

23.10.1881 No 2443 A W
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Ph. C. 2753
Govt. of {188 } Madras.

Per Mr. May

To

Dated

Recd.

6 May

188 , No.

Nos.

Directing that front
of Indian may be
addressed on the
subject of the appro-
-priation for the Road
from Cobacarrum
to Madhavaram
from the No 1166 W. 7/5/81

B Recorded

Cy CR

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following

Memorandum from the Public Works Department, dated 1st April 1881, No. 873.

Order thereon 2nd May 1881, No. 763A.

Ordered that the Government of India be again addressed on the subject.

(True Extract)

C. Leavelle Esq.

*Under Secy. P.W.D.
for Chief Secretary*

To The Public Works Department

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

27th November 1878, F.R. No. 2,428.

Famine Relief.

Read the following papers:—

No. 395. From A. J. B. ATKINSON, Esq., Acting Sub-Collector in charge of Cuddapah, to J. H. GARSTIN, Esq., Additional Secretary to Government, Revenue (Famine) Department, dated 20th October 1878, No. 680.

I HAVE the honor to submit the following matter for the information and orders of Government.

2. The Famine Relief-works in the Badvel Taluk were handed over to the Public Works Department on the 1st December 1877. Shortly afterwards, the Special Deputy Collector, Mr. J. H. M. Cox, asked the Sidhout Range Officer, the late Mr. Schoury, to place Rs. 8,000 at the disposal of the Tahsildar to pay up Contractors, &c., for work done previous to the transfer. This requisition was not, very fortunately for Government, complied with by the Range Officer who wrote to the Special Deputy Collector in reply that he had no authority to do so, but that all outstanding balances would be settled by his department, if bills, &c., were forwarded to the Sub-divisional Officer.

3. Amongst those that came up for settlement was a bill for carting material on the Mydukur road for Rs. 9,974-13-10, of which Rs. 2,000 had been paid. The Range Officer found that the rate entered in the body of the bill was 9 Pies per cubic yard per furlong, but that the amounts entered in the rate column and calculated upon it were just double this amount, viz., 18 Pies, while the rate promised to the Contractor was 9½ Pie per furlong.

4. The Range Officer further discovered that bills for carting material on the Cuddapah and Cumbum road were similarly prepared; that in these contracts no agreements were taken on stamped papers, while in all other trifling contracts they were; that the only authority on which the work proceeded was a permit to go on with it without any particulars; and that the bill alluded to in paragraph 3 was prepared by a Public Works Department Sub-Overseer, Mr. LeFebour, whereas it ought to have been prepared by the Clerks who were employed under Mr. C. H. Horden, the Relief Officer.

5. The Range Officer, therefore, concluded that there was no doubt that frauds had been committed against Government, although Mr. Cox, who was the Special Deputy Collector in the Famine charge of Badvel Taluk, was of opinion that the calculation in the bill was simply a mistake. The Range Officer accordingly reported* the circumstances of these cases to the District Engineer, Mr. Unwin, who agreed with him, and forwarded† the papers to Mr. Horsley, the Collector, for such action as he thought necessary, with his opinion "that Rs. 13,000 appear to have been overpaid by Government and that some steps should be taken to recover it."

* 25th March 1878.

3rd April "

† 9th " "

6. Mr. Horsley on obtaining some further description of the bills referred to from the Sidhout Range Officer, directed‡ the Tahsildar of Badvel to send up all the papers. These he placed§ in the hands of the Head Assistant Magistrate, Mr. O'Farrell, for inquiry.

† 17th April 1878.

§ 24th " "

7. Mr. T. S. LeFebour, Sub-Overseer of Badvel Taluk, was first proceeded against under Section 420 of the Indian Penal Code, and he was discharged*
* 10th May 1878.
for want of sufficient evidence to prove the offence against him.

8. Mr. C. H. Horden, the late Relief Officer, who was considered to be at the bottom of these frauds, had by this time gone to Rangoon, and a warrant was issued for his arrest, which was secured on the 11th July 1878. He appeared on the 30th July 1878 at Cuddapah according to his bail bond.

9. The inquiry as against him and the Contractor began on the 1st August 1878, the prosecution being conducted by Mr. M. W. Elliot, a Pleader of the District Court, who conducts the prosecution in all the Sessions cases, under the orders of Mr. Horsley. The inquiry terminated on the 11th August 1878 and resulted in the discharge of the accused for want of conclusive evidence of fraud.

