

(1) Number of pages _____

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No.	1799	Press
440,441		Mis.
Dated	29-4-	1872

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
29th July 1872.*

No. 430. Read the following letter from the Acting Superintending Engineer,
7th Division, to the Secretary to Government, Public Works Department,
dated Coimbatore, 17th July 1872, No. 84 —

With reference to G. O. No. 633 of 4th March 1871, I have the honour to
forward a copy of the Court's judgment in the suit in question.

No. 431. ORDER THEREON, 29th July 1872, No. 1,799.

ESTABLISHMENT, No. 29.

COMMUNICATED to the Controller of
Public Works Accounts. It is observed
that the suit authorized to be defended
at the public expense in the order quoted by the Superintending Engineer has
been dismissed, the plaintiffs paying all costs.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Controller of Public Works Accounts:
,, Acting Superintending Engineer, 7th Division.

Ed. S. T. Austin.

T. Venkataswamy
20th July 1872

of the Bridge was therefore delayed. Besides it has been admitted by 1st Plaintiff (Defendants' witnesses) that the materials were not delivered on the dates specified in the Karas.

23. The 1st Plaintiff (Defendants' witnesses) has also stated that he had written and kept an account of the quantity of bricks and Chumam he supplied, from time to time, for construction of the Bridge, that he had left the account in the issue of one Noothovelappa Gundam in Menatchi-porram, that he did not go and search for it afterwards and that therefore he could not say for certain whether that account is or is not true at present. On a consideration of this, and other matters, the Court has not the least doubt that the Plaintiffs' claim is false.

24. The Court therefore dismisses the Plaintiffs' claim with Costs and directs that they do pay the Defendants' Costs.

9th April 1872

Signed J. D. Macdonald
District Magistrate
(True Translation)

T. Venkataswamy
2nd Accountant, Subordinate Revenue

Memorandum

Costs incurred by Plaintiffs in appeal ——— 12-4-36

D^r — D^r — D^r in this list

Value of stamp paper	68-2-0	
Plader's fees	31-11-3	
Matta to Summons P ^{ow}	4-14-0	
D ^r to Witnesses	6-6-0	111-1-
		123-5-8

Costs incurred by 1st and 3^d Defendants in appeal ——— 0-0-0

D^r — D^r — D^r in this list

Value of stamp paper	3-12-0	
Plader's fees	31-11-3	
Matta to Summons P ^{ow}	12-	
D ^r to witnesses	6-	36-9-
		Total 159-14-4

Of this

Amount to be borne by Plaintiffs	123-5-6
D ^r to be paid by D ^r to 1st and 3 ^d Defendants	36-9-0

Steps should be taken above to recover the sum
 Rs 36.9.0. above noted.
 17.7.72

Translation of Judgment in O. No. 229 of 1872
on the file of the District Munsiff at Trichur

Present
J. D. Kashiakaloo Maidor
District Munsiff

Plaintiffs	Defendants
1. Vajapooray Gundon	1. Robert Esquire
2. Kunjappa Gundon	2. Col. Walker and
	3. Col. Farewell
	for the 2 ^d Dept. Col. Walker

The Plaintiffs in their Plaint and Examination state, that they on the 3^d February 1863 entered into a Contract with Mr. Paul, Range Officer, for the supply of 150,000 bricks at Rs 3-8-0 per 1000, and 2000 parabs of Chunnam at annas 7 per Parab for the Construction of Chinnamunharah Bridge in the Trichur District, in which there was further stipulated in the Agreement that the Plaintiffs were to deliver 75000 bricks and 1000 Parabs of Chunnam within 1st March 1863, and the remainder 75000 bricks and 1000 Parabs of Chunnam within the 19th of the said month, and to receive payment for the same, on being inspected

See letter from the
Engl. Hon. Secy. to Govt.
dated 28th July 1872
No. 229 of 1872

Translation of Judgment

1872-73-3488/72
J. D. Kashiakaloo Maidor

and accepted by the Range officer; that with reference
to the agreement, they have supplied from 25th Feb-
ruary to 10th April 1863, 78,000 bricks and 1054 Parahs
of Chumam - These materials were inspected
and accepted by Mr. Trail - and at his instance
Receipts were given to the 1st and 2nd Defendants for the
same to Plaintiffs by late Mr. William Smith, the
then Overseer. That 1st Plaintiff has asked
the 1st and 2nd Defendants to pay Rs 273 being the
value of the above 78,000 bricks and Rs 461-2-0 of
1054 Parahs of Chumam - in all Rs 734-2-0
minus Rs 100 paid on the 15th March 1863 but to be
no effect. The Plaintiffs have therefore been in
the suit for the recovery from the Defendants
of the sum of Rs 634-2-0 with interest.

