

(1) Number of pages _____

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 239-8	Press ~~Mis.~~
435-436	
Dated / 8 - 8	18 65.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
18th August 1865.*

No. 435. Read the following letter from Lieutenant-Colonel G. W. WALKER, R. E., Superintending Engineer, 7th Division, to Colonel C. A. OR R, R. E., Secretary to Government, Department Public Works, dated Coimbatore, 31st July 1865, No. 76 :—

SIR, 1. I have the honor to submit, for the orders of Government, a statement of the circumstances under which certain claims (hereafter particularized) are now made in the case of one Anunthoray Iyen, formerly a Sub-Overseer in the Coimbatore District.

2. The first three pages of the enclosure No. 1, give an abstract of the case as I originally found it in August 1863, when Mr. Sub-Engineer Lowry was summoned before the Moonsiff's Court at Bhowany to answer the claim of the late Sub-Overseer for the amount of his security money, Rupees 200, and arrears of salary, Rupees 62-12-6, with interest on the same, and costs. Seeing at once that the claim was good, I decided, after an interview with the Plaintiff, on accompanying Mr. Lowry to Bhowany, and settling the matter out of Court. And the fourth page of No. 1 is my original draft proposal on the date of trial. The Plaintiff preferred the personal payment of his claims, without costs, to payment into Court, to avoid the chance of claims being preferred thereon by people in Bhowany. So the matter was understood to be settled, and orders for the amounts of the security money and salary were given to the Plaintiff's Vakeel on the Hoozoor Treasury and Range Office at Coimbatore, where they were in deposit. Mr. Lowry had taken the precaution to appear personally in Court that morning, but came back on being told by the Moonsiff that he could not take up the case just then, and it was understood by him that he would be sent for when wanted.

3. It was, therefore, with the greatest surprise that Mr. Lowry found himself served on 27th May 1865, with an order from the Oodoomalpetta Moonsiff's Court, calling on him to show cause by the 5th June why enforcement of a Decree against him for the entire claim with interest and costs should not be made. By some mistake he attended at the Bhowany Court instead, and when at last he got to Oodoomalpetta he found a Warrant issued for seizure of his goods, which necessitated his paying into Court the entire sum of Rupees 342-3-5. He subsequently obtained an extension of the time for payment of that sum to the Plaintiff till 10th August, and then called on me to refund the same with claims of his own, as per paper No. 2, swelling the amount to Rupees 660-7-0.

4. I am advised by the Government Pleader that I can do absolutely nothing in the case, not having originally been made a party to it ; and that Mr. Lowry is the only person who can take further action. But that he has no inclination to do ; and there is hardly time for corresponding with him on the subject. I have, therefore, come to the conclusion to hand over to Mr. Lowry the Rupees 262-12-9, which appear still to be in deposit, and to request sanction for the further payment to him of Rupees 79-6-8, interest and costs, together with so much of his own claim as I recommend below.

Item No. 2 of that claim, Rupees 51-4-0, I entirely disallow, as the journey was made through a mistake of Mr. Lowry's own, which should never have occurred.

Items Nos. 3, 4, and 6, for Rupees 45, 30, and 150, cannot be said to have been necessarily incurred. His business with me, which will form one pretext for

*...sent into Court, to avoid the chance of claims
being preferred thereon by people in Bhowany.*

*Proceedings of the Madras Government, Public Works Department,
18th August 1865.*

them, might have been transacted much more conveniently by correspondence. And any legal advice he wanted might have been got at the Oodoomalpetta Court, where he should have gone in the first instance.

Items Nos. 5, 7, 8, 9, and 10, for Rupees 18½, 7, 1½, 10, and 5, I would allow, as having been necessarily incurred. They aggregate Rupees 42, and with the Rupees 80 mentioned in paragraph 4, will swell the costs, &c., to Rupees 122, for payment of which sanction is requested.

5. Mr. Lowry considers it very hard that he should have sustained such inconvenience in a Government case when not in Government employ, and he can not see that he is in any way the cause of the annoyance to himself and of the loss to Government, by his action when in the Department Public Works. For though I chiefly blame Captain Goddard for not having immediately ordered the return of the security money and payment of arrears of salary, instead of acting as per his endorsement of 28th October 1861, and letter No. 326 of 26th October, yet I see no reason for Mr. Lowry's not repaying the security money on receipt of Captain Goddard's endorsement of 18th May, or for his withholding salary due. For the accusations made by him against the Sub-Overseer, on which Captain Goddard appears to have been induced to act as he did, seem to have been the merest imputations of fraud or intended fraud, and of withholding payments from workmen (who do not, however, thereby appear to have acquired any claim against Government). The files of my Office show no final action on the part of the Deputy Chief Engineer, Southern Circle.

