M R O. 1—77,006—8-6-37.

(1) Number of pages 1 to 16

(2) Date of repair

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 1710 Press
452-53. —Mis.—

Dated 26-6 1871.

Not to be folded or roughly handled

No. 452. Read the following letter from the Government Pleader, Madras, to the Secretary to Government, Public Works Department, dated Madras, 13th June 1871, No. 102:—

I HAVE the honour to submit the following opinion upon the question referred to me by the Proceedings of Government noted in the margin, as to the legality of taking the Streeviguntum Anicut Works out of the Contractor's (Raghavacharry's) hands under the circumstances which have occurred.

5th June 1871, No 1,514

2 In my opinion neither the informality of the contract entered into by Lieutenant Shepherd with the Contractor, nor the fact that he had, strictly speaking, no authority to enter into such a contract, would be any ground for putting an end to the contract and taking the work out of the Contractor's hands. The written agreement, though not drawn up in legal form, and though purporting, on the face of it, not to be a legal document, has all the essentials of a legal contract, and as such would doubtless be enforced in a Court of law It is signed by both parties and states the terms of the contract with sufficient certainty to enable it to be enforced, and where this is the case no particular form of words is necessary to constitute a legally binding written contract. With regard to Lieutenant Shepherd's not having authority to contract on behalf of Government, I think that circumstance could not affect the validity of the contract as far as the Contractor was concerned, unless he had express notice of it. Lieutenant Shepherd was acting as the Agent of Government in the matter of these works and professed to contract as such, and the Contractor would have a right to assume that the authority to contract, which is one of the ordinary incidents of such an agency, existed in this case also. Moreover, work was actually done under the contract and payments were made on account, so that it was in effect sanctioned by Government, who could hardly after that plead that the whole thing was void *ab initio* I understand that the document is unstamped, but this would only involve the payment of the penalty by the Contractor if he wished to produce it in evidence.

3. The other ground assigned in the above Proceedings for taking the work out of the Contractor's hands, namely, that he had stopped work at a season when it was most important that the work should be proceeded with, appears to me to be much more satisfactory. The mere fact of his being in jail would not of itself be sufficient, especially as he had, I believe, partners, who were at large, by whom the contract might have been completed, or he might have employed other agents, personal superintendence not being a condition of the contract as reduced to writing. But as he in fact altogether stopped work at a critical season, and his Agent alleged no other reason for his so doing than the pendency of the criminal trial, I think the Government Engineer Officers were not bound to stand by and see the interests of Government suffer by a delay which seemed unlikely to have any end. Clearly they were not bound to wait until the expiration of the full contract time, by which irreparable loss might be sustained, and the only question is whether the suspension of work by the Contractor was sufficiently long to give Government a fair right to assume that he had abandoned the contract, and as far as the facts are before me I think it was I assume, of course, that the stoppage of work was not caused by any act or interference of the Government officials.

strictly speaking no authority to

Proceedings of the Madras Government, Public Works Department, 26th June 1871.

4. I presume the amount due to the Contractor for work already done under the contract has been either paid or tendered to him; if not, I think it would be well to do so without delay. That done, if he sues for breach of contract, I think his abandonment of the work will be a complete answer.

No. 453. ORDER THEREON, 26th June 1871, No. 1,710

IRRIGATION, No. 21.

ORDERED that a copy of this letter be sent to the Superintending Engineer of the 8th Division whose particular attention will be directed to the subject of the last paragraph.

(True Extract.)

(Signed) J. G. RYVES, Captain, R.E.,
Acting Joint-Secretary to Government.

To the Acting Superintending Engineer, 8th Division.

Exd. S. T. Augustin.

Madras
13th June 1871

From. J. W. Reeves Esqre
Government Pleader
Madras

To Col C. Carpendale R.E.
Secretary to Government
Pub: works Dept.

Sir

I have the honor to submit the following opinion upon the question referred to me by the Proceedings of Government noted in the margin as to the legality of taking the Streevygoontum Anicut Works out of the Contractor Raghava Charry's hands under the Circumstances which have occurred.

