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MADRAS RECORD OFFICE.

Government of Madras.

Judicial
Bangalore DEPARTMENT.

G.O. No. 1186 Press Mis.
23-35

Dated 23-8-1859.

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, from 20th to 26th August 1859.

Read again the Proceedings of Government in the Judicial Department, dated 3rd June 1859, No. 769.

Read also the following papers.

From the Collector and Agent to the Governor of Fort Saint George at Vizagapatam, dated 27th May, and recorded in the Proceedings of Government of 3rd June 1859, No. 772.

No. 23. From E. W. BIRD, Esq., Sub Judge of Ootacamund; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 3rd June 1859, No. 100.

I have the honor to forward for submission to the Right Honorable the Governor in Council the enclosed petition from the inhabitants of Ootacamund, praying that the provisions of Act 13 of 1859, may be extended to this station. The petition has been signed by all the influential European and Native residents of the place. Its prayer, I have reason to know, has the support of the entire European community; as well as that of the respectable portion of the Native Society of Ootacamund.

To the Right Honorable the Governor in Council, Fort Saint George.

The humble Petition of the Inhabitants of Ootacamund on the Neilgherry Hills.

Humbly Sheweth,

That an Act of the Legislative Council, No. XIII of 1859, entitled "*An Act for the punishment of breaches of contract by Artificers, Workmen and Laborers in certain cases,*" received the assent of the Right Honorable the Governor General on the 4th May 1859.

That the preamble of the above cited Act affirms that much loss and inconvenience are sustained in the several Presidency towns, and in other places, from fraudulent breach of contract; and that the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient.

That the insufficiency of such remedy has long been felt at Ootacamund on the Neilgherry Hills; and that thereby much loss, inconvenience, and hindrance to enterprise have been, and are, universally experienced by the inhabitants of this populous and most important settlement.

That the provisions of the above cited Act appear to your petitioners eminently calculated to diminish the evils of which they complain.

That Clause V of the Act referred to empowers your Excellency in Council to extend that Act to any place within the limits of your Excellency's jurisdiction.

That your petitioners therefore humbly and earnestly entreat that your Excellency in Council will be pleased to extend the above cited Act to this large and growing settlement;—a measure which they confidently believe will greatly conduce to their social and material advantage and progress.

And your petitioners will ever pray.

(Signed) T. MADRAS.
(,,) E. W. BIRD, Civil Service.
(,,) W. H. MILLER,
Col. and Brigdr. Artillery S. F. Dn.
And many others.

No. 24. From H. NELSON, Esq., Chairman of the Chamber of Commerce; to the Chief Secretary to Government, Fort Saint George, dated 6th June 1859.

By Section V of Act 13 of 1859, the local Governments are empowered to extend its provisions "to any place within the limits of their respective Jurisdictions."

I am directed by the Chamber of Commerce to represent to Government that it will be highly beneficial to extend the operation of the Act to the Wynaad District, and to the Shevaroy Hills. The large planting communities in those places suffer great loss and hardship for want of some such remedy as is given by this Act.

The Chamber observes that the Governor in Council is empowered to appoint Officers specially to exercise the powers created by the Act, and respectfully suggests that, in making such appointments, care be taken to select those who reside nearest to the Coffee Estates, and whose services will thus be made promptly available.

The Chamber believes that there are many other parts of the Presidency where this Act may be applied with advantage; and it is causing enquiry to be made, with the view to a further application to Government if necessary.

I am desired to state that, in the opinion of the Chamber, the restriction of the Act to contracts under advances is exceedingly impolitic; for, independently of the consideration that all contracts should be enforced on their merits, this Act is likely to give a quasi legal countenance to the pernicious system of advances, which has now such a hold on all the town classes of the community. This habit is engrained in the laboring class, and prevents the exercise of that frugal care which, in other countries, provides the small capital of artizans; while it undoubtedly gives great facility to fraud, and inflicts loss and injury upon honest purchasers.

On these grounds the Chamber strongly urges Government to attempt to obtain an amendment of the Act now passed.

No. 25. From P. GRANT, Esq., Magistrate of Malabar; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort St. George, dated Calicut 6th June 1859, No. 46.

The Joint Magistrate of Malabar having had a case of breach of contract, by certain wood-cutters, brought before him by Mr. Tomlinson a wood merchant of Paulghaut, points out the great loss which this merchant is likely to suffer by the acts of the contractor, and requests with reference to Section 5, Act 13 of 1859, that I will obtain the sanction of Government, for the exercise by him, of the powers conferred by the said Act.

2. I beg therefore to place this matter before Government for such orders as they may deem proper.

No. 23. From Lieutenant Colonel J. H. BELL, Chief Engineer; to the Secretary to Government, Public Works Department, dated 18th June 1859, No. 1805.

Military. Enclosure 1, 1 Original letter.

With reference to the Order of Government appended to Extract Minutes of Consultation, No. 836, under date 9th April 1859, directing that the Commissariat Officer at Jackatalla be appointed Joint Magistrate, I have the honor to request Government will take into consideration an application* from Captain Farewell, for the extension to Jackatalla of Act XIII, of 1859. which provides for the punishment of minor cases of breaches of contract among Artificers, Labourers, &c.

