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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.G.O. No. 816Press
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*Proceedings of the Madras Government, Public Works Department,
18th March 1871.*

No. 461. Read the following letter from the Consulting Engineer for Irrigation and Canal Company, to the Secretary to Government, Public Works Department, dated Madras, 21st February 1871, No. 123:—

I HAVE the honour to submit, for the consideration of Government, the correspondence noted in the margin, having reference to the refusal of the Agent and Manager, Madras Irrigation and Canal Company, to allow the Government Examiner of Accounts to see the correspondence between the Board of Directors in London and himself.

From Examiner of Accounts, to Consulting Engineer, 10th February 1871.	
From Consulting Engineer, to Agent, No. 324, 10th February 1871.	
From Agent, No. 67, 13th February 1871.	
To " " 334, 14th " "	
From " " 81, 20th " "	

2. In the first letter the Examiner of Accounts brought to my notice that while checking certain statements of home expenditure, he found it necessary to refer to a letter from the Board, which the Chief Accountant, acting under the Agent's orders, refused to let him see, though he would give extracts from any specific letter.

3. I communicated the Examiner's letter to the Agent, and drew his attention to Article 16 of the Contract, dated 3rd No. 324, 10th February 1871. June 1863, which, in my opinion, clearly provides that the officers acting on the behalf of Government (meaning the Consulting Engineer and the Examiner of Accounts) should have full access to all the books, accounts, papers, and documents of the Company, (except communications between the Company and their legal advisers,) and expressed a hope that he would, on consideration thereof, waive any objections he may have had to allowing the Examiner full access to all the correspondence between him and the Board, and to the accounts of home expenditure as received in original from London, for the Agent does not send me or the Examiner those accounts, but compiles others in his own office from them.

4. The Agent, in reply, declined to accede to my request, and, as far as I can understand his letter, his reasons are, first, that no intimation has been given to him that the Examiner of Accounts is a person appointed by the Secretary of State to have access to the correspondence; secondly, that the Contract does not contain the provision as I have put it, and that, if it does, it has not been acted on during the past twelve years; and that, thirdly, correspondence between Principal and Agent is always held to be privileged, and that Government have hitherto always respected that principle. The Agent also seems very apprehensive that he will lay himself open to a severe penalty under his agreement with the Company if he divulges the correspondence; but I have read over his covenant, and cannot find anything in it to alarm him.

5. I next pointed out to the Agent that the 16th Article of the Contract, already referred to, seemed to me to be provided for the express purpose of ensuring all the correspondence between him and his Board of Directors being open to Govern-

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ment inspection, and I begged his consideration of the practice existing in connection with all Railway Companies, and especially of a recent Resolution by the Government of India which requires the Consulting Engineer for Railways to keep himself acquainted with all correspondence between the Board of Directors and their local Agents, and I argued that, as the positions of the Madras Irrigation and Canal Company, with reference to the Secretary of State and to the Local Government, was analogous to that of any Guaranteed Railway Company, what has been declared to be the express duty of one Government officer could not be considered inappropriate for another filling a similar relative position.

6. The Agent, however, continues to hold his own opinion, as before expressed; denies that there is any analogy between his Company and any Railway Company in their relative positions to Government; and is confident that the Government will not disturb the practice that has existed hitherto without allowing him first to receive the instructions of his Directors, whom he has addressed on the subject, and whose reply, he says, will no doubt reach him within two months.

7. This is the simple history of the case, and, as regards its merits, I most certainly consider that it is necessary for the proper auditing of the accounts in India, that the Examiner should see, in the Agent's office, the original accounts of home expenditure as received from London, instead of copies or compilations thereof, notwithstanding that the latter may be more complete; and that he should also have the opportunity of perusing all correspondence called financial, or which in any way relates to, or is connected with, the accounts, more especially such as his check and examination of accounts may suggest the perusal of, and further that those documents should be complete, and not extracts. Whether it is necessary that the Consulting Engineer or the Examiner should see all correspondence, is a point on which it is not requisite for me to give an opinion; the Government can best judge as to the expediency and propriety of our doing so, unless my view of the 16th clause of the Contract is altogether erroneous; but, in reference to the concluding sentence of the Agent's last letter, I must observe that I cannot imagine how the perusal by Government officers of official correspondence, relating to an undertaking in which the Government are as directly interested as the Company, and whose pecuniary stake is so great, can be either embarrassing or obstructive.

