K. W. No 59.

24.4.85. Clupall

Memo No 1015 D of 23-4-85
40. A No 314 W of 10-2-85
" " 1850 W of 30-7-84
" 396 W of 14-2-84

23rd April/85

No 1015 D

To C

For remarks

C.S.

D.W.
22.4.85

No 75 of 29th April/85

To Dy. W. Encs: —

There is no objection to the proposal, but for facility of possible future reference, the original loss and the recoveries taken in reduction thereof should be clearly and distinctly shewn in the Work Vouchers for the Post and Telegraph Office Works.

O.C.
C.

No 1092 W of 9th May/85

E.P.
29/4.

The proposals of the Cons. Arch. & the Ex. are approved.

C.A. to Govt
C.S.
D.W.
1.5.85

Ex. P.W. acct
O.L.S. 14/5

5.5.85
14/5

27

P. W. D.

~~Roads and Buildings.~~
General or Establishment

From

THE CONSULTING ARCHITECT
TO THE GOVERNMENT OF MADRAS,

To

The Chief Engineer
P.W.D.

(6)

No. 83.

Dated 21st April 1885
Received

No 1092 W of 9th May/85

No. OF ENCLOSURES.

Subject.

Loss on account of timber Contract for Post and Telegraph office by Messrs Mansfield Brenner & Co.

Anent the lessening of — x

With order
~~Dur~~ W
T.C.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

Read—the following papers:—

Extract from a letter from the Consulting Architect to Government, dated 25th October 1883, No. 907.

"Item No. 4.—Explanation was sent with letter, No. 528, dated 9th August 1883. A full copy of the correspondence will be forwarded."

From C. VINCENT, Esq., Officiating Consulting Architect to Government, to the Chief Engineer, Public Works Department, dated Chepâk, 9th August 1883, No. 528.

I have the honor to report the following circumstances.

2. In March last, a large quantity of teakwood scantlings being required for the new post and telegraph offices, some tenders for the same, on the part of the firm of Messrs. Mansfield, Bremner, and Company, were submitted to Mr. Chisholm by Mr. Lennon,* the subordinate in immediate charge of the works. The price originally named was high, but eventually an agreement was arrived at to pay Rs. 165 per ton for the scantlings wrought and delivered; but although Messrs. Mansfield and Company agreed to deliver the timber by the end of March, they seem to have been in immediate need of funds; for, on March 19th, they addressed the following letter to Mr. Chisholm:—

One letter.

* Letter of March 9th.

"Referring to the purchase of 70 tons Moulmein teak made by Mr. R. P. Lennon on account of the new post and telegraph offices, we now have the honor to apply to you for an advance on this purchase, and in return for this we agree to give you entire control over a quantity of 70 tons teak in logs, our property, at Pondicherry, which is to be delivered in scantlings by us on or before the 31st instant at the new post and telegraph offices."

3. In reply, Mr. Chisholm† informed them that "the Code lays down a rule that no advances of any kind can be made;" but he suggested the following way of meeting the difficulty:—

† Letter of March 20th.

"Mr. Lennon to measure the timber at Pondicherry and wire in the quantity. I can then purchase it at a nominal rate, agreeing to sell it back to you, log by log, at the same rate, to be converted by you into scantlings according to agreement."

4. This was accordingly done. Mr. Lennon went down to Pondicherry, wired on March 21st—"Have measured up 70 tons, please pay for 35 tons to-day on bill of sale signed by vendors as banks close tomorrow for Easter;" and a cheque for Rs. 5,250 was sent to Messrs. Mansfield and Company, together with a bill for 1750 cubic feet of teakwood at Rs. 3 per cubic foot. This bill was signed and returned.

5. After taking over charge of the Consulting Architect's office, on April 16th, I made inquiries regarding the various contracts in hand, and was shown some timber at the post and telegraph offices which Messrs. Mansfield and Company had sent in; but great delay in carrying on the work soon becoming apparent, I made further inquiries shortly afterwards, and had an interview with Mr. Bremner, then the representative of the firm in Madras. Mr. Chisholm's transactions had all been, I believe,

with Mr. Mansfield, but that gentleman had, by that time, left for England without apparently telling Mr. Bremner much about the engagements into which he had entered.

6. Mr. Bremner was profuse in promises, but as these did not result in much, I had at last to insist on the execution of a stamped agreement to supply the scantlings. This was executed on June 8th, and Messrs. Mansfield and Company then bound themselves to supply one-half of the scantlings still remaining undelivered by June 26th, and the other half by July 16th. A deposit of Rs. 250 was made to ensure fulfilment.

7. But the agreement was not fulfilled, and, accordingly, on July 17th, after repeated warnings, I gave the firm formal notice that it was cancelled; that their deposit was forfeited, and that the immediate liquidation of the amount remaining due by them to Government must be exacted. This amount is Rs. 2,863-9-11, the balance of the original advance of Rs. 5,250 having been met by the value of the scantlings furnished.

8. The firm pleaded for delay, and I accorded them up to the 5th instant to make good their debt; but the 5th passed without any payment being made, and, in reply to an inquiry, they requested me to give them till the 15th instant, alleging that the bills of lading of some produce on the West Coast would reach them by that date, which would enable them to obtain the necessary advance of funds.