* No 35, dated 6th June 1859.

2. The independence of workmen on the Hills is notorious, and Captain Farewell states that many who have received small advances have thrown up their work, on the slightest reprimand, being well assured that it is beyond the power of the Officer in charge to procure their punishment, and further that a threat of a small fine for open and barefaced idleness is met by a counter threat of immediate return to the low country, being fully alive to the serious difficulty experienced by us, and their freedom from liability to punishment for breaches of contract, &c.

3. The pay given to all is liberal and as has already been proved by Colonel Lawford, no reasonable causes of complaint exist, yet Artificers and Labourers, (even those who have signed contracts to remain on the works on certain rates of wages,) strike work when the fancy seizes them with a view to extorting still higher wages, causing serious delay in the progress of the works.

4. Under these circumstances, I trust Government will, by the extension of Act XIII, of 1859, empower the Joint Magistrates on the Neilgherry Hills to control the extortionate demands, and uncertain conduct of the Artificers and Labourers employed on the Government works, who, at present, are well aware of their own importance and power and hold the Executive Officers at their mercy instead of being controlled by them.

From Captain W. FAREWELL, Special Executive Engineer, Jackatalla; to Lieutenant Colonel BELL, Chief Engineer, Public Works Department, dated 6th June 1859, No. 35.

I have the honor prominently to bring to your notice, the very great disadvantages in which I am placed as regards the difficulty experienced in obtaining any legal reparation in case of breach of contract by workmen or Artificers employed on these works.

Proceedings of the Madras Government, Judicial Department, from 20th to 26th August 1859.

2. The independence of all workmen on the Hills is notorious, and a threat of a small fine for open and barefaced idleness is met by a counter threat of immediate return to the low country. The people being fully alive to the serious difficulties, which exist as regards obtaining labor as also that of having them punished for desertion.

3. The pay given to all is liberal and I see no cause of complaint on that head, yet every now and then simply for exacting more pay, parties of Artificers and work people (even those who have signed agreements to remain on the works on certain rates of wages) strike work for an increase of wages and sometimes without any apparent excuse whatever, thus much retarding the completion of these works.

4. I would therefore respectfully urge the necessity of Government being solicited to extend Act No. XIII of 1859 lately passed by the Supreme Government to Jackatalla, and appoint an Officer to carry the same into effect.

No. 27. From P. GRANT, Esq., Collector of Malabar; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated Calicut, June, 25th 1859, No. 57.

In forwarding the accompanying letter from the Cochin Chamber of Commerce, requesting that the provisions of Act 13 of 1859, may be extended to Cochin, I have the honor to inform you that, having been called on by the Register of the Foujdaree Udalut, by direction of the Judges, to report the names of the towns, in which I considered the Act should be put in force in the District, Cochin was included among those mentioned by me.

Dated 22nd June 1859.

From C. E. MIRUS, Esq., Chairman, Cochin Chamber of Commerce; to T. PYCROFT, Esq., Chief Secretary to Government, dated 22nd June 1859.

I have the honor to inform you that at a Special meeting of this Chamber held on the 20th Instant, it was unanimously resolved to apply to Government for the extension of Act 13, 1859, entitled "an Act to provide for the punishment of breaches of contract by Artificers, Workmen and Laborers" to this town and its suburbs.

As the great necessity for a remedy against defaulting contractors in a town of so great Commercial importance as Cochin, has long been painfully felt here, and is too self-evident to require any further arguments in its support, this Chamber feels confident that the Government will readily concede its application.

No. 28. Read the following Proceedings of Government in the Public Works Department, dated 14th July 1859, No. 1712.

Transferring a letter from the Chief Engineer on the subject of the extension of Act XIII of 1859, to all the Districts of this Presidency } (Vide Proceedings Public Works Department, from 9th to 15th July 1859, Nos. 91 and 92.)

No. 29. Read the following Proceedings, of Government in the Public Works Department, dated 21st July 1859, No. 1752.

Refer for consideration para. 11 of the Chief Engineer's letter observing that he had in a former communication urged the necessity for the extension of Act XIII of 1859, to every District. } (Vide Proceedings Public Works Department, from 16th to 22nd July 1859, Nos. 55 and 56.)

No. 30. From Mr. JOHN J. TOMLINSON; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort Saint George, dated Paulghautcherry, 23rd July 1859.

I respectfully beg that you will have the goodness to lay before His Excellency in Council that my petition for the speedy extension to the Magistracy in Malabar of the powers conferred, by Act XIII of 1859 for the summary punishment of breakers of contracts.

2. I am one of a large body who are almost daily subjected to annoyance and pecuniary loss by the utter want of good faith on the part of the Natives in carrying out petty contracts, which they have entered into, as one instance I may mention the following:

An individual named Poranathey Numboody agreed to let me two large Elephants for the purpose of dragging Timber out of the forest which I rent from Government. The man receiv-

ed Rupees one hundred as an advance and gave me a written promise to provide the animals by the 13th June. That date has long since past, and I now discover that the individual has let out the animals to another party. The consequence is that unless the performance of the contract can be enforced at once, some of my timber must remain in the forest till next season and will very probably be destroyed by the annual fires.

