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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

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Dated 16 — 6 — 1863.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 16th June 1863.

No. 367. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras, to Colonel W. I. BIRDWOOD, R. E., Secretary to Government, Public Works Department, dated Madras, 1st June 1863, No. 335:—

Sir,

Procs. of Govt., P. W. D., No. 603, dated 12th March 1863.
Letter from Advocate General to Govt. Solicitor, dated 19th March 1863.
Letter from Govt. Solicitor to Secretary to Govt., P. W. D., No. 162, dated 20th March 1863.
Procs. of Govt., P. W. D., No. 841, dated 8th April 1863.
Do. P W. D., No. 921, dated 15th April 1863.
Do. P. W. D., No. 1,135, dated 4th May 1863.
Do. P. W. D., No. 1,227, dated 15th May 1863.

With reference to the papers noted in the margin, I have now the honor to forward for the information of Government a copy of the Opinion of the Advocate General (with whom I have had frequent communications on the subject) relative to the granting or withholding of the Certificate of due completion of the Madras Pier.

COPY OPINION.

1. Before I could give any opinion upon the question referred to me by the Order of Government, dated 12th March 1863, Public Works Department, No. 603, I was obliged, under date the 19th March, to request the Government Solicitor to obtain for me a written statement, whether with the single exception of the Cranes mentioned in the Government Order, Government was satisfied with the Pier works, and if not, to procure for me a statement of what was alleged to be incomplete, deficient, or in any way objectionable, these being points upon which, it is obvious, I can neither form nor offer any opinion, but must be guided entirely by the statements of the Engineer Officers who advise Government upon these matters.

2. I am now furnished with two letters; one from Lieutenant-Colonel Hitchins to Colonel Birdwood, dated 27th March 1863, and another from the same Officer to Colonel Birdwood, dated 1st May.

3. The former mentions "that *733 feet of Railway* had yet to be put down on the Madras Pier."

4. The latter, stated to be written consequent upon my request to be furnished with a full statement of *all* existing defects, mentions as deficient "733 feet of Railway *protecting railings* at the *head* of the Pier." Neither of these letters, however, at all advert to one point upon which I requested to be distinctly informed, namely, "whether Government contend that, in "order to complete the Pier the *Contractor* is *bound* to continue protecting railings round the "Pier *head*."

5. I am quite uncertain whether Lieutenant-Colonel Hitchins means that 733 feet of each of *two different* articles are deficient; or only 733 feet of *one* article, but it is most important to know which is actually meant, as I shall presently show.

6. The number of feet, 733, would seem to point to the conclusion that one article only is meant, as it would be somewhat remarkable if exactly the same number of feet were deficient in two entirely different articles; but then, on the other hand, as I must presume Lieutenant-Colonel Hitchins to know that the two different terms he has used, are used in the Pier Contract to denote two entirely different articles, I cannot assume that in using these two different terms, he meant to denote one and the same article.

7. Section 11 of the Specification at foot of the Pier Contract, says, "the whole breadth "of the platform, both on the main Pier, and the Pier head, is to be covered with open plank-"ing," &c, &c., showing clearly that the main Pier and the Pier head are mentioned separately and distinctly; and that the Pier *head* is *not* included in the term main Pier. Further on it says, "along the platform on the *main Pier* shall be laid four *lines of Railway*, &c. &c., with "the necessary Turn-tables, gangway, *and protecting railings*," showing clearly that the protecting railings *here* spoken of are limited to the *main Pier;* and I can find nothing in any part of the Specification requiring the Contractor to place protecting railings on the *Pier head;* and I am, therefore, of opinion that the Agent of the Pier Contractor was perfectly justified in refusing, as Lieutenant-Colonel Hitchins' letter, dated 24th June 1862, states he has done, to furnish protecting railings for the Pier head, unless ordered as work to be paid for extra. The same letter

shows that, in the opinion of both Lieutenant-Colonels Carpendale and Hitchins, protecting railings are required round the Pier head; but I am not at all prepared to say that a different opinion may not have been entertained in England when the Contract and Specification were drawn up. It seems to me not at all improbable that it may have been considered that protecting railings round the Pier *head* would impede the free action of the Cranes, and be in the way of vessels or lighters coming alongside the Pier. At all events the Contract does not bind the Contractor to supply them. They may now be ordered under the 8th Section of the Contract, but if so, they must be paid for separately, as that Section provides.

