

(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. 1224 (w) Press
B.P. No. Mis.

Dated 16.5.1876.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
16th May 1876.*

No. 276. Read the following letter from Lieutenant-Colonel R. F. OAKES, R.E.,
Superintending Engineer, Tanjore, to Major-General G. W. WALKER, R.E.,
Secretary to Government, Public Works Department, dated Tanjore, 6th
May 1876, No. 775:—

In reference to G.O., No. 47, dated 8th January 1876, authorizing the defence
of the suit instituted by the Contractor
for the Valanganny Sea Custom-house
work, I have the honor to state that the
case was finally heard and the decree
passed on the 11th March 1876.

1 Copy of Decree.
1 do. of Judgment.
To be returned.

	RS.	A.	P.
Balance due as per last contract certificate...	348	6	0
Value of 39½ cubic feet of brick- work, said to be the difference between the amounts of deduc- tions made from that item on account of doors and windows in the certificates, dated 14th May and 17th September 1874, the deduction in the former being in the plaintiff's favor ...	6	2	9
Allowance for scaffolding and sun- dries ...	25	8	2
	380	0	11

RS.	A.	P.
* 384	6	1
380	0	11
4	5	2
67	11	0
50	8	10
118	3	10

† Estimate Rupees 1,590 sanctioned in G.O.,
No. 3,429, dated 7th December 1874.

	RS.	A.	P.
Amount of the Decree ...	498	4	9
Deduct costs ...	67	11	0
	50	8	10
	118	3	10
	380	0	11
Balance available ...	165	15	6
Amount requiring sanction ...	214	1	5

No. 3,405, dated 5th October 1870, in the event of its being decided by Government
that the same shall be borne by the State. The above sum of Rupees 214-1-5, it
will be observed, is in excess of the estimate of Rupees 1,590 sanctioned for the
work in December 1874, regarding this a separate report will be made; but as the
amount decreed must be paid at once, I propose to have the sum of Rupees 214-1-5
charged in the accounts to "Miscellaneous Advances" until sanction has been
obtained to the same, when the "Advance" will be adjusted by debiting the amount
to the work.

2. Copies of the decree and judg-
ment passed in the case are enclosed. It
will be observed from them that the sum of
Rupees 380-0-11 has been adjudged to
the plaintiff as particularized in the
margin, or Rupees 4-5-2 less than the
amount* stated in the defence to be
payable to the plaintiff, and that the rest
of the plaintiff's claim has been dismissed.
It will also be observed that the Court
has adjudged the payment by this depart-
ment to the plaintiff of Rupees 67-11-0,
being costs on the amount allowed to him.
This sum added to the costs of the defence
of the suit, viz., Rupees 50-8-10, amount
to Rupees 118-3-10, and I have the honor
to request the orders of Government
relative to the payment of the same.

3. The work† to which the suit
relates has been completed, and the expen-
diture thereon up to date amounts to
Rupees 1,424-0-6, leaving an unexpended
balance of Rupees 165-15-6 from the
estimate; but to meet the amount of the
decree a further sum of Rupees 214-1-5
is required to be sanctioned, the amount
of costs being debitable to contingencies
under the ruling of paragraph 19 of G.O.,

(R. F. Oakes)
By order of the Secretary
W. K. S. S. S.

Proceedings of the Madras Government, Public Works Department,
16th May 1876.

No. 277. ORDER THEREON, 16th May 1876, No. 1,224.

ESTABLISHMENT, No. 22.

WITH this letter the District Engineer, Tanjore, submits the judgment of the Court in the case authorized to be defended in G.O., No. 47, dated 8th January 1876. The sum tendered to the contractor by the Public Works Department after stoppage of the work was Rupees 348-6-0. In addition to this amount the Court have decreed the following sums:—

	RS.	A.	P.
For additional brickwork	6	2	9
„ Sundries	25	8	2
„ Proportionate share of costs payable to plaintiff	67	11	0
„ Costs of defence	50	8	10
Total ...	149	14	9

Of this sum, however, only Rupees 118-3-10 are legal expenses; the balance being chargeable to the work.