2 In my opinion neither the informality of the Contract entered into by Lieut^t Shephard with the Contractor nor the fact that he had strictly speaking no authority to

5th June 1871
No 1571

to enter into such a Contract, would be any ground for putting an end to the Contract & taking the work out of the Contractor's hands. The written agreement, though not drawn up in legal form and though purporting on the face of it not to be a legal document, has all the essentials of a legal Contract & as such would doubtless be enforced in a Court of Law. It is signed by both parties & states the terms of the Contract with sufficient certainty to enable it to be enforced & where in the case no particular form of words is necessary to constitute a legally binding written Contract. With regard to Lieut. Shepherd not having authority to Contract on behalf of Government, I think that circumstance could not affect the validity of the Contract as far as the Contractor was concerned, unless he had express notice of it. Lieut. Shepherd was acting as the agent of Government in the matter of these works & professed to Contract as such, and the Contractor would have a right to assume that the authority to Contract, which is one of the ordinary incidents of such an agency, existed in this case also. Moreover work was actually done under the Contract & payments were made on account, so that it was in effect sanctioned by Government, who could hardly after that plead that the whole thing was void ab initio.

I understand that the document is unstamped, but this would only involve the payment of the penalty by the Contractor if he wished to produce it in evidence

3 The other ground assigned in the above Proceedings for taking the work out

ont of the Contractor's having said that he had stopped work at one season when it was most important that the work should be proceeded with, appears to be much more satisfactory. The mere fact of his having in addition not offered sufficient explanation why as he had a right to have persons who were at once, by whom the Contract might have been completed or he might have instructed other agents, personal supervision was not been a condition of the Contract as required to writing. But as he in fact altogether stopped work at a critical season, & his agent alleged no other reason for his so doing than the pendency of the Criminal trial, I think the Government Engineer officers were not bound to stand by & see the interests of Government suffer by a delay which seemed unlikely to have any end. Clearly they were not bound to wait until the expiration of the full Contract time, by which irreparable loss might be sustained, & the only question is whether the suspension of work by the Contractor was sufficiently long to give Government a fair right to assume that he had abandoned the Contract, & as far as the facts are before me I think it was. I assume of course that the stoppage of work was not caused by any act or interference of the Government Officials.

I presume the amount due to the Contractor for work already done under the Contract has been either paid or tendered to him. If not, I think it would be well to do so without delay. That done, if he sues for breach of Contract, I think his abandonment of the work will be a

a complete answer

Have the honour to be
Your most obed. Sert.
J. M. Hardy
Lieut. Govt.

No. 1780

From The Marine Department

To The Government Agent Galle

Under date the 26th June 1871

Sir,

I have the honor to forward herewith for your information and guidance a Copy of a Letter from the Superintending Engineer S.W. Province, on the subject of the Contract for the Construction of a Breakwater at Galle.

I have the honor to be Sir
Your most obedient Servant
Colombo 17th July 1871

Sir,

I have the honor to forward herewith for your information and guidance a Copy of a Letter from the Superintending Engineer S.W. Province, on the subject of the Contract for the Construction of a Breakwater at Galle.

I have the honor to be Sir
Your most obedient Servant
Colombo 17th July 1871

From The Government Agent Galle

To The Government Agent Colombo

Dated the 13th June 1871

Received the 16th do

No. 102

Sir, I have the honor to forward herewith Colonel Ahrent's Report, submitting his opinion as to the legality of taking the work out of the Contractor's hands.

I have the honor to be Sir
Your most obedient Servant
Galle 13th June 1871

From The Superintending Engineer S.W. Province

To The Government Agent Galle

Dated Galle 12th June 1871

No. 102

Sir, I have the honor to forward herewith for your information a Report on the subject of the Breakwater Contract.

I have the honor to be Sir
Your most obedient Servant
Galle 12th June 1871

Rs 5 Stamps fixed on 15-5-71

No. 1780 26th June 1871

No. 452

G.A. 21st June 1871 R. 2 2 0

Cost of 1871 Works.

PUBLIC WORKS.

To [illegible]

Date:

Re[illegible]

[illegible] 18 June [illegible] 1870

Nos. 452 & 453