

(1) Number of pages 20(2) Date of repair 25-5-43

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 3933

Press
~~Mis.~~

401-02

Dated 20 . 12

1867.

Not to be folded or roughly handled

10

*Proceedings of the Madras Government, Public Works Department,
20th December 1867.*

No. 401. Read the following Endorsement of the Superintending Engineer, 4th Division, dated Madras, 7th December 1867, No. 4,273 :—

Read the following letter from Conductor D. BOOTH, Supervisor in charge of No. 1 or Wallajah Range of North Arcot, to the Officiating Superintending Engineer, 4th Division, dated Ranneepett, 26th November 1867, No. 231.

1. Through the kindness of Judge Gordon, I have obtained a copy of Appeal Suit No. 54, Wallajah Coopoo Chetty and the Palar anicut bricks, &c. I most respectfully beg to forward the document for your perusal, to be returned when no longer required, as the decree is again in favor of Government. Comments are unnecessary at present. But should the Plaintiff appeal again, then I hope we will be allowed to put all right.

First.—Is a Takeed given by an Assistant Overseer to be considered a contract binding on Government.

Second.—At page 3, paragraph 3, I find mention of an advance, whereas the Cash-book in this office shows an actual payment.

Third.—Pages 4 and 5, paragraphs 7 and 13, sufficient proof not given for counting bricks. I was not called on for further proof, the original vouchers can be found.

Fourth.—Page 4, paragraph 9. The Range Officer is the person authorized to reject materials. Then not a single subordinate under me can show my authority to do more than count and pack the bricks, count, weigh or measure materials, evidently not one of them could reject or receive a single article, and that no one knows better than the Plaintiff, he failed to obtain his base desire from the Range Officers, he went to Court where he had not the shadow of a chance, only the bungling of Vakeels.

Fifth.—At the same page, paragraph 10, I can prove that on receipt of my statement being approved by the Officiating Superintending Engineer, 4th Division, every man concerned was sent for to this Office, the statement explained to all that did or would attend, the balance offered or amounts due from demanded with permission to take all rejected who wished.

Sixth.—Page 5, paragraph 11, I am most thankful for the Judge's good discernment throughout, and not the Circar Vakeel. But Judge Gordon of the Small Cause Court of Vellore stated, a Vakeel having been appointed by order to defend the original suit, I was bound by his statement recorded in the lower Court, and that all evidence should have been recorded there.

Seventh.—Page 5, paragraph 14, Rupees 2-9-0 actually lost for insufficient proof; all that was wanted was the original statement actually in Court, but not used by the Vakeel. It was marked C, and forwarded to your office with my letter No. 116, dated 17th July 1867, and as for the amount paid for firewood being higher than Plaintiff claims, I am thankful for Judge Gordon's deduction. The rates not only of firewood but every article was given to me by the late District Engineer of North Arcot, with orders to pay at once not only Plaintiff but all others also. I need not trouble you further at present than state, that in my opinion Plaintiff did bring forward a groundless, frivolous, vexatious suit, and that the Circar Vakeel totally failed to defend that suit properly.

**Proceedings of the Madras Government, Public Works Department,
20th December 1867.**

2. At your convenience I hope you will be pleased to inform me how I am to recover Rupees 77-14-0, the amount the Plaintiffs are adjudged to pay to me and our costs of original and Appeal Suits, if you have been informed; this in my opinion should be clearly stated on each decree, and avoid all further trouble and disputes.

Original letter, No. 231, dated 26th November 1867, with copy of Appeal Suit.

1. Submitted to Government with reference to their Order No. 3,380, dated 30th October 1867, and to paragraph 11, Chapter XIII of the Public Works Code.

2. The suit has been again decided in favor of Government. It having been defended this time by Mr. Booth (as the

* Excess payment with interest...	Rs. A. P.	77 14 0	Vakeel who defended the Original Suit
Cost of defence of Original Suit.		41 12 0	had left), it does not appear there are any
		119 10 0	costs to pay, but on the contrary a sum

of Rupees 119-10-0* remains to be recovered from the Plaintiff according to the decree.

(Signed) A. J. M. BOILEAU, Colonel, R. E.,
Superintending Engineer, 4th Division.

No. 402. ORDER THEREON, 20th December 1867, No. 3,933.

CIVIL WORKS, No. 65.

1. The Superintending Engineer of the 4th Division will inform Mr. Booth, in reply to paragraph 2 of his letter, that the Vakeel employed in the suit should move the Court which disposed of the case to realize from the Plaintiff the amount of costs awarded by the Acting Judge of the Court of Small Causes, acting as Principal Sudder Ameen, the result being reported in due course for the information of Government.

2. The Superintending Engineer will further inform himself whether, as Mr. Booth suggests, the Vakeel employed on behalf of Government failed in properly defending the suit.

