M.R.O. 1—77,000—8-6-51.

(1) Number of pages _____

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public work DEPARTMENT.

G.O. No. 578	Press / Mis.
392-93	
Dated 19 2	1893.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 19th February 1870.

No. 392. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Department Public Works, dated Tanjore, 22nd January 1870, No. 1,225 :—

I HAVE the honour to inform you that in July last I received the two petitions noted in the margin from one Mooroongakoondan who had contracted with Mr. Donaghue for the supply of firewood for the Canal works, and who claimed payment for both firewood and bricks, and charged Mr. Supervisor Donaghue with asking for 10 or 12½ per cent. on the value of bricks delivered before paying for them, and stating that he had already given Rupees 55. On the receipt of the petitions, I wrote to the petitioner asking him to state his grievance in Tamil, as his petition in English was not very clear. The petitioner called upon me in August, and finding he knew no English, I had the petitions carefully explained to him and as he stated that what was in the petitions was correct, I told him I had written to him to ask him to state his grievance in Tamil, but as he acknowledged his signature to the English petitions I would inquire into the matter. He afterwards presented me with two petitions in Tamil, very much to the same purport as the petitions in English.

1 Petition marked A.
1 Do. do. B.
1 Memorandum of firewood marked C.
1 *Extract from* Madras Times News paper, dated 23rd October 1839.
1 Copy of Decision.

2. The petitions I sent on to Mr. Donaghue and informed him that I would, if he wished it, ask the Magistrate to inquire into the case, or he might, if he chose, prosecute the petitioner for defamation. Mr. Donaghue prosecuted the petitioner before the Sub Collector, whose decision I enclose, and from it, it would appear that the petitioner was discharged because he stated that the money was given to John Pillay, the Accountant, and not to Mr. Donaghue himself, but John Pillay was not sworn and placed in the witness-box, and he was deterred from bringing an action against the petitioner because the Magistrate had stated that the *onus* of proving that a bribe had not been received, rested with the prosecutor.

3. When the circumstances were brought to my notice, I had received G. O., No. 3,275, dated 11th October 1869, and so I proceeded to institute an inquiry, though, as I reported in my letter, No. 730, dated 24th September, owing to my inability to summon witnesses or to examine them upon oath, it is of very little use my attempting to inquire into such matters.

4. The following is the result of my investigation :—

5. The contractor Mooroongakoondan it appears contracted for the supply of 100 tons of firewood for the Coopien and Paupan Voikal works within the official year 1868-69, failing in which he was to receive half payment only.

6. The contractor on being examined stated that he had supplied the firewood on two occasions; first, he supplied 23½ tons which he bought from another contractor; and, second, 45½ tons which he delivered between the 8th *Chitry and 8th †Vyashi, and yet he claims payment for 89¼ tons; he had previously stated that on the first occasion he had delivered 43¾ tons. Soopapillay, one of the contractor's witnesses, states that he was present when twenty-three tons of wood were weighed on one occasion, and when forty-five tons were weighed some fifteen days afterwards.

* 18th April.
† 19th May.

7. Mr. Donaghue's measurements are not forthcoming in the 4th Range Office, but from his note book it would appear that 22½ tons had been used up and twenty-one were on hand in May or early in June, and on these, Rupees 160* were advanced. Mr. Donaghue's measurements of the second supply amount to 26 tons and 1,450 lbs; the Canal Superintendent† had, however, given a Certificate C. that 45½ tons had been weighed and delivered from the 3rd to the 9th June. Mariapa Pillay, however, acknowledges that he did not weigh the wood but that it was weighed by a temporary Ameen named Abraham. The contractor states that Mr. Donaghue weighed only two heaps, and that they were small ones. Mr. Donaghue states that he weighed several of the heaps and satisfied himself that only 26 tons and 1,450 lbs. were delivered and that he was two days weighing them, but that the contractor was present for a few minutes only on one evening. It is to be observed that Mr. Bateman, the Range Officer, was encamped hard by, and if the contractor had any grounds of complaint he should have applied to Mr. Bateman to measure the wood; this he did not do, and he was unable to bring any witnesses to prove that firewood was taken away by Mr. Donaghue's servants or by those of the Accountant, as he said his witnesses would not come unless summoned.

* Rupees 80 on the 5th March.
" 80 " 5th May.

† Mariapa Pillay.

