

(1) Number of pages _____

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.**Government of Madras.***Public works* **DEPARTMENT.***1. A*

G.O. No. 3878	Press Mis.
280-81	
Dated 12 / 12	1868.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
12th December 1868.*

No. 280. Read the following letter from Messrs. HINDE & Co., to the Secretary to Government, Public Works Department, dated Vythery, Wynaad, 18th November 1868 :—

We have the honor, herewith, to forward you copy of correspondence between ourselves and Captain Kennedy, with reference to our claim for payment of work executed by us between Vythery and Culpatty. You will note from the correspondence that the principal point at issue is with reference to the foundations of No. 3 Bridge, which we had consented to build at cost price, being allowed twenty-five per cent. additional for supervision. Upon our handing to Captain Kennedy our bill for this work, payment was refused on the grounds that the cost was excessive. Mr. Moon, who had attended on Captain Kennedy, at his own request, to finally adjust our claim, consented on our behalf to accept rates "as for brick-work under water," in lieu of our previous agreement, it being clearly understood :—First, that neither party were to make any calculations. Second, that it was to be binding. The result of this new arrangement was in our favor, and showed a payment due us of Rupees 1,396-4-0, instead of Rupees 723-12-0, as previously claimed. On this result being ascertained, Captain Kennedy raised no objection, and only excused payments being then made on account of his having no cheque book. From his letter, No. 452, August 24th, copy of which is enclosed (written four days after this interview with Mr. Moon), he writes us to the effect that paucity of funds alone disenabled him from settling our claim, and it was not till on receipt of our letter of the same date, wherein we stated our intention to put in our claim for interest, that he attempts to repudiate this his second arrangement. His letter in reply to us re-opens the whole question of measurements, and in his letter to Mr. Moon he refuses to adhere to his acknowledged settlement, but proposes to pay us the amount of our previous claim. To this determination he at present adheres; it is, therefore, clear we have only one of these courses left open to us. Firstly, to take legal proceedings to enforce the agreement. Secondly, to lay the correspondence before Government in hope of receiving redress from them. And we sincerely hope that, by adopting this latter course, we may be saved the necessity of instituting proceedings against the Range Officer.

1. Captain Kennedy, in his letter No. 455, alludes to the relaxations of terms on which we originally undertook the work—relaxations, however, which we believe were also made, certainly offered, to Messrs. Vertue, Minchin & Co. We beg to point out to Government, that when we undertook the contract, a clear understanding existed that we were to receive advances on material at site; we have during the whole contract received only one advance amounting to Rupees 300, and when we applied to Captain Kennedy for an advance upon over a thousand rupees worth of shell, it was refused on the grounds that *it could be removed*, thus our outlay has been throughout materially augmented to the injury of our business, while it has also crippled our efforts to push on the works. That the rates we have received are not as favorable as those paid Messrs. Minchin & Co. Government are aware that those gentlemen did not find the rates remunerative, and will not, therefore, be surprised to learn that ours have been less so. Although we did not anticipate any profit on works we undertook on purely public grounds, we certainly did not expect to be, as we have been, serious losers. The data on which we took

Ans

the contract was supplied by Captain Kennedy, and we have no hesitation in saying that it is signally incorrect. In proof of this we refer Government to the costs (as shown on the 30th of April) for the Connooth bridge *vs.* estimate; and that a total ignorance on this head exists is shown in paragraph 13 of Captain Mullins' report on the ghaut works, wherein he states he found it impossible to arrive at the cost of the work in progress. If this exists on works supposed to be immediately under the control of Captain Kennedy, it is only fair to surmise that it exists to an even greater extent on works not so immediately under him as those on the plateau are.

2. Captain Kennedy has throughout endeavoured to throw discredit on the works executed by us, and, as in the case of the failure of No. 4 Bridge, saddled it on us. Yet we think Government can but exonerate us, when we state that this work was, from first to last, almost *daily* inspected by Captain Raynsford; so far from Captain Kennedy's assertions that the failure of this bridge was from inferiority of workmanship and requisite bond, we have to refer to a conversation our Mr. Hinde had with Captain Mullins, when he pointedly asked this question, inasmuch as had it been attributed to bad workmanship, it is not improbable we should have repaired it at our own cost; but, so far from this being the case, Captain Mullins informed him that it was, in his opinion, owing to faulty foundation that the bridge had been held *together* by the bond until the extra pressure of earth from behind compelled it to give way; this being the case, we were in no way to blame, as we had cut the foundation to the prescribed depth, and had been authorised to build on them, and the fact that the binding had been sufficiently good to hold, for so long a period, the work together, proves, we think, that want of bond was not the cause.

That some inferior work was done on a small culvert we admit, but it was done by bricklayers who had been working for Captain Kennedy, and who in consequence we had purposely engaged. This took place during Mr. Moon's absence from ill-health, and was immediately removed. We allude to this as we are certain that the Range Officer will endeavour on this plea to exonerate himself.

