

- (1) பக்கங்களின் எண்ணிக்கை 148
 (2) புதுக்கித் திருப்பிய நாள் 14/89
 (3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் 10/89

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு.

(60)

PN7 துறை

அரசாணை எண். மு. கோப்புத் தாள் எண்.	1332	அச்சகம் பலவகை
நாள் :	18-5-1889	198

மடிக்கவேண்டிய கண்டபடி கையாள்வோர் கூடாது

7/

74 sheets

Encls. to Engr's Office with -
No 2742 8/13.12.88

NOTE ON FORMS OF CONTRACT AGREEMENTS FOR THE MADRAS PUBLIC WORKS DEPARTMENT, AND CONNECTED MATTERS.

INTRODUCTORY REMARKS.

In my office note No. 652 of 14th October 1887, I have already briefly referred to certain deficiencies and imperfections of the Code in the matter of contract forms and instructions relating thereto. I do not wish to say more than is really necessary on this point; but in order to ensure suitable action being now taken, it is, I think, necessary that the extent of the present confusion should be understood. The late Chief Engineer for Irrigation recently remarked that he wished something could be done to provide proper contract forms, for at present "no one knows what form should be adopted for different works, or what is the difference between a contract, a petty contract and a piece-work agreement," and I think he might almost have added that, when the form has been chosen, nobody can tell exactly what it means or what it provides for, and what will be the obligation of the contractor and the rights of Government under the contract.

2. In some respects the imperfections of the present arrangements are, I think, well illustrated by the accompanying comparative analysis of the terms and conditions of the several contract agreement forms in use (see annexure A). I did not make this analysis for this purpose; I made it as a help and means towards preparing suitable forms for future use; but it brings out very clearly some of the imperfection of the present arrangements. The forms analysed are the following:—

- Form No. M. 169, piece-work agreement.
- " " M. 170, petty contracts not exceeding Rs. 2,000.
- " " M. 171, conditions to be attached to a petty contract.
- " " M. 172, petty contracts under Rs. 500.
- " " M. 173, contract for labor.
- " " M. 174, schedule contract for works or stores.
- " " M. 175, schedule contract under Rs. 10,000.
- " " M. 176, lump sum contract.

3. There is little or nothing in the Code or in the forms themselves to suggest or indicate what form should be used in any given case. In the case of forms 173 and 176, the titles "contract for labor" and "lump sum contract" are certainly suggestive but, as the Government Solicitor points out, form 173 is a form not for a labor contract, but for a contract to execute work, so that the suggestion is misleading, and the conditions on form 176, being word for word the same as those on form 174 (schedule contract) are quite unsuitable for a lump sum contract. As between forms 172, 170 and 175, no doubt the first is intended for contracts under Rs. 500, the second for contracts above that amount up to Rs. 2,000, and the third for contracts above Rs. 2,000 and under Rs. 10,000, whilst for contracts above Rs. 10,000 there is apparently no provision, unless it is form 169, piece-work agreement; but as between the three forms mentioned above (172, 170 and 175) and the piece-work agreement form (169) there is nothing to show in what cases one of the first three and in what cases the piece-work form should be used. In too many cases the piece-work agreement form has been selected, even for the largest contracts, partly perhaps because of its simplicity (as compared with 170 and 175), and partly, there is reason to suppose, because by calling work piece-work compliance in respect of accounts and other matters with certain rules governing

contract works was avoided; but the form has the great defect of containing no provision whatever for taking security from the contractor. I have failed to discover how form 171 came to be introduced; or how it is intended to be used; it is described as "to be attached to a petty contract;" but both forms 170 and 172, the only two which are concerned with petty contracts seem complete in themselves, and both of them have conditions on them which in some respects conflict with those of form 171, so that the latter conditions could hardly be attached to either of these forms without modifying them. In practice it seems to be used only in conjunction with form 172, and probably this is as intended.

4. Then as to the terms and conditions embodied in the several forms. The comparative analysis (Annexure A) shows an extraordinary, and, as far as I can see, quite unaccountable diversity of conditions. One would of course expect variety in the conditions relating to certain matters. For instance, in the provision for valuing or billing for work done, one would expect a distinction between a lump sum and a schedule contract; but just when variety would be expected it is not found. On the other hand, as regards such matters as settlement of disputes, the prosecution of work by the contractor, the provision of plant, scaffolding, agency, &c., conformity to specifications, compliance with instructions of the Executive Engineer, the Executive Engineer's right of entry, &c., &c., one would expect to find a certain uniformity of terms wherever the conditions of the case do not obviously require a distinction, but a glance at the comparative analysis will show that there is no pretence of uniformity, and that conditions which, if they are desirable in one case are desirable in all, are introduced in some forms and omitted from others without any apparent reason, or differ quite unaccountably as to detail.

5. Take for instance the conditions as to settlement of disputes (items 88 to 94 of the analysis). In the matter of quality of work forms 169, 170, 171 and 175 make the Executive Engineer the final arbiter, form 172 the Superintending Engineer, and forms 174 and 176 the Chief Engineer. If the difference corresponded with difference in the importance of the works to which the forms are applicable, the distinctions might be intelligible, but form 172, which calls in the Superintending Engineer, is intended for the very pettiest cases of all, whilst form 175, which only calls in the Executive Engineer, is apparently intended for the most important of all. As to other matters in connection with which disputes are evidently contemplated, not one of the forms provides specifically for all of them, and only four out of the seven forms have a general condition providing for cases not specifically mentioned. The most singular result, however, is found in form 175. This form has two distinct sets of conditions, one set numbered 1 to 19 and the other I to XI; condition 17 of the first set makes the Superintending Engineer sole arbiter as regards rate of progress, whilst condition I of the second set makes the Executive Engineer sole arbiter as to the very same matter.

6. Again, compare items 75 and 76 of the analysis; if the contract is annulled the contractor is to be paid for materials at site, in one case only if the contract is annulled otherwise than for his misconduct, and in the other case no matter why the contract is annulled.

7. Or compare items 5 and 6, conditions of one and the same form. For materials supplied by the Executive Engineer the contractor must provide carriage, without extra charge, if they are supplied from the Executive Engineer's stock; but if it is stated in the schedule that they are to be supplied by the Executive Engineer, then the Executive Engineer is to deliver them at the site of the work. What is to be done if, as may easily happen, the materials come under both categories is not stated; but setting this aside, and setting aside also the obvious contradiction between condition XIII under which the contractor is obliged to take at stock rates any materials the Executive Engineer chooses to issue to him, and the implied condition of Article XV that materials to be supplied by the Executive Engineer shall be specified in the schedule, setting these difficulties aside, it is not easy to understand why the contractor should be required to pay for the carriage, the cost of which he cannot possibly foresee and provide for in his tender, of materials arbitrarily forced upon him by the Executive Engineer, when he is not required to pay for the carriage of materials specified in the schedule and the cost of which, to some extent at any rate, he can foresee and provide for.

8. The point in which the deficiencies of the forms are probably of most serious importance is that of appropriation of security. A glance at items 79 to 84 of the analysis would make this fairly clear, supposing the analysis to be complete, but in some cases it is most difficult to make out what the conditions really are, and what is permissible under the contract. It will therefore be better to quote the remarks of the Government Solicitor. Of form 170 he says "this is somewhat vague, and the conditions do not provide specifically for the circumstances under which Government may retain the deductions or any part of them; the conditions should provide for this." Of form 171 "it is very difficult to say what the meaning of these conditions is, for they seem contradictory, and there is no condition providing specifically for the circumstances under which, &c." Form 174, he says "is much clearer in this respect," faint and relative praise, but he adds that, as condition 14 stands, Government might be unable to receive from the contractor in the event of the contract being cancelled more than a very small sum quite insufficient to recoup Government for the loss sustained. Of form 175, the form, as it observed, which is apparently intended for the most important works, he says: "This is a very bad form so far as the question of security [the only question put to him] is concerned; it is impossible to say from the form what security is to be, and there is almost a total absence of provision as to the circumstances under which the security is to be availed of by Government." In form 169, the form which I believe was until recently, if it is not still, the one most generally used in most divisions, there is no mention whatever of the question of security.

9. I may point to the singularly limited extent of the use of most of the forms—meaning the number of divisions in which each form is used—as illustrating in one respect the inconvenience of the present arrangements. As I shall have occasion to mention again further on, I have obtained from each of 29 divisions specimens of contract agreements in the several forms actually in use in each division, and it appears from an analysis of these specimens that whilst form No. 169 is used in 24 divisions, form No. 175 is used in 13 only, form No. 170 in 11, forms Nos. 171 and 172 in 10 divisions and form No. 174 in 9 divisions and form No. 176 in 5 only. Again looking to the number of forms used in each division, it appears that there is no division in which all the forms are used: 3 divisions use six out of the seven forms, 1 uses five, 5 use four forms, 6 use three forms, 6 use two and 8 use only one. These differences can hardly fail to be troublesome, in view of the frequent transfers of officers from division to division, as in such cases it is necessary to use a form containing conditions with which either the Executive Engineer or the contractor must be unfamiliar, and it does not seem at all probable that the use of the different forms can be accounted for by difference of local circumstances; there can, for instance, hardly be any local reason why the Tanjore division should use only forms 170, 171, 172 and 175, whilst the Nellore division will have nothing to say to these 4 forms and uses only forms 169 and 174, or why Trichinopoly should use only Nos. 169, 170 and 172, whilst the Presidency division uses only Nos. 174 and 175.

10. Then as to instructions or guidance and assistance of Executive Engineers in drawing up contracts and in dealing with contractors. In the whole chapter on contracts, Chapter XII of the Code, I cannot find a single word of instruction or guidance as distinguished from rules, unless it is para. 373, which it would perhaps be better to omit, for, assuming the forms of agreement to have been carefully drawn up under legal advice, nothing could probably be more undesirable than for an uninstructed layman to modify them except within limits and in respect of particulars clearly defined and understood.

11. There is not a single word of instruction as to the circumstances in which the different forms are to be used, whether forms of contract agreement, such as have been referred to above, or forms of agreement in respect of security, such as forms 177 to 182; there is no hint anywhere as to the way in which the blanks in the forms should, or which is quite as important, should not, be filled up; as to the manner of taking the personal security allowed by the Code [1364 (c)]; as to the recital of the security taken as to dealings with joint contractors and partnerships; as to powers of attorney; as to stamps, their kind and value; as to execution and witnessing of agreements, &c.; as to registration of documents; as to cancellation of

contract; as to supersession of the contractor; as to entry by the Executive Engineer; as to liability to attachment of security and dues of the contractor, or exemption therefrom; as to procedure in case of death or failure of any party to the contract; or in case of disputes either between contractor and Executive Engineer or between joint contractors. On none of these points is there a single word of instruction, and yet there is hardly one of them as to which mistakes and often serious mistakes, are not frequently made. Several instances of such mistakes have recently come under the notice of Government.

12. I have now, I think, said enough as to the faults and deficiencies of the present arrangements,—enough that is to establish a case for action,—and I will therefore pass on to the task of attempting to indicate how sufficient and suitable forms of agreement can be provided; but first it will be convenient to indicate the general plan on which I have proceeded. In the first place I have taken the existing forms of contract agreements and have analysed them and classified their contents so as to show under convenient heads all the different points which they collectively provide for, and to show at the same time how they differ one from another. This classified analysis is given in annexure A to this note. Then I have obtained from Executive Engineers a number of actual agreements or copies of such—altogether about a hundred and twenty of them—illustrating the various ways in which the several forms are applied and the blanks in them filled in. These I have examined and have noted (see annexure B) such points in connection with each of them as may prove useful for guidance whether as to what to do or what to avoid. These points, for convenience of reference, I have then collected in a classified abstract (annexure C), arranging them according as they indicate—

- (a) Matters that Executive Engineers desire to provide for in agreements drawn by them, or
- (b) Essential matters neglected in agreements drawn by them and matters carelessly or improperly provided for.

With this material, and in the light of hints derived therefrom, as well as from cases of complications that have from time to time come under my notice in connection with dealings of Executive Engineers with contractors, and largely also with the assistance of information given by the Government Solicitor in reply to a number of questions put to him, I have then discussed in detail, one by one, the several elements necessary or desirable of such contracts as are in question, considering, as regards each of them, the points to be attended to in connection with each kind of contract and the effect of diversity of conditions on the diversity of forms required; and lastly, I have dealt with a number of points not actually requiring to be provided for in the agreements, but as to which instructions or departmental regulations seem necessary or desirable for the guidance of officers of the department in using the forms or in dealing with contractors.

12-A. I may as well state that with the exceptions mentioned below—all statements, suggestions and opinions on legal or semi-legal points are based on answers given by the Government Solicitor to questions put to him. It has not always been possible to quote textually the very words of the Government Solicitor, because the opinions elicited by him have been obtained by repetition of questions and cross questions, and though the result as stated or suggested by me may in some cases require trifling correction, it is sufficiently correct to form the basis of preliminary discussion. The exceptions are one or two points as to which I have found it necessary to plainly suggest a doubt as to the correctness of the Government Solicitor's opinion.

ELEMENTS AND VARIATIONS OF CONTRACT AGREEMENTS.

Elements enumerated.

13. The essential things to be in some way or other stated or indicated in the contract agreement are:—

- (1) The parties to the contract.
- (2) The subject-matter of the contract.
- (3) The consideration.
- (4) The security for the due performance of the contract.

(5) The detailed conditions of the contract comprising conditions relating to—

(A) The prosecution and completion of the work, that is to say—

- (a) Time of completion.
- (b) Technical details connected with methods and sequence of carrying on work, provision of plant, materials, agency, &c., quality of materials tests, compliance with instructions and so forth.
- (c) The Executive Engineer's right of entry in order to carry on the work in whole or in part by himself or by his agent, and for other purposes.

(d) Sub-letting.

(B) The infliction of penalties on the contractor.

(c) Payments, that is to say—

- (a) Periodical or occasional measurements and payments on account.
- (b) Advances.
- (c) Final adjustment of account.

(D) Security—

- (a) Provision of security.
- (b) Retention of security and payment or non-payment of interest thereon.
- (c) Appropriation of security.

(E) Special provisions relating to dealings with two or more joint contractors.

(F) Manner of serving notices on the contractor.

(G) Settlement of disputes.

(H) Jurisdiction in respect of suits

(I) Modification and supplementing of agreement.

(J) Cancelling or voiding the contract.

(K) The execution and attestation of the agreement.

14. It is necessary to consider separately each one of these points, both with

Points to be considered and their influence on the number of forms.

reference to the kind of provision to be made in respect of each and with reference to the manner in which such provision can in practice be most conveniently made in the set forms of contract agreements to be provided. In connection with this last point it is especially necessary to consider to what extent, as regards each point, the wording of the agreement will necessarily, or may possibly, have to be varied to suit different classes of cases. It is obvious that the number of separate forms to be provided will depend entirely on the number of such independent variations of the wording of different essential parts of the agreement; but in order to understand fully the importance of this point, it is necessary to remember that, broadly speaking, the number of forms required will be the continued product of the numbers of the several independent variations. Thus if there are three necessarily variable parts, and they may vary in 3, 5, and 6 ways, respectively, the total number of forms required will be $3 \times 5 \times 6 = 90$. I shall show further on that unless something is done to restrict the latitude now allowed in respect of certain matters, and unless special devices—all in themselves more or less inconvenient or objectionable—are resorted to in order to circumvent certain forms of diversity which cannot be absolutely avoided, it may take as many as 324 separate and distinct forms of agreement to provide satisfactorily for all the different circumstances and conditions under which the most ordinary departmental contracts may be let.

15. In this calculation no account is taken of such trifling variations as can be

Significant variations of conditions.

easily and safely provided for by leaving blanks in the forms to be variously filled up according to the circumstances of the case. It takes into account only such variations (hereinafter called "significant variations") as cannot, it is thought, be safely provided for by blank spaces, even if set or model entries are provided for insertion in such blank spaces according to requirements.

PARTIES TO THE AGREEMENT.

Possible parties stated. 16. The possible parties to the contract agreement or bond will be—

- (a) The Secretary of State by his agent, the Executive Engineer.
- (b) The contractor or contractors.
- (c) Certain third parties, that is to say, *sureties* in cases of personal security, such as is expressly allowed by Code para. 1364 (c), or *mortgagors* when the security is a mortgage, a form of security which, though not expressly mentioned in the Code, is provided for in form No. M. 182, and must therefore be considered allowable.

16-A. The description of (a) will not vary, but care should be taken that the Executive Engineer is described in the preamble in the manner laid down by Standing Order No. 4 of 1870 to Government of India, Public Works Department Code, that is to say, not by name, as is, I find, often done, but as the Executive Engineer of such and such a division "acting in the premises by order of the Governor in Council of Fort St. George on behalf of the said Secretary of State in Council," and that he is similarly described in the execution, in those cases in which execution by the Executive Engineer is necessary. The proper formula is observed in form 164, both in preamble and in execution. It seems specially undesirable that the Executive Engineer should anywhere in the agreement be described or referred to by name instead of by his official designation, as the former mode of description may result in an improper limitation of the contractor's liability (see annexure C, item 28).

16-B. When a contract is taken by two or more joint contractors, it is important that they should be properly described. It is essential that the name of every individual joining in the contract should appear in the agreement as a party to it and as an executant of it, and this whether the individuals in question constitute a firm or not, and whether they contract as a firm or not. Executive Engineers not uncommonly describe the contractors as Messrs. B. D. and Co. This is wrong and may, I am told, occasion trouble in case of litigation. The parties should be described as A. B., C. D. and E. F., adding if they are a firm "trading under the style of B. D. and Co." or whatever the name of the firm may be, and the agreement should be so worded as to ensure both their joint and their several liabilities.

17. The description of (b) will then vary according as the contract is taken by (1) a single contractor, (2) two or more contractors not constituting a firm, or (3) an established firm. As far as the mere statement or recital of the parties to the agreement in the opening of the same is concerned, the unavoidable variations of wording, according as the contract is let to a single contractor or to two or more joint contractors, could no doubt be sufficiently provided for by blank spaces, suitable model entries being furnished for guidance, but as is fully explained further on, see para. 99 *et seq.*, there are certain conditions which are essential in the case of joint contractors, but which would be altogether irrelevant and out of place in the case of a single contractor, and which therefore constitute significant variations corresponding to variations in the number of contractors. It is of course essential that the name of the contractor or contractors should be stated in the opening of the agreement, but I have seen agreements in which it has been omitted (see annexure C, item 27(c)).

18. As regards (c) the variation will be the presence or absence of mention of *sureties* or *mortgagors*. Any variations under this head will correspond with, and will be considered in connection with, variations in the form of security (see para. 55 *et seq.*, below), so that the significant variations to be taken into account under the head of "parties to the agreement" will be two only according as the contract is given to a single contractor or to two or more joint contractors.

SUBJECT MATTER OF CONTRACT.

