

(1) Number of pages 18
(2) Date of repair 2-5-41
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 228	Press ~~Mis~~
461-62	
Dated 26 . 1	1871 .

Not to be folded or roughly handled

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

No. 461. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Public Works Department, dated Tanjore, 7th January 1871, No. 865:—

WITH reference to G. O., No. 2,889, dated 30th November 1870, permitting the defence of the suit brought against Mr. Donaghue's letter, No. 176, dated December. Mr. Supervisor Donaghue by one Vythilinga Pillay in the Moonsiff's Court at Trivalore, I have the honour to enclose the papers noted in the margin.

2. The plaintiff claimed Rupees 756-12-0, which was far in excess of the value of work actually done, while Mr. Donaghue passed work to the amount of Rupees 499-2-3, having declined to measure work executed after the end of May, when the contract time ceased, and after which work to the amount of about Rupees 65-10-0 appears to have been executed, but was left in an incomplete state. It would thus appear that work to the amount of about Rupees 564-12-3 was actually executed. The liquidated damages entered in the contract for non-completion of work were Rupees 300. Of this sum the Moonsiff has disallowed Rupees 150, as no damage "has been alleged or proved by the plaintiff's breach of contract," and he has proportioned the amount of the penalty according to the quantity of work which, he supposes, might have been executed had the contractor been allowed to continue to work till the end of June, instead of to the end of May, when the contract time ceased, the former being the date erroneously entered in an order to the plaintiff's father. This quantity, however, he estimates not according to the quantity passed by the Range Officer, and the accuracy of which he appears to admit, but according to the quantity of work said by the contractor to have been done by him, but which the Moonsiff disallows. The costs appear to be adjudged in a similar manner.

3. The sum to be paid to the contractor will now be Rupees 394-2-2 as follows:—

	RS.	A.	P.
Amount of decree	350	0	0
Proportionate costs of value of Stamp Paper and Vakeel's fee	43	12	0
Batta for commission, witnesses, etc.	20	11	0
	414	7	0
Amount to be paid to defendant by the plaintiff for Vakeel's fee	20	4	10
	394	2	2
Costs to be borne by defendant	39	0	0
	443	2	2

or Rupees 443-2-2 including costs to be defrayed by defendant, while work to the amount of Rupees 565-12-3 has been executed.

4. Mr. Donaghue requests permission to appeal against the decision of the Moonsiff. Should Government approve of an appeal being made, I beg that the enclosed papers may be returned at the earliest possible date, as the period within

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

which an appeal may be made terminates on the 15th instant. Should Government not approve of an appeal being made against the Moonsiff's decision, I beg that sanction may be granted to debit the costs incurred by Mr. Donaghue, as detailed above, to the estimate relative to which the suit has arisen, and that Government may be pleased to obtain an authoritative opinion relative to the legality of reducing the amount of liquidated damages entered in the contract, on the plea that no damage resulted from the breach of contract.

No. 462. ORDER THEREON, 26th January 1871, No. 228.

ESTABLISHMENT, No. 46.

In his letter of the 24th November 1870, No. 711, the Superintending Engineer of the 6th Division requested

permission to defend a suit brought by one Vythilinga Pillay, against Mr. Supervisor Donaghue in the District Moonsiff's Court of Trivalore for the recovery of a sum of Rupees 756-12-0, alleged to be due for work done on the Moodicondanoor south bank in the Tanjore District.

2. The facts brought to notice by Captain Oakes in connection with this case were that one Chidambaram Pillay originally engaged to carry out the work, but that, at his request, the name of his son, Vythilinga Pillay, was subsequently entered in the contract bond, the terms of which were that the works should be completed by the 31st May 1870, failing which the contractor should forfeit Rupees 300 as liquidated damages. The value of work performed up to that date having been only Rupees 444-2-3 against Rupees 2,097-9-8 entered in the agreement, the contractor was directed to stop work and was offered a payment of Rupees 144-2-3, being the amount due after deducting the penalty of Rupees 300. Vythilinga Pillay declining to accept this payment, instituted a suit for the recovery of Rupees 756-12-0, which included work said to have been executed after the 31st May. In his plaint the contractor represented that the time for completing the work had been extended up to the 30th June in an order issued by the Supervisor to Chidambaram, but Mr. Donaghue explained that the latter date was by a mere clerical error inserted instead of the date named in the agreement which was the 31st May.

3. Under these circumstances the Government, while remarking that Mr. Donaghue was much to blame for the carelessness displayed by him in allowing the mistake above noticed to occur, and in neglecting to register the contract bond, did not object to the suit instituted by the contractor being in the first instance defended at the public expense.

