

(1) Number of pages _____

(2) Date of repair 2-6-47

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.*Il***Government of Madras.***Public Works* **DEPARTMENT.**

G.O. No. 2889	Press
553-54.	~~Mis.~~
Dated 30. 11 —	1870.

Not to be folded or roughly handled*Q. /*

12

*Proceedings of the Madras Government, Public Works Department,
30th November 1870.*

No. 553. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Public Works Department, dated Tanjore, 24th November 1870, No. 711 :—

I HAVE the honour to inform you that one Vythelinga Pillay, a Contractor, has filed a suit against Mr. Supervisor Donaghue in the Trivalore District Munsiff's Court for a sum of Rupees 756-12-0, said to be due for certain works executed on the Moodicondanaur south bank in No. 6 Range, and the case is to come on for hearing on the 6th December next.

2. The particulars of the case are as follow :—One Chidambaram Pillay came forward as Contractor, but, by reason of his old age he appears to have

requested that his son's name might be entered in the Contract Bond, and accordingly an agreement was entered into with Vythelinga Pillay on the 19th March 1870 for executing certain works on the Moodicondanaur south bank, amounting to Rupees 2,097-9-8, the terms being that the works should be completed by

Vide translation of Agreement.

the 31st May, subject to a penalty of Rupees 300 in case of failure.

3. From the report of the Range Officer it is observed that the Contractor failed to complete the works according to the terms of his agreement; the work executed by the Contractor up to 31st May, when the contract time expired, amounted only to 8,156 cubic yards against 38,049½ cubic yards specified in the agreement, and of this only 1,853 cubic yards are said to be complete, the remainder 6,303 cubic yards being incomplete; that the contractor was directed to cease work after the 31st May, and as the work executed up to that date as above stated amounted only to Rupees 444-2-3, he was asked to sign a certificate for that sum and to receive Rupees 144-2-3, being the difference after deducting Rupees 300 on account of penalty for breach of contract; the Contractor refused to sign the certificate, as he was not willing to forfeit Rupees 300 from the amount due to him, and has filed the suit for Rupees 756-12-0 against the Supervisor. It is stated that the Contractor has executed work for about Rupees 100 subsequent to 31st May, although he was warned by the Supervisor in writing (*vide* enclosure marked C.) that any work done after that date would not be accepted or paid for; the Supervisor has not measured the work done after the 31st May.

4. The Contractor states in his plaint that the time for completing the works was extended up to 30th June in the order issued by the Supervisor in the name of the Contractor's father (*vide* enclosure marked A.) on the Contractor representing that the works could not be completed by the 31st May as entered in the agreement. The Supervisor states that no such representation was made to him by the Contractor, and 30th June was entered in the order by an error, as the date mentioned in the agreement for completing the works, instead of 31st May, owing to the contract agreement not being with him at the time. The text of this order clearly shows that the entry, 30th June, is erroneous, and that it should

Proceedings of the Madras Government, Public Works Department,
30th November 1870.

have been 31st May, as it runs as follows:—"And should the work not be completed by the 30th June as entered in your agreement."

5. No representation or petition on the part of the Contractor was made to me before he filed the suit. It will be observed that the Contract deed has not been registered, and that while it is drawn up in the name of Vythelinga Pillay the order A. is addressed to his father Chedambaram Pillay, and in this order the 30th June is stated erroneously to be the date on which the work is to be completed, though, as stated above, the following sentence, "as entered in your agreement," indicates clearly that it was not intended to extend the period within which the work was to be executed. This error however, which apparently was not detected till after the stoppage of the work, has been seized upon by the plaintiff. Whether the inaccuracies adverted to above will be held legally to have invalidated the contract or not, I am not aware; if so, it will be necessary to pay for the work executed and to settle the matter amicably, but if not I beg that Government may sanction the defence of the Suit, and approve of the enclosed draft answer.

6. I cannot but remark that Mr. Donaghue's carelessness with reference to the points noted above is very reprehensible.

7. Translations of the documents marked A., B., C., D., E., and F., adverted to in the defence, are enclosed.

No. 554. ORDER THEREON, 30th November 1870, No. 2,889.

ESTABLISHMENT, No. 63.

UNDER the circumstances brought to notice in this letter His Excellency the Governor in Council will not object

to the suit instituted by Contractor Vythelinga Pillay against Mr. Supervisor Donaghue in the District Munsiff's Court at Trivalore being in the first instance defended at the public expense, but the question as to whether the charges shall be ultimately borne by the State or by the defendant will be reserved for after decision.