9. But as, from inquiries I had made, I judged that the commercial standing of the firm was not of the highest, I refused, in the letter of which I attach a copy, to consent to any further delay; and I have now the honor to report that I propose to place the matter in the hands of the Government Solicitor, and to request your sanction to that course.

10. Such are the circumstances of the case. In the way of comment on them, I will only add that it is unfortunate no regular agreement was made with the firm in the first instance. In fact, I might go so far as to say that the purchase of any logs from them, and especially of logs lying at Pondicherry, was unfortunate. From the fact of the firm requiring an advance merely to cut the logs into scantlings, and to bring the latter to Madras, it may be reasonably surmised that the logs were not really the property of the firm, and that the Rs. 5,250 only enabled Messrs. Mansfield and Company to effect a whole or part purchase of them; and the fact of the purchase being made in foreign territory undoubtedly gives Government less legal hold over the firm. In any case it was practically impossible—the logs being at Pondicherry—to carry out the arrangement made by Mr. Chisholm, to sell the wood back to the firm log by log. They had perforce entire control over the wood, no delivery in its legal sense having ever, I understand, been taken; and, from the fact of Mr. Bremner steadily refusing to give me delivery of the logs stated to be still there, I have no doubt whatever that either the whole of the wood never did belong to the firm, or that, if it did, the balance undelivered has now been otherwise disposed of.

11. It is possible that the firm are anxious to liquidate the claim of Government, but they are *very* small people, and I think legal pressure must be brought to bear on them, the more so that, if they have not at Pondicherry the balance of the original 70 tons, they have most distinctly been guilty of dishonesty.

12. In any case the circumstances have been most unfortunate; for the failure to supply the scantlings has caused serious delay to the progress of the new post and telegraph offices. This, though inevitable, is much to my regret; but, I may add, I have now made other and satisfactory arrangements with regard to the timber supply.

From C. VINCENT, Esq., Officiating Consulting Architect to the Government of Madras, to the Chief Engineer, Public Works Department, dated Chepâk, 30th October 1883, No. 914.

As promised in my letter, No. 907, of the 25th instant, I have the honor to forward, herewith, a complete copy of all the correspondence that passed between this office and Mr. Bremner, of the defaulting firm of Messrs. Mansfield, Bremner, and Company. The original contract certificate is also forwarded.

1 Contract agreement.
1 Book of correspondence.

2. These papers, taken in connection with my letter to you, No. 528, of August 9th, 1883, form a complete statement of the case.

3. The case continues to be watched on behalf of Government by the Government Solicitor, and Mr. Bremner is said to be in custody and on his way back here; but it is extremely improbable that any of the balance remaining due by him will be recovered.

From Major J. L. L. MORANT, R.E., Officiating Consulting Architect to Government, to the Chief Engineer, Public Works Department, dated Chepâk, 4th February 1884, No. 1459.

I have the honor to enclose, for information and orders of Government, copy of this office letter, No. 1426, dated 25th January 1884, to the Government Solicitor, Madras, and his reply thereto, No. 66, dated 30th January 1884, on the subject of the insolvency of the firm of Messrs. Mansfield, Bremner, and Company.

2. The amount due by the firm, viz., Rs. 2,863-9-11, is now shown as an advance and debited to the new telegraph office work at Madras.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 7th February 1884, No. 82.

In reply to your memorandum, dated 6th instant, No. 277 C., I beg to inform you that I am watching the criminal charges against Mr. Bremner. The hearing of these charges has, however, been adjourned to next month.

2. I can see no ground for Government bringing a criminal charge against Mr. Bremner. His case is merely one of breach of contract by failing to deliver certain timber his firm had contracted to supply to Government, and for which they had been paid in advance. The fact that some of the timber was delivered according to contract would negative any idea of a criminal intention on Mr. Bremner's part when he obtained the advance from the Government Architect.

Order—dated 14th February 1884, No. 396 W., Public Works.

The papers above recorded have reference to a transaction entered into by the Consulting Architect to Government, Mr. Chisholm, with the firm of Mansfield, Bremner, and Company, for the supply of timber for works under execution at Madras. The facts of the case, as shown by the record before Government, are as follow.

2. In March 1883, a large quantity of teak-wood scantlings was required for the new post and telegraph office at Madras, and a tender for the supply was accepted by Mr. Chisholm from the firm of Mansfield, Bremner, and Company.

3. That firm were, however, unable to deliver the scantlings by the stipulated time, and applied to Mr. Chisholm for aid in the shape of an advance of funds. As the rules of the Public Works Code preclude such advances being made, Mr. Chisholm agreed to *purchase* from the firm a quantity of timber in bulk, then lying at Pondicherry, which was to be sold back to them, log by log, to be converted into scantlings.

4. On the 21st March, Mr. Lennon, the sub-divisional officer, was deputed to Pondicherry, whence he wired to Mr. Chisholm as follows:—"Have measured up 70 tons, please pay for 35 tons today on bill of sale signed by vendors." A cheque for Rs. 5,250 was thereupon sent to Messrs. Mansfield and Company together with a bill for signature, providing for the sale of 1,750 cubic feet of teak-wood, valued at Rs. 3 per cubic foot. This bill was duly signed and returned to the Consulting Architect.