19. This has to be considered with reference to two points, namely (1) the kind of thing undertaken, and (2) the extent to which that thing is undertaken. The first is simply a matter of description and involves no difficulty, the second is in every case a matter of more or less precise definition, the provision for which is perhaps the most important of the many points to be considered in connection with forms of contract deeds.

20. As regards the kind of thing undertaken, I think the following list exhausts all the ordinary kinds of contracts likely to be entered into by officers of the department, namely:—

- (a) Contracts for the execution of works of construction or repair.
- (b) Do. for the supply of materials or stores.
- (c) Maintenance contracts.
- (d) Labor contracts or, more correctly perhaps, contracts for the supply of laborers.
- (e) Contracts for carriage or freight.
- (f) Do. for the supply of carts, boats or other means of carriage.
- (g) Do. for winding and conserving clocks and other miscellaneous contracts.
- (h) Leases of grazing rights, canal produce, fisheries, &c., &c.

I do not propose to deal at any length in this note with any except the first two classes, namely, contracts for the execution of works and for the supply of materials but I mention them all here because some of them almost certainly, and others probably, will have to be provided for sooner or later.

21. Maintenance contracts are mentioned in Code para. 1345, III; whether they are practically known in the department I cannot say. Miscellaneous undertakings. Labor contracts, contracts for the supply of coolies, also contracts for the supply of carts and boats are known in the Presidency Workshops and Stores Divisions and possibly in others; forms drawn up by the Government Solicitor are in use in the divisions mentioned, but they have not been codified and are not generally available; the form of labor contract, so called, form No. 173, is not really a form for a labor contract; it is a contract for work of a specified kind. Contracts for carriage or freight are made in the Nilgiri Division and possibly others, and Government has directed that a suitable form shall be prepared. Contracts for conserving and winding clocks are made in the Presidency Division. Leases of various descriptions are common in every division, but the only form provided is form M 182 A, a form for a lease of a plantation, which is, I am disposed to think, a kind of lease which is practically unknown in the Presidency.

22. There may be other kinds of contracts not included in my list, and it would perhaps be well to ask Superintending Engineers to report all the different kinds of undertaking known in their several circles for which it may be desirable to make provision.

23. The contracts with which I propose to deal in this note (sub-divisions of classes (a) and (b) of para. 20) are of four kinds, namely:—

- (I) Contracts for specified works of construction or repair, or for specified parts of such works.
- (II) Contracts for the delivery (in specified locality) of specified or indicated quantities of specified kinds of materials.
- (III) Contracts for the execution of all works of a specified kind (in specified locality) within a specified period.
- (IV) Contracts for the delivery (in specified locality) of all required quantities of specified kinds of material during a specified period.

and these four cases may possibly be condensed and reduced to two, thus—

- (a) Contracts to execute or deliver (at a specified place or places or within specified areas) specified quantities of specified kinds of work or materials, such quantities being specified either by actual enumeration or by reference to drawings and descriptions of works from which the quantities may be ascertained; or

- (b) Contracts to execute or deliver (with similar conditions as to locality) any quantity or quantities of specified kinds of work or materials that may be demanded within a specified period, the quantities in this case also being definable either by enumeration or by reference.

This may at first sight seem a useless condensation, but it will be seen hereafter that in connection with the requirement of keeping the number of separate forms as low as possible, the reduction of varieties to a minimum number of types is or may be a matter of very practical importance.

24. The extent of a contractor's obligation to do the particular kind or kinds of things undertaken by him must be defined in some way; there must be some *definite* obligation. It is necessary to consider how the character and extent of the obligation can in each case be most conveniently indicated and defined in the contract agreement.

DEFINITION OF OBLIGATION—SINGLE WORKS.

25. Dealing first with the ordinary case of a contract relating to a single work of construction or repair, the satisfactory definition of the work to be done may be divided into two parts, each of which must be separately considered. There must be first a general statement indicating the scene of operations, and in general terms the character and extent of the contemplated operations, and, secondly, a detailed and precise indication of the work to be done as regards quantity and quality and the manner of doing it.

26. The general statement should, I think,—but for the fact that in the form actually provided for schedule contracts of large amounts (M. 175) no provision whatever is made for it, and that in some contracts that I have seen (see Annexure C, item 31) the name of the work is nowhere mentioned, I should have said “should certainly”—indicate that work is undertaken by the contractor in connection with the repair or construction of such and such a building, situated at such and such a place, or perhaps, *e.g.*, in the case of length of a road or canal, between such and such points; and with the abovementioned exception of form M 175, all the existing forms do provide for this more or less clearly, though in form M. 172 the space provided is altogether insufficient.

27. The extent of the contractor's undertaking, with reference to the work thus generally described, is, however, liable to vary greatly. The intention and meaning of the contract may be that the contractor undertakes to do the entire quantity of all descriptions, or, to use a common departmental expression, of all “items” of work involved in the repair or construction concerned, including the provision of all requisite materials, labor, supervision, plant, &c., &c., or the undertaking may relate only to certain descriptions or items of work, or may extend only to the provision of labor, supervision and plant, either for all or for some items of work, the materials or some of them being supplied by the Executive Engineer; and the general statement of the contractor's undertaking should, I think, give some indication of the extent of the undertaking considered with reference to distinctions of this sort.

28. The existing forms do not, I think, provide at all satisfactorily for this. Form No. 176, form for lump sum contract, does indeed provide for reciting that the contractor “undertakes to execute all the work (in such and such a repair or work of construction),” and on the other hand forms M. 174 and 175 (schedule contract forms) provide an undertaking “to execute *such* works” or “to execute and supply *such* works and stores” as are afterwards more particularly described or indicated on account of such and such a work of construction or repair. But a lump sum contract need not, any more than a schedule contract necessarily imply an undertaking to do the whole of all work in all items; the contractor may undertake for a lump sum to do only certain portions of the work; or to provide for a lump sum only the requisite labor, or the requisite materials, either for all or for specified items of work, and on the other hand he may undertake to do at schedule rates the whole of all items of work.

29. Whoever drew these forms evidently had in view the distinctions referred to in para. 27, but he has not, I think, provided for them satisfactorily. What seems to be required is a form of wording, which will allow for the above-mentioned varieties of the nature of the undertaking, both for lump sum and for schedule contracts, and this may be done in two ways, namely (1) directly or positively by the enumeration of things included in the undertaking, or (2) indirectly or negatively by the enumeration of things excluded from the undertaking. Which of these forms will be most convenient in practice, or whether it will be desirable to provide forms for both cases, will depend on the relative frequency of this or that kind of undertaking. As far as I can make out in an overwhelming majority of cases the undertaking is to do the whole of all items of work, either without any exception or with only trifling exceptions, and therefore I think that instead of providing, as the existing forms do—such of them at least as provide for anything—for enumerating the things to be done by the contractor, the most convenient plan will be to word the form of agreements so as to provide for an undertaking to do everything in connection with all items of work with the exception of things and items detailed in an attached schedule of exceptions.

30. I must point out that the contemplated enumeration of things to be done, when, as in existing forms, the positive method of indication is adopted, is quite a separate thing from, and is required in addition to, the schedule of rates. In form M. 174, for instance, the “enumerating and describing” of the things to be executed and supplied is to be done “in the attached specification (*sic*),” said specification being evidently something quite different from “the schedule (of rates) *thereto* appended,” *i.e.*, appended to the “specification,” which is mentioned immediately afterwards. Allowing for the misprint in form M. 175, by which the word “in” is placed after instead of before the blank in Article 1, it seems clear that the blank is intended for the insertion of certain descriptive lists, and form M. 175 therefore provides for “mentioning and describing” (a paraphrase of the “enumerating and describing” of form M. 174) the whole of the work in certain lists or specifications or other documents, such specifications or documents being again something quite different from the “schedule” mentioned in the next line. “Schedules” by the by is apparently a misprint for “schedule” the reference being to the single schedule provided for in Article 5; if the reference is to any other schedules, they should be described as “attached” and not as “following.”

31. Provision then for indicating generally the extent of the contractor's undertaking can, I think, be most conveniently made by means of a schedule of exceptions, in which would be entered, according to the intention in each case, that certain items of work will be executed, or that all materials or specified materials, or the materials required for specified items of work, will be supplied, by the Executive Engineer without the intervention of the contractor.

DETAILED DEFINITION AND INDICATION—SINGLE WORKS.

32. The detailed and precise indication of the work to be done includes the indication of—

- The dimensions and quantities of the several descriptions or items of work;
- The arrangement and connection and situation of the different items, both absolutely and relatively to each other; and
- The way in which each kind of work is to be done, and the order and sequence of operations as between different items or portions of work.

33. These things have to be indicated by means of—

- Measurement lists and schedules of quantities;
- Drawings, *i.e.*, plans, sections and elevations, and
- Specifications

referred to in the agreement and satisfactorily identified by mark, number, signature or otherwise. It may seem almost superfluous to mention this, but judging from the specimen contract agreements actually examined, it seems that it is seldom, if ever,

done. Code para. 1353 prescribes the "contract documents" which should be prepared before calling for tenders; Code para. 1353 really says "before a work is given out on contract," but it is evident from paras. 1354 and 1355 that the meaning is "before calling for tenders," and para. 1353 might perhaps be corrected in this sense.

34. Many Executive Engineers when calling for tenders refer to the contract documents thus prescribed, but the printed forms of agreements completely ignore them, and apparently in the agreements as actually drawn they are seldom or never expressly referred to. Prescribed contract documents seldom referred to. Form M 175 is indeed the only form in which there is any space for the description of these contract documents; the blank near the end of Article 1 is apparently meant for this purpose, but though it is in a few cases used (see annexure B, para. 43) for reference to connected documents, those documents are in no case, as far as I have seen, the documents prescribed in Code para. 1353. In a few cases (annexure B, para. 47) the blank in Article 19 is used for similar purposes, but with a like disregard of Code para. 1353. Form 174 ties the Executive Engineer down to a reference to a "specification" and to nothing else, and form 176, though mentioning "plans" and "specifications," leaves no room for describing them more particularly, or for in any way identifying them; moreover it makes no reference to schedules of quantities, and it introduces, incorrectly and injudiciously as it seems to me, a reference to "estimates" which are properly, I think, not regarded as "contract documents" in para. 1353 of the Code. The remaining forms do not, I think, provide in any way for reference to any connected documents.

34-A. It would be desirable to have some understanding of what is meant by a "specification;" and what it should, and what it should not include. Nature of a "specification." Conditions as to penalty, for instance, are quite out of place in a specification, whilst detailed instructions as to the manner of executing work should be found there, and hardly in the body of the agreement (see Annexure C, items 46 to 48).

35. The reference to estimates is very common indeed in agreements as actually drawn. It seems undesirable, because the estimate almost necessarily includes items such as supervision and contingencies with which the contractor has no concern; and then perhaps these irrelevant items are referred to (with the intention of excluding them) in vague and loose language which is almost as likely to be taken as including them (see annexure C, item 52). The necessity for any reference to estimates is probably a consequence of the very common and very convenient practice of allowing or even requiring contractors to tender at a percentage below or above estimate rates; but the proper plan would apparently be to provide that in all such cases the "contract documents" should include a schedule of standard or reference rates for the descriptions of work concerned. Reference, such as is sometimes made, to the standard rates of the division is hardly satisfactory. Such rates are liable to vary, and doubts and disputes may further result from the existence of two or more classes differently rated of the same kind of work. Code para. 1353 might perhaps be added to in the above sense. See also para. 38 below. Reference to estimates undesirable.

36. As for identification of connected documents referred to, I cannot see that any serious attempt at identification is made in any contract deed that I have seen. Identification of connected documents. Complete and satisfactory identification requires two things, namely (1) enumeration and description of the documents in question, including in each case the mention of some distinguishing sign, some mark, letter, date or signature, or several or all of these combined, and (2) the quotation on each connected document of the contract deed with which it is connected, describing it briefly, stating by whom and on what date it was executed, &c. In actual practice apparently all that is ever done is to refer vaguely in the contract deed to "the plans, specifications (or what not) attached," and sometimes to quote on the attached documents the name of the work to which it relates and to have the document signed by the contractor, but more frequently all that is done is to have the documents signed or perhaps only initialled by the contractor.

37. I am disposed to think that each contract document should be signed by the contractor, being described in the agreement as so signed and being detailed in a schedule in tabular form showing the nature of each document and its distinguishing mark (letter or number) and date. This schedule to be part and parcel of the contract deed; but all lists therein mentioned, such as schedules of rates or quantities to be separate documents; the reason for this being that it is quite impossible to say to what length they may run, and that, provided they are completely and satisfactorily identified, there is no object in making them part and parcel of the contract deed. Each attached document should then have its distinguishing mark at the head of it, and be described in the heading as such and such a list, schedule or specification, "being the first (or as the case may be the second or third, &c.) document referred to in the schedule in article (number) of a contract deed relating to (name and character of work) executed by (contractor's name) on the (date), and should be signed by the contractor." In the case of drawings these particulars, including the contractor's signature, might be on the back. Method of identification proposed.

38. A further requirement is the connection of the different parts of the specification with the items of work to which they severally relate. This is provided for in the form of schedule in Article 5 of form M 175, provision being there made for quoting in the schedule of rates against each item the number of the specification and the particular paragraph thereof relating to the item in question; but in only one of the specimen contract deeds that I have seen is any use made of this provision. Reference has already been made in para. 35 above to the expediency of including among the prescribed contract documents in certain cases a schedule of reference or standard rates. If this schedule were in the following form or something like it— Detailed references to specifications.

Item No.	Description of each item of work.	SPECIFICATION.		Unit of calculation.	Estimated quantities.	Standard or reference rates.	Contract rates or price.
		Number.	Paragraph.				

It would, I think, provide conveniently for both the abovementioned purposes, and also for the schedule of quantities prescribed as a contract document in Code para. 1353. In the last column would be entered, according to the actual circumstances of the contract, either (1) separate rates for each item, or (2) a percentage above or below reference rates (a single percentage for all items or various percentages for groups of items), or (3) a lump sum for the whole work. I am disposed to think that a schedule in this form might be prescribed as a contract document to be prepared in all cases.

39. The opening of the agreement for a contract for a single work would then set forth that— Resulting opening of agreement for single work. "Subject to the exceptions stated in the schedule of exceptions hereto attached marked A and signed by him on the day of 1888, the contractor undertakes to execute and supply all the quantities and descriptions of works and materials required for the repair or construction of the at in the taluk of the district, which works and materials are fully and particularly described, specified, enumerated and indicated as regards kind, quality, dimensions and quantities in the

schedules, specifications and drawings, &c., signed by him and detailed in the schedule immediately following, that is to say:—

Number in this schedule.	Description of document.	Distinguishing mark.

39-A. The contract documents would ordinarily include all or some of the following—

- (1) A set of drawings.
- (2) A complete specification or set of specifications.
- (3) A schedule of quantities.
- (4) A schedule of exceptions.
- (5) A schedule of standard rates.

The three first are provided for in Code para. 1353, the object of the two last is explained above in paras. 29 and 35. I have omitted the "set of conditions of contract," which is the fourth item of Code para. 1353, on the supposition that all conditions will be embodied in the agreement, and though it would be prepared beforehand as part of the basis for tenders, it would not require to be scheduled.

DEFINITION OF OBLIGATION.—GENERAL CONTRACTS FOR WORKS.

40. In some divisions it is, I believe, the practice to enter into contracts for the execution by the contractor of all works of specified kinds, *e.g.*, whitewashing or painting or color-washing in various colors, in connection with all works in a specified locality during a specified period; and in office note correspondence ending with your office note No. 1872 C, dated 4th June 1887, Government desired that the Code should be modified, and that, in communication with the Government Solicitor, a form of contract agreement should be drawn up with a view to recognizing and providing for a practice, actually obtaining in certain divisions of the Fifth Circle, of dividing the division into a number of definite sections or areas and giving out annually on contract to a single contractor all works of repair or construction in each section estimated to cost under a certain sum. At first sight, therefore, it may seem that there are two classes of cases to be provided for, namely, periodical contracts for "works" and periodical contracts for "items of work," using these two expressions in the well understood departmental senses; but on further examination it will be found, I think, that the two classes must be reduced to one, namely, periodical contracts for items of work.

41. It will, I think, be found absolutely impossible in the case of any periodical contract for "works" to frame any definition of the contractor's obligation except in the identical terms which should and would be used in the case of a contract for items of work. By the very conditions of the case, the contract being entered into at a time when it is not definitely known what the "works" will be that the contractor will have to undertake, the contract *must* be a schedule contract, it *must* be a contract to execute at scheduled rates certain scheduled items or descriptions of work, in such manner and in such situations and connections as may be required by the Executive Engineer within specified limits of time. For present purposes, therefore, the two cases are not differentiable.

42. It is a question whether it is necessary to provide for any limit to the value of such contracts. The present practice in the Fifth Circle is to limit them to works under Rs. 2,500, but as this apparently involves an infraction of the rule prohibiting an Executive Engineer from entering into contracts exceeding Rs. 2,000 in amount, it was intended by Government that, when regularizing the practice by Code rule, the limit should be reduced to Rs. 2,000. All that really seems necessary however is that the sanction of the Superintending Engineers or Chief Engineer should be obtained before any work is given out under such a periodical contract whenever the result would be a contract exceeding in amount Rs. 2,000 or Rs. 10,000 as the case may. This would, however, be matter of Code instruction to Executive Engineers and Superintending Engineers, and would not need to be noticed at all in the contract agreement, whether in defining the contractor's obligation or otherwise.

43. Assuming that the question of money limits will be a matter of departmental regulation only, the provision for the duration of the contract and for securing completion of work within a specified time seem to be the only points presenting any difficulty in connection with the definition of the contractor's obligation.

44. As regards the first, it is evident that in any such contract the obligation must be not simply to execute all scheduled kinds of work within the specified period, but to commence and carry through to completion, to the full extent required to complete each "work" concerned, all "items of work" of scheduled descriptions which, within certain limits of time, the Executive Engineer may call upon him to execute; that is to say the contractor's obligation so far as any particular "work" is concerned must not lapse with the expiry of the period unless the "work" or his share of it is then completed. In other words the duration of the contract must be governed by the period for *demanding* not by the period for *supplying*.

45. As regards the second point it seems to me quite impossible in any general contract of this sort to provide for completion of any particular work in a specified time. It could only be done by specifying a period which would in the very great majority of cases be very unnecessarily, and therefore undesirably, long. There are, however, two practicable alternatives. The first is to make it a matter of departmental regulation that emergent works and works which it is important to have finished by a definite date shall not be carried out under a general periodical contract of this sort. The other is to provide that such work shall only be carried out under a general contract of this sort when the contractor is prepared to execute a subsidiary agreement binding him under substantial penalty to complete the work by the desired date. The execution of such a subsidiary agreement must of course be quite optional on the contractor's part, and it would be useless to say anything about such agreements in the general contract. The subsidiary agreement would simply set forth that "whereas on such and such a date the contractor entered into such and such a general contract, and whereas in pursuance of such contract the Executive Engineer has called upon him to execute such and such a work or part thereof, and whereas it is necessary that the work shall be completed by such and such a date, therefore the contractor now further binds himself in the event of the work being given to him to, &c., &c."

