

(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. 1559	Press
551-52	Mis. -
Dated 23-5-	1867.

Not to be folded or roughly handled

No. 551.

Read the following :—

No. 51.

Memorandum on Suit of Iyempermaul Pillay against Mr. Smither, late Supervisor in charge of the Palghaut Range.

1. Plaintiff claims Rupees 2,451-8-6, as balance due for work to the value of Rupees 10,316-1-6 performed to the Topanadoo bridge, on the road between Palghaut and Calicut, *via* Mundoor, besides Rupees 455, value of materials said to have been appropriated by the defendant when he put an end to plaintiff's connection with the work.
2. Plaintiff supports his suit by copy of estimate for the work, said to have been supplied from the defendant's office. The existence of any such estimate is more than doubtful; for the plans of bridges on that line of road remaining unfinished in 1864-65 were cancelled, and revised ones called for by the Superintending Engineer. Whereof two in succession, estimated at Rupees 6,000 and Rupees 12,000, having been disapproved by him, final decision was postponed till his visit recorded in G. O. No. 3,295, of 2nd November 1865; work meanwhile having been carried out with his approval at a cost of Rupees 5,406-8-8 in 1864-65, for completion of which in 1865-66 he approved of an estimate of Rupees 4,024, making a total of Rupees 9,430-8-8, of which Rupees 7,864-8-8 is accounted for by payments to Iyempermaul Pillay, and Rupees 1,566 by payments for work performed through other agency.
3. The second paper relied on by the plaintiff is copy of a Contract Bond executed by him on the 7th November 1865, for completing the works before the end of December 1865, also said to have been furnished from the defendant's office. Defendant and both the Overseers, under whom the work was carried on, deny all knowledge of any such contract, and the Overseer in charge of the Range states that no record of it exists in his office. All that is known of it is from a paper purporting to be a translation of it, which accompanied a petition of the plaintiff's to the Superintending Engineer, dated 16th March 1866; and such paper ends without entry of the names of "undermentioned witnesses" before whom it purports to have been signed and sealed.
4. The third paper is copy of a letter to the plaintiff, wherein defendant promises to settle his accounts after completion of the work, if anything be due to him. To which the rejoinder is, that plaintiff having been actually overpaid, by advances on account, by Rupees 125-9-4, no further payment could be made him.
5. Two out of the three papers relied on by the plaintiff appear, therefore, to be fictitious or valueless documents; and the engagement made in the third to have been strictly complied with. Moreover, the plaintiff's demands, as made in his

*Proceedings of the Madras Government, Public Works Department,
23rd May 1867.*

petition to the Superintending Engineer of the 16th March 1866, differ in detail from the claims made in his suit dated 28th June 1866, as follows, viz. :—

An excess of Rupees 45 in the item of Masonry.

Do.	„	913	do.	Wood-work.
A decrease of	„	195	do.	Earth-work.
Do.	„	58	do.	Metaling.
Do.	„	360	do.	Digging foundations, baling water, erecting sheds, &c., &c., &c.
Do.	„	25	do.	Turfing.
Do.	„	65	do.	Clearing Jungle, &c.
Do.	„	205	do.	Materials at site.

Discrepancies which plainly show that the plaintiff kept no account of the work as actually performed by him, while the defendant's statement of the same can be proved by measurement of it as it stands, and by the Range accounts.

6. The Superintending Engineer does not, therefore, hesitate to take upon himself the responsibility of ordering Overseer Potter, at present in charge of Palghaut Range, to adopt the necessary steps for defending the suit, in anticipation of the orders of Government on this Memorandum. And he authorizes him to employ the services of the Government Vakeel, to summon the necessary witnesses and apply for the necessary original papers for the defence. In addition to which he sends him the original petition received from the plaintiff, to be made use of in proving the discrepancies above noted. And he directs him to report the evidence brought forward by the plaintiff to prove that the copies of the estimate and contract were given him from the office of the defendant, by whom the existence of such papers is disallowed.

(Signed) G. W. WALKER, Colonel, R. E.,
Superintending Engineer, 7th Division.
COONOR,
9th May 1867.

(True Copy.)