6. I think it right to bring to notice what appears to me to be conduct, on the part of Tiroomal Iyengar, Plaintiff's Vakeel, that should disqualify him from being allowed to practice in any Court of Law in future. He certainly gave me to understand before witnesses that the matter was compromised out of Court, and proceeded, in the absence of any Vakeel on Mr. Lowry's part, to induce the Court to give an *ex parte* judgment in his favour. Mr. Lowry has not supplied me with copy of the decree, but it appears to have been made on the 19th December 1863, more than 3½ months after the date fixed for hearing the case, and its existence was utterly unknown to us till the 5th June 1865, when Mr. Lowry was informed of it at Bhowany, whither he had gone on the supposition that the old case, after lying by so long, was then to be gone into anew. I cannot but think the Vakeel's action in the case to have amounted to sharp practice of a discreditable nature.

7. Whether he kept his client in equal ignorance of the issue I know not; but it is singular that after such a decree had been passed in his favor, Anunthoray Iyen should, under dates 29th January and 21st March 1864, have continued to petition the Government on the subject of his claims, which petitions were naturally enough endorsed by me as having been disposed of on 1st September 1863. I now imagine them to have been got up as blinds to assist in keeping from my knowledge the fact of a decree having been passed in the man's favor, for sums which I had no reason to believe he had not been paid. For these deposits, or payments from them, do not appear in any accounts that pass through my hands; and once the matter was finally, as Mr. Lowry and I thought, disposed of, I gave no further heed to it.

*Proceedings of the Madras Government, Public Works Department,
18th August 1865.*

8. The Moonsiff's procedure seems also to have been of a peculiar nature. He was perfectly aware that Mr. Lowry came to Bhowany to attend his Court on the day fixed. But in his decree* upon a petition of Mr. Lowry's, he states

that he saw him on the evening of the day previous, but ignores his appearance on the day itself, which can be sworn to. He could hardly have made an *ex parte* decree under the circumstances, without some information of what had been going on out of Court. And however it may be laid down that a Judge has nothing to do but to try what actually comes before him, and is not bound to send for absent parties, I do think he might have seen something suspicious in the presence of the Plaintiff only, and the absence of the Defendant, whom he knew to have come miles to attend his Court. No Vakeel was engaged by Mr. Lowry pending the progress of the compromise, and none was thought necessary when the compromise proved successful, as was thought. Had it not been so, our intention was by Vakeel to have me put in as Defendant instead of, or with, Mr. Lowry, and to obtain an adjournment till I could receive the orders of Government as to the action to be taken.

9. Deposition of Plaintiff's Vakeel in the matter of Mr. Lowry's petition is also forwarded (paper No. 4).

No. 2.

*Memorandum of expenses incurred and money disbursed by Mr. R. J. Lowry in the case
ANUNTHORAY versus Mr. R. J. LOWRY.*

	RS.	A.	P.
1. To amount paid into the Bowany Munsiff's Court	342	3	5
+ 2. Expenses travelling to and from Bowany from my Estate on the Anamallay, 205 miles, at 4 Annas per mile	51	4	0
+ 3. To do. of two journeys to and from Coimbatore and Estate, 180 miles, at 4 Annas per mile	45	0	0
+ 4. Hotel expenses for six days, at Rupees 5 per day	30	0	0
5. Expenses of journey to Oodoomalpetta and back, 74 miles, at 4 Annas per mile	18	8	0
+ 6. To ten days' loss of time, at Rupees 15 per day	150	0	0
7. To Stamp Paper, Vakeel's fees, &c., at Oodoomalpetta	7	0	0
8. To Vakulatnamah, &c., sent to Bowany	1	8	0
9. Vakeel's fee, Stamp Paper, &c., at Bowany	10	0	0
10. Do. fee at Coimbatore	5	0	0
Total...	660	7	5

(Signed) R. J. LOWRY.

No. 436. ORDER THEREON, 18th August 1865, No. 2,398.

ESTABLISHMENT, No. 54.

	RS.	A.	P.
Amount in deposit...	262	12	9
Interest and costs...	79	6	8
Travelling and other charges forming items 5 and 7 to 10 of Mr. Lowry's Memorandum.	42	0	0
	384	3	5

1. The Government authorize the payment to Mr. Lowry of the sums marginally noted, and for the reasons stated by the Superintending Engineer, they consider the further claims, amounting to Rupees 276-4-0, to be inadmissible.

Must not go into Court, to avoid the chance of claims being preferred thereon by people in Bhowany.

Proceedings of the Madras Government, Public Works Department,
18th August 1865.

2. It is observed from paragraph 2 of Colonel Walker's letter, that orders on the Hoozoor Treasury and Range Office at Coimbatore for the amount of security money and salary were handed over to the Plaintiff's Vakeel; but this is denied in the statement of the Vakeel, from which it appears that the Superintending Engineer promised to make the payment within a week, but failed to do so. Colonel Walker will explain these apparently contradictory statements.