From the Government Examiner, to the Consulting Engineer for Irrigation and Canal Company, dated Madras, 10th February 1871.

I HAVE the honour to inform you that yesterday, being engaged in going over certain statements of home expenditure, received from you for check, I found a reference to the Board's financial letter necessary, which letter I therefore asked to see. The Chief Accountant informed me that, under instructions from the Agent, he was precluded from allowing me access to these letters; but told me he was prepared to furnish me with such extracts as I might ask to be made from any specific letter.

2. As I imagine this action of the Agent is totally at variance with the agreement as to the Government control to be exercised, I bring the matter at once to your notice.

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13th March 1871.*

From the Consulting Engineer of the Madras Irrigation and Canal Company, to the Agent and Manager of the Madras Irrigation and Canal Company, dated Madras, 10th February 1871, No. 324.

I HAVE the honour to forward you copy of a letter, as per margin, from the Government Examiner of Accounts, bringing to notice that he is not permitted to see certain financial letters from

the Board, which he found it expedient to refer to in the course of checking the statements of home expenditure with your accounts; by Article 16 of the Contract, dated 3rd June 1863, it is clearly and specially provided that the officers acting on behalf of Government shall have full access to all the books, accounts, papers, and documents of the Company (except communications between the Company and their legal advisers), the object of this provision being, as stated in the same article, to enable the Secretary of State in Council to exercise the control and direction intended to be secured. I trust, therefore, that you will waive any objection you may have had to permitting the Government Examiner to see all the correspondence between the Board and yourself that he desires, and that you will also place before him all original accounts of home expenditure as received by you, or that you will furnish me with your reasons for not acting as required by the contract in order to my laying the same before Government.

From the Agent and Manager of the Madras Irrigation and Canal Company, to the Consulting Engineer of the Madras Irrigation and Canal Company, dated Madras, 13th February 1871, No. 67.

I HAVE the honour to acknowledge receipt of your letter, No. 324, of the 10th instant, with its enclosure, to the language of which latter I must beg leave to demur.

2. In its concluding paragraph I find these words—

“As I imagine this action of the Agent is totally at variance with the Agreement.”

3. There has been no action on the part of the Agent, but only on the part of the Acting Examiner of Accounts. In conversation with Mr. Badham, in the course of our daily official intercourse, I have expressed my conviction that I am not justified in exhibiting the Board's letter to any one without their permission—a conviction tacitly encouraged and acquiesced in by the Local Government for twelve years. Mr. Badham was naturally, and, as in duty bound, guided by this view when the Acting Examiner attempted an innovation, wholly unnecessary, unprecedented, vexatious, and at variance with the practice of the Government for twelve years. Upon this, I believe, the Acting Examiner threatened to “try the question,” and this threat he has carried out.

4. This is the only “action” which has been taken in the matter; and I submit, for the consideration of the Government, that it is action which has not arisen in the fair and candid course of business, but is of a gratuitous and uncalled for character; mischievous in its effects, as involving unnecessary labour and correspondence, not for the purpose of the legitimate examination of the Company's accounts, but simply to enable the Acting Examiner of Accounts to arrogate to himself a power which is wholly needless and extraneous to the sphere of his duties.

5. You say that “by Article 16 of the Contract, dated 3rd June 1863, it is clearly and specially provided that the officers acting on the behalf of Government shall have full access to all the books, accounts, papers, and documents of the Company,” and you add that you trust that I will waive any objection I may have to permitting the GOVERNMENT EXAMINER to see all the correspondence between the Board and myself that he desires.

6. This very novel and unprecedented request places me in a very difficult predicament.

7. My agreement with the Company contains a penal clause of a very severe character, and if you will kindly refer to my Power of Attorney, you will see that my powers are confined within very narrow limits, which, if I exceed, I bring myself within the scope and action of the penal clause.

