Office—at Bombay.

The terms make entry; passing through the Custom House; entered at or brought to be passed through a Custom House, appear to refer to much the same proceeding, if not to the very same; that is, when goods are "entered at or brought to" "be passed," as it is put in Section 167—37; and Section 86 enacts that "the owner of "any goods imported shall on the landing thereof from the importing ship, *make* "*entry* of such goods for home consumption, or warehousing."

This "*entry*" is not to be made, it will be observed, by carrying the goods into the Custom House, which is absolutely impossible at Bombay, but "*by delivery to the* "*Customs Collector of a bill-of-entry* thereof in duplicate in such form and containing "such particulars, in addition to the particulars specified in Section 29, as may from "time to time be prescribed by the Chief Customs authority." At Bombay upon such *entry* being made at the Custom House, in the Fort, and all other Customs regulations

having been complied with, the goods themselves are *passed*, not through the Custom House, but from *within Customs limits* at the Port Trust premises, as "*out of Customs charge*," and may then be removed.

18. In the standing orders of the Board of Revenue, made under the provisions of Section 9, and becoming law under Section 204, expressions occur which may also be taken to mean that goods must be carried into the Custom House.

Rule 62. "*All goods* must be landed at appointed places *and regularly passed through the Custom House.*" It is to be observed here that no exception is made, and that if it is to be taken literally that "*all goods must be passed through the Custom House*," it is difficult to see under what exception coal is delivered from outside, if it—coming within the category of "*all goods*"—must be regularly *passed through* the Custom House. The explanation seems to be that it is the documents relating to coal which must be submitted at the Custom House, and a pass order obtained in due form. The same remarks apply to Kerosine Oil in bulk as well as to many other descriptions of cargo, which cannot by any known means be physically carried into and out of the Custom House, or the yards attached to it.

It is also to be observed that under this very rule a distinction is made between goods passed through, and goods carried to, the Custom House; for clause 6 directs that under certain circumstances—those referred to in Section 83—"the Master or "Commander of such vessel as the case may be, or the officers of Customs, on his applica- "cation *may carry such goods to the Custom House.*"

Rule 72. "Goods once assessed for duty, on a declared value, will not be permit- "ted to be re-valued, *after they have left the Custom House*"; and Section 36:— "Except as provided in Section 94 no amendment of a bill-of-entry or shipping bill "relating to goods assessed for duty on the declared value, quantity or description "thereof shall be allowed *after such goods have been removed from the Custom House.*"

The point is, under what section of the Act can owners be compelled to take them into the Custom House.

Rule 73. "If any article of foreign production, on which import duty has "been once paid, is subsequently exported without drawback, and is re-imported, it "shall be exempted from duty if the Collector of Customs is satisfied of the identity "of the articles." There does not appear to be any reason why it should be easier to identify goods that have been stored in the Custom House yards, than to identify goods stored within Customs limits, in premises belonging to the Harbour Trust. On the contrary, as the present Custom House yards are totally inadequate to store packages, so that they can conveniently be seen, identification would appear easier—if visual observation is necessary—were they stored in the first instance in sheds with ample space; but it can hardly be contended that it is necessary that the external appearance of the packages should be familiar to, and recognised by, an Officer of Customs.

Rule 74. "Goods re-landed must be reported upon and identified as being the "same that had previously passed the Custom House for exportation." Here again to contend that actual familiarity with the external appearance of the packages is necessary, and that, to attain such, the goods must have been at some time in the Custom House, would appear a very unsatisfactory method of identification. The description contained in the documents would probably answer all purposes.

Rule 84. "Parties requiring to ship goods, with a claim to drawback, *must bring "them to the Custom House*, at least 24 hours before it is intended to ship them."

This rule does not appear to apply to goods landed for home consumption, and the question of drawback has not been raised by the Chamber of Commerce.

19. The Trustees would submit, that goods manifested for Madras are "*brought*" by the vessel, and that before they can be *cleared* or *passed* through the Custom House, certain formalities have to be gone through, to satisfy the Collector as to the nature and value of the goods; and this can most conveniently be done by the production of documents. If the Collector is not satisfied with such documentary evidence, he may order an examination; but for the purposes of this examination goods are not, in London, carried to the City, for examination at the Custom House, nor at Bombay are they taken to the Fort, to be there examined in the Custom House. In London the examination is made by Customs officials at the Docks or Wharves in the river, owned by private companies or individuals, and at Bombay at the Port Trust premises. Both the Docks and Wharves in London, and the Docks and Bhandas in Bombay, are *within Customs limits*; but neither in London or Bombay are they *declared part of the Custom House*. Moreover all goods, without exception, have to be *passed* through the Custom House; that is, a pass obtained by the production of the necessary documents; but even in Madras goods which are too large to pass under the entrance archway, or too heavy to carry into the Custom House yards, or which are considered dangerous or objectionable, are *not* taken into the Custom House, and yet there does not appear to have been any exception made in their favour, exempting them, and compelling say Manchester bale and case goods to be taken into the Custom House, or the yards attached to it.

20. Goods must be taken somewhere for protection; they cannot be left upon an open sandy beach, and as the "*Custom House*," with the yards attached, is the only place in Madras where they can, at present, be temporarily stored and conveniently examined, they have been, it is understood, taken there, under the orders of the Board of Revenue; but there does not appear to be any reason why, if more convenient arrangements can be made, the order to take goods to the Custom House should not be cancelled, and a similar order substituted that they shall remain *within Customs limits* at such wharf, pier or jetty, according to their nature, as the Harbour Board may, with the approval of Government, direct in a bye-law framed under Section 70, Act II of 1886.

21. Referring to Section 204, it is enacted therein that "all rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law."

Under Section 9 it is enacted, that the Chief Customs authority may from time to time, with the sanction of the local Government, make rules *consistent with this Act*:

(*a*) Prescribing and limiting the powers and duties of officers of Customs;

(*b*) Regulating the delegation of their duties by such officers; and

(*c*) Generally to carry out the provision of this Act.

If, therefore, no section of the Act empowers the Chief Customs authority to direct that *all* goods shall be taken *into the Custom House*, it would seem to have been

the intention of the Legislature that no such power should be exercised, except as laid down in Sections 83, 84, 85 and 88; and this for the very good reason that a Custom House is not a wharf, or warehouse, for landing and storing cargo, before it is passed for Home consumption, or otherwise disposed of; but *an office* where the Collector assesses duty, and from whence he controls the goods landed and temporarily stored *within Customs limits*, under his jurisdiction and control, and in his *constructive* custody so long as his lien for duty lasts.

It is merely an accidental circumstance that, at Madras, the sheds where goods are stored, are in the same block of buildings as the Custom House.

22. It is further to be observed that in the only sections of the Sea Customs' Act—which provide for goods being actually taken *into the Custom House*—Section 83 enacts that "If the owner of any goods (except such as has been shown in the import "manifest as not landed) does not land such goods within such period as is specified "in the Bill of Lading of such goods * * * the Master of such vessel or, on "his application, the proper officer of Sea Customs, *may* then *carry such goods to* "*the Custom House*, there to remain for entry. The Customs Collector shall there- "upon take charge of, *and grant receipts for, such goods.*"

Again, in Section 84, it is enacted that "at any time after the arrival of any "vessel the Customs Collector *may*, with the consent of the Master of such vessel, "cause any *small package* or *parcel* of goods to be *carried to* the Custom House, "*there to remain for entry.*"

If, therefore, before goods can be *carried to the Custom House*—except such

Rule 72. "Goods once assessed for duty, on a declared value, [illegible]
"ted to be re-valued, *after they have left the Custom House*"; and Section 36:—
"[illegible]
as are still uncleared four months after the arrival and entry of the vessel, under Section 88—a request must be made by the Master, or his consent obtained; it is clear that the *entry of goods* is not the physical operation of placing them in the Custom House; for *after* goods have been *carried into the Custom House* at the request of the Master, or to it with his consent, they then have still to await "*entry*," and have still to be "*passed*" through the Custom House, before they can be cleared.

23. With regard to the method of landing goods at Madras: there does not appear to be any necessity to make any alteration. The agents object to land under Section 85, because they would then incur responsibility on behalf of the ship not contemplated in the Bill of Lading, and therefore beyond their authority.

