

(1) Number of pages 1-1

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public works **DEPARTMENT.**

G.O. No. 3956	Press
467-68	Mis.
Dated 21 12	1867.

Not to be folded or roughly handled

26

*Proceedings of the Madras Government, Public Works Department,
21st December 1867.*

No. 467. Read the following letter from the Superintending Engineer, 7th Division, to the Secretary to Government, Department Public Works, dated Camp at Calicut, 3rd December 1867, No. 139:—

1. I have the honor to report, for the information of Government, the payment of the sum of Rupees 1,132-13-11 as per Memorandum attached, in satisfaction of the decree of the Principal Sudder Ameen of Calicut, (whereof copy
- | | |
|------------------------------|--|
| 1 Memorandum of sums paid. | |
| 1 Contract Certificate. | |
| 1 Copy of Decree. | |
| 1 Mr. Smithers' explanation. | |

is annexed,) in the matter of the Topanadoo bridge contract, whereon report was made in my letter, &c., printed with G. O. No. 1,559, of 23rd May 1867.

2. The case should never have gone into Court at all, and Mr. Smithers' conduct throughout is most blamable. The decree of the Court was based solely on a certificate, copy of which is herewith forwarded, to the entire rejection of all other evidence on the part of the plaintiff, documentary or verbal. From the style of the Judgment on which decree was given, and from Mr. Smithers' verbal complaint to myself of the Principal Sudder Ameen's contemptuous manner in announcing it, it has been painfully evident to me that the Public Works Department has suffered in estimation by the unworthy manner in which its Range Officer has acted.

3. Compare the certificate abovementioned with Mr. Smithers' official statement, whereon the order to oppose the action was based. It falsifies his declaration that plaintiff was not a contractor; and also his measurement of masonry, and rate for timber, whereby he sought to deduct from the plaintiff's bill sums for which Judgment has been given against him, in an aggregate of Rupees 962-14-6. I have not one word to say for him, on the contrary, I must recommend that he be made personally answerable for Rupees 170, the net amount of the costs of the suit, to be recovered from him within the current official year.

4. It would appear that the Acting Range Officer, who took up the case on Mr. Smithers' transfer from Palghat range, noticed the discrepancy between the transfer certificate and the statement of measured work subsequently put forward; but instead of putting me in possession of the true facts of the case, he contented himself with writing to Mr. Smithers for an explanation. I submit copy of that explanation with my remarks, to show the persistent wrongheadedness of the man from first to last.

5. Mr. Smithers' conduct in this business, and in that of the Cochin Lighthouse (*vide* G. O., No. 1,177 of 17th April 1867) has quite shaken my confidence in him as a Range Officer. In both cases he has, by his own confession, failed to check the measurements of his Overseer (the same Mr. Dalby, who is his brother-in-law), while he has supplied the Controller with vouchers certifying that he has measured and paid up for work at each visit. I can only repeat what I before observed with reference to Cochin affairs, that his conduct has almost staggered my confidence in the present Public Works system, which permits of Upper Subordinates holding independent executive charges. But I will not allow one exception quite to nullify my general experience.

6. The total sum of Rupees 1,133 is shown at present as an advance. I propose debiting Rupees 963 against the sanction for road and bridge-work

[illegible]

interest thereon at 12 per cent money he received and paid to him.

Principal Sudar Amrao of Calicut, having examined the documents
 Krishna Vaidya, and before the Plaintiff Vaidya & Shudra Vaidya
 Vaidya on behalf of the 2^d Defendant before me, and having
 scrutinized the documentation evidence produced by them,
 decreed that the 2^d Defendant should pay to the Plaintiff
 Rs 752-14-6 and the costs of Court thereon, that the
 Plaintiff should pay to the 2^d Defendant the costs of the
 Court on the amount objected to, and his (Plaintiff's) own costs
 of the Court on the amount objected to should be suffered by
 the Plaintiff himself.

Costs of Court.