Submitted for the orders of Government, together with translation of Plaint and Mr. Smither's Defence.

(Signed) G. W. WALKER, Colonel, R. E.,
Superintending Engineer, 7th Division.
COONOR,
9th May 1867.

Defence of Mr. Thomas Smither, Defendant in Suit No. 34 of 1866, before the Principal Sudder Ameen's Court at Calicut.

1. That Statement A. is false; that I never employed the plaintiff as a contractor; that he cannot produce either evidence or documents to prove such; that he was employed by the Overseers First Overseer, W. Dalley, who was in charge of the work from the commencement to 1st August 1865, when he was relieved by Overseer C. Briant, who completed the bridge in March 1866. That I totally deny having exercised at any time, during the construction of the bridge, any but due and lawful authority over the Overseers; and I deny ever having had dealings personally with the plaintiff during his employment on that or any other work. I can produce evidence to prove that I interfered only to prevent the plaintiff doing bad work, and fraudulently palming off timber as his own, which was subsequently removed from the spot by its owner Genidim Cootty, a local trader.

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23rd May 1867.*

2. In consequence of a modification of the plan of the bridge the estimate was Rupees 9,424, and the work as executed cost Rupees 9,430-8-8, as per accounts rendered for the work. The plaintiff makes a claim for Rupees 10,316-1-2. This can be refuted by the actual measurements of the work as it now stands, and therefore proved to be false.

3. The work done by the plaintiff was as follows :—

Masonry.

58 × 8½ × 8	= 4,060	Foundation to abutments.
108 × 5½ × 8	= 4,752	do. to wing-walls.
68 × 8½ × 8	= 4,760	do. to piers.
523 × 7854 × 8	= 3,286½	do. to cut-waters to do.
56 × 6 × 13½	= 4,536	Abutments above.
112 × 3½ × 12½	= 4,550	Wing-walls do.
68 × 6 × 13½	= 5,508	Piers do.
289 × 7854 × 12½	= 2,837½	Cut-waters to do.

34,289½ Total cubic feet.

100 Deduct for corbles.

34,189½ Remaining cubic feet of stone in mortar } Rs. 5,128 7 0
at 15 Rupees per 100 cubic feet.

Wood Work.

1,050 feet × 8 inches × 1 foot	= 700	Girders.
450 „ × 8 „ × 1 „	= 300	Corbles.
450 „ × 8 „ × 6 inches	= 150	Struts to do.
146½ „ × 4½ „ × 6 „	= 90	feet 7½ inches, 19 long joists.
714 „ × 4½ „ × 6 „	= 123	„ 10½ „ 21 short joists.
960 „ × 3 „ × 6 „	= 120	„ Bridging pieces.
147 „ × 4 „ × 4 „	= 16	„ 3 inches, 42 Railing posts.
189 „ × 2 „ × 3 „	= 7	„ 11 „ 42 Struts to do.
1,050 „ × 2 „ × 3 „	= 43	„ 9 „ 6 Railing bars.
175 „ × 17 feet × 2 „	= 495	„ 10 „ Planking.

2,048 feet 3 inches, Total.

395 „ Deduct wood purchased by Talook Overseer.

1,653 feet 3 inches, Remaining, cubic feet partly wrought wood at 10 As. per 1 cubic foot. } Rs. 1,033 4 6

Approaches.

100 × 9½ × 1½	= 1,387½	Raising south approach.
214 × 2 × ½	= 214	Cutting side trenches.
72 × 9½ × 1½	= 999	Raising north approach.
	2,600½	Total cubic yards.
	3,923	Add cubic yards paid for last year.

6,523½ Total cubic yards of earth-work at 2 As. [per] cubic yard. } Rs. 815 6 9

200 × 4 = 800 Turfing side slopes.