2. It is observed from the judgment that the Court are of opinion that had the Overseer, who was in charge of the work when it was withdrawn, taken the trouble to convince the contractor, by measurements in his presence, of the amount of work actually done and materials taken over, and obtained the usual acknowledgment, there would have been no room for the litigation which has taken place. In this view His Grace the Governor in Council concurs. There is nothing in the papers submitted to show that the Overseer, Padmanaba Naidoo, took any trouble to effect an amicable adjustment of the dispute. His inaction, unchecked by the Range Officer, appears to have forced the contractor to seek legal redress. The result has been an unnecessary expenditure of time and money.

3. The costs will on this occasion be paid by Government; but the Overseer will be warned that he is expected to be more conciliatory in his relations with those entrusted with the works of the department.

4. The District Engineer's report on the excess over the sanctioned estimate for the Sea Custom's Cutcherry at Valanganny will be awaited.

(True Extract.)

Colonel,
Offg. Under Secy. to Govt., P.W.D.

To the Superintending Engineer, Tanjore.
„ Examiner of Public Works Accounts.

Exd. S. T. Austin.
Specs Copies



3rd April 1876

W. K. S. S. S.

In the District Munsiff Court of Negapalam
The 11th day of March 1876.

Present: A. R. Venasami Esq., District Munsiff
O.S. No. 222 of 1875

Sungata Naiken ————— Plaintiff
versus

Mrs J. M. B. Leggatt, offg. District Engineer
of Bellary, and another } Defendants
This is a suit to recover Rs 881-6-8, being the remainder
of the value of the work done to and the value of the
materials taken away by P. M. D.

On the 20th August 1873, the Plaintiff made a Contract
with the then Range Officer of Negapalam, to build
the Custom House at Valanganny. According to it
he finished the brick works &c, and the second
defendant the overseer accepted it. On the 10th September
1874, the 1st defendant who was then Range Officer
issued an order to the Plaintiff to the effect that the
work will be done in "amami" that the Plaintiff
shall settle his accounts and that if he has gathered
materials, he can sell the good ones to the overseer
if he requires any. Accordingly the Plaintiff on the 27th
(At Sicut)

By order of the Court
W. K. S. S. S.

December 1874 and on several other subsequent occasions requested the range officer to settle his accounts but he has not done so. And besides the 2nd defendant has made use of for the building some of the materials without his Consent and without paying him the price. Hence the Pl^{ff} has brought this suit to recover the remainder of what is due to him after deducting \$1543, which he has admitted to have been paid to him. The Plaintiff has at the request of the Court given a list of the work done and materials taken away.

II The second defendant is ex parte

The defence for the 1st defendant is undertaken by the government, and the government Pleader urges that the government are willing to pay for what work the Dff has done and what materials he has supplied. He further states that the Dff is entitled to recover Rs 348-6-4 only, which was tendered and refused.

• IV. The Court framed the following issues for decision:

Q What is the value of the work done

(2) Whether the defendant did on several occasions between the 1st and 31st December 1874 remove without the Plff's consent the materials mentioned in the list, the deft acting in the matter through Pathuaba Haidoo, the

(2nd Sheet)

By order of the Court.

Wendell Phillips

208 222
75
S. H. & Co. Grocers
S. H. & Co.
3/4/16
A. W.

revenue (2nd defendant)

The Df filed the following documents

A. Order given by the 1st defendant to the Df and dated 2nd September 1874.

B. Order given by the 2nd defendant to the Plaintiff and dated 24th August 1874.

C. Order given by the 1st defendant to the Plaintiff and dated 17th November 1874.

D. Application presented by Plaintiff to the 1st defendant and dated 7th December 1874.

E. Copy of the order given by the joint magistrate at Nagapattinam to Df on the 2nd April 1875.

F. Copy of another order dated the same day.
The defendant filed the following documents

I. Original estimate

II. Revised estimate

III. Contract Agreement with tender attached

IV. Contract Certificate with measurement attached, dated 21st March 1874.

V. Contract Certificate with measurement, attached dated 14th May 1874

(3rd sheet)

By order of the Court
A. Subrahmanyam
H. E.

IV. Certificate dated 17th September 1874. with
Measurement and letter by 134 from Overseer
Pathmanaba Kaido attached.

III. Do by overseer Joseph Wiley, dated 27th
March 1875.

VIII - Station Book for Constructing Bea Custom
house at Valangannur.