4. With his letter read at the head of these Proceedings the Superintending Engineer submits the decree of the District Moonsiff in the case of this suit. Recognizing the claim of the plaintiff to Rupees 500 for work actually carried out, and fixing the penalty to which he had become liable at Rupees 150, the Court has adjudged payment of Rupees 350 with costs amounting to Rupees 83-2-2. The total amount payable to the contractor is thus Rupees 433-2-2 against Rupees 565-12-3, estimated to be the value of work performed including that executed after the 31st May.

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26th January 1871.*

5. The Supervisor requests authority to appeal against this decision on the grounds set forth in his letter which forms an accompaniment to Captain Oakes' letter above recorded, but, taking all the circumstances into consideration, the Government do not think that it will be expedient to carry the case further.

6. The Government approve of the costs (Rupees 83-2-2) being charged to the estimate for the work in connection with which the suit was instituted, and the question raised by the ruling of the District Moonsiff regarding the appropriation of the sum stipulated for as liquidated damages for failure of contract will be referred for the opinion of the Government Pleader.

(True Extract.)

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

Secretary to Government.

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

Exd. S. T. Augustin.

Govt. of {1871} Madras.

PUBLIC WORKS.

To

THE SUPERINTENDING ENGINEER,

6TH DIVISION.

&c., &c., &c.

Dated January 26th.

Recd.

Encl.

G. O., 26th January 1871, No. 228.

JANUARY

Nos. 461-462

Suit.—Passing orders on the letter from the Superintending Engineer of the 6th Division forwarding copy of a decree and judgment in the matter of the suit filed against Mr. Supervisor Donaghue by a contractor, and requesting authority to appeal against the decision, and recommending the costs of the suit being charged to the estimate for the work.

No. 865

Superintendent Office
Bangalore 7th January 1871.

From,

Captain R. F. Oakes R.E.
Superintendent 6th Division.

To,

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

Sir,

With reference to G. O. No. 2889, dated 30th November 1870 permitting the defence of the suit brought against Mr. Supervisor Donaghue by one Vythilinga Pillay in the Moonsiff's Court at Trivalore, I have the honour to enclose the papers noted in the margin—

The plaintiff claimed Rs. 7567. 12 - 0 which was far in excess of the value of work actually done, while Mr. Donaghue paid work to the amount of Rs. 499 - 2 - 3, having declined to measure work executed after the end of May, when the contract time ceased and after which work to the amount of

of about Rs 65-10-0 appears to have been executed but was left in an incomplete state. It would thus appear that work to the amount of about Rs 564-12-3 was actually executed.

The liquidated damages entered in the Contract for non completion of work were Rs 300. Of this sum the Moonsiff has disallowed Rs 150 as no damage has been alleged or proved by the Plaintiff's Breach of Contract, and he has proportioned the amount of the penalty according to the quantity of work which, he supposes, might have been executed, had the Contractor been allowed to continue to work till the end of June instead of to the end of May, when the Contract time ceased; the former being the date erroneously entered in an order to the Plaintiff's Father. This quantity however he estimates not according to the quantity papered by the Range Officer and the accuracy of which he appears to admit but according to the quantity of work said by the Contractor to have been done by him but which the Moonsiff disallows: the Costs appear to be adjudged in

in a similar manner. 7-

The sum to be paid to the Contractor will now be Rs 394-2-2 as follows:-

Amount of decree	350-0-0
Proportionate Costs of value of Stamp Paper & Vakils fee	43-12-0
Batta for Commission & Interpreter Rs.	20-11-0
	414-7-0
Amount to be paid to Defendant by the Plaintiff for Vakils fee	20-4-10
	394-2-2
Costs to be borne by Defendant	39-0-0
Total	443-2-2

or Rs 443-2-2 including costs to be defrayed by Defendant, while work to the amount of Rs 565-12-3 has been executed.-

Mr Donaghy requests permission to appeal against the decision of the Moonsiff. Should Government appear of an appeal being made, I beg that the enclosed Papers may be returned at the earliest possible date as the period within which

an

an appeal may be made terminate
on the 15th Instant. Should govern-
ment not approve of an appeal being
made against the Moonsiff's decision
I beg that sanction may be granted to
debit the costs incurred by Mr. Donaghue
as detailed above to the estimate relative
to which the suit has arisen and that
Government may be pleased to obtain
an authoritative opinion relative
to the legality of reducing the amount
of liquidated damages entered in
the Contract on the plea that no damage
resulted from the breach of Contract.