3. I applied to Mr. Sullivan the Joint Magistrate at this Station, begging him to exercise the powers of Act XIII, but was informed by him that they had not as yet been extended to the Provinces. Though I have doubtless been grossly imposed upon, I fear that prosecuting the party for fraud would avail me little, as I am advised by the Joint Magistrate that clear proof of the intent to defraud at the time of receiving the advance, would be essential to conviction on such a charge. Under these circumstances my only resource is to lay my case fairly before the Government with a humble request that by extending the powers of the above mentioned Act to the Magistracy of this District, they will afford the protection of the Law to the interests of myself and of many others similarly engaged in mercantile pursuits.

Trusting that the (to me) important interests involved in a speedy settlement of this question will prove my excuse for trespassing on your time.

No. 31. From G. W. BOOTHBY, Esq., Managing Partner of the Aska Sugar Company; to the Chief Secretary to the Government of Fort Saint George, Madras, dated 27th July 1859.

1. I have the honor to request that you will be pleased to submit to His Excellency the Governor in Council the following representation of the serious difficulties which the Aska Company has to contend against in the prosecution of Commercial enterprise in the Ganjam District.

2. The exigencies of the position of the Aska Company, namely, a Sugar Factory requiring large supplies of raw material, render it imperative that the risk of making cash advances to the ryots at sugar-cane planting time should be undergone, though a year elapses before any return on these advances can be made.

3. It will be obvious that under such a system, whereby many thousands of ryots receive advances, there will surely be defaulters: in some instances without any blame attaching itself to them, but owing to unavoidable circumstances such as failure of crops, &c. Such cases receive from me every consideration, the cultivators being allowed to carry on the advance to another season, but in other cases the intention to defraud is most flagrant: no attempt even having been made to meet engagements, the advance money being used for other purposes than that for which it was given.

4. Under such circumstances the Aska Company has no other course open for redress save through the obviously unsuitable means of a Civil suit.

5. The Legislature of India, in admission of the evils and injustices arising from such a state of the law, has passed a remedial enactment, whereby such cases as those I have mentioned can be summarily disposed of before a Magistrate.

6. But this most important and much needed Act has not yet been extended to this District, though I am aware that the Collector of the District has strongly recommended that it should be so extended; and the object of my present communication is earnestly to solicit that His Excellency the Governor in Council will be pleased to take this matter into his consideration, and afford to the mercantile interests in these parts that protection which is so urgently needed, by permitting to be adopted an Act that has already been passed by the Legislative.

No. 32. From C. F. CHAMIER, Esq, Register to the Court of Foujdaree Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated 4th August 1859, No. 18.

1. I am directed by the Court of Foujdaree Udalut to acknowledge the receipt of the Proceedings of the Government, dated the 3rd June, requesting the Judges to state the places to which they would propose that the provisions of Act XIII of 1859, being "*an Act to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers, in certain cases,*" should be extended; and the Officers by whom the powers vested by the Act in a Magistrate of Police, should be exercised in such places.

2. The Court not having upon their records such information as would enable them to reply at once to this communication, have been under the necessity of calling upon the several Magistrates, by a Circular, to submit a list of the places, within their respective limits, to which the said Act might in their opinion be extended.

3. The majority of the Magistrates have named particular towns in their Districts where they suggest the Act be brought into operation; but the Magistrates of seven Districts, viz., Canara, Chingleput, Cuddapah, Guntoor, Masulipatam, Salem, and Vizagapatam, have not furnished such particulars, being of opinion that it should be made applicable to their entire Districts.

4. The question raised by the reports of these latter Magistrates, viz., whether the Act can be so generally applied, has been expressly referred for the Court's consideration in the Order of Government, dated 3rd June, on a letter from the Agent of Vizagapatam. On this point I am directed to state that the Court see nothing in the Act to prevent its being extended to all parts of the Presidency, should the Government consider it expedient so to extend it.

5. In order, however, to obviate the delay which a second reference to the Magistrates would entail, should the Government desire to restrict the operation of the Act to particular localities, the Court have supplied, by a reference to the Map, the names of the principal towns in those Districts of which the Magistrates have not forwarded the lists required, and have directed me to append to this letter a general list of places to which the Act might be at once extended.

6. With respect to the Officers to be authorized to exercise the powers of the Act, the Court are of opinion that, looking to the nature of those powers, they should only be vested in such of the Magistracy as are competent to use the extended powers conferred by Section LIV, Act VII of 1843; the complaint being made in each case to the nearest of such Magisterial Officers having jurisdiction over the locality where the breach of contract may occur.

