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MADRAS RECORD OFFICE.

Government of Madras.

Public & Works DEPARTMENT.

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Dated	17-3-	18 66.

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Public Works Department,
17th March 1864.*

No. 420. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, to Colonel C. A. ORR, R. E., Secretary to Government, Department Public Works, dated Madras, March 8th 1864, No. 104:—

SIR,

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, regarding the validity of Mr. J. Nowland's claim to pay and allowances during his stay as a patient in the General Hospital, and up to the time of his arrival in England.
Dated 3rd March 1864, No. 632, P. W. D.

2. I submitted them with the former correspondence and papers relative to Mr. Nowland's misconduct for the consideration of the Advocate General, and have also conferred with him thereon, and

3. I now forward a copy of his opinion and likewise return the papers which you were good enough to send me.

COPY OPINION.

1. I would first observe that though Mr. Norton in his Opinion dated 5th October 1863 (in which I entirely concur, especially where he observes upon the objectionable practice of transmitting privileged communications, even the confidential ones of the Law Officers, to the very parties antagonistic to Government in the matter, a point upon which I have had myself to observe more than once) observes upon the obscurity of the term "result of his own imprudence," used by Lieutenant-Colonel Chambers and Dr. Lowe, and points out that it is *not every* imprudence, *ex. gr.*, imprudent exposure to the sun, which would warrant dismissal, and requests that if by "imprudence" intemperance is meant, as he believes it is, it may be so stated; Lieutenant-Colonel Chambers and Dr. Lowe merely repeat the same phrase again,—“4. Mr. Lowe repeats that he considers Mr. Nowland's sickness the result of his own imprudence,” and give no further information whatever. They were not asked to repeat the term “imprudence,” but to explain what they meant by it, whether intemperance or not. This neither of them has done.

2. I do not know what has been done in this case, subsequent to Mr. Norton's opinion: Has Nowland been dismissed for misconduct (intemperance and fighting) or what is the notice served upon him, alluded to in paragraph 2 of the Order of Government dated 3rd March 1864? If he has *not* been “dismissed” for misconduct, but the notice merely amounts to this, that the period of his engagement has expired, and that Government do not mean to renew it, then I am of opinion that Nowland must be taken, in the meaning of the Covenant, to “leave the service with the *approbation* of the Government” (though I quite agree with Mr. Norton, paragraph 9 of his Opinion, that Nowland *might* have insisted on 12 months' notice), meaning “with the *consent* of Government,” or “without objection on the part of Government,” and in *such* case I am of opinion that the words, “and it is also agreed that the Government in India shall” and will * * * at the expiration of the said period of five years * * * if the said “James Nowland shall leave the said service with the approbation of Government * * *” “pay him, *during his voyage Home*, at and after the *same rate of salary* hereby agreed to be paid “to him,” do unquestionably entitle him to such “salary” from the beginning of his voyage up to the time of his arrival in England, which seems to me precisely the same thing as “during his voyage Home.”

3. I can, however, find nothing about “allowances,” nor anything entitling him to “pay, &c., until he is pronounced fit to embark, or to Rupees 30 a month or any other sum so long as he may continue under treatment in the Hospital.”

4. If indeed Nowland could establish what he asserts in paragraph 3 of his letter dated 26th February 1864, viz., that his “present illness is the *result of the want of Medical attention*” to which he was clearly entitled by his Covenant, then there would be some grounds for his claim to “full pay and allowances up to the day I embark,” as his illness and consequent detention would in such case be the result of a breach of the Covenant on the part of Government.

Proceedings of the Madras Government, Public Works Department,
17th March 1864.

5. I conclude, however, from the statements of Lieutenant-Colonel Chambers and Dr. Lowe, that the statement of Nowland's is untrue, and that his illness is really the result of his own intemperance; and in such case I am clearly of opinion that he has no such claim.

6. Government, however, would do well to bear in mind Mr. Norton's opinion, paragraph 9, in which I entirely concur, that Nowland, if *not dismissed* for misconduct and breach of Covenant, *might* claim 12 months' notice, and whether to prevent this it might not be expedient to grant his present demand putting it as a matter of indulgence and favor, and denying that Nowland has any *right* to it.