But this is no reason why the Dubashes, as agents for the consignees, should not continue to land goods as at present under Section 83; and when the Harbour Trust has constructed a Boat basin with convenient Wharves, and sheds adjacent, take such goods to those Wharves—authorised landing places under Section 11 (*c*) of the Sea Customs' Act—and there make the goods over to the Harbour Trust, to remain in the *actual* custody of the Trustees, but in the constructive custody, and under the actual control, of the Collector until passed as *out of Customs charge*.

24. That there must be some way of overcoming the difficulty, would appear certain; from the fact that *goods are not taken into the Custom House* at Bombay; but are handled *within Customs limits* by the Port Trust,

and that there "*the sheds in which the goods are stored are under the sole control of the Port Trust,*" and "*except for a general supervision by the Customs Preventive Department, the entire management of the sheds and the gates at the Docks is conducted by the Port Trust*" while on landing "*no goods are taken charge of by the Customs.*"

It is incomprehensible to the Trustees why an exactly similar procedure cannot be followed at Madras, without their becoming the servants of the Collector.

25. The *constructive* custody of goods, and the actual lien of the Collector, has been sufficient, and is presumably considered legal in Bombay, and consistent with the *actual* custody being vested in the Bombay Port Trust *under the control of the Collector.* The Sea Customs Act applies to Bombay as well as to Madras, and there is little, if any, difference in the powers conferred upon the Trustees of Bombay, and the Madras Trustees, by their respective Acts, so far as the power of dealing with goods is concerned, except that in Madras the Harbour Board is specifically empowered, under Act I of 1892, to undertake the porterage of goods, which at Bombay the Port Trust appears to do as a matter of course, within its own premises, and without any specific authority.

26. The question of warehousing goods under warrant, is separate and distinct, and need not now be discussed.

I have the honour to be,
Sir,
Your obedient servant,

[signature]
Chairman,
Harbour Trust Board.

OPINION.

The Board of Revenue propose that the sheds which the Harbour Trust Board purpose building shall be declared to be part of the Custom House;* that all cargo shall be stored therein; and that the Harbour Trust Board shall be responsible for the safe custody of such of the goods so stored as are in the custody of the Collector of Sea Customs. The Harbour Trust Board are willing to accept this responsibility. I am asked whether there is any legal objection to the proposed arrangement, and whether it is necessary to obtain from the Harbour Trust Board documents acknowledging their responsibility if the arrangement be carried out.

2. The Collector of Sea Customs cannot legally transfer his custody of dutiable goods to the Harbour Trust Board so as to relieve himself of the duty of safeguarding them; and the proposed arrangement is not intended, I understand, to effect such a transfer. The Collector of Sea Customs is to retain charge of the goods, † and do every thing necessary to ensure their safe custody in the premises which will form part

Memo. by Trustees.

* This the Harbour Trust objects to, and the Trustees are not willing to accept any such position as is involved.

† The *actual* custody of the goods by the Harbour Trust is what was proposed by the Chamber of Commerce.

of the Custom House "*in fact as well as in name.*" The Board of Revenue "would treat the Harbour Trust Board as contractors for the safe custody of goods in the custody of the Customs Collector," in other words would treat them as bailees of goods in the Custom House. The Sea Customs Act, 1878, does not allow of joint control over such property, and the Harbour Trust Act, 1886, does not empower the Board to become bailees of such goods. The Board of Revenue admit that "the possession of goods on behalf of the Collector by the Harbour Trust Board will not be under any provision of law, but under an ordinary contract." A contract of bailment by which the bailor is to retain in his own premises absolute control over the property bailed, and the bailee is to be responsible to the bailor for the safe custody of that property is unknown to the law.

3. I am of opinion that on legal grounds the proposed arrangement is objectionable.

MADRAS,
26th August 1896.

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

(*Reference.*—*G. O., Mis. No.* 3996, *Revenue, dated 5th October* 1896.)

OPINION.

The importation of dutiable goods creates a debt by the consignee to Government to the extent of the duties leviable upon the goods. Government has a lien on the goods for the unpaid duty. "The right of the Government to the duties does not arise from the possession of the goods, nor is it confined to the goods." (*a*) For example, in cases to which Section 39 is applicable though the lien is lost, the claim can be enforced in the manner prescribed.

(*a*). Elwes' Law of the Customs, page 15, Section 31.

In the interests of trade, the Legislature have empowered the Collector in certain cases to abandon the lien and to accept in its place a bond and securities prescribed, *e. g.*, in Section 41.

Importation is complete as soon as the goods are brought within the limits of the Port with the intention of unlading them.

2. *The Collector's custody of dutiable goods extends throughout the period during which the lien attaches.* Where goods are in the Custom House or in a warehouse, his custody is actual; where they are entered for transportation or exportation, they are during transit at least constructively in his custody until the duty thereon is paid. He is in no sense a bailee of the goods, and is not responsible to the consignee for any loss which is not due to his personal misconduct or neglect in the discharge of his duties. (*b*) No dutiable goods can be taken out of the Collector's custody until the duties have been fully paid or have been duly secured by bond in the manner prescribed by law. The manifest by the master (*c*) gives the Customs Collector the information he must have

(*b*). Section 197.

(*c*). Sections 53 to 60.

(*d*). Sections 81, 82 and 85. In the order of Government above referred to, it is said that Section 85 has not been extended to Madras, but see Notification No. 22, dated 3rd January 1885.

before he can issue his permit without which the unlading of goods is not allowed in order to prevent the unlawful importation of goods. (*d*) When the permit has been granted and the goods have been landed, the consignee must deliver to the Collector a bill of entry which is *primâ facie* evidence of their value in order that the Collector may assess the duty payable thereon. (*e*) When the duty is paid the lien is at an end, and the consignee is entitled to remove the goods. (*f*)

(*e*). Sections 29 and 86.

(*f*). Section 89.

In order to encourage trade and commerce, and to meet the convenience of importers, while, at the same time, securing the interests of Government, the system of warehousing was adopted by the Legislature. (*g*) The liberty to warehouse dutiable goods is a privilege conceded not a contract entered into by Government. To prevent an abuse of the privilege, the time during which goods may be deposited in a warehouse without duty being paid thereon is limited. The lien of Government on the goods warehoused continues until payment of the duties, and the goods remain in the custody of the Customs Collector. They are forwarded to the warehouse in charge of one of his officers, (*h*) and remain there under his control. (*i*) The control or custody may pass from one Chief Customs Officer to another under the provisions of Sections 104 to 108, but the lien of Government still attaches to the goods, and their custody, at least constructively, remains in the Customs Officer.

(*g*). Chapter XI.

(*h*). Sections 93 and 94.

(*i*). Sections 97 and 102.

3. By the Act, the Collector is required—

(1). To detain goods coming within the provisions of Chapter IV;

(2). To *detain* goods which have been undervalued by the consignee; (*j*)

(*j*). Section 32.

(3). *To take charge of and grant receipts for goods deposited with him under Sections* 83 *and* 84, *or discharged under Section* 85 (*a*).

The provisions of Chapter IV were framed on grounds of public policy, and have nothing to do with any lien possessed by Government, or custody by its servant.

The provisions contained in Section 32 do relate to such lien and custody the existence of which is of course recognised.

The provisions of Section 83 in no way deal with, or affect the Government's lien or the Collector's custody. That lien and custody are unaffected by Sections 84 and 85.

4. My answers to the question put to me are as follows:—

(1). In my opinion *the Collector's custody of dutiable goods for the purpose of securing the payment of the duty leviable thereon lasts as long as the lien of Government exists, viz., from importation till clearance.*

(2). His custody is that of a servant of Government duly empowered by the Act to enforce the lien of Government and to collect the duty or debt due to Government

by the consignee. He is in no sense a bailee of the goods in his custody. In my opinion, dated the 26th August, I said that he *cannot delegate his powers of control* over them.

(3). In the view I take, the question of bailment cannot arise. If the buildings be declared to be part of the Custom House under Section 11 (*f*), the owner of the buildings would not be a bailee. The goods would be in the Custom House in the sole and absolute control of the Collector.

If the buildings be appointed public warehouses* under Section 15 (*k*) or be licensed as private warehouses under Section 16, the rules relating to such warehouses will apply. Consignees cannot be compelled to warehouse their goods, but if they desire to do so, the goods "shall be forwarded in charge of an officer of Customs" to the warehouses, where they will be deposited and will remain at the risk and expense of the owners, but will continue to be in the possession and control of the Collector.