46. I think then that the contractor's obligation will be sufficiently defined if the agreement is so worded as to show that the contractor "undertakes to execute and supply at the rates entered in the schedule hereto attached marked A and signed by the said contractor on the day of 188 , in the manner and to the extent required and indicated in such specifications, schedules, drawings and instructions as may from time to time be supplied to him by the Executive Engineer, all such descriptions of works and materials entered in the said schedule A, as by notice in writing under his hand bearing date between the day of 188 , and the day of 188 , the Executive Engineer shall require the said contractor to execute and supply for on account of or in connection with any work of construction or repair to be

executed within the local limits specified in the schedule hereafter immediately following, that is to say—

(Here enter schedule of localities)

Provided always that such of the above said specifications, schedules, drawings and instructions as may be reasonably necessary to enable the said contractor to commence and put in hand on the site thereof and according to the meaning and intention of the written notice of the said Executive Engineer thereto relating any such work of construction or repair, or such part or parts thereof as the said contractor may be required to execute or supply, shall be delivered to the said contractor not later than the day of 188 .

47. I should state here that as a result of the instructions of Government already quoted (see paragraph 40 above) a draft of a contract deed to suit general contracts for works on the system in force in the Fifth Circle was prepared by the Government Solicitor in communication with either the Superintending Engineer, V Circle, or the Executive Engineer, Presidency Division—I am not sure which—and this draft came to me for remarks. Exception was taken to it in several respects, one point being that it did not provide for a general undertaking to execute certain classes of "works" as distinguished from "items of work"—as to which as will be seen from what I have said above (paras. 40 and 41), I have come to the conclusion that the distinction is not tenable—and there was some correspondence on the subject ending with the Superintending Engineer's letter No. 781, dated 23rd May 1888. No further action has been taken in respect of this separate matter, because I soon realized the uselessness of attempting to deal separately with any one kind of work contract pending a settlement as to the kinds of security admissible, and generally as to the conditions of all contracts in respect of many matters common to them all, for which the draft agreement did not attempt to provide. The draft form of agreement and the correspondence mentioned are herewith sent for perusal if desired.

DEFINITION OF OBLIGATION—SUPPLY OF DEFINITE QUANTITIES OF MATERIALS.

48. The quantities of materials to be supplied may have to be defined in two ways. The obligation may be to supply specified (*i.e.*, enumerated) quantities of each kind of material, or to supply the material required for a specified work or works. The contract documents required will necessarily differ in the two cases. In the former case the only documents required will be—

(a) A schedule in a form something like that of the schedule in form M 157 (tender for supply of materials) which has columns for—

- (1) The description of materials.
- (2) Total quantities of each kind of material.
- (3) Places of delivery.
- (4) Quantities deliverable at each place.
- (5) Date by which delivery at each place is to be completed.
- (6) Rates for each article and place.
- (7) Unit of measurement.
- (8) Total cost of each article.
- (9) Remarks.

to which might be added a column for reference to paragraphs of specifications as in form 175. Specification of the place or places of delivery seems essential in all such contracts, but in practice it would seem to be seldom attended to (see Annexure C, item 34).

(b) A specification of the qualities and possibly of the dimensions of the several articles, and, where necessary, of the sources from which they are to be obtained, or of the methods of manufacture or preparation.

In the other case the contract documents would be the same as for a work of construction or repair.

49. In the first case the agreement might set forth that "the contractor undertakes to supply (at the rates for the several description of materials and places entered in the schedule hereto attached marked A and signed by him on the day of 188) all such quantities and descriptions of stores and materials as are entered in the said schedule, and to deliver the same in good order and of the qualities, kinds and dimensions specified in the specification hereto attached marked B and signed by him on the date aforesaid at the places and on or before the dates in the said schedule A entered against the several items and according to the quantities in the said schedule A stated to be delivered at such places severally." In the second case the wording of the agreement might apparently be identical with that suggested in para. 39 for a contract for a single work, omitting only the words "execute" and "works."

DEFINITION OF OBLIGATION—GENERAL CONTRACT FOR MATERIALS.

50. In the case of a general contract for the supply of materials, the period, as in the case of work (see para. 44 above), must be the period for *demanding*, and not the period for *supplying*, and the agreement should be worded accordingly. Otherwise the only difference between this case and the first case of para. 48 is that the quantities deliverable and the dates of delivery cannot be specified. The same form of schedule can, however, be used, entering in the columns for "quantities" and "dates" the words "such quantities (or dates) as may from time to time be required (or specified) by the Executive Engineer." The agreement would then set forth that "the contractor undertakes to supply (at the rate for the several description of materials and places of delivery entered in the schedule hereto attached marked A, &c.), such quantities and descriptions of the stores and materials entered in the schedule A, as by written notice under his hand bearing date between the day of 188 and the day of 188 , the Executive Engineer may require him to supply, and to deliver the same in good order and of the qualities, kinds and dimensions specified in the specification hereto attached marked B, &c., at such places as the Executive Engineer shall in such written notice specify and within the periods for the several places and descriptions of materials in the said schedule B severally provided."

51. Code para. 1353 at present says nothing about the contract documents required in connection with contracts for materials. This omission should, I think, be supplied. Form M 174 is the only existing form at all applicable to contracts for materials, and if my remarks in the preceding paragraphs indicate at all correctly what is required in such cases, it must, I think, be admitted that the form is by no means sufficient.

52. The significant variations arising out of varieties of the subject-matter will apparently be five, corresponding to the five following cases, namely:—

- (1) Contracts for single works.
- (2) Periodical contracts for works.
- (3) Contracts for specified quantities of materials.
- (4) Contracts for materials for a specified work.
- (5) Periodical contracts for materials.

Cases (1) and (4) might perhaps without very much difficulty be reduced to a single case, and with ingenuity it might be possible to reduce the five cases to the two typical cases indicated in para. 23. I doubt, however, whether it could be done without considerable risk of sacrificing clearness of expression.

CONSIDERATION.

53. The consideration may be either a lump sum for the whole work or a stated rate or price per unit for each description of work or materials, including under the latter alternative a stated percentage above or below standard or other specified rates, or it may be a combination of lump sum and rates (see Code para. 1346). It may be assumed that a

lump sum will never be stipulated for except in a contract for a specified work of construction or repair, in all other cases payment will be at schedule rates and the statement of the consideration may in such cases (i.e., of schedule rates) be most conveniently embodied in a schedule quoted in the opening statement of the contractor's promise or obligation as in the wording suggested in para. 39 above. In a contract for a specified work, if the consideration is a lump sum or a combination of lump sum and rates, it *might* be indicated in the same way, the lump sum being entered in the schedule instead of rates for each item, or it might be separately stated in the agreement. The latter is certainly the clearer of the two. The former would at first sight seem to have the advantage of slightly reducing the number of forms, but it would not really do so, because considerations connected with payments on account (see para. 88 below) and other matters requiring to be stated in the case of a lump sum contract will make it necessary to have in any case separate forms of agreement for such contracts.

Nature of liability under a lump sum contract. 53-A. In this connection it is necessary to understand clearly what a lump sum contract is. The intention may be—

- (a) That the contractor undertakes, for the lump sum mentioned, to execute the whole of the work with all its contingencies, including alterations and additions, or
- (b) That he undertakes the work for the lump sum, subject to increase or reduction of that sum for additions, omissions and alterations priced at schedule rates, or at rates otherwise determined when the occasion arises.

But unless the contrary intention is expressly stated or clearly indicated, a lump sum contract precludes any claim for payment for extra work. A contract in form 176 is, according to the Government Solicitor, a contract of the first kind (a). He says with regard to the first sentence of Article 6 of the conditions attached to this form: "This is inconsistent with the contract, which provides that the contractor is to do all the work in a certain place for a lump sum; *the lump sum would therefore include alterations and additions*; if the contractor is to be paid extra for any alterations or additions, the conditions should provide for how he is to be paid, and not refer to rates which do not exist." Practically, therefore, there are two kinds of lump sum contracts, namely, lump sum proper and lump sum with payment for extras.

Significant variations. 53-B. Under the head of "consideration," there are therefore five significant variations, which it *may* be necessary to recognise, corresponding to the five descriptions of contracts, that is to say (1) schedule contracts, (2) lump sum contracts without extras and (3) lump sum contracts with extras and two combinations of (2) and (3) with (1). These variations however apply to one only of the kinds of contracts mentioned in para. 52 above, and therefore the effect is only to increase the number of variations from five to nine.

Doubt as to necessity for combined lump sum and schedule contracts. 53-C. I doubt, however, whether it is really necessary to provide for combinations of lump sum and schedule contracts. This view is not quite in accordance with that of code para. 1347, according to which this particular kind of contract is likely to be more common than a purely lump sum contract; but it seems to me that if you are to have a schedule at all (i.e., a schedule for additions and alterations) you may just as well drop the lump sum altogether and have a genuine schedule contract. This however is rather a point for the Chief and Superintending Engineers to consider; possibly in the case of a lump sum contract for a building it might be convenient to provide by a schedule for unforeseen alterations in the amount and character of the foundations, everything above foundation including all contingencies being covered by the lump sum, and there may be other cases in which a combination of lump sum and schedule contracts would be desirable. The point should be considered and settled, and the conditions intended in the case of lump sum contracts should be distinctly expressed. Lump sum contracts of any kind are not very frequent, but they do occur, and they have to be provided for.

53-D. By "extra work" I mean items of work not stated or indicated in the schedules, specifications and drawings by means of which the work to be done is defined. In the case of a lump sum contract of the kind which does not exclude payment for extras, no price for such work can be specially

1332
stated or indicated in the agreement and its connected documents, but in the case of a schedule contract, a price may or may not be stated or indicated according as the extra work consists of (1) unforeseen quantities of foreseen description, or (2) unforeseen description of work. In case (1) the extra quantity will of course be paid for at scheduled rates, but in case (2) and in all cases of lump sum contracts, in which there is an intention of paying at all for extras, it is necessary to settle how the price of such extra work is to be determined. This may be done either by supplemental agreement (see para. 107 below) or by providing for settlement of a reasonable price either by the Executive Engineer or by some appointed referee. The latter plan is, I think, the most usual, and it will probably be best to provide that the price of such extra work shall be settled by the arbiter named for the settlement of disputes, if the Executive Engineer and the contractor cannot agree as to prices (see below para. 105).

PROVISION OF SECURITY.

54. This has to be considered under two heads, namely (1) the nature of the security, and (2) the amount of the security, and the first head may have to be considered in two different connections, namely (a) with reference to the comparative advantages of different kinds of security, and (b) with reference to the effect of variety on the number of distinct forms required. I will deal first with this last point 1 (b).

Permissible forms of security. 55. The Code (para. 1364) expressly recognizes only the following forms of security, namely:—

(a) A deposit of—

- (1) Cash.
- (2) Government promissory note.
- (3) Stock notes.*
- (4) Guaranteed railway stock.

(b) A fund formed as the work proceeds by short payments for work done; and

(c) The personal security of two persons of known probity and wealth; but by implication, that is to say, inasmuch as it recognizes (para. 1373) forms Nos. 179 and 180, it also recognizes the classes of security to which those forms are applicable, namely:—

(d) Mortgages of landed property;

also by a somewhat similar implication, that is to say by inference from condition 10 of forms 174 and 176, it recognizes, as security for advances.

(e) A mortgage of materials at site of a work.

56. The existence of form 178, a form of bond to be executed by the contractor, might be taken as indicating the recognition of the personal security of the contractor himself, but the intention probably is that this form of security shall be taken only in conjunction with other security. This is probably the meaning of the reference to this form in the first line of Code para. 1364, but it is not clearly stated, and the reference is just as likely to suggest that form 178 is a form of instrument for evidencing or making available, in the same way as an agreement of deposit, one of the forms of security mentioned in the paragraph, and in point of fact in the only case of the use of this form that I have come across it was so regarded.

Personal security of sureties. 57. Form 177 does not indicate any additional form of security; it is simply a form of instrument for making available the "personal security of two persons of known probity and wealth" which is allowed by Code para. 1364 (c); but this fact is nowhere stated or even suggested. Similarly forms 166 and 167 are forms of instruments by which deposits of Government promissory notes [in accordance with Code para. 1364 (a)], are to be made available; but owing to absence of instructions these forms are apparently never used, Executive Engineers being under the impression that the terms of the contract agree-

* The greater part of this note was written before the issue of the recent resolution of the Government of India, regarding the withdrawal of stock notes. It has not been thought worth while to expunge the references to stock notes; but it may probably be taken that stock notes are a thing of the past.

ments relating to the execution of works (forms 169 to 176) are sufficient in themselves. The only case that I have seen in which separate agreement has been obtained in respect of the security deposited being that abovementioned, in which a bond in form No. 178 was taken for the purpose. Some years ago it seems to have been the practice of the Consulting Architect to take agreements of deposit in form No. 166, but in recent years the use of this form seems to have been discontinued.

58. Forms 164, 165, 181 and 182 are forms of instruments for securing advances, but the security contemplated is in each case either a deposit of Government promissory notes or a mortgage of landed property. The forms do not therefore indicate any additional form of security other than those mentioned in para. 55 above.

59. The Code then directly or indirectly, expressly or by implication, recognizes primarily eight different forms of security, namely :—

- (1) A deposit of cash.
- (2) A deposit of Government promissory notes.
- (3) A deposit of stock notes.
- (4) A deposit of guaranteed railway stock.
- (5) A fund formed by short payments.
- (6) The personal security of two suitable sureties.
- (7) A mortgage of landed property.
- (8) A mortgage of materials at site of work.

But forms 166 and 167 show clearly that the required deposit of Government promissory notes may be made by a third party as well as by the contractor, and similarly forms 181 and 182 show that when the security is a mortgage of landed property, the land may be the property either of the contractor or of a third party, and the inference seems to be that any permissible form of deposit (cash, Government promissory notes, stock notes, or guaranteed railway stock) may, if desired, be made by a third party. It is true that forms are not provided for all these cases, but then no forms are provided at all for deposits of cash or stock notes or guaranteed railway scrip. In the only case in which forms have been provided at all they have been provided for both alternatives; they are provided for the deposit or mortgage of (1) the property of the contractor, and (2) the property of a third party. Cases 1, 2, 3, 4 and 7 must therefore be doubled, adding five additional forms of security and bringing the number of permissible kinds up to thirteen. Excluding mortgages of materials at site, which are only admissible as security for advances, there will be twelve different forms.

60. But this is not all; in practice Executive Engineers combine the two forms of security allowed by sub-heads (a) and (c) respectively of Code para. 1364, and they combine them in various ways; thus in one case a deposit of cash, and in another case a deposit of Government promissory notes, will be combined with a fund formed by short payments; then in some cases there is no limit except in so far as it depends on the percentage, to the fund to be formed by short payments, in other cases a definite limit is named. In this way counting only combinations and variations actually in common use, we get some half-dozen additional forms, bringing the total number of forms of security up to say eighteen.

61. I have no desire to suggest any restrictions which would prevent the adoption of any form, or combination of forms, of security which is found to be practically convenient and desirable; but inasmuch as suitable forms of agreement should be provided beforehand to meet all permissible forms of security, and in view of the effect that permissible variety may have upon the number of forms to be provided, I think it necessary to suggest that the adoption of any forms of security other than the few which are now to some extent in actual use should be prohibited, except in special cases in which, with the sanction of Government, it may be worth while to have special forms of agreement drawn up to meet each such case. The considerations affecting the number of forms required, and the nature of the restrictions necessary in order to keep

that number within reasonable limits, will be further discussed later on (see para. 117 *et seq.*).

AMOUNT OF SECURITY.

62. This may be considered under three heads, namely (1) the comparative amounts of different forms of security for the same purpose, (2) the manner and time of taking security, and (3) the amount of any given kind of security, or of some one standard form of security, with reference to the purpose for which it is taken.

63. With regard to the first point, the Code neither indicates nor suggests any scale of comparative values. It prescribes within certain limits (Code para. 1364 B) the amount to be required when a guarantee fund is formed by short payments on account of work done, and it has been customary to consider the minimum of 5 per cent. required in this case as applicable also when the security is taken entirely in the shape of a deposit of cash or Government promissory notes. Personal security being in practice unknown, no such question has ever arisen in connection with it. It is evident, however, on the one hand that a deposit of cash or Government promissory notes at the outset is a very much better security than a fund formed by deductions, and on the other hand that personal security secured by a bond for Rs. 1,000 is very inferior security to a deposit of that amount in cash or Government promissory notes. Supposing therefore that all these different forms of security are still to be allowed, it seems desirable to give some general instructions as to the comparative amounts to be required. Precise rules are probably out of the question; but with regard to personal security the Government Solicitor states that it is an ancient and usual practice to take a bond for double the amount that would be required in cash.

64. With regard to the amount of security taken and the manner of taking it, by which I mean not so much the description of the security as the time at which it is receivable, the general practice in many divisions seems to me not altogether satisfactory. As an illustration of what I mean, I may mention the case referred to in G.O. No. 1838 W of 20th June 1888, and connected correspondence. In this case an ancient of some little importance, with probably a considerable revenue dependent on it, to say nothing of the value of the crops under it, was to be repaired, and the work was given out on contract, the security for the performance of the contract being a deposit of Rs. 50 in cash plus a prospective guarantee fund to be formed by short payments. A year or more later, when the work should have been finished, it had not even been begun; then, done apparently in a hurry just before the freshes, the work was all carried away and had to be done again at greatly increased cost to Government. It is obvious that in a case like this a deposit of Rs. 50 is utterly insufficient, whilst a prospective fund formed by deductions is of no use whatever either as security against delays or as a source of compensation for loss of revenue, or other inconvenience resulting from such delays. In this case, however, there was at any rate a deposit of something down, not much, but still something, whereas in some divisions it seems customary in almost every case to rely entirely on the prospective guarantee fund.

65. I think that in dealing with this question it would be well to recognise that security has to be taken for two distinct purposes, namely :—

- (1) As a fund, actual or prospective, from which Government may recover any expenditure incurred in making good, bad or deficient work, or in consequence of having to oust the contractor and put the work in other hands, or from which Government may recover over-payments made or penalties or fines imposed during the progress of the work; and
- (2) As a fund from which Government may recover compensation for loss or inconvenience caused by non-completion of the work in a satisfactory manner within the stipulated time.

For the first of the two purposes a fund formed by short payments is generally suitable, but it seems doubtful whether even for this purpose it is desirable to rely entirely on a prospective fund. For the second purpose, a prospective fund is absolutely useless.

1332

10

I think, therefore, that in almost every case it would be desirable to require a deposit down as part security.

