M.R.O. 1—77,006—8-5-37.

(1) Number of pages_____

(2) Date of repair_____

(3) Initials of the Reference_____

MADRAS RECORD OFFICE.

Government of Madras.

Police DEPARTMENT.

G.O. No.	Press Mis.
Dated	18 .

Not to be folded or roughly handled

Read the following papers :—

No. 364. From the Superintending Engineer, 1st Division.
(Here enter No. B, dated 28th February 1871.)

No. 365. From Do. do. 2nd Division.
(Here enter No. 167, dated 6th March 1871.)

No. 366. From Do. do. 3rd Division.
(Here enter No. 2,512, dated 7th March 1871.)

No. [illegible] From Do. do. 4th Division.
(Here enter No. 4,966, dated 8th March 1871.)

No. 368. From Do. do. 5th Division.
(Here enter No. 250, dated 9th March 1871.)

No. 369. From Do. do. 6th Division.
(Here enter No. 37, dated 15th April 1871.)

No. 370. From Do. do. 7th Division.
(Here enter No. 229, dated 13th February 1871.)

No. 371. From Do. do. 8th Division.
(Here enter No. 305, dated 1st May 1871.)

No. 372. From the Special Executive Engineer, Wynaad.
(Here enter No. 102, dated 7th March 1871.)

No. 373. From the Government Pleader.
(Here enter No. 103, dated 15th June 1871.)

No. 374. ORDER THEREON, 28th August 1871, No. 2,198.

ACCOUNT, No. 43.

G. O., No. 375, dated 7th February 1871.

IN January 1871 the Superintending Engineer of the 3rd Division suggested that the money limit with respect to petty contracts should be fixed at Rupees 100, Range Officers being as a rule required to make all payments themselves to contractors as well as to petty contractors. In endorsing these proposals the Controller of Public Works Accounts recommended that a reference be made to the Superintending Engineers generally with a view to elicit their opinions on the question. This reference was accordingly made and the papers recorded at the head of these Proceedings are the replies to it.

2. From these papers it is observed that the Superintending Engineer of the 1st Division is of opinion that, as no contracts without formal agreements can be said to be in existence, it is not advisable that any works should be undertaken on petty contracts, but that they should be executed by Overseers in the ordinary way, payments being made by them after inspection by Range Officers on completion.

3. Describing the manner in which almost all large earthworks are at present executed in the 2nd Division, and explaining the mode pursued in making payments, the Superintending Engineer of that Division does not consider it necessary to define a petty contract by means of a money limit or to alter the rule in the Manual of Public Works Accounts regarding payments.

4. In the opinion of the Superintending Engineer of the 3rd Division payments to contractors and petty contractors should invariably be made by Range

Officers with a deduction of 15 per cent. on Overseer's measurements in order to make good any differences which may be found on check measurements being taken by the former.

5. The Superintending Engineer of the 4th Division, while questioning the expediency of restricting Range Officers to a fixed amount as respects petty contracts, states that, if it be necessary to lay down a limit, he would fix it at Rupees 500, and that contractors should always be paid by Range Officers by cheques directly, and that the payments should not be made to them directly or indirectly through subordinates.

6. The Superintending Engineer of the 5th Division recommends the observance of the rules contained in Chapter XVI. of the Code of the Public Works Department as regards the execution of works on petty contract, and states that payments should be made by cheques to contractors, direct if practicable, otherwise through Overseers.

7. The Superintending Engineer of the 6th Division is of opinion that the existing rules relating to works which may be undertaken on petty contract should remain unaltered, but that, if a money limit is to be fixed for such works, it should not be below Rupees 2,000.

8. As regards payments to contractors Captain Oakes considers that, for works below Rupees 50, Overseers should be empowered to pay sums up to Rupees 20, any balances due being paid by Range Officers in cash after inspecting and passing the works. For works above Rupees 50 Captain Oakes recommends that payments should be made by Range Officers by cheques, but that those payments should not be rendered dependent upon personal examination but made on the certificate of the Overseer, who should be held responsible, the check measurements and contract certificates required by the orders marginally noted being dispensed with until Range Officers have had an opportunity of inspecting the works. These check measurements, or certificates, Captain Oakes would require to be submitted at least once in three months, and as soon as possible after the termination of the working season. The object Captain Oakes has in view in making this proposal is to prevent the contractor being kept waiting for what is due to him.

G. O., No. 2,788, dated 19th November 1870.
,, ,, 104, ,, 16th March 1871, paragraph 6.

9. The Superintending Engineer of the 7th Division would fix the money limit within which works may be undertaken on petty contracts at Rupees 500, and recommends that payments should invariably be made by Range Officers only.

10. Considering Rupees 100 to be a fair money limit for works to be undertaken on petty contract, the Superintending Engineer of the 8th Division is of opinion that as a rule payments to all contractors should be made directly by Range Officers.

11. Defining a petty contract to consist of piece-work of agreements for the delivery of materials without advance, or for the execution of works costing not more than Rupees 500, also without advance, the Officer in charge of Public Works Operations in Wynaad states that payments for such works should continue to be made under the existing rules.