We have now simply to lay before Government the grounds on which we base our claim to the latter settlement for payment of the foundation of No. 3 Bridge.

When Captain Kennedy objected to our claim *on the grounds that it was excessive*, and himself proposed another and fresh arrangement, he must have been of opinion that it would be unfavorable to us, and he would scarcely have entered into it unless he was determined to hold us to the results; if our Agent was, therefore, to be held to the agreement, it is only fair that the Agent of Government should be held to it also.

2nd.—When Captain Kennedy himself proposed, (as is shown in his letter, No. 457, to us, and in extracts of his letter to Mr. Moon,) that we should accept the rates as for *brick-work under water*, it is clear that he did not consider such a rate unreasonable; his sole objection now is that it is more than the amount of our previous claim, which claim was what it had actually cost us, and proves how reasonable it was.

3rd.—Apart from Captain Kennedy having committed himself to the rates we now claim, we think such a demand not unreasonable, for when we undertook to do this work for Captain Kennedy at cost price, it was at some inconvenience to

ourselves; we, however, anticipated that the completion of the bridge would have been left on our hands this would have enabled us to have got *back* some of the heavy preliminary expenses that the commencement of such a work naturally entails. We have given up the contract upon the suggestion of Captain Mullins and by the desire of Government, and from a feeling that, after what has occurred, the interests of our community will not be advanced by our retaining it.

In conclusion, we have again to refer to his letter, No. 457, wherein he professes to say that we consented to leave all matters, relative to No. 3 Bridge, to his decision; this is certainly incorrect. The bridge was originally to have been sixteen feet span, with timber superstruction, but when Captain Kennedy found that the water during a whole monsoon was carried off by an eighteen-inch drain we had cut across the road, he proposed to build an arched culvert in lieu of the proposed bridge; to this we raised no objection, but merely pointed out that we had consented in our contract to do a certain amount of arch-work, which we were prepared to do, but as we did not consider the rates so remunerative as timber superstructions, we claimed higher rates for all *additional* arch-work, over and above what we consented to do. This Captain Kennedy refused, and put a stop to our works. As we did not wish that our private interest should clash with public interest, we consented to proceed with the work, leaving our claim to additional rates to the further consideration and decision of Captain Kennedy, who had verbally consented to reimburse us for any clearly proved loss we might sustain by the alterations as for a timber superstruction to an arch.

With the consent of Government we will lay our claim for interest and other minor items before them direct, as we are desirous to put an end to all further correspondence or dealings with the Executive Engineer at Vythery.

No. 281.

ORDER THEREON, 12th December 1868, No. 3,878.

CIVIL WORKS, No. 37.

1. From these papers it would appear that Messrs. Hinde & Co. having undertaken to build the foundations of a bridge, No. 3, on the road between Vythery and Kulputty, presented their bill of Rupees 723-12-0 for the work, in accordance with their agreement that they should be paid the cost price *plus* 25 per cent. for superintendence, and that, the amount being objected to by Captain Kennedy as excessive, a new agreement was come to between him and Mr. Moon as the representative of Hinde & Co., to allow them the value of the work by measurement at the rates fixed for brick-work under water. The result was that Messrs. Hinde & Co. became entitled to receive Rupees 1,396-4-0 instead of their first claim of Rupees 723-12-0. Finding this, Captain Kennedy wishes to withdraw from his engagement on the plea that he acted hastily and without consideration, and that, as he is willing now to pay Messrs. Hinde & Co. the sum they themselves claimed, they would be no losers. Messrs. Hinde & Co. however hold him to his second agreement, and, as they would have been losers had the result of it been unfavorable to them, so they maintain their right to any benefit that it has given them.

2. Presuming that Captain Kennedy's case is fully stated in his letter to Messrs. Hinde & Co. of the 26th August last, the Government are of opinion that

*Proceedings of the Madras Government, Public Works Department,
12th December 1868.*

he cannot now equitably recede from his engagement, and they accordingly direct that Messrs. Hinde and Co.'s demand of Rupees 1,396 be paid. His Excellency in Council however trusts that the result which has followed Captain Kennedy's want of prudence will induce him to be more cautious in future.

(True Extract.)

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

To Captain Kennedy.
To the Controller of Public Works Accounts.

Exd. S. T. Augustin.

*Special Exe: Engineer's Office
Wynaad Lakshy.
24th August 1868.*

No 452.

*To
Messrs Hinde & Co
Vythery
Gentlemen*

*I find I have not sufficient funds
at my credit for the current month in the
Calicut Treasury so that I am unavoidably
precluded from settling up the work account
for your work till a further amount has
been placed to my credit, which will be in
the course of next week*

*I have the honor to be
Gentlemen*

*Your most obedient Servt.
(Signed) R B Kennedy. Captain
Spl. Engineer Wynaad.*

24th August 1868

Capt Kennedy.