66. It is of course impossible to lay down precise hard and fast rules for the guidance of departmental officers with regard to the security to be required as a protection against loss and inconvenience resulting from non-performance of contract; but it is, I think, desirable that the Code instructions regarding security should notice the distinction pointed out above and should affirm the responsibility of Superintending and Executive Engineers for seeing that whenever necessary *substantial security of a suitable kind* is taken for the second purpose, over and above the normal security required for the first purpose. I think that in such a case as that referred to above in para. 64 it should not be open to an officer, as it certainly was in that case and now generally is, to say that he had done all that the rules of the department required him to do.

67. With regard to what I have called the normal security to be ordinarily formed by part retention of sums due, it is, I think, a question for consideration whether it would not be advisable to fix a *minimum* limit for such security. I find the deposit accounts of many divisions loaded with petty items, most of them individually under twenty, and many of them under ten, and even under five rupees, which remain for months and months in the hands of Executive Engineers and as to which the explanation generally is that they will be paid when the contractor finishes the work or makes good some defect or deficiency. It seems a reasonable inference that such petty sums are not generally sufficient to induce a contractor to start work again when once he has stopped, and, if so, they are probably not sufficient to cover the expense to which an Executive Engineer is eventually put in finishing the work himself. Insistence on a minimum retention would prevent this sort of inconvenience.

68. In this connection I think it would be well to consider whether the rule of the note to Code para. 1364 (b) allowing the reduction of the amount retained to any percentage not less than 5 per cent. might not be improved. Applied with discretion and with due regard to the circumstances of individual cases, the rule is all very well, but it is quite a different thing when the rule is applied, as it has been, to allow general reductions without consideration of individual cases, *e.g.*, a reduction to 5 per cent. in all cases in which the security at 5 per cent. would amount to a certain sum.

RETENTION AND DISPOSAL OF SECURITY.

69. Provision should be made as in Article 15 of form M 174 for retention of the security until the Executive Engineer grants a certificate of completion, but the latter part of the article quoted, which allows the retention of security under certain conditions in the last month of the official year, is objectionable and should not be repeated. The object in view, the spending of the grant, can as effectually be attained by crediting the security to deposits and debiting the work. Forms 174 and 176 are the only ones in which anything is said about retention of security.

70. None of the existing forms show whether interest is or is not to be paid on deposits or how they are to be disposed of, for instance, whether cash deposits are to be retained by the Executive Engineer or paid into savings bank in the contractor's name, or whether retentions from dues are to be carried to the contractor's credit or to remain the property of Government. The practice is, if the contractor desires it, to draw interest on Government promissory notes and pay it over to him, and to pay into savings bank in the name of the contractor deposits of cash down: otherwise deposits of cash are retained by the Executive Engineer, and percentage retentions from dues are I think always retained as Government property, although Code para. 1825 says that if the amounts are large—at what precise point they become large is not explained—they must be treated as deposits, in which case it would seem to follow that they should then be paid into savings bank if the contractor desires it. As to this

point see also para. 137. Thus in practice the contractor can get interest on all actual deposits if he likes, but he gets none on retentions.

71. In my opinion it would be very much better to provide distinctly that no interest will be drawn or paid, nor any arrangement made to enable the contractor to obtain interest in any way as long as the security is retained by the Executive Engineer. The case of a contractor is quite different from that of a Government servant depositing security for good behaviour. Say that a contractor deposits Rs. 1,000 in Government promissory notes—deposits of anything like this amount are very rare—and that it takes him a year to fulfil his contract: then, if he is not allowed to draw the interest accruing until his security is returned to him, the worst that can happen to him is that he is kept waiting six months for half a year's interest, say about Rs. 20, and allowing him interest on this sum at 10 per cent. his actual loss is one rupee. If his contract runs for two years—a very unusual length of time—his loss, calculated in the same way, will be Rs. 3. I do not think that for a difference of two or three rupees on a contract of at least Rs. 10,000, and possibly Rs. 20,000, it is worth while to put Executive Engineers and others to all the trouble entailed by the arrangement necessary to enable a contractor to obtain a little interest on his deposit. It may be said that a contractor who deposits cash down—not Government promissory notes—would not only lose the interest on the interest, but would permanently sacrifice the interest itself. This can however be obviated by his depositing the amount himself in the savings bank and pledging his pass-book with the Executive Engineer (with, of course, suitable notice to the bank) so that he would draw the arrears of interest on the pass-book being returned to him.

72. I believe that as often as not contractors depositing cash do not trouble themselves about getting it paid into the savings bank; and in the few cases in which a contractor would nominally sustain an insignificant loss, this loss could be at least counterbalanced by relieving him from the nominal charge for stamp duty on contract agreements as proposed below in para. 141. I say "nominal" because in both cases the contractor would or does recoup himself in his prices.

73. It may be said that the effect of the change would be to largely increase the number of items in divisional deposit accounts and to seriously increase the labor of preparing the monthly schedule of deposits, more especially if, as suggested in paragraph 65, the substitution of deposits of cash down for percentage retentions is carried out to any considerable extent. This is true, but I hope very soon to submit proposals for a modification of the system of accounting to the central office for such matters which will greatly reduce even the present labor and make it practically immaterial whether the number of items is large or small.

74. In the case of notes of certain loans, it is the practice of the Currency Department, with a view to the consolidation of Government stock, to cancel the notes actually deposited with the Accountant-General (Madras) and to substitute equivalent notes of the 4 per cent. loan of 1865, and according to the Government Solicitor it is necessary that this should be provided for in any agreement for deposit of Government promissory notes. This should therefore be done in the same manner as in the forms of agreements of deposits recently drawn up for servants in the Revenue Department.

APPROPRIATION OF SECURITY.

75. It is in connection with this matter that the present forms, even when they do make some sort of provision for security, are most notably deficient; and in providing new forms great care should be taken to guard against the omission and the vagueness of the existing forms, (see Annexure C, items 38 to 40). The point is to express the conditions in such a way that there may be no legal difficulty as to recovering or enforcing penalties, and I understand from the Government Solicitor that the law of the matter is substantially as follows: "If Government claimed to appropriate the whole or any part of the security as compensation for damage sustained through the contractor's

default, then in the event of the contractor taking the matter into court, Government would have to prove the damage and its amount; but that if the contract clearly provided for settlement of these matters by the Executive Engineer himself or by some appellate authority, *e.g.*, the Superintending Engineer or the Chief Engineer, then the award of the appointed individual would be sufficient proof of the fact and amount of the damage. Again if Government claimed to appropriate the security or any part of it as a penalty for non-performance of a specific condition of the contract, then if the contract clearly provided the penalty claimed for the alleged breach of conditions, Government would have to prove the breach of conditions, but would not be required to prove specific damage resulting therefrom. For instance, if the contract clearly provides for forfeiture of security in the event of non-completion of the work by a stipulated date, it would be sufficient to prove non-completion; or (to take a case in which actual damage seems out of the question) if the Executive Engineer fined the contractor in strict accordance with the plain conditions of the contract for working on a Sunday without permission, it would be quite sufficient to prove the Sunday working, and it would be useless for the contractor to contend however true it might be that Government could not and did not sustain any pecuniary damage by reason of his Sunday working." At the same time what is "reasonable compensation" being in the discretion of the court if no specific penalty were mentioned, it is improbable that the court would give much "compensation" for a breach of contract, such as Sunday working, or for any other breach by which Government would not really suffer damage.

Essential requirements stated. 76. I gather from this that in framing the forms of contract agreements or the conditions to be attached to them, these four points should be attended to, that is to say, *as far as possible* :—

- (a) All the purposes for which it may be necessary to appropriate the security should be specifically stated;
 - (b) All acts and omissions on account of which it is, or may be, desired to inflict a penalty, and the penalty appropriate to each should be specified;
 - (c) All classes of matters as to which disputes are likely to arise during the progress of the work, or the currency of the contract, should be specifically mentioned, and as regards each of them the mode of settlement or the authority to settle should be specified; and
 - (d) All matters in respect of which it may be necessary to claim compensation, and the mode of assessing damage and compensation in each case should be specified;
- general clauses being in each case added to provide for cases not specified.

Purposes for which security should be appropriable? 77. As regards the first of these points (a) it will I think be right to provide specifically for the appropriation of the security for the purpose of recovering the following, namely :—

- I. Over-payments;
- II. Advances;
- III. Any charges incurred in undoing or removing and making good any rejected work or materials, or in doing or supplying any work, plant agency or things omitted by the contractor;
- IV. Charges incurred in completing and rectifying work after annulling contract or ousting the contractor;
- V. Charges incurred in examining contractor's work (see Article 18 of conditions on form 174);
- VI. The value of any materials or plant supplied by the Executive Engineer to the contractor, and compensation for loss of or damage to any tools, scaffolding, or other plant lent to the contractor;
- VII. Any fines or penalties imposed on the contractor;
- VIII. Compensation for inferiority of work or materials not absolutely rejected;
- IX. Compensation for any loss, expense or inconvenience consequent on the annulling of the contract, or the ousting of the contractor, and the substitution of other agency for any one of certain reasons (to be specified);

- X. Compensation or penalty (to be specified if possible) for non-completion of work, or non-performance of promise by due date;
- XI. Compensation for breach of conditions not otherwise specifically provided for.

As far as I can make out items I, III and VIII of the above list are the only ones that are specifically provided for in any of the existing forms, and this only in comparatively few forms, and in them only partially.

78. The preceding remarks apply only to security definitely described as such in the contract, *e.g.*, a guarantee fund or a deposit; but some of the forms provide for certain charges or costs being recovered "from any sum due or to become due to the contractor" (*e.g.*, articles V and XIII of form 171), and in other cases it is provided that certain costs or charges shall be "at the cost of the contractor" or "made good by the contractor" (*e.g.*, Articles 7, 9 and 12 of form 174 and Article 8 of form 171) without any provision as to manner of recovery; and I understand the intention—or perhaps I should rather say the desire—to be that almost all, if not all, of the costs referred to in para. 77 shall be recoverable, if necessary, "from any sum due or to become due to the contractor." If this is, or is to be, the intention, it seems necessary that the terms of the contracts shall be made much clearer than they now are in any form. I understand for instance that under a contract in form 174 in all probability Government could not, under any circumstances, recover for breach of contract more than the amount of the guarantee fund; and that if this fund had previously been diminished by recoveries of fines and charges incurred from time to time, then no more than the balance of the guarantee fund at the specified percentage on the total value of work done could be recovered. The only doubt according to the Government Solicitor appears to be due to the fact that the guarantee fund when formed by deductions is not a specified sum and therefore might not perhaps be held to be a named sum within the meaning of section 74 of the Contract Act; and if the security were a specified sum there would apparently be no doubt about the matter. If therefore it is desired that the guarantee fund shall, as far as possible, be kept intact at its full amount, then it should be distinctly provided that all costs, charges and damages from time to time incurred may be deducted from sums due or to become due to the contractor, and that the guarantee fund or other security need only be appropriated to such recoveries when, and for so long as, other means of recovery are not available.

79. It is further necessary to indicate distinctly whether "due to the contractor" means due to him only under the contract in which the expression occurs, or due to him under that or any other contract, or in any other way. There seems to be no reason why an actual debt due from the contractor for work done on his account, or for materials supplied to him, should not be set off against any other debt whatsoever due to the contractor. Claims for compensation and for recovery of penalties are perhaps in a different case. It is for Government to say whether, and to what extent, as regards any of the items in para. 76 they would wish the principle of set off to be provided for.

TIME OF COMPLETION.

80. This has to be considered with reference to the five kinds of contracts mentioned in paragraph 52. In all cases of contracts for materials the dates will presumably be stated in the schedule. In cases of periodical contracts for different descriptions of work, any stipulation as to date of completion is out of the question—see para. 45. In the remaining case of a contract for a single work, the stipulation for completion by a specified date can be easily made either in the body of the agreement or in attached conditions.

81. On reference, however, to annexure C, items 17 and 18, it will be seen that Executive Engineers are frequently not satisfied with a stipulation for completion by a certain date, but further stipulate for certain definite rates of progress, measured either by value or by quantity, or by sections of work, and the question is whether such requirements should be provided for, and, if so, how. I am disposed to

think that no attempt should be made to provide, either in any set form of agreement, or in any set form of conditions to be attached thereto, for anything more than completion by a certain date and general regulation of progress to the satisfaction of the Executive Engineer and according to his instructions. Anything further would then be matter of separate instruction by the Executive Engineer to the contractor under some clause of the contract requiring the contractor to comply with the requirements of the Executive Engineer as to such matters.

TECHNICAL DETAILS.

82. Under this head I include all such conditions as are collected under heads D and E of the accompanying analysis of existing forms. Items 10 and 19 of Annexure C might also be considered. It is presumably for the Chief Engineer to determine what those conditions shall be and whether it is necessary to vary them to suit different cases; but I think it is quite a question whether anything more can be required than one set of conditions for contracts for works and another set for contracts for materials.

83. I do not lose sight of the fact that in the present forms for such contracts the conditions differ widely, but as I have already pointed out the differences are unaccountable. They do not seem to be based upon any intelligible principle, unless to some very slight extent and very imperfectly on the principle of having fewer and simpler conditions for contracts for the less costly works. Possibly there may be some advantage in recognizing such a distinction, but at present I am unable to see any. Of course if it were a question of having a fresh agreement drawn up on each occasion under legal advice, nobody would dream of drawing an agreement for the construction of a road culvert at the same length and in identically the same terms as an agreement for the construction of the new High Court buildings; but, when it is a question of supplying a printed form for general use, the importance of distinctions based on cost of works is greatly reduced, if indeed it does not disappear altogether, and having regard (1) to the inconvenient effect that any such distinction must have on the number of forms, and (2) to the advantage of uniformity in facilitating a knowledge and recollection of conditions, I do not think any such distinction should be recognized unless very good reasons indeed can be shown for it. Form 172 is an instance of an attempt to provide a very simple form with hardly any conditions; but from the fact that it was afterwards found necessary to supplement this form by providing the "conditions to be attached to it" in form 171, it seems clear that this simplification was not found advantageous. Abundant material for drawing up the conditions, or the several sets of conditions, required will be found in the appended analysis and in annexure C. The Chief Engineer will no doubt indicate the conditions that he thinks it desirable to include.

83-A. It may be a question whether it is not desirable to recognize the distinction at present vaguely suggested by the expression "contract," "petty contract" and piecework agreement," but the distinction, if recognized at all, should be based upon some intelligible definition of those terms. The recognition of such a distinction of course mean an increase, and possibly a large increase, of the number of forms required; and I may point out that the distinction can be recognized in connection with manner of payment, methods of accounting, and authority for entering into contracts, even though it is not recognized in the forms and conditions of contracts, and *vice versa*.

SUB-LETTING.

84. Provision against sub-letting without the written consent of the Executive Engineer seems desirable in all cases. Form 175 (condition 11) is however the only existing form which contains any such provision. Such a provision is usual in all contracts of the kind now in question.

EXECUTIVE ENGINEER'S RIGHT OF ENTRY.

85. There should not, I think, be any difficulty in expressing the conditions as to Executive Engineer's right of entry (whether for inspection or for execution of work) in terms which, with possibly a few blanks to be easily filled in according to models

furnished, shall be applicable to all contracts of the classes now under consideration. The circumstances in which entry by the Executive Engineer may be necessary are perhaps sufficiently indicated under head G, item 41 *et seq* of the analysis in annexure A. It might however be well to provide also for *testing*, and I think that the conditions should provide—the present forms do not provide—(1) for inspection certainly and possibly for execution (*i.e.*, for completely or partially superseding the contractor) not only by the Executive Engineer himself (as in the present forms), but by such other person as the Executive Engineer may appoint for the purpose, and (2) for entry on and inspection (by the Executive Engineer or by his nominee) of any manufacture or process (such as brick-making or lime-burning) carried on by the contractor for the purpose of supplying materials required in connection with his contract. The conditions should of course also provide for charging the contractor with any expenditure incurred by reason of the Executive Engineer superseding the contractor. Provision for the recovery of such expenditure is a separate matter (see paragraph 77.) The terms of the conditions in the form of agreement in use in the Presidency Stores and Workshop Divisions in connection with contracts for supply of firewood, carts and coolies and boats, might I think be taken as a basis to work upon. The form and mode of expression seem clearer than those of any of the work contract forms in use (forms 169 to 176) in which such conditions are more or less mixed up with conditions as to prosecution of work by the contractor (*e.g.*, condition 9 of form 176), an arrangement which is not only not clear, but involves a considerable amount of repetition.

FINES AND PENALTIES.

Forms of penalty.

86. Existing forms, or rather some of them, provide for mulcting the contractor—

- (1) By reduction of rates (or prices) for inferior works or supplies.
- (2) By the infliction of a fine of specified amount for each case of delay or of bad work or materials.

It will probably be advisable to provide in addition a penalty (to be specified) for each day, week or other convenient period, or part thereof, by which the stipulated time is exceeded. No other desirable addition occurs to me at present. I think, however, that as regards delays it is necessary to indicate more specifically what constitutes delay. Delay should, I think, mean, and be clearly shown to mean, delay in complying with some specific instruction or requirement of the Executive Engineer or of his authorized agents, given or made under the provision of some clause of the contract, and the fine should be a specified amount for each day or week (or other period) of delay. General slow progress involving no specific breach of agreement is hardly a proper matter for fine, completion within the stipulated period being otherwise provided for; nor is it possible, as regards delay of this sort, to determine what constitutes a separate "occasion." The penalty for non-completion by stipulated date, except where completion by that date is essential for the saving of a season or for some such paramount reason, should also, I think, be ordinarily a stated fine for each week's or month's delay: it makes it very much easier to enforce the penalty without question. Moreover, in the case of periodical contracts, in connection with which it is impossible to specify any date for completion, this is the only practicable way of stating the penalty for non-performance of contract.

87. With regard to fines for bad work, it should be made quite clear that the fine provided for is something quite distinct from the reduction of rate for inferior work accepted at Executive Engineer's valuation or replaced by him at contractor's cost; the intention of the penalty being to prevent the contractor from doing any such bad work.

87-A. In connection with the conditions as to penalties it might be well to make it clear that the contractor must take all risks whatsoever, and that the contractor's liability can only be extinguished, as of right, by obstruction on the part of the Executive Engineer, or by failure of the latter to perform some necessary or stipulated act (see Annexure C, item 25).

PAYMENTS ON ACCOUNT AND MEASUREMENTS.