8. I cannot find in the Contract the covenant you quote. I find that the Secretary of State in Council, and any person or persons appointed by him in that behalf, shall (for the purpose, etc., and not further or otherwise) have full access to all the books, accounts, papers, and documents of the Company (except communications with their legal advisers).

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18th March 1871.*

9. Correspondence between Principal and Agent is always held to be privileged, and whatever may be the scope of the strict letter of the *Contract*, during the twelve years that this Company has been carrying on its operations in India, the Government appear to have respected that principle, for this is, I believe, the *first* time that such a demand has ever been made. The Consulting Engineer has, from time to time, inquired of me the purport of communications I may have received from my Directors, and I have always rendered the fullest information.

10. With regard to home expenditure and the transactions of the Board in England, although it seems to me to be altogether beyond my province to supply information in Madras upon those subjects, and the information that I can supply must necessarily be *imperfect*, whereas the same information can be supplied to the Local Government fully and perfectly by the Secretary of State. Nevertheless, I have endeavoured to afford you, when requested, all the information in my possession, and great labour has been undergone in my office to collect and extract, for the purposes of the new Government Audit, all matters that bear in any way upon the accounts, or that can aid the Examiner of Accounts in the discharge of his duties; but a perusal of "*all the correspondence between the Board and myself*," appears to me to be wholly beyond his province; no intimation has ever been conveyed to me that he is a person appointed by the Secretary of State to have full access to all the books, etc., nor do I find in the Audit Rules any provision for his entering upon a perusal of "*all the correspondence between the Board and myself*."

11. Although not specially instructed, I have, as a matter of course, always taken the Consulting Engineer to be "a person appointed by the Secretary of State," with whom I could confer freely and authoritatively; but the Government Examiner of Accounts holds a totally different position; he has a certain class of duties to attend to, confined within very narrow limits, as defined by the rules, and beyond those limits Captain Moberly never wandered; indeed, so scrupulous was he on this point, that I remember when upon one occasion I had occasion to put some questions to him, which seemed to him to go slightly beyond his province, although in close connection with the accounts, he courteously declined to act officially, but offered to speak privately to the Consulting Engineer on the subject. He was always most scrupulous in avoiding the assumption of any authority that did not clearly belong to him; and I cannot refrain from observing that so long as he discharged the duties of Examiner the business was disposed of with rapidity, efficiency, and perfect harmony.

12. Permit me to add, in reference to "*the accounts of home expenditure as received by me*," that these would be of no use to you as they stand; they would by no means meet your requirements. I always do furnish copies of the whole of them supplemented by information collected in my own office, and if you wish to see the originals they are quite at your service. It is the bulk of the "*correspondence*," which upon principle I look upon as coming under the denomination "*privileged*," and which I do not consider myself justified in exhibiting to any one without the permission of the Board—a permission, however, which they would probably grant upon the request of the Government.

13. I feel assured that, when you reflect that this principle has been respected by the Secretary of State and the Local Government for twelve years, you will at once comprehend the sentiments that guide me, and I also feel assured that the Government will not enforce a very unnecessary power, which they have so long, if it exists, left in abeyance, without first allowing me to take the instructions of my Directors thereon.

14. With reference to the concluding words of your letter, I beg to state most emphatically that my desire is "*to act as required by the Contract*" and not otherwise, and I feel assured that the Local Government will not deem it necessary to issue orders that may require me to do any act which is not provided by the Contract, which exceeds my power, and the doing which would clearly lay me open to the penalties provided by my contract with the Company.

From the Consulting Engineer for Irrigation and Canal Company, to the Agent and Manager of the Madras Irrigation and Canal Company, dated Madras, 14th February 1871, No. 331.
With reference to your letter, No. 67, of the 13th instant, I have the honour to inform you that I understand that the object and intention of the 16th Article of the Contract between the Secretary

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of State and the Company that you represent, was to prevent any "*privileged communications*" between the Company and their Agents, if by the word privileged you mean confidential communications regarding their affairs, and not open to Government inspection, and as you may perhaps change your opinion on further consideration, I think it expedient, before addressing Government on the subject, to acquaint you with the circumstance that it has long been customary for the Consulting Engineers for Railways to be furnished by the Agent and Manager with copies of all letters that he writes to his Board of Directors. Copies of all communications from the Boards in London to their Agents in India being, in like manner, communicated through Government to the Consulting Engineer, and as a matter of convenience the Government Examiner sees all the files when conducting his audit.