8. With regard to the complaint relative to an amount due for 15,000 bricks, it appears that the contractor based his claim for payment for these bricks on a statement of Maistry Ramasawmy Pillay that one Permacheekoundan, who had taken the contract for the construction of the Keelapadagay sluice, had been paid for them, in this, however, he was in error, for in a contract certificate for 57,400 bricks paid to Mooroongakoondan 13,700 bricks for the Keelapadagay sluice are included, and these are the bricks he supplied to the work when the contractor Permacheekoundan ran short of bricks. The certificate of payments to Permacheekoundan shows that he was paid for 24,300 bricks for this work, while upwards of 36,000 were required for it. It would appear the Ameen was not aware that the cost of these bricks had been deducted from the bill of contractor Permacheekoundan and that Mooroongakoondan had been paid for them.

9. The contractor states that when he asked for payment for these 15,000 bricks, both Mr. Donaghue and John Pillay told him Permacheekoundan had been paid for them, and that he (the contractor) must get the amount from Permacheekoundan. Mr. Donaghue states that he never heard of any such claim till he received the Petitions A. and B. when sent by me, and John Pillay states that the contractor had informed him that he (the contractor) had given some bricks to Permacheekoundan for which he could not get payment, and that the contractors had quarrelled about the payment. Permacheekoundan asserting that he had paid for all the bricks he had obtained from Mooroongakoondan; it appears that some transactions did pass between these contractors relative to the supply of materials, but with these this department has nothing to do. The claim for the payment for the 15,000 bricks is clearly inadmissible.

10. The contractor stated before me that he was not asked by John Pillay for any money, but that as he was informed by other contractors that it was usual to pay 10 or 12½ per cent. he proceeded to John Pillay's house and paid him Rupees 55 about a month after he was paid for the 57,400 bricks; he cannot, however, state the day; he says nobody was present when he paid the money, but that two men* were outside the house who had accompanied him.

* Soopoo Pillay.
Kundasamy.

11. Soopoo Pillay stated that one day the contractor met him at Negapatam and stated that he (the contractor) must pay the office people Rupees 50 before he could get payment for the 15,000 bricks for which payment was due, but that he does not know whether any amount was paid; he does not, however, appear to have accompanied the contractor to John Pillay's house and cannot state when the conversation occurred.

12. Kundasamy Pillay, the other witness, says he accompanied the contractor when the latter went to John Pillay's house; that he (Kundasamy) remained outside, while the contractor went in; that the latter remained in John Pillay's house for about 40 minutes, and when he rejoined Kundasamy, he told him that he (the contractor) had paid John Pillay, but he mentioned no sum; that he did not see that the contractor had any money with him before he entered John Pillay's house; he has no idea of the date on which the interview took place.

13. John Pillay denies that he ever received any money from the contractor, and as neither the contractor or either of the witnesses can state the day on which the transaction is supposed to have taken place, he is unable to meet the charge by endeavouring to prove an *alibi*, or in any other way.

14. As far as I can judge I should say there is no ground for any of the charges made in the petitions, and I beg to solicit the orders of Government on the subject, and request that I may be informed whether I am to refuse payment for more firewood than Mr. Donaghue found, to refuse payment for the 15,000 bricks, and to defend the case if the petitioner appeals to the Courts.

15. It appears that a very similar charge to that made by the contractor Mooroongakoondan against Mr. Donaghue and John Pillay, was lately brought against Mr. Lowry, Assistant Engineer, and that the case was tried at the Royapettah Police Court, and the defamer was sentenced to three months' imprisonment, to pay a fine of Rupees 200, and to pay costs. I enclose an extract from the *Madras Times* of the 23rd October on the subject. Mr. Donaghue, on the other hand, has lost Rupees 150 which he paid a Vakeel he employed, and has not been able in any way to clear himself. This is a striking illustration of the uncertainty of the Law.

16. I would suggest that Government should lay down rules as to the action to be taken in similar cases in future. An examination by a person who is not a Magistrate is clearly useless.

No. 393. ESTABLISHMENT, No. 38.

ORDER THEREON, 19th February 1870, No. 578.

IT appears from these papers that the Superintending Engineer of the 6th Division received in July last two petitions, in which one Mooroongakoondan, while claiming certains sums on account of firewood and bricks alleged to have been supplied to works in the Tanjore District,

some connection of 45 2
from the 3rd to the 9th June.—

charged Supervisor Donaghue with having demanded a percentage on the amount due, as a preliminary to its settlement. These petitions were forwarded to Mr. Donaghue with permission to prosecute Mooroongakoondan for defamation, or to refer the case to a Magistrate for inquiry. Mr. Donaghue adopted the former course, but the prosecution broke down, because, in the opinion of the Joint-Magistrate, there was no sufficient foundation for a criminal charge, the terms in which the accusation was made in the petitions of having demanded a percentage being obscure, and there being no evidence before the Court that the said percentage had not been paid to one John Pillay.