5. It would appear that no steps were taken by the Consulting Architect to obtain actual delivery of the timber which he thus purchased. Of the 70 tons measured up at Pondicherry, only 35 tons were paid for; and there is nothing to show that these 35 tons were specially identified and separated from the bulk.

6. To the inexactness of the transaction in this particular is now due the probable loss, which is the immediate subject of the present correspondence.

7. The firm had entire control over the logs lying at Pondicherry. Some of these were converted into scantlings and delivered at the works at Madras; but it would appear that the logs thus converted were not actually sold back in detail to Mansfield and Company, as agreed upon. Such an arrangement was, in fact, impracticable; there being no Public Works establishment at Pondicherry to carry on such a completed transaction. The firm thus had entire control over the timber; cut some of it into scantlings for the Public Works Department, and made away with the rest. The security which Mr. Chisholm had in view, by *purchase* of the timber, disappeared; and the sum of Rs. 5,250 paid to Mansfield and Company resolved itself into an *advance*, with no security whatever. The advance was worked out to the extent of Rs. 2,386, being value of scantlings delivered from time to time, leaving Rs. 2,864 still unadjusted.

8. The present representative of the firm, Mr. Bremner, is now undergoing, at Madras, criminal prosecution by private persons for other alleged malpractices. The Government Solicitor has been watching the case on behalf of Government, with a view to a *civil suit* ultimately. The assets of the firm are, however, problematical, and the Government Solicitor considers that there are no grounds for a criminal prosecution by Government in connection with the case above detailed.

9. The papers will be forwarded to Mr. Chisholm, for such explanation as he may have to offer; and he will be requested to show cause why he should not be held personally liable for any loss which Government may sustain.

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

To R. F. Chisholm, Esq., Consulting Architect to Government,
(through the India Office).
,, the Acting Consulting Architect to Government.

Exd. E. Fernandez.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of {1884} Madras.

PUBLIC WORKS.

Dated February, 14th.

Recd.

Encl.

G.O., 14th Feb. 1884, No. 396 W.

FEBRUARY.

Messrs. Mansfield, Bremner, and Company

Mr. Chisholm called upon for such explanation as he may have to offer regarding his transactions with — for the supply of timber, and to show cause why he should not be held personally liable for any loss which Government may sustain thereby.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

READ—the following papers:—

From R. F. CHISHOLM, Esq., Consulting Architect to Government (on leave), to the Secretary to Government, Public Works Department, dated 42, Craven Park, Willesden Junction, 19th March 1884, No. 35.

I have the honor to acknowledge the receipt of G.O., No. 396 W., dated the 14th of February 1884.

2. I must express my great regret that any act of mine should have caused the Government loss, and if, after perusing this letter, the Governor in Council is of opinion that I did not exercise ordinary forethought, I will cheerfully submit to any restitution of money by instalments which he may feel disposed to order.

3. The execution of work in Madras is rendered, under the most favorable circumstances, exceptionally difficult, as the orders of Government are framed to suit circumstances which can be hardly said to exist. Still, I must admit that my own difficulties were not greater than those which beset other officers, although possibly they were more numerous.

4. In regard to this particular transaction, I would respectfully submit that, in my opinion, a mistake has been made in mixing up two separate undertakings, each of which has no reference to the other, viz., the purchase of timber, and its conversion into scantlings. These two separate undertakings are as distinct as those of the purchase of cloth from the merchant and its conversion by the tailor. In this case it was convenient, for many reasons, to make the merchant the tailor, but the purchase from the merchant was nevertheless complete and *bonâ fide*.

5. Mr. Lennon went to Pondicherry, selected and marked the timber, so that he could identify it, measured it with Mr. Mansfield, the owner or supposed owner, the bill of sale was made out, the money paid, and delivery taken, and nothing which took place subsequently could affect this transaction. The reason why Mr. Lennon measured timber in excess of the quantity agreed on was, I understood at the time, to save himself a double journey should we require more, and I fail to see the importance attached to this point. Mr. Lennon could without the least difficulty identify the timber he measured (see Government Order, paragraph 5).

6. The timber once purchased might have been converted by Messrs. Mansfield and Company or by any one else. It was, and is now in point of fact, the property of Government and for aught that has been shown to the contrary may be lying at Pondicherry, for neither Mr. Lennon nor any one else appears to have gone there with the view of looking after the property: if it is *not* there it could only have been removed by some fraudulent process.

7. It seems to have been accepted by every one that the part payment I made was an advance, or, to quote the Government Order under reply, "resolved itself into an advance." It was in reality payment for a *bonâ fide* purchase for property marked and delivered. If Mr. Mansfield knowingly sold me timber which did not belong to his firm, the transaction was fraudulent; if it did belong to his firm and has since been removed, either he or some one else must have stolen it.