Lt Engineer. Ladakh.

Sir

We have the honor to acknowledge the receipt of your letter of this day's date informing us that you still are unable to pay us for work which we have performed.

We have now been kept out of our money for about three months and we beg to notify to you that on settlement of our dues we shall make a demand for interest due from the dates of measurement of the different works we have performed.

We have the honor to be

Sir

Your obedient Servants
(Signed) Hindle & Co
(True copy).

20/1/1868

20/1/1868

No 455

Special Engineman Office

Myraan Lachadee

24th August 1883

To Messrs. Bunde & Co.

My Dear

Gentlemen.

Any claim you may consider yourselves entitled to make for interest shall be prepared to submit for approval of Government, but it is not an item that I am competent to allow on my own responsibility. I would wish however to remind you that there have been some relaxations in the terms on which you originally undertook the work such as a rate given for excavating foundations, and the permission to use ground made for table bricks; and with reference to the principal work for which there will be a payment due to you viz No 3 Bridge I have yet to make an examination of the work done, and am quite ready to do so at any time. As you will have it in your power for inspection of your goods on twenty four hours notice.

I am etc

Sgt. R. H. Kennedy

This letter accompanied me to the Moon
apudatus in agreement addition to
No 3 Bridge - etc.

1883/4 5 8 4 100

and

25th August 1868.

To Capt. Kennedy.

S. E. Engineer. Lakadi.

Sir

We have the honor to acknowledge the receipt of your letter No 455 dated 24th Inst and we have also received from our agent Mr. Moon your letter to him of this day's date.

2. We have to refer you to your letter No 437 dated 17th Inst. in which you inform us that on our agreeing to give up the remainder of our contract, you have received orders from Government to pay us for all work finished or partly executed.

3. At your own request Mr. Moon attended at your office and with yourself went through all the measurements and calculations of the work for which payment was due us, for which money you informed Mr. Moon that you would send us a cheque as soon as you had checked the account and received a cheque Book you were daily expecting.

4. In your letter No 452 dated 24th August or 7 days after your previous communication and 4 days after

Mr. Moon attended you, you inform us that paucity of funds alone precluded you from settling our account making no mention that any further examination of our work was necessary.

5. In the course of yesterday however your views appear to have undergone considerable change, and it is now no longer a question of the arrival of a cheque book.

R. 17. 6. 5. 24/68

or

and

or of want of funds, for in your ~~reply~~ letter now under reply you reopen the whole matter of measurements and in your letter to Mr Moon repudiate your own settlement of the monies due us.

6 We have adhered to our part of the agreement and have thrown up the remainder of our contract, and we must decline having anything ^{further} ~~more~~ to do with No. 3 Bridge, with the exception of receiving the money due us according to your own arrangement with Mr Moon and the giving you a receipt for the same. You might and ought to have examined the work on this Bridge long since, and now we decline spending any more money on it simply for your satisfaction.

7 We have also to state with reference to your letter to Mr Moon that we decline to allow any attestation to be made in the amounts already acknowledged by you to Mr Moon to be due us.

We have the honor to be

Sir

Your obedient servants

(Signed) Wm. & Co

P.S. We may mention that as soon as we have been paid the Principal due us, we shall be prepared to lay our claim for interest before Government who will doubtless give you an opportunity of making any remarks you may deem fit but we must decline any further correspondence with you on the subject.

(Sgd) W. & Co

(True copy)

Wm. & Co

Special Eng. Engineer's Office
No 457
26 August 1868
Messrs. Mudge & Co.
Gentlemen

The cost of bating out the water in order to enable me to make the necessary inspection of that portion of the work in No 3 Bridge which has not yet been examined will be so very trifling, it is not worth discussion, and I will have it done myself, letting you know the result of my inspection, I think you will find that I was never asked while the work was proceeding to inspect this part, I presume because before the transom set in and stop the work, Mr. Mow did not consider sufficient had been done since the previous work had been seen and measured by Major Rainsford, to require another inspection. I do not think there is anything else requiring settlement except your objection to my withdrawing from the proposal made without sufficient consideration regarding the work below the foundations of No 3 Bridge. I must first say that yourselves and Mr. Mow are in error in your impression that on my interview with

27/10/85

with the latter on Thursday everything was finally settled; on the contrary the intention of that interview was that I might take down from Mr Green the particulars of all outstanding claims on your part, for subsequent comparison and check of course with a view to final settlement.

With regard to No 3 Bridge Mr Moon produced two Memoranda of measurements one of which he told me was copied from Major Painsford's, but the other was entirely his own - the latter being the part not yet inspected. Owing to the absence of my head clerk I have been unable to find Major Painsford's original certificate, but my recollection corroborating Mr Moon's statement of the measurement having been taken I then accepted his copy - the other part however, never having been inspected or measured by anyone on behalf of Government, before I saw it, the quantities as I have to do in my accounts it is necessary that both should be done.

