

(1) Number of pages 2(2) Date of repair 18. 7. 1867(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 2164	Press
452-55	~~Mis.~~
Dated 18. 7. 1867.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department.
18th July 1867.

Read the following letters :—

No. 452. From the Officiating Superintending Engineer, 8th Division, to the Secretary to Government, Department Public Works, dated Kodikannel, 24th May 1867, No. 390.

List of papers enclosed, No. 32.

1. I have the honour to request the authority of Government to institute an appeal in the Civil Court of Trichinopoly against the recent decision of the District Moonsiff. By the sanction of Government, conveyed in G. O. No. 3,769, of the 19th December 1863, Suit No. 528 of 1864 was preferred in the Moonsiff's Court of Peroombaloor for the recovery of certain sums due to Government by Formerly Arialoor, and now Peroombaloor. Soobroy Pillay, formerly a Sub-Overseer in the Public Works Department, viz. :—

	RS.	A.	P.
Amount of outstanding balances	731	9	2
Value of tools lost	44	14	3
	776	7	5

From this sum deductions were made on account of security money deposited by the Sub-Overseer ...	200	0	0
Gratuity money to which the Sub-Overseer would be entitled on his services being dispensed with ...	240	0	0
	440	0	0

Leaving a balance of	336	7	5
Add interest at 12 per cent. per annum... ..	48	9	6

Amount sought to be recovered	385	0	11
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The former Moonsiff passed a decree that the defendant shall pay to the plaintiff, on account of the Secretary of State for India, the amount claimed and costs of the suit, and shall bear his own costs.

The defendant then appealed to the Civil Court in Appeal Suit No. 25 of 1865, and the Civil Judge in his Proceedings of the 11th April 1866, reversed the original decree, and directed that the suit be replaced on the file for enquiry *de novo*.

2. The present Moonsiff has passed a decree, in which he disallows :—

	RS.	A.	P.
Amount of gratuity	240	0	0
Value of tools lost	44	14	3
Amount of interest	48	9	6

	333	7	9
Which deducted from the amount claimed	385	0	11

Gives net amount decreed	51	9	2
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while a portion of the costs of the suit, Rupees 9-14-7, is also ordered to be borne by the defendant.

3. In accordance with paragraph 13, Chapter XIII of the Code, I now forward the proceedings of the Original Suit, and submit my own remarks of the grounds on which I propose to rest an appeal. I use the term "Original Suit,"

Nos. 776-7-3.

*Proceedings of the Madras Government, Public Works Department,
18th July 1867.*

because although the suit was at first decided in favour of Government, and an appeal made to a higher tribunal, still the higher Judicial authority, the Civil Judge, did not investigate the case himself, but simply ordered that it should be tried again in the lower Court.

4. In the second trial, the Moonsiff finds (paragraph 8), with reference to the third and fourth issues, whether there was a deficiency in the stores, and whether the defendant agreed to pay the value of the same: "that the burden of proof rests on the plaintiff, and he has adduced no evidence to prove them, and I can find nothing in the plaintiff's Deed of Agreement A, as observed by the late Moonsiff in paragraph 4 of his Judgment, holding the defendant liable in respect of the stores, until he produces a written receipt of his having delivered them correctly."

With regard to the fifth issue, whether the gratuity due to the defendant has been carried to his credit: the Moonsiff decides "that the balance against the defendant is Rupees 491-9-2, and that the gratuity due to him was not deducted from it, as the amount of security lodged by him has been done. Now the plaintiff's Vakeel states that the balance against the defendant was more than the said sum of Rupees 491-9-2, and that the gratuity due to the defendant has been deducted from that larger sum. If so, the plaintiff should have produced the accounts showing that larger sum, and how the defendant's gratuity has been deducted from it; but he has not done so."

Finally, the decree is that of the balance of Rupees 491-9-2 against the defendant, deducting Rupees 440, the amount of security (Rupees 200), and gratuity (Rupees 240), the remainder, Rupees 51-9-2, shall be paid to the plaintiff by the defendant, and that the rest of the plaintiff's claim is dismissed.

5. The deficiency in the tools to the value of Rupees 44-14-3 is shown in the list marked O., as filed in the Court; and as to the defendant having agreed to pay the value of the same, I think it is very clear from the Memorandum of Agreement filed as A, that the Sub-Overseer is liable for all sums of money, and the full value of all stores, materials, and other property, as may be justly disallowed from his accounts by any person having authority. The Memorandum of Agreement is the printed form issued for all Sub-Overseers, and specially drawn up to protect the Government; as to the burden of proof resting on the plaintiff: surely, if the person in authority hands up a list of missing property, the defendant should show good cause why he is not liable; and it appears to me, the first Moonsiff justly decided that in the absence of a receipt, the defendant is held responsible.