2. The Government concur with the Superintending Engineer in considering that Mr. Donaghue is much to blame for the carelessness displayed by him in allowing the mistakes which are noticed in paragraphs 4 and 5 to have occurred.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,

Secretary to Government

To the Superintending Engineer, 6th Division.
" Controller of Public Works Accounts.

Lrd. S. T. Augustin.

Document. A.

No 214.

I.

Chedambaram Pillay Contractor
of the Moodicondavarur South Bank.

The Ministry reports very unfavorably of your work. It appears that only 35 Cods are employed and only 2400 Cods of work have been done by you of which only 400 Cods were executed during the current month. You are now warned about the slow progress of the work and should the work not be completed by the 30 June as entered in your agreement the fine of Rupees 300 therein mentioned for breach of contract will be recovered from you.

Donaghue }
25th April 1870 - }

(Signed) Mr. F. Donaghue
Superintendent in charge
No 6 Range.

"Translation"

A. F. A. Captain R.E.
Superintending Engineer, 6th Division.

SP
Document B

No 229.
P.

Vithilinga Pillay Contractor of
Mordindanur South Bank

The Contract Agreement entered into
by you on the 19th March having received
the Approval of the Superintending Engineer
you are directed to attend at my camp
immediately you receive this order
for registering the above document.

Camp Umbel }
4 May 1870 }

/signed/ W. H. Donaghue
Supervisor D.P.W.
No 6 Range.

"Translation"

A. F. Dutta Captain R.E.
Superintending Engineer C. Divn.

Document - 211

From Vithilinga Pillay
Contractor of
Mordindanur South Bank
Dated 25th April 1870.

1870 4998/30

Enclosure No 3 in a
letter dated 20th 7/11/84
24th November 1870 from the
Superintendent - G. Divn.

Document C.

No 255.

7P

To Vethilinga Pillay Contractor of
Moodindanur South Bank

Although you were directed to
attend at the Range Office for registering
the Contract Agreement entered into by
you for the above work you have not done
so yet. As the stipulated time of
your contract will expire by the end
of this month you are directed not to
do any work after that date. Any
work done afterwards will not be
paid for and the fine mentioned
in your agreement will be recovered.

Camp Kanchanabary }
28 May 1870 - }

(signed) W. F. Donaghue
Supervisor S.P.M.
6 Range.

"Translation"

W. F. Bates Captain R.E.
Superintending Engineer 6 Division

Document B.

From Supervisor

To Contractor Vethilinga
Pillay

Dated 4 May 1870.

1871 4396/70

Enclosure. No 4 in all the
to Govt. No 711 Dated 24
November 1870. From the
Superintendent - C. Division

Document C. G.

9/1

No 40.

J. Vithilinga Pillay Contractor
on the Moodiendavur South Bank.

In forwarding the enclosed order
No 255 from the Range Officer you are
directed to stop work as therein required
after the 31st Instant.

29 May 1870.

(Signed) Moonesamy Mudaly
Overseer D.P.M.

"Translation"

J. T. Bates Captain R.E.
Superintending Engineer 6th Div.

Document - C.

From Superintendent
to Contractor Vithilinga
Pillay

Dated 25th May 1870.

PM 4796/70

Long Lamine. No 5 in a
letter to Capt. D. O. 711 & 140
24 June 1870 from the
Supt. Engineer - 6th Div.

Document. C.

VP

No 41.

To Maistry Nagapa Ror.

An order no 255 is enclosed to Vittalinga Pillay the Contractor of the Moodriandanaur South bank you will deliver the same to him without fail on the evening of the 31st Instant and put a stop to any work being done by him from 1st June. A report of your having done so should be made at once.

29 May 1870.

Signed / Munesamy Mudali
Censor D.P.M.

"Translation"

W. F. A. S. Captain D.E.
Superintending Engineer, 6th Division

Document D.

To Censor
To Contractor Vittalinga Pillay

Dated 29 May 1870.

1870/4796/20

Enclosure No 6 in a
letter to Capt O. J. 11/8/70
24 November 1870 from
the Supt Engineer - 6th Div.

Contract Agreement.