88. It is usual to provide for making payments to a certain extent during the progress of a work, and when the consideration is determined by a schedule of rates or prices, it is usual to provide for such payments on account at a stated percentage of the value (at scheduled rates) of work actually executed to the satisfaction of the Executive Engineer; but, when the price is a lump sum, no part of such lump sum can be attributed to any specified part of the work. Nothing is really due to the contractor, nor should any actual debt be recognized, until the work is completed. Payments on account should therefore be entirely at the discretion of the Executive Engineer, and if they are referred to at all in the contract agreement, it should, I think, be merely by way of mentioning that the Executive Engineer may, from time to time, at his discretion, make such payments to the contractor on account of the lump sum mentioned in the contract, not exceeding such lump sum, and not exceeding a stated percentage of the value of the work done, as estimated by the Executive Engineer with reference to the value of the whole work to be done. If the conditions provide for the submission of any sort of claim by the contractor, for payments on account, he should be required to submit (in case of lump sum contracts) a "measurement list" and not a "bill." In the case of schedule contracts the provision will of course be for payments at or not exceeding a stated percentage of the value of approved work priced at schedule rates.

89. Stipulation as to periodical or occasional measurements and payments should be carefully worded with reference to actual possibilities. Inconvenient and often impracticable stipulations for measurement "at least once a month" or for payment "within ten days of presentation of bill," and stipulations for payment once a week, or once a fortnight, or on stated days of the month, or on completion of "sections of work," should, I think, be avoided (see items 64 and 67 of Annexure A, and 3, 4, 5 and 6 of Annexure C). The conditions should give the Executive Engineer discretion to reduce the percentage of payment on account in certain contingencies (*ibid.* items 13 to 16.)

89-A. If it is necessary to say anything regarding methods of measurement (see Annexure C, item 7,) something like article 10 of Form M. 175 would be suitable. It can hardly be necessary (*ibid.* item 8) to provide for giving notice to the contractor except for final measurements. Provision for measurement by subordinates (*ibid.* item 9) would but be provided for by some general clause as to agency of the Executive Engineer's nominee.

ADVANCES.

90. Most of the forms say nothing whatever about advances; but two of them (Forms 174 and 176, article 10 in each case) provide that "advances may be made to the contractor to the extent of 80 per cent. of the value of all materials (as assessed by the Executive Engineer) deposited at site and mortgaged to Government, the amount of all such advances being recovered as the materials are utilized, or from the bill for completed works subsequently submitted." As to this, it is to be observed that this clause, under which a contractor might almost claim an advance, subject to compliance with the conditions stated, is directly opposed to Code paragraph 1372, which says that "advances are, as a rule, prohibited," but that "under very exceptional circumstances the Government will authorise such advances to contractors as may be deemed indispensable, taking the necessary precautions for securing the Government against loss, &c., &c." If Government desire to reserve to themselves the right to authorise advances, then no clause of the contract should be so worded as to imply that such authorisation is unnecessary, and that on certain conditions advances may be made as a matter of course.

91. With regard to the above-quoted provision of Code paragraph 1372 for "taking the necessary precaution for securing the Government against loss," I may point out that, as a matter of fact, in the cases—not very frequent it is true—in which such advances are made no real precautions are taken to secure Government against loss, unless this require-

ment is held to be satisfied if the Executive Engineer or the Superintending Engineer is of opinion that the contractor will in all probability work off the advance in due course; nor do I see how, in any individual case, any more satisfactory security can be devised on the spur of the moment, when the advance is required, and when delay in giving it, if it is to be given at all, probably means delaying the progress of the work. If, therefore, Code paragraph 1372 is to stand as it now does—and for my own part I am disposed to think that it should, substantially at any rate—then it is, I think, very desirable that the nature of the precautions to be taken in such cases should be clearly indicated, and the means thereto provided beforehand.

92. Although no such means are indicated in the Code itself, they are provided for and suggested by certain Code forms, but without any instructions regarding the use of these forms. Forms 164 and 165 are forms of agreement of deposit of promissory notes, by the contractor himself and by a third party respectively, to secure advances, and Forms 181 and 182 are forms of mortgage of landed property, by the contractor and by a third party respectively, for the same purpose; and as already pointed out, article 10 of Forms 174 and 176 suggests another description of security, namely, a mortgage of materials at site, but no form is provided for the purpose of taking such security.

93. It will be for Government to decide whether all or any, and, if the latter, which, of these forms of security shall be recognised in such cases, and whether any other and, if so, what forms, shall be allowed; and this being done, a contractor desiring an advance would be required to specify the security offered, and the Superintending Engineer, when forwarding the application to Government, would be able to state the nature of the precautions to be taken with reference to Code paragraph 1372. Assuming that the point will have to be considered, it may be convenient to say a few words as to the advantages and disadvantages of the several forms of security for the purpose now in question.

94. With regard to agreements of deposits of promissory notes it appears to me that if a contractor is able to cover the amount of the desired advance by a deposit of Government promissory notes or other readily realizable security, he might just as well be left to realize the notes, and so provide the funds for himself; and, similarly, if he can get a third party to mortgage Government promissory notes on his account, he might get the same party to realize and to provide the required accommodation. There seems to be no sufficient reason why in such cases Government should be asked to provide funds, unless the contract distinctly contemplates their doing so. If Government should be disposed to allow deposits of stock notes for such purposes, the argument would not apply to them, stock notes being, as a rule, I believe, practically unsaleable.

95. The great objection to mortgages of landed property is the inevitable delay attendant on the necessary inquiries as to the value of the property and as to the mortgagor's title. There is also the greater trouble of realizing, in case of need, and the inevitable uncertainty as to the ultimate value of the security.

96. With regard to mortgages of materials at site, I understand that it has recently been decided in England that property mortgaged must be definitely specified, and that a mortgage of floating stock is no mortgage at all, and, in fact, worthless. I do not know whether the decision applies in India; but if it does, a valid mortgage of materials at site of a work, though perhaps not absolutely impracticable, will probably be a difficult matter to arrange.

97. With regard to such mortgages, supposing them admissible, for several reasons (with reference to stamp duty chargeable, and necessity for registration), it will be necessary to understand whether they are mortgages with possession or mortgages without possession. In a question put to the Government Solicitor regarding the advisability of registering such mortgages, I took it as certain that they "would always be mortgages without possession," but the Government Solicitor, in his reply, says:—"I should have thought

that when materials were at site of a work Government had possession of them: if I am wrong in this, however, it would be safer to register the mortgage, or to arrange for the contractor giving possession of the materials: the latter would be the simpler course." In Form 175—the only form of agreement which notices the matter at all—article 3 distinctly provides that all materials brought on to the works by the contractor shall remain there at his risk, "the said Secretary of State shall not be responsible for any loss which may arise." This seems quite right, and I do not think it would be advisable to alter it; but it seems incompatible with the theory of possession by the Executive Engineer.

98. There is not among the existing forms any form of *bond*, either by the contractor singly or by the contractor and sureties, to secure advances, but this form of security seems at least as appropriate for this purpose as for securing the performance of any other contract; and as compared with mortgages of landed property it has the advantage of being easily and generally available. The security is, perhaps, inferior, but then, if advances are to be given at all, it will generally be desirable that they should be given promptly, and any avoidable delay, over and above such delay as may be inseparable from a reference to Government for the required authority, would, as a rule, be very objectionable. A deposit of Government promissory notes is of course the most perfect security, in every respect, but when it is available there is no apparent necessity for any advances. Mortgages of materials at site, if they are free from the objections suggested in paragraph 96, would therefore seem to be the most suitable form of security, when an advance is really necessary; but failing these I am disposed to think that a bond would generally be the most suitable instrument for the purpose.

FINAL ADJUSTMENT OF ACCOUNT.

98-A. If it is considered necessary to make any special reference to this matter the provisions of article 17 of Form 174 will probably be found generally suitable. The preliminary remeasurement seems to be the only thing that need be provided for, the adjustment being otherwise regulated by the several conditions as to rates or price and as to penalties and compensation for breach of contract, &c. It may be desirable to provide for postponement of final payment in certain contingencies, or pending certain tests, &c., (see Annexure C, item 16).

SPECIAL PROVISIONS RELATING TO JOINT CONTRACTORS.

99. In the first place, as stated in article 16 of Form No. 170, it is essential that the joint contractors shall appoint a single attorney, to receive payments and grant receipts; timely notice being required of revocation or modification of the power of attorney by all or any of the joint contractors; and such notice of revocation or modification being sufficient cause for determining the contract, on the part of Government. Moreover, it should be made a condition of the contract that such power of attorney shall be drawn in a prescribed form and be lodged with the Executive Engineer, and that the Executive Engineer shall not be bound to recognize any other power of attorney, because Executive Engineers are not, as a rule, able to judge whether a document, purporting to be a power of attorney, is really a sufficient authority for the purpose for which it is given, especially when, as is often the case, the instrument is drawn in the vernacular. The joint contractors can appoint their attorney by a single instrument on the same stamp as if executed by a single individual. The Government Solicitor should be asked to draw up suitable forms of power of attorney, and as the contracts in question are all of fairly similar kinds there will probably be no difficulty in drawing one form (or one set of forms) suitable for all contracts.

99-A. When signing under a power of attorney the usual practice is for C. D., the attorney of A. B., to sign "A. B. by his attorney C. D."; and when two or more parties to the contract are represented by a single attorney, that attorney, in the absence of any special authority to grant receipts in his own name, would have to sign the name of each of his principals. It may, therefore, be necessary to provide for the possibility of three or four or even more signatures to receipts, each of them *by attorney*, and it will then be necessary to allow much more space on our contract certificate forms than is now given. The matter

to be crowded into a receipt in a contract certificate is more than enough already, and the mistakes made, in consequence to a great extent of such crowding, are numerous, and it is most undesirable to further cramp and confine the signatures to such vouchers. If, however, a special form of power of attorney is prescribed it might provide that the attorney shall grant receipts in his own name. The Government Solicitor states that there is no objection to this. It would simplify signatures and reduce the probability of mistakes, such as the omission of the name of any of the joint contractors. This may seem a very trivial matter, but attention to it may save a great deal of trouble.

99-B. To meet the case of joint contractors who are habitually associated in numerous contracts, it might be well to provide a form of special power giving authority in respect of a specified contract, and also a form of general power in respect of all contracts in which the same contractors are associated. The object would be to relieve the contractors from unnecessary charges for stamp duty and to save a certain amount of trouble of repetition. If, however, such instruments are exempted from stamp duty (see paragraph 141 below), it might not be worth while to have separate forms for the two cases. The provisions suggested above only cover cases of joint contractors, who should be dealt with *only through their duly constituted attorneys*; but even a single contractor frequently requires payment to an attorney, and having regard to the difficulty already mentioned of judging of the validity of the power, unless given in an authorized form, it may be desirable to provide in the conditions that no payment will be made to an attorney except under a power drawn in the prescribed departmental form. In the absence of such a provision the Executive Engineer could not lawfully refuse payment on any valid power of attorney, and yet he might not be able to judge of its validity. Further, as a single contractor might wish to receive by attorney only a single payment, as distinguished from all payments on account of a specified contract or on account of all his contracts, it will be necessary to provide a form for such special power of attorney. This is necessary for two reasons—(1) that the contractor cannot be required to give more extensive authority than he wishes to give, and (2) that in one case the stamp duty is Rs. 5 and in the other only Re. 1, but as to this last point see also paragraph 141 below.

Apparently, therefore, it will be necessary to provide three forms of powers of attorney, namely—

- (1) for all payments on account of a specified contract;
- (2) for all payments on account of all contracts in which specified individuals are jointly engaged;
- (3) for a specific payment;

and probably it will be necessary to have two sets of forms (*i.e.*, two for each of the above cases), one set for single executants, and the other set for joint executants. Two or more joint contractors desiring to appoint a single attorney can do so in a single instrument under the same stamp as if the instrument were executed by a single individual, but I presume that the wording of the powers will necessarily differ in the two cases, and two sets of forms, making six in all, will therefore be necessary.

100. It seems desirable that agreements with joint contractors should provide that, as between the contractor and Government, in the case of the decease of any one or more of the contractors, the obligation of the deceased should devolve on the surviving contractors, instead of passing, as, in the absence of any agreement to the contrary, they would pass under the Indian Contract Act, to the representatives of the deceased. It is essential that the Executive Engineer should know who he contracts with. A. B. and C. D. may be excellent men to deal with, but of W. X. and Y. Z., their representatives after death, the Executive Engineer probably knows nothing, or may know that it is undesirable to have anything to do with them. The arrangement should be without prejudice to the lien of Government on the security taken, and without prejudice to the liability of representatives of the deceased (to the extent of assets of the deceased come to hand) for any advances made. No corresponding powers seem to be necessary in the case of a single contractor, though it might be advisable as a precaution, and at any rate Executive Engineers should be instructed. According to the Government Solicitor "it may be taken as a general rule that a contract for anything in the nature

of construction is a personal contract and would terminate on the death of the contractor" and he thinks most of the contracts here in question would so terminate. "A contract to account for advances would not so terminate and the contractor's estate would be liable."

101. Further, it should, I think, be provided that disputes between contractors, such as are frequently indicated by their obtaining injunctions against each other, or in other ways, shall be sufficient ground for at once determining the contract as against Government. On this point the Government Solicitor says: "in the cases put, I should think it would be very necessary to stop the work, especially in the last two cases put," i.e., the contractor getting into difficulties, as evidenced by attachments against his dues, or disputes between contractors evidenced by their obtaining injunction orders one against the other: and in reply to a question as to whether these would be sufficient grounds for terminating the contract in the absence of specific provisions to that effect: "though the mere circumstances mentioned in the question would not of themselves justify the termination of the contract, should these circumstances arise they would be very likely to involve a breach of the contract on the part of the contractor, which would be taken advantage of to terminate the contract. Any real breach on the part of the contractor would justify the Executive Engineer in determining the contract, though such breach was not specifically mentioned in the contract." It is, therefore, desirable to state specifically in the contract, as far as they can be foreseen, all circumstances which it is desired to treat as grounds for terminating the contract, and among them those just mentioned.

SERVICE OF NOTICES.

102. None of the existing forms make any provision for what is to be deemed sufficient service of notice, although several of them provide for the giving of written notices or instructions on various points. Judging from the frequency with which ignorance of the whereabouts of the contractor is given as a reason for delays in payments, non-correction of vouchers, &c., I think it is very necessary that some provision should be made for this. Such a provision is usual in contracts of the kinds in question. Delivery to the contractor's recognised agent or gumastah, or the posting of a registered letter to the contractor's registered postal address should, I think, be deemed sufficient service, and a contractor should be required to give his postal address when tendering. Any one authorized by power of attorney to receive payments, might be deemed a recognized agent for this purpose also, or the contractor might name a person, failing both of which all notices and instructions should be sent to his postal address. Nomination of an agent or representative, who may or may not be one of the joint contractors, is especially necessary in the case of joint contractors, whether for personal service or for service by post.

SETTLEMENT OF DISPUTES.

103. I take from the analysis in annexure A the following list of matters as to which differences and disputes may be anticipated, namely:—

- (i) Quality of work or materials;
- (ii) Quantities or measurements;
- (iii) Quality or sufficiency of labor and other agency employed;
- (iv) Rates of progress;
- (v) Construction and meaning of plans, drawings, sections and specifications;
- (vi) Interpretation of any of the conditions of the contract;
- (vii) Any other matter.

The only other specific grounds of dispute that occur to me as proper to be provided for under this head are disputes as to accounts. It might be well to include these. The fault of the present forms is that hardly any of them, if any, provide for all the points, and that they provide for them in such an unnecessary number of different ways

Unmeaning diversity of this sort makes it exceedingly difficult for any one to remember accurately the precise conditions of any contract. It is hardly for me to advise as to who should be made the arbiter as to all or any of the above-mentioned points: but I think I may say that uniformity of treatment is desirable. There seems to be no good reason why, for instance, disputes as to measurements should be settled under one contract by the Executive Engineer, under another by the Superintending Engineer, and under a third by the Chief Engineer, unless, indeed, they severally deal with matters of different degrees of importance (see also paragraph 5).

104. Probably the clauses as to settlement of disputes might, with advantage, provide also for assessment of damages or compensation, and for determining the propriety of any penalty inflicted. Such clauses, properly acted upon, would, in many cases, make litigation by the contractor quite hopeless. It may possibly be argued that the conditions would become such that nobody would accept them; but I am not suggesting anything new: I am only suggesting clearer and more uniform provision for a number of points every one of which is already more or less perfectly provided for in one or other of the existing forms: and clauses of this kind are, I think, quite usual in such contracts.

105. Under this head provision might also be made for the assessment of payments to be made to the contractor for work done and materials at site in certain cases of cancelment of a contract by the Executive Engineer otherwise than for actual default or breach of conditions by the contractor (see paragraph 114 below), and also for the settlement of the price to be paid for extra work (see above paragraph 53-D).

JURISDICTION IN RESPECT OF SUITS.

106. Some of the present subsidiary forms (e.g., Form 178) contain a provision for removing any suit to the jurisdiction of the High Court, at the instance of Government. Others (e.g., 177) contain no such provision. As far as I can see it is just as necessary, or just as unnecessary, in one case as in the other. On this point the Government Solicitor says:—"The provision referred to in this question can be inserted in all the contracts if thought necessary; but that is a matter for the consideration of Government. If the amount to be recovered from the contractor were under Rs. 2,000, Government would probably not recover their costs of the suit in the High Court from the contractor. In most cases it would be very undesirable to remove cases to the High Court, for, where a contract has been broken up-country, all the witnesses and documents would be at or near the place where the contract was broken and the loss and trouble to Government of bringing them down to Madras would not compensate for whatever trifling advantage there might be in having the suit tried in the High Court. I think myself that this provision is unnecessary and as far as my experience goes, it has never been acted on. I have some doubts also as to whether the parties to a contract can, by agreement, give the High Court a jurisdiction which, but for such agreement, such court would not have." On the other hand, I may point out that it is not altogether an unknown thing for a contractor to defer the bringing of a suit until all the Government witnesses have been scattered all over the Presidency, or have, perhaps, even left the country, and that in such cases it might be highly convenient to be able to turn the tables on the contractor, without any unfairness; and with regard to the doubt as to the efficacy of such a clause I may point out that the clause occurs in all recent forms of security bond prescribed by the Government of India, and that this question has probably been carefully considered.

MODIFICATION OF CONTRACT.

107. The terms of articles 12 and X of Form 175, to the effect that the terms of the contract are not to be modified except by supplementary agreement duly stamped and executed, seems suitable if any provision of the sort is required, which, however, seems doubtful. In view, however, of the difficulty of getting a suitable agreement properly drawn in such a case, without inconvenient delay, it is a question whether it would not generally be better to cancel the original contract by agreement, and then execute a new one. The necessity for any modification should very seldom occur if suitable provision is made for settling the price to be paid for extra work (see above paragraphs 53-D and 105).

CANCELMENT AND SUSPENSION OF CONTRACT.

108. The necessity for cancelment of a contract by the Executive Engineer may apparently arise in four ways, namely:—

- (1) Owing to default or breach of contract on the part of the contractor;
- (2) Owing to disputes between contractors, or attachments against their dues, or other circumstances reflecting on the contractor, but without any actual breach of contract on his part;
- (3) Owing to inability of Government to provide funds;
- (4) By mutual agreement.