Superintending Engrs office 1st Div
Camp. Malbar. 28th February 187

No. B 5

From

Major J. F. Fischer R.E.
Ag Superintg Engr 1st Division
Dowlaisheweram

To

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

Sir

With reference to G.O of the 7th Feby 1871 No. 345, I have the honor to state I do not consider it advisable that any works should be undertaken on petty Contract, in fact without formal agreements no such thing as a Contract can exist. Overseers should be able to get all such works executed in the ordinary way the payments can be made by themselves after inspection by the Range officer on Completion.

2. I do not see that it is necessary for all payments to be made by Range officers for works done on Contract, if he is satisfied the work has been done properly it does not matter who makes the actual payments and

Execution

Executive Officers should be relieved as
much as possible of office work, at present
more than half an officer's time is em-
ployed on the accounts and writing
cheques for the different funds from which
disbursements are required, to be made.
3. I think it is very necessary a check
should be placed on the contract system
altogether; in this Country there being no people
of sufficient standing or intelligence to
take it up: and at present it is only another
name to get as much as possible out of
an estimate and go to law for the balance.

I have the honor to be
Sir
Your most Obedt Servt.
Wm: H Richmond Major RE
Actg Insp Engineer 1st Division

Rec'd February 7th No 159-
160

Public Works 1871 Department
Trans of Govt for August
-Sc- 1855-

Memo
The Supt. Engr. of the
1st Division

Dated 28th February
Received 7th March } 1871
-Sc- B.

Submitting
his opinion on
the subject of the
fixing of the sums
to be paid by
Range officers to
Contractors -

No 2198 - 28 Aug 6/71.

No 361

No 167.

Super Engrs Office &c
Camp Nellore 9
6th March 1871

From Colonel F. J. Moberly R.E.
Superintending Engineer &c

To Colonel C. A. Orr R.E
Secretary to Government &c.P.W.

Sir I in reply to G.O. No 375. 7th February,
I have the honor to observe that I see no necessity
for fixing by money limit the definition of a
petty Contract - Nearly, if not quite, all new
large Earth works are executed by gangs of men
undertaking to provide labour at a given rate
per cubic yard - No quantity is named, and there
is no Contract, but we get many thousands of
yards of work done with very little trouble and
no discussion -

2 Generally small payments on account
are made by the Overseer on rough measurements,
but the Range officers, so far as I know,
invariably check these measurements and
make the final settlement themselves, whether
on regular or informal Contract.

3 I do not however think it advisable to
alter the rule in the Manual as there might be
instances in which great delay would be caused
if the Range officer were forbidden to trust

to a

No. 2572 Superintending Engineer's Office.
3rd Division.
Bellary 1st March 1871

From,
The Superintending Engineer
3rd Division.

To,
The Secretary to Government
Public Works Department
Fort Saint George

losures.

Sir,

With reference to G.O. No. 375 of 9th ultimo, I have the honor to inform, that in my opinion a Range Officer should invariably make all payments to Contractors and petty Contractors — to Lascars himself, however, he might make a deduction of 15 per cent on the Overseer's measurements, so as to be able to cover any differences which may be found out by the Range Officer when he takes his check measurements.

I have &c &c

A. Morris Lieut Col RE
Supg Engineer 3rd Division

In the Kistna the Asst Engineer would not be disbursing agent under this rule, where the Range is under an Executive Engr

I have &c &c

Lieut Colonel RE
Supg Engineer 2nd Div.

Rec'd 1st March 1871

Submitted

Chief Engineer & Secretary to Government

No. 4968 Supt. Engrs. Office A. & D. Dn.
Madras 6th March 1871

From,
Colonel C. F. Haddelsam R.E.
Superintending Engineer A. & D. Dn.

To,
Colonel C. A. Orme R.E.
Secretary to Government P.W.D.
Fort Saint George

Sir,

With reference to G.O. No. 375 dated 4th February 1871 on subject the Government Sanction for the Subscriptions Engineers to receive their salaries and Allowances to the month Ended 28th February last I have the honor to forward herewith Contingent Abstract No. 1 for Rs. 1,80,000 and Establishment Abstract No. 1 for Rs. 50,000 for the month of February 1871 and to state for the information of Government that the Establishment Abstract for the month of January last was submitted to the Accountant General on the 28th ultimo.

I have the honor to be
Sir
Your most obedient
Servant

From,
The Superintending Engineer
3rd Division.

To,
The Secretary to Government.
Public Works Department.
Fort Saint George.

No. 2572.

Dated 7th March 1871.
Received 9th

Instruct Range Officers should make all payments to Contractors and make a deduction of 15 per Cent on each payment so as to cover difference if any.

No. 2198 - 28° Augt 6/71

No. 366

6/Mar 21st

spent in closing breaches, the delay of making a formal Contract when the work has frequently to set about at once without an hours delay would stop the usefulness of any such repairs being done. Again in large works where no Contractor for the work comes forward, and each separate item of the estimate is carried out by petty Contractors, no money limit can be put on such works. I consider therefore tying down a Range Officer to a certain sum would not be of any good whatever; but I would have the Controller have much more Control over the Completion Bill, or the Contract certificates which are sent in monthly, as I consider the check now exercised really amount to nothing at all. I would have each certificate accompanied by measurement Statements taken by Range Officer himself in the case of all large works, or of a Competent Overseer not by a local fund ministry, in every other case with a counter check of measurements by the Contractor himself.