800 Total square yards of turfing at 6 Pies per square yard. } Rs. 25 0 0

144 × 5 × ⅓ = 60 } Metaling south approach.
45 × 5 × ⅓ = 37½ }

97½ Total cubic yards of unbroken shingle at 6 Annas per cubic yard. } Rs. 36 9 0

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Digging foundation and baling water	Rs.	609	0	1
Erecting a shed	„	91	4	0
Total	Rs.	7,738	15	4
Amount paid to Iyemperumaul (Plaintiff)	„	7,864	8	8
Excess	Rs.	125	9	4

3 I can prove that at the time the work was commenced no sanction had been granted for the bridge as constructed, but that the work was carried out on a portion of the allotment for the construction and bridging the road from Calicut to Palghaut *via* Mundoor for the official year 1864-65, and that Rupees 5,406-8-8 was expended in that year, and that a statement was drawn up and submitted to the Superintending Engineer of the Division on the 8th of May 1865, for completing the structure from the balance of the original estimate, viz., Rupees 4,024, making Rupees 9,430-8-8.

4. I deny ever having taken or ordered to be taken from the plaintiff the tools and materials entered in the Statement B., and firmly deny that such tools and materials were on the spot at the time.

5. The witnesses I propose to call are—

1. Overseer W. Dalley.
2. Overseer C. Briant.
3. Talook Writer Cawder Moideen.
4. Mr. W. E. Gay of the firm of Gay Brothers.
5. The Accountant of the Range, J. Mahadavyan.
6. Maistry Chinnasamy.
7. Lascar Ramun Nair.
8. Do. Mullen (Palghaut Talook).

PALGHAUT,
2nd April 1867.

(Signed) T. SMITHER,
Supervisor, Palghaut Range.

Principal Sudder Ameen's Court, Zillah Calicut.

Iyempermaul Pillay, son of Rama Pillay, in the Coppum
Umshom of the Palghaut Talook... .. Plaintiff.
Ananthakristna Iyen, Vakeel for do.

Palghaut Range Officer Mr. Thomas Smither, residing at
Yakaray Umshom of the said Talook... .. Defendant.

Plaint.

Under orders from the defendant, plaintiff has, in accordance with the estimate and contract, carried out at his own cost the works of the Topanadu bridge on the road from Calicut to Palghaut *via* Mundoor up to 10th December 1865. On the 11th December he, the defendant, forcibly trespassed on the said work and took possession of the materials of the plaintiff, shown per Statement A. for the work done, and Statement B. for the value of materials appropriated by the defendant, the payment of which he, the plaintiff, demanded of the defendant in December 1865, but failing to obtain, he, the plaintiff, prays that the amount due to him, viz., Rupees 2,906-8-6, may, with its future interest at twelve per cent. per annum, be recovered from the defendant and paid over to him, the plaintiff.

**Proceedings of the Madras Government, Public Works Department,
23rd May 1867.**

Statement A.

No. of Items.	Particulars of work executed by Plaintiff at his own cost up to 10th December 1865.	Value.		
		RS.	A.	P.
1	To value of 37,252½ cubic feet of masonry work at 15 Rupees per 100 cubic feet	5,587	14	7
2	To do. of 2,100 cubic feet of wood work at Rupee 1-4-0 per 1 cubic foot	2,625	0	0
3	To do. of digging foundation, baling water, and erecting sheds	710	4	1
4	To do. of 6,523½ cubic yards of earth-work at 2 Annas per cubic yard	815	6	9
5	To do. of 300 cubic yards of broken stone metal spread and tamped, at 10 Annas per cubic yard, and 300 cubic yards of do. collected on the road side at 8 Annas per do.	337	8	0
6	To do. of 800 square yards of turfing at 6 Pies per square yard	25	0	0
7	To do. of clearing jungle and tamping road	64	15	9
	Total	10,166	1	2
8	To do. of erecting a bungalow with cadjan roof at the work spot, on the order of the defendant	150	0	0
	Total	10,316	1	2
	Deduct payment received from the defendant on account of the above works	7,864	8	8
	Balance due	2,451	8	6

Statement B.