7. At various times since the receipt of the Proceedings of Government now under reply, the Court have received from the Government communications* addressed to them by the Chief Engineer, the Executive Engineer at Jackatalla, the Chamber of Commerce, the Magistrate of Malabar, and other parties, relating to the subject of the Act under consideration. So far as the question of the general extension of the Act, to which these communications refer, is concerned, the opinion expressed in the fourth para. of this letter, will meet the requisition of the Government in respect of them; but the Court presume that the Government are further desirous of ascertaining whether, in the Court's opinion, the provisions of the Act are applicable to contracts made in the Department of Public Works.

* Herewith returned.

8. The Act, the Court observe, is entitled one to provide for breaches of contract "in certain cases." The question arises, in what particular cases? The Act embraces "*any* Artificer, Workman, or Laborer," engaged by "*any* Master or Employer" for the performance of "*any* work;" and therefore, so far as the parties employing and employed, and the work to be executed, are concerned, it is as wide and comprehensive in its terms as language can make it. The limitations are these, and these only, that the engagement shall be of the character of a contract for the performance of a specific work, and that the Employer shall have made the Workman an advance of money for the execution of the work.

9. The Court consider that all contracts for particularly defined works to be executed in the Public Works Department, would come fairly under the protection of the Act in all places to which its operation may be extended; but they do not think it embraces contracts for labor upon wages, not being for execution of a specific work. Neither the word "wages" nor the word "servant" appears in the Act, and where the relation between the employer and employed is simply that of master and servant, the one exacting and the other rendering labor or service, limited it may be in its nature, but undefined in its extent, and upon remuneration by periodical wages and not by calculation of the value of the work to be executed, the Court do not consider that the Act applies.

Places to which it is proposed that Act XIII of 1859, be extended.

Bellary.	Town of Hospett.
Town of Adonie.	„ „ Ooravacondah.
„ „ Bellary.	„ „ Pennacondah.
„ „ Gootty.	„ „ Ramandroog.

CANARA.

Town of Buntwall.
" " Cauergode.
" " Coompta.
" " Cundapoor.
" " Honore.
" " Mangalore.
" " Moolky.
" " Poottoor.
" " Sedashegur.
" " Siddapoor.
" " Sircy.
" " Tudree.
" " Yellapoor.

CHINGLEPUT.

Town of Chingleput.
" " Conjeveram.
" " Palaveram.
" " Poonamallee.
" " Poolicat.
" " Saint Thomas' Mount.
" " Sydapett.
" " Tripassore.
" " Trivulloor.
" " Wallajahbad.

COIMBATORE.

Town of Coimbatore.
" " Metapollium.
" " Bowany.
Neilgherry Hills.

CUDDAPAH.

Town of Cuddapah.
" " Muddumpilly.

GANJAM.

Town of Aska.
" " Berhampore.
" " Calingapatam.
" " Chetterpore.
" " Chicacole.
" " Ganjam.
" " Itchapore.
" " Munsoorcottah.
" " Nursanapettah.
" " Purlakemedy.
" " Russelcondah.

GUNTOOR.

Town of Guntoor.
" " Nizampatam.

KURNOOL.

Town of Atcoor.
" " Chagulmurry.
" " Coilguntlah.
" " Culloor.
" " Cumbum.
" " Doopaud.
" " Kurnool.
" " Maikapooram.
" " Nundial.
" " Nundicootoor.
" " Panniem.
" " Puttycondah.
" " Ramulcotah.
" " Sirwell.

MADURA.

Town of Dindigul.
" " Madura.
" " Paumben.

MALABAR.

Town of Baddagherry.
" " Beypoor.
" " Calicut.
Town of Cannanore.
" " Cochin.
" " Chowghaut.
" " Mulliapooram.
" " Paulghaut.
" " Ponany.
" " Tellicherry.
Talook of Wallowanaud.
" " Wynaud.

MASULIPATAM.

Town of Bezwada.
" " Condapilly.
" " Ellore.
" " Juggiapettah.
" " Masulipatam.

NELLORE.

Town of Nellore.
" " Ongole.

NORTH ARCOT.

Town of Amboor.
" " Arcot.
" " Chittoor.
" " Goriattum.
" " Ranipett.
" " Sholinghur.
" " Triputty.
" " Trivalum.
" " Trivatoor.
" " Vellore.
" " Wallajapett.

RAJAHMUNDRY.

Town of Cocanada.
" " Coringa.
" " Dowlaishwaram.
" " Ingeram.
" " Juggernaikpooram.
" " Neelapillay.
" " Narasapoor.
" " Rajahmundry.
" " Samulcottah.
" " Tallaravoo.

SALEM.

Town of Darampoory.
" " Kishnagerry.
" " Ossoor.
" " Salem.
" " Sankerydroog.
" " Tripatoor.
" " Vaniembady.
" " Womaloor.
Shervaroy Hills.

SOUTH ARCOT.

Town of Cuddalore.
" " Porto Novo.
" " Tindevanum.
" " Virdachellum.

TANJORE.

Town of Combaconum.
" " Negapatam.
" " Tanjore.
" " Tranquebar.

TINNEVELLY.

Town of Palamcottah.
" " Tinnevelly.
" " Tuticorin.