The Off^y examined the following witnesses

1. Sangara kaiken (Oly)
2. Manyu Pillay
3. Amiasami Pillay
- 4 - Thachina Murthy Kusari
5. Thyagos Pillay

11

(1) The sum due to him for the work done by him;
and (2) the value of certain materials which he had
agreed to sell to the department, but which
were taken away by the overseer without his
consent and no value being appraised.

The defence was undertaken by the Government, and the Government Pleader urged in defence that the Public Works Department was willing to pay to Plaintiff what he was justly entitled to, but the Plaintiff refused to accept the sum of Rs 248-6-0 tendered to him in full satisfaction of his account.

The Offr's Case was naturally a weak one, and it has been handled in a way certainly not the best. The Contractor in this Case, as many of his Class, is an ignorant man more or less depending on the good will of the Officer of the department placed in immediate supervision of the work.

He has kept no regular account of the work done;
and were it not for the certificates issued by
(5th Feb)

By order of the Court
Nebraska, this 1st day of June
1883

Such of these Certificates of work done as were
issued while the Plaintiff had the work upon
his hand, were not disputed by either side.

Correctly taken, and the statement, made by the Range Officer as the result of his measurement taken at the request of the Court, was reported to have fallen short of what is admitted in the pleadings. Besides, there is an element of error which the Offs have not endeavored to estimate. The work

(6. Sheet) By order of the Court

By order of The Board

Wickatahoo Taylor
H.C.

15
was stopped about the end of July 1874, and the
sub-overser examined by the defendant swore that
before he fitted the roofwork he had to do a portion
of brick work, and he was not able to say where
the Df had left off. Now there is not a particle
of evidence to show how far the Df did, and if he
had not done the entire work as estimated,
there must be a difference in quantity shown
in the Certificate and the estimate; and that
difference consists solely in the height of the
main walls above the basement as is found
on comparing the Df's and the defendant's
statements. Had the overser who was in charge
of the work when it was taken away from the
Df's hands endeavored to convince the Df
as to how much work he had done, and measured
the work in his presence and caused the Certificate
to be signed by him, as he had done the previous
ones, there would have been no room for all this
litigation. But as it is I am unable to determine
what Df now claims is due to him on this head,
and as there is no evidence of any kind on Df's
side, I adopt with the exception of two items the

(7 "Shut")

By order of the Court
Wm. H. T. Taylor
Jr.

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Certificate made out by the second defendant.
 though the Plaintiff alleges that Certificate was
 not correctly made up by him. These two items are

(1) 2. Main walls above $34\frac{1}{4} \times 1\frac{1}{2} \times 12 = 1233$

(2) Deductions for { doors 3. $3\frac{3}{4} \times 1\frac{1}{2} \times 6\frac{3}{4} = 113\frac{7}{8}$
 { windows 4. $3\frac{3}{4} \times 1\frac{1}{2} \times 4\frac{1}{4} = 82\frac{7}{8}$

These two items appear in the Certificate issued by
 the officer in charge of the work on 14th May 1874
 as under

(1) 2 main walls above $34\frac{1}{2} \times 1\frac{1}{2} \times 12 = 1242$

2 For { doors 3. $3\frac{1}{2} \times 1\frac{1}{2} \times 6 = 94\frac{1}{2}$
 { windows 4. $3 \times 1\frac{1}{2} \times 4 = 72$

this leaving a balance of $39\frac{1}{4}$ Cubic feet in
 favor of Off to be added to the quantity shown in
 the final Certificate issued on 20th March 1875.
 The full benefit of this piece of evidence ought,
 I think in the circumstances of the case, to be
 given to Off. As early as July the work appears
 to have been taken away from the hands of the
 Plaintiff for delaying it. The Off complained
 against the measure, but in answer he was
 told on 2^d August 74. that his accounts will
 be settled but the work will be carried in "Amami".
 Probably upon this Complaint, the second deft

(S to Clerk) By order of the Court
 & Westlake's sign
 1875

19

was called upon to submit a statement of work done by Olff, and by him a statement was sent up on 17th September. This does not appear to have been made up with the knowledge and concurrence of the Plaintiff, who has been from the beginning calling it in question as incorrect. The previous Certificate was signed by Plaintiff and was accepted as correct and passed in the range office, and the apparent discrepancy between these two documents seems not to have attracted the notice of the Range Officer.