No. of Items.	Particulars of materials which had been on the work spot appropriated by the defendant when trespassed on the work on the 11th December 1865.	Value.		
		RS.	A.	P.
1	To value of 4 iron crowbars and 4 hammers	24	0	0
2	To do. of 14 carts for conveying stone	56	0	0
3	To do. of 4 guard stones	8	0	0
4	To do. of 90 cubic yards of remaining rough stone	67	8	0
5	To do. of 450 parrahs of chunam, at Rupees 8-10-0 per 100 parrahs	38	13	0
6	To do. of old bamboos and coir rope used for scaffolding	55	11	0
7	To do. of 41 candies of wood prepared for the bridge work, &c., at 5 Rupees per candy	205	0	0
	Total	455	0	0
	Balance as per Statement A	2,451	8	6
	Total amount	2,906	8	6

Plaintiff hereby presents three documents as per list.

(Signed) _____ Vakeel.

(Signed) _____ Plaintiff.

I, Iyempermaul Pillay, son of Rama Pillay, do hereby declare to the best of my knowledge and belief that the statements contained in this plaint have all been truly made by me.

(Signed) _____ Plaintiff.

To the Principal Sudder Ameen's Court, Zillah Calicut.

Ananthakristna Iyen, Vakeel in behalf of Iyempermaul Pillay, plaintiff in suit No. 34 of 1866, presents herewith documents as per list.

Proceedings of the Madras Government, Public Works Department,
23rd May 1867.

Copy of the estimate of the cost required for the works of the Topanadu bridge shown in the plaint, given from the office of the defendant ... 1
Copy of the Contract Bond executed by the plaintiff on the 7th November 1865, for completing the works of the said bridge before the end of December 1865, and which copy was furnished from the office of the defendant... 1
Original letter from the defendant to the plaintiff, 20th February 1866, stating that after the completion of the work of the said bridge the accounts of the materials of plaintiff used for the work and of the quantity of work executed by him will be settled, and if any sum then found due will be paid to him ... 1

Total documents ... 3

(Signed) ——— Vakeel.

Dated 28th June 1866

Received 28th June 1866, Stamp value correct.

(True Translation.)

(Signed) T. SMITHER,
Supervisor, 7th Division.

No. 552.

ORDER THEREON, 23rd May 1867, No. 1,559.

CIVIL WORKS, No. 62.

The Government grant authority for the suit in question being defended in the first instance at the public expense.

(True Extract.)

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

To the Superintending Engineer, 7th Division.
,, Controller of Public Works Accounts.

Exd. S. T. Augustin.

Defence of Mr Thomas Smither Defendant in Suit No. 552 of 1866 before the Principal Under American Court at Calicut. 7

That Statement A is false. that I never employed the Plaintiff as a Contractor, that he cannot produce either evidence or documents to prove such. that he was employed by the Overseer in charge of the work to furnish materials and labor at rates agreed upon between themselves. First Overseer W. Dally who was in charge of the work from the commencement to 1st August 1865 when he was relieved by Overseer S. Briant who completed the bridge in March 1866. That I totally deny having exercised at any time during the construction of the bridge any legal and lawful authority over the Overseer and I deny ever having had dealings personally with the Plaintiff during his employment on that or any other work. I can produce evidence to prove that I interfered only to prevent the Plaintiff doing bad work and fraudulently palming off timber as his own which was subsequently removed from the spot by its owner Ividian Kooty, a local trader.

In consequence of a modification of the plan of the bridge the estimate was Rupees 9424 and the work as executed cost Rupees 9420-8-8 as per accounts rendered for the work. The Plaintiff makes a claim for Rupees 10316-1-2. This can be refuted by the actual measurements of the work as it now stands and therefore proved to be false.

The work done by the Plaintiff was as follows.

No account
58 x 8 3/4 x 8 = 4060 Foundation to Abutments
108 x 5 1/2 x 8 = 4752 " " to Wing Walls
68 x 8 3/4 x 8 = 4760 " " to Pier
523 x 7 5/8 x 8 = 3286 1/8 " " to Cutwaters to " "
56 x 6 x 13 1/2 = 4536 Abutments above
112 x 3 1/4 x 12 1/2 = 4550 Wing Walls above
68 x 6 x 13 1/2 = 5508 Pier above
289 x 7 5/8 x 12 1/2 = 2837 1/2 Cutwaters to " "
34289 7/8 Total Cubft
100 Deduct for Coables
34189 7/8 Remaining Cubft of Stone in masonry
@ 15 Rupees per cubft } Rs. 5128-7-"
Woodwork
1050' x 8" x 1' = 700 Girders
450' x 8" x 1' = 300 Boards
450' x 8" x 6" = 150 Struts to " "
146 1/2' x 4 1/2" x 6" = 90' 7 1/2" 19 String Loists
1240 + 7 1/2' Carried forward