TRICHINOPOLY.

Town of Chintamony.
" " Pullakurray.
" " Puttore.
" " Seringham.
" " Trichinopoly.
Town of Vurraganerry.
" " Worriore.
" " Yeddatheroo.

VIZAGAPATAM.

Town of Bimlipatam.
Town of Nursapatam.
" " Vizagapatam.
" " Vizianagrum.

(Signed) C. F. CHAMIER,
Register.

No. 33. From C. F. CHAMIER, Esq., Register to the Court of Foujdaree Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated Madras, 5th August 1859, No. 19.

As a supplement to my letter of yesterday, I have now the honor to forward a Minute recorded by Mr. H. D. Phillips, on the reference made by the Government on the 3rd June last, respecting Act XIII of 1859, in order that the same may be read with the Court's letter on the subject. It only remains for me to add, that I had reason to believe it to be the intention of the collective Court, that the letter to Government should be based upon the concurrent opinions of Messrs. Hooper and Strange, without allusion to the grounds on which Mr. Phillips dissented from them.

MINUTE.

Letter of the Foujdaree Udalut to Government, dated 4th August 1859, No. 18.

As this communication has been despatched without an opportunity being afforded to me of signing the draft, last prepared, under the concurrence in opinion of Messrs. Hooper and Strange, I desire here to note that there are portions of it in which I do not agree.

* 3rd June 1859, No. 769.

The Government* have simply called for a list of places to which Act 13 of 1859, should, in this Court's opinion, be extended:—it is possible, however, that when the Chief Secretary subsequently sent down, under official wrappers, certain communications from the Public Works Department, and others, it may further have been intended to ask for the Court's views as to the extension of the Act to entire Districts; and adverting to such possibility the Court's opinion has been submitted. But I am strongly impressed with a conviction that the Government has neither required nor intended to require from the Foujdaree Udalut, their opinion on the Judicial bearing of the new Law, which I observe has been laid before it in the two last paras. of the Court's letter. Such opinion is extra Judicial, and had the Draft come before me, I should have desired to add that, not being founded on any case of actual occurrence, the Court would not, of course, be bound by it, should they, in the discharge of their regular duties, find cause to justify action in modification or in contravention of it.

5th August 1859.

(Signed) H. D. PHILLIPS.

(True Copy.)

(Signed) C. F. CHAMIER,
Register.

No. 34. MINUTE by the HONORABLE the PRESIDENT, dated 15th August 1859.

As the opinion of the Foujdárí Adálut—that the Act may be extended to all parts of the Presidency—coincides with the reason of the case, I think we may without hesitation accept it.

The Act relates to breaches of contract which may occur anywhere; and, whether it be good or bad, the Act is therefore equally applicable everywhere.

In my opinion the Act will be beneficial if it is properly administered.

With this view special authority is given to the Local Governments to vest the powers conferred by the Act in any Officers they think proper.

The Sudr Adálut recommend that the powers should be vested only in such of the Magistrates as are already entrusted with full Magisterial jurisdiction.

I propose that the Act should be extended to the whole Presidency and that the powers should be vested as recommended.

I do not see any necessity for a previous authoritative interpretation or for any present amendment of the Act. The effect will, I think, be the reverse of that anticipated by the Chamber of Commerce for seeing that advances will bring them within the jurisdiction of this summary Act, people will be cautious how they take advances.

(Signed) C. E. TREVELYAN.

Proceedings of the Madras Government, Judicial Department, from 20th to 26th August 1859.

No. 35. ORDER THEREON, 23rd August 1859, No. 1136.

On Act XIII of 1859, or an Act to provide for the punishment of breaches of contract by Artificers, Workmen and Laborers in certain cases, being passed, reference was made* to the Judges of the Court of Foujdaree Udalut for their opinion, as to the places to which the Act should be extended, and the Officers by whom the powers vested by the Act in a Magistrate of Police, should be exercised in such places.

* 3rd June 1859.

2. Subsequently applications were received by Government from several Public Officers, Commercial bodies and individuals, requesting that the Act might be introduced in their several localities. These applications, as they were received, were forwarded to the Foujdaree for their consideration, in connection with the reference already made to them.

3. The Foujdaree in their reply,* advert to the question raised in the letters from some Magistrates, whether the Act can be made applicable to entire Districts, and say that they "see nothing in the Act to prevent its being extended to all parts of the Presidency, should the Government consider it expedient so to extend it." In case, however, that Government should wish to restrict the operation of the Act to particular localities, the Court append to their letter a general list of places to which the Act might at once be extended.

* 4th August 1859.

4. The Government observe, that the view taken by the Foujdaree Udalut, that the Act may be extended to all parts of the Presidency, coincides with the reason of the case, and they have no hesitation in adopting it. The Act will, therefore, be put in operation throughout all the Districts of the Madras Presidency.

5. As to the Officers to be authorized to exercise the powers of the Act, the Court think that, looking to the nature of those powers, they should only be vested in such of the Magistracy as are competent to use the extended powers conferred by Section LIV, Act VII of 1843, the complaint being made in each case to the nearest of such Magisterial Officers, having jurisdiction over the locality, where the breach of contract may occur.