3. Paragraphs 6 to 8 of the Superintending Engineer's letter will be considered in the Judicial Department.

(True Extract.)

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

To the Judicial Department.

„ Superintending Engineer, 7th Division.

„ Controller of Public Works Accounts.

Exd. S. T. Augustin.

1876
Superintending Engineer Office
7th Division
Coimbatore 31st July 1865
From Secy. Col. C. A. Orr R.E.
To Superintending Engineer, 7th Division
Colonel C. A. Orr R.E.
Secretary to Govt. P. W. D.
I have the honor to submit for the Orders of Government, a statement of the circumstances under which certain claims (hereafter particularized) are now made in the case of one Annatharay Sany, formerly a Sub Engineer in the Coimbatore District.
The first 3 pages of the Enclosure give an Abstract of the case as I originally found it in August 1863, when Mr. Sub Engineer Sany was summoned before the District Court at Dhawan to answer the claim of the late Sub Engineer for the amount of his Security Money, Rs. 200, and Arrears of Salary, Rs. 62-12-9, with Interest on the same, and Cash being at once that the claim was good I decided after an interview with the Plaintiff, on accompanying Mr. Sany to Dhawan and settling the matter out of Court. And the 4th page of No. 1 is my original draft proposal on the date of trial. The plaintiff preferred personal payment of his claims, without costs, to payment into Court, to avoid the chance of claims being preferred thereon by people in Dhawan.

So the matter was understood to be settled and orders for the amount of the Security Money and Salary were given to the Plaintiffs Vakil on the Mysore Treasury and Range Office at Srirangapatna, where they were all deposited. Mr. Henry had taken the precaution to appear personally in Court that morning, but came back on being told by the Vakil that he could not take up the case just then, and it was understood by him that he would be sent for when wanted.

It was therefore with the greatest surprise that Mr. Henry found himself served in 27th May 1865, with an order from the Co-dornalpetta Munsiff's Court calling on him to show cause by the 5th June why enforcement of a Decree against him for the entire claim with Interest and Costs should not be made. By some mistake he attended at the Mysore Court instead, and when at last he got to Co-dornalpetta he found a Warrant issued for seizure of his goods, which necessitated his paying into Court the entire sum of Rs. 262-12-5. He subsequently obtained an extension of the time for payment of that sum to the Plaintiffs till 10th August, and then called on me to refund the same with claims of his own, as per Paper No. 2, swelling the amount to Rs. 660.

I am advised by the Government Reader that I can do absolutely nothing in the case, not having originally been made a party to it; and that Mr. Henry is the only person who can take further action. But that he has no inclination to do, and there is hardly time for corresponding with him on the subject. I have therefore come to the conclusion to hand over to Mr. Henry the Rs. 262-12-5 which

which appear still to be in deposit, and to request sanction for the further payment to him of Rs. 49-6-8 Interest and Costs; together with so much of his own claim as I recommend below. Item No. 2 of that claim Rs. 51-4-0. Entirely disallow as the journey was made through a mistake of Mr. Henry's own, which should never have occurred.

Items 3, 4, and 6, for Rs. 45, 30, and 150, cannot be said to have been necessarily incurred. The business with me, which will form one part for them, might have been transacted much more conveniently by correspondence. And any legal advice he wanted might have been got at the Co-dornalpetta Court where he should have gone in the first instance.

Items Nos. 5, 7, 8, 9, and 10, for Rs. 18-2-7, 12, 10, and 5, I would allow as having been necessarily incurred. They aggregate Rs. 42, and with the Rs. 80 mentioned in para 4, will swell the total to Rs. 122, for payment of which sanction is requested.

Mr. Henry considers it very hard that he should have sustained such inconvenience in a Government case, when not in Government employ, and he cannot see that he is in any way the cause of the annoyance to himself and of the loss to Government, by his action when in the Department Public Works. For though I chiefly blame Captain Goddard for not having immediately ordered the return of the Security Money, and payment of arrears of salary, instead of acting as per his endorsement of 28th October 1864, and the No. 326 of 26th October, yet I see no reason for Mr. Henry not repaying the Security money in receipt of

of Captain Goldland's endorsement of 18th May, or
for his withholding salary due. For the accusations
made by him against the Sub Overseer, in which
Captain Goldland appears to have been induced
to act as he did, seems to have been the mere
imputation of fraud or intended fraud, and of
withholding payments from workmen (who do
not however thereby appear to have acquired any
claim against Government). The files of my Office
show no final action on the part of the Deputy
Chief Engineer Southern Circle.

