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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.
Copy 30-11-59

G.O. No. <i>2719</i>	Press Mis.
<i>25.26</i>	
Dated <i>22-11-</i>	<i>18 59.</i>

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
for the month of November 1859.*

No. 25. Read the following letter from Lieutenant-Colonel J. H. BELL, Chief Engineer;
to J. D. BOURDILLON, Esq., Secretary to Government, dated 31st October 1859,
No. 6692.

In accordance with order of Government, No. 1712, dated 14th July last, paragraph 2,

• 1 Letter from District Engineer, dated 9th August 1859, No. 153, with 1 enclosure. I have the honor to forward the correspondence* as per margin, explanatory of the omission of the District Engineer, Bellary, in making certain contracts for timber, to comply with the standing orders of the department and orders of Government on this subject.
1 Do. from do. 9th do. No. 154.
1 Do. to do. 25th do. No. 4227.
1 Do. from do. 15th October 1859, No. 268, with 4 enclosures.

2. The contract itself and a translation are among the papers, and it will be perceived that the document is defective in the following particulars. It is not prepared on stamped paper, the signatures of the contractors are not witnessed. No security was taken from the contractors, and far from being drawn up with legal precision, the wording of the contract or agreement is so loose and vague that it is extremely doubtful, if a suit was instituted in the Civil Court against the contractors, that it would be decided in favor of Government.

3. The agreement is to supply teak wood and red wood at certain rates by September 1858, at a penalty of a fine of two annas per cubic foot, but the quantity to be supplied is not specified; and it is not apparent whether the fine, for non-fulfilment of the contract, is to be levied on all that may be supplied, or on the quantity that may be supplied subsequent to September 1858. I am, therefore, of opinion, that it is not desirable to take any legal proceedings in the matter.

4. The other departure of the District Engineer from regulations consisted in making as large an advance of 5,000 Rupees at one time to the contractors. Captain Fisher in his letter of 15th October explains, that when, after a long correspondence, the permission of the authorities in Mysore had been obtained for the contractors to cut teak wood in the Nugger division, the season for floating it down the Tumbuddra had passed away, and that the men then offered to supply him with wrought timber by land carriage. The agreement in question was then drawn up; but the District Engineer omitted to prepare the same on stamped paper; for a reason which is not very clearly given in his letter, but which apparently is, that he did not consider himself bound to consider the contractor's interests more than he had already done. But he has overlooked the circumstance that the use of stamped paper was necessary to protect the interests of Government. He afterwards explains, that he gave them the advance of 5,000 Rupees as a necessary encouragement, in order to obtain from them the wood required for the new hospital at Bellary, the completion of which would otherwise have been delayed another year, and he states that his omissions are attributable to his anxiety to avoid any delay in a work of such importance, and which he considered was imperatively required to be completed without delay.

5. Captain Fisher reports that no other contracts of any kind have been made by him.

6. I take this opportunity of observing that, upon reconsideration of Act xiii of 1859, I cannot see that it provides any remedy against contractors according to the usual understanding of the term, but only against artificers, workmen or laborers who fail in labor contracts. I shall be obliged by definite information as to whether I am right or wrong in this view, for the question is of great importance to the Department Public Works.

No. 26. ORDER THEREON, 22nd November 1859, No 2719.

Ordered to be referred to the Government Pleader together with the enclosures, for his opinion whether legal proceedings can be taken against the defaulting contractors with reasonable prospect of success. The Chief Engineer will be instructed to supply Mr. Dale with any further information required by that gentleman.

2. Mr. Dale will also report his opinion on the question raised by Colonel Bell in paragraph 6 of his letter respecting the scope of Act 13 of 1859.

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

Central Office of D. W.
Fort Saint George
31 Oct. 1859

N: 6692

From, *The Chief Engineer*

To, *The Secretary to Government*
P. W. D.