The

The actual measurements taken being kept in note books kept in the range Office and to be sent to the Controller when required - At present only a remark is entered into the Contractors certificate that the Range Officer has satisfied himself of the correctness of the measurements and as far as my inspections have been the Range Officer is generally very easily satisfied at least I found it so in one range of my Division. Then the Controller ought to check the expenditure to the minor heads of the estimate.

2 This is no hardship on the Range Officer as with the exception of occasionally in cases of very emergent repairs the ordinary works and repairs of the Division can be all measured up by that Officer.

3 With regard to the question of payment of Contractors I consider that all payments to Contractors should be invariably by the Range Officer by cheques paid directly to the Contractors and not conveyed to them directly or indirectly through the medium of subordinates. This has from the reports I have received from my Range Officers always

always been the case in this Division,
and no money payments are made
by the subordinates except in the case
of road repairs which are carried on
by Coolly Labour, a very stringent rule
however in this point is much required.

I have the honor to be
Sir
Your most obedient Sr.

Morrieson Col. R.E.
Supt. Engr. A. & D.

No. 250.

Superintg. Engrs Office, 5th Divn.
Salem, 9th March 1871.

From,

The Superintending Engineer,
5th Division.

To,

The Secretary to Government,
Public Works Department,
Madras.

Sir,

With reference to G.O. No. 375 dated 7th February 1871, I have the honor to report that the practice, both as regards the limitation of the sum within which works may be undertaken on petty Contract without a formal agreement, and also with respect to payments being invariably made by Range Officers, differs somewhat in this Division.

2. In one case indeed, viz. in No. 2 Range South Arcot District, the Range Officer reports that it is not his practice to execute any works by Contract, petty

or

Recd 7th February 71 Nos 159-160

Public Works 1871 Despatches
From Supt Engr 5th Divn
The Superintending Engineer
5th Divn

To,
The Secretary to Government
Public Works Dept

Dated 6th March 1871
Recd 10th March 1871

No. 496.

Expressing opinion as to the money limit within which works may be undertaken on petty Contract.

No. 369

6 Refd 21st

No. 2198. 28 Aug 6/71

or otherwise the work being done by the Moregars of villages. Generally, however, it is stated that as regards works to be undertaken on petty contract without formal agreement no limit is placed (one Officer speaks of a 100 Rs limit) and the system of payments by cheque by Range Officers, sometimes direct if the Contractor is at hand, at other times sent through Overseers, seems to be adopted; the thing to be avoided being the causing Contractors to complain of having to travel great distances to obtain their money.

3. Bangalore would seem to stand of itself apart from other Ranges, as its conditions are different. There no formal agreement is made for unimportant works, and there of course, more than elsewhere, all payments are naturally made by the Range Officer himself.

4. On the whole, I see no reason for advising any departure from the Rules laid down in Chapter XVI of the Code (especially referring to Section 4) wherein, after having in previous sections laid down strict Rules for Contracts of the Major Kind, it is enjoined that "the foregoing Rules shall apply only to cases, in which the Officer concerned, considers it advisable to enter into formal Contracts; and shall in no way preclude him from making agreements of a more informal character at his discretion. In such a case the Officer concerned will be responsible for any loss which Government may sustain through the want of any formalities on his part."

5. In all cases the payments should continue to be made by cheques to Contractors, direct if practicable, otherwise through Overseers.

I have the honor to be
Sir,
Your most Obedient Servant

A. Pilcan Lol: R.E.
Superintg: Engineer, 5th Div.

21

Rec'd February 1871 No 157
155

P.W. 1871 Dept
From Govt. No. 1826.

The Superintg Engineer
5th Division,

To The Secretary to Govt
P.W.

Dated 9th March 1871
Rec'd 13 March 1871

No 250

Petty Contract.—

Submitting his opinion as regards the money limit within which works may be undertaken on Petty Contract, and with respect to payments being made by Range Officers.

No 2198. 28 Aug 71

No 368

Rec'd 21st

officers for Petty Contracts under para 8 Section I Chapter XVI of the P.W. Code.—

3rd —— What the officers of the D.P.W. want is a simple form of Contract which has been carefully examined by a Lawyer who is also a Tamil Scholar so that there may be no possibility of an evasion of a Contract owing to any informal inaccuracy in it or to the use of any Tamil terms which do not express precisely what is intended or which may admit of a doubtful significance.