(*k*). By notification, dated 11th December 1883, under Section 14, Madras was declared to be a warehousing Port.

The extent of the responsibility of the warehouse-keeper is laid down by Section 123. I do not understand that there is any intention to declare the Port Trust buildings "public warehouses" when they are erected. *So long as goods are not "cleared," the owners cannot store them where they please.* They must make entry of the goods for "home consumption" or "warehousing."(*l*) If they make entry for "home consumption," they must proceed to "clear" them by paying the duty thereon.(*m*) *Until they do so, the goods remain in the custody of the Collector in the Custom House.*† If the goods are entered for warehousing,(*n*) they must be assessed, and then be warehoused in some warehouse "appointed or licensed under this Act."(*o*)

(*l*). Section 86.
(*m*). Sections 87 and 89.
(*n*). Section 87.
(*o*). Section 90.

MADRAS,
17*th October* 1896. } (Signed) J. H. SPRING BRANSON,
Advocate-General.

G.O. 17 Learning 6-1-97

Order No. 682, Revenue, dated 1st December 1896.

His Excellency the Governor in Council is of opinion that it is desirable to allow the Harbour Trust Board to undertake the storage of goods for the trade of Madras in the same manner as the Bombay Harbour Trust has done for Bombay, and that the Harbour Trust Board should be allowed to provide the buildings necessary for such service.

2. It seems to His Excellency in Council, however, that under the existing Customs law, the Harbour Trust Board can only be allowed to undertake this duty

Memo. by Trustees.

* The question of warehousing goods upon warrant is distinct for the storage of goods on landing, but forms part of the proposals of the Chamber of Commerce, and will be separately dealt with.

† Under what section of the Sea Customs Act *must* all goods for home consumption be taken *into the Custom House*. Sections 86, 87 and 89 do not appear so to enact.

as servants of the Sea Customs authorities. Under the Advocate-General's opinion read above, there can be no dual control; hence the custody of the Harbour Trust Board must be that of the Sea Customs authorities. Since the Customs authorities are not responsible for any loss or damage except under Section 197 of the Act, the Mercantile Community will have no greater remedy against the Harbour Trust Board than they have now against the Customs authorities for any loss or damage occurring after the goods have been placed in the custody of the Harbour Trust Board for storage at their sheds. It also follows that the Harbour Trust Board will have no lien for any fees due to them for storage and will not be able to detain the goods for such dues. It will be necessary, however, to make such arrangements that the control of the Sea Customs authorities shall be complete and sufficient for the due realization of the Customs revenue, and for this end it will be necessary to declare the Harbour Trust sheds a part of the Custom House. Storage fees can then be realised under Section 199 of the Act; such fees being made over to the credit of the Harbour Trust Board.

3. In view to definitely settling the relations between the Harbour Trust Board and the Sea Customs authorities, His Excellency the Governor in Council thinks it necessary that definite rules laying down the conditions on which the Harbour Trust Board may be allowed to undertake this service be drawn up in communication, if necessary, with the Government Solicitor and agreed on by the Sea Customs authorities and the Harbour Trust Board.

4. Before issuing final orders on this subject, however, His Excellency the Governor in Council thinks it desirable to forward to the Chamber of Commerce the material papers connected with this subject and to invite an expression of their views on the desirability of the above arrangement from the point of view of the convenience of the trade of the Port.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

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No. 1112

Government of Madras.

Marine
~~PUBLIC WORKS~~ DEPARTMENT.

Endorsement
~~MEMORANDUM.~~

Dated Madras, 17th February 1897.

Letter from the Chairman Harbour Trust Board, Madras, No. 4654 d/29 January/97.

Transferred ~~to~~ the Revenue department.

J. H. Campbell Col: R.E.
Secretary to Govt:

To

The Revenue Dept:

[P. W. 41
2,000—6-3-96.]

Revenue (1897) Department.

CURRENT No. 870

Order

From Chairman, Chamber of Commerce, Madras.

No.

Dated 26th Feb 1897

Received 26th Feb 1897

Registered 2nd March 1897

Enclosures

Spare copies

SUBJECT.

Making certain suggestions with regard to the legal points raised by the Advocate. Genl in connection with the provisions of the Sea Customs Act 1878.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

90

The Chamber of Commerce,

MADRAS, 26*th February*, 1897.

FROM

G. G. ARBUTHNOT, ESQ.,
CHAIRMAN, CHAMBER OF COMMERCE,
MADRAS.

To

THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
MADRAS.

SIR,

I have the honour to acknowledge receipt of G.O. of the Madras Government, No. 682, Revenue, dated the 16th December last, and G.O., No. 4909, Mis., dated the 2nd idem. While the Chamber is gratified to observe that the Government will have no objection to assimilating the practice in Madras to that in Bombay, it notes with regret the legal points raised by the Advocate-General. If the change c only be effected under the conditions thus laid down, it hardly seems to the C mber worth while to make any alteration.

The Advocate-General is of opinion:—(*a*) That the Sea Customs Act, 1878, oes not allow joint control of the Harbour Trust Board and the Collector of Sea Customs over dutiable goods, and (*b*), that the Harbour Trust Act, 1886, does not empower the Board to become the bailee of such goods (*i. e.*, dutiable goods in the control of the Collector of Sea Customs).

With regard to (*a*), admitting, for the sake of argument, this view to be correct, the Chamber submits that no joint control is contemplated. It is merely desired that the Harbour Trust Board should be permitted by Government to remove into its sheds cargo as landed and to deliver same upon pass orders from the Collector.

This procedure has been, and is still, in force in Bombay, as will be seen from a note appended to a letter from the Collector of Sea Customs of Bombay to the Collector of Sea Customs of Madras, dated the 27th July, 1896, wherein he says:—"It will be seen from the above that, except for disposal under Section 88 of the Sea Customs Act, no goods are taken charge of by the Customs, that the Department has nothing to do with landing, storage or delivery of goods, etc.," and in his letter of the 16th August, 1892, the Collector of Customs, Bombay, says that "except a general supervision by the Customs Preventive Department, the entire management of the sheds and gates at the Docks is conducted by the Port Trust."

With regard to (*b*), the Chamber would call the attention of Government to Section 60 of the Harbour Trust Act, which empowers the Board to execute such

works as it determines to be necessary or expedient; to Section 61, wherein the works authorised by Section 60 include (*inter alia*) "*warehouses and sheds for receiving and storing goods to be landed or to be shipped or otherwise*," and to Section 53, which is as follows:—"Such goods shall be retained in the warehouses and sheds of the Board or with the consent of the Chief Officer of Customs in the Public Customs Warehouses at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned; and godown rent shall be payable by the party entitled to such goods for the time during which they may be so retained."

With all due deference to the Advocate-General, the foregoing Sections, among others, clearly, in the view of the Chamber, contemplate the Harbour Trust Board acting as the bailee of goods landed, shipped, or otherwise, and the Chamber is unable to find anything in the Act which prevents dutiable goods in the control of the Collector of Sea Customs being, with the sanction of Government, dealt with as proposed.

The Chamber has been favoured with a copy of the letter which the Madras Harbour Trust Board addressed to Government on the 29th ultimo, and as the views therein enunciated—which have been approved by the Chamber's representatives on the Board—are identical with those entertained by all the members of the Chamber, it would be a work of supererogation for the Chamber to enunciate its views separately. If, however, the object of the proposal before Government is unattainable under the present Acts—which the Chamber ventures to doubt—then a simple way out of the difficulty offers itself in their amendment, and in view of the very great desirability of the change being brought about, the Chamber would strongly urge immediate legislative action, for the present state of affairs is as anomalous as it is unsatisfactory.

In view of the fact that the Sea Customs Act applies to the whole of British India, and that in ports like Calcutta, Bombay and Karachi a system is in vogue which is illegal in the opinion of the Advocate-General of Madras, the matter may be deemed of sufficient importance to have the opinion of the adviser of the Government of India taken on the legal points raised.

I have the honour to be,

Sir,

Your most Obedient Servant,

(Signed) GEORGE G. ARBUTHNOT,

Chairman.

The Chamber of Commerce,

MADRAS, *26th February*, 1897.

FROM

G. G. ARBUTHNOT, ESQ.,

CHAIRMAN, CHAMBER OF COMMERCE,

MADRAS.