Value of stamp paper for Plaintiff	Rs 150 -- --
Fees for Plaintiff's Vaidya	145 -- 4 -- 10
Fees for the 2 ^d Defendant's Vaidya	145 -- 4 -- 10
Value of other stamps by the Plaintiff	1 -- 8 -- --
Do. for 2 ^d Defendant	1 -- -- --
Value of Stamp by the Plaintiff	5 -- 7 -- --
Do. by the 2 ^d Defendant	8 -- -- --
Total	406 -- 8 -- 8

Amount due to the Plaintiff	105 -- -- 7
Do. to be suffered by Do.	147 -- 3 -- 3
Do. due to the 2 ^d Defendant	97 -- 3 -- 3
Do. to be suffered by Do.	57 -- 12 -- 7
	406 -- 8 -- 8

The time for appeal on this Decree will expire on the
 3^d October 1867.

To Palghat Range -

With orders to the Officer in
 charge to close no time in
 settling with the Plaintiff and
 Vaidya for the whole of the sums
 herein decreed; taking credit
 with the process for this sum of
 costs, and his acquittance in full,
 as well as that of every one else
 concerned -

To be returned at an early date
 with clear statement of all
 payments made in accordance
 with the Decree, which must be
 shown in the Advance Statement
 until authority of Govt. shall
 have been received to write them
 off against the Bridge work

Calicut
 2.11.67

Payments have been made as follows
 To the Govt. Vaidya Shaker Koorroop, as
 per statement annexed, Rs: 142.2.1-

The amount due to Plaintiff should
 have been paid to him in the presence of
 the Court, but as he would not come forward
 I have paid his amount viz: Rs 97.11.10.
 (as per statement) into the Court -

27.11.67
 Calicut

James Lewis
 Supervisor
 In Ch. Palghat Range

Money of hand paid on account of the Appraisers' Office's bill

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To the Plaintiff $\frac{99}{100} \frac{11}{100}$

Amount decreed _____

Other _____

963	44	6		
105	.	7		
1067	15	1		

Debit Amount due by the Plaintiff to the Defendant on account of costs due the Court _____

Not done: paid to the Plaintiff _____

97	3	3		
970	11	10		

To Appraisers' Debit

Amount of fees set for Decree _____
 Value of Stamp Report _____
 Postage for to over _____
 Charge for Copying Documents _____
 Costs for Deeds _____
 Debit Amount advanced _____

145	4	10		
8	.	.		
1	5	.		
3	8	3		
8	.	.		
163	2	1		
20	.	.		
142	2	1		

Net Amount paid to Debit _____

Balance of 29. 10m 10p

James Henry

Supervisor of Pr. Pr. Pr.

1 N 4682/69
 Memo of Sum paid
 on account of the Sopanades.
 Bridge Smt. -

No 3
 CONTRACT CERTIFICATE. for Nov/65
 Palyat RANGE Palyat Taluq

Name of Work
 Name of Contractor
 Authority for work, Estimate Rupees _____ sanctioned
 Number of last Certificate granted for this work, No.
 Total quantity of work executed up to 17th November/65

No. in Pro- gress Report.	Quantity.	Items.	Rate.		Per.	Amount	
			Rs.	A. P.		Rs.	A. P.
	1006.71						
	37252 3/4	Rough stone in channel	15	.	.	5587 1/2	
	1076	Cubic feet of timber	1	.	.	1076	
	3923	Cubic yards of masonry work	.	2	.	4906	
		Digging for foundation, filling water, and sundries				710 41	
		Total value				7864 88	
		Deduct value of work done as per last certifi- cate				7364 88	
		Net value				500	

(Signed) *Hyem Kinnal*
 Contractor.

(Signed) *C. Bryant*
 Taluq Overseer.

Certified that the preceding claim is correct; that the measurements have been made by me; and that the work
 has been satisfactorily performed.

(Signed) *C. Bryant*
 Taluq Overseer.

REMARKS BY RANGE OFFICER.