On the next point, that the gratuity should be deducted from the balance Rupees 491-9-2, and not from a larger sum, I find a Memorandum of the Superintendent Engineer, dated 18th January 1864, and filed in the Court. II, which begins: "The Government have sanctioned a suit against Soobroy Pillay for the recovery of Rupees 729-13-2 less 200 Rupees security and Rupees 240 gratuity &c."

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18th July 1867.*

(The total amount Rupees 729-13-2, here entered, differs from that quoted in the first paragraph of this letter, as Rupees 731-9-2, by Rupees 1-12-0, which latter sum was subsequently discovered to be due by Soobroy Pillay, and is admitted as part of the general outstanding balance.) This Memorandum explains clearly that the gratuity money, as well as the security, was deducted from the larger sum, leaving a balance of—Rupees 291 9 2, and adding
44 14 3, value of tools,
also ,, 48 9 6, interest,

the total Rupees 385 0 11 is arrived at, which is the amount for which the defendant is sued.

The Moonsiff has deducted the gratuity, Rupees 240, a second time from the balance Rupees 291-9-2, and decrees only the remainder Rupees 51-9-2: now if the Vakeel for the plaintiff did not bring prominently forward the fact of the gratuity, Rupees 240, having been already deducted from the larger sum, a document on the file in the Court distinctly shows that such was the case, and in an unprofessional review of the matter it appears to have been the duty of the Moonsiff to have considered all the papers bearing on it.

The first Moonsiff refers to the Memorandum II in paragraph 6 of his Decree, and orders the defendant to pay the full amount claimed, with the costs of the suit, while the second Moonsiff ignores this Memorandum, and disallows the greater part of the claim.

The defendant pleaded before the Civil Court, that the first Moonsiff had not given him a chance of proving that he had satisfied the demands, and the Civil Judge says it is not to be gathered from the record whether the gratuity was carried to plaintiff's credit or not; then the suit being replaced on the file for a fresh enquiry, the Moonsiff decrees in accordance with the expression of opinion in the higher Court.

6. In my own opinion, the documents presented to the Court were sufficient to establish the claim on the part of Government, and I think the claim would be admitted in a trial before the Civil Court.

No. 453. From the Officiating Superintending Engineer, 8th Division, to the Secretary to Government, Department Public Works, dated Periacolum, 22nd June 1867, No. 697.

I have the honour to return the Tamil papers, sent with your Memorandum No. 124, of the 4th June 1867, and originally furnished with my letter No. 390, of the 24th May, an English translation being attached to each of the documents.

Referred, with G. O. No. 3,769, of the 19th December 1863, for the opinion of the Government Pleader.

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

27th June 1867.

*Proceedings of the Madras Government, Public Works Department,
18th July 1867.*

No. 454. From the Officiating Government Pleader, to the Secretary to Government, Public Works Department, dated Madras, 11th July 1867, No. 113.

From Officiating Superintending Engineer, 8th Division, dated 24th May 1867, No. 390, and 22nd June, No. 697, respectively.

1. I have the honour to return, herewith, the two letters to your address noted in the margin, together with all the papers which accompanied them, relating to the suit instituted in the District Moonsiff's Court of Perombaloor on behalf of the Government against Soobroy Pillay, pursuant to the Order of Government in the Public Works Department, dated the 19th December 1863, No. 3,769, all which letters and papers were referred to me for my opinion.

2. Having carefully perused the letters and papers above-mentioned, I have the honour to advise that notwithstanding the way in which the case for the Government appears to have been mismanaged in the lower Court, an appeal would have lain against the revised decree of the District Moonsiff of Perombaloor had such appeal been preferred within the proper time allowed for the purpose, namely thirty days from the date of the Decree. The first letter to you from the Officiating Superintending Engineer, 8th Division, above noted, requesting the authority of the Government to institute an appeal, is dated the 24th May 1867, upwards of three months after the time within which the appeal should have been preferred.

3. In the absence of anything either in the letter referred to in the preceding paragraph, or in any of the papers before me, to account for the delay in presenting the appeal, I cannot advise that any appeal, however successful it might have been, if presented in proper time, would be successful if preferred now. But in the event of there being some satisfactory explanation of the delay, and in order to save the time which would be lost in a further reference to me, I have the honour to add that, if the Lower Appellate Court can be induced to permit an appeal to be preferred, the appeal to be preferred should be upon the four following grounds:—

1st.—That the decree of the Lower Court was against the weight of evidence.

2nd.—That the Lower Court did not give to the plaintiff's document A. its proper construction or effect.