In the last case the terms of the cancelment would naturally be agreed upon when the necessity arises, and it is probably unnecessary to say anything about this in the contract; but it is necessary to distinguish clearly as regards the other three cases, and to provide for what is to happen in each case.

109. As regards the first case (supposing that it is considered proper to provide for cancelment in such cases, as to which see paragraph 110), the contract should clearly provide for determining the contract only in so far as it binds Government, *all obligations of the contractor remaining unimpaired*. This is to a certain extent provided for in the present Forms 174 and 176, in which the lien of Government *on the specified security* is saved (see condition 14) in the event of cancelment for default; but even these two forms do not provide that Government shall retain any hold on "other sums due or to become due to the contractor," (the words "or other security," according to the Government Solicitor, not being construable as referring to "other sums due,") and the other forms, as far as I can see, do not even secure the retention of a lien on the specified security. In this respect the form of agreement in use by Local Fund Boards seem very much better; that form clearly provides that, in the event of determination of the contract for default, only the conditions therein contained "on the part of the President shall cease and be void," the contractor's obligations remaining unimpaired—see Proceedings of the Board of Revenue, No. 2447, of 20th August 1883.

110. The best course, however, would apparently be to say nothing about cancelling or annulling the contract for actual default, but to make proper provision for carrying on the work by other agency in case of need. If a contract is properly drawn, power can be taken for the Executive Engineer, without any cancelment of the contract, to substitute himself (or his nominee) for the contractor for the purpose of doing, at the contractor's expense, all and singular the things that the contractor has undertaken and failed to do, whilst if the contract is not very carefully expressed the Executive Engineer may very easily, by cancelling the contract, endanger the rights of Government under the contract. The Government Solicitor, agreeing in this view of the matter, says: "then I would suggest that no provision for cancelling the contract, except perhaps such as that mentioned above [*i.e.*, provision for ousting the contractor and substituting other agency], be inserted in the contract. If a contract is broken there is an end of it, unless it otherwise specially provides, and section 73 of the Contract Act provides that, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. What I understand to be 'cancelling' a contract, as the word is used in the forms, is, that the contractor having committed a breach, the Government have the right to say the contract is at an end; but it seems to me the law itself gives that right. If a contract is broken there is an end of it and section 73 comes in, or section 74, where the amount of compensation is fixed by the contract. I do not see that, as a general rule, there is any object in giving Government a right to cancel a contract which has been already broken. However, as already mentioned, the alteration suggested, and which is in very general use, will save all question as to whether a contract has been broken."

111. With regard to (3), the four forms noted in the margin provide that in the event of cancelment of contract by Government for want of funds, the value of materials "collected" in the case of Form 172 and "at site" in case of the other forms, shall be paid to the contractor, if not in excess of requirements; and though it is not distinctly stated, the inference is that, the contractor is to have no claim to any compensation. Forms 174 and 176, although evidently contemplating (see article 14) the cancelment of the contract for causes other than the default of the contractor, make no provision for what is to be done in such a case; and none of the forms say how or by whom the value of the materials is to be determined. The intention, whatever it is, as to giving or not giving compensation, should be clearly indicated, and the settlement of the value of materials to be paid for and of the question whether they do or do not exceed requirements, should be provided for, if not covered by clauses as to settlement of disputes, which would probably be the best plan (see para. 105).

112. Though it is not stated it is of course implied that in cases of cancelment otherwise than for default, the contractor shall be paid the full value of work actually done; and in the case of a schedule contract there can be no difficulty in determining the value of work done; but in the case of a lump sum contract it seems absolutely necessary to indicate how, or by whom, the value of work done is to be settled. Form 176 makes no provision for this. This also might be provided for under settlement of disputes.

113. It frequently happens that an Executive Engineer finds it necessary, by reason of want of funds, to stop the progress of a work for a time, without actually cancelling the contract. This contingency should, I think, be provided for, and the contractor should, I think, have a right to cancel the contract in such cases.

114. With regard to cases coming under head (2) of paragraph 108, the Government Solicitor says: "In the cases put I should think it would be very necessary to stop the work, especially in the last two cases put": these last two cases being the case of a contractor getting into difficulties (shown by the receipt of orders attaching his dues), and disputes between joint contractors (evidenced, for instance, by their obtaining injunctions against each other). Such difficulties and disputes are not uncommon, and are generally followed by difficulty in securing progress of works, and it would probably be well that an Executive Engineer should have it in his power to at once cancel the contract (or substitute other agency) without waiting for an actual breach of contract. Supposing that Government concur in the opinion of the Government Solicitor as to the expediency of determining contracts in such cases, they should, I am disposed to think, be dealt with in the same way as cases of cancelment for actual default or breach of conditions, the same being clearly provided for in the contract.

115. It might be well to provide also for the case of lapse by death of contractor (being either a single contractor or the last survivor of two or more joint contractors), as disputes may otherwise arise as to terms of settlement. The conditions should presumably be generally the same as in a case of cancelment otherwise than for default, and could be provided for in the same clause.

EXECUTION AND WITNESSING.

116. As to this point the forms in use are in several cases misleading, and may give trouble and cause unnecessary doubts as to what is proper and necessary. Many of the forms, most of them in fact (Nos. 164 to 166, 174 and 176 to 182) provide for "signing, sealing and delivering," which may suggest puzzling doubts as to what constitutes sealing and delivering, operations which are quite unnecessary. On this point the Government Solicitor says: "No document in India requires to be under seal, unless, perhaps, it be a power of attorney authorising attorney to execute an instrument

under seal. If I recollect right, the forms of bonds or mortgages purport to be under seal. If this is so, and it be thought desirable to do away with sealing, it would be advisable to amend the forms slightly by omitting all references to sealing." All that is necessary is signing in the presence of the requisite witnesses; that is to say, two witnesses, to each execution, in cases of mortgages of land or other immovable property; and in all other cases one witness to each execution. Additional witnesses of course do no harm, but they are not necessary, and provided each execution is attested by the requisite number of witnesses, the same witness or witnesses may attest any number of executions to the same instrument. Witnesses should sign at the end of the instrument and not at the top as suggested in form 173. Probably none of the forms now in question will require to be signed by the Executive Engineer. This will have to be settled when the provisions of the several forms are known. Some of the existing forms are misleading, or give no information, as regards this point. If execution by the Executive Engineer is in any case necessary, the form should provide for his proper description, as indicated in paragraph 16 above. It might be well to provide for the fuller description, and easier identification, of witnesses, by providing on the form for inserting the occupation and address of each of them.

CONSIDERATIONS AFFECTING THE NUMBER OF FORMS REQUIRED.

117. I have shown in paragraph 52 that, looking only to the subject-matter of the contract, there are probably five ordinary cases to be provided for; and in paragraph 53-B I have shown that variations in the form of the consideration may bring the number of significant variations, under these two heads combined, up to nine; also in paragraph 18 I have shown that separate forms will be required for single and for joint contractors, that is two varieties; and finally I have pointed out that there are probably about eighteen different forms of security at present permissible. It follows that in order to provide a suitable form for each possible and permissible combination of conditions, it may be necessary to have altogether ($9 \times 2 \times 18 = 324$) three hundred and twenty-four separate forms of contract agreements. I need scarcely say that this would constitute a very serious practical inconvenience. I am of course assuming here that it is necessary that each written contract should be complete in itself, which is a point to which the Government Solicitor attaches some importance, though he does not insist upon it as absolutely essential. The point, however, which I have now to make clear is, that if the number of forms of agreements is to be kept within reasonable limits, it can only be done in one or other of the following ways, namely:—

- (1) by adopting some plan which will admit of a single form of agreement being made available for several different forms of security;
- (2) by arranging that the contract in respect of security shall be a separate instrument from the contract for execution of work, &c.;
- (3) by eliminating some of the forms of security now permissible; or
- (4) by a combination of these plans.

118. To begin with (1), there will probably be no difficulty in providing a single form of agreement which can be used for deposits of either Government promissory notes, stock notes, or guaranteed railway stock, provision being made in the form for describing the deposit in general terms applicable to all these classes, and scheduling the details; but this seems to be the full extent of practicable simplification in this way: a deposit of cash would require a different form; because in one case it is, and in the other it is not, necessary to introduce a power of sale. The other kinds of security mentioned in paragraph 55 above, will obviously require each of them a separate form. I did, indeed, suggest to the Government Solicitor that it might be possible to go a little further by detailing, in a printed schedule, forming part of the printed form, certain kinds of security ordinarily admissible, and against each the Executive Engineer's power of disposal over each kind, and then providing in the body of the agreement that the security deposited, as detailed in a second schedule, should be available in case of need according to its kind in the manner indicated in the first (printed) schedule. This

plan would admit of making one form of agreement available for any form of security, except mortgages and personal security, but the Government Solicitor, whilst admitting that it would probably be practicable "cannot but express the opinion that it would be most objectionable" as "a written contract should be as concise as possible and should contain no matter which does not relate to the contract itself." I therefore take it that the utmost simplification to be obtained by scheduling the security is the practical reduction of Government promissory notes, stock notes and guaranteed railway stock to a single class. Separate forms would of course still be required according as the deposit is made by the contractor himself or by a third party. This would reduce the eighteen forms of security to, say, twelve and the total number of forms required from three hundred and twenty-four to two hundred and sixteen ($18 \times 12 = 216$), which is not very much better.

119. The next plan (2 of paragraph 117) is a much more promising one. Taking the same figures as before, if the contract in respect of the security may in every case be a separate instrument, the number of forms required will be only $18 + 18 = 36$, or with the reduction shown in paragraph 118, $18 + 12 = 30$ instead of $18 \times 18 = 324$ or $18 \times 12 = 216$. Instead of combining each of eighteen forms of contracts for work with each of eighteen different sets of clauses relating to security, and providing 324 forms of agreement each complete in itself; 18 forms of contracts for work, &c., and 18 forms of agreement in respect of security would be provided, and on each occasion one of each—the appropriate pair—would be used. On this point the Government Solicitor says in one place: "It would be rather clumsy to have a separate agreement in respect of the security, but I do not see how this can be avoided unless Government determine that the security shall in all cases be Government promissory notes, cash or, in the case of a schedule contract, deductions from periodical payments," by which, as he afterwards explains, he means that it cannot be avoided "unless Government select one of these three forms of security and rule that it, and it only, shall be allowed." In another place, with reference to a remark of mine that on certain grounds it would be convenient that the agreement for security should in every case be a separate instrument, he says: "I think that, as far as possible, the form of contract should include the agreement as to security." It appears, therefore, that though the Government Solicitor would prefer an agreement which is complete in itself, he does not regard the separate agreement in respect of security as particularly objectionable, and he apparently admits that, if the number of admissible classes of security cannot be reduced, the separate agreements as to security are a practical necessity.

120. It may perhaps appear that the matter is already practically settled, and that the existence, and the code recognition, of such forms as 166, 167, 178, 179 and 180, which are all of them forms of separate instruments for making available the security offered for due performance of contract, is a sufficient recognition of the propriety of the proposed practice; but the truth seems to be that these are Government of India forms which have been adopted without much consideration of their applicability to the different system obtaining in Madras. As I have elsewhere pointed out, under the Government of India system the tender and its acceptance constitute the contract, and no additional contract agreement (in respect of work) is drawn up after acceptance of the successful tender; under this system, therefore, the agreement in respect of security, if any be taken, must be a separate instrument, and as there was never any question of taking a contract agreement, the question, of what is or is not proper in connection with such an agreement, can never have arisen. Under the Madras system, on the other hand, a complete contract agreement is supposed to be drawn up, after acceptance of tender, and the forms provided *ad hoc* all provide, or are supposed to provide, more or less perfectly, for security and for appropriation of the same. A separate form for other and further security would therefore generally be unnecessary, and, in certain cases, might even be objectionable, as, for instance, when third parties provide, or join in providing, the security, when those third parties might possibly be able to claim a release on the ground of other security having been taken from the contractor, and not recited in the agreement to which they are parties. Forms 167 and 180 do not provide for any such recital.

121. I may here mention, parenthetically, that the adoption of Government of India forms, without reference to difference of practice, which accounts for the absence from the code of any rule requiring the taking of a written agreement, probably also accounts for the apparently singular wording of the conditions of some of the forms; for instance condition 16 of form 176, which reads like an instruction for the guidance of the Executive Engineer, or for drafting an agreement, rather than a clause in an actual agreement, but which is quite intelligible as one of a set of conditions drawn up for the information of a number of competing contractors at a time when it is impossible to say whether the contract will be secured by a single contractor, or by two or more individuals contracting jointly. Many—perhaps I might almost say most—of the conditions in most of the forms seem open to the same remark.

122. It will, I think, be worth while to consider the expediency of adopting the Government of India plan, which, as I shall show hereafter would very much simplify the settlement of the whole question, and would greatly reduce the number of separate forms required. It will make no difference whatever as regards the immediate task of determining the conditions to be required, and all that is said in this note will apply equally whichever plan is adopted. For further remarks regarding this suggestion see paragraphs 127 *et seq.*

123. With regard to alternative (3), of paragraph 117, the elimination of some forms of security now allowed, I must in the first place point out that, as regards certain of these classes of security, namely deposit of stock notes or guaranteed railway stock, personal security, and mortgages of landed property, the permission to accept them—expressed or implied—is practically a dead letter: as a matter of fact, these forms of security are, I believe, never taken, and therefore no practical inconvenience could be caused by removing them from the list of permissible securities, or at any rate relegating them to a separate list of forms of security admissible only under special sanction in special cases when special agreements would be prepared to suit the occasion. It is, however, also desirable to point out that some of these kinds of security are more or less positively objectionable or undesirable.

124. Thus, with regard to guaranteed railway stock in reply to my inquiries as to whether the fact that railway stock is transferable by deed and not by endorsement would make any difference, the Government Solicitor replies: "It would make such a difference as to make it very undesirable to take railway stock as security: if I am not mistaken transfers of railway stock have to be registered in the company's book, which would be another objection."

125. And with regard to personal security, and mortgages of landed property, it is evident that when such security is offered, it is absolutely essential that careful and possibly protracted inquiries should be made before the security is accepted, and this will almost always be inconvenient on account of the delay involved. Moreover, however good such security may be, it can never be—sum for sum—as good as cash or Government promissory notes, and there is always a possibility—not to say a considerable probability—that its realization in case of need may involve much trouble and even litigation.

126. For these reasons I am disposed to think that personal security, mortgages of landed property, and deposits of railway stock should be removed from the list—expressed or implied—of permissible forms of security. The forms of security to be provided for would then be only (1) deposits of cash, (2) deposits of Government promissory notes, and (3) funds formed by short payment of dues; and combination of (1) or (2) with (3). The ordinary cases and combinations are:—

- (a) deposits of cash (or Government promissory notes or stock notes) without any percentage retentions;
- (b) deposits of cash (or Government promissory notes) with retentions of specified percentages, without limit;

- (c) deposits of cash (or Government promissory notes) with retentions of specified percentages until the total sum deposited reaches a specified amount.

The Government Solicitor will, I think, say that it will be necessary to provide separate forms for (a) and (c), but (b) and (c) can, I think, be easily reduced to a single case, by providing for the insertion of an extreme sum as the nominal limit, when the intention is that the retention shall be limited only by the stipulated percentage. The different forms of admissible security will then be reduced to four, two for cash deposits, and two for deposits of Government promissory notes or stock notes; and the number of separate forms required will then be either seventy-two (18×4) or twenty-two ($18 \div 4$), according as the agreement in respect of security and the agreement relating to the work are, or are not, combined in a single instrument. A further slight reduction of the number of forms required might perhaps be made by reducing to a single case the two cases (1) and (4) of paragraph 52, contracts for a specified work, and contracts for the supply of materials for a specified work; and possibly the five cases of paragraph 52 might, with a good deal of ingenuity, be reduced to the two typical cases indicated in paragraph 24, but I do not myself think that this could be done without a considerable sacrifice of clearness of expression and certainty of meaning.

127. If the separation of the agreement in respect of security from the agreement in respect of work is considered objectionable; or if, this separation being accepted, the resulting number—eighteen—of separate forms is still considered excessive; then, in my opinion, the only thing is to adopt the Government of India plan of treating the tender and its acceptance as in themselves constituting a sufficiently definite contract, requiring at the most to be supplemented, in certain cases, by an agreement in respect of security. The way in which the number of forms is affected, by the adoption of one plan or the other, is this: At the time when tenders are called for certain essential points connected with the future contract are undetermined. It is not then known whether the contract will be with a single contractor or with several jointly: if any option is allowed, the exact form of security that will be offered is not known: and again, if option is allowed, it is not known whether the consideration demanded will be a lump sum, or schedule rates, or a stated reduction or advance on standard rates. This being the case, if a written tender and its acceptance in writing are treated as constituting in themselves a sufficient reduction of the contract to writing, then it is not only in no way improper, but it is absolutely proper, and, indeed, essential, that the written conditions on which tenders are to be based, and which, being then read with the accepted tender, form a part of the contract, shall provide alternatively for all possible eventualities. If, on the other hand, the written tender and its written acceptance are not considered sufficient—if, when the tender has been accepted it is considered necessary to execute an agreement embodying the conditions of the contract, as then precisely known in every particular; then it is wrong and objectionable to import into such a written agreement any irrelevant matter, such as conditions relating to circumstances which might have existed, but which, in point of fact, do not exist.

128. It follows that under one system the only set forms required will be:—

- (a) either a single set of conditions, or at most a separate set of conditions for each of the five classes of paragraph 52 which cannot be eliminated by reduction to a single case with some other class;
- (b) suitable forms of tender for each of these classes, reduced, as above, if possible; and
- (c) a set form of agreement for each form of security admissible, and which cannot be provided for in the general conditions (a);

whereas under the other system it is necessary to provide separately for every possible combination of alternatively possible circumstances.

129. I have shown in paragraph 126 that on the separate agreement system the minimum number of forms would probably be twenty-two, this being the lowest number if the contract in respect of work and the contract in respect of security are embodied in separate instruments. There are, however, objections—though not absolutely decisive objections—to this arrangement, and if the two contracts are in any case to be embodied in a single contract, then the minimum number of forms will be seventy-two. On the other system the number of set forms need not, I think, exceed seven, as explained below.

130. It will, I think, be very easy to prepare a single set of conditions which shall suit all the cases of paragraph 52; such conditions being arranged in sections so that two or more sections (to be specified in the tenders and in the notices calling for the same) shall, taken together, provide for everything required in connection with any one case. Thus one section (A) would include all conditions common to all contracts whether for works or materials; two others (B and C) would include conditions peculiar to contracts for works and stores respectively; and two others (D and E) would include all conditions peculiar to contracts for specified works or supplies and to periodical contracts respectively. Sections A, B and E taken together would then provide completely for a periodical contract for works; sections A, C and D taken together would provide for a contract for the supply of specified quantities of materials; and so on. The necessary

forms of tender would certainly not be more than are provided for in existing forms, Nos. 156 to 159; but a single form might easily, I think, be made to serve for the three forms—156, 158 and 159; so that only two forms of tender would really be required. The different

forms of security agreement would not exceed the four of paragraph 126, assuming the same restrictions as are there assumed; but there would not then be the same objection to the admission of other forms of security. As to this, however, I do not think that it is in any case advisable to allow, except under special sanction, any other forms of security than those assumed in paragraph 126. The entire number of separate set forms required will then be one set of conditions, two forms of tenders, four forms of security agreement, or altogether seven forms, as stated above.