In connection with this part of the claim, the Olff complains that no allowance has been made to him for scaffolding and Sundries, though this item has been acknowledged to be one for which some thing was due to him by the second defendant when he sent up his Certificate on the 17th September 1874. It is true that the Olff has not produced any account relating to these, but as there is no doubt that some amount must have been spent on that account and as it is made out that

(9th Sheet)

By order of the Court
W. H. T. J. J. J.
J. J. J.

5 per cent on the value of work done is usually allowed on account of sundries, I think it is but fair that at least 4 per cent on the value of the work done by the Off up to the 31st August amounting to Rs 25-8-2 ought to be allowed and I accordingly advise that the above mentioned two items be added to the Certificate Amount.

Now as regards the materials alleged to have been taken away by the second defendant, the Off's contention is, that as he did take away wrongfully the burden of proof must be shifted to the side of defendant. It is however admitted that the Off himself petitioned the executive Engineer against his being treated unjustly and he seemingly accepted the proposal made by that officer to take the materials he had collected. In these circumstances it is not right to assume that the second defendant, the officer, acted wrongfully however he might have been indiscreet in having omitted to settle with Off the value thereof.

From the evidence recorded, I am constrained to think that the Off has not met with fair treatment from that officer, and ~~that~~ ^{from} any person.

(10th Sheet)

By order of the
Muzdarif
1905.

his Conduct is open to observation in having omitted to take necessary precautions to avoid litigation.

Technically speaking, however, the plaintiff has failed to prove wrongful seizure and the burden therefore is cast on himself to show what materials he had collected, of which how much had been taken, and further what was the then market value of those taken by the defendant. On these points he has no reliable evidence which is worthy of consideration and here again the plaintiff is completely at the mercy of the defendant and however unjust or arbitrary it may really be I have no help but to accept the Certificate of the 31st August 1875 as the only evidence of the quantity and value of Plff's materials appropriated by the 2nd Dept. The Plff was suddenly told to stop work. He had collected various materials on the job; and his work was half finished. In this state of things the plaintiff ought to have been according to the executive Engineer's directions, allowed to remove his things unless he willingly parted with any, whereas rejected and selected

(H^{rs} Clerk)

By order of the Court
Wm. K. H. H. H.
H. S.

materials were allowed to be on the same spot,
and no valuation appears to have been
taken with the Consent of the owner. From July
1874, the Df has been kept from payment
of what was actually due and at last
has been forced to resort to a Law Suit.

In Conclusion I cannot help observing that
had the Second defendant been more conciliatory
in his treatment of the Df's Case this suit
would probably not have arisen and that
justice has in some measure failed in this
Case mainly because the Df is the weaker
man; and that the best way to avoid
litigation would be to deal with Contractors fairly
instead of trying to prevent them from going to
Law by the terms of the Contract or to place
obstacles in their way.

The result is, the Plaintiff will have a decree
for Rs 380 — " — //, as shown below.

Total Cts to Df Certified	Rs 891 — 6 — "
Add Value of 39 1/4 C ft omitted	6 — 2 — 9
allowance for scaffolding and ladders — }	25 — 8 — 2
	923 — " — //

(12th Dec) By order of the Court
W. K. T. K. S. S. S.
S. S.

Seduct Amount acknowledged
to have been received by Plaintiff / 543 - a - 4
Balance 380 - a - 14

The rest of the Offs Claim is dismissed.
The Off will have proportionate Costs on the
amount allowed and the dependants will
bear their own Costs.

(13th Last Sheet)
[Signed] H. R. Verranum by
D. H. Munsiff

(True Copy)
By order of the Court
W. K. H. H. H. H. H.
H. H. H. H. H. H.

Copy applied for 3-4-76
Stamp produced 3-4-76
Copy ready 4-4-76

Compared By order of the Court
M. H. H. H. H. H. H.
L. H. H. H. H. H. H.



P. W. 2314/76

Copy of Decree

Enclosure in letter
from the Deputy Engineer
Bengal & Madras
Sept. 16. 1876.
6. Dec. 1876.