I Vithilinga Pillay son of Chakrumbra Pillay of Poodocaday -
 Numilam Salug, have on this
 day the 19th March 1870 in the
 presence of Mr. Donoghue the
 Range Officer of the 6th Range
 entered into the undermentioned
 Contract on account of Captain
 R. F. Baker. the Superintending
 Engineers 6th Division :-

The works here specified viz:

38049 $\frac{1}{4}$ Cys. of Earth work @ 1 Anna per cysd - Rs.	2378-1-3
Running the above @ 5 per cent	118-14-5
Cutting Trees & Bushes	55-11-11
	<u>2551-15-8</u>

being those sanctioned by the Su-
 perintending Engineers on the 22nd
 October 1869 for the repairs of the
 South bank of Mudicondamun
 and of these Contractor Shashisagar
 having

Document C.

From Quorum
 To Secretary Madras

Dated 29th May 1870.

1870/4/98/70

Frederick. Do you a
 letter to Capt. No. 711 and
 24 December 1870 from
 Mr. F. S. Engineer - 6. 28. 70

Having executed 7270 Cys of Earth
work amounting to Rs. 454-0-0
at 1 anna per Cys I hereby agree
to carry out the remainder of the
work above detailed amounting
to Rs. 2097-9-8 as may be marked
out by the Range Officer or by his
Subordinates first laying out a
Section for each 40 yards and to
complete the works to the satisfac-
tion of the Range Officer by the end
of May next. In the event of my
failing to do so, I agree to pay a
fine of Rs. 300 and to have it
deducted out of the amount which
may due to me for work executed -

I agree to abide myself by all
the conditions above adverted to or
by such alterations as may be
made in them by the Superintending
Engineers -

I further agree that the Earth
required for the above works shall
not be excavated by me within
10 yards from the foot of the bank &

no payment shall be made
to me for Earth excavated within
the said 10 yards. -

/signed/ Vithilinga Pillay -

Witnesses.

P. C. Vethanulu Pillay -

M. Ramakrishna Naidu -

"Translation"

J. J. Waters Capt. R.E. -
Superintendent B.E. Division.

Document D.

98

No 40.

To
Vithalinga Pillay Contractor
on the Moodindavur South Bank.

In forwarding the enclosed order
No 255 from the Range Officer you are
directed to stop work as therein required
after the 31st instant.

29 May 1870.

/signed/ M. S. M. M. M.
Overseer D.P.M.

"Translation"

W. T. Bates Captain R.E.
Superintending Engineer C.D.W.

Document C.

From Superintendent
of Cultivation Vithalinga
Pillay

Dated 25th May 1870.

Off 4796/70

One (1) ...
...
...
...

having executed 7270 Cys of Earth
work amounting to Rs. 454-0-0
at 1 anna per Cys I hereby agree
to carry out the remainder of the
work above detailed amounting
to Rs. 2097-9-8 as may be marked
out by the Range Officer or by his
Subordinates first laying out a
Section for each 40 yards and to
complete the works to the satisfac-
tion of the Range Officer by the end
of May next. In the event of my
failing to do so, I agree to pay a
fine of Rs. 300 and to have it
deducted out of the amount which
may due to me for work executed.

I agree to abide myself by all
the conditions above adverted to or
by such alterations as may be
made in them by the Superintending
Engineers.

I further agree that the Earth
required for the above works shall
not be excavated by me within
10 yards from the foot of the bank &

no payment shall be made
to me for Earth excavated within
the said 10 yards.

/Signed/ Vithilinga Pillay.

Witnesses.

P. C. Vethala Pillay -

N. Ramakrishna Naidu -

"Translation"

J. J. S. Capt. P. C. -
Superintendent Division.

Copy of proposed Defence in case No 183
brought by one Vythalinga Pillay against
6th Range Officer.

Chedambra Pillay was the party who
came forward to undertake the repairs of the
Moodiandanur bank, subsequently when the
Contract was to be drawn up, he, by reason
of his old age, desired that his son's name
should be entered, accordingly it was written
in the name of the latter Vythalinga Pillay.
II. The Contract was drawn up on the
19th March for Rs. 2097-9-8 the terms
being, that the work detailed in the Agreement
should be completed by the 31st May failing
which, Rupees 300 were to be forfeited for
breach of Contract.