10/5/11 CD

Reference of Mr. T. Smith
dependent in Rut-
No. 34 of 1886. before the
Principal Engineer
American Court of Patent

Principal Under Mexican Court
Yellow Cabinet

Gnanapriyanand Pillay son of Ramo Pillay, in the possession
 of the Plaintiff —————
 Plaintiff
 Plaintiff Range Officer & Mr. Thomas Smelter residing
 at Gairaray —————
 Defendant
 Defendant
 Plaintiff

Under order from the Defendant, Plaintiff has, in accordance with
the Estimate and Contract, carried out at his own cost, the works
of the Lapandew Bridge on the road from Calicut to Palghat via
Maidoor up to 11th December 1885. On the 11th December
he, the Defendant, forcibly trespassed on the said work and took
possession of the materials of the Plaintiff shown in the Statement
B which were then on the work Report. Plaintiff is entitled to receive
sums as per Statement A for the work done and ^{Statement} B for the value
of materials appropriated by the Defendant, the payment of
which he the Plaintiff demanded of the Defendant in Decr 1885
but failing to obtain, he Plaintiff prays that the amount
due to him vizt Rs 2906-8-6 may, with its future
interest at 12% per annum, be recovered from the Defendant
and paid over to him, the Plaintiff.

Statement A

Statement A		Value
No. of items	Particulars of work executed by Plaintiff at his own cost up to 10 th Decr 1885.	Cost
1	To Value of 37,252 $\frac{1}{2}$ Cubft of Rough-hewn ^{chadsworth} wood @ 15 Rs per 100 Cft. —	5587 14 7
2	To do of 2100 Cft of Wood work @ 12 1/2 — 4 — of 1 Cubft. —	2625 " "
3	To do of Digging foundations, hauling water and erecting sheds —	710 4 1
4	To do of 65,23 $\frac{3}{8}$ Cub yds of Earthwork @ 2 1/2 and 1/2 Cub yds —	815 6 9
5	To do of 3000 yds of broken stone meted spread & tamped and @ 10 annas per yd and 3000 yds of do collected on the road side @ 8 annas per do —	337 8 " "
6	To do of 800 yds of Turfing @ 6 pie of 1 yd —	25 " "
7	To do of 800 yds of Turfing @ 6 pie of 1 yd —	64 15 9
7	To do of Cleaning, leveling and tamping road —	10166 1 2
8	To do of Erecting a lamp post with budjan roof at the work spots on the order of the Defendant —	150 " "
	Total	10316 1 2
	Deduct payments received from the Defendant on account of the above works —	7864 8 8
	Balance due —	2451 8 6

Memorandum

On Suit of Lymanman Sillay against
Mr. Smither, late Supervisor in charge
of the Palghat Range.

1. Plaintiff claims Rs 2451.8.6 as
balance due for work to the value
of Rs 10,316.1.6 performed to the To-
panados Bridge on the Road between
Palghat and Calicut via Mundoor,
besides Rs 455 value of materials said
to have been appropriated by the Defen-
dant when he put an end to
Plaintiff's connection with the work.

2. Plaintiff supports his suit by
Copy of Estimate for the work said
to have been supplied from the Defen-
dant's office. The existence of any
such Estimate is more ^{than} doubtful; for
the Plans of Bridges on that line of
Road remaining unfinished in 1864-65
were cancelled, and revised ones called
for by the Superintending Engineer.
Whereof two in succession, estimated
at Rs 6000 & Rs 12,000, having been
disapproved by him, final decision
was postponed till his visit recorded
in L. O. No 3295 of 27 November 1865.