130-A. If Government should decide to adopt the India system, the "tender" will of course become a much more important document than it now is, and it will be necessary to consider carefully the form, or forms, of tender to be adopted. This consideration may however be deferred until the point in question is settled; in the meanwhile, however, with a view to facilitating its consideration when necessary, I have obtained from all Executive Engineers copies of all forms used by them in connection with tenders and calls therefor. The question of stamps, as applicable to tenders, will also have to be considered.

POINTS IN CONNECTION WITH WHICH INSTRUCTION SEEM DESIRABLE.

131. Coming now to the question of instructions required for the guidance of Executive Engineers as to the use of the forms prescribed, and as to their dealings with contractors, it is first of all necessary that the circumstances under which each kind of form is to be used should be clearly stated; nothing definite can be said on this point until the forms are settled, but it should eventually be laid down in the code and, as far as possible, in notes on the forms themselves.

132. The next instruction, and perhaps the most important of all, should, I think, be that under no circumstances is any prescribed form to be altered or in any way modified, added to, or taken from, without sanction. The only exception, if any, to this rule, should, I think, be in the case of conditions relating to technical details connected with methods of execution and such matters. As regards such matters, the Executive Engineer is more or less an expert; but as regards all other matters, he should take the forms as given to him by the Government Solicitor, and should adhere to them absolutely, filling up all blanks in precise accordance with prescribed models. Instances of the number of

different uses to which blanks provided for a particular purpose are actually put in practice will be found in annexures B and C; and I have several times seen blanks filled up in a way which makes them absolutely meaningless, as, for instance, when the blanks in article VI are filled up so as to make the article run thus:—

"In the event of due progress not being made or of bad work being done, or bad materials used, the Executive Engineer may determine and end this agreement without further notice, or he may fine the contractor to the extent of five per cent. in each case, as compensation for slow work or for work materials of inferior quality."

It would be a little difficult to say on what basis the five per cent. is to be calculated, even in the case of bad work, and quite impossible in the case of slow progress. It seems essential that, at any rate, as regards matters other than technical details, the prescribed form and models should be rigidly adhered to. As the Government Solicitor remarks, when an Executive Engineer alters a form and introduces clauses and conditions of his own devising "he may think he has done it all right, but when it comes to be tested in litigation it may be found to be all wrong": even as regards conditions relating to professional details it is, I think, desirable that all modifications, additions, &c., should be reported, for this reason, if for no other, that an alteration necessary in one division, if really desirable, is probably also desirable under similar conditions in all other divisions, and it is only through reports of modification that the standard conditions can be improved and perfected. No matter what care and trouble may be devoted to the preparation of the forms in the first instance, it is practically certain that experience will bring to light shortcomings and mistakes, and it is very desirable that all such experience should be taken note of with a view to the gradual improvement of the forms.

133. At present the only hint on the subject of dealings with joint contractors is to be found in condition 16 of form 174; but it appears that in a good many divisions this form is never used, and the condition consequently never seen. In any case this is hardly the proper way of conveying instructions which should apply to all joint contracts irrespective of the form in which the agreement is drawn. Any separate dealings with individual parties to a joint contract, such as dividing between them at the discretion of the Executive Engineer, or equally, or according to any agreement made among themselves, any sum due to them jointly, should be prohibited. This is a mistake which is very frequently made. The separate and individual responsibility of each contractor is another matter; but such separate responsibility could hardly come into question except in the event of litigation, and all notices and instructions should be given to the contractors jointly or to their nominated representatives (see above paragraph 102).

STAMPS.

134. This is a matter with regard to which very many mistakes are made, and in connection with which a few instructions would probably save a great deal of trouble. In the first place as to the kind of stamp, the only kind admissible for all instruments of the classes now in question is an impressed stamp. Court-fee stamps are frequently used: such stamps and indeed any kind of adhesive stamp are simply wasted, as they count for nothing. Many officers apparently do not know how to set about getting a document impressed with the proper stamp. The document should be sent before execution to the Superintendent of Stamps, Madras, either (1) directly to him together with treasury receipt for the stamp duty previously paid into treasury, or (2) through the Treasury Deputy Collector, paying the stamp duty into treasury at the same time. All instruments, such as are now in question, must be stamped before or at the time of execution; and no document on which the duty is to be denoted by an impressed stamp can be stamped after execution; but it may be endorsed by the Collector of the district, without penalty, at any time within one year from date of execution, if it is brought or sent to him for the purpose by one of the executants, and if he is satisfied that the omission to stamp it at the proper time was due to accident or urgent necessity; and such endorsement has the same effect as stamping.

135. Then there is a good deal of misapprehension as to the value of stamps required in different cases. As far as I can discover the only instruction ever given on the subject is that implied in G.O., No. 140 W., dated 17th January 1884, communicating a decision of the High Court regarding the duty chargeable on an agreement drawn in some form which I understand was the present form No. 170. The decision in question evidently applies only to the particular form of agreement submitted for consideration and, moreover, can only apply when the form is drawn up in the manner intended and indicated by the wording; but it seems to have been taken by the department generally, including the Examiner's office, as applying to all the forms in use irrespective of the manner of filling them up and using them. By "forms in use" I mean only those actually used, and not all the forms included in the code list and referred to in code paragraph 1373. The form of mortgage deeds, and agreements of deposit are not really used, so that I cannot say what the general understanding is with regard to them; or rather there is no such understanding; and in the only instance in which I have known the form of bond (No. M. 178) to be used, the penalty named in the bond happened to be Rs. 500, so that the stamp duty was 8 annas, the same duty as on an agreement.

136. Form 170 and also forms 171, 174 and 176 (see articles IV, IV, 3 and 3 respectively of the conditions of these several forms), are evidently meant to be filled up so as to allow the Executive Engineer to retain a percentage of sums falling due to contractors in order to form a guarantee fund; and as long as the form is filled up in this way the decision of the High Court of course applies, and the contract deed is chargeable with stamp duty of 8 annas as an agreement, item 5 (c) of the first schedule to the Act. But an Executive Engineer frequently fills up these forms (170, 171, 174 and 176) and also supplements forms 169 and 172, which contain no printed clause relating to security, with words or clauses, according to his fancy, so as to provide for a deposit of cash or Government promissory notes, either instead of or in addition to a percentage deduction; also in form 175 the last blanks on page 5 are apparently intended to be filled in either way. Now, when any of the above-mentioned forms is filled up so as to provide for a deposit of Government promissory notes or cash down, the decision of the High Court does not apply. The decision applies only to an agreement in which "the contractor waives prompt payment of a percentage of the sum to accrue due to him" which is not "severed from bulk" and "the property (in which) remains in Government." An agreement of deposit in forms 164, 165, 166 or 167, or an instrument in any of the forms 169 to 176, when filled in for a deposit of Government promissory note or cash down (if it is of any good at all), seems, for the purpose of assessing stamp duty, to be clearly a mortgage with possession, whatever it may be called in any other connection—see Stamp Act, section 3 (13),* definition of mortgage deed. Of course such an instrument, when prepared according to the uninstructed fancy of a layman, may be nothing at all—may be worthless; but if it is what it is intended to be, it must, I suppose, be a mortgage. I presume that cash so deposited although cash is not ear-marked, is "specified property" within the meaning of the definition. This seems to be implied in the above-quoted decision of the High Court. The difference in the stamp duties chargeable in the two cases is considerable. Suppose a contract of the value of Rs. 10,000. Then a contract deed providing for a deduction of 10 per cent., yielding eventually a security of Rs. 1,000, would be chargeable as an agreement (item 4 of the first schedule to the Act) with a duty of 8 annas; but if the agreement provided for the deposit of Rs. 10,000 in cash or promissory notes, it would be chargeable (see item 44-A of the schedule) as a conveyance (item 21) with a duty of Rs. 10.

137. A question arises as to the consequences, as affecting stamp duty, of adopting the procedure indicated in code paragraph 1825 in case of large retentions. The code here says: "If the amount is large it must be treated as 'deposits' and entered as received in the cash book and register of deposits." The High Court decision quoted above assumes that it is not the case that "a percentage is actually set apart for the contractor and retained," and it seems reasonable to infer that if the percentage is to be set apart and retained,

* "Mortgage deed includes every instrument whereby, for the purpose of securing the performance of an engagement, one person creates in favor of another, a right over specified property."

and if the agreement contemplates this, then it is a mortgage. Whether in the case of large amounts such an understanding can be held to be implied by inference from the departmental rule indicated above, and what should then be held to be "large" amounts, and how the stamp duty is to be determined (no definite sum being pledged) if, on the strength of such implied understanding, the contract deed is held to be a mortgage, are questions which I cannot attempt to determine, but which it may perhaps be necessary to decide hereafter.

138. As I understand the case, the correct classification, for assessing stamp duty, of the different kinds of instruments for which forms are provided, and the duties severally chargeable thereon, are as follows:—

Description of instrument.	Nature of instrument and schedule numbers according to classification of Stamp Act.	Classification and schedule number of instrument for purpose of assessing stamp duty.
1. Agreements of deposit—forms 164, 165, 166 and 167.	Mortgage with possession. (Item 44 (a).) Do. do.	Conveyance. (Item 21.) Do. do.
2. Contract deeds in forms 169, 170, 171, 172, 174, 175 and 176, when drawn to provide for a deposit of cash or Government promissory notes or other movable property.	Agreement. (Item 5 (c).) Do. do.	Agreement. (Item 5 (c).) Do. do.
3. The same when drawn to provide for a percentage retention not set apart or carried to a separate account.	Do. do. Bond. (Item 13.)	Do. do. Bond. (Item 13.)
4. Contract for labor (so called) in form 173.	Mortgage without possession. (Item 44 (3).) Do. do.	Do. do.
5. Bonds, with or without sureties, in forms 177 and 178 (see also paragraph 139 below).		
6. Mortgages of landed property in forms 179, 180, 181 and 182.		
7. Mortgages of materials at site of a work ...		

139. With regard to bonds in forms 177 and 178, I am not at all sure of the classification. The wording of the last half dozen lines of form 177 makes the voiding of the bond contingent on the payment, by the contractor or his representative, "of all losses, damages, costs and expenses" which the Secretary of State may incur in consequence of the default of the contractor, and, for aught that I know, this may perhaps make the instrument an Indemnity Bond (item 28 of the schedule) chargeable (see item 14, Security Bond) with double the duty of a bond (item 13) whenever the amount exceeds Rs. 1,000. The wording of form 178 is quite different. With regard to agreements in form 173 (No. 4 of the above list), I should mention that, according to the note on the form, it should bear "an *ad valorem* stamp" (as what, or how calculated is not stated), and the Government Solicitor thinks this is right, and that the form "is in the nature of a bond liable to stamp duty." I think, however, that there must be some mistake here, seeing that (for this purpose at any rate) the essence of a bond is a promise, contingent or absolute, to pay money or to deliver grain or other agricultural produce (see Stamp Act, section 3 (4)). In the form of instrument in question (form 173) the contractor offers somebody as his surety; and it is presumably contemplated that he and his surety shall execute a bond, otherwise the tender of a surety is of no use; but the instrument itself contains no promise of any sort or kind to deliver anything, and I fail to see how it can be treated otherwise than as an "agreement."

140. I understand that, under section 7 of the Stamp Act, when an instrument is really a combination of two or more different kinds of instruments (according to the classification of the Stamp Act), it must be considered in both or all aspects and will be liable, under the second clause of the section quoted, to duty on the highest scale. Thus, supposing that an instrument in form 173 is a bond, yet it is also an agreement

for the execution of certain work, and if the clauses which make it—if they do make it—a bond were removed, it would be liable to duty as an agreement; consequently if the amount concerned does not exceed Rs. 50 (making the instrument liable as a bond to a duty of 4 annas, or possibly 2 annas) it will be chargeable with a duty of 8 annas as an agreement; but if the amount exceeds Rs. 100, it will be chargeable as a bond, at the rate of 8 annas for every Rs. 100 and so on; but it is not quite clear that such an instrument or combination of instruments would not be chargeable with both duties. This is a point that may have to be settled.

141. If all the different forms of security now recognized are retained, and, in any case, so far as they are retained, unless Government is prepared to forego the stamp duty altogether, it will be necessary to determine, once for all, the proper classification of the several kinds of instruments for stamp duty, and to settle the questions suggested in the last two paragraphs. I venture, however, to think that the proper way of settling the matter will be to move the Government of India to exempt all such instruments from stamp duty, by notification under the Act. There can, I think, be no question that the charges for stamps must in the end be paid by Government, just as much as any other expense of the contractor; and very probably Government in the end pays back to the contractor not only the amount of the stamp duty, but something besides. Government therefore could lose nothing and might even gain, and, in any case, would save their servants a great deal of trouble, by foregoing the stamp duties. I may point out that the stamp question will give a great deal more trouble when the necessity of looking to the true character of the instrument is recognized, than it does now when instruments of all kinds are regarded as agreements chargeable with a uniform stamp duty. On the latter understanding, agreement forms might be stamped wholesale before issue, which will not be possible, or only possible with great inconvenience, if the stamp duty is properly charged *ad valorem* in the many cases in which it should be so charged.

142. The same result might be attained by introducing into every contract a clause to the effect that the duty will be paid by Government, by which means all such instruments would be brought under the general exemption No. 18 of the second schedule to the Act. But probably this would not be a legitimate way of compassing the object in view. Another possible solution of the difficulty, as far as Government is concerned, would be to instruct the officers of the department that the sufficiency and validity of the stamps is entirely the contractor's concern, and that they may wash their hands of it. As far as Government is concerned, the only consequence of insufficient and invalid stamping is, that if Government wish to put the instrument in evidence they may have to pay the penalty provided in section 34 of the Stamp Act; but such a penalty, as against Government, is only nominal, and the Government Solicitor is of opinion that, in such a case, the general exemption, No. 18 of the second schedule, would probably operate: and if he is right it is a matter of absolute indifference to Government whether the instrument is properly stamped or not; but this solution of the difficulty would not, I think, be quite fair to contractors.

143. Whether powers of attorney, granted in connection with these contracts, should be similarly exempted from stamp duty, is another question. It is perhaps not true—it certainly is not true to the same extent—as in the case of stamps on contract agreements that the charges for such stamps must in the end be paid by Government. These charges are not necessary charges of all contractors: they are not a necessary expense of all contractors, and therefore they operate rather to reduce profits in special cases, and so far are ultimately paid by the contractor and not by Government. At the same time if they are insisted on for the convenience of Government; and if, for the same reason, Government requires them in a special form, which may very possibly oblige a contractor to execute two powers of attorney empowering the same representative—one for general use, and one to be lodged with the Executive Engineer—it would seem perhaps only fair to exempt such instruments from duty. Instruments for securing advances (see paras. 90 *et seq.*) are again in a different case from all other classes of instruments. Except on the score of saving trouble to officers of

Exemption of instruments from stamp duty recommended.

Other ways of avoiding the stamp difficulty.

Exemption in case of powers of attorney and instruments for securing advances.

1332

the department, and in consideration of the extreme rarity of the occasion, there seems to be no reason for exempting them from stamp duty.

144. I have assumed above that the duty would in all cases be payable by the contractor, unless otherwise provided in the instrument; but I should point out that the Stamp Act does not say as to all kinds of instruments by whom the duty is payable. Of the instruments now in question, namely, mortgages (with or without possession), bonds, agreements and powers of attorney, the two first are the only ones mentioned in section 29 of the Act (duty by whom payable). As regards powers of attorney, there is, I suppose, no room for doubt that, in the absence of agreement to the contrary, the person executing the power would have to pay the stamp duty, he being, presumably, the person really interested in getting the instrument properly executed; but the case of an agreement is different. This point should apparently be settled, unless exemption of all these instruments from stamp duty is decided upon.

Doubt as to liability for stamp duty in certain cases.

EXECUTION AND ATTESTATION.

145. The witnesses should see the instrument executed, and not simply attest the signature after execution. The same witnesses may witness any number of executions to the same instrument (*e.g.*, the contractor's execution, the execution by each surety, and, when such execution is necessary, the execution by the Executive Engineer), provided that each execution is witnessed and attested by the requisite number of witnesses, and that each witness separately attests each execution witnessed by him. According to the Government Solicitor, it is desirable, if possible, that the execution by the contractor or contractors, and by the sureties and other parties, if any, associated with them, shall be done in the presence of the Executive Engineer; but it is not essential. The Executive Engineer himself should not, I think, witness any execution (see Annexure C, item 43). The Government Solicitor considers that, if the instrument cannot be entirely executed in the presence of the Executive Engineer, the witnesses to any execution not in the Executive Engineer's presence should be trustworthy Government servants. If the executions are not all completed at the same time, the date to be inserted should be that on which the last party executes, *i.e.*, the last execution in order of time, and not necessarily the last in the order on the instrument: no date should, therefore, be entered until all executions are completed. Sufficient attention is not always given to the execution of agreements. I have seen agreements only initialled, and some not even initialled, by the contractor (see Annexure E, item 42.)

145-A. In this connection it might be well to caution Executive Engineers as to the necessity of taking great care that there can be no room for doubt as to the precise terms of the agreement as actually executed. Nothing is more common than to find corrections and interpolations, whether of a few words or of entire clauses, without any separate attestation by the initials of the parties, and made in such a way that they might easily have been inserted after execution (see Annexure C, items 41, 44 and 45). Excess of caution may also be dangerous as when the initials of the contractor are obtained to the ordinary (and original) entries in blank spaces, which initials might easily be converted into attestation of a correction subsequently made.

Caution required as regards corrections and alterations.

REGISTRATION.

146. Any instrument (*e.g.*, a mortgage of landed property) which creates an interest in immovable property of the value of Rs. 100 and upwards must be registered under Act III of 1877. The Government Solicitor considers that it is advisable, although not necessary, to register even when the value of the property is less than Rs. 100. In the case of movable property, registration is useless when possession is given (*e.g.*, in the case of deposit of cash or promissory notes); but when possession is not given (*e.g.*, a mortgage of materials at site of work if considered a mortgage without possession, see above paragraph 97) he thinks it would be safer to register the mortgage. It is for Government to say

Registration.

22

whether they desire registration in any case other than those in which it is required by law.

SECURITY.

147. As to time of depositing the Government Solicitor says it should be done "at the time [of executing the contract deed] for choice; but it is not very material, provided the deposit is made not very long before or after: it does not matter much about the length of time before; but the contractor should not be allowed to begin work until he has deposited the security." The precaution of taking the security before the work is begun is, I think, very often neglected.