III. Plaintiff states, that he represented
that work could not be completed by
30th May and that on this Account, an
order was sent to his father to complete
work by the 30 June, this statement is quite
false; I am prepared to prove, that no
such representation was made, by either
father or son, The first time I saw them
after starting work was on the 28 April
at Kuruvadi or 3 days after the enclosed
order marked. A. was written from Koda-
chery. From the text of this order it will
be

Document 17

Copy of Agreement
or Contract Book

MS 4796/70

Indra Kumar. Q. 8 in a letter
to Govt. D. 11/2/24
November 1870 from the
J. S. G. G. - 68/2

be seen that 30 June should have been 31st May, this error arose from the absence of the Agreement; but it in no way invalidates the Contract.

IV. An Order Dated 4 May was sent to Contractor to appear in Range Office to register the deed, he failed to come, and on the 28th Idem he was warned to cease work after the 31st of the month, and work done subsequent to that date would be rejected, Vide letters marked B and C. The Overseer also sent Orders directing that work be stopped, Vide letters marked D and E.

V. On the 16th June at Polagam, the Contractor came to me for a settlement of his Accounts, he was willing to sign the Certificate which was not then disputed, providing I would strike out the fine, he was informed that I could not do so and that the terms of the Contract must be adhered to, he replied that he would consult his father and return, the father appeared a few hours afterwards, he was willing to receive the Certificate Amount, without the fine and he too did not contest the Accuracy of the Bill.

VI. The Overseer is prepared to prove that the pit measurements in support of the Bill are correct, these measurements have been checked by me and found correct: Pits excavated subsequent to the 31st May have been properly rejected as Contractor worked on, against the orders of Range Officer and Overseer, who are prepared to swear to the correctness of the foregoing statements.

Camp Trivalis?
4 October 1870

(Signed) W. F. Donaghue
Superior D.P.M.
6. Range.

W. F. Donaghue
Captain R.C.

198

Copy of Plaint N P

To. The District Munsiff's Court of Trivallur
Plaintiff.

Vithalinga Pillay son of Chedumbura Pillay
residing in Pothoorcadu in Polagum Ma-
-gannum Kunnilem Taluq

Defendant.

Mr. Donaghu Supervisor in charge
of the 6th Range residing in Kordachary in
Peromalagaram Magannum of the afore-
-said Taluq.

On a certain date in March
last which I do not remember the Defendant
obtained from me a Contract agreement
requiring me to carry out the improvement
of the South bank of Moodicondunair
from the east of Pothacoody Channel
in Saparomammigalam limits to the
west wing of the Bridge on Road No 30
in the limits of Viroomaraagal including
the formation of slopes and cutting
trees and to complete the work by
the 30th May in consideration of receiving
Rupees 2100--- for the work and
permitted

Copy of Plaint
or
Draft-Answer

Pl 4995/30

Ex-Licence No 2 in a letter
to Genl. O. G. 11 dated 24th
November 1870. From the
Superintendent, G. O. in

permitted me to carry out the work under the above agreement.

2. On my informing the Defendant that the work could not be completed by the 30th May the Defendant issued an order on the 25th April in the name of my father that the work may be completed by the 30th June.

3. While I was carrying on the work so as to complete it by the 30th June the Defendant deceitfully issued an order on the 28th May contradictory to the one above referred to and stating that the work should be completed by the 30th May and that no work should be done after that date and any work done afterwards will not be accepted. The Defendant did not pay the amount due to me on account of the work performed up to the above date as specified below and has contracted for completing the remainder of the work elsewhere.

Particulars of the Sum of Rupees— 756-12-—
due by the Defendant.

132 1/2 Pits dug from east of
Poothoocady Vertical Sluice in
Tajaroomamungalum limits
to west of Ayanawar Civil at
1 Rupee per pit ——— 132-0-—

265 1/4 Pits dug between the west-
ern limits of Poothoocady
in Polagam Injannam and
west of the pathway to the
Maravillayanni house — 265-4-—

153 Pits dug from east of the
pathway to the above Villayanni
house to the under Sluice No — 153-— —

151 Pits dug from east of
Karyelipar to the western wing
of the Bridge on Road No 30 — 151-— —

Total Pits 701 3/4 ——— 701-12-—

For forming slopes and
cutting trees in the above
limits ——— 55-0-—

Total amount due ——— 756-12-—

I solicit that the Court will be
pleased to pass a decree for the recovery
of the above sum with costs from
the

the Defendant.
I the Plaintiff declare that
all what is stated in this is true.

