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MADRAS RECORD OFFICE

Government of Madras

Public Works

DEPARTMENT

G.O. No.	2073	(M)	Press
B.P. No.			Mis.
Dated	14-8-		1876.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
14th August 1876. No. 2,093.*

No. 284. Read the following letter from Major J. VERTUE, R.E., District Engineer, Trichinopoly, to Major-General G. W. WALKER, R.E., Secretary to Government, Public Works Department, dated Trichinopoly, 4th August 1876, No. 414 :—

With reference to the Government Orders marginally noted on the subject of the Deputy Collector's Cutcherry and Sub-Jail at Arealur, I have the honor to forward, in original, the decree of the

No. 688, of 13th March 1874.

„ 1,368, of 22nd May „

District Munsif of Trichinopoly in the suit instituted on 15th March 1875 by Major Law, then Officiating District Engineer, against the Contractor, Murugasa Moodelly.

2. As will be remarked, the suit has been decided against the Contractor, who is condemned in the payment of Rupees 1,029-14-4, with interest from 22nd June, the date of the decree.

No. 285. ORDER THEREON, 14th August 1876, No. 2,093.

ESTABLISHMENT, No. 14.

ORDERED to be recorded.

(True Extract.)

Colonel,

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

To the District Engineer, Trichinopoly:
To Captain Brockman, R.E.
To the Examiner of Public Works Accounts.

Edw. W. H. French.

Spare Copies

15-16
Dacca 15-16

Judgment
O.S. No. 279 of 1875.

In the Court of the District Munsif
of Trichinopoly.

Present J. Banerjee Esq.

On the 15th March 1875, Messrs. the then District Engineer of Trichinopoly, instituted this suit against Defendant, Contractor and the English plaint presented is as follows.

The Defendant has executed an agreement with a Specification Bond, on the 10 March 1873, undertaking to construct a Sub Jail at Thiruvannam, in this District, in accordance with the terms specified in the said Specification Bond, within the 20th of March 1874.

The Defendant has received in advance for the said work Rs 500, on the 22nd of April 1873 and another sum of Rs 800, on the 25th of June 1873. The said Defendant did not collect proper materials and commence work, as he ought to have done, by the 7th of October 1873 and as there was no probability of the completion of the work within the period fixed, even if subsequently commenced, the Range Officer issued him a notice on the said date that his contract will be rescinded from the 2nd of the said month and that he must pay up the amount of

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1899

the said two advances.²

The Defendant has replied that he is liable to pay the said amount & that he is unable to finish the work within the said period and that the value of the Materials collected as alleged by him, & must be credited to the said amount & that he must be directed to pay the balance.

As the materials collected were not worth being taken for the work, the Range Officer issued him another notice on the 10th of October 1873, directing him to pay the said amount and he issued him a 3rd and then notice on the 20th of June 1874, in obedience to an order of Government, directing him to supply some materials and labor, on the understanding that their value will be credited to the said amount.

The Defendant has accordingly supplied some sundry articles to the value of Rs 65—some of the materials he had collected and he also executed work and supplied materials in connection with another work, to the value of Rs 121—4—6, and delays to pay the balance or to execute work or to supply materials for it."

"The Cause of action has accrued on the 22^d of October 1873, the date following that on which the Contract was rescinded."

The amount sought to be recovered.

Amount of advance dated 22^d of April 1873. Repaid 500—

Interest for the said amount at 12 per Cent per annum from the said date up to the date of payment 113—10—8

Amount of the 2^d advance, dated 25th June 1873. 500—

Interest for the said amount at 12 per Cent per annum from the said date up to the date of payment 103—2—8

Total 1216—13—4

Value of the clothing articles received on the 26th September 1874. 65—10—6

Value of the 2^d advance labor subsequently supplied in connection with the work. 100—4—0

Total 1381—17—10

Balance Due 1216—13—4

with subsequent interest from that date up to the date of payment

2 shillings

and costs?

2.

Defendant in his written statement admits the contract, but urges that he did not fail to execute it & therefore, he cannot be held the amount of a breach. He says that Plaintiff has no right to sue him in that the Range Officer illegally recovered the contract within the time specified in Exhibit 2a; that the amount of the contract is not really the amount of a breach, but the amount paid for materials & labor collected by him and deposited by the Range Officer. He says that the Range Officer is a defaulter and therefore Plaintiff cannot get back the amount.