8th July 1876
Bengal & Madras
17. Dec 22. 76
Copy of Decree

Sum 340 = 1-12-4
C 1-1-1
2-3-5

35
P. W. 2314/76

In the District Munsiff's Court of Negapatam.

The 11th day of March 1876.

Present: A. R. Veerasami, Munsiff

Of No 222 of 1870.

Singara Vaiken, a contractor, son of
S. Panoo Vaiken residing in Sichel. } Plaintiff
Negapatam Taluk.

Versus

M. J. W. R. Leggat, offg.
District Engineer of Bellary - 1
P. Athmanahannidoo, Taluk } Defendants.
Overseer of Mayanur Taluk - 2

This is a suit to recover Rs 881-6-8
being the remainder of the value of work done to
and the value of materials taken away by P. W. D.

On the 28th August 1873 the Plaintiff
made a contract with the then Range Officer
of Negapatam, to build the Customs House
at Valangany. According to it, he finished
the brick work &c, and the 2d Defendant
accepted it. On the 10th September 1874,
the 1st Defendant who was then Range Officer

(first sheet) issued
By order of the Court
W. H. J.

issued an order to the Plaintiff to the effect that the work will be carried in "Amani", that the Plff shall settle his accounts, and that if he has gathered materials, he can sell the goods over to the Overseer if he requires any. Accordingly the Plaintiff, on the 27th December 1874 and on several other subsequent occasions, requested the Range Officer to settle his accounts, but he has not done so. And besides the 2^d Defendant has made use of, for the building, some of the materials without his consent and without paying him the price. Hence the Plaintiff has brought this suit to recover the remainder of what is due to him after deducting Rs 54 3, which he has admitted to have been paid to him.

U) To amount of the value of the work done 668-
 : Deduct from it the sum received 543-
 Balance 125-

(2) To amount of Value of ~~materials~~
taken away by the defendant . . . } 696-4--
(2^d sheet) - Pay order of Melrose
Whitcomb & Co
657

~~Feb 22~~ ~~Jan 28~~
75
~~Feb 22~~ ~~Jan 28~~
75
J.E. Butler
3/4/94
C.M.

Interest upon the same to 20th July 75
from 1st January 75 at 12 percent
per annum } 46-9-4
Total 742-13-4

Grand total 881-6-8.

Decree:— This suit coming on for hearing; upon
perusing the records of the suit; upon examining
the oral and documentary evidence adduced by
on either side; and upon hearing the arguments
of R. Steeniasa Rangar Vakil for the Plff.
and of Government Pleader S. S. Saminatha
Cyer, on behalf of the Government who under-
took the defence for the first Defendant, the 2^d
Defendant not appearing in person or by Vakil;
this court doth order and decree that the Def. do
pay to the plaintiff Rs 380-0-11 as hereinafter
set forth:

Total costs to plaintiff certified Rs 891-6-0
Add value of 39 1/4 C. Ft omitted 6-2-9
allowance for scaffolding &
sundries } ~~25-8-2~~ 25-8-2
Total 923-0-11
Deduct amount acknowledged
to have been received by plaintiff } 543-0-0
Balance 380-0-11

(3^d sheet)

By

This court doth further order and decree
that the plaintiff's suit for the rest of his claim
be and the same hereby is dismissed:

This court doth further order and decree
that the Defendants do pay to the plaintiff
costs on the amount allowed to him and the
Defendants do bear their own as hereinafter set
forth:

costs to be paid by Defs to Plff

Value of stamp paper Rs 33-5-"

Batta 14-4-"

Witnesses expense 1-2-"

Vakil's fee 19-1-"

Total 67-11-"

costs to be borne by plaintiff on the amount
disallowed

Value of stamp paper 37-8-"

Vakil's fee 30-1-10

Total 67-8-10

costs to be borne by Defendants

Value of stamp papers 1-1-"

Penis Batta 8-"

Vakil's fee 49-1-15

Total 50-8-10

(4th sheet)

By me
[Signature]

(Signed)

A. R. Veerasami ayes Dt Munsiff

(5th and last sheet)

(True copy)

By order of the court

Venkatiah Typ
Head Gunastah

Date of application 3-4-76
stamp produced 3-4-76
copy ready 6-4-76

Compared
Munthasani
Gunastah.