8. If therefore, Lieutenant-Colonel Hitchins means that "733 feet of Railway have yet to "be put down on the Madras Pier" to complete the four lines of Railway on it, as his letter of 27th March states, then I am of opinion that *this* deficiency *is* a sufficient ground for withholding the Certificate of completion.

9. If, on the other hand, the 733 feet deficient are, not "733 feet of Railway," but as stated in his letter of 1st May, "733 feet of Railway protecting railings *at the head of the Pier*," then I am of opinion that this deficiency is *not* one which, under the terms of the Pier Contract, the Contractor is bound to make good, and consequently is *not* a sufficient ground for withholding the Certificate of completion.

10. The absence of thescrew moorings which the Secretary of State has ordered to be dispensed with, can form no ground of objection. What "the Turn-tables already condemned" mentioned in Lieutenant-Colonel Hitchins' letter of 1st May, may be, I do not understand; for, in his letter of 3rd September 1862, paragraph 9, he mentions the Turn-tables as "*in good order*," which is the only previous mention I can find of them. If they were in good order on the 3rd September 1862 (it is no where said when they were delivered) the inference is that they had been previously or were then accepted as sufficient. If so, all that can be required is that the Contractor should keep them "in good condition for six months from the date of Certificate of delivery"; see Contract, Section 17.

11. Lieutenant-Colonel Hitchins does not mention where they are, or were, or ought to be. Under Section 11 of the Specification, the Contractor is bound to furnish the necessary Turn-tables for four lines of Railway on the main Pier. If any of these have not been furnished, or were such as ought not to have been supplied, this, *unless* they were *accepted*, is, in my opinion, a sufficient ground for withholding the Certificate of completion. On the other hand, the Chairman to the Pier Committee in his letter to the Chief Secretary, No. 44, dated 14th April 1863, mentions that a Turn-table *has been fitted* in the Custom House Yard. Was this what was condemned? If so, the deficiency would seem to have been made good.

12. There remains only the question of the Cranes; for, according to the information before me, upon which alone my present opinion is based, this is the only remaining matter wherein any deficiency seems to be alleged.

13. This question seems to turn entirely upon what passed, and, most unfortunately, it seems all to have passed at the time verbally, without any writing, on the subject, between Mr. Wells, the Contractor's Agent, and Colonel Boileau, the Government Superintendent and Controller of Pier Works; and if Mr. Wells' statement, in his letter of 15th December 1862, to the Under Secretary of State for India, be correct, then I am clearly of opinion that the Contractor is not responsible for the failure of the Cranes; and I observe that what Mr. Wells states to be the evidence of Colonel Carpendale, and Messrs. Wright and Kennedy, upon this point (which the letter of the two last named gentlemen to Captain Hemery, 8th October 1862, substantially confirms) is such as strongly confirms my opinion.

14. The report of Mr. G. P. White, to the Under Secretary of State, dated 10th October 1860, on officially inspecting the Cranes, speaks decisively in their favor as regards material, manufacture, working, adequate strength for the required weights, and careful packing before shipment for Madras. Lieutenant-Colonel Carpendale's letter, 11th October 1862, shows that Colonel Boileau reported on these Cranes on the 26th June 1861; and, it would seem no other objection was made to them then, than to the insufficient length of the jibs. The report of Messrs. Wright and Kennedy is dated 8th October 1862, or nearly *sixteen* months later; after the jibs of the Cranes had been lengthened by order of Colonel Boileau to 22 feet, an addition

of nearly one-fourth to the radius, thus necessarily exposing the Cranes for many months to an immense additional strain beyond what they were originally constructed to bear. It might be inferred from Lieutenant-Colonel Carpendale's letter that Colonel Boileau's order was under instructions from Government, but I do not feel at all clear that this was really so.