2. In his examination, 1st and 3rd Defendants
Tahil, states that the Plaintiffs did not on the
3rd day of February 1863 enter into an agreement
with Mr. Trail to supply him with 150,000 bricks
and 2000 Parahs of Chumam for the construction
of Minna sawmery bridge, that the Plaintiffs
have supplied neither bricks nor Chumam to
Mr. Trail, that no payment of a sum of
Rs 100, was made to Plaintiffs on that account,
that Plaintiffs have made no demand and that
Defendants are not indebted to Plaintiffs
in the sum sued for and Receipts are not given

That the said acts that on 3^d February 1863,
1st Plaintiff alone entered into an agreement
to have in readiness within the 19th of March fol-
lowing Bricks and Churnam required for the Con-
struction of Chinnaswaray Bridge, that 1st
Plaintiff having failed to act up to this agree-
ment, Notice No. I was given to him by Mr. Trail
on the 24th March, calling upon him to supply
the Materials by the 26th Idem. That as 1st Plaintiff
did not attend to this Notice, Notice marked
No. II was given to him by Mr. Trail on the 30th
of the said month, intimating that the Materials
should be ready on the 31st Idem within the 1st April
and that on failing to do so, a suit will be lodged
in the Court for the recovery of the Penalty men-
tioned in the Karar (Agreement), that 1st Plaintiff
failed to deliver the Materials even on this date;
The said further adds that on the 26th March 1863,
1st Plaintiff received from Mr. Trail as an
advance a sum of Rs 100 for 28,571 Bricks @ 3 1/2 Rs
per 1000. See Document IX, & that on the 27th May 1863
Mr. Overseer Mr. Donough wrote to Mr. Trail, the
letter marked No VIII intimating that only 13,000
Bricks were found in 1st Plaintiff's Kiln,
that deducting Rs 45-8-0 the value of the said
13,000 bricks, from the advance amount of Rs 100,
the remainder Rs 54-8-0 is due to Defendants.

from 1st Plaintiff, that on the 5th June 1867 Col.
Walker, the then Superintending Engineer, published
a Notification marked No. 5 in the Coimbatore
District Gazette calling on all claimants for
Materials Supplied, to submit their claims
within the month of June 1867. but then the 1st Plaintiff
has not in accordance with this Notice, re-
presented to him anything about the sum he was
owed for, that on the receipt of Summons
Defendants searched for the Kari's but could
not find it and that therefore they could not
say for certain how many thousands of bricks
and how many thousands Paraks of Chumam
1st Plaintiff agreed to supply.

3- The issues settled in this case are
as follows.

1st Whether on 3rd February 1863 Plaintiff
executed a Kari's to Mr. Trail to the
effect that they would supply 150,000 bricks
@ $3\frac{1}{2}$ Rs per 1000, and 2000 Paraks of Chumam
@ 7 annas per Parak for the construction of
Chinnia Kowkary Bridge in Coimbatore Taluk
that of this above quantity 75,000 bricks and
1000 Paraks of Chumam were to be delivered within
the 1st, and the remainder 75,000 bricks and
1000 Paraks of Chumam within the 19th March 1863.
and that the value of the said Materials were

15
1st to be paid to Plaintiffs by Mr Trail?

2^{ndly} Whether from 25th February to 10th April 1863
Plaintiffs delivered to Mr Trail 78000 bricks and
1054 parabs of Chumam and whether the Receipt A
was given for the same by Mr Mc Donough at the order
of Mr Trail? and

3^{rdly} Whether on the 15th March 1863 a sum of
Rs 100 was paid to Plaintiffs on account of
Rs 734⁸⁵² being the value of 78000 bricks and 1054 parabs
of Chumam. and whether 1st Plaintiff demanded
the balance Rs 634-2-0 from Mr Trail, his suc-
cessor (the 1st Defendant) and the Superintending
Engineer (the 2nd Defendant)?