Inspected and examined the work herein specified on the 6th November 1865, and found correct - (See other copy) EW

(Signed) Wm. Smithers

1865

Range Officer.

MEMORANDUM of Payments made.		Rs.	A. P.	Rs.	A. P.
Total value of work done...				7864	53
Amount of previous payment, from last Certificate...		7364	88		
Payments now made...		500			
				7864	53
	Balance due to me...				

1865/11/27/65

Received Rupees 500 (five hundred) only in account of this work.

Paid at 21st November 1865

(Signed) Wm. Smithers

Contractor.

Wm. Smithers
Officer in charge
of the Works,
Calicut Bridge

W. G. 64

W. Smithers's Explanation.

Supplementary Remarks.

Memorandum explanatory of the difference shown in the last Certificate dated 21st November 1865 and marked E, and the Statement dated 27th April 1866, and marked F, produced in the Principal Sudder Ameen's Court at Calicut in Original Suit No. 34 of 1865.

That the difference shown in the item of Masonry is explained by the Plaintiff having been previously paid by the Overseer in charge in respect for that portion of the work done by the Plaintiff, and which excess was not discovered until the whole of the Masonry was remeasured - As the Cubical Content of the Foundation to Sopanados Bridge, as shown in the Statement dated 27th April 1866, and marked E, can be verified by competent evidence i.e. the Overseer Mr. W. Dalby who commenced and carried out the whole, and the Maistry or partner of the Plaintiff, one Moothrin Chetty, and as the Cubical

Herewith forwarded - Printed with G.O. No. of

In Mr. Smithers's Statement he allows 34189 7/8 C: D: of Ma. Now then does he deny - account for the undermentioned - viz.
In Contract Certificate for Sept. 1865 - 34252 3/4 C: D:
"I checked the measurements of the above work in the 24th August, and found them to be correct."
Certificate for Oct. - 37252 3/4 C: D:
"Inspected and examined the work herein specified, on the 18th Oct., and found it correct."
Certificate for November 1865 -
herewith forwarded - same entries as last -

Content of the whole of the
superstructure can be ascer-
tained by the actual mea-
surements, it is submitted
that the quantity of mason-
ry done by the Plaintiff
is that exhibited in Statement
dated 27 April 1866, and marked
E, and not that shown in
last Certificate dated 21st Nov.
1865, and marked E, and the
Amount paid for such mason-
ry was therefore recovered on final
adjustment of Plaintiff's ac-
counts.

2^d. That the difference in
the item for Timber as shown
in the last Certificate dated
21st November 1865, and marked
E, and the Statement dated
27 April 1866, and marked F,
is explained by the Plaintiff
having carried on the work
subsequent to the date of the
former document, viz to the date
on which it was taken from
him.

3^d. That the difference in
the item of Earthwork is ex-
plained in the same man-
ner as that for Timber.

4th. That the item of
Metal or River Shingle not
appearing in the last Certificate
dated 21st November 1865, &

This being the case the
Certificates should have
plainly shown a distinc-
tion between payments
for work done, and
advances on account of
work unmeasured -
Whereas all entries of
payments are as values
for work done.

Mr. Smithers eludes
the real point of the question
about the Timber - His
larger measurement of
1653 $\frac{1}{4}$ C^s. 2^s. was not called
in question - But only
his arbitrary reduction
of the Contract price to
10 Annas per C^s. 2^s. where
as One Rupee had been
admitted by him pre-
viously.

Not objected to -

marked E, and having been
entered in the Statement
dated 27 April 1866,
and marked F, is explained
by the material having been
supplied by the Plaintiff
subsequent to the date of
the former document.

5th. That the item of
turping is explained in the
same manner as that for
the Item Metal.