10. Copies of judgments in the two cases referred to in paragraphs 7 and 9 are enclosed, and these contain the particulars of the frauds and the manner in which they were perpetrated.

11. The points for the decision of Government are:—

1st.—The amount of fee to be paid to Mr. Elliot for having conducted the prosecution in the case against Mr. Horden.

2nd.—How should the lost money be recovered and from whom?

12. Regarding the first point Mr. Elliot has asked in his bill a fee of Rs. 200 and the Acting Head Assistant Magistrate, who inquired into the case, "does not think that the fee is high, seeing that the inquiry was intricate and occupied several days, and that the amount embezzled was large (Rs. 13,000)." I agree with the Head Assistant Magistrate, and beg to solicit the sanction of Government for the payment of Rs. 200 to Mr. Elliot.

13. Regarding the second point, although Mr. Horden cannot be criminally punished, there seems no doubt but that he is civilly responsible. He signed bills which he could never have checked or he must have seen their falsehood. His story is that Mr. LeFebour, the Public Works Department Sub-Overseer, prepared them and that he signed them on trust. Even supposing that to be true, it in no way defends him, as he was not entitled to Mr. LeFebour's services for such a purpose. Mr. LeFebour's story is that he simply wrote what Mr. Horden ordered him to write as a friend as he was in no way under Mr. Horden's orders. Regarding the status of Mr. Horden and his capability of paying even if a civil suit against him were successful, there is no trustworthy information. The Contractor's story is that, although he signed as having received the full amount of the bills, he does not know how much he really got. He is reported to be a man of no substance.

14. I respectfully beg to submit that inquiries should be made in Rangoon as to Mr. Horden's status; and that if he is proved to have any substance, I may be permitted to put the papers before the Government Pleader to ascertain if a suit will lie.

ENCLOSURE No. 1.

Judgment in Register Case No. 3 of 1878.

THE prisoner, Thomas Stephen LeFebour, is charged on suspicion of being concerned in certain frauds connected with the Badvel Famine Accounts.

The facts of the case are as follows:—The relief-works in Badvel Taluk were handed over by the Revenue Department to the Public Works Department authorities on the 1st December 1877. The latter department undertook to satisfy all outstanding claims if sent in to them. Among the bills which were so submitted was a bill for Rs. 7,974-13-10 for payments due to the contractor for carting material on the Mydukur road. This bill is signed by Mr. Horden but the body of the bill in the handwriting of the accused. The bill was checked by the Department of Public Works authorities and found to be incorrect. The precise nature of the errors detected is thus described by Mr. Schoury, the Range Officer of

Badvel, and witness for the prosecution. "In the body of the bill the rate per furlong per cubic yard is stated to be 9 Pies while in the rate column 18 Pies has been used in calculation." This error is, as may be verified on inspection, persisted in throughout the bill. The effect of course is to make the sum due to the contractor appear twice as great as it properly ought to be. On discovering this Mr. Schoury called for a copy of the order given to the contractor to do the work. A copy of this marked B is put in. The rate promised therein to the contractor is 6 Annas 9 Pies per cubic yard per mile, or at the rate of 9½ Pies per furlong.

Mr. Schoury states that he has never seen a bill prepared in such a way as this, and that he has not the slightest doubt that the bill is fraudulent.

Two other bills, C and D, for carting material on the Cumbum road are also produced. The body of the bills is in the accused's handwriting. The rates per mile are entered at the head of the bill in a handwriting which is not that of the accused, viz., in Bill C. The rate is 6 Annas 9 Pies per mile and in Bill D 7 Annas 10 Pies per mile.

In the body of the bills the rates are entered in the handwriting of the accused at 1½ Annas per furlong and 1½ Annas per furlong respectively. These rates amount to 12 Annas and 14 Annas 8 Pies respectively per mile, rates nearly double those entered at the head of the bill. These bills were paid by the Revenue Department apparently before the works were handed over to the Public Works Department. The Range Officer, Mr. Schoury, on examining these bills and with reference to the errors alluded to above, states "I have never received a bill drawn in this manner before; I should say that such bills as these are framed with the intention of defrauding."