2. As Mr. Donaghue had thus failed to clear himself of the imputation cast upon him by the statement of the petitioner, the Superintending Engineer considered it necessary to enter into a departmental investigation of the circumstances connected with Mooroongakoondan's contracts for the delivery of certain quantities of bricks and firewood, and after a full and careful inquiry, Captain Oakes is satisfied that there is no ground for any of the charges contained in the petitions. Captain Oakes shows conclusively that the claim for payment for 15,000 bricks, which were transferred to the Keelapadagay sluice from a supply of 57,400 bricks delivered by Moorcongakoondan, has apparently been preferred under a misapprehension, Mooroongakoondan having received payment for the whole of the 57,400 bricks, and granted a receipt for the amount.

3. As the claim would thus seem to be clearly inadmissible, further payment should be resisted, and any suit which may be instituted for the recovery of the amount alleged to be due should be defended.

4. With regard to the contractors demand for 45½ tons of firewood stated to have been supplied, but of which only 26 tons and 1,450 lbs. appear to have been actually delivered, the Government consider it very questionable whether, seeing that the contractor is in possession of a receipt granted by an accredited agent of Mr. Donaghue for the larger quantity, payment for that quantity can be legally withheld. The acknowledgment of a supply in excess of that ascertained to have been delivered is open to suspicion, and His Excellency in Council is of opinion that the additional sum payable to the contractor is recoverable from Mariapa Pillay, who, whether from improper motives or through carelessness, put his name to the incorrect receipt.

5. The Government gladly accept Captain Oakes' opinion that the departmental investigation which he has held has exculpated Mr. Donaghue from the grave imputation of having participated in the acceptance of money from the contractor, but they are not in a position to lay down any definite course of action to be pursued in cases like that under notice.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
" Controller of Public Works Accounts.
Exd. A. G. Turton.

Extract from the "Madras Times" Newspaper dated 23d October 1869

W.29 8/73.

DEFAMATION.—Some time ago Mr. Campbell at the Town Police Court began the hearing of a case in which Mr. Lowry an Assistant Engineer in the P. W. Department charged a native named Teroovengada Chetty under section 500 of the Indian Penal Code with defamation. It was alleged that the prisoner had written a petition signed by a number of people and addressed to Colonel Bean the prosecutor's superior officer. The petition contained several statements defaming the character of the prosecutor and that of the contractor under him. Mr. T. C. Clarke appeared for the prosecutor and Mr. Gooch for the defence. Five witnesses were produced by the prosecutor to prove that the petition had proceeded from the prisoner. On Friday at the Royapettah Police Court before Mr. Campbell, the investigation being resumed, Mr. Gooch entered upon his defence. He submitted that the petition was not written by the prisoner but by one Pacha Naidu who was not forthcoming at the trial. There had never been any ill-feeling on the part of the prisoner towards the prosecutor and there was no motive for the defamation. Mr. Gooch also said that an attempt had been made by one of the witnesses for the prosecution to win over three of the witnesses for the defence. These witnesses had been taken to a place near the works at which the prosecutor is employed and two of them were promised a contract and one was promised pecuniary consideration if they would go to Mr. Clarke's office and sign depositions in favour of the prosecution and against the prisoner. Mr. Gooch produced five witnesses to support the defence. His Worship was satisfied that the prisoner was the person who had written the defamatory petition and sentenced him to three months' rigorous imprisonment and to pay a fine of two hundred rupees and one hundred rupees costs; and in default of payment of the fine to three months' further rigorous imprisonment.

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Mount Road, 1st October 1869.

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" Striped and Colored Flanne
" Colored Silk Shirtings.

No. Invoice of firewood supplied by Contractor Moongappa Kannudrun for Cooptien Vaikal under Shnie Wks from 3d June 1869.

Number & Date	Name.	Loss	Less	Rate	Amount
	For Cooptien Vaikal under Shnie.				
3	Munga[illegible]pa Kannudrun	7			
4	—— do —— do ——	6			
5	—— do —— do ——	12			
6	—— do —— do ——	"			
7	—— do —— do ——	9			
8	—— do —— do ——	8			
9	—— do —— do ——	3½			
	Total	45½			

June

(Signed) Muniappan
Canal Supd 5/10

(Signed) P. Abiram
Overseer

Rec'd 9/1/68

1868. Moorcacarumtan

Most honored Sir,

Moorcacarumtan has taken contract of 15000 of bricks. That my contract is to keep my stones at Karapidacay. But Mrs. Donough said to keep my brick in the place of Bramasi. But I didn't consent for that. But in another time Mrs. Donough & John Pillai said keep in the places which we say, we will receive & give you bricks for bricks & money. Ga Ramasamy Brathers had worked from taking 15000 bricks. Asking Rapidi from him, he said that I have sent it to mrs Donough go & receive from him. Asking Mrs Donough, he said, your certificate will come to you if you return me 10 or 12½ for 100 Rs. I have given 55 Rs. for the sum received before, as this contractman give 10 or 12½ Rs for 100 Rs. And asked the money of 15000 stones. But did not give my sum of money.