6th. That the difference
in the item entered in the
last Certificate dated 21st

November 1865, and marked
E, under the head of "Dig-
ging foundation and baling
water" is explained by the
erecting a shed" being a
distinct work, the amount
actually paid by the Overseer,
for that work was entered
in latter document under
its correct and appropriate
head to render every item
plain, and, as the sum
entered in the last Certificate
dated 21st November 1865,
and marked E, is equal to
the two sums entered in the
Exhibit marked F under the
heads "Digging foundation
and baling water" and "erect-
ing a shed" it is plain
that the difference is merely

Not objected to -

Do - and not
bearing on the real
question at issue, wh-
concerns only the se-
terms of Masonry
and Timber -

in nomenclature and not in amount.

7th. That the difference exhibited in last Certificate dated 21st November ¹⁸⁶⁵ and marked E, and that shown in the statement dated 27th April 1866, and marked F under the head "Timber" was fully explained

in Memo. from 1st Defendant to Plaintiff dated 27th April 1866, viz: a deduction from the Plaintiffs' amount for Government the expense incurred in reconstructing that portion of the Topanadoo Bridge fraudulently executed by the Plaintiff -

8th. It should be remarked that on the 26th of March 1866, that when the Plaintiff was requested by the 1st Defendant to point out the work done by him the grossly insulting conduct of the Plaintiff at the work spot prevented the 1st Defendant from proving before the witnesses present by actual measurements, that the Plaintiff had been fully and justly paid for all and every portion of work done by him at the Topanadoo Bridge.

Signed J. Smith
Sub Insp. A.P.W.

Having admitted all work done up to Nov. inclusive as good, and paid for 1076 C: 2: 2: at \$1, it is not understood how 10 annas only is allowed for the whole after half as much more is done and admitted - All bad work that had to be replaced should have been absolutely rejected and the full price paid in all good work - The sum finally admitted in the statement of April 1866, is actually less than the sum passed in the Certificate of Nov. 1865, as value for work then done & accepted.

Plaintiff alleges violent behaviour of defendant against him -

Guaranteed
Superintendent

Calcutta -
3rd Decr 1867

Enclosures in letter from
the Superintending Engineer
J. Du to the Secretary to
Govt. No 139 of 3rd December
1867.

12/4/62/67

Papers connected
with the decree passed
in favor of the Thopa.
Madras Bridge Contractor

Enclosures 11.
1 Memo of sums
paid
1 Contract Certificate
1 Copy of Decree
1 Mr Smithers
Explanation

No 139. Superintending Engineer's Office
Camp Calicut 3rd December 1867
From Colonel G. W. Walker R.E.
Superintending Engineer J. Du
To Colonel C. A. Orr R.E.
Secretary to Government D. O. M.
Madras

Sir, I have the honor to report for the information of Government the payment of the sum of Rs 1132-13-11, as per Memo attached, in satisfaction of the decree of the Principal Sudder Ameen of Calicut (whereof copy is annexed) in the matter of the Topanador Bridge Contract whereon report was made in my letter & printed with G.O. No 155 of 23rd May 1867.
2 The case should never have gone into Court at all, and Mr Smithers' conduct throughout is most blamable. The decree of the Court was based solely on a Certificate, copy of which is herewith forwarded; to the entire rejection of all other evidence on the part of the Plaintiff, documentary or verbal. From the style of the judgment on which decree was given, and from Mr Smithers' verbal complaint to myself of the Principal Sudder Ameen's contemptuous manner in announcing it, it has been painfully evident to me that the Public Works Department has suffered in estimation by the unworthy manner in which

its Range officer has acted.

3 Compare the Certificate abovementioned with Mr Smithers official Statement whereon the order to oppose the action was based. It falsifies his declaration that Plaintiff was not a Contractor; and also his measurement of Masonry, and rate for Timber, whereby he sought to deduct from the Plaintiff's Bill sums for which judgement has been given against him in an aggregate of Rs 962-14-6. I have not one word to say for him; on the contrary I must recommend that he be made personally answerable for Rupees 170 the net amount of the costs of the suit; to be recovered from him within the current official year.