To

THE SECRETARY TO GOVERNMENT,

REVENUE DEPARTMENT,

MADRAS.

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This procedure has been, and is still, in force in Bombay, as will be seen from a note appended to a letter from the Collector of Sea Customs of Bombay to the Collector of Sea Customs of Madras, dated the 27th July, 1896, wherein he says:—"It will be seen from the above that, except for disposal under Section 88 of the Sea Customs Act, no goods are taken charge of by the Customs, that the Department has nothing to do with landing, storage or delivery of goods, etc.," and in his letter of the 16th August, 1892, the Collector of Customs, Bombay, says that "except a general supervision by the Customs Preventive Department, the entire management of the sheds and gates at the Docks is conducted by the Port Trust."

With regard to (*b*), the Chamber would call the attention of Government to Section 60 of the Harbour Trust Act, which empowers the Board to execute such

works as it determines to be necessary or expedient; to Section 61, wherein the works authorised by Section 60 include (*inter alia*) "*warehouses and sheds for receiving and storing goods to be landed or to be shipped or otherwise,*" and to Section 53, which is as follows:—"Such goods shall be retained in the warehouses and sheds of the Board or with the consent of the Chief Officer of Customs in the Public Customs Warehouses at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned; and godown rent shall be payable by the party entitled to such goods for the time during which they may be so retained."

With all due deference to the Advocate-General, the foregoing Sections, among others, clearly, in the view of the Chamber, contemplate the Harbour Trust Board acting as the bailee of goods landed, shipped, or otherwise, and the Chamber is unable to find anything in the Act which prevents dutiable goods in the control of the Collector of Sea Customs being, with the sanction of Government, dealt with as proposed.

The Chamber has been favoured with a copy of the letter which the Madras Harbour Trust Board addressed to Government on the 29th ultimo, and as the views therein enunciated—which have been approved by the Chamber's representatives on the Board—are identical with those entertained by all the members of the Chamber, it would be a work of supererogation for the Chamber to enunciate its views separately. If, however, the object of the proposal before Government is unattainable under the present Acts—which the Chamber ventures to doubt—then a simple way out of the difficulty offers itself in their amendment, and in view of the very great desirability of the change being brought about, the Chamber would strongly urge immediate legislative action, for the present state of affairs is as anomalous as it is unsatisfactory.

In view of the fact that the Sea Customs Act applies to the whole of British India, and that in ports like Calcutta, Bombay and Karachi a system is in vogue which is illegal in the opinion of the Advocate-General of Madras, the matter may be deemed of sufficient importance to have the opinion of the adviser of the Government of India taken on the legal points raised.

I have the honour to be,

Sir,

Your most Obedient Servant,

(Signed) GEORGE G. ARBUTHNOT,

Chairman.

The Chamber of Commerce,

MADRAS, 26*th February*, 1897.

FROM

G. G. ARBUTHNOT, ESQ.,

CHAIRMAN, CHAMBER OF COMMERCE,

MADRAS.

To

THE SECRETARY TO GOVERNMENT,

REVENUE DEPARTMENT,

MADRAS.

SIR,

I have the honour to acknowledge receipt of G.O. of the Madras Government, No. 682, Revenue, dated the 16th December last, and G.O., No. 4909, Mis., dated the 2nd idem. While the Chamber is gratified to observe that the Government will have no objection to assimilating the practice in Madras to that in Bombay, it notes with regret the legal points raised by the Advocate-General. If the change can only be effected under the conditions thus laid down, it hardly seems to the Chamber worth while to make any alteration.

The Advocate-General is of opinion:—(*a*) That the Sea Customs Act, 1878, does not allow joint control of the Harbour Trust Board and the Collector of Sea Customs over dutiable goods, and (*b*), that the Harbour Trust Act, 1886, does not empower the Board to become the bailee of such goods (*i. e.*, dutiable goods in the control of the Collector of Sea Customs).

With regard to (*a*), admitting, for the sake of argument, this view to be correct, the Chamber submits that no joint control is contemplated. It is merely desired that the Harbour Trust Board should be permitted by Government to remove into its sheds cargo as landed and to deliver same upon pass orders from the Collector.

This procedure has been, and is still, in force in Bombay, as will be seen from a note appended to a letter from the Collector of Sea Customs of Bombay to the Collector of Sea Customs of Madras, dated the 27th July, 1896, wherein he says:—"It will be seen from the above that, except for disposal under Section 88 of the Sea Customs Act, no goods are taken charge of by the Customs, that the Department has nothing to do with landing, storage or delivery of goods, etc.," and in his letter of the 16th August, 1892, the Collector of Customs, Bombay, says that "except a general supervision by the Customs Preventive Department, the entire management of the sheds and gates at the Docks is conducted by the Port Trust."

With regard to (*b*), the Chamber would call the attention of Government to Section 60 of the Harbour Trust Act, which empowers the Board to execute such

works as it determines to be necessary or expedient; to Section 61, wherein the works authorised by Section 60 include (*inter alia*). "*warehouses and sheds for receiving and storing goods to be landed or to be shipped or otherwise*," and to Section 53, which is as follows:—"Such goods shall be retained in the warehouses and sheds of the Board or with the consent of the Chief Officer of Customs in the Public Customs Warehouses at the risk and expense of the owners of the said goods until such lien is discharged as hereinafter mentioned; and godown rent shall be payable by the party entitled to such goods for the time during which they may be so retained."

With all due deference to the Advocate-General, the foregoing Sections, among others, clearly, in the view of the Chamber, contemplate the Harbour Trust Board acting as the bailee of goods landed, shipped, or otherwise, and the Chamber is unable to find anything in the Act which prevents dutiable goods in the control of the Collector of Sea Customs being, with the sanction of Government, dealt with as proposed.

The Chamber has been favoured with a copy of the letter which the Madras Harbour Trust Board addressed to Government on the 29th ultimo, and as the views therein enunciated—which have been approved by the Chamber's representatives on the Board—are identical with those entertained by all the members of the Chamber, it would be a work of supererogation for the Chamber to enunciate its views separately. If, however, the object of the proposal before Government is unattainable under the present Acts—which the Chamber ventures to doubt—then a simple way out of the difficulty offers itself in their amendment, and in view of the very great desirability of the change being brought about, the Chamber would strongly urge immediate legislative action, for the present state of affairs is as anomalous as it is unsatisfactory.

In view of the fact that the Sea Customs Act applies to the whole of British India, and that in ports like Calcutta, Bombay and Karachi a system is in vogue which is illegal in the opinion of the Advocate-General of Madras, the matter may be deemed of sufficient importance to have the opinion of the adviser of the Government of India taken on the legal points raised.

I have the honour to be,

Sir,

Your most Obedient Servant,

George G. Arbuthnot

Chairman.

Marine (1897) Department.

1210

CURRENT No. 2477 366

No 201 E of 18th March 1897

Endorsement.

Order:

To Transferred to the Revenue Department with reference to the order in that Dept No. 4909 Mis dated 2d December 1896 and in Continuation of Marine Dept Endorsements No 111E dated 17th February 1897.

J. H. Cumberlege Colonel R.E.
Secretary to Govt

SECRETARIAT MADRAS
19 MAR 97

From

The Chairman,
Harbour Trust Board,
Madras.

No. 5174.

Dated 26th *Feby.* 1897.

Despatched 2nd March " 19th "

Received 3.3.97 19th March 1897

Enclosures: Copy of Bombay Act VI of 1883.

Spare copies: three.

SUBJECT.

MADRAS HARBOUR TRUST.

Replying to G. O., No. 18, Marine, dated 6th January 1897, regarding the proposed rental of the yards attached to the Custom House by the Harbour Trust Board.

Suggesting that the Madras Harbour Trust Act should be amended in a manner similar to the Bombay Port Trust Act: by the addition of the words *land or building* to Section 45.

19-3-97

BACK PAPERS.

G. O.	No.	Department.	Date.
91	82-2-97		
Absent			

FURTHER PAPERS.

G. O.	No.	Department.	Date.

Harbour Trust Office,
Madras, 26th February 1897.

No. 5174.

FROM

WARE AUSTIN, ESQ., I. C. S.,
CHAIRMAN, HARBOUR TRUST BOARD,
MADRAS.

To

THE HON'BLE COL. D. McNEIL CAMPBELL, R. E.,
SECRETARY TO GOVERNMENT,
Marine Department.