2. I enclose, for your perusal, and to be returned, a recent Resolution of the Government of India on the subject, and of which you may if you like take a copy. I regret I cannot furnish

Madras G. O., No. 136, 13rd January 1871.

you with one, as it has not been communicated to me. The position of the Madras Irrigation and Canal Company, with reference to the Secretary of State and to the Local Government is, I am sure you will admit, analogous to that of all Guaranteed Railway Companies, and, notwithstanding the practice that has hitherto existed, simply because necessity had not arisen for the Consulting Engineer or the Government Examiner seeing the Board's correspondence with you, there cannot, I think, be any doubt that the inspection of correspondence, which is distinctly declared to be the duty of the Government officer associated with Railway Companies, must be considered appropriate for the officers in a similar position with regard to the Madras Irrigation and Canal Company.

From the Agent and Manager of the Madras Irrigation and Canal Company, to the Consulting Engineer for Irrigation and Canal Company, dated Madras, 20th February 1871, No. 81.

I HAVE the honour to acknowledge receipt of your letter, No. 331, of 14th instant, enclosing

copy of a Resolution of the Government of India, which I return with thanks.

2. I perceive that this Resolution was ordered to be forwarded to the Governments of Bengal, Punjab, and Oudh for information and guidance, but to Madras and Bombay for information (only).

3. I cannot perceive that the Resolution applies in any way, directly or indirectly, to the Madras Irrigation and Canal Company. I cannot perceive any analogy between this Company and the Railway Companies; the *supplementary* contract places this Company on a totally different footing, and in a delicate and dangerous position which bears no analogy whatever to that of any Railway that I am acquainted with.

4. In this Resolution I can find no allusion of the remotest kind to any Examiner of Accounts.

5. When I first came to Madras, I had occasion to make inquiries regarding the practice of the Railway Company, and I was informed (whether correctly or not I cannot of course determine) that it was the practice of the Agent of that Company to address a *confidential* report to his Directors with each official communication.

6. You inform me that "*copies of all communications from the Boards in London to their Agents in India ARE COMMUNICATED THROUGH GOVERNMENT*" to the Consulting Engineers; this is precisely the course which it appears to me is the only legitimate mode of conveying to the Consulting Engineers such documents emanating from the Board of Directors as it may be desirable for those officers to see.

7. Whatever may be the practice with regard to Railway Companies, the fact that during twelve years no "*person appointed by the Secretary of State*," as provided by our Contract, has ever hinted any desire to peruse the letters which I receive from my Directors, has established a practice and precedent which I am quite sure the Government will not disturb without at least extending to me the courtesy of permitting me to receive instructions from my Directors, whom I have addressed on the subject, and whose reply will no doubt reach me within *two months*.

8. To myself personally it is obviously a question of perfect indifference whether the Secretary of State, or any person appointed by him, peruses or not every document in my keeping; personally, I see no objection to such a course, and had I found it to be the practice when I took charge it would, as a matter of course, have been continued without objection or comment; but for me to exhibit

N. 324-10 Feb/71.

Contract dated 3rd June 1863 which in my opinion clearly provides that the officers acting on the behalf of Government (meaning the Consulting Engineer and the Examiner of accounts) should have full access to all the Books, accounts, papers, and documents of the Company, except communications between the Company and their legal advisers, and expressed a hope that he would on consideration thereof waive any objections he may have had to allowing the Examiner full access to all the correspondence between him and the Board, and to the accounts of Home expenditure as received in original from London, for the Agent does not send me or the Examiner those accounts, but compiles others in his own office from them.

4. The Agent in reply declined to accede to my request, and as far as I can understand his letter his reasons are; first that no intimation has been given to him that the Examiner of accounts is a person appointed by the Secretary of State & have access to the correspondence - 2nd that the Contract does not contain the provision as I have put it and that if it does it has not been acted on during the past 12 years; and that 3^{rdly} correspondence between Principal and Agent is always held & has Privileges and that Government have hitherto always respected that principle. - The Agent also seems very apprehensive that he will lay himself open to a severe penalty under

334-14 Feb/71.

was L.O. 11: 186
23 Jan/71.