I am of opinion that the Plaintiffs have
not satisfactorily proved the 1st Issue.

5- Plaintiffs' 2nd and 3rd Witnesses have de-
posed that about 8 or 9 years ago Plaintiffs ex-
ecuted a Karar to the Engineer agreeing to supply
150,000 bricks @ Rs 3 1/2 per 1000 and 2000 parabs of
Chumam @ 7 annas per Parab for the construction
of Chumam Howdary Bridge and that they at-
tended the said Karar. The Court places no confidence
in their statements.

Because - 1st these two Witnesses have admit-
ted that they were in the employ of 1st Plaintiff.

2^{ndly} They have added that the Karar was drawn
up in the upstais in the Engineer's office and that

Some others besides themselves were present. The witnesses appear to be persons coming to their livelihood through 1st Plaintiff. The Court could hardly believe that such persons would have been selected to attest the Kar's and that they would have at all obtained admittance into the Upstairs.

3rdly David Pillay witness for both parties states that it was laid down in the Kar's that on failure to deliver the materials on the dates specified therein, certain amount of Penalty was to be paid for every day's delay until the delivery was effected. Further, at Court he was examined as 1st witness on behalf of Defendant to admit that a penalty of 1/4 Rupee per diem was intended inserted in the Kar's. But the aforesaid 2nd and 3rd witnesses state that the Kar's was read out to them but that they do not know if any mention was made therein as regards the penalty.

4thly In Exhibit A filed by Defendant, being a letter written by Mr. Trail to the Principal's dated 26th March 1863, it is mentioned that a Kar's executed by Vyasa (poorly pronounced 1st Plaintiff) for the supply of bricks and Chumam for the construction of Shriina Howary bridge has been sent up.

4
in Exhibit II being a reply from the Principal
Said Amin men. It is made of the name of
1st Plaintiff alone. If the Karas which is ad-
mitted on behalf of Defendants to have been
but had been executed by the two Plaintiffs
of their names would not have been submitted
in the said Exhibits Nos III and IV. Hence the
statements of the said 2^d and 3^d Witnesses that
the Karas was executed jointly by the Plaintiffs
are unworthy of belief.

7. The second item has also not been proved
by Plaintiffs.

8. Because Plaintiffs 3^d, 4th and 5th witnesses
do have not already proved either that Plaintiffs
delivered to Mr. Trail 7000 bricks and 1054 paraks
of Chumam from 25th February to 10th April 1863 or
that the Receipt A was granted by Mr. Overman
Mr. Donough by order of Mr. Trail.

9. The 3^d and 4th witnesses have deposed that
agreeably to the orders of Mr. Mc Donough a
Muslim servant of his, had, received
for 13 days, from Plaintiffs bricks @ 6000 per
diem and Chumam 54 paraks on one day and
@ 100 paraks each on other days. The 3^d witness
added that Mr. Trail came to the spot where
bricks and Chumam were delivered, that the
Materials have been actually supplied, that the

1st Plaintiff requested the Engineer to furnish him with a receipt for the same, that the Engineer said that he had told Mr. Mc Donough, he would give him a receipt, that 10 days afterwards, 1st Plaintiff saw Mr. Mc Donough and asked him for the Receipt, that Mr. Mc Donough said that he would give one if he came to office and that accordingly 1st Plaintiff went over to the office in the evening and obtained a Receipt from Mr. Mc. Donough. The 5th witness states that Plaintiff has supplied 78,000 bricks and 1054 parabs of Chumam for the construction of Quina Rowing Bridge, that 1st Plaintiff afterwards asked the Engineer for a receipt for the same, who said that Mr. Mc Donough would grant it and that 10 days afterwards Mr. Mc. Donough granted a Receipt to the 1st Plaintiff. The said 5th witness further states that the Materials were received on some days by him and on same day by Mr. Mc. Donough. This witness was then a Watchman and he does not at all know to keep accounts. The witness has stated that he did not keep an account for the Bricks and Chumam he received and that he does not recollect that Plaintiff were present at the time of the delivery of the Materials, on the other hand the 3rd and 4th witnesses have stated

that the 78000 bricks and 1054 parabs of Chuanam were received by the 5 witnesses alone but they have never stated that Mr. Mc. Donough was present even a day at the time of the receipt of the material. It has not been stated by Plaintiffs that the 78,000 bricks and 1054 parabs of Chuanam were inspected and accepted by Mr. Trail and the evidence adduced by them does not at all prove that the materials in question were either inspected and accepted by Mr. Trail or that they were accepted by Mr. Mc. Donough at the orders of Mr. Trail. The Court therefore has not the least doubt in concluding that the statements of the 3, 4 and 5 witnesses to the effect that 78000 bricks and 1054 parabs of Chuanam were supplied by the Plaintiffs for the construction of China Hawkey Bridge, are but false.