Mr. Schoury states that "the prisoner, who is an Overseer of the Public Works Department," has no right to draw up these bills. "I was not aware that he ever drew up such bills till these bills came into my hands * * *". The rates entered in the body of Bills C and D (1½ Annas and 1½ Annas per furlong or 12 Annas and 14 Annas a mile) are very high rates. It is just possible that these rates may escape the notice of professional person copying these bills, but I think it is very unlikely. The prisoner is of three years' service in this district, and he had been under me very nearly three years. I have always found the prisoner a fairly sharp man in his work, and anything but dull." In answer to a question put by the Court, Mr. Schoury said "I believe that when the prisoner copied these bills he must have been perfectly well aware that by placing 9 Pies in the body of the bill and calculating at the rate of 18 Pies it would be paying for the work at double rates."

In cross-examination the witness stated—"If the entries at the head of the Bills C and D had not been made, the form of the two bills would have been correct." "For work done generally, in the famine higher rates than ordinary were paid, but in Badvel the rates for carriage of materials on other roads were the ordinary rates." "Even considering that there were 13,000 coolies working and that materials had to be constantly supplied for their use, I would still consider the rates of 12 Annas and 14 Annas per mile excessive rates. The ordinary rates are 5 Annas 4 Pies per mile."

Then the prisoner asked "what construction do you put on the words 9 Pies average per furlong?"

The witness answered, "I understand that to mean there being two or more rates of which 9 Pies is the average or mean."

The prisoner asked "if the highest rate be 1 Anna 6 Pies will not the average rate be 9 Pies?"

The witness answered, "Yes if an equal amount of work has been done for nothing."

The witness admitted that he had heard that Mr. Horden had pointed out these double rates to Raghava Chari, the Sub-divisional Officer, but added that he had done so when the bills were being paid, and long after the bill had been discovered by Raghava Chari to be incorrect.

The prisoner's defence is that these bills were written by him at the request of Mr. Horden because the latter's writer was sick, and that the wording of the bills was dictated by Mr. Horden himself. The discrepancy of the double rates in the Bill A he admits struck him, and he asked Mr. Horden about it. Mr. Horden said the rate 9 Pies was the average of 18 Pies, and with this explanation he was satisfied, believing Mr. Horden to be a "Sub-Engineer."

It is just possible that the prisoner's explanation is correct, and that he was easily satisfied with any explanation from a person holding the responsible position which Mr. Horden held. I am of opinion that the evidence as it stands does not amount to more than a strong presumption of guilt on the part of the accused, and I must therefore discharge him. There is no doubt in my mind that the bills produced are fraudulent. If the prisoner's story be correct, that fraud must have been the work of Horden, and it seems hardly likely that the latter would have chosen, as an innocent tool, a professional man like the prisoner. The prisoner, according to his own statement, is struck with the discrepancies in the Bill A, and yet allows himself to be put off with an excuse that is palpably ridiculous. In regard to the

other bills, it is true that the entries at the head are not in the prisoner's handwriting, but he could hardly fail to be struck with the exorbitant rates entered by himself in the body of the bill.

This evidence, however, is merely presumptive, and although the presumption which it raises is a very strong one, yet it is not such as would justify a Court in convicting or a Magistrate in committing.

The prisoner is accordingly discharged from custody.

Cuddapah,
10th May 1878.

(Signed) H. H. O'FARRELL,
Ag. Head Asst. Magistrate.

(True Copy)

(Signed) A. J. B. ATKINSON,
Ag. Joint Magistrate in charge.

ENCLOSURE No. 2.

Judgement in Register Case No. 4 of 1878.

This is a case arising out of two of the three bills regarding which the preliminary inquiry in Register Case No. 3 of 1878 was instituted. The defendant Charles Hewith Horden, formerly a Relief Officer in Badvel Taluk, is accused of cheating under Section 420 by fraudulently preparing these bills for larger sums than were actually due, and causing money to be paid thereon to a certain Bala Guruvadoo, a Contractor for the works in question.

The two bills, in respect of which the present charge is made, marked A and B, are bills for carting material on the Cuddapah-Cumbum road, middle and northern sections, a famine relief-work, then being executed under the direction of the defendant. These bills were prepared by the 1st witness Mr. LeFebour, a Local Fund Overseer in the Badvel Taluk, and certified and signed as correct by the present defendant. The two bills aggregate Rs. 26,000. The fraud charged in these bills is as follows:—

In the heading of the Bill A, are inserted in the defendant's handwriting the words "material carted on Cumbum road, central section, rate 7 Annas 10 Pies per cubic yard average per mile." The rate at which the amounts in the body of this bill are entered is at $1\frac{1}{2}$ Annas "per cubic yard per furlong" or nearly double the rate entered in the heading of the bill. Similarly with Bill B the rates being respectively 6 Annas 9 Pies per mile and $1\frac{1}{2}$ Annas per furlong. These rates being maintained throughout all the items of the bills, the result is an excess payment of nearly half the amount of the bills or 13,000 Rs.