3rd.—That under the plaintiff's document A. the defendant was as liable for the value of the stores and tools entrusted to him, as he was for the monies that came to his hand.

4th.—That the balance of Rupees 491-9-2, sued for in the plaint, was arrived at after giving the defendant credit for the sum of Rupees 240 payable to him by the Government as a gratuity; and that in deducting it, as the lower Court has done, from the sum of Rupees 491-9-2, sued for in the plaint, the defendant has had credit twice for the same sum of Rupees 240.

No. 455. ORDER THEREON, 18th July 1867, No. 2,164.

ESTABLISHMENT, No. 42.

The letter from the Officiating Government Pleader above read will be communicated to the Superintending Engineer of the 8th Division, who will report the cause of the delay noticed by Mr.

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18th July 1867.*

Brockman in presenting an appeal against the revised Decree of the District Moonsiff of Perombaloor. If satisfactory explanation can be now afforded for the delay in question, and in the opinion of Captain Prendergast it is such that on a consideration thereof, the lower Appellate Court can be induced to permit an appeal to be preferred, Captain Prendergast is authorized to prefer such appeal based upon the grounds specified by the Government Pleader.

(True Extract.)

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

To the Superintending Engineer, 8th Division.

With thirty-two original Enclosures, and their translations, and a List.

Government Pleader

Exd. S. T. Augustin.

From this sum, deductions were made on account of

Security money deposited by the Civil Court 2.00
Gratuities money to which the
Overseer would be entitled, on his
Services being dispensed with 2.40

Leaving a balance of 4.40
Add interest at 12 per Cent per
Annum 3 18 9.60

Amount sought to be recovered Rs. 385 0-11

The former Moonisiff passed a decree that the defendant shall pay to the Plaintiff on account of the Secretary of State for India, the amount claimed, and costs of the suit, and shall bear his own costs.

The Defendant then appealed to the Civil Court in Appeal suit No 25 of 1866, and the Civil Judge in his Proceedings of the 11th April 1866, reversed the original decree, and directed that the suit be replaced on the File for enquiry de novo.

2. The present Moonisiff has passed a decree in which he disallows

Amount of Gratuity Refused	2.40
Value of Tools lost	44 14 3
Amount of interest	48 9 6
Refused 3.33 7 9	

which deducted from the amount claimed 385 0-11

gives net amount decreed Rs. 51 9 2

while a portion of the costs of the suit, Rs. 14 7 is also ordered to be borne by the defendant.

3. In accordance with para 13 Chapter XIII of the Code, I now forward the proceedings of the original suit, and submit my own remarks of the grounds on which I propose to rest an appeal. I use the term "original suit," because although the suit was at first decided in favor of Government, and an appeal made to a higher Tribunal, still the highest judicial authority, the Civil Judge, did not investigate the

case himself, but simply ordered that it
should be tried again in the lower Court.
In the second book, the Moonsiff
finds (para 8), with reference to the 1st
Issue whether there was a deficiency in
the stores, and whether the defendant agreed
to pay the value of the same: "that the
burden of proof rests on the Plaintiff,
and he has adduced no evidence to prove
them, and I can find nothing in the Plaintiff's
deed of agreement A, as observed by the
late Moonsiff in para 4 of his judgment,
holding the defendant liable in respect of
the stores until he produces a written receipt
of his having delivered them, correctly?"

With regard to the 5th Issue, whether the
gratuity due to the defendant has been
carried to his credit: the Moonsiff decides
"that the balance against the Defendant
is Rs 91. 9. 2: and that the gratuity due

to him was not deducted from it, as the
amount of security lodged by him, has
been done. Now the Plaintiff's Vakils
states that the balance against the
defendant was more than the said sum
of Rupees Rs 91. 9. 2, and that the
gratuity due to the defendant has been
deducted from that larger sum. If so,
the plaintiff should have produced
the accounts shewing that larger sum,
and how the defendant's gratuity has
been deducted from it: but he has not
done so."

Finally the decree is, that of the
balance of Rupees Rs 91. 9. 2, against
the Defendant, deducting Rupees Rs 100
the amount of security (Rs 200) and
gratuity Rupees (200), the remainder
Rs

Rupees 51. 9. 2 shall be paid to the Plaintiff by the Defendant, and that the rest of the Plaintiff's claim is disallowed. 5. The deficiency in the tabular statement of Rupees 141. 14. 3, is shown in the list marked C. as filed in the Court, and as to the defendant having agreed to pay the value of the same, I think it is very clear from the Memo of agreement, filed as A, that the Sub Overseer is liable for all sums of money, and the full value of all stores, materials, and other property, as may be justly disallowed from his accounts by any person having authority. The Memo of agreement is the printed form, issued for all Sub Overseers, and specially drawn up to protect the Government from the burden of proof resting on the Plaintiff, surely, if the person in

I

parts of his
Deccan.