6. Having resolved that the Act shall be made generally applicable to all parts of the Presidency, the Government further resolve to vest the powers necessary for giving it effect, in all Session Judges, Subordinate Judges and Principal Sudr Ameens as well as in all Magistrates, Joint Magistrates, and in all Assistant or Deputy Magistrates, Covenanted or Uncovenanted, who are competent to exercise the jurisdiction conferred by Section LIV, Act VII, 1843. At Judicial Stations the powers should ordinarily be exercised by the Subordinate Judge or Principal Sudr Ameen, in their absence by the Magistrate or by one of his Subordinates qualified as aforesaid, and in default of all these by the Sessions Judge. Beyond the limits of such stations the powers will be exercised by the Magistrate, Joint, Assistant or Deputy Magistrate within whose range the breach of contract may occur. At Cochin, the power will be exercised by the Principal Sudr Ameen, at Ootacamund by the Subordinate Judge, at Jackatalla, Saint Thomas' Mount and other Military Cantonments within the frontier, the power will be exercised within the Cantonment limits by the Cantonment Officer, being also a Joint Magistrate.

5th August 1859.

7. Adverting to the 2nd letter from the Register to the Foujdaree Udalut and to its enclosure, the Government would remark, that in sending down to the Court the letters from the Chief Engineer, Department Public Works and others, it was not intended to call for any expression of opinion from the Foujdaree except, upon the point which was of necessity involved in the original reference, viz., whether the Act admitted of being made applicable to whole Districts as well as to distinct towns. The Government will not, therefore, discuss the subjects mooted in the last two paragraphs of Mr. Chamier's letter of the 4th Instant.

8. With regard to the last paragraph of the letter from the Chamber of Commerce, the Government would observe, that, in their judgment, the Act will prove very beneficial if properly administered, and that as respects the system of advances, its effect is likely to be the reverse of that anticipated by the Chamber, as people will be more cautious how they take advances, when they find that the receipt of them will bring them within the provisions of this summary Act.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Cochin Chamber of Commerce
Cochin 22nd June 1859.

To,
J. Pycroft Esq.
Chief Secretary to Government

Sir, I have the honor to inform you that at a special meeting of this Chamber held on the 20th Inst. it was unanimously resolved to apply to Government for the extension of Act 13. 59. entitled "An Act to provide for the punishment of breaches of Contract by Artificers, Workmen and Laborers" to this town and its Suburbs.

As the great necessity for a remedy against defaulting Contractors in a town of so great Commercial importance as Cochin, has long been painfully felt here, and is too self evident to require any further arguments in its support, this Chamber feels confident

that

that the Government will readily concede its application

I have the honor to be
Sir
Your most Obedt Servt

Chairman

Hon. Sec. of War

PUBLIC WORKS DEPARTMENT.

Public.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letter from Lieutenant-Colonel J. H. BELL, Chief Engineer; to J. D. BOURDILLON, Esq., Secretary to Government, dated 2nd July 1859, No. 2346.

I do myself the honor to forward herewith the papers marginally noted on the subject of the failure of certain Contractors to fulfil the conditions of the engagement entered into by them with the District Engineer of Bellary, for the supply of timber.

From District Engineer dated 23rd May 1859, No. 40.
To do. 1st June 1859.
From do. 6th „ No. 67.
„ do. 0th „ 74, with one enclosure.

2. It will be observed that the District Engineer failed to take any tangible security from the Contractors for the due performance of their contract, which simply provides for the forfeiture of 2 annas a cubic foot for any delay in the supply of the timber. In this the District Engineer appears to have neglected the express orders of Government dated 26th September 1856, given at page 331 of the Circular Order Book, which direct that valid security should be taken from Contractors, and further that all documents connected with contracts and advances to Contractors should be drawn up with legal precision. He has therefore been called upon for an explanation.

3. As the legal proceedings which the enforcement of the above mentioned provision of the contract would involve, would, in the opinion of the District Engineer, be tedious and probably unsatisfactory, he applied to the Magistrate of Bellary to enforce the provisions of Act XIII of 1859, in the case of the Contractors, but as the operation of that Act is limited to the Presidency Town of Madras, Mr. Hathaway did not feel himself warranted in acting under its provisions. The District Engineer has therefore requested that the subject should be brought to the notice of Government, in view to the Act being extended to the several Districts of this Presidency.

4. On the 18th ultimo, I had the honor of addressing Government on the subject of extending the provisions of the above Act to Jackatalla. It seems, however, highly desirable that it should be made general, as proposed by the District Engineer, to prevent the loss and inconvenience sustained both by the Government and private individuals, by fraudulent breaches of contracts. As the Act in question confers the power on the Executive Government of any Presidency to extend its provisions to any place within the limits of its jurisdiction, I beg that the Government will be pleased to make the Act applicable to the several Districts of this Presidency.