Signed Vithalinga Pillay

Signed V. Mahadaviam.
Taken for Plaintiff.

31 August 1970. Regular suit file No. 183—

"Translation"

A. F. A. Captain R.E.
Supg Engineer 6th Divn

Exhibition No. 1 in a letter
to Government. No. 711
dated 24 November 1970.
From the Dy. Sg. Eng. 6-Divn.

10/11/70

Copy of Plaintiff

No. 711

Superintending Engineer's Office 6th Divn.
Canjore 24th November 1970.

From

Y P
Captain R. F. Oakes R.E.
Superintending Engineer, 6th Division

To

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

Sir,

I have the honor to inform you that one

1. Vithalinga Pillay
2. Chidambaram Pillay
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Vithalinga Pillay
a Contractor has
filed a suit against
Mr. Supervisor Donaghy
in the Trivalore
District Munsiff's
Court for a sum of
Rs. 756-12-00 said
to be due for certain
works executed on the
Mordicondaman
South Bank in

No. 6 Range and the case is to come on for
hearing on the 6th December next.

2.— The particulars of the case are as follows.
One Chidambaram Pillay came forward as
Contractor, but by reason of his old age, he
appears to have requested that his son's name
might be entered in the Contract Bond and
accordingly an agreement was entered into
with

with Vithalinga Pillay on the 19th March 1870
for executing certain works on the Moodiendannur
South Bank amounting to Rs 2097-9-8 the terms
being that the works should be completed by the
31st May subject to a penalty of Rs 300 in case
of failure.

3. — From the report of the Range Officer
it is observed that the Contractor failed to
complete the works according to the terms
of his agreement; the work executed by the
Contractor upto 31st May, when the Contract
time expired, amounted only to 8156 Cuyards
against 38049 $\frac{1}{4}$ Cuyards specified in the Agree-
ment and of this only 1853 Cuyards are said to
be complete the remainder 6303 Cuyards
being incomplete, that the Contractor was
directed to cease work after the 31st May
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as above stated amounted only to Rs 444-2-3
he was asked to sign a Certificate for that
sum and to receive Rs 144-2-3 being the
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to him and has filed the suit for Rs 756-12-
against the Supervisor. It is stated that
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Rs 100 subsequent to 31st May, although
he was warned by the Supervisor in writing
(Vide enclosure marked b) that any work
done after that date would not be accepted
or paid for - the Supervisor has not measured
the work done after the 31st May.

1. — The Contractor states in his plaint that
the time for completing the works was extended
upto 30 June in the order issued by the Supervisor
in the name of the Contractor's father (Vide enclosure
marked A) on the contractor representing that
the works could not be completed by the
31st May as entered in the Agreement; the
Supervisor states that no such representation
was made to him by the Contractor and 30 June
was entered in the Order by an error, as the
date mentioned in the Agreement for
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of the Contractor was made to me before he
filed the Suit. It will be observed that
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and that while it is drawn up in the name
of Vithalinga Pillay the order A. is
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Pillay and in this order the 30 June is
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the work is to be completed though as
stated above the following sentence "as
entered in your agreement" indicates
clearly that it was not intended to
extend the period within which the work was
to

to be executed. This error however, which, apparently, was not detected till after the stoppage of the work has been seized upon by the plaintiff. Whether the inaccuracies adverted to above will be held legally to have invalidated the Contract or not I am not aware. if so, it will be necessary to pay for the work executed and to settle the matter amicably, but, if not I beg that Government may sanction the defence of the Suit and approve of the enclosed Draft Answer.

6. — I cannot but remark that Mr. Donaghe's carelessness with reference to the points noted above is very reprehensible.

7. — Translations of the documents marked A. B. C. D. E. and F. adverted to in the defence are enclosed.

I have the honor to be
Sir

Your most Obedt. Servant

W. F. Tate Captain R. E.

Superintending Engineer, 6 Div.

29/12

1253

Under the circumstances brought to notice in this letter His Excellency the Governor in Council will not object to the suit instituted by Contractor Tythelunga Pillay against Mr. Supervisor Donaghue in the District & Moonaff's Court at Trivalore being in the first instance defended at the

public expense, but
the question as to
whether the charges
shall be ultimately
borne by the State
or by the defendant
will be reserved for
after decision.