(True Extract.)

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

To the Superintending Engineer, 4th Division.
,, Controller of Public Works Accounts.

a just Dept

Exd. S. T. Augustin.

No. 231

From

*No. 101 Hallajah Range Office
Ramespett 26th November 1867*

*Conductor D Booth Supervisor
In charge of Hallajah Range of C.A.*

*The Offg. Superintending Engineer,
4th Division
Madras.*

1 Through the kindness of Judge Gordon I have obtained a copy of Appeal Suit No. 54 Hallajah Coopoo Chetty and the Palat Amicut Bricks &c. I most respectfully beg to forward the document for your perusal, to be returned when no longer required, as the decree is again in favour of Government. Comments are unnecessary at present. But should the Plaintiff appeal again, then I hope we will be allowed to put all right.

+ 1st Isa Takeed given by an Assistant Overseer to be considered a Contract binding on Government.

+ 2nd At Page 3, para 3, I find mention of an advance, whereas the Cash Book in this Office shows an actual payment.

--- 3rd Page 4 and 5, para 7 and 13 sufficient proof not given for counting Bricks. I was not called on for further proof, the original vouchers can be found

--- 4th Page 4, para 9. The Range Officer is the person authorized to reject materials. Then not a single subordinate under me can show any authority to do more than count and pack the Bricks, count, weigh or measure materials, evidently not one of them could reject or receive a single article.
and

and that no one knows better than the Plaintiff, he failed to obtain his base desire from the Range Officers he went to Court where he had not the shadow of a chance, only the bungling of Va keels.

5th At the same page. Para 10. I can prove that on receipt of my statement being approved by the Officiating Superintending Engineer Lt. Division, every man concerned was sent for to this Office, the statement explained to all that did or would attend, the Balance offered or amount due from demanded with permission to take all rejected who wished.

6th Page 5 Para 11 I am most thankful for the Judge's good discernment throughout and not the Circar Va keel. But Judge Gordon of the Small Cause Court of Vellore stated a Va keel having been appointed by order to defend the original suit I was bound by his statement recorded in the lower Court, and that all evidence should have been recorded there.

7th Page 5 Para 14 Rupees 2-7-11 actually lost for insufficient proof, all that was wanted was the original statement actually in Court, but not used by the Va keel. It was marked and forwarded to your office with my letter No. 116 dated 17th July 1867. and as for the amount paid for firewood being higher than Plaintiff claims I am thankful for Judge Gordon deduction. The rates not only of firewood but every article was given to me by the Lt. District Engineer of North Arcot with orders to pay at once not only Plaintiff but all others also. I need not trouble you further at present than state, that my opinion Plaintiff did bring forward a groundless, frivolous, vexatious suit, and that the Circar Va keel totally failed to defend that suit properly.

At

At your convenience I hope you will be pleased to inform me how I am to recover Rupees 77-11-11 the amount the Plaintiffs are adjudged to pay to me and our costs of original and Appeal suits, if you have been informed, this in my opinion should be clearly stated on each decree and avoid all further trouble and disputes.

I beg to Remain,
Sir,
Your most Obedt. Servant.
M. H. Supervisor,
In charge of the Kallajah Range of
North Arcot.

in exhibit A and were unfit for use, and that they were rejected accordingly. With regard to the 2^d claim for the value of 465000 bricks, Defendants state that on their being counted, 100800 only were found to be the bricks contracted for the rest being half bricks as stated in exhibit C. The claim for firewood is admitted. The total number of 1st Sort Bricks supplied by Plaintiffs is 316270. value 1106-15-2. The Plaintiffs having omitted to deliver the Bricks counted Rs 45 was expended in the hire of Coolies for that purpose, Plaintiffs are indebted to Government in the sum of Rs 2-9- for implements given to them but not returned. The account as stated by the Defendants is therefore as follows.

To Bricks Supplied	1106-15-2
To Firewood	166-4-
with interest	1273-3-2

To payment	1267-8-
To Cost of Counting Bricks	45-
To implements not returned	2-9-
Interest from 27 th October 1862	16-5-
	1331-6-
	1273-3-2

58-2-10 due to Defendants

This amount they pray the Plaintiffs may be adjudged to pay with the Costs of Suit.

The Plaintiffs filed the following exhibits.

- A. — Takered informing Plaintiffs of the Contract having been given to them dated 4th January 1862.
- B. — Receipt for 95 Cart loads of firewood dated 19th February 1864.
- C. — Receipt by V. Corthundarama Moovilyar late Sub Censorer D.P. for 100800 full and 64800 half Bricks dated 17th December 1863.
- D. — Receipt by Sertaram for 235000 Bricks of 27th June 1863.
- E. — Takered to Plaintiffs from Sertarama Naiboo stating that he has been directed to count and receive the Bricks prepared by Plaintiffs and directing Plaintiffs to deliver them to him duly counted on the 19th May. dated 17th May 1862.