Therefore I beg of you to restore me
the sum I gave you the money of
15,000 bricks of your poor mind
In the year 1876 [illegible]

D

11.10.
Rec'd 8/4/76

Most honoured Sir,

Tayore Jibba,

To sixth Division

Superintending Eng. C. Oak. The contract
man Broomcacaundam has written
his petition. I have promised
to Mrs. Donough to give him 10
tons of wood for the work of Him
fifty tons of wood to Coopein Vaikal
& fifty tons to Ayam Vaikal
Reaching my promise I have gr
C.Vs. 50 tons of wood for the burning &c
Him I made ready 50 tons of wood
Ayam Vaikal & asked permisson
to Mrs. Donough to make weight of them
She answered they are not necessary here
take to Coopein Vaikal. I will restore
you expense according your account
Having made weight of them & their
Rubrics and asked certificate from the
gentleman. He said I would give
you tomorrow. From that to this days
he did neither gives Rasidi nor certificate
But asking him again, he says
I will give you only 100 Rupees

I have received 160 rupees for
89 1/4 gr. bu. The remainder I shall
receive. The Queen Regent's
Shebars are diminishing very much
The answer I gave, as that gover
Sardyman Corporeum, in order
all others have taken from the
afforesaid and further faithfully
Thuriantand John Pillay have
in taking bribes from the Chetti
an officer of minister for the
Company's service taking for their
with the Hey Sayer taking
only 5 or 6 Rupees & by other causes
When I am going to take cognizance
Thom Pillay asked a favour in
that I do not consent. Then I
in Compliance to your
in turn I will do what is
There are sufficient evidences to
this. Therefore I ask you majesty
and beg your honour to examine
in which is the faultiness & notor
Thereon I remain to your honour
1869. July 29 — Your most
humble
servant
Gravesande
Con. Maccallum

The accused Imungappa fourth-dan is charged with having committed defamation by presenting petitions to the Supdg Engineer to the effect that he had not been properly paid by the Offrs in charge of the 6th Range & also had been made to give him a bribe of 55 Rs and thereby having committed an offence punishable under Section 500 of the Indian Penal Code.—

There are two Tamil Petitions (A & B) and 2 English Petitions (C & D) which are nearly translations of them all are admitted by the Petitioner, who states that the facts stated in them are in the main correct and true.—

Petitions (B & D) relate to a claim by the accused for firewood supplied— He delivered firewood in the month of June 1869 which was received by the Canal Superintendent Maria Pillay who weighed it at the time & entered the amount received daily in a counterfoil receipt or Certificate while there was a delivery by the Contractor of 45½ tons from the 3rd to the 9th June.—

The

The Range Officer Mr Donaghue went however on the 19th June & re weighed all the wood and found that in each heap there was a slight deficiency of about 12 per Cent, so that all this together came to a total deficiency of 18 tons odd. & that the Contractor therefore had really only supplied 26 tons odd instead of the 45½ odd that Inspector Pilkay had allowed him and therefore offered him the proper price Rs. 100-9-0 instead of Rs. 182 which would be the price of the larger Amount.—

The Contractor therefore applied to the Superintendent for payment of the whole Amount as a Subordinate of the Public Works Department had already admitted that to be correct and indeed had himself made the account— He states that if there was any deficiency when Mr. Donaghue weighed it it must be owing to pilfering having gone on, but Mr. Donaghue urges that this could not possibly account for the very great difference of 18 tons & complains that the Petition was therefore defamatory of him as implying that he had not paid the Contractor properly—

The other Petitioner A. S. Card to the effect that he was ordered in 1868 to supply bricks for certain works and did so to the number of 15,000 but that he could not get the usual acknowledgement or Certificate from him nor the payment, that he has repeatedly applied and has always been put off, that he was told he had better give the usual per centage of 12 or 13 per Cent and therefore paid 55 Rs. but without any result as he still has not been paid up to date.

The Range Officer declares that no such bricks were ever supplied by the Contractor and in proof thereof produces the bill & acknowledgment of brick supplied amounting to 57,400 the last payment for which is Rs. 28-"-" which was acknowledged by the Contractor on the 8th July 1868 - See Exhibits H and I.