This I think conclusively proves that no final settlement could have been possible on Thursday.

3. With regard to the work below the foundations I have not reopened any question of measurement, it is merely a question of rates. It will be in your recollection that it was agreed that such extra work for which no rates were specified

specified, should be paid for at 25 per cent above actual cost, qualified on my part by a proviso that the work people should be required to do a fair day's task, this was demurred to by you as calculated to lead to difference of opinion, but you subsequently by your letter offered to leave all matters in dispute to my decision in place of the arbitration you had at one time proposed. I think certainly did think that the arrangements made by Mr Moon were not calculated to carry on the work properly and that to default of better were due the frequent slips of the sides of the excavation, and the long time taken in execution of the work: on these grounds, I objected to the bill he presented of Rs 723-12 - but proposed to leave the case for Captain Millins to arbitrate: a mode of settlement which was understood generally refused by you.

When I met Mr Moon on Thursday I renewed my objections, but being anxious not to prolong disputes, I made a suggestion to put an end to the difficulty. When I found the effect of this would be a serious overcharge against Government I own I was wrong not at once to have withdrawn and I regret very much that my want of consideration has led to disappointment on your part, but as I now agree to pass your own claim, I cannot see that you can consider yourselves wronged; and I think if

21/

serious to bring about a speedy and amicable settlement agreed to enter upon mutual responsibility with you / into a fresh agreement / thereby cancelling the previous one / which eventually proved to be in our favor / showing how moderate our previous demands had been / but because it is in our favor and for no other reason you consider yourself justified to repudiate it - you now offer to adhere to the previous contract, even suppose we accept it what guarantee / may we ask / have we that after 24 hours further consideration you will not repudiate that also? Nor does it end here - for if we once admit the principle that you are at liberty to repudiate all or any arrangements we may make with you if unfavorable to you there is nothing to prevent you in repudiating the rates you consented to pay us for brick work as excessive thus we may after 24 hours further consideration be brought in debt to Government; or by repudiating your letters altogether we might subject ourselves to prosecution for stopping the Government road

We entirely differ from you in thinking that if we hold you to your acknowledged agreement that it would be somewhat sharp practice - it is simply absurd - for both you and Mr Moon when entering into the fresh agreement did so under an uncertainty as to what the results would be. it is clear therefore that if it is sharp practice on our parts to avail ourselves of favorable results it would have been equally sharp practice had you done so providing the new arrangements had been in your favor - if so why have made the arrangements at all?

231
One of two things is clear either you are or you are not the authorized agent of Government— if you are you have legally committed them to your agreement as the deeds of an accredited agent are binding and we consider ourselves justified in binding them to it in the same way you would have held us to Mr. Moon's settlement, if you are not their legal representative you had no authority to treat with us at all and have been deceiving us throughout as to the extent of your power but this we have reason to know is not the case; and if you have made a mistake you made it deliberately and with your eyes open and you must take the result on your own shoulders— if you still persist in repudiating your own acts and deeds we cannot in justice to ourselves consent to treat with you any longer further and shall be compelled to submit this question together with all the correspondence and our claim for interest to Government direct.

We have the honor to be
Your most obedient servants
(Signed) Winde Leo

P.P. 45.84/68.

25th August 1868

My dear Capt Kennedy

I am in receipt of your favor dated 22^d & 25th Inst and in reply to the former I beg to state that the contents of cuttings therein contained agree with those made up by me from the measurements taken by you on the 21st Inst showing a balance due me of Rs 97-10-7 which I shall be happy to receive as it is better than my having to pay you Rs 33-6-9 which amount your letter of the 10th Instant showed as being due to you and which results you seemed quite as confident of, being correct as you are of those you now send, but how 903 c. yds of cutting can swell into 1600 c. yds. of Bund or nearly three times its bulk I have yet to learn. I shall have to settle with my maistry, to whom I out let the contract, according to my own measurement, and two annas a square yard for turfing, at which rate he took the contract as, knowing the shape of the cutting before he commenced work. I feel convinced my measurements are correct and my having been payed half the amount due is no reason why I should do the same by my maistry.