4 It would appear that the acting Range officer who took up the case on Mr Smithers transfer from Palghat Range, noticed the discrepancy between the Transfer Certificate and the Statement of measured work subsequently put forward; but instead of putting me in possession of the true facts of the case, he contented himself with writing to Mr Smithers for an explanation, and submit copy of that explanation with my remarks, to shew the persistent wrongheadedness of the man from first to last.

5 Mr Smithers Conduct in this business and in that of the Cochin Light House (vide G.O. No 1177 of 17th April 1867) has quite shaken my confidence in him as a Range officer. In both cases

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he has, by his own confession, failed to check the measurements of his Overseer (the same Mr Dalby, who is his brother in law), while he has supplied the Controller with vouchers certifying that he has measured and paid up for work at each visit. I can only repeat what I before observed with reference to Cochin affairs, that his conduct has almost staggered my confidence in the present Public Works system, which permits of Upper Subordinates holding independent Executive Charges. But I will not allow one exception quite to nullify my general experience.

6 The total sum of Rs 1133 is shown at present as an advance. I propose debiting Rs 963 against the sanction for Road and Bridge work between Calicut and Palghat via Mundom Ilem No 273 of the Budget and recovering the remaining Rs 170 from Mr Sub Engineer Smithers; and request sanction for adoption of such course.

I have the honor to be
Sir

Your Most Obedt Servt

Wm. A. C. Colwell R.E.
Superintending Engineer J^{dn}

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Forward copy of above-
passed to Henry B. 1132-1341
to the Superintendent of Bridge
Construction and Reconstructing
to receive the cost from
the old Congress with
No. 3956-21st Dec 7/87

Dated 3^d Decemr 1843
 Received of
 Constance A. V.

24.139

Wm. Secresty to Genl
1847.

*P. J. W. B. P. B.
No. 1000000000000000
from
The Duke of Cambridge
7.66*

Read the following

From (The) *Supt* & *Engineer* }
J. H. D. } (Here enter No. 139 dated 3rd December 1867)

The Proceedings of the
23rd May last, 1859, the
Government granted authority
for the defence, in the first
instance at the public cost,
of a suit brought by one Syam
Prasad Pillay against
Mr Smith, lately in charge
of the Palghat Range in the
Malabar District, for the
recovery of Rs 2451 - 8 - 6
alleged to be the balance due
for work done to the Sopanam
Bridge on the road between
Palghat & Calicut, and

I would remark that this
f.o. recently passed in this Rev:
depart: refusing the return from
in a case such as this is, of a
copy of the judgment passed -
the Court, has not been observed -
Col Walker has sent up a copy
of the decree only - Thus leaves
the mere result of the litigation
the other would probably
supply reasons

2. 14782002/67 Li. 1877

though in a justification
for the "contemptuous" manner
on the part of the S. I. Ameer
towards Col. Walker admitted
being forced in it. a small
history of cities which are not
shown in these papers.
of their death - order had not
been prepared of paper by
the President. And have prop.
to delay its issue until receipt
of the judgment of the S. I. A.
for at any rate - I would
now call -
Code Civil Code (act. 8 of 59)
Sections 184 and Section 189
as to judgment & decree
W.D.

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(4) P

Para 6 of Col. Walker's letter
 is approved, and that officer
 is requested with reference to
 No. 3820 d/7 Dec/07.
 to obtain & submit the judgment
 of the Principal Supt. Amun
 in the case
 under report,
 and to be
 careful in
 future, when the defence of
 a suit is undertaken on the
 first instance at the public
 expense, to furnish that
 document invariably with
 the Decree of the Court in
 which the suit may be heard.

P. W. 186 . Department.

No.

PROCEEDINGS OF GOVERNMENT.

Dated

19/12/07
 P. W. 186

- To -
- 7 The Supg Engineer, Dist
- 4 . Controller
- 3 . Sect General

24
 4 Dec 24/12/07

Pub. Works 1867 Department

Proc. of Govt. for December
No. 3956

Proc. of the Madras Govt
21st December 1867

No. 467-468