SIR,

I have the honour to acknowledge the receipt of G. O., Marine, dated 6th January, No. 18, regarding the proposed rental of the yards attached to the Custom House by the Harbour Trust Board.

2. In my letters Nos. 3771 (a) and 4654 (b), dated 4th December 1896 and 29th January 1897, respectively, the views of the Trustees are fully expressed in reference to the general question of the custody of goods within Harbour Trust premises, which if declared wharves for landing cargo under Section 11c of the Sea Customs Act would also be within Customs limits.

3. According to the opinion of the Advocate-General printed with G. O., Revenue, No. 682, dated 1st December, goods which are *in the Custom House*—by which term, it is understood, he means also the yards attached to it—are "in the sole and absolute control of the Collector," and, as pointed out in my letter No. 4654 above referred to, are moreover at present held by him *under lock and key*.

But in his letter No. 5130 G, dated 25th September, the Collector contends that "the goods in the Custom House are under Harbour Trust control and in their "custody from the time they are deposited to the time they are delivered."

It is clear therefore that the Collector did not, at that time, understand his legal position as custodian of those goods which are "*in the Custom House*", as laid down by the Advocate-General in the quotation given above; and the fact of goods being in the actual possession and custody of the Collector, when *in the Custom House*, is reiterated by the Advocate-General in his statement that "where goods are in the "Custom House or in a warehouse, his (the Collector's) custody is *actual*."

4. It is an open question whether, under the Harbour Trust Act, difficulty might not occur in the recovery of Harbour dues on goods stored in the yards, attached to the Custom House, outside Harbour Trust premises.

A somewhat similar difficulty appears to have been experienced in Bombay: for Section 43 of the Bombay Port Trust Act VI of 1879 (corresponding with Section 45 of the Madras Harbour Trust Act) was amended by Bombay Act VI of 1883, which added the words "land or building" to that Section.

5. A copy of Bombay Act VI of 1883 is submitted herewith, for information, and should Government decide that the actual custody of goods may be undertaken by the Harbour Trust, while the constructive custody, and control, remains with the Collector, all uncertainty as to the legal position of the Trustees, in premises outside their own limits, could be overcome by amending Madras Act II of 1886 in the same manner.

I have the honour to be,
Sir,
Your obedient servant,

Chairman,
Harbour Trust Board.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 25th August 1883, and the assent of His Excellency the Viceroy and Governor-General on the 3rd November 1883, and is published for general information.

BOMBAY ACT No. VI OF 1883.

An Act to further amend the Bombay Port Trust Act, 1879.

(Third publication).

The assent of the Governor-General of India to this Act was first published by the Governor of Bombay on the 26th November 1883.

Whereas it is expedient to amend the Bombay Port Trust Act, 1879, in manner hereinafter appearing: It is enacted as follows:—

Amendment of Section 43.

1. Instead of the words "or pier" in Section 43 of the said Act, the words "pier land or building" shall be substituted.

By order of His Excellency the Right Honorable the Governor in Council.

(Signed) C. G. W. MACPHERSON,
Under Secretary to Government.

BOMBAY CASTLE, *24th November* 1883.

Bombay Act VI of 1879.

Section 43:—The Board shall frame a scale of tolls, dues, rents, rates, and charges, to be levied for each or any of the following matters (namely):—

(*a*) for the landing, shipping, wharfage, cranage, storage, or demurrage of goods at,

(*b*) for permission for vessels or boats to approach, or lie alongside, and

(*c*) for animals or vehicles carrying goods to or from, or entering upon or plying for hire at or on, any wharf, dock, pier, *land or building** in the possession of the Board.

Madras Act II of 1883.

Section 45:—The Board shall frame a scale of rates to be levied for each or any of the following matters, *viz.*:—

(*a*) for the landing, shipping, wharfage, cranage, storage, or demurrage of goods at, and for the porterage of goods, on, from, or within,

(*b*) for permission for vessels or boats to approach or lie alongside,

(*c*) and for animals or vehicles carrying goods and merchandise to or from or entering upon or plying for hire at or on any wharf, pier or dock in the possession or occupation of the Board.

* As amended by Act VI of 1883.

Revenue (189) Department.

CURRENT No. 3072

From

The Chairman
Chamber of Commerce
Madras

Order

No.

Dated 6th
Received 8th } April 1899
Registered 9th

Enclosures

Spare copies One

SUBJECT.

Stating that the Chamber has since been favoured with a copy of a letter from the Harbour Trust Board addressed to Govt. requesting that Act II of 1896 be so amended as to bring Sec 45 into conformity with section 43 of the Bombay Port Trust Act, and that the Chamber is in entire agreement with the Bd and that Govt to the Bds request

1a
9.4.97

BACK PAPERS.

G.O.	No	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

GOVERNMENT OF MADRAS
19 APR 97
REVENUE DEPARTMENT

The Chamber of Commerce,

MADRAS, *6th April*, 1897.

FROM

THE HON'BLE MR. G. G. ARBUTHNOT,
CHAIRMAN, CHAMBER OF COMMERCE,
MADRAS.

To

THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
FORT ST. GEORGE.

SIR,

In continuation of my letter of the 26th February, 1897, I have now the honour to inform you that the Chamber has since been favoured with a copy of a letter (No. 5174, dated the 26th February) which the Harbour Trust Board addressed to Government requesting that Act II of 1886 (the Madras Harbour Trust Act) be so amended as to bring Section 45 into conformity with Section 43 of the Bombay Port Trust Act. The Chamber is in entire agreement with the Board, and in strongly supporting its request, it does so in the belief that with the Act amended as suggested, the Board will be in a position to warehouse goods on warrants. The Chamber attaches much importance to the Board being empowered to do this, as it would be a very great convenience to the trade of this Port, especially in view of the probable passing of the Bill of Sales Act at an early date.

I beg to annex overleaf for the information of Government copy of a letter from the Chamber's Solicitors expressing their opinion in the matter.

I have the honour to be,

Sir,

Your most obedient Servant,

Geo. G. Arbuthnot

Chairman.

ENCLOSURE.

Letter from the Solicitors of the Chamber of Commerce, Madras, dated the 20th March, 1897.

We are in receipt of your letter of the 17th instant with copies of letters from the Harbour Trust Board and other papers relating to the storage of goods, and requesting to know whether the amendments to the Harbour Trust Act suggested by the Board will give the Trust authority to "warehouse goods on warrant."

We assume the expression "Warehouse goods on warrant" to mean that goods landed or about to be shipped may be deposited in the godowns or premises of the Harbour Trust Board, that warrants may be issued to the party so depositing the goods, which warrants represent the goods and are capable of being transferred, so as to enable the transferee to obtain possession of the goods so deposited.

The question to be determined, therefore, is, whether the issue by the Harbour Trust Board of warrants would be within the powers given them by the Legislature. In this connection we would observe that it is doubtful if the Legislature contemplated the Board becoming a Warehouse Company, which they virtually will be if they issue Warehouse warrants.

The law on this point, however, is that "Whatever may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held to be *ultra vires.*" (See Ashburry Railway Company *vs.* Riche—Law Reports 7, House of Lords, 653, and the Attorney-General *vs.* The Great Eastern Railway Company, Law Reports Appeal Cases, Vol. V., page 478).

The preamble of the Harbour Trust Act states that it is expedient to make provision for the regulation, conservancy and improvement of the Harbour.

The Harbour is defined to mean, *inter alia,* all buildings provided by the Trust Board for the purposes of the Harbour.

Under Section 70, the Board may, with the approval of the Governor in Council, make Bye-laws for, *inter alia,* the convenient use of the Warehouses vested in them. To warehouse goods on warrant would, we presume, be a convenient use to put the Warehouses to.

It appears to us, therefore, that the issue of warrants may be regarded as fairly incidental to those things which the Legislature has authorised the Board to do under the Act, and we see no reason why, with the sanction of Government, Bye-laws should not be passed authorising the Board to issue warrants.

If Bye-laws are passed to this effect and the amendments suggested by the Board are made to Section 45 of the Act, the Trust would, in our opinion, have authority to warehouse goods on warrant.

* * * * * * * *

Chamber of

MADRAS, *6th April*, 97.

FROM

THE HON'BLE MR. G. G. ARBUTHNOT,
CHAIRMAN, CHAMBER OF COMMERCE,
MADRAS.