I shall be much obliged if you will return the section and measurements sent by me as I intend cutting a trench across the bund to ascertain the real width and height of the old embankment for my own satisfaction before settling with my

Maistry

V

27/1
 I must however beg to be excused from having any more
 business transactions with or doing any more work for you
 as after your letter of yesterday's date I think you will
 see that it is impossible as I attended you on the oc-
 casion therein alluded to at your own request as agent
 for Messrs. Minde & Co. I have handed your letter over
 to them for reply, on my return I gave a report of
 the results of the interview and there my responsibility
 ended, but you must allow me to observe that after the
 conversation that took place between us, I would, had
 I been in your place, sooner have paid the money out
 of my own pocket than have retracted my word once
 pledged, the only mistake I made & for which Messrs.
 Minde & Co. blame me was my not getting a copy of
 the bill we drew up together with your signature
 to it, but I unfortunately mistook my man, however
 if you like to send me one now I shall be happy
 to keep it with your subsequent letter in memory of
 the transaction and as a future guide to all innocent
 and confiding individuals like myself who have to do
 with government represented by their range officers.
 With regard to the bricks Messrs. Minde & Co. promised
 per thousand in the kiln as they stand taking bad &
 good payment to be made before delivery.
 I remain
 Yours truly
 (Signed) Chas. F. Moore
 P.S. When at your Bungalow the other day

27/1
 I must however beg to be excused from having any more
 business transactions with or doing any more work for you
 as after your letter of yesterday's date I think you will
 see that it is impossible as I attended you on the oc-
 casion therein alluded to at your own request as agent
 for Messrs. Minde & Co. I have handed your letter over
 to them for reply, on my return I gave a report of
 the results of the interview and there my responsibility
 ended, but you must allow me to observe that after the
 conversation that took place between us, I would, had
 I been in your place, sooner have paid the money out
 of my own pocket than have retracted my word once
 pledged, the only mistake I made & for which Messrs.
 Minde & Co. blame me was my not getting a copy of
 the bill we drew up together with your signature
 to it, but I unfortunately mistook my man, however
 if you like to send me one now I shall be happy
 to keep it with your subsequent letter in memory of
 the transaction and as a future guide to all innocent
 and confiding individuals like myself who have to do
 with government represented by their range officers.
 With regard to the bricks Messrs. Minde & Co. promised
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 good payment to be made before delivery.
 I remain
 Yours truly
 (Signed) Chas. F. Moore
 P.S. When at your Bungalow the other day

23/

29th Aug 68.

Vythery

Further discussion would be superfluous
but on the 1st Prox. I will forward you for sig-
nature the receipts for amounts I consider
completed wholly or in part.

I have the honor to be
Gentlemen

(Sgd) R B Kennedy. Captain
Spl. Lt. Engineer
in charge of Wynaad

much from a letter Wm. Brown from Calif
Memorandum

Next as to the question of rates for the work
has bridge - If I will first ask you to
consider was it not perfectly understood by
you that if you were to be paid the actual
cost, with 25% per cent added? Did you
ever think of claiming more? and when
you came to me on Thursday would you
have been perfectly satisfied by my
giving to your bill for Dec. 23. 12.00 without
objection or enticement?

You are aware that I had objected to the
above amount and that on Thursday I
renewed the objection and named the
grounds on which I was of opinion that
the cost had been needlessly heavy. I think I
can make no mistake in assuming your
replies to the above, as they can be but one
way. I allow that I did by way of
getting rid of a troublesome dispute suggest
a mode of dealing with the question, it was,
however, without consideration and, however,
much I must consider myself bound when
simple personal interests were concerned. I
think no one would hold me justified in
permitting any consideration to influence
my strictness to the proposal at the cost
of the Government when I am quite certain consent
especially, when I am quite certain consent
would be refused, if asked. You will not

1897/11/18-2/11/18

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]

dispute that every Agent is liable to have his
acts repudiated by his Principal, if those
acts go beyond the legitimate power of such
Agent but I do not think any one would
hold an Agent wrong, if before he concluded
such a transaction he were to acknowledge
he had acted beyond his powers and withdrawn
from his proposal: In this case I hold myself
specially at liberty to do so, as by my withdrawal
no wrong or injustice is inflicted. If
it had been your claim and I had agreed you
would have had more grounds to go on. I
pay you all you asked and thought you may
be irritated at the disappointment caused by
my first want of consideration I do not
consider you have any right to ~~have~~ think
yourself as wronged

[Faint handwritten marks or text.]

[Faint handwritten text at the bottom right.]

Not back from E. Allen of
Babson House to me

27/10-5-21/11/12

Receipt of final settlement for work done
on Culvert No. 8

21-6-6

1 Go on Culvert No. 19

23-13-3

1 Go on Do No. 18

669-14-4

715-2-1

490
Special Eng. Engineer's Office
Wynand LaRade
September 1868

Refers Glende Co.
Grattemeror

I beg herewith to forward
you a cheque for the amount of the receipts
named in the margin. I propose inspect-
ing the measurement portion of No. 3
Bridge this day, having already sent pro-
prietors out the water, and will com-
municate the result tomorrow and be
prepared to pay for what may be due on
the masonry work of that Bridge.

I regret I cannot alter my
decision regarding the extra work, and
intirely repudiate the existence of any
alleged agreement to the contrary; I have
tendered payment in accordance with
your own bill, and leave you to take any
further measures you please.