8. I would respectfully urge that a copy of this letter be sent to the Government Solicitor, together with a copy of Mr. Lennon's measurements, and the original bill of

sale, for I cannot help thinking the case was not fully laid before him. If A purchased from B in Madras 1,000 bags of rice which B agreed to pack in bags and send to Rangoon at so much per bag, A having in the meantime weighed the rice with B and in part paid for it, and if B had sold to A rice not his to sell, or subsequent to selling it to A resold it to C or D, surely the Government Solicitor would not say the proceeding was merely one of failure of contract, towards which A had paid an advance! If such is really the law of the case, I must perforce suffer for my ignorance of the law; at the same time I am constrained to remark that it is the first time I have found the law contrary to the dictates of common sense.

Had I been in Madras and had delay occurred in the delivery of the scantlings, I should have sent Mr. Lennon to Pondicherry with orders to convert the whole into scantlings by any agency at command.

From E. BARCLAY, Esq., Government Solicitor, Madras, to the Secretary to Government, Public Works Department, Ootacamund, dated 2nd May 1884, No. 246.

I beg to acknowledge receipt of G.O., Public Works Department, dated 23rd ultimo, No. 37 E., with its enclosures.

2. There seems to be some uncertainty as to the actual facts of the case against Messrs. Mansfield, Bremner and Company. In August last year I was informed by the then Officiating Consulting Architect to Government that the original purchase of timber was 1,750 cubic feet (35 tons), at Rs. 3 per cubic foot, amounting to Rs. 5,250, and that the total quantity supplied was Tons 14-13-0-7-10, amounting in value to Rs. 2,386-6-1, leaving a balance of Rs. 2,863-9-11, the equivalent of 17·35 tons wrought and delivered, due; and of this balance of Rs. 2,863-9-11, I demanded payment from Messrs. Mansfield, Bremner and Company on the 13th August last.

3. In his letter, of 19th March last, No. 35, Mr. Chisholm says (paragraph 5):—"Mr. Lennon went to Pondicherry, selected and marked the timber, so that he could identify it, measured it with Mr. Mansfield, the owner or supposed owner, the bill of sale was made out, the money paid, and delivery taken." Mr. Chisholm therefore argues that the timber, the whole 1,750 cubic feet, thereupon became the property of Government, and possibly he is right, if up to the time the timber was delivered, it was the property of Messrs. Mansfield, Bremner and Company. To the best of my recollection, however, for I have not now the correspondence before me, the timber was the property of a native and had not been paid for by Messrs. Mansfield, Bremner and Company, and if this is correct, the property in the timber never passed to Government as it was not in Messrs. Mansfield, Bremner and Company to give, unless, as is hardly likely, it had been sold and *delivered* to them upon credit. If, however, the timber was not Messrs. Mansfield, Bremner and Company's at the time it was supposed to have been delivered to Government, and Government were induced by the person who presented the bill for payment to pay for the full weight of timber on the representation that it had all been delivered, the person who made such representation and induced such payment could be prosecuted for cheating. If, on the other hand, it could be proved that when the delivery was made to Government the timber did belong to Messrs. Mansfield, Bremner and Company, and that it was applied by the firm to their own purposes, the member of the firm who so used the timber, or so authorized its use, could be prosecuted for criminal misappropriation.

4. I think, however, speaking from my recollection of the correspondence, that Mr. Chisholm's contention that the timber was actually delivered is not quite borne out. Mr. Chisholm is no doubt supported by the bill for the timber as the bill shows 1,750 cubic feet of teakwood supplied in current month (March 1883). It would be of importance to see whether the correspondence bears this out. I don't think it does myself, and it is a curious fact that the certificate at foot of the bill, to the effect that the claim for the price of the timber, Rs. 5,250, is correct, and that the materials have been received and are of good quality, has not been signed by the sub-divisional officer, as was evidently intended, and as one would have expected to have been done if the timber had been actually delivered. There is also another circumstance that tells against

Mr. Chisholm's contention that the timber was in fact delivered, viz., that Mr. Lennon measured more timber than the quantity actually agreed on, so as to save himself a double journey should Government require more timber. It is not suggested that the measuring of this extra timber amounted to a constructive delivery of it, and if not, why should the measurement of the other timber amount to a constructive delivery of that? Mr. Lennon's telegram to the Consulting Architect saying that he (Mr. Lennon) had measured up 70 tons, and asking the Consulting Architect to pay for 35 tons on bill of sale signed by the vendors, is no doubt in support of Mr. Chisholm's contention that the 35 tons had been delivered, but the reason for such immediate payment is given in the telegram itself, viz., that the Banks would close the next day for the Easter holidays, and no doubt Mr. Lennon had satisfied himself that the 35 tons of timber were there and could be delivered when required. It seems to me that Mr. Lennon fell into the same error as to actual delivery as did the Consulting Architect, and indeed led the latter into the error by the telegram.