With regard to suggestion that this bribe or allowance of 12 per Cent should be paid, the language is obscure as it is. "Mr. Donaghue and John Pilkai, he said" as the document does not explain itself therefore the accused

accused is now asked what he meant by it, and states that John Pilley the accountant told him that Mr. Donaghue said that the money ought to be paid but that he did not hear Mr. Donaghue himself say it, & that he was not present at the time: so that it was John Pilley alone who asked for the money and to him alone that he paid it and that this is what he meant by the Petition —

That being so it cannot be investigated in this case, but as it is simply an accusation against John Pilley, he must be left to make a separate Complaint if he wishes it. —

With this then being removed what is left is very small & quite inadequate to form basis for a Criminal prosecution. It is "simply a claim to money & although in an indirect manner it might reflect upon the Ranger officer this will not make it a case of defamation for the same might be said about every claim to money that is brought before any Civil Court. —

Every defendant who denies that he is indebted as the plaintiff urges, might say that it was defamatory in the plaintiff saying that he owed him any thing, as it was tantamount to saying that he (the defendant) had not paid what was justly due, and therefore was dishonest. This is precisely the case here, but it cannot be considered defamatory as otherwise every Civil Suit would be defamation & the Civil Courts themselves would be taking official notice of the Crime and be themselves centres of defamation.

The final offence of defamation is therefore something totally different and does not in any way include every claim that indirectly reflects upon another man's character. —

This then is a simple claim for the amount of a Bill such as occurs hundreds of times in every day life. The firewood transaction is peculiarly simple, and there is not a word in the Petitions (B & D) that can be taken exception to, on the contrary they seem to represent the case very fairly & correctly. It simply is that the Contractor received an acknowledgment

as

as he supplied the wood daily: but that on checking these entries the Range officer found that they were incorrect disallowed them & offered the Contractor payment at the smaller amount that he made out. The Contractor naturally enough objected and endeavored to be paid according to the larger amount and therefore appealed to the Supt Genl for his full claim to be paid. But it is altogether out of the question to hold that there is any thing defamatory in all this. It is not for this Court to say whether the Contractor could or could not recover the full amount in a Civil Court, and whether or the Canal Superintendent was an accredited agent, the Range officer may not be bound by acknowlegement made by him in the course of business, even though they might be incorrect, because the act of the Agent is in law the act of the principal and he is barred by the law of Contracts from afterwards disputing the act of his accredited agent, as in Peto v Hague 5 Exch 133 Coates v Bainbridge 5. Barg. 58 &c &c; even though that act of the Subordinate agent

agent might be a fraud or a tort as in Shirley v Wilkinson 1 Doug 4 306; Thorn v Read 13 M and W. 834; Freeman v Rosher 18 L.J.Q.B. 340 – The point is not before the Court to decide & therefore it would be out of place to give any expression of opinion upon it but at any rate it may be said that the Contractor had a great deal to support his claim and therefore was quite at liberty to urge it, & the idea that it was at all defamatory to do so is altogether out of the question.—

The other claim as set forth in the Petitioner A & C is different being that he (the Contractor) supplied bricks which none of the Public Work officers will acknowledge – Here again it cannot be shown that the accused committed an offence in making the claim – It may be quite true that the fact of subsequent Contract & receipt in full by the Contractor would be a sufficient defence to prevent him from recovering the amount in a Civil Court, but that does not show that it was unlawful for him to make the claim. Again it may be quite true that this claim

is

is purely without foundation and is only made now (though it alleges to have been on a transaction that occured a year ago) on account of the other claim being disallowed and in order to strengthen it but even this does not make it criminal—

The Contractor simply claims money which he asserts to be due & the Range Officer pleads nunquam indebitatus but there is nothing Criminal in all this

Again the prosecutor urges that it was objectionable because made to his Superior Officer & therefore liable to prejudice his character; but though this might be a very good point if he sued in a Civil Court for defamation of character and could show that he had been professionally injured by such reflection upon his character yet all this is something totally different from the Criminal Issue and this Court cannot take upon it the functions of a Civil Court where alone such Suit for damages could be brought.