15. Mr. Wells says that the drawing of the Cranes gives a radius of 17' 6"; Lieutenant-Colonel Carpendale's letter to Colonel Birdwood, 11th October 1862, paragraph 4, says Colonel Boileau's correspondence states that the only drawing he had to guide him, showed an 18 feet radius; and Mr. Wells admits that the radius of the Cranes when manufactured was but 15 and 16 feet respectively. This would have been a good ground for rejecting the Cranes in the first instance, but it was no ground for Colonel Boileau giving an order, as Mr. Wells' letter says he did, which Lieutenant-Colonel Carpendale confirms, to lengthen the jibs so as to afford a working radius of 22 feet. Mr. Wells says that, to avoid further dispute, he consented to provide the longer jibs, free of expense, but distinctly told Colonel Boileau that the risk of doing so must be his.

16. From the way Mr. Wells writes, and more particularly from what I saw here of his keen, cautious and thoroughly business-like manner, on the occasion of the action for libel brought by the Contractor against the "Madras Times," I think it highly probable he has some Memorandum made soon after the event, to whose correctness he would probably swear. Has Colonel Boileau any similar Memorandum? If not, Mr. Wells would certainly carry the day, if the case should come into Court. If he has, then both parties would stand at first on equal terms, and the result would turn on which party's evidence weighed most with a Jury. In England I think they would probably decide in favor of the Contractor, for certainly the *probabilities* of the case seem to me in favor of Mr. Wells' statement.

17. Is it likely he would have altered the length of the jibs from 15 and 16 to 22 feet, unless ordered to do so? If Colonel Boileau gave that order, I am not aware of any authority in the Contract for his doing so. This point would probably be decided by the drawings, which I have never seen, but one of which Mr. Wells appears to have. The drawing alluded to in Lieutenant-Colonel Carpendale's letter, as mentioned in Colonel Boileau's correspondence, as it gives only a radius of 18 feet, would only make *against* him, if he ordered the radius to be altered to 22 feet.

18. Upon the whole I am of opinion, taking the statements of Colonel Boileau and Mr. Wells together that the radius which the Contractor was bound to provide, must be decided by the drawings, and that these, at the *outside*, required only an 18 feet radius. Lieutenant-Colonel Carpendale confirms Mr. Wells that Colonel Boileau ordered the radius to be lengthened to 22 feet, an order for which I can find no authority, and Messrs. Wright and Kennedy state expressly that the jibs (as lengthened by Colonel Boileau's order) are "too long and too heavy" in proportion with the other parts of the work.

19. The Cranes might, in my opinion, have been rejected at first in toto, but as this course clearly was not taken, and as Colonel Boileau ordered alterations which seem quite sufficient, *per se*, to amount for their failure (for it requires a very slight knowledge of dynamics to understand that a Crane, quite strong enough to lift a given weight at the end of a 15, 16, or 18 feet jib, will probably give way very soon indeed under the same weight at the end of the jib when lengthened to 22 feet), I am of opinion that it would not be safe for Government, with reference to all the foregoing circumstances, to withhold the Certificate of completion merely on account of the defects in these Cranes. The only course now appears to be that suggested by the Pier Committee in their Chairman's letter to the Chief Secretary, under date 14th April 1863, No. 44, viz., "that another complete set should be obtained from England of a quality guaranteed by "the Contract," and also, I should suggest, after duly apprising the Contractor of the exact length of jib required for each Crane.

May 27th, 1863.

(Signed) T. SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

Proceedings of the Madras Government, Public Works Department, 16th June 1863.

No. 368.

ORDER THEREON, 16th June 1863, No. 1,562.