5. Considering the circumstances that the certificate of the sub-divisional officer at foot of the bill is unsigned, that Mr. Lennon at the time he measured the timber which it is now said was actually delivered also measured timber which it is not suggested was delivered and that Government has called upon Messrs. Mansfield, Bremner and Company for payment of the balance of the *advance* of Rs. 5,250 given them for the timber, such balance arising by reason of the *non-delivery* of part of the timber, I think it would be extremely difficult, indeed almost impossible, now to bring home a criminal charge against either Mr. Mansfield or Mr. Bremner. The case of Government has been entirely changed from what it was in August last when the letter of demand was written to Messrs. Mansfield, Bremner and Company, and of course the very most of that would be made if a criminal charge were now to be preferred.

6. So far I have avoided all mention of the timber having to be cut into scantlings. Mr. Chisholm says it was a mistake to mix up the two things; but if it was a fact that the timber or some of it was to be cut into scantlings by Messrs. Mansfield, Bremner and Company, that is, to my mind, another reason for Mr. Lennon's measuring the timber at Pondicherry not amounting to and not being intended to amount to a constructive delivery of the timber. If, according to the contract, Messrs. Mansfield, Bremner and Company were to cut the timber or some of it into scantlings, it could hardly be contended that they had delivered the timber according to their contract until they had cut it up, or cut up such part of it as they were to cut up, and in that case they were not entitled to payment of the full amount of their bill.

7. I return Mr. Chisholm's letter and the other papers sent to me, and if Government wish for any further opinion on the matter, I should like to be furnished again with the correspondence and with a statement of Mr. Lennon as to what actually took place when he was at Pondicherry, whether he knew then whether the timber was the property of Messrs. Mansfield, Bremner and Company or not, and if not, whose it was, and whether he knew then that the timber or any and what part of it was to be cut up by Messrs. Mansfield, Bremner and Company into scantlings.

From Messrs. MANSFIELD, BREMNER AND COMPANY, to R. P. LENNON, Esq., Sub-Engineer, Post and Telegraph Office Works, Madras, dated Madras, 30th May 1883.

In reply to your letter of this day's date, we have the honor to request that for the future your Storekeeper will be good enough to grant receipts at the time that the timber is delivered on the works. It is most unsatisfactory to us that a fortnight almost should be allowed to elapse before receipts are granted, and we cannot possibly be held responsible for anything that is likely to occur between the time of delivering the teak and the day on which the receipt is granted.

2. We do not understand how any of the scantlings can be deficient in length as they are most carefully cut up in Pondicherry. We would further remind you that we are cutting up the timber that you passed when you visited Pondicherry with our

Mr. Mansfield. We are therefore much surprised that you should have cause to reject so much of it.

3. We think if you will refer again to our Mr. Bremner's letter of yesterday's date you will find that you were not asked to return rejections. We should feel very much obliged if you would kindly answer our letter of the 23rd, as it is very evident that when we last sent our man for rejected pieces the wrong ones were delivered to him.

4. Our Mr. Bremner will inspect the rejections on the last lot delivered this evening at 5 P.M. if quite convenient to you.

5. By this evening's mail we are instructing our Manager to be most careful in selecting the logs, and you may rest assured that we shall do all in our power to give you satisfaction; at the same time we are disappointed to find that the very timber passed by you is now being rejected as unfit for use.

No. 675 G.D.

Submitted to the Chief Engineer, Public Works Department, with reference to his memorandum, No. 91 E., dated 6th May 1884.

DOWLAISHWERAM, 5th June 1884. (Signed) P. MONTGOMERIE, Lieut.-Col., R.E., Superintending Engineer, I Circle.

From E. BARCLAY, Esq., Government Solicitor, Madras, to the Secretary to Government, Public Works Department, Ootacamund, dated 7th July 1884, No. 340.

I beg to acknowledge receipt of the Order of Government, Public Works Department, dated 19th ultimo, No. 295 E., and the documents therein specified relating to the claim against the late firm of Messrs. Mansfield, Bremner and Company.

2. I have perused again the copy correspondence which passed, and the more it is read the more confused the matter seems to become.

3. On the 8th March 1883, Messrs. Mansfield, Bremner and Company wrote Mr. Lennon that they could guarantee to supply him with 100 tons Moulmein teak in scantlings at Rs. 3-10-0 per cubic foot delivered at his works complete by the 31st idem and that they would give him a quotation for logs the next morning. The next day they wrote Mr. Lennon offering to supply Moulmein teak in logs at Rs. 160 per ton *delivered at his works* in scantlings Rs. 181-4-0 per ton (Rs 3-10-0 per cubic foot). As appears from Mr. Chisholm's letter of 9th March 1883 to Mr. Lennon, the former refused to give the prices named and inquired of the latter what quantity of wood was procurable at Rs. 165 per ton in scantlings. This letter Mr. Lennon appears to have shown Mr. Bremner, for, on the 10th March, he writes Mr. Lennon returning Mr. Chisholm's letter and stating that his firm are willing to supply the timber in scantlings at Rs. 165 per ton. On the 10th March, Mr. Lennon wrote the Consulting Architect that he, Mr. Lennon, was unable to procure teak timber in scantlings at Rs. 165 per ton. This seems inconsistent with Mr. Bremner's letter of same date, but possibly Mr. Lennon wrote his letter before receiving Mr. Bremner's.