that Mr. Brahmam, who gave the contract to the Defendant has approved of the superiority of the materials and speed of work which, who succeeded him (McBookman) cannot take exception to the materials, that the Range Officer took wrongful possession of materials, which, with labor, cost the Defendant Rs. 1300 and the Plaintiff's claim for two thousand Rupees, without answering to the Defendant for the value of materials and labor, is not sustainable and interest is

is not bound to pay; that he would have completed the work within the time, had Mr. Brockman given him (Defendant) an increased rate for bricks which he wanted the Defendant to burn in a place far away from the work and had not the Range Officer delayed the work by not issuing final instructions as to the increase of rate; that the rate has now been increased and yet the work has not been finished, though it is now 1 or 2 years; that Defendant is in possession of testimonials to show that he is a diligent contractor and Mr. Brockman wrote to the Government to say as much and observed that the Range Officer and the Plaintiff have not treated him (Defendant) properly; that he did not inform the Range Officer his inability to finish the work, but replied to him in writing, when he gave him notice rescinding the contract, and any admission contained in the said reply, cannot bind him, as the sum he received is not legally returnable; that the Plaintiff is unremunerable to him (Defendant) for value of materials and labor, Rs. 13.00 and

profit Rs 1500; that he, of his own accord, delivered no materials to the Range Officer, but he has himself taken away the materials collected for the work in question and another work and has valued them very low and that the materials collected for the other work are worth Rs 32/- 4/- 00.

3. The following issues were recorded,

1. Whether or not the contract in this case could have been rescinded before the time fixed for the completion of the work?

2. Whether Defendant's delay in commencing the work and the inferior quality of the materials are sufficient reasons for rescinding the contract?

3. Whether the materials collected, were in accordance with the Specification and were approved by the Range Officer and such approval binding on the Plaintiff?

4. To what extent materials were collected by the Defendant and materials of what value were used by the Plaintiff?

5. If the cancellation of the contract was illegal, whether Plaintiff can claim the whole or any part of the advance amount?

4. The Range Officer, Syed Yunus
sheet.

do so and Major Ventre, the District Engineer, informs the Defendant by a notice dated the 11th November 1873. Exhibit C, that should he not look sharp and pay the amount, proper steps would be taken to recover the amount. On the 23rd June 1874 Mr Wybrow, the officiating District Engineer, informs the Defendant in writing, Exhibit R, in reference to instruction received from the Government that he should pay up the amount of advances and deliver the materials collected, to the Range Officers, who will give him credit for their value. Defendant sets all these orders at naught and the Plaintiff is compelled to put the Defendant in Court.

Defendant raises all sorts of objections and contends that he is not bound by his own admission, as contained in Exhibit L, because the amount is not legally recoverable, inasmuch as it was not an advance but the value paid for materials collected and approved. No such approval is elicited in evidence. Mr Brockman, who was examined on interrogatories through the District Court of Godavari, says in direct opposition to the De-

defendant, that he did not inspect the materials and that he acted in the matter through his subordinate agency. Plaintiffs 1 and 2, witnesses speak to the inferior quality of the materials. Para 12 of the Specification Bond B, runs thus:

"Payments will be made to me as often as is convenient to the Range Officer, on the quantity of work done and materials brought on the respective work spot." No quantity of work was done according to Defendant's own admission and therefore he is not entitled to any payment. The "materials brought" means materials of good quality. When the materials brought, were pronounced to be of inferior quality, Defendant is not entitled to any payment. Therefore the amount given to Defendant is an advance in the ordinary acceptance of the word and as such, is legally returnable and Defendant is bound to do so, according to his own admission, as contained in Exhibit L.

The only question, without any reference to the issues raised is whether Defendant has been properly given credit for materials collected by him. The evidence

since adduced by the Plaintiff and
exhibited & signed by the Defendant
himself. When satisfactorily
that Defendant was given credit
for materials used by the D. & W.
The evidence, contra, is not at
all reliable. Another item for
which Defendant is given credit
in the plaintiff, appears also to
be correct.

I therefore adjudge that
Defendant do pay the amount
due for said costs, with interest
at 6 per cent per annum, &
from this date to date of payment.
June 2d. 1876.

Witness my hand & seal
at New York
this 10th day of June
1876.

Compared by
V. P. ...
James ...

10/0 Sept.
No. 5031

of me. I regard my the
— brought against
me all my years. I would
the Commission had
Col. Schair's Publishing
at New York.

of
Oman
The District Engineer
Crested Heights
The Secretary of Post
S. W. Department
Madras
No 414
Dated 4th August 1916
Rd 7
Encls: none

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Enclosed to the
Letter from the
New York University
Archives

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1881

Dr. Surg. Trichinopoly
 Capt. Brockton, P. Q.
 Ex. Dr. A. A. A. A.

Oct 25/8/8

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 3. 8. 8. 76

5631

Sept. of 1873 Madras
PUBLIC WORKS.

Re D. B. Suckinopoly

11th August

1873

281-285-

Recd from the
24.8.73

Suit Suckinopoly D.

Letter from the D. P. Eng.
submitting the decree of the
D. P. Suckinopoly in the —
instigated by alias' law
against the Contractor in
connection for the recovery of
the advance made to him
in connection with the D.
Collectors Cutchery & Sub
at the above records.