4th —— With regard to the question whether payments for works executed on Contract should not be invariably made by Range officers, I am of opinion that for works below Rs. 50 the Overseer should be permitted to pay sums upto Rs. 20. for it is often not worth the while of a Petty Contractor in a remote Village to travel 40 or 50 miles to find the Range officer & then to proceed another 20 or 30 miles to the Treasury with the cheque to draw so small an account and in such cases I

vide Letter No 107 in G.O. No 1261 dated 16th May 1870

I am of opinion that the Range officer after inspecting & passing the work should pay any balance on it in Cash, so as to save the Petty Contractor, probably a poor Villager, the waste of time & trouble of proceeding to the Treasury for a very small sum. The relaxation of the Rule as regards payments by cheque in such cases is required rather for the convenience of the Range Officer.—

5th —— For all Contract works above Rs. 50, I am of opinion that payment should be made by the Range officer by cheque but that payments should be permitted for works while still in progress on the Certificate furnished by the Overseer (who should be held responsible for any difference found when the Range officer measures the work) even when the work has not been examined by the Range officer or has not been examined by him subsequent to the bringing up of the work to the stage

stage to which the work has progressed when the Overseer submits the Contract Certificate & when payments are to be made, the check measurements required under G.O. No 2788 of 19th November 1870 and also the Certificate proposed by the Controller should be dispensed with until the Range officer has had an opportunity of examining the work. For minor works which are completed within 6 or 7 months there is probably only one intermediate Contract Certificate before the final Certificate & therefore would, as a rule, be but little difficulty in attaching the check measurements to such Certificates, but it is with reference to the larger works that the difficulty in connection with the check measurements arises for large quantities of materials may be supplied during the absence of a Range officer and it is hardly fair to keep the Contractor waiting for payment when the Overseer or Subordinate in charge of the work has reported the receipt of the material and is in fact then using it up.

In such cases I am of opinion that the Controller should pass the expenditure incurred (though in excess of the Range officers check measurements) conditionally, and that the Range officer should be required to submit check measurements or the Certificates required by the Controller at the earliest opportunity and as soon as possible after the termination of the working season, and in these check measurements or Certificates any alterations and additions or deviations from the Estimate should be specified - Unless such a system it appears to me that there would be no difficulty in bringing the responsible officer to book for any unauthorized changes or additions.—

6— The payments made on the Overseers Certificates are not in any sense advances but represent materials provided or work bonâ fide executed but not such as can be briefly defined unless the state & condition of each portion of a work such

such as of each Pier or Arch is minutely described and defined—

7— In large works it appears to me that the Range officers check measurements might be made at various definite stages of the work and such as are entered distinctly and separately in the Estimate such as the Foundations— the base, inner walls above &c in Buildings or Piers and Abutments: turning Arch— face walls &c in Bridges.—

I have the honor to be
Sir
Your most obdt Servt
H. Yates Capt RE
Superintendg Engineer

No. 239

Supt Engineer Office
4th Division
Fourth Presidency
13th February 1871.

Sir,

I have the honor to forward for the information of the Superintending Engineer, Public Works Department, Calcutta, the accompanying letter No. 369, dated 7th instant, from the Secretary to Government, Public Works Department, with its enclosure, on the subject of the Rules for the execution of Petty Contracts.

2. I have the honor to state that the Rules for the execution of Petty Contracts, as published in the Calcutta Gazette of 1865, pages 178 and 179, and subsequently modified by Notifications in the Calcutta Gazette of 1866, page 205, of 1867, page 366, of 1871, page 159, and in the Bengal Gazette of 1868, page 104, have been carefully observed in this Division.

3. I have the honor to be, Sir,
Your most obedient Servant
Superintending Engineer
4th Division

To
The Secretary to Government,
Public Works Department,
Fourth Presidency.

Sir,

In reply to your No. 2325 of 15th February 1871, I have the honor to forward herewith Superintending Engineer's letter No. 239, dated 13th instant, reporting that the Rules for the execution of Petty Contracts published in the Calcutta Gazette of 1865, pages 178 and 179, and subsequently modified by Notifications in the Calcutta Gazette of 1866, page 205, of 1867, page 366, of 1871, page 159, and in the Bengal Gazette of 1868, page 104, have been carefully observed in this Division.

2. I have the honor to be, Sir,
Your most obedient Servant
Executive Engineer
4th Division

To
The Superintending Engineer,
4th Division,
Fourth Presidency.

Public Works Department
Proceedings for August
Nos. 1 to 2 1729

From
The Secretary to Government,
Public Works Department,

To
The Superintending Engineer,
4th Division,
Fourth Presidency.

Dated 15th April 71.
Received 17th April 71.

No. 37.

Referring to G.O. No. 375, dated 7th February 1871, relative to the money limit within which works may be undertaken on Petty Contract.

No. 369

No. 2198 - 28 August 71.

No 305. Superintending Engineer's Office,
8th Division Secunderabad 1st May 1871.

From,

The Ag. Superintending Engineer
8th Division

To,

The Secretary to Government
P. W. Department

Sir,

With reference to G. O. No 375. dated 7th February 1871. I have the honor to state that Secunderabad Rupees 100. to be a fair money limit to which vehicle works may be undertaken on petty contracts, for which no formal agreement need be made. I am of opinion that as a rule all payments to Contractors whether petty or otherwise, should be made directly by Paying Officer.

I have the honor to be,
Sir
Your Most Obed.t Servt

Richd. F. Roberts Lieut. Col. R.E.
Ag. Superintending Engineer
8th Division.

Rd. 5th May 1871

No 198-208 Aug. 8/71

From
The Deputy Engineer
4th Division

To
The Executive Engineer
Bolarum

Dated 8th February 1871
No 239

Refer to D.O. No
3rd ultimo, & 5th February
1871 regarding Petty
Contracts.