The Government
concur with the Su-
perintending Engineer
in considering that
Mr. Donaghue is
much to blame for
the carelessness dis-
played by him in
allowing the mistakes
which are noticed

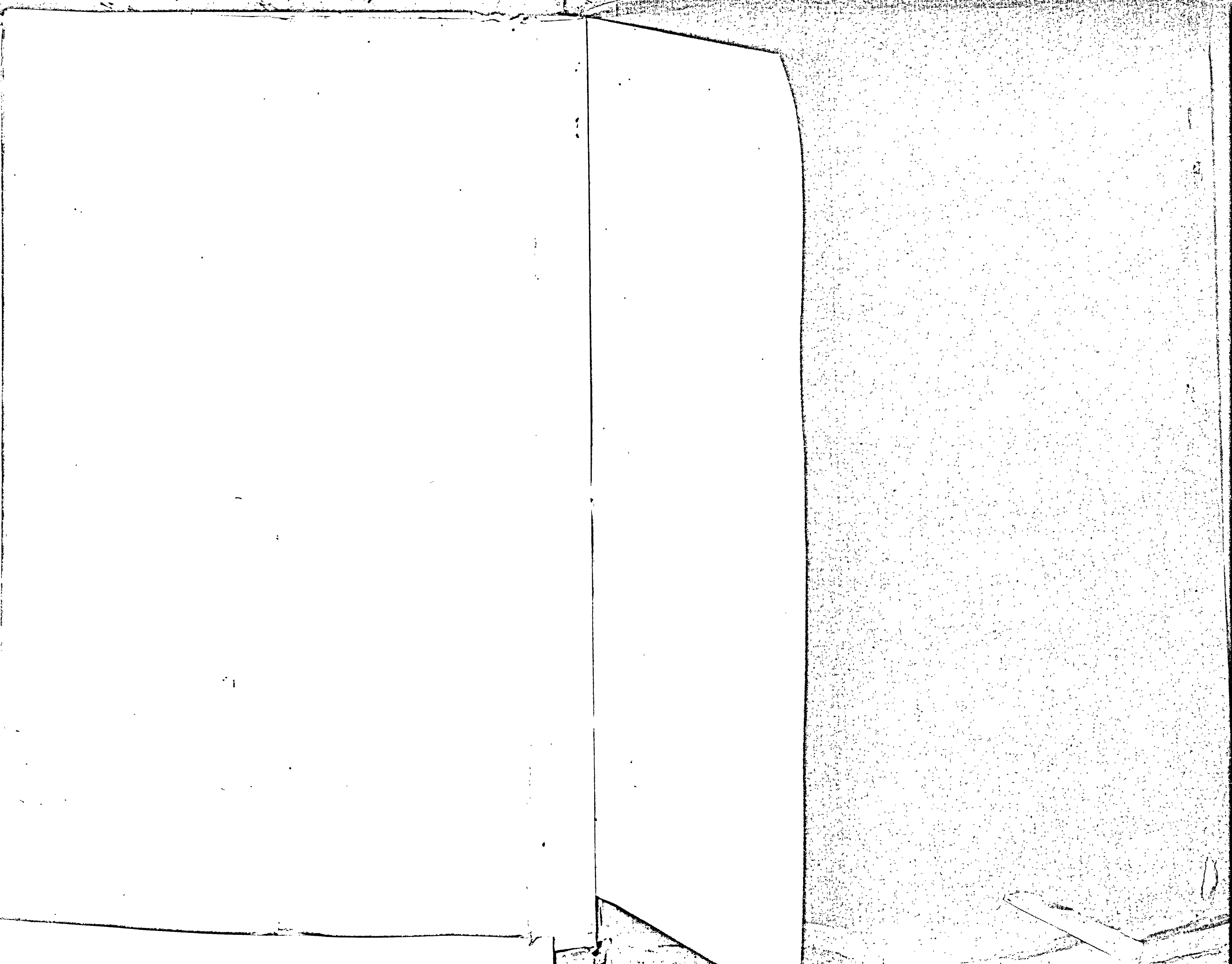
in Pages 4 and 5
to have occurred —

33P

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Govt. of 1870 Madras.

PUBLIC WORKS

to the Superintendent Engr
6th Division

Date

Recd.

Recd. 8

G. O. 30th Dec. No. 2889

No. 5581 534

Sup. Papering orders on the letter
from the Superintending Engr
forwarding papers connected
with a suit filed against Mr.
Herriest Amaghe by a
Contractor & requesting per-
mission to defend the
same.