With reference to No. 4 Bridge
I will refer to the measurements of the
foundation of right abutment, and be
prepared to pay for the same; but I object
to all the other charges in the first
place

11th Sept 1868

To

Capt. Kennedy
S. E. Engineer
La Rade.

Sir

We have the honor to acknowledge the receipt of your letters of the 8th & 9th Inst numbered 490 & 492 respectively. The latter hands in receipts for signature for work performed on Nos: 4 & 3 Bridges. We sign these and now return for payment but you will please understand that we only acknowledge these to be part payments for work performed, notwithstanding any mention to the contrary made in the receipts sent us for signature.

On receipt of this money we still demand the sum of Rs 1346-4-0 for work done on No 3 Bridge; and also the amount noted by us in the memorandum attached by us to the receipt for work on No. 4 Bridge already returned to you.

With reference to para 2 of letter 490, we much regret that you still repudiate the existence of an agreement in final settlement for Bridge No 3 which was made between our agent Mr Moen and yourself, as it leaves us no other resource but to apply elsewhere for redress. We are at a loss to know by what other name than an agreement you can call such an arrangement which was at least to be adhered to by Mr Moen, whatever was the result, by your own expressed stipulation.

With reference to Para 3 we can only say that the charges made

place, the backing filled in without or those of the inspecting Officer. I am however prepared notwithstanding to pay for filling in, in accordance with measurements of space between the wing walls at the agreed upon rate. This measurement and the preceding one I will communicate to you tomorrow when I inform you of the result of my inspection of the work of No. 13 Bridge.

I cannot allow the charge made for baling out foundations for inspections, that being a part of your obligation as Contractors.

I have the honor to be, Gentlemen,

Your most obedient Servant
(Sgd) P. B. Kennedy Captain
S. E. Engineer La Rade.

29/9/68

made on for work done by either your own or Gap Ruginsford's
directions to Mr. Moore verbally. We cannot allow that it is part
of the obligations of Contractors to clear foundation from water
3 times when on inspection, if made the first time, would
have saved the expense of the other two bakings.

We have the honor to be

Sir

Your obedient Servants
(Signed) Anne Ples
(Anne Lespy).

21/11/18

21/11/18

Se

Col. W. R. L.
Secretary Public Works Department
Madras.

Sir, We have the honor herewith to forward you copy of correspondence between ourselves and Capt. Kennedy with reference to our claim for payment of work executed by us between Vythery and Culcutty. You will note from the correspondence that the principal point at issue is with reference to the foundations of No. 3 Bridge, which we had contracted to build at cost price, being allowed 25% additional for supervision. Upon our handing to Capt. Kennedy our bill for this work, payment was refused on the grounds, that the cost was excessive. Mr. Moon who had attended on Capt. Kennedy at his own request to finally adjust our claim, constituted our behalf to accept ^{of} ~~as~~ for breach of contract under water in lieu of any previous agreement, it being clearly understood - 1st That neither party were to make any calculations - 2nd That it was to be binding. The result of this arrangement was in our favor and showed a payment due us of Rs. 1396. 4. A statement of Rs. 723. 12. 6. as previously claimed - on this result being ascertained Capt. Kennedy raised no objection and only refused payment being then made on account of his having no Check Book. From his letter No. 152. Dug. 24 copy of which is enclosed (written to days after this interview with Mr. Moon) he writes us to the effect that privacy of funds alone disabled him from settling our claim - and it was not till our receipt of our letter of the same date wherein we stated our intention to put in our claim for interest that he attempts to repudiate this his previous arrangement. His letter in reply to us proposes the whole question of measurements, and in his letter to Mr. Moon he refuses to adhere to his acknowledged settlement but proposes to pay us the amount of our previous claim. So this determination he at present

Rs. 723. 12. 6.

Rs. 723. 12. 6.

adheres; it is therefore clear we have only one of this
courses left open to us. Firstly to take legal proceed-
ings to enforce the agreement. Secondly to lay the
correspondence before Government in hope of receiving
redress from them. And we sincerely hope that by
adopting this latter course we may be saved the
necessity of instituting proceedings against the
Range Officer

No 1. Capt Kennedy in his letter No 455 alludes
to the relaxations of terms on which we originally
undertook the work. Relaxations however which
we believe were also made. Certainly offered to Messrs.
Vernon & Minchin &c. We beg to point out to Govern-
ment that when we undertook the contract a clear
understanding existed that we were to receive ad-
vances on material at site. we have during the whole
contract received only one advance amounting to Rs 300,
and when we applied to Capt Kennedy for an advance
upon over a thousand Rupees worth of shell, it was
refused on the grounds that it could be procured. Thus
our outlay has been throughout materially augmented.
to the injury of our business, while it has also suppli-
ed our efforts to push on the works. That the rates we
have received are not as favorable as those paid Messrs.
Minchin &c. Government are aware that those Gentlemen
did not find the rates remunerative and will not
therefore be surprised to learn that ours have been less
so. Although we did not anticipate any profit on
work we undertook on purely public grounds we
certainly did not expect to be as we have been,
serious losers. The data on which we took the contract
was supplied by Capt Kennedy and we have no
hesitation in saying that is signally incorrect.
In proof of this we refer Government to the costs (as
shown in the 30th of April) for the concrete bridge
versus estimate and that a total ignorance on this
head exists is shown in para 13 of Capt. Mullins
report on the 1st of that work, wherein he states he
found it impossible to arrive at the cost of the work
in progress. If this work on works supposed to be
immediately under the control of Capt Kennedy it
is only fair to surmise that it exists to an even greater
extent on works not so immediately under him
as those on the platform are.