No 350
1/

6 Copies

Special Executive Engineer's
Office Wynaad, Nythery
7th March 1871.

No 102.

From,

The Special Executive Engineer
Wynaad

To,

The Secretary to Government
Department Public Works
Madras

Sir

With reference to G.O. No 375 dated 7th February, I am of opinion that all piece work, agreements for delivery of materials without advance, or for execution of works not exceeding Rs 500 in value, also without advances, may be considered Petty Contracts.
And with regard to the second query I do not see any reason for altering the existing Rules.—

I have the honor to be
Sir,
Your most Obedient Servant
Wm. G. Lewis Major
Special Exc: Engineer Wynaad

G.O. 1871 Executive
Forest Dep. 9 Feb 1871 No 203
Ex. Engineer Wynaad
Rs 500 Rupees

To
The Secretary to
Government of Madras
Public Works Department

Dated Ootacamund 8th March 1871
Rec'd 13th March 1871
No 395

Sir,

I have the honor to acknowledge the receipt of your letter No 375 dated 7th Feb. 1871, requesting to be informed whether in my opinion it is necessary that the Rules for the execution of works by Petty Contract should be altered as suggested by the Executive Engineer Wynaad.

2. In reply I have the honor to state that I do not consider it necessary that the Rules for the execution of works by Petty Contract should be altered as suggested by the Executive Engineer Wynaad.

I have the honor to be
Sir,
Your most obedient Servant
[illegible]
Chief Engineer

No 2198-428 Civil

No 103

37

Madras
15th June 1871

From. J. W. Handley Esqre
Government Reader
Madras

To Col. C. Carpendale C.E.
Secretary to Government
Public Works Department

Sir

19th Jan 1871 G.O. No- 148

With reference to the Proceedings of Govt noted in the margin I have the honor to state that I have carefully perused & considered the various remarks and suggestions of the Government Engineer officers upon the subject of the proposed form of petty Contract, & I have the following observations to make thereon

2 Many of the remarks & suggestions of the Engineer officers refer to question which are entirely within their province & out of mine, such as whether it is possible or desirable to take security from Contractors or whether the better plan

is not to deduct a percentage at time of payment; whether payment by instalments or in a lump on completion of the work is the best plan; whether in all cases Contracts should be by specification & tender; whether mere payment for work done by measurement without any Contract is not practically as good a plan as any to see. Upon all these points I imagine I am not called upon to express an opinion. The question referred to me in the former Proceedings was as to the sufficiency of the form of Contract proposed by Captain Oakes for the purpose for which it was required, & I shall therefore confine the remarks of the Engineer Officers only to far as they discuss my views upon that subject & the form proposed by me in modification of Captain Oakes'.

3 In this view the first remarks & suggestions calling for observation are those of Mr Fraser in his letter

(forwarded)

forwarded by Col Moberly & stated by that officer to represent his own views. Mr Fraser thinks it is useless to stipulate for forfeiture of the security as liquidated damages on breach of the Contract, the amount of actual damage being always ascertainable, such as stipulation would be treated as a penalty which the Court would not enforce. Mr Fraser's statement of the law on this subject is not quite correct. It is not the possibility of ascertaining the actual damages resulting from a breach of Contract which is the test whether a sum stipulated to be paid on breach, shall be considered as liquidated damages or as a penalty, but the intention of the parties, to be gathered from the terms of the Contract. The mere use of the words 'liquidated damages' or 'penalty' will not make it either one or the other if it is clearly contrary to

to the intention of the parties that it should be so. No doubt if at the time of making the Contract the damage to result from a breach of it is ascertainable, that is strong evidence against the intention being to make a larger sum liquidated damages, but if the probable damage is not known & parties choose to say "we will fix it at so much to avoid the trouble and expense of inquiry" the tendency of the English Courts in modern times is to keep them to their bargain. All the Cases are discussed & the Law on the subject very clearly expounded in a Judgment of Mr Justice Holloway reported in the 2nd Volume of the High Court Reports page 1051. I apprehend that the Case of a Public Works Contract is just one in which a stipulation for payment of a fixed sum as liquidated damages would be upheld, because even if it were always possible to ascertain exactly the actual damage, which

which In nature to doubt, to do so would always involve an inquiry more or less Complicated & expensive according to the nature of the works.

I Mr Fraser also objects (para 7) to the wording of the Clause providing for payment by the Contractor of any increased Cost caused by the work being taken out of his hands. He Considers that the provision for deducting the difference between the Contract price & the Cost of Completion from the sum deposited as Security leaves it open to be argued that the Contractor is to pay that sum & no more towards making up the difference. The objection seems to me hypercritical. I do not see how any such argument could be founded on the words as they stand. It is distinctly stated that the Contractor shall make good the whole difference & then it is provided that this may

not shall, be deducted from the security. Of Course it would seem to be the case that the security Cover all loss + I doubt whether, when a sum has been fixed upon, as liquidated damages for a total failure to Complete the Contract, more could be recovered under any Circumstances for a partial breach, but this would be the effect, not of the wording of the Clause in question, but of the general principle that, if you choose to fix your damages at so much, you cannot recover more.