In fact so far as a Criminal prosecution goes the Circumstance of the Statement having been made to a Superior Officer & not to any one else is precisely what is altogether in favor of the

the accused. If it had not been so if the Contractor had spoken of his grievance only to others which could not do him any good and had spoken much about the unjust way in which he had been defrauded of his money & had thus done his best to circulate an impression against the accused, all this would be much more nearly approaching to the Criminal Offence, as it would go to show that he had been doing it simply out of malice in order to slander the prosecutor & thus he could not benefit himself by it. It is this purely Malicious intention which is the essence of the Criminal act.—

Here there was nothing of the Sort the Contractor merely evinces a desire to get his money and for that purpose he takes what appears to him to be the best steps viz to appeal to the Supt Engineer to set a side the decisions of the Range Officer who had disallowed his claims & to look into the case & grant him what was due. And here we come to the point which was noticed by the High Court in a Remark on Section 182 of the Penal Code in

in Lab: Statement for 1864 viz: that a petition seeks enquiry & therefore on the face of it courts truth. It is therefore altogether different from a Malicious Slander which avoids investigation with the knowledge that with this it would at once collapse these petitions ask for it. for it cannot be thought that the Petitioners believed that the Sup[t] Engineer would on the strength of them at once give him the Money: they rather are that his claim should be looked into & if there were any thing in it that it should be paid.—

In every way therefore the Petitioners are quite free from every thing that would warrant a Criminal prosecution under Section 500 of the Indian Penal Code & except so far as the Charge of Bribery against John Pillai goes which must form the subject of a separate Complaint by him if he wishes it & the Joint Magistrate therefore having Examined the Complainant and accused Ummu Sappa Soundum, finds that there are no sufficient grounds for Committing & remanding him & therefore discharges him

him without trial under Section 225 of the Criminal Procedure Code—

(Signed) W. F. Hathaway
Joint-Magistrate.

(True Copy)

Comp[t]. A.
V. L. Copyist.

(Signed) W. F. Hathaway
Joint-Magistrate

(True Copy of a true Copy)

Sup[t] Eng[g] Office 6[th] D[n]
Tanjore 22[d] January 1870

J. T. Dates Capt. R.E.
Sup[t] Engineer—6[th] D[n]

Sup.E.Engs Office 6th D. 22nd January 1870.

No 1225

14

From, Captain R. H. Oakeley R.E.
Sup.E.Engineer 6th D.

To, Colonel C. C. Orr. R.E.
Secretary to Govt D.P.W.

Sir,

I have the honor to inform you that in July last I received the 2 Petitions noted in the margin from one Noorun Jemadar who had contracted with me to supply firewood for the Canal works & who claimed payment for both firewood and bricks, and charged Mr Superviser Donaghue with asking for 10 or 12½ per Cent on the value of bricks delivered before paying for them and stating that he had already given Rs 55 —

On the receipt of the Petitions I wrote to the Petitioner asking him to state his grievance in Tamil as his

Enclosure in a letter from the Sup.E.Engineer 6th D. to the Secretary to Govt D.P.W. No 1225, dated 22nd January 1870.

Rs 55 — 22nd January 1870.

Copy of Petitions against a charge of Explanation brought against Conductor Donaghue by Supt Sup.E.Engineer.

his Petition in English was not very clear - The Petitioner called upon me in August and, finding he knew no English, I had the Petitions care-fully explained to him and as he stated that what was in the Petitions was correct, I told him I had written to him to ask him to state his grievance in Tamil but as he acknowledged his signature to the English Petitions I would enquire into the matter - He after-wards presented me with 2 Petitions in Tamil very much to the same pur-port as the Petitions in English.—

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and not to Mr. Donaghue himself but John Pillay was not sworn & placed in the Witness box and he was de-terred from bringing an action against the Petitioner because the Magistrate had stated that the onus of proving that a bribe had not been received rested with the Prosecutor.—

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The following is the result of my investigation.—

The Contractor Marungoo Kona-dan it appears Contracted for the supply of 100 tons of firewood for the Coopsies and Paupers Poor House within the official year 1868-69 - failing in which he was to pay

½

½ payment only.—

The Contractor on being examined stated that he had supplied the firewood on 2 occasions. 1st—he supplied 23½ tons which he bought from another Contractor & 2d 45½ tons which he delivered between the 8th Chitty and 8th Yaski and yet he claims payment for 89¼ tons which he had previously stated that on the 1st occasion he had delivered 43¾ tons - Soosa pillay one of the Contractor's witnesses states that he was present when 23 tons of wood were weighed on one occasion and when 45 tons were weighed some 15 days afterwards—