The Defendants filed the following exhibits.

- I Government Proceedings authorising Defence in 1st instance by Government.

- II — Statement of number of Bricks moulded burnt, paid for and remaining to be paid for dated 25th July 1862.
- III — Statement of Bricks purchased of 7th October 1863.
- IV — Receipt by Cooppy Chetty (1st Plaintiff) for Rs 822-8- less Rs 45 reserved to meet the cost of opening the kilns and counting the Bricks at the option of Government.
- V — Statement of Tools remaining in possession of 1st Plaintiff valued at Rupees 2-9-.

The issues settled by the District Munsiff were two.

- 1st Whether or not the Plaintiffs had delivered 516000 of the Bricks described in Takered A?
- 2^d Whether or not the Plaintiffs are entitled to the sum of Rs 836 9 7 claimed by them?

The District Munsiff found for the Defendants adjudging the Plaintiffs to pay the balance claimed by the Defendants.

The Plaintiffs Appealed to the Civil Court on the following grounds.

- 1st That the Plaintiffs claim has been established by evidence and documents.
- 2^d That the Defendants in their Statement fully admit the facts of their having received the Bricks and the Wandy loads of firewood as sent for, and of their having paid the amount as stated in the Plaint on that account.
- 3^d That the agreements of the Defendants that an advance was made contrary to the Takered A which is an undisputed document and that after the Bricks had been received the 1st Defendant had rejected, some of them as being half and quarter Bricks are unsustainable.
- 4th That there is no proof on the part of the Defendants, that the Bricks were rejected in presence of the Plaintiffs as being unfit for use or that they were delivered over to them (Plaintiffs).
- 5th That the Munsiff who admits in Para 16 of his judgment, the fact of the Plea of the Defendants and of the evidence adduced by them being opposed to the documents which are undisputed ones, is not justified.

in giving judgment according to the defence made by them. That the legality of this Plaintiffs claim being evident from the plea of the Defendants, it is unnecessary to enquire evidence on that account.

7. That the Defendants had not properly adduced proof as to the particulars of Rs 45 having been expended on account of Cooly people, and as to the dock hire being due by the Plaintiffs.

8. To prove the delivery of the Bricks as asserted in the plaint, Plaintiffs call four witnesses of whom the 1st speaks to the delivery by him to Sektarama Naikar (Defendants' 4th witness) of about 135000 whole and well burnt Bricks; the 2nd to the delivery of whole and properly burnt Bricks to the same person to the extent of two laes and odd; the 3rd to the delivery of whole and well burnt Bricks to the extent of Rs 160,000 - the 4th witnesses speaks to having by order of Defendants' 4th witness received bricks, number unknown from Plaintiffs 1 & 2 witnesses.

The Defendants admit in exhibit III that 375000 Bricks were received by them, but plead that 2,15,470 only answered to the description contained in Exhibit A. The evidence of their 4th witness shows that of the 235000 for which he gave exhibit D - the Range Officer the person to whom under Para 4. Sec. 2 Ch. XVI. of the new Code of the D.T.N. authority to reject materials is committed, this former number only was allowed the rest being rejected. It is not suggested that Plaintiffs considered that they were dealing with individuals in their private capacity, nor under the circumstances would such a plea be sustainable. I think therefore in order to obtain good evidence of receipt according to the terms of exhibit A it lay with the Plaintiffs to ascertain who were the persons having competent authority and to get receipts from them.

10. To the objection of the Plaintiffs Vakil that notice of rejection was not given to them, Defendants reply that the Bricks rejected were left by them as appears by the evidence of Defendants' 2nd witness where they were deposited by Plaintiffs and that it was open to the latter to satisfy themselves as to the correctness of

of the fact, a course which they do not appear to have taken. Exhibit III which is supported in different degrees by the evidence of Defendants 1, 2, & 4th witnesses, shows that on the 7th October 1863. there were on the spot a total of 296030 bricks of which 136500 only were Bricks of the quality described in A the rest being unfit for use. The difference between this total and 375000 the amount admitted to have been received is credited to Plaintiffs as having been previously used for the works.

11. On the whole, I think the Defendants' reply is satisfactory. The Plaintiffs evidence as to the quality of the 370000 Bricks or thereabouts delivered by his witnesses is of too slight a nature to convince me of its correctness. I therefore find that the Plaintiffs delivered in accordance with exhibit A up to October 63. 215,470 Bricks only.

12. With regards to the 2nd claim of 165600 Bricks, it is sufficient to remark that 64800 of those Bricks were stated in the receipt (exhibit C) to be half Bricks and that the receipt was not given by a person competent to reject those Bricks which were not in accordance with the terms of exhibit A. The remainder 100800 is credited by Defendants to Plaintiffs.