5. The Superintending Engineer 4th Division thinks that the forfeiture of the security should be enforced not only on actual failure to Complete the Contract within time but on such delay or neglect taking place as to justify the officers of the Department in taking the work out of the Contractor's hands, in fact on the occurrence of a probability of failure of which the officer is to be the judge. This is precisely the part of Captain Oakes' draft to which I took exception as being too highly penal to be enforced by the Courts, to which opinion I still hold, but I shall touch upon the subject again when I come to Captain Oakes' remarks. The Supt. Engineer 4th Division has slightly misunderstood the meaning of the words "in case the same be not forfeited," Commented upon by him in para 5 of his letter. It will be seen that the draft proposes for the work being taken out of the Contractors hands in two events. 1st on his not Completing within time, 2ndly on its being probable that he will not do so. In the 1st event the security would be properly forfeited + it is to this that the words in question allude.

6. Captain Roberts' objections apply

apply really to all forms of agreement except his own, which has certainly the merit of brevity but would probably be found if attempted to be enforced in a Court of law, to be more suggestive & productive of legal quibbles than a more formal document. Of Course if the only object were to burke the Consciences of the Contractors, the form of words used would Cast much matter & even the stamp paper might be omitted. He prefers Captain Oake's form to mine but gives no reasons so that his remarks do not seem to require further Comment from me.

7. Captain Oake still thinks that it is necessary to guard, against the contingency of a Contractor who finds the work not likely to be profitable making wilful default, by providing that when the Engineer officer sees reason to take the work out of his

his hands, he shall forfeit both the security & payment for work actually done by him. In my former opinion, I gave my reasons for thinking that such a provision is of too highly penal a nature to be enforced by the Courts, to which I still adhere. Moreover I am still unable to see how Government can actually lose anything by any such Conduct on the part of a Contractor. Conduct which I should think would be rare for it would generally be against the man's own interest, if the terms of the agreement are as I have suggested. Under these, if the work has to be taken out of the Contractors' hands owing to his neglect & delay, all the loss, & delay, Caused by the work having to be Completed either Departmentally or by another Contractor, falls upon the defaulting Contractor. The work is ultimately completed in the Contract time

agreement not only Govt. Government not to lose but they might gain considerably by the act of their officer in taking the work out of the hands of the Contractor. Thus suppose one half of the work properly done & then the work taken over & finished for half the Contract price, there would be a clear gain of the other half plus the security, & an arrangement which may have such a result & can in no sense be said to be an Equitable one. The Supt. Engineer 4th Division who supports Captain Oake's views on this point alludes to the case of a Contractor using bad materials which must be removed. Of course the cost of this removal would be part of the cost of completing the work & would thus be borne by the Contractor. If he is insolvent & the security does not

time & for the Contract price, for the excess cost over that price is to be paid by the Contractor, therefore there is no damage from it not having been done under the Contract, & I strongly incline to think that any provision for muleting the Contractor in damages to the extent of the amount of his security & the value of work already done & materials left by him, as proposed by Captain Oake, would be regarded as a penalty & prohibited against by the Court. In short liquidated damages are intended to provide for possible actual damage being caused by breach of Contract, & where there is & can be no damages, it will never be held that the parties meant to fix the damages at a certain amount. Under Captain Oakes proposed condition of the agreement

) Cover the increased cost caused by
his default. no doubt the Govt
will lose, but that must be the
case under any arrangement
it is equally so under Captain
Oake's proposed conditions as under
mine. On the whole I cannot
recommend the adoption of a
form of Contract which I think
Could not legally be enforced.
Of course if it is considered that
such a provision as that advocated
by Captain Oake is necessary
for the protection of the interest
of Government, I shall be ready
to modify my draft accordingly
Subject to the foregoing observations.
8. Captain Oake asks whether
if the Contractor is allowed to com=
=plete the work after the Contract
time, the liquidated damages for
non-completion within time can
be insisted on. Certainly I think so.
They become due immediately on

failure to complete within time & are
the Compensation which the Contractor
has to make for that failure, having
paid which there is no reason why
he should not be allowed to Complete
the Contract ~~time, & Course he Could do so~~ in the mean time.
~~If he desires to step work after the expiration of~~
~~the Contract time of course he can do so,~~ but
the damages for breach of Contract —
having been fixed by the parties nothing
further than payment of these damages
Can be insisted on. The usefulness of the
provision for taking the work out of his
hands on failure to Complete within
Contract time, consists in it obviating
all questions as to right of possession
of material & plant or as to his claim
to be paid for work done, which he
might enforce at law, though his
Claim under the Special Contract
were forfeited.

9 The Special Executive Engineer
in Charge of Wynaad asks whether
a pecuniary penalty by way of
fine

fine or damages inserted in an agreement destroys liability to the Criminal provisions of the breach of Contract law. I think not. The offence under act XIII of 1859 consist in the taking an advance & then neglecting or refusing to complete the work & this proved, the Magistrate must at the option of the Complainant, either order the work to be completed or the advance to be refunded, non-compliance with which order is punishable by imprisonment. The right to recover damages for breach of Contract exists wherever there is a Contract, whether the amount of such damages is fixed by the Contract or has to be determined by evidence, & the existences of this right does not affect the liability to the Criminal law in the one case any more than in the other.