No 2. Capt Kennedy has throughout endeavored

to throw discredit on the work executed by us,
and as in the case of the failure of No 4 bridge
saddled it on us. Yet we think Government can
but see on a scale when we state that this work
was from first to last almost daily inspected by
Capt Raynsford. so far from Capt Kennedy's assertion
that the failure of this bridge was from inferiority
of workmanship and requisite bond we have to refer
to a conversation our Mr. Nind had with Capt Mullins
when he pointedly asked this question was much
as had it been attributed to bad workmanship
it is not improbable we should have repaired it
at our own cost; but so far from this being the case
Capt Mullins informed him that it was in his
opinion owing to faulty foundation: that the
bridge had been held together by the bond
until the extra pressure of earth from behind compelled
it to give way; this being the case we were in no
way to blame. as we had cut the foundation to
the prescribed depth and had been authorized to
build on them. and the fact that the building
had been sufficiently good to hold for so long a
period the work to gether proves we think that want
of bond was not the cause.

That some inferior work was done on a small extent
we admit. but it was done by bricklayers who had
been working for Capt Kennedy and who in conse-
quence we had purposely engaged. This took place
during Mr. Moon's absence from ill health, and
was immediately removed. We allude to this as we
are certain that the Range Officer will endeavor
on this plea to exonerate himself.

We have now simply to lay before Government
the grounds on which we have our claim to the
latter settlement for payment of the foundation
of No 3 bridge.

When Capt Kennedy objected to our claim
on the grounds that it was excessive and himself pro-
posed a different and fresh arrangement he must have
been of opinion that it would be unfavorable to us.
and he would scarcely have entered into it unless
he was determined to hold us to the results. If
our Agent was therefore to be held to the agreement
it is only fair that the Agent of Government should
be held to it also.

2nd When Capt Kennedy himself proposed
(as is shown in his letter of 1857) to us and in extracts
of his letter to Mr. Moon) that we should accept the
rates as for crierover under water it is clear that
he did not consider such a rate unreasonable, his
sole objection now is that it is more than the amount
of our previous claim - which claim was what it
had actually cost us and seems quite reasonable it is ad.
3rd I part from Capt Kennedy having committed
himself to the rates we now claim, we think
to such a demand not unreasonable - for when we under-
took to do this work for Capt Kennedy at cost price
it was at some inconvenience to ourselves, we however
anticipated that the completion of the bridge would
we have been left on our hands. this would have enabled
us to have got back some of the heavy preliminary
expenses that the commencement of such a work naturally
entails. We have given up the contract upon the suggestion
of Capt Kennedy and by the desire of Government
and from a feeling that after what has occurred the
interests of our community will not be advanced
by our retaining it.

In conclusion we have to again refer to his
letter of 1857 wherein he professes to say that we
have consented to leave all matters relative to the Bridge
to his decision; this is certainly incorrect. The
Bridge was originally to have been 16 feet span
with timber superstructure but when Capt Kennedy
found that the water during a high monsoon was
carried off by an 18 inch drain we had cut
across the road, he proposed to build an Arched
culvert in line of the proposed bridge. This
we raised no objection - but merely pointed out
that we had consented in our contract to do a
certain amount of arch work - which we were
prepared to do. but as we did not consider
the rates so remunerative as timber superstructure,
we claimed higher rates for all additional
arch work over and above what we consented
to do. This Capt Kennedy refused and put a
stop to our works. As we did not wish
that our private interest should clash with
the public interest we consented to proceed with
the work - leaving our claim to additional
rates to the further consideration and decision
of Capt Kennedy who had verbally consented

to reimburse us for any clearly proved loss we
might sustain by the alterations as for a
timber superstructure, to an Arch.

With the consent of Government we
will lay our claim for interest and other minor
items before them direct as we are desirous
to put an end to all further correspondence or
dealings with the Ex. Eng. at Vytherry

We have the honor to be

Sir

Your obedient Servants

Frederick C. C.