Mr Donaghue's measurements are not forthcoming in the 4th Range Office but from his note book it would appear that 22½ tons had been used up and 21 were on hand in May or early in June and on these Rs 160 were advanced - Mr Donaghues measurements of the 2d supply amount to 26 tons & 1450 lbs; the Canal Superintendent had however given a Certificate C that

that 45½ tons had been weighed & delivered from the 3d to the 7th June - Diarisapa Pillay however acknowledges that he did not weigh the wood but that it was weighed by a temporary Assam named Abraham — The Contractor states that Mr Donaghue weighed only 2 heaps & that they were small ones. Mr Donaghue states that he weighed several of the heaps & satisfied himself that only 26 tons & 1450 lbs were delivered & that he was 2 days weighing them but that the Contractor was present for a few minutes only on one morning — It is to be observed that Mr Bateman the Range officer was encamped hard by and if the Contractor had any grounds of Complaint he should have applied to Mr Bateman to measure the wood: this he did not do, and he was unable to bring any witnesses to prove that firewood was taken away by Mr Donaghue's Servants or by those of the Arrack Contractor as he said his witnesses would

would not come unless summoned.—

With regard to the Complaint re. latine to an amount due for 15,000 bricks it appears that the Contractor based his claim for payment for these bricks on a Statement of Maistry Ramasamy Pillay that our Permacker Koundan who had taken the Contract for the Construction of the Keelapadagay Sluice, had been paid for them: in this however he was in error for in a Contract Certificate for 57,400 bricks paid to Muruga Koundan. 13,700 bricks for the Keelapadagay Sluice are included and these are the bricks he supplied to the work when the Contractor Permacker Koundan ran short of bricks. The Certificate of payments to Permacker Koundan shows that he was paid for 24,300 bricks for this work while upwards of 36,000 were required for it— It would appear the Ameen was not aware that the cost of these bricks had been deducted from the Bill of Contractor Permacker Koundan and

and that Muruga Koundan had been paid for them— 17

The Contractor states that when he asked for payment for these 15,000 Bricks both Mr. Donaghue & John Pillay told him Permacker Koundan had been paid for them and that he [the Contractor] must get the amount from Permacker Koundan— Mr. Donaghue states that he never heard of any such claim till he received the Petitioners A. & B. when sent by mr & John Pillay ~~states that the Contractor had in-~~ formed him that he [the Contractor] had given some bricks to Permacker Koundan for which he could not get payment and that the Contractors had quarrelled about the payment— Permacker Koundan ~~asserting~~ that he had paid for all the Bricks he had obtained from Muruga Koundan: it appears that some transactions did pass between these Contractors relative to the supply of Materials but with these

this

this Department has nothing to do—
The claim for the payment for the
15000 bricks is clearly inadmissible.

The Contractor stated before me
that he was not asked by John Pillay
for any money but that as he was
informed by other Contractors that
it was usual to pay 10 or 12½ per Cent
he proceeded to John Pillay's House
and paid him Rs. 55 about a
month after he was paid for the
57,400 bricks, he cannot however
state the day, he says no body was
present when he paid the money
but that 2 men were
outside the House who
had accompanied him.

Soopoo Pillay stated that one
day the Contractor met him at
Negapatam and stated that he (the
Contractor) must pay the office
people Rs. 50 before he could get
payment for the 15000 bricks for
which payment was due but that
he does not know whether any
amount was paid. he does not
however

however appear to have accompanied
the Contractor to John Pillay's House
and cannot state when the Con-
versation occurred.—

Kunda Kanny Pillay the other wit-
ness says he accompanied the Con-
tractor when the latter went to John
Pillay's House, that he (Kunda Kanny)
remained outside while the Con-
tractor went in, that the latter re-
mained in John Pillay's House
for about 40 minutes & when he
returned Kunda Kanny he told him
that he (the Contractor) had paid
John Pillay, but he mentioned no
that he did not see that the
Contractor had any money with him
before he entered John Pillay's House
he has no idea of the date on which
the interview took place.—

John Pillay denies that he ever
received any money from the Con-
tractor and as neither the Contractor
or either of the witnesses can state
the day on which the transaction
is supposed to have taken place he
is

is unable to meet the charge by endeavouring to prove an alibi or in any other way.—

As far as I can judge I should say there is no ground for any of the charges made in the Petitions, and I beg to solicit the orders of Government on the subject, and request that I may be informed whether I am to refuse payment for more firewood than Mr. Donaghue found, to refuse payment for the 15000 bricks and to defend the Case if the Petitioner appeals to the Courts—

It appears that a very similar charge to that made by the Contractor Murunga Koundan against Mr. Donaghue and John Pillay was lately brought against Mr. Lowry Assistant Engineer and that the Case was tried at the Royapettah Police Court and the Defaulter was sentenced to 3 months imprisonment, to pay a fine of R. 200, and to pay Costs — I enclose an Extract from the Madras Times of the 23d October

on

on the subject — Mr. Donaghue on the other hand has lost R. 150 which he paid a Vakeel he employed & has not been able in any way to clear himself — This is a striking illustration of the uncertainty of the Law —

I would suggest that Government should lay down rules as to the action to be taken in similar Cases in future — An Examination by a person who is not a Magistrate is clearly overlap —

I have the honor to be

Sir,

Your most Obd. & Servt.