10 Several of the Engineer Officers advocate payment by instalments on

measurement of work done instead of in a lump sum. Of the expediency of such a method of payment they are of course the best judges. I do not think, however, that it would be necessary or useful to cumber the contract with such details. If that method of payment is found convenient it can always be adopted, such payments would be merely payments on account & would be quite consistent with the terms of the Contract, whereas it would always be well to have the power to withhold payment until final Completion.

Another suggestion made is that security should not be taken. Such security should not be taken. Such be easy to alter the form of Contract to meet the case of no security being taken. In that case the agreement will merely provide for payment by the Contractor of a certain fixed sum as liquidated damages for breach of the Contract. I would suggest.

suggest that, whatever form is adopted, the widest discretion should be left with the Engineer officers to vary or alter it terms to meet the peculiar circumstances of each case. They must be the best judges of the Contractors they are dealing with & the necessity for stringency or the reverse in the terms of the Contract.

11 The above are all the observations I wish to offer on the various suggestions of the Engineer officers. At present, for the reasons assigned, I do not see any necessity for modifying the draft contract before submitted by me.

I have the honour to be
Your most obedient Servt
J W Bazalgette
Govt Pleader

P. W. D.

Proceedings of the Madras Government 55

No. 2198. Read the following:

From, The Supg. Engineer 1st Dn.	(H. E. No. 13	of 28th February 1871.)
Do	Do 2nd	(" " 167	of 6th March ")
Do	Do 3rd	(" " 2512	of 7th " ")
Do	Do 4th	(" " 4966	of 8th " ")
Do	Do 5th	(" " 250	of 9th " ")
Do	Do 6th	(" " 37	of 15th April ")
Do	Do 7th	(" " 229	of 13th Feby. ")
Do	Do 8th	(" " 305	of 1st May ")
Special Ex: Engr. Mysoad		(" " 102	of 4th March ")
Govt. Pleader		(" " 103	of 15th June ")

G. O. No. 375 of 7 Feby 71

In January 1871 the Supg. Engineer of the 3rd Division suggested that the money limit with respect to petty contracts should be fixed at Rs 100, Range Officers being as a rule required to make all payments themselves to Contractors as well as to petty contractors. In endorsing these proposals the Controller of Public Works Accounts recommended that a reference be made to the

N.

A. A.

W

Con 19th Jany/71 No. 303 / 312

1871 Sept.
Proceedings Govt. of ... August
No. 2782.
From The Govt. Pleader Madras
To The Secy. to Govt. P. W. Dept.

Dated 15th June
Recd. 16th " No. 103

Proposed form of petty Contract.

Submits his observations upon the various remarks and suggestions of the Govt. Engineer Officers in relation to —

No. 2198. 28th Aug/71

No. 373

C. Recd. 21st Aug/71

the Supt Engineers generally
with a view to elicit their
opinions on the question.
This was accordingly made
and the papers recorded
at the head of these
proceedings are the replies
to it.

From these papers
observed that the
Supt Engineer Otto 1st
Division is of opinion
that as no contracts
without formal agreements
can be said to be in
existence it is not ad-
visable that any works
should be undertaken
on petty contracts but
that they should be
executed by Overseers in
the ordinary way payments
being

being made by them
after inspection by
Range officers on com-
-pletion.

Describing the
manner in which
almost all large earth
works are at present
executed in the 2nd
Division and explaining
the mode pursued in
making payments the
last Division
Supt Engineer does not
consider it necessary
to define a petty con-
-tract by means of a
money limit or to alter
the rule in the Manual
of Public Works Accounts
regarding payments.

In the opinion of the
Supt Engineer of the 3rd
Division

Division payments to Contractors and petty Contractors should invariably be made by Range officers with a deduction of 15 per cent on Divisional measurements in order to make good any differences which may be found on check measurements being taken by the former.

The Supt Engineer of the 4th Division, while questioning the expediency of restricting Range officers to a fixed amount as respects petty Contracts, states that if it be necessary to lay down a limit, he would fix it at Rs 500, and that Contractors should

should always be paid by Range officers by cheques directly to the former and not be conveyed to them directly or indirectly through subordinates.

The Supt Engineer of the 5th Division recommends the observance of the rules contained in Chapter XVI of the Code of the Public Works Department as regards the execution of works on petty contract and states that payments should be made by cheques to Contractors direct if practicable, otherwise through Overseers.

The Supt Engineer of the 6th Div. is of opinion that the existing rules relating

relating to works which may be undertaken on petty contract should remain unaltered, but that if a money limit is to be fixed for such works it should not be below Rs 2,000.

As regards payments to Contractors Captain Oates considers that for works below Rs 50 Overseers should be empowered to pay sums upto Rs 20, any balance due being paid by Range officers in cash after inspecting and passing the works. For works above Rs 50 Capt. Oates recommends that payments should be made by

G.O. Nos 2488 & 17th Nov. 1870
" " 104 & 16th March 1871
P6.