7. Paragraph 6 of Lieutenant-Colonel Chambers' letter dated 8th January 1864, the Government Order thereon dated 21st January 1864, and Lieutenant-Colonel Chambers' letter dated 15th February 1864, paragraphs 2 and 3, do seem to afford some ground for the charge that "Nowland" was left "to seek medicine and attendance where he can best find them," which certainly is not a fulfilment of the Covenant on the part of Government, so that, if possible, it is much better to avoid litigation on this point, for though I am clearly of opinion that Nowland has no claim under the Covenant to "full pay and allowances" *eo nomine* while detained in Hospital after the termination of his engagement; yet, in respect of the non-fulfilment of that part of the Covenant which entitled him to medicines and medical attendance from Government, he might possibly recover a larger sum as damages.

(Signed) T. SYDNEY SMYTH,
Advocate General.

7th March 1864.

(True Copy.)

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

No. 421.

ORDER THEREON, 17th March 1864, No. 817.

Ordered to be recorded.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

Exd. S. T. Augustin.

Copy Opinion

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1864? If he has not been "dismissed" for misconduct, but the notice merely amounts to this, that the period of his engagement has expired, and that Government do not mean to renew it, then I am of opinion that Nowland must be taken, in the meaning of the Covenant, to "leave the Service with the approbation of the Government" - (though I quite agree with Mr. Norton, para 9 of his opinion, that Nowland might have insisted on 12 Months notice), meaning "with the consent of Government," or "without objection on the part of Government," and in such case I am of opinion that the words - "And it is also agreed that the Government in India shall and will + + + at the expiration of the said period of five years + + + if the said James Nowland shall leave the said Service with the approbation of Government + + + pay him, during his voyage home, at and after the same rate of salary hereby agreed to be paid to him" - do unquestionably entitle him to such "salary" from the beginning of his voyage up to the time of his arrival in England - which seems to me precisely the same thing as "during his voyage home".

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7. Para 6 of Lt. Col. Chambers' letter dated 8th January 1864; the Government Order thereon dated 21st January 1864; and Lt. Col. Chambers' letter dated 15th February 1864, Para 2 and 3, do seem to afford some ground for the charge that "Nowland was left 'to seek medicine and attendance where he can best find them,' which certainly is not a fulfilment of the Covenant on the part of Government - so that, if possible, it is much better to avoid litigation on this point - for though I am clearly of opinion that Nowland has no claim under the Covenant to "full pay and allowances" eo nomine while -
detained

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Signed / J. Sydney Smyth
Adm. Genl.

March 7/64.

True Copy
A. Boyson
Govt. Supt.

This may be built, depending on various
 conditions, as the power of the mind, the
 size of the brain, the state of the
 system, the age, the sex, the
 state of the system, the age, the sex, the
 state of the system, the age, the sex, the

Captain O. W. S. Chambers C. E.
Superintending Engineer
1st Division

I beg to acknowledge the receipt of your Memorandum dated the 15th instant 1945 requesting me to proceed to Madras. Viz Cochinada. in answer to which I am very sorry to inform that I am unable to leave my quarters at present as at this date I am not able to walk 40 yards as soon as I gain sufficient strength to get out of the House your order shall be complied with and I will endeavour to reach Madras on or before the 24th January as I am only too proud of being removed, as a voucher for this I trust you will be good enough to forward on Dr. Lowe's Certificate according to the rules of the Service. I also beg to bring to your notice that my term of 5 years expires on the 24th January on which date or any subsequent date I am entitled to a free passage to England with all necessary for my accommodation at sea and with full pay until I report myself in London.

I would likewise beg to bring to your notice and I hope it will merit your impartial consideration that is if the Government will grant me only passage money 600 Rs. and 2 months full pay I am willing to forego. all further claims on the said Government the above sum is the amount allowed by Covenant to all Mechanical Engineers of whatever grade at the expiration of their time and as I am intitled to full pay until

Arrival

The validity of Mrs. G. Newland's claim to pay and allowances during his stay as a patient in the General Hospital, and up to the time of his arrival in England.

John

Address to General's opinion.

