M.R.O. 1—77,006—8-6-37.

(1) Number of pages 12

(2) Date of repair

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public (Courts) DEPARTMENT.

G.O. No. 2736 Press Mis.

Dated 30 - 10 - 1871.

Not to be folded or roughly handled

Read the following letters:—

No. 459. From the Superintending Engineer, 3rd Division, to the Secretary to Government, Public Works Department, dated Camp at Goondloor, Cuddapah, 16th October 1871, No. 1,320:—

I HAVE the honour to request the permission of Government to the case noted on the margin being defended, in the first instance, at Government expense.

Enclosures, marked 1-A to 9-A and one packet of papers.

Plaintiffs.—Contractors B. Mooneswamy and Bheema Charloo.

Defendants.—1, Talook Overseer T. Parthasarathy Moodelliar.
2, Supervisor Mr. F. Watkins.

Claim.—Rupees 334-10-0.

2. The nature of the case is this:—In July 1870, the Overseer of the Hindupur Talook, T. Parthasarathy Moodelliar, engaged the services of B. Moonesawmy for the construction of a culvert in the 82nd mile of the Bangalore High Road at the estimated cost of Rupees 510.

3. The Overseer entered, when he had no power to do so, into a verbal contract with the plaintiff without the knowledge of Mr. Watkins, the Supervisor in charge of the Range, and it was not until the 6th of August that Mr. Watkins became aware that the work was going on when passing along the road. The absence of the Overseer precluded full inquiries being made until the 19th idem, on which date the Overseer received very peremptory orders on the subject, see extract marked C in document numbered 1-A (in blue pencil).

4. From extract* marked A of a letter for the Maistry in charge of the work, it will be seen that from the outset the Overseer had information regarding the work being constructed unsatisfactorily, and all this has been borne out by subsequent inspections, as in no course of the foundations can it be said that mortar existed, as the stuff used was prepared ordinarily as for buildings, and in consequence washed out, as the contractor failed to keep the foundations dry.

* In document marked 1-A.

5. I would beg to draw attention to the following remark of the Head Assistant Collector, in his annual Report for the past year, on this very work:—

"On one occasion I observed a small culvert partly built on the 82nd mile, "and upon closer examination found that the masonry was very bad. I mentioned "this to the Range Officer, and he told me that prior to my inspection the work "had been stopped by him and the contractor ordered to pull it down."

6. In my memorandum dated 6th July 1871, No. 639, an extract from which I send, Government will see that I had disposed of the case, as I thought, finally; but as the Contractor and Overseer are evidently under the impression that if the former established his claim in the Moonsiff's Court, the Government would be induced to consider the culpability of the latter to be such as not to mulct him in in the full sum decreed, I must therefore leave it for the orders of Government to decide when the Court's decision is obtained.

7. The case was posted for hearing on the 11th October, but as I considered the time insufficient to obtain the required sanction, etc., I instructed Mr. Watkins

to have the hearing postponed to the 13th November 1871. I therefore request that early orders may be issued for defending the suit, in the first instance, at the public expense.

8. With the enclosures submitted, and which I request may be returned, I beg to forward a statement* of pleas, together with the original summons (6-A).

* 5-A.

No. 460. From the same Officer, dated Bellary, 26th October 1871, No. 1,385.

I HAVE the honour in continuation of my letter No. 1,320, dated 16th instant, to forward, for the information of Government, original letter dated 13th instant, No. 546, with enclosures, received therewith, from Mr. Supervisor Watkins, in charge of Pennacondah Range, on the subject of the plaint filed against himself and the Talook Overseer of Hindupur for the recovery of certain money from Government on account of the construction of a tunnel in the 82nd mile of the Bangalore High Road.

2. The points urged in this communication by Mr. Watkins are—

I.—That if the case is insisted upon being put into Court that the Government Solicitor (Pleader as Mr. Watkins says) be required to draw up the defence pleas.

II.—That the antagonism shown by the 1st defendant (the Talook Overseer) and the support he has throughout his proceedings given the plaintiff, and which is supported by documentary evidence, leads him (Mr. Watkins) to believe that the defence pleas would be unsupported by evidence beyond that of his own (Mr. Watkins, the 2nd defendant), and therefore recommends, so far as the contractor (the plaintiff) is concerned, that the suit be compromised to the extent of Rupees 220 (*vide* paragraph 6).

III.—That for further reasons set forth in paragraph 6, if Government insist upon the case being defended the same be removed for trial to the Court of a District Moonsiff other than that of Purghee.