II

authority, hands up a list of missing property, the defendant should show good cause why he is not liable; and it appears to me, the first Moonsiff justly decided that in the absence of a receipt, the defendant is held responsible. -

On the next point, that the gratuity should be deducted from the balance Rs 491. 9. 2, and not from a larger sum. - I find a Memorandum of the Superintendent, dated 18th January 1864, and filed in the Court, II, which begins. "The Government have sanctioned a suit against Sobroy Pillay for the recovery of Rupees 729. 13. 2 less 200 Rupees security, and Rupees 240 gratuity &c." The total amount Rupees 729. 13. 2 here entered, differs from that quoted in the first para of this Letter, as Rupees 731-9. 2; by Rupees 1-12-0, which latter sum was subsequently

Subsequently determined to be due by
Dooling & Pelly, and is admitted as part
of the general outstanding balance.
This Memorandum explains also
that the gratuity money, as well as the
security, was deducted from the larger sum,
leaving a balance of Rs 291-9-2, and being
also 44-14-3 value of title,
the total, Rupees 385-0-11 is arrived at,
which is the amount for which the defendant
is sued.

The Moonsiff has deducted the
gratuity Rupees 240, a second time from
the balance Rupees 291-9-2, and decrees
only the remainder Rupees 51-9-2, for
if the Wakil for the plaintiff did not
bring prominently forward the fact of
the gratuity Rupees 240 having been
already deducted from the larger sum.

15
a document on the File in the Court, distinctly
shows that such was the case, and in
an unprofessional review of the matter,
it appears to have been the duty of the
Moonsiff to have considered all this
before bearing on it.

The first Moonsiff refers to the
Memo. II, in para 6 of his decree, and
orders the Defendant to pay the full
amount claimed, with the cost of the
suit, while the second Moonsiff ignores
this Memo, and disallows the greater
part of the Claim.

The defendant pleaded before the
Civil Court, that the first Moonsiff
had not given him a chance of proving
that he had satisfied the demands,
and the Civil Judge says it is not
to be gathered from the records, whether the
gratuity?

gratuity was carried to the tiff. Out of
or not. then the suit being placed on the
File for a fresh enquiry. the Magistrate
decides in accordance with the expression
of opinion in the higher Court.

b. In my own opinion, the documents
presented to the Court, were sufficient
to establish the claim on the part of
Government, and I think the claim
could be admitted in a trial before the
Civil Court.

I have signed

Wm. D. Dugan.

Captain U.S.A.
Off. Superintending Engineer, S.C.

Referred, with L &
No 3769, of the 19th December
1863, for the opinion of the
Government Pleader -

Amthor. M. Colmd. 18
Secy. to Govt

27 June 1867.

To
The Government Pleader -

12th July 1867
Govt of India for India

1390
From 2000 -

11. 11. 1867
S. C. 11. 1867

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11. 11. 1867

2164 - 1867 July 1867
11. 11. 1867
11. 11. 1867

Submit the paper for
with the end and end of
the Government of India
and request the Govt of
India to be notified in
affairs of the Govt of India
Indians only.

W. H. 11. 1867

No. 452

c. 15 July 1867 D. 1867

N. 697. Superintendent Engineer's Office
Buenos Aires 22nd June 1867.

Honorable
Captain W. S. Sandercock R.E.
Off. Superintending Engineer
St. Domingo.

Colonel C. J. Crook R.E.
Port of Spain Government P.O. W.

3 1/2
I have the honor to return the
enclosed papers with your Memoir N.
124 of the 4th June 1867, and originally in
furnished with my Letter N. 390 of the
24th May - an English translation being
attached to each of the documents.

Yours
Shaver

Wm Sandercock Captain R.E.
Off. Superintending Engineer St. D.

No. 113

High Court House,
Madras 11th July 1867.

From H. J. Breckinam,
Officiating Government Pleader,
Madras.

To Colonel C. A. Orr. A.E.
Secretary to the Government of Madras.
Public Works Department.

Sir,

From Offg. Supdtg.
Engineer 8th Division
Dated 24th May 1867.
Nos 369 and 22nd
June 1867
respectively.

1. I have the honor to return herewith the two letters to your address noted in the margin, together with all the papers which accompanied them, relating to the suit instituted in the District Munsiff Court of Perambalur on behalf of the Government against Subbraya Pillay pursuant to the order of Government in the Public Works Department, dated the 19th December 1863 No. 3769, all which letters and papers were referred to me for my opinion.