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arrival in England. I trust Sir, you will consider this a reasonable request, as I shall make a sacrifice of at least 600 Rs. for the interest of Government, as it is impossible to say what date

I may be sufficiently recovered to go on ship board, if going home sick I shall as a matter of course require the aid of a medical officer as my sickness is the result of shore exposure and hard work which circumstances is patent to the medical officer of Poulisnamu and also to Colonel Randall when that officer was District Engineer of the Godavari, if the above proposition I should merit your approbation I hope you will be good enough to forward the same to the Secretary of Government if sanctioned I will proceed to Australia when my health permits at my own expense and from thence to England as I am informed by my medical adviser that nothing but a long sea voyage is likely to promote my health.

I am

Yours most obedtly

Howland

J. P. Clap, District Engineer

Poulisnamu

27th Decr 1863

Captain P. M. S. Chambers C.E.
Superintending Engineer
1st Division

Sir

I beg to acknowledge the receipt of your Memorandum of the 18th inst. requesting me to send Vouchers for the money disbursed by me in Medicine and Medical Attendance, in reply to which I beg to inform you that I had to send to Madras for receipt which is enclosed with my Agent letter as I received another supply on the 16th inst. by order of Dr. Lowe who advised me to continue the same treatment, that officer will Vouch for this apportion in his Bill for this month: in the month of November I made a shift with a Doctor to contain expenses this month I was compelled by the nature of my case to call into requisition the services of Dr. Lowe, who is attending regularly with this explanation I hope you will be good enough to forward on my bill for payment, I find it very hard to defray these expenses out of my private resources. I also beg to bring to your notice that I am prohibited from getting any Medicine from the Civil Dispensary at Rajahmundry for which no reason has been assigned this I consider unreasonable as I am a Government servant and the Dispensary a Public Establishment &c.

Enclose

enclose the list for your information

I am
Sir,
Yours most obedt. Servt
Howland

Class Boiler maker.
Don't know what it is in
20th December 1863

no other...
27/12/63

Conf. not imp
impr. of diff

1125
1863
27/12/63
13.5
My Dear Mr. Howland
I am sorry to say that
I cannot supply you any
more medicine from the Civil
Hospital, as I got instruction
from Dr. MacDonald and the
Genl. Dr. Cooper.
Civil Dispensary, Yours Truly
Rajakumari
18th December 1863
Winchester
1st Dispensary

20/27/64

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in my judgment.

Ad. de la. de la. de la.

Dear Sir, your message
 dated 11th instant came to hand on the
 same night at 9.45 and I had under
 full and serious consideration of your
 views. They are able that I have been
 holding the view of it in relation to
 your will being as you say, we will
 have sent you something in that line
 before now and I will give
 presentat- I have only to say that
 in the last volume of my paper I
 of your view on the subject and
 at the end of the chapter that
 I have completed my paper on
Scott's not much more than
 man Scott's whole philosophy that
 the will find in independent being
 as it relates me and your

17.
H. K. B. 1844
Main

My sincere friend
Edw. W. L. H. 1844

N^o 104.Madras March 8th 1864.

From
John Robert Boyson
Government Solicitor - Madras.

To
Col^l. C. A. Orr R. E.
Secretary to Government D. P. W.
Madras.

Sir,

Dated 3rd March 1864. N^o 632. P. W. D. I have the honor to acknowledge the Proceedings of Government noted in the margin regarding the validity of Mr. J. Nowland's claim to Pay and Allowances during his stay as a Patient in the General Hospital, and up to the time of his arrival in England.

2. I submitted them with the former correspondence and papers relative to Mr. Nowland's misconduct for the consideration of the Advocate General and have also conferred with him thereon and.

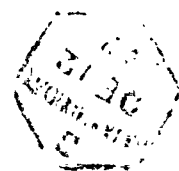
3. I now forward a copy of his opinion and likewise return the papers which you were good enough to send me.

I have the honor to be,

Sir,
Your most Obedient Servant
J. R. Boyson
Gov^t Sol^r.

PW 1125/64

James Nowland Esq^r
Mechanical Engineer
Dontashuram
808
PW 274/64



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1211 1864. *De la*
Pro. Hoc. Sen. Major
the Gen. del. Madras
to the Secy to Gen. G. O. W.

Dated 8th March
Recd 12th No 104
11 inclosures
No 2

Forwarded Copy Abstract General
opinion regarding the validity of
Mr J. Munton's claim to pay and
allowances during his stay as a
Patient in the General Hospital,
and up to the time of his arrival
in England.

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Elephantia
17 March 1864

W. J.