The foregoing papers will be communicated to the Superintendent and Controller of the Madras Pier, who is requested to submit, with reference to paragraphs 10 and 11 of the Advocate General's opinion, the fullest information on the points adverted to as respects the Turn-tables, and he will at the same time be so good as to expedite the submission of the estimate called for in Proceedings dated 15th May 1863, No. 1,227. The Government note that the 733 feet of rail reported to be deficient are intended to complete the four lines of Railway on the Pier, and not to serve as protecting railings at the head of that structure; the latter were dispensed with by this Government, and a report of the circumstance was made* to the Home Government on the 24th October 1862.

(Signed) W. I. BIRDWOOD, Colonel, R. E.,
Secretary to Government.

* To Secretary of State, No. 99, dated 24th Oct. 1862.

No. 335.

Madras June 1st, 1863.

From John Robert Boyson
Government Solicitor Madras.

To Col. W. J. Birdwood. R. E.
Secretary to Government
P. W. D. — Madras.

Sir, With reference to the papers noted in the margin, I have now the honor to forward for the information of Government a Copy of the Opinion of the Advocate General (with whom I have had frequent communications on the subject) relative to the granting or withholding of the Certificate of due Completion of the Madras Pier.

Proceedings of Govt. P. W. D. No. 1603. dated 12th March 1863.
Letter from Advocate Genl. to Govt. Solr. dated 19th March 1863
Letter from Govt. Solr. to Secy. to Govt. P. W. D. No. 162 dated 20th March 1863
Proceedings of Govt. P. W. D. No. 341 of 2nd April "
Do. P. W. D. No. 921 of 15th Do. "
Do. P. W. D. No. 1135 of 4th May "
Do. P. W. D. No. 1227 of 15th Do. "

I have the honor to be,
Sir,
Your most Obedient Servant,
J. R. Boyson
Govt. Solr.

Sir Lucky Archdale of the Madras Civil Service
Chairman of the Civil Committee

P.W.D.

No. 1562.

Proceedings of the Madras Government

Under date the 16th June 1863.

Read the following letter from the Government-Solicitor Madras -

Forwards for the information of Government, Copy of the Advocate-General's opinion relative to the granting or withholding of the Certificate of the due completion of the Madras Pier -

Pier under 1st June 1863 No. 335.

The foregoing proceedings were communicated to the Auditor & Controller for the Presidency who is requested to submit with reference to para 10 & 11 of the Advocate General's opinion, the fullest information and the grounds considered to be sufficient for the Pier Tables, & he will at the same time be good as to specify the particulars of the Returns called for under Proc of 18th May 1863 No 1227. -

The Govt. note that the 733 feet of Rail referred to the Solicitor are considered to complete the four lines of Railway on the Pier, & that to screw on the fastening Railings at the head of that extension, the latter were dispensed with by the Govt. as regards the circumstances was

To the Auditor & Controller of the Presidency

Chairman of the Pier Committee Dated 17th June

P.W. Works. Despatch from Chairman of Pier Committee No. 1677 dated 15th June 1863 forwarding application for the Government Certificate of the completion of the Madras Pier -

To the Secretary to Government P.W.D. Pier

Despatch from Pier Committee No. 335 dated 1st June 1863

Enclosure

Forwards for the information of Government Copy of Advocate General's opinion relative to the granting or withholding of the Certificate of the due completion of the Madras Pier -

Copy in a letter to England Dated 23rd October 1863 No 63

Proc. 12th March 1863 No 161-163
" 8th April " 170-172
" 15th " " 229-230
" 4th May " 66-68
" 15th " " 246-247

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made to the Navy Dept. on the 24 Oct, 62.

To S. of State 99 of 24 x.

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Copy in a Letter to England
dd 23d October 1863. No 63

No. IV. 1863 Desp.
Pub: of Govt for June
No. 1562
Pub. of the Mgaz.
of 16 June 1863

Further Ch. 2563 of
1863

Letter from the Government Solicitor
forwarding copy of the opinion of
the Advocate General relative to the
granting or withholding of the cer-
certificate of due completion of the
Madras Pier. Communicated to the
Superintendent & Controller of the
Pier.

No. 367. 368.