6. I think it right to bring to notice what ap-
pears to me to be conduct, on the part of Siromala
Nyangwa, Plaintiff Vakil, that should disqualify
him from being allowed to practice in any Court
of Law in future. He certainly gave me to under-
stand before witnesses that the matter was compromised
out of Court, and proceeded in the absence of any
Vakil on Mr. Lowry's part to induce the Court
to give an ex parte judgment in his favour.

Mr. Lowry has not supplied me with copy of the
Decree, but it appears to have been made on the
19th December 1863, more than 3½ months after the
date fixed for hearing the case, and its existence
was utterly unknown to us till the 5th June 1865,
when Mr. Lowry was informed of it at Phowang,
whether he had gone on the supposition that the
old case, after being by so long, was then to be
gone into anew. I cannot but think the Vakil's
action in the case to have amounted to, at least,
practice of a dishonest nature.

7. Whether he kept his Client in equal
ignorance of the issue I know not; but it is
singular that after such a decree had been passed
in his favour, Amithoray Syen should make
date

3
date 29th January and 21st March 1866 have con-
tinued to petition the Government on the subject
of his claims; which petitions were naturally
sufficiently endorsed by me as having been disposed
of on 1st September 1863. I now imagine
them to have been got up, as blinks to assist in
keeping from my knowledge the fact of a Decree
having been passed in the main favour of some
which I had no reason to believe he had not
been paid. For these Deposits, or payments from
them, do not appear in any accounts that pass
through my hands; and once the matter was
finally, as Mr. Lowry and I thought, disposed
of, I gave no further heed to it.

8. The Munsiff's procedure seems also to have
been of a peculiar nature. He was perfectly aware
that Mr. Lowry came to Phowang to attend his
Court on the day fixed. But in his decree upon
a petition of Mr. Lowry, he states that he saw
him on the evening of the day previous,
but ignores his appearance on the day
itself, which can be sworn to. He could
hardly have made an ex parte decree under
the circumstances without some information
of what had been going on out of Court.
And however it may be laid down that
a Judge has nothing to do but to try what
factually comes before him, and is not bound
to send for absent parties, I do think he might
have seen something suspicious in the presence of
the Plaintiff only, and the absence of the Defend-
-ant whom he knew to have come miles to attend
his Court. No Vakil was engaged by Mr. Lowry
pending

* Paper No 3.

pending the progress of the compromise, and now
was thought necessary when the compromise proved
successful, as was thought. Had it not been so,
our intention was by VaKel to have ~~one~~ put in as
Defendant instead of, or with, Mr. Burg, and to
obtain an adjournment till I could receive the
Order of Government as to the action to be taken
9. Deposition of Plaintiff VaKel in the matter
of Mr. Burg's Petition is also forwarded (Paper No. 4).

I have the honor to be

Sir,

Your most Obedt Servant

Walker Smith M.C.

Superintending Engr. / 24

R.P.

No 2398

Proceedings of the Madras Government

Under date the 18th August 1865.

Read the following

From the Superintending Engineer of the 7th Div.

Submits for the orders of Govt. a statement of the circumstances under which certain claims are now made in the case of one Annathony Appaformally a Sub Officer in the Coimbatore District -

(Horse enter 31st July 1865 No 76)

Amount in deposit -	Rs 262-12-9
Interest & loss -	79-6-8
Travelling & other charges forming balance 5 & 7 to 10 of Mr Lowry's home -	42-0-0
	<u>384-3-5</u>

The Government authorize the payment to Mr Lowry of the sums marginally noted, & for the reasons stated by the Supg Engineer, they consider the further claims amounting to Rs 276-4, to be inadmissible.

It is observed from Para 2 of Col. Walker's letter that orders on the Hoogoor Treasury & Range Office at Coimbatore for the amount of Security money & salary were handed over to the Plaintiff's Vakiel; but this is denied in the statement of the Vakiel, from which it appears that the Supgrnge promised to make the payment within a week,

MR

W.D.C.

No 2398

Received by the Superintending Engineer of the 7th Div. 2899

The Superintending Engineer

To

The Secretary to Govt

P.M.

Received by the Superintending Engineer of the 7th Div. 2899

To

The Secretary to Govt

Received by the Superintending Engineer of the 7th Div. 2899

Received by the Superintending Engineer of the 7th Div. 2899

Submits for the orders of Govt. a statement of the circumstances under which certain claims are now made in the case of one Annathony Appaformally a Sub Officer in the Coimbatore District -

71
9th 1865 Depa
Proc. of Govt. for the

732398
Proc. of the Milpout
Df 18 Augt 1865

Rs 32 08/5

Letter from the
Supt. Engr. D. S. Sub.
mitting with certain
observations a Memo.
of the expenses incurred
by Sub Engr. Lawry
in the case of one. Smt.
Thoray Jyau late
Sub Overseer in the
Coimbatore D. S. M.
orders thereon.

N^o 425. 406