Public

Sir,

In accordance with order of Government,

N: 1712, dated 14th July last, para 2, I have

the honor to forward the Correspondence as per Margin

explanatory of the omission of the District Engineer

Delivery, in making certain contracts for Timber, to

comply with the standing orders of the Department and

orders of Government on this subject.

2. The Contract itself and a translation

are among the papers, and it will be perceived that

the document is defective in the following particulars. It

is not prepared on stamped paper, the signatures of the

Contractors are not witnessed. No security was taken

from the Contractors and far from being drawn up

with legal precision the wording of the Contract or

agreement is so loose and vague that it is extremely

* Letter from Dist. Eng^r
dated 4th Aug^r 1859
N: 167, with 1. Encl^{ure}

1 D^r from D^r 9th D^r
N: 167.

1 D^r to D^r 25th D^r
N: 4227.

1 D^r from D^r 16th Oct^r
N: 268, with 1. Encl^{ure}.

doubtful, if a suit was instituted in the Civil Court against the Contractors, that it would be decided in favor of Government.

3. The agreement is to supply Teak wood and red wood at certain rates by September 1858, at a penalty of a fine of 2 Annas per cubic foot, but the quantity to be supplied is not specified, and it is not apparent whether the fine, for non-fulfilment of the Contract, is to be levied on all that may be supplied or on the quantity that may be supplied subsequent to September 1858. I am therefore of opinion that it is not desirable to take any legal proceedings in the matter.

4. The other departure of the District Engineer from regulations consisted in making, as large, an advance of 5000 Rupees at one time to the Contractors. Captain Fisher in his letter of 15th October explains, that when, after a long correspondence, the permission of the authorities in Mysore had been obtained for the Contractors to cut Teak wood in the Nuggur Division, the season for felling it down the Tungabuddra had passed away, and that the men then offered to supply him with wrought timber by land carriage. The agreement in question was then

drawn.

drawn up; but the District Engineer omitted to prepare the same on stamped paper, for a reason which is not very clearly given in his letter, but which apparently is, that he did not consider himself bound to consider the Contractors' interests more than he had already done.

But he has overlooked the circumstance that the use of stamped paper was necessary, to protect the interests of Government. He afterwards explains that he gave them the advance of 5000 Rupees as a necessary encouragement, in order to obtain from them the wood required for the new Hospital at Bellary, the completion of which would otherwise have been delayed another year, and he states that his omissions are attributable to his anxiety to avoid any delay in a work of such importance and which he considered was imperatively required to be completed without delay.

5. Captain Fisher reports that no other Contracts of any kind have been made by him.

6. I take this opportunity of observing that upon reconsideration of Act VIII of 1859 I cannot see any to the effect that it provides any remedy against Contractors according to the usual understanding of the term, but only against

against artificers, Workmen or Laborers who fail in
Labor Contracts. I shall be obliged by definite in-
formation as to whether I am right or wrong in this
view, for the question is of great importance to the
Department Public Works.

Central Office of P.W.
Fort Saint George
31 October 1859

I have the honor to be

Sir,

Your Most Obedt. Servt.

 Captain
For Dy. Chief Eng. N. 6.

 A. M. Lall Lieut. Colonel
Chief Engineer.

To The Secretary to Government
P. W. D.

L. S. Gray

From 15th July/89 to 9th 1892

From 15th July/89 to 9th 1892
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From 15th July/89 to 9th 1892

From 15th July/89 to 9th 1892

No. 25426.

With an order
No. 2719-22 of November.

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Ordered to be referred
to the Joint Master together
with the enclosed, for his
information whether legal proceedings
can be taken against the defaulting
contractors with reasonable prospect
of success the Chief Engineer will
be instructed to supply the
with any further information re
quired by that gentleman.

2. The date will also be
heard his opinion on the question
raised by Colonel Ball in form
of his letter respecting the
scope of Act of 1859.

From 15th July/89 to 9th 1892
22nd Nov 1892
Copy to Col. Ball with reply of 23rd
to Chief Engineer