The explanation offered by the first witness, Mr. LeFebour, is briefly this: that there are two rates paid to the Contractor according as he carts the material in a lump from one end of a given distance to the other or spreads it along the road as he goes in a continuous line, the latter rate being half the former. This statement is contradicted by the witness Raghava Chari, a Public Works Department Supervisor, who states that the practice in the Public Works Department is not to fix two rates but to take an average of the distances. This is practically admitted by the first witness who says, "if a Contractor were to do work in these two ways mentioned he would be paid according to the work mentioned at the average rate and the full rate respectively, and the distances would be shown at half mile and one mile."

The words which I have italicised are an admission that it is not the rate which is altered but the distances which are halved.

I have no doubt therefore that the bills are fraudulent, and that an excess sum, amounting to nearly Rs. 13,000, has been paid to the Contractor on them. Indeed the defendant has not attempted to contest this point.

There is no evidence of any advantage having been gained by the defendant in respect of these bills, but I conceive such evidence would not be necessary were the bills shown to have been knowingly prepared by the defendant in the fraudulent manner set forth.

The manner of payment of the bills seems to have been as follows. After such bills were prepared they were sent to the second witness Dupati Seshiah, Public Works Maistry and Famine Superintendent, who drew the money required on indent from the Taluk Cutcherry paid it and sent a "Butwada account" to the taluk. The contract for these works was paid in instalments, and he professes himself (third witness) unable to recollect the total sums paid him on these bills or the rate per furlong he received, although he has affixed his mark to a receipt for the full amount of the bills. I cannot credit his statements on these points.

The main evidence against the defendant is that of the first witness who states that these bills were dictated to him item by item, as they are now drawn up by the defendant in person. He expressly states that the defendant told him the average rate per furlong and not per mile, and that the defendant afterwards entered the headings showing the rates per mile, giving as his explanation the one already referred to of "average rates."

Could this evidence be depended upon, it would be clearly prove the defendant's knowledge of the fraudulent manner in which the bills are prepared. It is clear, however, that the witness rests under a strong moral suspicion of being an accomplice, and that his evidence must be received with great caution. The statement of the defendant is that he gave Mr. LeFebour directions to draw out the bill at the average rates entered in the headings of the bills; that he asked him whether he had carefully checked the calculations, and on his assuring him that he had done so, he had signed the bills in question.

Much has been made of the facts that the defendant had no authority or occasion to employ the first witness to draw up these bills, that the bills were never seen by the defendant's Head Clerk (fifth witness), and that no office copies were kept.

All these, however, it seems to me are circumstances which tend to raise a strong suspicion, but no more. Nor is it clear that the suspicion points at the present defendant. The fact that the Head Clerk was kept in ignorance of the bills, and that no office copies were kept, may be due to the first witness quite as much as the defendant.

In regard to the employment of the first witness, the defendant states, but does not prove, that he did so on the authority of a Government Order. The question, however, is clearly immaterial as the defendant may have employed the first witness in good faith, even though without authority, and there is nothing to show that he did not. Under these circumstances, I find myself unable to rely on the uncorroborated evidence of the first witness, and I accordingly discharge the defendant.

Cuddapah,
19th August 1878.

(Signed) H. H. O'FARRELL,
Ag. Head Asst. Magistrate.

(True Copy).

(Signed) A. J. B. ATKINSON,
Acting Joint Magistrate in charge.

No. 785.

OFFICIAL MEMORANDUM.

THE undersigned has the honor to forward the accompanying papers* to the Government Solicitor, and to request to be informed whether in his opinion, assuming Messrs. Horden, LeFebour and the Contractor to be worth money, there is any reasonable prospect of a successful issue to any procedure against them.

FORT ST. GEORGE,
12th November 1878.

(Signed) G. STOKES,
Addl. Under Secy. to Government.

No. 396. From ERNEST BARCLAY, Esq., Government Solicitor, Madras, to J. H. GARSTIN, Esq., Additional Secretary to Government, Revenue (Famine) Department, dated Madras, 20th November 1878, No. 459.