4. About this time it appears from Mr. Lennon's letter of 30th May 1884 to the Officer in charge Central division, Godávari, that Mr. Lennon went down to Pondicherry to inspect and report upon certain logs of teak timber said to be there for sale by Messrs. Mansfield, Bremner and Company, and met Mr. Mansfield there. The timber, Mr. Lennon believes about 165 tons, was pointed out to him by Mr. Mansfield, who, Mr. Lennon says, pointed out not only what did belong to the firm, but also some that did not. The timber shown to Mr. Lennon (I presume that said to belong to the firm) was, he says, of very good quality, seasoned and much in excess of the quantity he required. On returning to Madras, Mr. Lennon reported results to Mr. Chisholm, and after that interview Mr. Lennon says he understood everything (what?) was arranged. On the 19th March 1883, Messrs. Mansfield, Bremner and

Company wrote to the Consulting Architect with reference to an alleged purchase of 70 tons Moulmein teak made by Mr. Lennon on account of the new Post and Telegraph office, and applying for an advance, and agreeing in return to give Mr. Chisholm entire control over a quantity of 70 tons teak in logs which they said *was their property at Pondicherry* and which was to be delivered in scantlings by them on or before 31st idem at the new Post and Telegraph office. From this it appears that Government were to have control over the timber as security for the advance, though how that control was to be retained at Pondicherry is not apparent, but the actual delivery of the timber was to be at the new Post and Telegraph office in Madras when the timber was cut into scantlings. In reply to this letter, Mr. Chisholm wrote on 20th March to Messrs. Mansfield, Bremner and Company that he found that the code laid down a rule that no advances of any kind could be made on account of purchases, and that the only way he could suggest of meeting the difficulty was for Mr. Lennon to measure the timber at Pondicherry and wire Mr. Chisholm the quantity. Mr. Chisholm then proposed that he should purchase the timber at a nominal rate, agreeing to sell it back to Messrs. Mansfield, Bremner and Company log by log at the same rate, to be converted by them into scantlings according to agreement.

5. So far, therefore, I think it is quite clear that there had been no delivery of the timber seen by Mr. Lennon at Pondicherry. Of course Messrs. Mansfield, Bremner and Company were only too glad to accept Mr. Chisholm's proposal and wired Mr. Mansfield, who was apparently at Pondicherry, accordingly. Mr. Lennon seems to have gone there again and it is necessary to return to his letter of 30th May 1884 to see what took place there.

6. Mr. Lennon says that he and Mr. Mansfield went to Pondicherry and measured up the quantity of timber shown in the list submitted with his letter of 30th May last. In addition to these measurements, Mr. Lennon says there are others in his note book of scantlings in sheds which he did not enter in the list as he had more than required, and also 14 exceptionally lengthy logs all over 32 feet, of which he only noted lengths, but which he says were also *promised* him by Mr. Mansfield, and he says that four tie-beams were actually delivered in Madras, one of which was condemned (as a tie-beam) for a slight flaw, and was sawn up for other purposes. Apparently these four logs were not delivered in Pondicherry, for they were only promised there and were delivered in Madras.

7. Mr. Lennon then proceeds to argue that his measurement assisted by Mr. Mansfield and his Dubash constituted a purchase. On the 21st March 1883, he telegraphed to the Consulting Architect that he, Mr. Lennon, had measured up 70 tons and asking that 35 tons might be paid for that day on bill of sale signed by the vendors (Mansfield, Bremner and Company I presume being meant), as the Banks closed the next day for Easter. Accordingly the same day the Consulting Architect forwarded to Messrs. Mansfield, Bremner and Company a cheque for Rs. 5,250, for, it is said, timber supplied, and enclosed for signature a bill for 1,750 cubic feet of timber, as if the same had been supplied, at Rs. 3 per cubic foot. No doubt this was done in accordance with the suggestion contained in Mr. Chisholm's letter of 20th March that he should purchase the timber and resell it to Messrs. Mansfield, Bremner and Company to be cut into scantlings. Unfortunately, there is no evidence to show that this arrangement was carried further; there is nothing to show the resale and very little to show delivery to Government, and the subsequent correspondence negatives the idea of any delivery, and still stronger that of any resale, for it speaks of this payment as an advance, as I shall show later on.

8. Curiously enough, though I do not attach much weight to it, in their letter of 21st March to the Consulting Architect, Messrs. Mansfield, Bremner and Company acknowledge receipt of the Rs. 5,250 as *on account* of the 1,750 cubic feet of Moulmein teak, as if the payment were not in full, and here comes in the remark made in paragraph 4 of my letter of 2nd May last, No. 246, that the certificate at foot of the bill, to the effect that the claim for the price of the timber is correct and that the materials have been received and are of good quality, has not been signed by the sub-divisional officer. Of course this may be open to explanation, but when a man is prosecuted on

a criminal charge in what is already a doubtful case, the fewer points there are that require explanation the better.