5. The Act however, even if extended cannot have retrospective effect, and the District Engineer of Bellary has therefore been instructed to institute proceedings in the Civil Court against the timber Contractors, in the event of their failing to fulfil the engagement entered into by them.

ORDER THEREON, 14th July 1859, No. 1712.

This letter will be transferred to the Judicial Department as respects the main question, viz. the extension of Act XIII of 1859 to all the Districts of this Presidency. But with reference to the concluding para., the Chief Engineer's attention will be called to the circular order of his Department noted in the margin,* which was based on an order of Government. The Government does not permit any of its servants to involve it in legal proceedings without special permission. If therefore it is intended that the proceedings there directed shall be taken in the name of Government, the course pointed out in the order must be followed.

* June 23rd 1857, A, No. 45. Circular Order Book page 551.

2. The District Engineer's explanation of the neglect noticed in para. 2 should be submitted for the information of Government; and the Chief Engineer will ascertain and report whether Captain Fisher has disobeyed his instructions in other similar cases; and, if so, in what cases.

(True Extract.)

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

To the Chief Engineer.
„ Judicial Department.

Exd. Wm. Thomas.

PUBLIC WORKS DEPARTMENT.

Public.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letter from Lieutenant-Colonel J. H. BELL, Chief Engineer; to J. D. BOURDILLON, Esq., Secretary to Government, dated 5th July 1859, No. 2416.

I have the honor to acknowledge the receipt of the order of Government under date 11th June 1859, No. 1440, appended to the Proceedings of the Madras Government, conveying copy of a letter from the Collector of Trichinopoly, regarding the progress made in closing the breaches in the river and channel embankments in that District, occasioned by the floods in November 1858, and also as to the work remaining to be done.

2. The cause* of the loss of time at the commencement of the working season is to be attributed in the first place to the change of District Engineers; prior to Captain Moberly's proceeding to take charge of the Tanjore District, he gave instructions to all the subordinates to commence works as soon as the estimates were made, his successor unfortunately omitted to re-issue these instructions, which though contrary to rule, were owing to the condition of the District works absolutely necessary, consequently the accustomed routine was pursued, and the repairs were not carried out until the estimates were sanctioned.

* Letter from District Engineer of Trichinopoly No. 243 dated 23rd June 1859.

3. Captain Moberly further reports that Mr. Harrington, an efficient Officer and well acquainted with all the works in his circle, was removed from the District at this crisis. Mr. Harrington was relieved by Assistant Supervisor Bateman from the 1st circle, of which, an executive Officer new to the District, had just assumed charge. Shortly afterwards Assistant Overseer Ramasawmy Iyer, a very active and intelligent executive subordinate sent in his resignation. Altogether it is only fair to Captain Moberly to state from these untoward circumstances, he had an overwhelming amount of difficulties to contend with.

4. The District Engineer however reports that on the 19th of April last, upwards of a month prior to the date of the Collector's letter above alluded to, he thoroughly inspected the Peroovallay channel and found only one breach open.

5. There were breaches in the north bank of the Coleroon unclosed at the same date, but contractors were at work on all, and under penalty to close every thing before the end of May, and one failure only was reported.

6. By the 1st of May Captain Moberly had completed his inspection of the Wyacondan nullah; of 95 breaches, all had been closed with the exception of 15 in progress.

7. The north Coleroon or south Iyen Voikal bank was left open in four or five places to discharge water from the Iyaur, for fear of its endangering the upper annicut north branch repairs, in progress, all however were closed on the 10th of June. In the Cauvery S. bank all the breaches were closed with the exception of three on which were employed a large number of coolies when Captain Moberly visited these works on the 20th of May.

8. The District Engineer reports that the Wyacondan, as far as Pootoor, has a good stream in it, and its subsidiary channels all carrying down a full supply.

9. All the small channels in the Conaud and Vettycutty talooks are well filled, and he doubts not that the same has taken place in the Laulgoody and Moosery talooks, as the works were ready for the reception of water before the 20th of June.

10. Several estimates have been prepared for strengthening, or I should say increasing, the present section of some of the river and channel embankments, which, in Captain Moberly's opinion, stand greatly in need of this measure of precaution, and which I would have clearly understood is entirely unconnected with the repair of the river and channel embankments and closing breaches, on which points I am happy I can say the District Engineer reports satisfactorily and that the river and channel embankments are in a sufficiently secure state for the ensuing freshes.

11. In conclusion, and with reference to para. 43 of Captain Moberly's report, requesting that some means may be taken to guard Government interests from loss by the failure of contractors, I observe that I have in my letter of the 2nd instant No. 2346, urged the necessity for the extention of Act XIII of 1859 to every District in the Presidency having before in my letter of the 18th June 1859 No. 1805, requested its extension to the Neilgherry Hills.

ORDER THEREON, 21st July 1859, No. 1752.

Ordered to be communicated to the Collector of Trichinopoly with reference to his letter of the 28th May No. 10.

2. Para. 11 will be referred to the Judicial Department for consideration.

(True Extract.)

Ag. Dy. Secretary to Government.

To the Chief Engineer.
" Collector of Trichinopoly.
" Judicial Department.