H. F. Oates Captain R.E.

Supg Engineer 6th Dn.

Public Works Department.

Proceedings of the Madras Government.

Under date the 19th Feby 1870.

Read the following

From The Secretary to the Government of India, Home Department, No. 578, dated the 4th February 1870.

Forwarding for the information of the Madras Government a copy of a letter from the Superintending Engineer of the 6th Circle, No. 1225, dated the 22nd January 1870, with enclosures, submitting documents in connection with a charge of defamation brought against Contractor Immanuel Rajaratnam Raundeen by Messrs. Donaghue & Co. and requesting to be informed whether the Rs. 1,12,000 claimed by the Contractor for wood & bricks is to be disbursed or whether to defend the Suit should one be instituted by the Contractor.

Read the following Report from the Superintending Engineer of the 6th Circle, dated 22nd January 1870, No. 1225.

Submitting for the information of Government the papers noted in the margin relative to a charge of defamation brought against Contractor Immanuel Rajaratnam Raundeen by Messrs. Donaghue & Co. and requesting to be informed whether the Rs. 1,12,000 claimed by the Contractor for wood & bricks is to be disbursed or whether to defend the Suit should one be instituted by the Contractor.

Ordered that the Superintending Engineer of the 6th Circle be informed that the Government do not consider that any of the claims now preferred by the Contractor Immanuel Rajaratnam Raundeen should be disbursed by the Department, and that the Government will not undertake the defence of any Suit that may be instituted by the Contractor on account of the claims.

To The Superintending Engineer 6th Circle.

To The Secretary to Govt. P. W. D.

Dated 22nd January 1870.

Received 24th January 1870.

No. 1225.

Enclosures 5.

No. 578-59-Feby/70.

Submits documents in connection with a charge of defamation brought against Contractor Immanuel Rajaratnam Raundeen by Messrs. Donaghue & Co. and requests to be informed whether the Rs. 1,12,000 claimed by the Contractor for wood & bricks is to be disbursed or whether to defend the Suit should one be instituted by the Contractor.

No. 392

dated 4th July 1870

on the amount disputed
a preliminary to its
settlement. These
petitions were forwarded
to Mr Donaghue with
permission to prosecute
Mooroonga Kyogle
for the formation
the legal
for enquiry
adopted the former course,
but this proceeding was
deemed necessary in the
opinion of the Joint
Magistrate there was no
sufficient foundation
for a criminal charge
the terms in which the

a accusation was made
in the petitions of having
demanded a percentage
being obscure, and there
being no evidence before
the Court that the said
percentage had not been
paid to one John Pillay
Mr Donaghue
had therefore failed to clear
himself of the imputation
cast upon him by the
statements of the petitioners,
the Ministers considered
it necessary to enter into
a departmental investi-
gation of the circum-
stances connected with
Mooroonga Kyogle
Contracts for the delivery
of certain quantities of

bricks and firewood,
and, after a full and
careful enquiry, Captn
Oakes is satisfied that
there is no ground for
any of the charges con-
tained in the petitions
Captain Oakes shows
conclusively that the
claim for payment
for 15,000 bricks, which
were transferred to the
Kulapadagay schools
from a supply of 57,400
bricks delivered by Moo:
roongaKoondan, has
apparently been preferred
under a misapprehension,
MooroongaKoondan
having received payment

for the whole 57,400
bricks, and granted a
receipt for the amount.

As the claim
would thus seem to
be clearly inadmissible
further payment should
be withheld, and any
sum which may be
substituted for the re-
covery of the amount
alleged to be due should
be proportioned
with regard to the
Contractor's demands
for 4.5½ tons of firewood
stated to have been
supplied, but of which
only 26 tons and 1/4 lbs
lbs appear to have been
actually

C. Hartley 1870

actually delivered the
Government consider
it very questionable
whether, seeing that the
Contractor is in possession
of a receipt signed by
an accredited Agent of
Mr Donaghue for the
large quantity of Metal
for that quantity cannot be
legally withheld. The
acknowledgment of the
supply in excess of that
ascertained to have been
delivered is open to sus
picion, and His Ex
cellency in Council is
of opinion that the ad
ditional sum payable

to the Contractor is
recoverable from Messrs
Pillar who, whether
from improper motives
or through carelessness
put his name to the
incorrect receipt

The Govt gladly
accept Captain Bake's
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has exculpated Mr
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c. 4 Feby 1870

21/3

To
6 Thick Engr 6 Feet
4 Counterbalances

Despd 22/2/70.