9. Mr. Lennon says that at the time there were in the railway station yard (at Pondicherry) two coupled wagon loads of timber, some 10 or 12 tons, amongst which were four tie-beams for Government to be sent to Madras. Now, if these four beams were to be sent to Madras as they were, as part of the timber sold, what becomes of their resale to Mansfield, Bremner and Company for the purpose of being cut into scantlings? At any rate as regards those four beams they had been paid for before delivery. Mr. Lennon, I may here remark, seems to have somewhat confounded a bargain and sale with a sale and delivery, for he remarks, with reference to Mr. Mansfield's pointing out a flaw in one of these logs, that it appears like *bonâ fides*, and also that there was an understanding as to purchase. No doubt there was the purchase; but beyond the bill for Rs. 5,250, on which is the unsigned certificate of delivery, I can find no evidence of delivery, so as to make the timber the property of Government. It by no means follows that because a man buys and pays for a thing that the property in it passes to him; there must also be a delivery, and if there be no such delivery, he has only a right of action against his vendor.

10. Mr. Lennon's letter of 30th May last does not throw any light upon the question as to whether the timber was Mansfield, Bremner and Company's to deliver or not. He evidently did not know, but for reasons he gives, he thought everything was straightforward, and if Mr. Mansfield had remained out here it is not, I think, at all unlikely that the timber would all have been delivered. Mr. Lennon suggests that as soon as Mr. Bremner had the field to himself he manipulated the timber and very probably sold it over again or mortgaged it. Mr. Lennon may be right, but there is no evidence of this, or, supposing the timber had become the property of Government, that either Mr. Mansfield or Mr. Bremner misappropriated it. But it is difficult to see how there could be any misappropriation of the timber if it was resold by Mr. Chisholm to Mansfield, Bremner and Company to be cut into scantlings, for it then became their property again.

11. Mr. Chisholm's connection with the matter appears from the correspondence to have ceased in March 1883. On 14th May 1883, Mr. Vincent wrote to Messrs. Mansfield, Bremner and Company inquiring when the remainder of the timber then apparently lying at Pondicherry was to be delivered at the works. This could only be if the timber had already been delivered to Government and resold and re-delivered to Mansfield, Bremner and Company. If this was not what Mr. Vincent meant, then he could only mean that the timber had not been delivered at all, and, taking either view of the case, there could be no criminal misappropriation.

12. The correspondence now gets somewhat confused and confusing. On the 15th May, Mr. Vincent wrote to Mansfield, Bremner and Company inquiring whether the teakwood they reported as on its way from Pondicherry *for delivery on the new Post and Telegraph office works* includes the large logs selected by Mr. Lennon for the tie-beams. In reply, the firm write on the 16th May that the large logs are *not* among the 117 pieces of teak *delivered to Mr. Lennon the previous day*. From this I gather that the timber, the 117 pieces, had arrived on the 15th May, and had been *delivered in Madras*. This is hardly in accordance with the supposed delivery of the timber to Mr. Lennon in Pondicherry. It is only in accordance with Mr. Chisholm's supposed resale, which, as already mentioned, is not consistent with a criminal misappropriation.

13. On the 18th May, Mr. Vincent wrote to Mansfield, Bremner and Company that, so far as he understood the circumstances, the large logs for the tie-beams were specially selected by Mr. Lennon, and that the Rs. 5,250 were paid to the firm by Mr. Chisholm on the understanding that these logs in particular were to be at once *purchased* (they were not apparently, therefore, the firm's property) and sent to Madras, that it was certainly understood that Mansfield, Bremner and Company had secured the logs, and Mr. Vincent inquires whether these logs were still at Pondicherry, and, if so, what prevented their *purchase*. The correspondence does not show how these questions were answered, as, apparently, Mr. Bremner called and answered them in person. I only allude to this letter as showing an apparently new point in the matter, viz., that when Mr. Lennon was at Pondicherry he knew these logs were not Mansfield, Bremner and

Company's, and that they had to purchase them. I may not be right as to this, but presuming that Mr. Vincent derived his knowledge from Mr. Lennon, I think I have drawn the natural inference. Now if Mr. Lennon knew these four logs were not Mansfield, Bremner and Company's, how could there have been even a constructive delivery of them at Pondicherry and if they were not delivered there, I do not see how the delivery there of the rest of the timber is to be established. The four tie-beams were subsequently delivered in Madras as appears from Mr. Lennon's letter of 30th May last.

14. This letter has already extended to so great a length that I am unwilling to trouble Government by going further into the correspondence. I will only point out that in Mr. Vincent's letter of 11th July 1883 and in the correspondence subsequent thereto, he has treated the payment to Messrs. Mansfield, Bremner and Company of the Rs. 5,250 as an *advance* on account of the timber sold to Government, thereby entirely upsetting the theory of a sale and delivery of the timber to Government and a subsequent criminal misappropriation of that timber by either Mr. Mansfield or Mr. Bremner. But as already mentioned, if there was no delivery of the timber to Government, there could be no misappropriation, whilst if there was, on the other hand, a delivery and a subsequent resale of the timber to Mansfield, Bremner and Company, there could be no misappropriation so that in neither case could they be prosecuted. But as pointed out, Mr. Vincent has treated the payment of the Rs. 5,250 as an advance for timber to be delivered, thereby treating the matter as a simple breach of contract.

15. I return the papers sent to me and I cannot advise that any criminal proceedings should be instituted against either Mr. Mansfield or Mr. Bremner, for it would be quite impossible to secure a conviction.