Vytherry

Indrag

18 November 1868

Public Works Department
 No 3878/80
 Proceedings of the Madras Government
 Under date the 12th Decr 1868
 Read the following

From Hinde & Co. 14th Decr 18th Novmbr/68

From these papers
 it would appear that
 Messrs Hinde & Co. having
 undertaken to build the
 foundations of a bridge,
 No 3, on the road between
 Vythery and Kulpatty, pre-
 sented their Bill of Papers
 723-12- for the work in
 accordance with their
 agreement that they should
 be paid the cost price plus
 25 per cent for superintendence,

and

and
 No 280
 C-265 Novmbr/68 Decr 9 68
 Dec 3878-120000
 1868
 By order of the
 Public Works Department
 for making correction
 done relative to
 their claims for pay-
 ment for the work
 executed by them
 between Vythery and
 Kulpatty in Mysore.

and that the amount
being objected to by
Captain Kennedy as
excessive a new agree-
ment was come to be-
tween him and Mr. Moon,
as the representative of
Hinde & Co, to allow them
the value of the work
by measurement at the
rates fixed for brick
work under water. The
result was that Messrs
Hinde & Co became entitled
to receive Rs. 1396-4-0 in-
stead of their first claim
of Rs. 723-12-0. Finding
this, Capt. Kennedy wishes
to withdraw from his

engagement on the plea that
he acted hastily and without
consideration; and that,
as he is willing now to
pay Messrs Hinde & Co
the sum they themselves
claimed, they would be no
losers. Messrs Hinde & Co
however hold him to his
second agreement, and as
they would have been losers
had the result of it been
unfavourable to them, so
they maintain their right
to any benefit that it has
given them.

Presuming that
Capt. Kennedy's case is
fully stated in his letter

a. Messrs. Knide & Co. of the
 26. August last, the
 Capt. are of opinion
 that he cannot now
 equitably recede from
 his engagement, and
 they accordingly direct
 that Messrs. Knide and
 Co. demand of Rs. 1396
 be paid. His Excellency
 in Council however
 trusts that the result
 which has followed
 Capt. Kennedy's want
 of prudence will in-
 duce him to be more
 cautious in future.

To Capt. Kennedy!
 Cont. P.R. Accts!

Recd 14/12/68

Wk

The claim of Messrs. Knide & Co.
 for the highest sum of Rs. 1396-4-0
 must stand, he met.
 It is a pity that Captain Kennedy
 creates an unpleasant for all their
 writing which must interfere
 with the execution of work
 that he was especially
 & defunct to push
 on.

I presume that Capt.
 Kennedy's case is fully
 stated in his letter
 to Messrs. Knide & Co.
 of Aug. 26. I included
 in the account of the
 circumstances. If he
 has no more to say on
 his side I think that
 he cannot equitably
 recede from his demand
 and that he must
 simply pay the
 demand of Messrs.
 Knide & Co. for
 Rs. 1396 still. But
 I am sure that the
 money is not to be
 paid. I have no objection
 to the amount being
 paid to the contractor
 by the Government.

The Government is pleased
 to have the work done
 for the Government.
 For orders.
 It would appear
 that Messrs. Knide & Co.
 having undertaken to
 build the foundations
 of a bridge at the
 road between Vythery
 and Kullatty, presented
 their Bill of Rs. 723-12-0
 for the work in accord-
 ance with their agree-
 ment that they should
 be paid the cost price
 plus 25 per cent for
 superintendence, which
 was objected to by Captain

Kennedy as excessive,
a new agreement was
come to between him
and Mr. Moore, as the
representative of Hinds & Co.,
to allow them the value
of the subscription.

Subsequent to the sale
of the brick work
struck, the result was that
Hinds & Co. became en-
titled to receive \$1396.
instead of
their first claim of \$723.
12. In considering
this Captain Kennedy
wishes to withdraw from

his engagement on
the plea that he acted
hastily and without
consideration, and that
as he is willing now
to pay Messrs. Hinds &
the sum they themselves
claimed, they would be
no losers. Messrs. Hinds
however hold him to
his second agreement,
and as they would
have been losers had
the result of it been
unfavorable to them, so
they uphold their right
to any benefit that it
has given them -

in the morning
I went to the
house of the
old man
and found him
very well
and happy
and I was
glad to see
him. He was
very old
and had
many
years of
life.
He was
very
kind
and
friendly
and I
was
glad
to
see
him.
He was
very
old
and
had
many
years
of
life.
He was
very
kind
and
friendly
and I
was
glad
to
see
him.

1868

1868

1868

1868

53 533

Cue 4532;
Govt. of 1868 Madras.

PUBLIC WORKS.

To *Captain Kennedy*

Ac. Ac. Ac.

Dated *1*th

Recd.

Encl

G. O. 12th Decr 1868, No 3878

Nos. 280 & 281

Bridge The payment of Rs. 1396
to Messrs Hindle & Co. on account of
building the foundations of a
bridge No. 3, on the road be-
tween Vythery and Kulpatty,
Sunderland.