69/544/1865

work meanwhile having been carried out with his approval at a cost of Rs. 5406. 8. 8 in 1864-65, for completion of which in 1865-66. he approved of an estimate of Rs. 4024, making a total of Rs. 9430. 8. 8 of which Rs. 7864. 8. 8 is accounted for by payments to Sgrm. = permaul Sella and Rs. 1566 by payments for work performed through other Agency. -

3. The second paper relied on by the Plaintiff is Copy of a Contract Bond executed by him on the 7th November 1865 for completing the works before the end of December 1865, also said to have been furnished from the Defendants' Office. Defendant, & both the Overseers under whom the work was carried on deny all knowledge of any such Contract, and the Overseer in charge of the Range states that no record of it exists in his Office. All that is known of it is from a paper purporting to be a translation of it which accompanied a petition of the Plaintiff's to the Supg. Engineer dated 16th March 1866; and such paper ends without entry of the names of "undermentioned witnesses" before, ^{whom} it purports to have been signed and sealed. -

4. The third paper is copy of a letter to the Plaintiff wherein Defendant promises to settle his accounts after completion of the work, if anything be due to him. - To which the rejoinder is that Plaintiff having been actually overpaid, by advances on account, by Rs. 125. 9. 4, no further payment could be made him. -

5. Two out of the three papers relied on by the Plaintiff appear therefor to be fictitious or valueless documents; and the engagement made in the 3^d to have been strictly complied with. Moreover, the Plaintiff's demands as made in his Petition to the Superintending Engineer of the 16th March 1866 differ in detail from the claims made in his Suit dated 28th June 1866 as follows, viz:-

Amount of Rs. 45 in the Item of Masonry		
Amount of Rs. 913	_____	Woodwork
A decrease of - " 195	_____	Earthwork
" 58	_____	Masonry
" 360.	_____	Digging foundations, building water, erecting sheds &c. &c.
" 25.	_____	Turfing
" 65	_____	Clearing jungle &c.
" 205.	_____	Materials at Site

Discrepancies which plainly show that the

Plaintiff kept no account of the work as actually performed by him, while the Defendants' statement of the same can be proved by measurement ^{of it,} as it stands, and by the Range Accounts.

6. The Superintending Engineer does not therefore hesitate to take upon himself the responsibility of ordering Overseer Potter at present in charge of Dalhaut Range to adapt the necessary steps for defending the suit, in anticipation of the orders of Government on this ~~Matter~~ ^{point}. And he authorizes him to employ the services of the Court Vakeel, to summon the necessary witnesses, and apply for the necessary original papers, for the defence. In addition to which he sends him the original Petition received from the Plaintiff, to be made use of in proving the discrepancies above noted. And he directs him to report the evidence brought forward by the Plaintiff to prove that the copies of the ^{Estimate} and Contract were given him from the office of the Defendant, by whom the existence of such papers is disallowed.

Sups. Engrs' office 7th Dⁿ Signed E. W. Walker Esq. Esq.
 Comor, 9th May 1867. Sups. Engineer 7th Dⁿ
 True Copy. - Submitted for the orders

Encls: 2.
 of Government together with some
 letters of Plaintiff, and Mr. Smith's
 reference.
 Sups. Engineer's office
 Comor, 9th May 1867.
 To the Secretary to Government
 at Lucknow.
 Minutes Esq. Esq.
 Sups. Engrs' 7th Dⁿ
 Standard.

Recd. 25th May 1867.

env 1559

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following

(Here enter No. 51 dated 9 May 1867)

The Government
grant authority for
the suit in question
being defended in the
first instance at the
public expense.

N.
J.

now

The J. King & Co.
Contractors -

Sept. 25th May 1867.

2

From 1845

The Supreme
7th Dec

To
The Leary Club
O.R.N.
Mass

No 5.

Dated 9th May 1867
Recd 11th " "

Case 2. Copy of
Memo: on suit of
Imperial Palace
against Mr. Smith
late Supervisor in
charge of Palisant
Range.
no. 1539 - 23d May 1867

2/55

15th May 1867

Pub: Works 1867 Depart
4683
Pro: of Govt for Navy
L 1359

Off 23rd Aug 1867

Authority granted
for Suit of Sympsonal
Pillory against Mr
Smith, late Supervisor
in charge of the Palghat
Range, in the Malabar
District, being defended
at the public expense.

No 551-552