Exd. Wm. Thomas.

Madras 5th August 1859

No 19

From

C. J. Chamier Esquire,
Register to the Court of
Foujdaree Udalut.

To

J. Sycroft Esquire
Chief Secretary to
Government.

Sir,

In supplement to my letter of yesterday, I have now the honor to forward a Minute recorded by Mr A. D. Phillips, on the reference made by the Government on the 3rd June last, respecting Act XIII of 1859 in order that the same may be read with the Court's Letter on the subject. I only remains for me to add, that I had reason to believe it to be the intention of the collective Court, that the Letter to Government should be based upon the concurrent opinions of Messrs Cooper and Strange, without allusion to the grounds

on

Copy of Minute of Mr A. D. Phillips, Barrister at Law, dated 26th July 1859.

Referred to in Letter from Register to Court of Foujdaree Udalut, dated 5th August 1859 No 1136.

Received 21 Aug 1859

Examined

Copy for consideration.

Engrossed

Compared

Despatched

Entered

Returned

Copy for consideration.

Engrossed

Compared

Despatched

Entered

Returned

on which Mr Phillips dissented from them.

Foujdaree Adalut,
Registers Office
5th August, 1859.

I have the honor to be
Sir,
Your most obedient Servant.

C. L. Chanier
Registrar

Minute

Minute

Letter of the Foujdaree Adalut to Government
dated 4th August 1859, No 18.

As this communication has been despatched without an opportunity being afforded to me of signing the draft, last prepared, under the concurrence in opinion of Messrs Hoppin and Strange, I deem it here to note that there are portions of it in which I do not agree.

3d June 1859
No 769.

The Government have simply called for a list of places to which Act 18 of 1859 should, in this Court's opinion, be extended if possible, however that when the Chief Secretary subsequently sent down, under official wrappers, certain communications from the Public Works Department, and others, it may further have been intended to ask for the Court's views as to the extension of the Act to other Districts, and adverting to such possibility the Court's opinion has been submitted. But I am strongly impressed with a conviction that the Government

Now

has neither required nor intended to require from the Sanjidance Adalat, their opinion on the judicial bearing of the new law, which Solicitor has been laid before it in the two last years of the Courts letters. Such opinion is extra judicial, and had the Draft come before me, I should have deemed to add that, such being founded on any case of actual occurrence, the Court would not, of course, be bound by it should they, in the discharge of their regular duties, find cause to justify action in modification or in contravention of it.

5th August 1859. (Signed) P. D. Phillips

(True Copy)

C. S. Chamier

Register

26th June 1857	Rom. Light 26 Sept. Judicial 1857	The Superintendent of Police	Copy of this communication will be forwarded to the Judges of the Foujdaree Adalut in reference to the Proceedings of the 3d Instant, No. 729.
		80 No. 113 B. From the Superintendent of Police	
		To The Officiating Secretary to Government	
		Dated 25th Inst.	
		Rec'd 26th Ditto	
		Forwarding Copy of a Minute by the Hon'ble Member in the Judicial Department of the Council of India, recommending the Establishment of a Police Force,	
		Reply Ditto	
	33		

No.

Copy of this communication will be forwarded to the Judges of the Foujdaree Adalut in reference to the Proceedings of the 3d Instant, No. 729.

The Court of Foujdaree Adalut.
Chief Engineer with Enclosures returned.

Deputy

For the Gazette

14

Notification

Fort St. George 25th August 1859.

Under the authority conveyed by Section V Act XIII 1859, the Honorable the Governor in Council hereby extends the provisions of the said Act, or "an Act to provide for the punishment of breaches of Contract by Artificers, Workmen, and Labourers in certain cases," to all the Districts of the Madras Presidency.

2. For the better carrying out of the said Act throughout the Madras Presidency, the Honorable the Governor in Council hereby specially appoints all Sessions Judges, Subordinate Judges, Principal Sudr Ameens, all Magistrates, Joint-Magistrates as well as Assistant or Deputy

Deputy Magistrates, Covenanted and Uncovenanted, who are competent to use the extended powers conferred by Section 7 & III Act VIII - 1843, to exercise the powers vested in a Magistrate of Police by the said Act XIII - 1859.

3. At the Stations of Sessions, Subordinate or Principal Sudr Ameens Courts, these powers will ordinarily be exercised by the Sub Judge or the Principal Sudr Ameen, in his absence by the Magistrate, or by one of his Assistant or Deputies qualified as aforesaid, and in default of all these by the Sessions Judge - Beyond the limits of such stations the powers in question will be exercised by the Magistrate, Joint, Deputy or Assistant Magistrate in whose charge the breach of contract may occur.

4. In Military Cantonments the powers will within the Cantonment limits, be exercised by the ~~Commissariat or Staff~~ Officer having the jurisdiction of a Cantonment Magistrate.

J. P.

Judicial Br. of Dept.
Govt.
Notification.

Go 1136
Dated 23-8-59

Dt 23rd Aug. 59.

23-32

☆ 3/6-16
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(12 Guineas)

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