To

THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
FORT ST. GEORGE.

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(Signed) GEORGE G. ARBUTHNOT,

Chairman.

31

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The law on this point, however, is that "Whatever may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held to be *ultra vires*." (See Ashburry Railway Company *vs.* Riche—Law Reports 7, House of Lords, 653, and the Attorney-General *vs.* The Great Eastern Railway Company, Law Reports Appeal Cases, Vol. V., page 478).

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If Bye-laws are passed to this effect and the amendments suggested by the Board are made to Section 45 of the Act, the Trust would, in our opinion, have authority to warehouse goods on warrant.

* * * * * * * *

Please put these with previous two files

TRK
13.8.04

Notes connected with G.O. 493, L, Rev., dt 28.6.97.

Subject - Investing the Harbour Trust Board, Madras with certain powers

Letter from the Chairman, H.T. Bd, Madras, No. 465L, dt 29.1.97 & the Endt. of the Marine Dept. thereon No. 111 E, dt 17.2.97

Letter from the Chairman, Chamber of Commerce, Madras, dt 26.2.97

Letter from the Chairman, H.T. Bd., No. 514L, dt 26.2.97 & the Endt. of the Marine Dept. thereon No. 201 E., dt 18.3.97

Letter from the Chairman, Chamber of Commerce, Madras, dt 6.4.97

493-494
28-6-97

Draft letter to Madras Govt required. 11/29.5.97.

The Hon. Mr. Bliss C.I.E
The Hon. Mr. Grose C.I.E.
H.E. the Governor

The object sought to be attained is stated in p. 4 of this note & is that the H.T.B. should be enabled to receive into their sheds (when built) all goods as landed; & retain them there subject to [illegible] allow their removal except under the Coll's pass orders; & warehouse goods upon warrant; and at the end of 4 months to deliver to the Coll. & to deal with under s. 88 of the S.C. Act, all goods as have not been cleared or warehoused within 4 months of the date of entry of the vessel which brought them.

The question seems to be complicated, rather than cleared up, by the use of the phrase "within customs limits". This phrase seems to have been invented by the Bombay customs people (vide p. 6 of G.O. 682 / 1.12.96), but I can find no legal warrant for it. Nor is it in any way necessary to use it. The law [s. 13, 73 & 167(31) of the Act] is that all goods must be landed at wharves or other duly appd. for the purpose, and it therefore proposed to declare the whole of the possible landing places within the limits of the port to be wharves under s. 11(c) & (d) [Vide C No. 3403]. I can see no objection to this, for it is merely to make legal what is in fact, the existing & only possible practice. If goods are not to be landed within the limits proposed, they can't be landed within the port at all. Now the goods are landed, the H.T.B. can charge landing dues under s. 45 of

13/5/97 Wharfage (undertaken)

1

C. Nos 1527, 1870, 2477, 3022 and 3403 of 97

For orders — Tobey

The following papers are submitted for consideration :-

(1) C. No 1527 :- Letter from the Chairman, Harbour Trust Board, declining to undertake the storage of goods for the trade of Madras on the conditions enunciated in G.O. No. 682 dated 1st December 1896, and pointing out that in its opinion there is no legal disability for the Board to have the actual custody of the goods while the Customs Collector retains the goods in his constructive custody only — which would sufficiently secure the interests of Government.

(2) C. No 1870 :- Letter from the Chairman, Chamber of Commerce, expressing its concurrence in the views of the Harbour Trust Board and pointing out that under Sections 60 and 61 of the Madras Harbour Trust Act, II of 1886, the Board is authorized to act as bailee

bailee of the goods and that there is nothing in the Act to prevent goods in the constructive control of the Collector being dealt with by the Harbour Trust Board as proposed. As the Sea Customs Act, VIII of 1878, is applicable throughout British India and as the Port Trust Act in various Provinces contains ~~cancelled~~ provisions similar to those in the Madras Harbour Trust Act, the Chamber desires that the opinion of the advisers of the Government of India may be taken on the subject seeing that the opinion of the local Advocate General is not in consonance with the practice followed in other Provinces.

(3) C No. 2477:- Letter from the Chairman, Harbour Trust Board pointing out that under the opinion of the Advocate General, viz, that goods in the Customs House are in the actual custody of the Collector there may be some difficulty in the recovery of harbour dues on goods stored in the yards attached to the Customs House. The Chairman accordingly requests that section 45 of the Madras Harbour Trust Act II of '86 (Mad). Thereupon can then proceed at once to remove his goods after duly entering them in the Custom House, having them scanned, having duty &c. If he does not do so immediately, the H.T.S. can then make him pay for storage, demurrage &c. by Rules framed under the same section & approved by Govt.

So far all seems clear. The first difficulty that seems to arise is as to where custody will the goods in the H.T.S.'s shores or sheds be? The H.T.S. seems to think that they will be in their sole custody - but I do not think this. The Calcutta Wharf Rules (p. 165 of Finlay's book) show that Govt. officers are there in charge of the gates, and so, I consider, it should be here. I submit that the risk of losing the goods in the sole charge of the H.T.S. will not be great, for the Law provides an adequate penalty [S. 167 (36) & (39)] for unauthorised removal of goods which have not been fully dealt with by the Customs officers. But it is best to be on the safe side and to omit in the Madras precautions which are taken in Calcutta. The Govt's custody would consist in the maintenance of patrols for the due security of such goods as from storage, which will not be placed in sheds but be kept out in the open, and in the actual affixing of locks and closed sheds. Whether these sheds be on the open ground round portion of the Custom House, or be declared part of the Custom House, or not, seems to me to be of no importance. In either case, the H.T.S. will be bound to provide proper accommodation for the officers of Customs for the storage of goods so that they can be properly examined. ~~Should~~ I think this amendment is necessary and may be made at once. A Bill for the purpose will be prepared in the Marine Dept.

HS JG

3

Trust Act may be amended so as to enable it to recover the dues without difficulty. It is pointed out that the Bombay Act, VI of 1879, was amended by Act VI of 1883 in a similar manner.

(4) C. No. 3072:- Letter from the Chairman, Chamber of Commerce, supporting the request of the Harbour Trust Board to amend Section 45 of Act II of 1886 and expressing its opinion that such an amendment would enable the Board to warehouse goods on warrant, a matter to which the Chamber attaches great importance. It forwards the opinion of its Solicitors in the matter which confirms ~~its~~ the Chamber's opinion.

2. Before considering the several points raised in the above communications a brief summary will be given of the previous correspondence on the subject.

3. The Committee appointed in 1895 to consider the question of Harbour improvements strongly recommended a proposal made by the Chamber of Commerce at adopt at

5

they do not, the order constituting such places "wharves" for the landing of goods can be cancelled (S. 205). If the goods are not declared for the Custom House, goods ~~under~~ not cleared must be removed within 4 months must be removed to the Custom House itself, unless for the convenience of trade, the H.T.S. should prefer (as in Calcutta) to set apart a particular shed, which would be declared part of the Custom House, for this purpose. If that were done, such goods as must under Ss. 83 & 84, be taken "to the Custom House" might be deposited either in such shed or in the actual Custom House, as found convenient. In either case, the Custom House itself should be the "Public Warehouse" for the receipt & custody of prize opium &c.