21-20 Feb/71.

his agreement with the Company if he divulges the correspondence but I have read over his Covenant and cannot find anything in it to alarm him. 9th
5. I next pointed out to the Agent that the 16th Article of the Contract already referred to seemed due to be provided for the express purpose of ensuring all the correspondence between him and his Board of Directors being open to Government inspection, and I begged his consideration of the practice existing in connection with all Railway Companies, and especially of a recent Resolution by the Government of India which requires the Consulting Engineer for Railways to keep himself acquainted with all correspondence between the Board of Directors and their local Agents, and I argued, that as the positions of the Madras Irrigation and Canal Company with reference to the Secretary of State and to the local Government was analogous to that of any Guaranteed Railway Company, which has been declared to be the express duty of one Government officer could not be considered inappropriate for another filling a similar relative position -
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his Directors whom he has addressed on the subject and whose reply, he says, will no doubt reach him within two months.

7. This is the simple history of the case, and as regards its merits, I must certainly concede that it is necessary for the proper auditing of the accounts in India, that the Examiner should see in the Agent's office the original accounts of Home expenditure as received from London, instead of copies or compilations thereof notwithstanding that the latter may be more complete, and that he should also have the opportunity of perusing all correspondence called financial, or which in any way relates to, or are connected with the accounts, more especially such as his check and examination of accounts may suggest the perusal of, and further that those documents should be complete and not extracts. Whether it is necessary that the Consulting Engineer or the Examiner should see all correspondence is a point on which it is not requisite for me to give an opinion - the Government can best judge as to the expediency and propriety of our doing so unless my view of the 16th clause of the Contract is altogether erroneous, but in reference to the concluding sentence of

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of the Agent's last letter, I must observe that I cannot imagine how the perusal by Government officers of official correspondence relating to an undertaking in which the Government are as directly interested as the Company, and whose pecuniary stake is so great, can be either embarrassing or obstructive.

Have the honour to be,
Sir,
Your most obedient servant,
Messrs. W. & A. G. Company
Colonial Office

C. M. B.

W. H. H. H.

Under date the 18 March /71.

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Feb 1871

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Oct 1871
to Mr J. Gordon & Co.
from J. C. 881.

Just: d.

1816-18 March

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Col. Sarpentdale
points out that Clause 16 of
the Company's Contract pro-
vides for the Secretary of
State, or any person or
persons appointed by him,
or on his behalf, having
access, at all reasonable
times, to all accounts,
papers, and documents of
the Company (except com-
munications between them
and their legal advisers)
to which, in the exercise
of the supervision and
control over not only the
works but the expenditure
of the Company that the
Contract reserves to the
Secretary of State and
the Govt., it may be

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necessary to refer, or from which
it may be considered advisable
to make copies or take extracts.
This, in the opinion of Govt.,
is obviously the intention of
the Contract, and as it has
not been disputed that
practically acted upon by
all the Guaranteed Railway
Companies whose agreements
with the Secretary of State
are expressed in language
identically the same as
that in which the Madras
Irrigation and Canal Com-
pany's Contract is couched,
His Excellency the Governor
in Council trusts that
on reconsideration, Mr.
Kenslowe will see the
propriety of acceding to

the requisitions of the Examiners
of Accounts for such ori-
ginal Official papers as
relate to the Company's
home-expenditure being
made available for his
inspection when, in the
discharge of his duty, he
may believe it necessary
to consult them.

W.B.

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for Engineer J.C. C. United
Agent & Manager Co. -

Desps 20/3/00.

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Govt. of 1871 Madras.

PUBLIC WORKS.

To The Consulting Engineer for the
Madras Irrigation and
Canal Company

Dated

Recd.

Encl.

G. O. 18 March 1871 No. 816.

Nos. 4614 462

Correspondence. Referring orders
in the letter from the Engineer for
the Madras Irrigation and
Canal Company. The Engineer
has requested to permit the
Joint Engineer to see the
correspondence between
the Board of Directors &
himself.