ORDER—dated 30th July 1884, No. 1850 W., Public Works.

The circumstances connected with the transaction in timber, to which the above papers refer, were reviewed in Proceedings of Government, No. 396 W., dated 14th February 1884.

2. The further inquiries which have since been made go to show that it is apparently impracticable to prove *actual delivery* to Government in the first instance. Subsequent misappropriation by Messrs. Mansfield, Bremner and Company cannot, therefore, it would seem, be established. Evidence of the *resale* of the timber to the firm, as had been originally intended by Mr. Chisholm, is moreover not forthcoming.

3. The transaction, as already observed, thus resolves itself into an *advance* for timber which has not been delivered in full; and as in present circumstances there seem to be no means of recovering the balance, Rs. 2,864, due, Mr. Chisholm, who is responsible for the transaction, will now be furnished with the further correspondence on the subject, and he will be finally called on to show cause why he should not be required to make good the loss entailed by his evading a distinct rule of the Public Works Code,* which prohibits advances to contractors without the special sanction of Government.

* Section 1630.

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

To R. F. Chisholm, Esq.
„ the Consulting Architect to Government.

Exd. P. L. Pereira.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of {1884} Madras.

PUBLIC WORKS

Dated July, 30th.

Recd.

Encl.

G.O., 30th July 1884, No. 1850 W.

JULY.

Messrs. Mansfield, Bremner and Company

Mr. Chisholm finally called on to show cause why he should not be held personally liable for the loss entailed by his transactions with — for timber supply.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Account.

READ—the following papers :—

Letter from R. F. CHISHOLM, Esq., dated 4th October 1884, No. 62.
Do. from do. „ 20th December „ „ 12.
Do. from the Government Solicitor, „ 20th January 1885, „ 23.

ORDER—dated 10th February 1885, No. 314 W., Public Works.

The letters from Mr. Chisholm recorded above contain the further explanations called for in connection with the transaction in timber, the circumstances of which are reviewed in the orders quoted in the margin.

G.O., No. 396 W., dated 14th February 1884.
„ „ 1850 W., „ 30th July 1884.

2. Mr. Chisholm endeavours to show that an actual *purchase* had been effected, and that, had proper steps been taken, after his departure on leave, for securing to Government their right and title to the timber lying at Pondicherry, no loss would have occurred.

3. The Government Solicitor, to whom Mr. Chisholm's letter was referred, adheres to his original opinion that there is no sufficient evidence of the *delivery* of the timber, and that there is thus no ground for any action against the firm of contractors, except such as can be brought in a civil court.

4. In the circumstances of the case, nothing would be gained by instituting a civil suit, and the Government are therefore compelled to order the loss to be written off. His Excellency the Governor in Council must, however, express dissatisfaction at the careless manner in which the transaction with Messrs. Mansfield, Bremner and Company was carried through by the Consulting Architect, whereby so large a loss to the State has been caused.

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

To R. F. Chisholm, Esq., Consulting Architect, on special duty.
To the Consulting Architect, to Government.
„ Examiner, Public Works Accounts.

Exd. E. Fernandez.
Spare Copies

4

1885.

P. W. DEPARTMENT.

Current No. 3578

From The Consg Archtt to Govt.

Enclos.—

No. 83

Dated 21-4-85

Received 22-4-85

Subject.

Loss on account of timber Contract for Post and Telegraph Offices by Messrs Mansfield Brenner & Co. — reg: the lessening of in writing it off by the amount of deposit & other recovery from the firm —

Disposal.

No. 1015 D Dated 23rd April /85

To C.E. For remarks

By order

D.W.

Dist: 23/4

GENERAL.
ACCOUNT.

Govt. of {1885} Madras.

PUBLIC WORKS.

Dated February, 10th.

Recd.

Encl.

G.O., 10th Feb. 1885, No. 314 W.

FEBRUARY.

Timber

Orders on explanation submitted by Mr. Chisholm, in regard to the — transactions connected with the new post and telegraph offices at Madras.

P. W. D.

Consulting Architect's Office,
Chepauk, Madras,
21st April 1885

No. 83.

From

The Consulting Architect to the Government of Madras,

To

The Chief Engineer, Public Works Department.

Enclosures.

Sir,

With reference to G. O. No 314 W dated 10th February 1885, ordering the loss due to the failure of Contract for timber for Post and Telegraph Offices by the Firm of Messrs Mansfield Brenner & Co to be written off, I have the honor to request that you will kindly accord sanction to my ~~loss~~ lessening this loss by the sum of Rs 250 (together with interest thereon) which is the amount deposited by the Firm for the due fulfilment of their Contract.

2. A further sum of Rs 216-12-0 is due to the same Firm for timber supplied by them for the Amir Mahal works & I have further

futher lessened the loss by this amount.
[illegible]ending your approval which I now
[illegible]g to Solicit

I have the honor to be
Sir
Your most obed^t Servant

J. E. Morant.
Lt Col RE.
Offg Cons^g Architect
~~to Govt~~:

12/Bul
3835/15

OJS 14/5