Granting all this, there remains, it seems to me, a considerable difficulty which arises not of the law as of the actual landing of goods. This is contained in Ss. 83 cl. 2 & 84 of the Act: S. 83 points to the moment of the goods as the important one & provides that, if he does not do so within a specified time, the master of the vessel may take the goods "to the Custom House" [not, it will be observed, to any Wharf or other appointed landing place], where the Customs Collector [not the owner or manager of any Wharf] shall thereupon

(5) C No. 3403 from the Board of Revenue (Sep: Rev:) submitting a draft Notification for appointing wharves for the landing & shipping of goods at the Port of Madras under the Customs Act.

take charge of, and grant receipts for, such goods: under S. 84, Special provision for of a similar nature is made for the conveyance "to the Custom house" of "any small package or parcel of goods". This is, I presume, intended to provide for the safe landing & custody of consignments of treasure, jewelry &c, which it might not be safe to send from

at Madras a system similar to that at Bombay by which the Harbour Trust Board would receive into their sheds all cargo as landed, deliver the same upon pass orders from the Collector, merchandise goods upon warrant, and at the expiration of four months deliver to the collector any goods not then cleared through the Sea Customs office. The Board of Revenue to which the papers were forwarded for remarks supported the recommendations of the Committee. The Government however, pointed out that the Harbour Trust Board could act only under Section 85 of the Sea Customs Act and that a proposal made in 1892 similar to the one under consideration had fallen through owing to the unwillingness expressed by the leading firms of shipping Agents in Madras to land cargo under Section 85 or to employ the Harbour Trust Board as their Agents for landing. The Board of Revenue was under the circumstances asked to report how it proposed to overcome the difficulty and whether the firms concerned were willing to land goods

ordinary Wharf. S. 85 is evidently intended to provide for the case of such ports as Madras, which are not ports of final destination but only of call, and at which it is necessary that cargo shall be kept out of the ships as soon as possible so as to allow them to proceed to their destination. It provides that the whole of the cargo destined for the place may be discharged into the godown of the ship's agents for delivery at the Custom House or any specified landing place or any landing place in charge belonging to any .... Port Trust. It would be worthy of consideration, but is rendered nugatory by the refusal of the firms who are the chief ship's agents in Madras to take advantage of it, or may therefore be kept out of account.

We are therefore thrown back on S. 83 (for S. 84 may be neglected for present purposes), under which it is for the owners of landed goods, whether owners may do by themselves or they may do by their agents; and it is explained (vide Mr. Austin's letter No. 5730 G. dt. 25/9/96 in P.P. 4909 Mis) that in Madras 2.12.96 when a vessel arrives the agents send to consignees asking if they will land their goods themselves or will have the work done for them at their own cost, which is meant by signing the application for delivery of the goods landed accordingly. The statement is made, but with less detail, in the Chief's letter on p. 10 of P.P. 1882 1.12.96 :

Now, it is quite possible, or even probable, that the firms who generally do most of the import trade have a standing arrangement of the above sort and have granted permanent authority to land any goods that may arrive for them or the subordinates (that is, the native agents of the chief trading firms) whose business it is to have charge of the landing business at Madras. But I do not hesitate to say that the detailed statement made in the Chief's letter of 20/9/96 cannot be accepted

to be true — Ships come in to Madras early in the morning & begin discharging as soon as moored, by 7 A.M. How can notice possibly be sent round to consignees & replies be received from them? It is not possible. Nor I should think would the firms who do most of the import work, & who have given a standing consent & authority, be willing to give a special consent on many occasions — but there are numerous consignments to private persons, some in Madras, others up-country. How can notice be sent to such persons? Of course it cannot be. I know also from personal experience that the statement as stated is not correct. If following the practice in S. 83, that all consignments intended for sale must by law be taken to the Custom House, where the Customs Collector must take charge of & give receipts for them; and it is certain, so far as I can see, that no change in the law is contemplated either (1) the Customs remains as it is and (2) the ships' agents refuse to act under S. 85, the object of the Chr. of Commerce & of the H. T. B. cannot be legally secured out. That is, the H.T.B. cannot take charge of all cargo landed by consignees or with their consent & under their authority by others (the dubashes) or on their behalf; but it can not take charge of any goods not so landed. The H.T.B. cannot ... carry out its objects in their integrity. It is represented that in Bombay the Port Trust lands all goods. How it may be I am not aware about this. But all I can say is that the Bombay practice seems to be not warranted by law.

I regret this conclusion, but it seems to me unavoidable.

In any case, I agree that we had better apply to India for further advice. Any view is correct, it will be necessary to present a legislation. How to be easy to amend S. 83 as to allow goods not landed by their owners being handed over, if by the H. T. B. or other similar public body, instead of the Collr.

17/5/97

Noted above

goods under Section 85.

4. The Board of Revenue thereupon reported that the leading firms were decidedly opposed to entrust their landing to any Agency outside their own control or to land the goods under Section 85 of the Sea Customs Act in their capacity as Ships agents. The Collector of Sea Customs was under the circumstances of opinion that the only way out of the difficulty was for the Harbour Trust Board to undertake by special agreements with the steamer agents to meet all claims for damage or short delivery which might be established by the owners of such cargo only as might be landed in good condition at any wharf belonging to the Board and taken into its sheds and to pass a receipt to the Master for all such goods as were landed in their original good condition while all damaged packages should at once be taken to a separate strong room to be surveyed in order to fix responsibility. The Board of Revenue, however, considered that the above procedure would not

commend

commend itself to the agents of vessels as it would not relieve them from responsibility for damage occurring before the Harbour Trust Board took charge of the goods on the pier or on the beach. The Board of Revenue accordingly suggested that goods might continue to be landed under Section 83 by the Agents of the Consignees and after being landed be received by the Harbour Trust Board which should then accept all responsibility in regard to them, the sheds which might be constructed by the Harbour Trust Board for storing the goods being declared part of the Sea Customs House under section 11 (4) of the Sea Customs Act. — Under this proposal, the Harbour Trust Board would act as contractors for the safe custody of goods in charge of the Customs Collector in the same way as the Collector of Customs now treats it as portion of contractors' the premises being constituted as part of the Sea Customs House and necessary steps taken for guarding

it by posting Customs guard at its entrance. As the Board of Revenue entertained doubts as to whether the proposal was legally unobjectionable the papers were forwarded to the Hon'ble the Advocate General for opinion. On receipt of his opinion it appeared that some of the points were not made clear and the papers were returned to him for opinion on certain questions definitely set out.

5. The following is the gist of the opinions of the Advocate General given on the subject: —

(i). Importation of goods is complete as soon as they are brought within the limits of the port with the intention of unloading them;

(ii). Importation of dutiable goods creates a debt by the consignee to Government to the extent of the duties leviable upon the goods and that Govt. has a lien on the goods for the unpaid duty;

(iii). The Collector's custody of dutiable goods extends throughout the period during which the lien attaches

attaches. In some cases the custody is actual and in others constructive.

(iv). The Collector is in no sense a bailee. He holds Charge of the goods as the servant of Govt. to enforce its lien and to collect the duty. This duty cannot be delegated to any other authority.

(v). If the premises of the Harbour Trust Board be declared part of the Customs House, the owners of the buildings (the Harbour Trust Board) would in no sense be a bailee. The goods will be in the Customs House in the sole and absolute control of the Collector.

(vi). The Sea Customs Act does not allow of joint control over goods in the Customs House and the Harbour Trust Act does not allow the Board to become bailees of goods. The Govt., however, was of opinion that it was desirable to allow the Harbour Trust Board to undertake the storage of goods for the

(Page) F.

the trade of Bombay in the same manner as the Bombay Harbour Trust does for Bombay. But as the leading firms of shipping Agents were averse to land cargo under Section 85 of the Sea Customs Act and as the Advocate General had given it as his opinion that there could be no dual control over goods in the Customs House, the Government considered that the only way out of the difficulty would be to declare the Harbour Trust sheds as part of the Customs House and to allow the Harbour Trust Board to undertake the duty as servants of the Sea Customs authorities. In this case it was pointed out that while on the one hand the mercantile community would have no greater remedy against the Harbour Trust Board for any loss or damage occurring after the goods had been placed in the Custody of the Harbour Trust Board for storage at their sheds, on the other hand the Harbour Trust Board would have no lien for any fees due to them for storage and would not be able to detain the goods

goods for such fees, which moved have to be collected under section 99 of the Sea Customs Act and made over to the Harbour Trust Board. In view to definitely settling the relations between the Sea Customs authorities and the Harbour Trust Board, the Govt. considered that definite rules should have to be laid down, but before taking final action the Chamber of Commerce was asked to give their opinion as to the suitability of the arrangements to the trade of the port.