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by Range officers by cheques but that these payments should not be rendered dependant upon personal examination but made on the certificate of the Overseer who should be held responsible, the check measurements and contract certificates required by the orders marginally noted being dispensed with until Range officers have had an opportunity of inspecting the works. These check measurements or certificates Capt. Oates would require to be submitted at least once in three months and as soon as possible after the

the termination of the work Range reasons. The object Capt. Carter has in view in making this proposal is to prevent the Contractor being kept waiting for what is due to him.

The Supt. Engineer Delta Division would fix the money limit within which works may be undertaken on petty contracts at Rs 500 and recommends that payments should invariably be made by Range officers only.

Considering Rs 100 to be a fair money limit for works to be undertaken on petty contract, the Supt. Engineer Delta 8th Div. is

is of opinion that as a rule payments to all contractors should be made directly by Range officers.

Defining a petty contract to consist of piece-work - of agreements for the delivery of materials without advances for the execution of works costing not more than Rs 500, also without advances the officer in charge of Public Works operations in Nagpur states that payments for such works should continue to be made under the existing rules.

It appears evident that the terms petty contract is a misnomer. Under the present customs of the department all agreements implied or understood for the execution of a work, not based on an estimate, specification, plan, with tender and acceptance of the tender, witnessed by a deed, would appear to be included in the term. A native employer of labor tenders for the execution of an earth work at a certain rate per cubic yard which the Engineer accepts. There is an implied agreement that he will complete the work

work, but the basis of the contract is piece work payment.

On the one hand the Contractor can cease carrying out the work at any period. On the other the Engineer has power to stop the work and to discard the contractor. The payments being made periodically, and it being also the custom to reserve a percentage on sums due, there is always a balance in the hands of the Govt. officer in favor of the Contractor, and this acts practically as a security for the due performance of the work. The term petty is however misapplied

for it has frequently happened that a large quantity of work has been executed and large sums have been paid under this system of informal agreements, and some officers are much in favor of it. Nevertheless it is not one to be encouraged. It is not adapted for the execution of work of a complex nature, for nothing could be more inconvenient or more usually productive of loss and delay than the abandonment of a building (for instance) by a contractor or that an officer should be under the necessity of taking it out of his hands when incomplete.

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There plies to the references to Supt Engineers on this subject made under L.O. No. 160 of the 7th February 1871, show that a very great divergence of opinions exists amongst these officers as to the question of the money limits which should be fixed within which only works by formal agreements should be undertaken, but the majority recommend that no limit should be assigned, and with this opinion the Government are disposed to concur.

Para 2 Section 2 of the XVI Chapter of the Public Works Code does not, as has been supposed,

confine the discretion of officers in making informal agreements to the sum of Rs 100 but merely requires that such agreements if for larger sums should be published in the Fort Saint George Gazette.

The Govt consider that the question should be entirely governed by the circumstances of each particular locality, and that to fix any limit without reference to those circumstances would only hamper officers in their operations. Supg Engineers who have the best means of judging will exercise their discretion

but

but with due regard to the 1st paragraph of the Chapter of the Code above referred to which prescribes that in all practicable cases recourse should be had to formal Contracts.

There is no difficulty in arriving at a conclusion on the other subject of reference, that is to say, the medium through which payments for work executed for Govt should be made. Almost all Supg Engineers are in favor of the disbursement being made by the Range officers, but the Govt while directing that this rule may be generally followed, are of opinion that

that the exceptions recommended by Capt. Bates in his reply should be allowed, and that Overseers in respect of works under Rs 50 in value should be allowed to pay in cash to the extent of Rs 20 on account, the balance being paid by the officer in person after passing the work. It seems also necessary that the Controller should have authority to pass payments made by Range Officers on Overseers' certificates and measurements, without the Range officers' certificates as to check measurements during any interval not exceeding 3 months. These certificates may

may be headed Intermediate. Range officers will be required to supply certificates with their check measurements to cover these intermediate payments at least once every three months. Further it is desirable that where there is an Assistant Engr. under the Range officer he may with the approval of the Superintending Engineer be made a disbursing officer for the payment of work carried on under his immediate supervision to the extent of its value.

The subject of the form of contract most suitable for adoption under the circumstances referred to by Capt. Bates in

in his letter to Govt. of the
27th April 1870 No. 107 have
been the subject of separate
orders of reference and the
observations of the Supt.
Engr. on the draft form
furnished by the Govt.
Pleader with his letter
No. 68 of the 6th June 1870
as well as the reply of
that officer to those obser-
vations are before Govt.

It is to be borne in
mind that the pre-
sumed necessity for
the new form arose from
the consideration that the
form of Contract Bond
circulated with G. O.
No. 245 of the 27th Janry 1869
was only applicable to
contracts for large works

when

Nos 1055, 1112, 1080, 1103, 1120, 1729, 761
2063, 1084, & 2782

Govt of [1871] Madras.

PUBLIC WORKS.

To The Superintending Engr

Dated

Recd. Read.

G. O. 28 Legl. No. 21 J.S.

Nos. 3 to (a) 76

Petty Contracts. Papers

Orders in ~~letter~~ Correspondence
on the subject of the money
limits within which
works may be undertaken
as Petty Contracts.