3. Having entered into the particulars of the case in my letter to Government above cited and in memorandum No. 639, dated 6th July 1871, in disposal of the case to the Pennacondah Range, it but remains for me to inform Government that I consider the statement of defence pleas drawn up by Mr. Watkins, and which is now before Government, to be sufficiently clear and explicit and do not, therefore, need revision, since Mr. Watkins is unacquainted with legal technicalities and may therefore not understand the pleas drawn up by the Government Solicitor without the assistance of proper personal legal aid.

4. I most certainly do not recommend the compromise suggested as, in such a case, Mr. Watkins would have every contractor whose work he rejects going into Court with the impression or hope of his claim being compromised. In this particular case I am quite convinced of the Overseer's culpability, and if the result

of the suit is unfavourable to Government, I intend recommending that this man be made to pay the whole sum decreed.

5. The third point is one which is not in my province to deal with, and on whatever grounds Mr. Watkins's anticipations are based, I should think that Government would be quite in a position to deal with the case when the result of the suit is placed before them for their final orders. I however beg to refer to paragraphs 12 and 14 of my letter printed with G. O., No. 2,154, dated 22nd August 1871, which to an extent supports Mr. Watkins's present representations.

6. I request the return of the enclosures as the case has been fixed for early hearing.

No. 461. ORDER THEREON, 30th October 1871, No. 2,736.

ESTABLISHMENT, No. 37.

THE Government authorize the defence in the first instance of this suit at the public expense. The question of liability for any expenditure that may be incurred in connection therewith will be considered upon the judgment of the Court with a record of the case being laid before Government.

(True Extract.)

(Signed) J. CARPENDALE, Colonel, R.E.,
Secretary to Government.

To the Superintending Engineer, 3rd Division, with 34 Enclosures.
„ Controller of Public Works Accounts.

Exd. S. T. Augustin.

Read Register 1 . . 50 15

No. 1320 Superintending Engineer's Office.
3rd Division.
Camp Goodloor, Villupuram Talook
Cuddalore District.
The 16th October 1871

From,
The Superintending Engineer
3rd Division.

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

Enclosures marked A to G & one packet of papers.

Sir,

I have the honor to request the permission of Government to the case noted on the margin being defended, in the first instance, at Government Expense.

Plaintiff -	Contractors	B. Moonesawmy and Bhoomy Chetty -
Defendants -	1	Taloor Overseer T. Parthasarathy Mudeliar
	2	Supervisor Mr F. Watkins
Claim -		Rupees 3314-10-0

2. The nature of the case is this:- In July 1870 the Overseer of the Nemelloor Taloor T. Parthasarathy Mudeliar engaged the services of B. Moonesawmy for the construction of a Culvert in the 82nd mile of the Bengalore High Road at the estimated Cost of Rupees 510/

3. The Overseer entered, when he had no power to do so, into a Verbal Contract with the Plaintiff without the knowledge of Mr Watkins, the Supervisor in charge of the Range, and it was not until the 6th of August that Mr Watkins became aware that the work was going on when passing along the road. The absence of the Overseer precluded full enquiries being made until the 13th Idem on which date the Overseer received very peremptory

orders on the subject, see Extract marked C in
the current numbered 1.A (in blue pencil).

4. From Extract marked A of a letter for the
Secretary in charge of the work, it will be seen
that from the onset the Overseer had information
regarding the work being constructed unsatisfac-
torily and all this has been borne out by subse-
quent inspections as in no course of the founda-
tions can it be said that mortar existed as the
stuff used was prepared ordinarily as for buildings
and in consequence, washed out as the Contractor
failed to keep the foundations dry.

5 I would beg to draw attention to the
following remarks of the Head Assistant Collector
in his Annual Report for the past year on this work.

" On one occasion I observed a small culvert "
" partly built on the 82nd mile, and upon closer ex- "
" amination found that the Masonry was very "
" bad. I mentioned this to the Manager Officer and he "
told me that prior to my inspection the work had
been stopped by him and the Contractor ordered
to pull it down."

6. In my Memorandum dated 16th October
1871 No 69, on Extract from which I based my
letter on that subject of the 25th ult I thought
possibly but as the Contractor and Overseer are evidently
under the impression that it is the intention to abandon
his claim in the Arbitration Court, the Government would
be induced to consider the culpability of the Contrac-
tor to be such as not to make him entitled for the order
of Government to decide when the Court's decision
is obtained.

7. The case was posted for hearing on the 14th
October but as I considered the time under the circum-
stances to obtain the required sanction to the
alterations to have the hearing of the case posted to the
13th November 1871. I therefore request that early
orders may be issued for defending the claim

*. In document marked 1.A

D 5.A.

7

in the first instance, at the public expense.

8. With the Enclosures submitted, and which I request may be returned, I beg to forward a Statement of pleas together with the original Summons (6 A.).-

I have &c &c

Superintending Engineer 3rd Div

P.W. 1871.