13. It would have been more satisfactory had more evidence been tendered by the Defendants to show the details of the alleged outlay of Rs 45 for counting the Bricks. The outlay is however spoken to by their 2nd & 4th witnesses and Plaintiffs do not appear to have asserted that they did themselves count the Bricks. Further it appears from the terms of exhibit IV that that sum was reserved with the consent of 1st Plaintiff for the counting &c. of the Bricks at the option of Government.

14. The Claim of Rs 2-9- rests entirely upon exhibit V which is not of itself direct evidence, but a mere statement by an Officer who might have been examined. That amount is therefore disallowed. It is not open to the District Munsiff to award to the Plaintiffs on account of firewood an amount larger than that which they have claimed with these exceptions, the District Munsiff's decree is affirmed.

Amount -

Amount received by Plaintiffs in receipts
of Value of 316270 Bricks supplied } — 160-8-10
Interest on the same to 25th January 1866 from
date of last payment } — 62-9-
Amount expended in counting the Bricks. — 45-
268-1-10
Deduct Value of firewood due to Plaintiffs — 154-6-
Interest thereon from date of receipt
to 25th January 1866 } — 35-13-10
190-3-10
Total 77-14-

This sum the Plaintiffs are adjudged to pay to
Defendants with their costs of suits, both original and appeal.

/Signed/ J. P. Gordon
 Ag. Engr. as C. T. A.
 13/11/67.

(True Copy) Miott's Supervisor
Wallajah Range -

N^o 4273.

150

Papers regarding the Appeal Suit of
Marajah Cooroo Chetty.

Submitted to Government with
reference to their Order N^o 3380 dated 30th
October 1867 and to para: 11 Chapter XIII
of the Public Work Code.

The suit has been again decided
in favor of Government. It having been
defended this time by Mr. Booth (as the
Vakeel who defended the original suit had
left it does not appear there are any costs
to pay but on the contrary a sum of Rupees
119-10-00 remains to be recovered from the
Plaintiff according to the decree.

Excess payment
with interest Rs. 77.14.
Cost of defence
of Original Suit - 41-12-00
119-10-00

Sup^y Insp^y Office } A. Vileau, Col R.E.
4th Division
Madras
5th December 1867. } Sup^y Insp^y 4th Division

To Colonel C. A. Orr R.E.
Secretary to Government P.W.D.

1/5/1867
for
the
Government
with
copy of
original
suit

Civil No. 170

3933 Public Works Department.
3933
ev 3933

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 20th Decr 1867

Read the following

(Here enter No. 423 dated 7th Decr 1867)
From The Sup^d Engineer }
4th Divⁿ }
The Superintending Engineer of the 4th Divⁿ will inform Mr. Booth, in reply to para 2 of his letter, that the Valuel employed in the suit should move the Court which disposed of the case to realize from the Plaintiff the amount of costs awarded by the Acting Judge of the ^{Chief of} Small Causes, acting as Principal Sudder Ameen, - the result being reported in due course for the

The Superintendent
4th Division

The Secretary
to Government P.W.D.

dated 23rd Decr 1867
Recd 23rd Decr 1867
No. 4233

submitting papers re:
pending the appeal and
of Madras Corpⁿ Chetty
and intimates that the
and has been again
decided in favor of Govt
and that all him. 4th Divⁿ
119-10. Remains to be
covered from the Plaintiff
according to the tenor of
the decree.

ev 3933-20th Decr 1867
The Sec^y

Referred -
J. Russell

W. B.

Forwarded without the
sent: Engineer to inform
his book-keeper that
Officers' quarters in the Court,
that the Court had
in the suit, within 100th
rebut otherwise, should
move the Court - as
referred from the
of each respondent of the
house acting as
and upon the result - in a
the Court under review
Government are aware of
to be taken -
to be taken -
to be taken -

Comdr. Major
in further reference to the
the Court's decision in the
the Court's decision in the

1867
1867
1867

information of Govt
-vernment -

The Superintendent
ing Engineer will further
inform himself whether,
as Mr Booth suggests,
the Va had employed on
behalf of Govt failed
in properly defending
the suit

W.H.

To
The A. Sur Lt. D. S.
Orville M. S.

Sept 21/12/67

401 A 402.

P. W. 1867. Department.

Bo: of Gov^t of Dec 1867

No. 3933

PROCEEDINGS OF GOVERNMENT of Alaska

Dated 20th December 1867

Issuing certain
instructions to the Supp. Engrs
of the 1st Division for the
realization from the Plaintiff
of the amount of costs incurred
by the Judge of the Courts
of Small Causes in the
Palmer Ancient case.

No. 101-102