I have the honor to be
Sir,

Yours most obed^t Serv^t

A. F. Bates Capt. R.E.
Superintendent C.D.

1871 kept
From Pro. of Govt. for Lumsden
No. 84
The Sup^r Engineer
C.D.
The Secretary to
Govt. D.P.W.
No. 865
Date 27th Jan 1871
Recd 29th Jan 1871
Encls. 38
No. 828. 26th Dec 1870
Towards copy of
Decree & judgment
in the matter of the Sub
by Contractor by the Lingam
Pillay against Mr. Sup^r
Donaghue. Inquires
whether the judgment
may be appealed against
& recommends the cost
of the suit may be debited
to the work to which it refers.

A. 461

C/4 Law 1/71

12298
Public Works Department
Proceedings of the Madras Government
Read the following

From

The Suptg. Engineer
6th Division } (No. 6482865.9) 7th January 1871

In his letter of the
24th November 1870. No. 971 the
Supt. Engineer of the 6th Div.
requested permission to
defend a suit brought by
one Vythalinga Pillay
against his Supervisor
Donaghue in the District
Munsiff's Court of Srirangapatna
for the recovery of a sum of
Rs 756-12 alleged to be
due for work done on the
Moodicondanor South
bank in the Tanjore
District.

R.

The facts brought to
notice by Capt. Oakes in
connection with this case
were that one Chidambaram
Pillay originally engaged
to carry out the work,
but that, at his request,
the name of his son, Tythe-
longa Pillay, was sub-
sequently entered in the
contract bond, the terms
of which were that the
work should be com-
pleted by the 31 May 1879,
failing which the contractor
should forfeit Rs 300 as
liquidated damages.
The value of work per-
formed up to that date
having been only Rs 144-2-3
against Rs 2097-9-8
entered in the agreement.

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the contractor was directed
to stop work and was
offered a payment of
Rs 144-2-3, being the
amount due after de-
ducting the penalty of
Rs 300. Tythelunga Pillay
declining to accept this
payment, instituted a
suit for the recovery of
Rs 165-12, which in-
cluded work said to
have been executed after
the 31 May. In his
plea, the contractor
represented that the time
for completing the work
had been extended up to
the 30 June in an order
issued by the Supervisor
to Chidambaram, but
Mr. Donoghue explained
that

that the latter date was
by a mere clerical error
inserted instead of the
date named in the
agreement which was
the 3rd May 1912.
Under these circum-
stances the Court while
remarking that Mr.
Draughton was much
to blame for the careless-
ness displayed by him
in allowing the mistake
above noticed to occur,
and in neglecting to
register the contract.
Board did not object
to the suit instituted
by the Contractor being
in the first instance
defended at the public
expense. and gave a Decree
with

With two letters read
at the head of these Pro-
ceedings the Superintendent
submitted the Decree of the
District Munsiff in
the case of this suit.

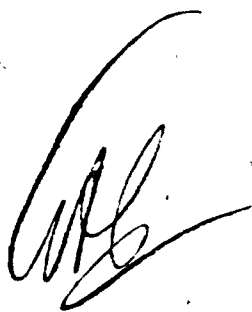
Recognizing the claim
of the Plaintiff to Rs 500
for work actually carried
out and facing the
penalty to which he has
become liable at Rs 150,
the Court has adjudged
payment of Rs 350 with
costs amounting to Rs
93-2-3. The total amount
payable to the Contractor
is thus Rs 443-2-2
against Rs 565-12-3
estimated to be the
value of work performed
including that executed
after

after the 31st May.

The Supervisor requests authority to appeal against this decision on the grounds set forth in his letter which forms an accompaniment to Capt. Barker's letter above recorded, but taking all the circumstances into consideration the Govt. do not think that it will be expedient to carry the case further.

The Govt. approve of the costs (Rs 93-2-3) being charged to the estimate for the work in connection with which the suit was instituted and the question raised by

by the ruling of the District Moonsiff regarding the appropriation of the sum stipulated for as liquidated damages for failure of contract will be referred for the opinion of the Govt. Pleader.



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6 The Supg Engr. 6th Div
5th Controllr
2nd Govt Pleader ✓

Dec 27th Jan 1871

Cp 89

Govt. of 1871 Madras.

PUBLIC WORKS.

To

The Superintending Engineer
6th Division

Delet

Recd.

Encl.

G. O. 26th Aug 71, No. 228

HCS. 461-462

Encl. - Passing orders on the
letter from the Inspector of the
Public Works forwarding copy of a
Decree & judgment ~~in the~~
matter of the suit filed against
Mr. Superior Ordnance by
a Contractor & requesting
authority to appeal against
the decision & recommending
the costs of the suit being
charged to the estimate for