10. As regards Receipt A filed on behalf of Plaintiffs the Court has not any doubt that it was actually granted by Mc. Donough, in: Donough for the signature, "Mc. Donough", affixed thereto agrees with the signatures in Documents B and F also filed by Plaintiffs. David Pilling witness for both the parties states that the signature in Document A resembles that of Mc. Donough but he cannot positively say that it is not his signature and that the signature

in Documents E and F are those of Mr. Donough.
It is clear to the Court that the signatures
in Documents A, E and F are of one and the
same person.

11. But as witnesses David Pilling and
1st and 2nd witnesses ^{for Defs} have deposed that Mr.
Donough was in the habit of being
intoxicated by excessive drinking it appears
to the Court that 1st Plaintiff might have
fraudulently obtained the Receipt A from
Mr. Mc Donough when he was under the
influence of liquor. Further 1st Plaintiff
is witness for the Defendants, has declared
that he had obtained from Mr. Mc Donough
separate receipts for the supply of bricks
made by him from time to time and that he,
Mr. Mc Donough received back these receipts
and granted him the Receipt A in return. If
it is true that 1st Plaintiff obtained from
time to time receipts from Mr. Mc Donough
for the materials there was no occasion for him
(1st Plaintiff) to ask Mr. Trail for a separate
acknowledgment.

12. Had the Receipt been truly granted
for the sum of 14,73000 bricks and 1000 parats of
Chunam there mentioned, the sum of Rs 1000
alluded to in the Court would have been paid

to Plaintiffs subsequent to the date of the
said receipt, i.e. 26th May 1863 but not on the 26th
26th March 1863, a date prior to that given in
Exhibit IX filed on behalf of Defendants.

13- Had 1st Plaintiff had any other receipts
previous to the time he received the aforesaid
Receipt A, he would have shown them to Mr. Trail,
when he asked him (Mr. Trail) to grant him
the receipt in question. Had 1st Plaintiff so
shown those receipts to Mr. Trail, the said
3rd and 5th witnesses must certainly have known
the same. But they have not made any mention
of those receipts, and there lone it further appears
to the Court that the statements of the 3rd and 5th
witnesses that 1st Plaintiff asked Mr. Trail
for a receipt and Mr. Trail said that Mr. Mc.
Donough would give one, are false.

14- It has been stated on behalf of Plaintiffs
that from 25th February 1863 previous to 26th
March of the same year, being the date of Exhibit
IX to 10th April, subsequent to the above date,
78,000 bricks and 1054 parabs of Chumam were
delivered. It has also been stated that a condition
was inserted in the Kharas executed
to Mr. Trail, to the effect that the price of the
150,000 bricks and 2000 parabs of Chumam all
to in the Kharas was to be paid by Mr. Trail after

he had inspected and accepted them. With reference
to this condition the Plaintiffs had no right what-
ever to receive from Mr. Trail the price of any
materials previous to the said 10th April. Therefore
the statement of the ~~1st~~ Plaintiffs that £100
were paid to them out of the value of the materials
delivered by them is unworthy of credit.

15. David Pilling witness for both the parties
has stated that it is true that the said sum of
£100 was paid to 1st Plaintiff, that 1st Plaintiff
asked that the said sum may be given to him
as an advance, the sum being required for bandy
live, that Mr. Trail thinking that it would not
be proper for him to make advances, entered in
the accounts as much bricks as would be
supplied for £100. Calculated @ $3\frac{1}{2}$ £ per every
1000 bricks, and gave £100 to 1st Plaintiff. It therefore
appears to the Court that the sum of £100 was paid
to 1st Plaintiff for the purpose stated by David Pilling,
but not in part payment of the price
of the materials supplied by Plaintiffs, as stated
on their behalf.