T. R. Saminatha ayes
copyist.



Copy of Decree

P. H. 3314/7

re. Decree
by Engineer
re. Decree
re. Decree

8 95- 7-11
C. 2-11

Ad No. 222
1875

No. 775
Superintending Engineer's Office
Bengal 6th May 1876

From
Lieut Colonel R. F. Baker M.E.
Superintending Engineer
To
Major General G. W. Walker M.E.
Secretary to Government M.O.

Sir
In reference to G.O. No. 47 dated
5th January 1876, authorizing the defence
of the Suit instituted by the Contractor
for the Valungammy Sea Custom House
Work, I have the honor to state that
the case was finally heard and de-
cided on the 11th March 1876

Copies of the Decree & Judgment
passed in
the case are
enclosed & it
will be ob-
served from
them that the
sum of Rs. 3000/-
has been
adjudged
to the Plaintiff

as particularized in the margin

or Rs. 4-5-2 less than the amount stated in the defence to be payable to the Plaintiff and that the rest of the Plaintiff's claim has been dismissed. It will also be observed that the Court has adjudged the payment by this Department to the Plaintiff of Rs. 67-11-¹¹ being costs on the amount allowed to him. This sum added to the costs of the defence of the Suit, viz Rs. 50-8-10 amount to Rs. 118-3-10 and I have the honor to request the orders of Government ^{relative} to the payment of the same.

3 The work to which the Suit relates has been completed, and the expenditure thereon up to date amounts to Rs. 1424-¹¹-6 leaving an unexpended balance of Rs. 165-15-6 from the Estimate; but to meet the amount of the Decree, a further sum of Rs. 214-1-5 is required to be sanctioned, the amount of costs being

being debitable to Contingencies under the ruling of para 19 of G.O. No. 3405 dated 5th October 1870 in the event of its being decided by Government that the same shall be borne by the State. The above sum of Rs. 214-1-5, it will be observed, is in excess of the Estimate of Rs. 1590 sanctioned for the work in December 1874, regarding this a separate report will be made, but as the amount decreed must be paid at once, I propose to have the sum of Rs. 214-1-5 charged in the Accounts to "Miscellaneous Advances" until sanction has been obtained to the same when the "Advance" will be adjusted by debiting the amount to the work.

I have the honor to be
Sir
Your most obedient Servant
A. D. G. G. G. G. G.
Superintendent Engineer

85-Act/10-2405
 - 7: Dec/74 - 3629
 - 8: Jan/76 - 47

P. H. 1876 Department
 No 3314

Forward copy of
 Decree & judgment
 passed in the suit
 filed by the contractor
 for the De Laungum
 sea custom house
 work.

To
 The District Engineer
 Mysore
 The Secretary to
 Govt.
 No 775
 Dated 6 May 76
 No 8-11-76
 Recd 25

No 1224 41
 Public Works Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 16 May/76.
 Read the following:—

From
 The Sup^r Eng^r
 Tanjore } H.E. No 775 of 6th May 1876

With this letter the
 District Engineer Tanjore
 submits the judgment of
 the Court in the case
 authorized to be defended
 in G.O. No 47 dated 5th January
 1876. The sum tendered
 to the Contractor by the
 Public Works Department
 after stoppage of the
 work was Rs 348-6-0.
 In addition to this amount
 the Court have decreed

the

No 276

Cy. 11.5.76 Dtd 16/5/76
 Despatched 8-5-76

by Government, but the
Overseer will be warned
that he is expected to be
more conciliatory in his
relations with those en-
trusted with the works
of the Department.

4. The District Engineer's
report on the excess over
the sanctioned Estimate
for the Sea Customs
Catchery at Valangannur
will be awaited.

Copy 12

30
3

No 276-277

Supd. Engr. Tanjore ✓
Examiner P.W. Accts. ✓

Exd. Secy

Detd 3/5/16

3314

Govt. of Madras
PUBLIC WORKS.

To

The Sup^r Eng^r Puzos

D.D.

10/11

R.O.

E.O.

G.O. 16 May 1876. N 1224

Nos. 276 - 277

Encl - Puzos S^r

Passing orders on the
costs incurred in de
funding the — in con
nection with the Encl
ance at Villangannu.

Sub in Puzos
2-1-76.