I HAVE the honor to acknowledge receipt of your Official Memorandum without number, dated 12th November 1878, with its enclosures.

2. The cases against Mr. Horden, Mr. LeFebour, and Bala Guruvadoo, the Contractor, are on different footings. With regard to Mr. Horden, I am of opinion that an action would lie against him for recovery of the amount overpaid to the Contractor if it could be shown that it was Mr. Horden's duty to prepare or check the bills on which the Contractor has been overpaid, and that by reason of Mr. Horden's neglect of that duty, the Contractor has been overpaid, and that thereby Government has sustained damages. If, on the other hand, it was not Mr. Horden's duty to prepare or check these bills, I do not think any action would lie against him. Mr. Horden has already been tried and acquitted on the charge of fraud, or otherwise I think an action would have lain against him on the ground that by reason of his fraud Government had sustained damage. In paragraph 4 of the letter from the Acting Sub-Collector in charge of Cuddapah to your address and dated 20th October 1878, No. 680, he states "the Range Officer further discovered * * * that the bill alluded to in paragraph 3 (of Mr. Atkinson's

letter) was prepared by a Public Works Department Sub-Overseer, Mr. LeFebour, whereas it ought to have been prepared by the clerks who were employed under Mr. C. H. Horden, the Chief Relief Officer." From this I gather that it was Mr. Horden's duty to at least see to the preparation of the bills in question, and that he was responsible for their correctness. Again, in paragraph 13 of Mr. Atkinson's letter he says, "he (Mr. Horden) signed bills which he could never have checked or he must have seen their falsehood. His story is that Mr. LeFebour, the Public Works Department Sub-Overseer, prepared them, and that he signed them on trust. Even supposing that to be true it in no way defends him as he was not entitled to Mr. LeFebour's services for such a purpose. Mr. LeFebour's story is that he simply wrote what Mr. Horden ordered him to write as a friend as he was in no way under Mr. Horden's orders." If, as is no doubt the case, what Mr. Atkinson here states is correct, I think there can be no doubt but that Mr. Horden's duty was to prepare or have prepared the bills and to see that they were correct, that he has neglected that duty, and that he is liable to Government in an action for damages for such negligence.

3. For the same reason that I think Mr. Horden is liable in an action for damages, I think Mr. LeFebour is not, for it does not appear that, as a matter of duty, he had any thing to do with these bills or their correctness.

4. As regards the Contractor I think an action would lie against him for money paid to him under a mistake of fact.

5. In advising as above you will understand that I am advising on the strictly legal position of Government in the matter. Whether there be sufficient evidence forthcoming to support such actions as I have suggested is a question upon which I am not in a position to advise.

6. If it be determined to institute proceedings, I think the action against the Contractor should be brought first, and then if the amount overpaid to him cannot be recovered after judgement, the action against Mr. Horden should be brought to recover such amount as may not have been recovered from the Contractor.

7. I return the papers which accompanied your Official Memorandum under reply and I have, &c.

No. 397.

ORDER THEREON, 27th November 1878, F.R. No. 2,428.

Miscellaneous.

THE Acting Collector will consider whether the evidence obtainable is sufficient to establish to the satisfaction of a

Court the liability of the Contractor and of Mr. Horden, and if he considers it to be so he will institute legal proceedings accordingly, and report what action he takes in the matter.

(True Extract.)

(Signed) J. H. GARSTIN,
Additional Secretary to Government.

To the Collector of Cuddapah.
„ the Board of Revenue.
„ the Financial Department.
„ the Public Works Department.
„ the Government Solicitor, Madras.

Exd. W. J. Lewis.

Oct. of 1878 Madras

REVENUE.

To

THE COLLECTOR OF CUDDAPAH,

&c,

&c,

&c.

Dated November 27th.

Printed December 4th.

Recd.

Encl.

G.O., 27th November 1878, F.R. No. 2,428.

NOVEMBER.

Nos. 395—397.

*Fraud committed by Mr. Horden while on
farming duty in the Cuddapah District.—Directing
the Collector, with reference to the correspond-
ence on the subject of the —, to institute legal
proceedings if he considers the evidence obtain-
able sufficient to establish the liability of the
Contractor and of Mr. Horden; and desiring
him to report the action he takes in the matter.*

Mis: No 4719 Wd/10 Dec/78

Recorded.

(Sig.) W. F.

S.E. Second Circle.