From,
The Superintending Engineer
3rd Division.

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

No. 1320

Dated 16 October 1871.

Enclosures 2.

Forwards a Statement of Plans together with an original Summons for defending Suit made by Contractors [illegible] against [illegible] Taluk Overseer of Hindupoor & Superv. Mr. J. Watkins for a claiming Rs 334-10-" & requests permission to defend the same of Govt.

No. 1385

Superintending Engineer's Office.
3rd Division.
Bellary 26th October 1871

From,
The Superintending Engineer
3rd Division,

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

Enclosures.
(under binder).

Sir,

I have the honor in continuation of my letter No. 1320 Df. 16th Instant, to forward for the information of Government original letter dated 13 Instant, No. 546, with enclosures received therewith, from Mr. Supervisor Watkins, in charge of Pennaconda Range, on the subject of the Plaint filed against himself and the Taluk Overseer of Hindoopoor for the recovery of certain money from Government on account of the construction of a Tunnel in the 82nd Mile of the Bangalore High Road.

2. The points urged in this communication by Mr. Watkins are:—

I. That if the case is insisted upon being put

into

in the Court that the Government Solicitor (Colonel Mathias says) be required to draw up the defence pleas.

II. That the encouragement shown by the Defendant (the Calcutta Brewer) and his support he has throughout the proceedings given the Plaintiff and which is supported by documentary evidence leads him (Mr Mathias) to believe that the defence pleas would be unsupported by evidence beyond that of his own. Mr Mathias the 2d Defendant (and therefore) recommends as far as the Contractor of the Plaintiff is concerned that the suit be compromised to the extent of Rs 220/- (vide para 6).

III That for further reasons set forth in para 6, if Government insist upon the case being defended the same be removed for trial to the Court of a District Moonsiff other than that of Perghee.

3. Having entered into the particulars of the case in my letter to Government above cited and in Memorandum No 639 Dated 6th July 18[illegible] disposal of the case to the Nemacandal Range it but remains for me to inform Government that I consider the Statement of defence pleas drawn up by Mr Mathias and which is now before Government, to be sufficiently clear and explicit and do not therefore need revision since Mr Mathias is unacquainted with legal technicalities and may therefore not understand the pleas drawn up by the Government Solicitor without the assistance of proper personal legal aid.

4. I most certainly do not recommend the Compromise suggested as in such a case, Mr Mathias would have every Contractor whose work he rejects, going into Court with the impression or hope of his claim being compromised — In this particular case, I am quite convinced of the Overseers Culpability and if the result of the suit is unfavorable to Government, I intend recommending that this man be made to pay the whole sum decreed.

5. The 3d point is one which is not in any way connected to deal with and on whatever grounds Mr Mathias justifications are based, I should think that Government would be quite in a position to deal with the case when the result of the suit is placed before them for their final orders. I have the

beg

beg to refer to paras 12 & 14 of my letter printed with G.O. No. 2154 Dt: 22d August 1871 which to a considerable extent supports Mr Watkins present representations.

6. I request the return of the enclosures as the case has been fixed for early hearing.

I have the honor to be
Sir
Your most Obedt & Servt

C. Tillett Lt Col. R.E.
Supdg Engineer 3d Div.

Public Works Department

No 2736 2[illegible]

Proceedings of the Madras Government under date the 30th Octr 71.
Read the following

From the Superintending Engineer 3rd Division (R. P. No 1320 dy 16th Octr 71)
No 82 Dy
do do (R. P. No 1385 dy 26 —"—)

The Government authorize the defence in the first instance of this suit at the public expense. The question of liability for any expenditure that may be incurred in connection therewith will be considered upon the judgement of the Court with a record of the case being laid before Govt.

H.T.D.

Supdg Engr 3rd Div with 34 enclosures
Controller P.W. Accts
Sec to Govt P.W. Dept 30/10/71
P.C. — 8/11/71

26 Octr

From,
The Superintending Engineer
3rd Division.

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

No. 1385

Dated 26th October 1871
Received 27th

Forwarded in original bills with the enclosures received from the Executive Engineer Bangalore Division for the Blasting made for the excavation of earth work from Government land on account of the construction of the road in the 82nd part of the Bangalore Hosur Road

No 460

No 2736 - 30 Octr 71.

Ups 497 & 5722

Cobl. of 1871 Orders.

PUBLIC WORKS.

To The Superintending Engr
3d Division

Date

Ent.

C. C. 30 Oct 71. No. 2736.

Nos. 459 @ 460

Subt. Re defences of the Fort
Instituted by certain contractors
against Br Capt Watkins &
Acting Overseer Bartlesbury
Hardly Authorized with
Remarks.