2. Having carefully perused the letters and papers above mentioned, I have the honor to advise that notwithstanding the way in which the case for the Govt. appears to have been mismanaged in the lower Court, an appeal would have lain against the reversed Decree of the District Munsiff of Perambalur, had such appeal been preferred within the proper time allowed for the purpose: namely 30 days from the date of the Decree. The 1st letter to you from the Officiating Superintending Engineer 8th Division above

21572 July 1867

21573

21574 July 1867

Madras 22nd June 1867
Recd 29th July 1867
Distt.
Madras
H. J. Breckinam
Offg. Pleader
Public Works
Department
Madras

Madras 22nd June 1867
Recd 29th July 1867
Distt.
Madras
H. J. Breckinam
Offg. Pleader
Public Works
Department
Madras

Madras 22nd June 1867
Recd 29th July 1867
Distt.
Madras
H. J. Breckinam
Offg. Pleader
Public Works
Department
Madras

Madras 22nd June 1867
Recd 29th July 1867
Distt.
Madras
H. J. Breckinam
Offg. Pleader
Public Works
Department
Madras

noted, requesting the authority of the Government to institute an appeal, is dated the 24th May 1867, upwards of three months after the time within which the appeal should have been preferred.

3. In the absence of anything either in the letter referred to in the preceding para, or in any of the papers before me, to account for the delay in presenting the appeal, I cannot advise that any appeal, however successful it might have been, if presented in proper time, would be successful, if preferred now. But in the event of there being some satisfactory explanation of the delay, and in order to save the time which would be lost in a further reference to me, I have the honor to add that, if the lower Appellate Court can be induced to permit an appeal to be preferred, the appeal to be preferred should be upon the four following grounds.

- 1st That the Decree of the lower Court was against the weight of Evidence.
- 2nd That the lower Court did not give to the Plaintiff Document A its proper construction or effect.
- 3rd That under the Plaintiff's Document A the Defendant was as liable for the value of the stores and tools entrusted to him, as he was for the monies that came to his hands.
- 4th That the balance of Rupees 491-7-2 sued for in the Plaint was arrived at after giving the Defendant credit for the sum of Rupees 240- payable to him by the Government as a gratuity, and that in deducting it as the lower Court has done, from the sum of Rupees 491-7-2 sued for in the Plaint, the Defendant has had credit twice for the same sum of Rupees 240-

I have the honor to be,

Sir,

Your most obed^t Servant

A. Moorhew.

Offg. Secy. Reader

216, 2151

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 18th July 1867

Read the following

From the Offg. Super Engineer of the 8th Div. (H.R. No 390 of 24th May 1867)
Do. Do. Do. (Here enter No 197 dated 22nd June 1867)
Offg. Govt. Pleader (H.R. No 113 of 11th July 1867)

The letter from the
Offg. Government Pleader
above read will be commu-
nicated to the Superintend-
ing Engineer of the 8th Division
who will report the cause of
the delay noticed by Mr.
Brockman in presenting
an appeal against the re-
vised Decree of the District
Munsiff of Perumbaloor.

If satisfactory explanation
can be now afforded for the
delay in question, and the
lower Appellate Court can
be induced to permit an
appeal to be preferred.

Capt.

Pranderghat
In the opinion of Captani
it is such that on a consid-
eration thereof,

20th 1867
J. of 6th Div. for 8th Div.

Thos. M. Govt. Pleader

For the delay & cost
paid

21st 11 3 July 1867

216/113

Obtaining as to

the Cause & the cost

as related to the said

instituted in the District

Munsiff's Court of

Perumbaloor on today

the cost against do.

"brought along."

216, 2164-1867 July 1867.

216, 2154

216, 2154 July 1867 July 1867.

"Captain Prendergast
is authorized to prefer
such appeal based upon
the grounds specified
by the Government
Board."

AP

W-S. Dec 18/7/67 to the S. Eng. only To
P-C — a — 24/7/67 to both

To the Govt. Secy

The S. Engineer & Surveyor
thirty ^{original} two enclosures
+ their translations
a list

P. W. 1867. Department.

Proc. of Govt. for Exch.
No. 2164

PROCEEDINGS OF GOVERNMENT.

Dated 18th July 1867

Authorizing conditionally
the Supg. Engrs. of the S. L. Co.
to prefer an appeal against
the decision of the District
Messrs of suching in
the suit for the recovery from
Johny Pilling late a Sub
guard in the P. W. Co. of
certain sums due to Govt.

A. L. S. 2 @ 455

15 July 1867 A. L. S.