7. The Harbour Trust Board refuses to undertake the operation on the conditions imposed by Govt. and points out that there is nothing illegal in the Bombay system being carried out here without ~~the intervention of Section 45 of the Sea Customs Act~~. The only thing to be done is, in the opinion of the Board, to declare as wharves for landing cargo the whole of the H. T. premises under Section 11 (c) of the Sea Customs Act. The Harbour Trust

C. No 1527.

11

Trust Board considers that for this case all cargo landed would remain within Customs limits in the actual custody of the Trust but in the constructive custody of the Collector so long as his lien for duty lasted. Under this arrangement it is pointed out that merchants and the Board would be in a better position the former in regard to their claims for damages and the latter as regards the realization of fees due to it, while the security of Customs revenue would also be in as good a position as it ever was. The Harbour Trust Board points out that in Bombay goods are not taken to the Customs House that they are handled within Customs limits by the Port Trust that the sheds in which the goods are stored are under the sole control of the Port Trust, that except for a general supervision by the Customs Preventive department the entire management of the sheds and gates at the docks is conducted by the Port Trust, and that

that no goods are taken charge of by the Customs authorities. The Board point to out at considerable length that the use of the words Customs House in the Act, the rules framed thereunder and the Standing orders of the Board of Revenue has given rise to a misapprehension, that there is no provision in the law to compel a person to take the goods to the Customs House and that expressions such as "passed through the Customs House", "cleared through the Customs House" &c. relate to formalities to be gone through and is done only by means of documents.

8. The Chamber of Commerce agrees in the views of the Harbour Trust Board above set forth and considers that the opinion of the advisers of the Govt. of India may be taken on the legal points seeing that the opinion of the Local Advocate General is at variance with the practice followed in Calcutta Bombay and Karachi.

9.

12

I submit the H.T.B. is right.

W 12/5/07.

C. No 1270

13

This is I submit not the main question. There is no doubt that the H.T.B. can in its capacity as corporation or as servants of the Customs authorities undertake the storage of goods. The question may I think be more accurately stated to whether there is any legal necessity in the present Madras practice of taking all goods into the Customs House & keeping them till the charges is paid. The Advocate Genl. but Branson held that the Madras practice is necessary & legal. and Govt. tried & got round the opinion that H.T.B. won't accept the position and the Chamber of Commerce wants this legal question referred to the advisers of the Govt. of India. This I submit is a very good suggestion. I have never had any doubt myself that but Branson's opinion was wrong; but it was the but the arrangements at Bombay & Calcutta are illegal, a not very likely contingency: but I do not see how Govt. can move them in over without the opinion of higher authority:

W 12/5/07.

II No 1906

9. The main question for decision is whether the Harbour Trust Board can, in its capacity as a corporation, and not as servants of the Customs authorities undertake the storage and custody of goods for the trade of Madras.

The object of the Madras Harbour Trust Act 1886 is to make provision for the regulation, conservancy and improvement of the harbour of Madras. Under Section 45, the Harbour Trust Board shall frame a scale of rates to be levied for each or any of the following matters:- for the landing, shipping, wharfage, craneage storage or demurrage of goods at and for the portage of goods on, from or within any wharf, pier, or dock in the possession or occupation of the Board.

Under Section 48, the Board has a lien on goods for the amount of all rates leviable under the Act in respect of any goods and may seize and detain the same until such rates are fully paid. Sections 49 to 57 provide for the recovery of fees in case of default.

Under

Under Section 60 the Board may execute such works as they determine to be necessary or expedient for the purposes of the said harbour and such works may include

(1) wharves, jetties, landing places

(2) warehouses, sheds, engines and other appliances for carrying receiving and storing goods landed.

Under Section 70 the Board is authorized to make bye-laws for the reception, removal and porterage of goods brought within the premises of the Board and for the exclusive conduct of these operations by the Board or by persons employed by them.

70. If the storage and custody of goods subject to the control of the Collector of Customs can be regarded as incidental to or consequential upon the operations for the carrying on of which the Harbour Trust Board is authorized to levy rates, or construct works and make bye-laws, there can be no legal objection to the Board undertaking the storage of goods in its independent capacity

Mrs Brown can come to-day when Can be -

11/5/57.

capacity provided the premises of the Harbour Trust Board are declared to be within Customs limits. [In this connection it may be observed that the terms "Customs House" is not defined in the Sea Customs Act. But in clause (f) of Section 11, the local government is given the power to declare what shall for the purposes of the Act be deemed to be a Customs House and the limits thereof. The Act does not state whether by the term "Customs House" is meant "walled buildings" or merely "territorial limits". But the practice in the Madras Port and in other ports such as Bombay &c appears to favour the latter view. For instance, the foreshore on either side of the pier at this port is declared to be a Customs House for the storage of iron. Moreover, as pointed out by the Harbour Trust Board, there are places for the landing of timber, coal &c which do not admit of being brought under a roofed building and which have not been declared to be a part of the Customs House. So that the only

"It means "territorial limits" & is the same as Customs limits almost."

11/5/57.

only interpretation that can reasonably be put upon the term "Customs House" seems to be that it is any place or places the limits of which are defined within which all goods imported or exported must be brought and allowed to remain pending payment of duty and for home consumption or shipment clearance. This view receives confirmation from the fact that in Bombay and Calcutta though the Custom House proper covers only a small area is situated in one place, customslimits are defined to include an extensive areas. There can it is submitted, be no question that the physical custody of goods which it is proposed to transfer to the Harbour Trust Board is precisely the operation contemplated in the Harbour Trust Act for the levy of fees for which the Board may prescribe a rate. If the view above set forth as to the interpretation to be put upon the expression "Customs House" be accepted and the whole of the Harbour Trust premises be declared to be inbarring for landing cargo under Section 11(c) of

* See this connection attention is invited to the notification contained in para 3 of chairman's letter in G.O. No 35 Marine dy 11.1.1897 (G.O. No 507 Revn dy 2.2.1897)

A notification has now been submitted by the Bd of Revenue for publication in the Fort St George Gazette (Vide C. No 3403 of 1897)

Under Bombay circumstances there can be no actual Control.

1/12/1897.

of the Sea Customs Act, all Goods landed will be within Customs limits and in the actual custody of the Harbour Trust Board and in the constructive custody of the Sea Customs Collector. The latter will thus retain his lien for duty which is all that is desired while the Harbour Trust Board will be able to realise its dues from the consignees. "The right of the Govt to the duties does not arise from the possession of the Goods, nor is it confined to the goods". But in the case of the levy of the rates & dues to the H.J. Board, possession is all important, and the Board will find it difficult to recover its dues after goods have passed out of its possession. Neither in the Sea Customs Act nor in the Harbour Trusts Act is there any direction that Goods shall be delivered into the sole and actual custody of the Collr.

In Bombay, the Port Trust does precisely for the Collector what it is proposed to make the H.J. Board do in Madras. Reference is solicited, in this connection, to the portion marked in pencil on page 3 of the Notes under G.O. No 3976 dy 5th Oct 1896. For advice as to whether the Govt of

If it be held that the H.J. Board cannot carry on the operations of Custody & storage in its independent capacity,

Question may be addressed in view to the opinion of its legal adviser being obtained, as whether in the light of the remarks contained in this para the opinion of the Acting Advocate General may be asked for.

it is respectfully submitted, it cannot undertake the work as the servants of the Sea Customs authorities, as such a measure would be foreign to the object for which the H.J. Board act was passed.

12. In his letter in C.№2477, the Chairman H.J. Board states that it is an open question whether, under the H.J. act, difficulty might not occur in the recovery of harbour dues on goods stored in the yards attached to the Custom House outside H.J. premises. He suggests that section 45 of Act II of 1886 may be amended so as to remove the difficulty. In his letter in C.№3072 the Chairman of the Chamber of Commerce supports this request and points out that the amendment proposed will enable the Board to warehouse goods on warrant. Submitted that a short act amending section 45 of Act II of 1886 may be passed similar to Bombay act VI of 1883.

I submit that this reasoning and argument just forward how an correct and that Govt might accept them but for the opinion of the late Advocate Gen.l If it be decided best to put aside that opinion then the matter to be referred to the Legal advisers of India. In any event the Harbour Trust Act and amendment as pointed out.

11/5/97.

I submit that this should be done.

Js
17/5/97

10/5/97

To the H.M.V
Circulate,

Hon'ble Mr. H. Risley, C.S.I.
H.E. Excellency the Governor in Council (Para 1-6)

18

REVENUE DEPARTMENT. 14?

Draft letter to India as agd.
G.S.
29.5.97.

Risley
Drafts entrusted.

A.K.
8.6.97

To the H.M.V circulate
G.S.
9.6.97.

(Redraft) H.M.V.B
11.6.97

(Do.) J.G.
15.6.97.

(Do.) A.E.H.
24.6.97

Issue
G.S.
28.6.97.

[Issued as G.O. No. 493 D. 28.6.97 V
letter to Govt of India of the same date]