16. Further if it is true that from 25th Feb.
until 10th April 1863, 78,000 bricks, and 1054 parabs
of Churnam, were supplied by Plaintiffs, as alleged by the
in payment of the price of the same, the said sum
of £100 was paid to Plaintiffs, mention made

have been made in Receipt A dated 26th May
1868, a date subsequent to the 10th of April of the same
year, of the numbers of bricks that remained after
deducting 28,571 bricks from the sum of 70,000 but not
the full 70,000. From this it clearly appears to the
Court that the said Receipt A was fraudulently
obtained from Mr Mc Donough. Had not 1st Plaintiff
obtained the Receipt A by fraudulent means
he would not have refrained from showing the
same to the 1st and 2^d Defendants. It has not been
stated on Plaintiffs' behalf that 1st Plaintiff
even showed this Receipt to 1st Defendant or the
2^d, or in any other manner.

17. As regards the Third issue, it has not
been proved by witnesses examined for Plaintiff
that the said sum of £1000 was paid to Plaintiff
in part payment of the amount sued for, namely
£734-2-0, or that 1st Plaintiff demanded
of Mr Trail or the 1st or 2^d Defendants the pay-
ment of the ~~balance~~ £634-2-0.

18. The Exhibits B to G and H to N filed
on behalf of Plaintiffs do not establish their
claim.

19. From Documents C and D it appears
that on the 22nd and 17th October 1868, 1st Plaintiff
wrote and asked 1st Defendant to pay him the
amount sued for. In a notice published he

2^d Defendant in the District Gazette on the 5th June 1867 / a date prior (above) and now filed on Defendants' behalf as Exhibit A, it is contended "that all Contractors who have any demands against the Engineer's Office should address the 2^d Defendant supported by vouchers before the end of the above month, and that notice will be taken of claims that may not be so preferred."

20. And Plaintiffs really supplied 78,000 bricks and 1054 parabs of Chauran within the 10th April 1867, they would not have, from that date to June 1867, neglected to demand payment for the same nor should they have, in the absence of any notice in the Gazette, had they demanded and 2^d Defendant refused payment.

21. From receipt to it appears that 1st Plaintiff sent to 2^d Defendant a certain Registered Letter on the 10th July 1866. As this letter seems to have been written on a date prior to the notice issued by 2^d Defendant on 5th June 1867, and as the contents thereof could not be ascertained for certain, the receipt is of no avail to Plaintiffs.

22. The witnesses examined by Defendants and Public Documents I to 11 filed by them have clearly proved that Plaintiffs failed to carry up to their Contract and that the Construction

No. 84

Superintending Engrs Office
Ponimbatore 17th July 1872

From The Superintending Engineer
g. Division

To

The Secretary to Government
P. B. Department
Madras.

Sir,

With reference to G.O. No 633 of
25 March 71, I have the honor to
forward a copy of the Court's
judgment in the suit in
question -

I have the honor to be

Sir,

Yours most Obedt. Servt.

W. H. M. S. at G.O.
Offg. Engrs.

P. W. Sept 27
A: 1799.

Proceeding at the Madras Court.
Read the following:

From the Sup. Eng. (H. No 84) 17 July 72

P. W. 1872 Report.
One of the for the
A: 3488.
No 84

From
The Sup. Engineer
7th Division

To the Secretary to Govt
at Mr. Madras
Dated 17th
No 19 } July 72.

Enclosure ✓
Forwarded copy of
Judgment of the Court
Suit No 229 of 1870.
A: 1799 - 29 July 72

Op 447
Sent to C. O. 29 July 72

Communicated
to the Controller of Public
Works Accounts. It is
observed that the suit
authorized to be defended
at the public expense
in the order quoted by
the Superintending En-
gineer has been dismissed,
the plaintiffs paying all
costs. G.M.

To the Controller P. W. A.
Sup. Eng. 7th Div. Des 23/8/72

11/2/96

11/2/96

Govt. of 1872 Madras.
PUBLIC WORKS.

To the Controller of Public
Works.

Dist.

Recd.

29 July 1897

Nos. 147 & 148

Sub. Letter from the Super-
intendent of the 1st Bombardment
Company of Madras in the
suit instituted against
the Super- & to punish
the Range Officer in
a Contractor for the
care of money due to
supply of bricks & chunam
in 1883, Comd to the
Controller of P.W. Works.

Copy to Comd 29 July 1897.