148. Mis-description of the security taken seems to be not uncommon; the agreement, for instance, setting forth that the contractor has deposited cash, when he has, in fact, deposited Government promissory notes, or *vice versa*. Executive Engineers require to be cautioned against such mis-recital, which though, according to the Government Solicitor, it will not vitiate the instrument and will probably not vitiate the security, is liable to cause confusion and litigation, and, in the event of litigation, may make it necessary to adduce evidence to prove that though one kind of security was mentioned in the contract, another was actually deposited; or, in the event of a Government promissory note being deposited in lieu of cash, it might be necessary, in the absence of a power of sale, to adduce evidence to show that the Executive Engineer was justified in selling the note. It will be convenient to state how, and in what detail, each kind of admissible security should be described and enumerated. This will be done when the admissible kinds have been settled.

148-A. According to the Government Solicitor *separate security* for each contract is essential, unless a special form of agreement in respect of security is provided (and used) which is applicable to a number of similar contracts. I cannot say whether the practice is common, but I have come across cases in which a single deposit has been taken as security for the performance of two or three distinct contracts without anything in the agreements to show it.

TENDER OF PAYMENT.

149. Clear instructions on this point would, I think, tend, in many cases, to prevent litigation, and to improve the position of Government when litigation cannot be avoided. If the conditions of a contract, whether embodied in an agreement drawn up after acceptance of tender, or understood by reference to the tender, are carefully framed in accordance with the requirements indicated in this note, with clear and specific provision for penalties and compensation, for appropriation of security and for recourse to other dues, and for settlement of disputes and for assessment of damages and compensation not specified in the agreement, and if the conditions as to settlement of disputes are complied with, it will seldom be possible, with ordinary care and discretion on the part of the Executive Engineer concerned, for a contractor to bring a successful suit against Government; but unless, in case of dispute, the precaution is taken of making a proper legal tender of admitted dues, Government may very possibly be prejudiced in the matter of costs even in a practically unsuccessful suit by a contractor: for, according to the Government Solicitor, the general principle on which the courts act appears to be that, in the absence of legal tender of any part of his claim before action, the contractor would be entitled to costs on the full amount of his decree, Government getting costs against the contractor for the difference if he sued for more than the amount of his decree; whereas if legal tender of any sum could be proved he would only be entitled to costs on the differences between that sum and the amount of his decree. Therefore, whenever any part of a contractor's claim is admitted, Government should be in a position to plead and prove legal tender of admitted dues before action; but the prescribed form of payment (by cheque) is not a legal tender; and

even a tender in coin or notes would be deprived of its character of legal tender by the demand which, under the rules in force—to which no exception is allowed—the Executive Engineer is bound to make for a receipt in full of all demands, or indeed by any demand whatever, even for a simple receipt, if the tender is conditional on compliance with such demand.

150. Tender of payment in the first instance by cheque, accompanied by a request for a receipt in full of all demands, is quite right; but I think Executive Engineers should be instructed that, when such payment is refused, they should at once proceed to make a legal tender of the amount; and that such a tender must be made in cash and currency notes, of the exact amount admittedly due, neither more nor less, and should be accompanied by a letter saying for what purpose the money is tendered, and that the tender is *absolutely unconditional*. The payee should be asked, in the event of his accepting the sum tendered, to grant a receipt for it, that is to say, an ordinary receipt without prejudice to any further claims; but the granting of even such a receipt as this must not be made a condition of the tender. If payment is accepted, but a receipt not given, steps should be separately taken to enforce the demand for a receipt.

151. Cheques, such as are issued by the department, *i.e.*, cheques current for three months only, and indeed any cheques, are not legal tender. According to the Government Solicitor a provision in a contract or otherwise that a cheque tendered and refused, or accepted and not cashed before expiry of three months, after notice that, if not so cashed, the cheque will not be revived, would not constitute a legal tender or bar any claim for that specific sum; but such a provision might possibly prevent a contractor recovering that sum on the principle that he had, by his contract, agreed to accept payment in a particular manner, and that payment in that manner had been made to him or offered to him. Such a provision in contract agreements would often save a good deal of trouble. Code paragraph 1371 requires the insertion in contracts of a stipulation that payments will be made by cheque on the nearest treasury or sub-treasury, but apparently such a clause is never inserted: certainly, no provision is made for it in any form. It is for Government to say what manner of condition they would wish provided as to this matter.

ATTACHMENT OF DUES OF CONTRACTORS.

152. It is desirable that Executive Engineers should understand clearly the extent and limits of the liability of contractor's dues to attachment. It appears to be very usual for the courts to follow up an order of attachment by calling upon the Executive Engineer to pay into court the amount attached. If Government has an unexhausted lien on the property attached, the Executive Engineer should not pay the amount into court, but should represent to the court that Government has a lien on the property. No court, according to the Government Solicitor, has power to make an order for the delivery of property in the hands of a third party who has a lien thereon; the procedure in such case being provided for by sections 300, 301 and 303 of the Code of Civil Procedure. Apparently the court can only prohibit delivery of the property to any party other than the judgment-creditor.

153. The only doubt seems to be as to what is, and what is not, property of the contractor on which Government has a lien: there is no difficulty in the case of a deposit of cash or promissory notes suitably secured by an agreement of deposit, or in case of any other security distinctly pledged; but it does not seem equally certain that a clause giving the Executive Engineer power to recover certain expenses "from any sum due, or that may become due, to the contractor" (see, for instance, Forms 169 (3), 170 (5), and 171 (12)) would create in favor of Government a general lien on all debts whatsoever to the contractor. This is a point that should perhaps be settled and understood.

ANNEXURE A.

Analysis of conditions provided in contract forms in use by the Public Works Department, Madras.

[To accompany Note by the Examiner, Public Works Accounts, on contract forms for the Madras Public Works Department].

Item number.	Classification and particulars of conditions.	Petty contract under Rs. 500.	Piece-work agreement.	Petty contract under Rs. 2,000.	Conditions of petty contract.	Schedule contract.		Schedule contract under Rs. 10,000.	Lump sum contract.
						Work.	Stores.		
		172	169	170	171	174	174	175	176
	Article or clause in which the condition is expressed or implied.*								
	A.—As to the specification of work to be done.								
1	By schedule, without reference to any plan, estimates specification or other documents.	A	A	A	...	...	...	1	...
2	By schedule and specification attached.	...	...	...	...	A	A	...	A
	B.—As to excepted items of work and supply of materials by the Executive Engineer.								
3	Contractor to use any materials that may be issued to him from stock by the Executive Engineer.	...	...	...	XIII	...	...	...	...
4	Materials issued to contractor to be charged at stock rates.	...	...	II	II and XIII	...	...	II	...
5	Contractor to provide (at his own expense) carriage for materials issued to him from stock.	...	...	...	XIV	...	...	...	...
6	Materials noted in schedule as to be supplied by the Executive Engineer are to be delivered at site of work, or within a 1,000 yards of it.	...	...	...	XV	...	...	...	...
7	Contractor to be responsible for all materials, scaffolding and tools and plant supplied by the Executive Engineer.	...	...	...	...	...	...	4	...
	C.—As to extra work and departure from original design.								
8	Contractor to carry out additions and alterations at same rates as other portion of the work.	...	...	...	...	6	...	...	6
9	Price to be agreed on in writing before work is commenced, or may be done by the Executive Engineer at his option.	...	...	...	...	...	...	12	...
10	In case of extra work that cannot be brought within any schedule item the price is to be settled before work is commenced.	...	...	X	X	...	...	X	...
11	Extra work not specified or ordered, not to be paid for.	...	...	III	III	...	...	III	...

* The letter A indicates that the condition in question is contained in the body of the agreement.

Analysis of conditions provided in contract forms in use by the Public Works Department, Madras—cont.

Item number.	Classification and particulars of conditions.	Petty contract under Rs. 500.	Piece-work agreement.	Petty contract under Rs. 2,000.	Conditions of petty contract.	Schedule contract.		Schedule contract under Rs. 10,000.	Lump sum contract.
						Work.	Stores.		
		172	169	170	171	174	174	175	176
	Article or clause in which the condition is expressed or implied.								
	D.—As to prosecution of work by Contractor and his conduct generally.								
12	To provide all requisite plant ...	...	...	...	XXI	9	...	...	9
13	To provide all requisite agency ...	...	...	...	...	9	...	...	9
14	Contractor to provide intelligent agency.	...	...	...	...	...	...	...	...
15	Contractor to employ proper maistries and supervision.	...	...	...	XVII	...	...	...	...
16	To supply materials ...	...	...	...	...	...	...	3	...
17	To supply scaffolding (including labor for the same).	...	...	...	XVI	...	...	3	...
18	To proceed with due diligence ...	...	1	I	I	...	...	7 and I	...
19	Value of work done between any two payments not to exceed a stipulated sum.	...	...	...	XX	...	...	...	...
20	Contractor not to work on Sunday without permission.	...	...	XI	XI	...	...	15 and XI	...
21	Contractor to conform minutely to standard specifications of the division.	...	...	...	XII	...	...	...	...
22	Contractor to conform to design and specification prepared for the work.	...	...	...	XII	...	...	...	...
23	To remove all rejected materials ...	...	...	...	...	11	11	...	11
24	To remove rubbish and dirt ...	...	...	IX	IX	12	...	IX	12
25	To rectify and remove unsightly pits and disfigurements.	...	...	...	...	12	...	...	...
26	Nothing brought on work to be removed without permission.	...	...	...	...	...	...	3	...
26a	To use materials supplied by Executive Engineer for purposes of contract only.	...	...	...	...	...	...	4	...
27	All materials, &c., to be at risk of contractor.	...	...	...	...	...	...	3 & 4	...
28	Contractor not to give or offer any bribe or reward to any servant of the Public Works Department.	...	...	...	...	...	...	18	...
	Contractor to comply with all instructions of the Executive Engineer as to								
29	Adopting such methods of carrying on work as may be ordered by the Executive Engineer.	...	...	...	XII	...	...	...	...
30	Providing all labor and tools for examination of work by the Executive Engineer.	...	...	...	...	18	18	...	18
31	Undoing and making good bad work (or supplies?)	...	...	...	...	6	...	...	6
32	Making good any damage that may happen, or imperfection that may appear, from any cause whatever during time of contract.	...	...	VIII	VIII	...	...	VIII	...
33	Additions and alterations to original design.	...	...	...	...	6	...	...	6
34	Conforming to all subsidiary instructions of the Executive Engineer.	...	...	...	...	...	...	2	...

Analysis of conditions provided in contract forms in use by the Public Works Department, Madras—cont.

Item number.	Classification and particulars of conditions.	Petty contract under Rs. 500.	Piece-work agreement.	Petty contract under Rs. 2,000.	Conditions of petty contract.	Schedule contract.		Schedule contract under Rs. 10,000.	Lump sum contract.
		172	169	170	171	Work.	Stores.	175	176
Article or clause in which the condition is expressed or implied.*									
E.—As to the quality of work and materials.									
35	To be thoroughly good and according to contract.	...	...	...	...	2	2	...	2
36	All work to be done in substantial and workmanlike manner.	...	I	I	I	...	...	I	...
37	All materials to be of the best quality...	...	1	I	I	...	...	I	...
38	Work to be accepted or rejected at the discretion of the officer in charge.	1	...	...	...	...	...	...	...
F.—As to completion of the work.									
39	To be completed by a stipulated date ...	...	...	...	XVIII	A	A	...	A
40	Contractor to deliver up the building or work on completion in a clean and fit state for occupation or use.	...	...	IX	IX	...	...	IX	...
G.—As to the right of the Executive Engineer to enter on the work and carry on work in case of default by Contractor.									
41	In case of delay by contractor ..	...	...	...	...	...	...	8	...
42	In case of alterations and additions required not being done.	...	...	...	...	7	...	...	7
43	For examination of work	...	...	...	...	18	18	...	18
44	To replace bad work	...	2	V	V	7	...	8 & V	7
45	To remove plant or agency objected to and supply others.	...	...	...	...	9	...	...	9
46	To remove rejected materials	...	2	...	...	11	11	9	11
47	To rectify and remove unsightly pits, refuse, and disfigurements.	...	...	...	...	12	...	...	12
48	To make good damage done, or imperfections appearing during the progress of the work.	...	...	VIII	VIII	...	...	VIII	...
49	In the event of non-completion by stipulated date.	...	...	...	...	...	...	8	...
50	On withdrawal or transfer of power of attorney granted.	...	...	...	...	16	16	...	16
51	For breach of conditions generally	...	...	...	...	13	13	...	13
H.—As to power of the Executive Engineer to fine or mulct the Contractor.									
52	To reduce rates for inferior work and supplies.	...	...	...	...	8	8	...	8
53	To inflict a specified fine for each case of delay.	...	...	VI	VI	...	...	VI	...
54	To inflict a specified fine for each case of bad work or materials.	...	...	VI	VI	...	...	VI	...

* The letter A indicates that the condition in question is contained in the body of the agreement.

Analysis of conditions provided in contract forms in use by the Public Works Department, Madras—cont.

Analysis of conditions.		Petty contract under Rs. 500.	Piece-work agree- ment.	Petty contract under Rs. 2,000.	Conditions of petty contract.	Schedule contract.		Schedule contract under Rs. 10,000.	Lump sum contract.
Item number.	Classification and particulars of conditions.	172	169	170	171	Work.	Stores.	175	176
Article or clause in which the condition is expressed or implied.									
	I.—As to measurements by the Executive Engineer or his agents.								
55	Once a month	...	2	...	...	1	1	...	1
56	Once a month at least	2	...	II	II	...	...	II	...
57	From time to time	...	...	...	...	...	...	10	...
57a	Work to be measured net, by standard measure, according to Public Works Department rules and customs, without reference to local custom.	...	...	...	...	...	...	...	...
	J.—As to advances to Contractor.								
58	To be allowed on mortgage of materials at site to the extent of 80 per cent. of the value of the same.	...	...	...	...	10	...	...	10
	K.—As to submission of bills.								
59	To be submitted monthly by contractor.	...	...	...	...	1	1	...	1
60	To be submitted within seven days after measurements are made.	...	...	...	...	...	...	14	...
61	To be at schedule rates	...	...	...	...	3	3	14	3
62	Bills to be in duplicate	...	...	...	...	...	...	14	...
63	To be in form supplied by the Executive Engineer.	...	...	...	...	3	3	14	3
	L.—As to payments on account.								
64	To be made (subject to deduction for security) within ten days of presentation of bill.	...	...	...	...	1	1	...	1
65	To be made as soon as bills have been checked and corrected by the Executive Engineer.	...	...	...	...	...	...	14	...
66	From time to time	2	...	II	II	...	...	II	...
67	Once a month at least	...	2	...	...	10	...	...	...
68	Advances to be recovered when paying.	...	...	III	III	...	...	III	...
69	Extra work not ordered or specified not to be paid for.	...	...	...	XX	...	...	...	...
70	Value of work done in excess of stipulated amount between any two payments not to be paid for.	...	...	...	...	8	8	...	...
70a	Work not in strict accordance with specification, or inferior stores, to be paid for, if accepted, at Executive Engineer's valuation.	...	...	...	...	...	...	...	...
	M.—As to final adjustment of account.								
71	To be preceded by [thorough] re-measurement.	2	2	III	III	17	17	III	17
72	The Executive Engineer and contractor, or their representatives are to be present at measurement.	...	...	...	...	17	17	...	17

Analysis of conditions provided in contract forms in use by the Public Works Department, Madras—cont.

Item number.	Classification and particulars of conditions.	Petty contract under Rs. 500.	Piece-work agreement.	Petty contract under Rs. 2,000.	Conditions of petty contract.	Schedule contract.		Schedule contract under Rs. 10,000.	Lump sum contract.
		172	169	170	171	Work.	Stores.	175	176
Article or clause in which the condition is expressed or implied.									
M.—As to final adjustment of account—cont.									
73	Ten days' written notice to be given to contractor.	...	...	...	...	17	17	...	17
74	Failing contractor's presence on appointed day, measurement to proceed and be binding.	...	...	...	...	17	17	...	17
75	Value of materials at site (of approved quality and not in excess of requirements) to be paid to contractor if contract is cancelled, otherwise than for his misconduct.	3	...	...	...	...	...	VII	...
76	Value of materials at site (of approved quality and not in excess of requirements) to be paid to contractor if contract is cancelled for any cause whatever.	...	...	VII	VII	...	...	...	...
N.—As to provision of Security.									
77	By percentage deductions from dues ...	...	...	IV	IV	3	3	IV	3
78	Vaguely and indefinitely ...	...	...	...	...	...	...	19	...
O.—As to retention and appropriation of Security.									
79	The guarantee fund to be retained until certificate of completion is given by the Executive Engineer.	...	...	...	...	15	15	...	15
To be available for the purposes of.									
80	Remedying bad work (or supplies ?) ...	...	...	V	V	4	Nil.	V	4
81	Recovering over-payments ...	...	...	...	...	5	5	...	5
82	Making good any loss in the event of cancelment of the contract.	...	...	...	...	14	14	...	14
83	Recovering any sums chargeable to contractor.	...	...	...	...	...	...	6	...
84	As a penalty for giving or offering a bribe or reward to a servant of the Department.	...	...	...	...	...	...	18	...
P.—As to sub-letting contract.									
84(a)	Contractor not to sub-let without permission in writing from the Executive Engineer.	...	...	...	...	...	...	11	...
Q.—As to joint contractors and partnerships.									
85	Attorney to be appointed to receive payments and grant receipts.	...	...	...	...	16	16	...	16
86	Power to be lodged with the Executive Engineer.	...	...	...	...	16	16	...	16
87	One month's notice of withdrawal or transfer of power to be given.	...	...	...	...	16	16	...	16

Analysis of conditions provided in contract forms in use by the Public Works Department, Madras—cont.

Item number.	Classification and particulars of conditions.	Petty contract under Rs. 500.	Piece-work agreement.	Petty contract under Rs. 2,000.	Conditions of petty contract.	Schedule contract.		Schedule contract under Rs. 10,000.	Lump sum contract.
		172	169	170	171	Work.	Stores.	175	176
Article or clause in which the condition is expressed or implied.									
R.—As to settlement of disputes.									
	Matter in dispute.	Authority to settle.							
88	As to quality of work.	Chief Engineer ...	...	...	...	19	19	...	19
89	As to quantities or measurement.	Executive Engineer.	...	1	I	...	...	16 & I	...
		Chief Engineer ...	...	...	...	19	19	...	19
		Suptg. Engineer ...	...	...	...	...	...	17	...
90	As to rate of progress.	Executive Engineer.	...	...	...	...	...	...	...
		Suptg. Engineer ...	...	...	...	...	...	17	...
91	As to description of labor and agency employed.	Executive Engineer.	...	1	I	...	...	I	...
		Suptg. Engineer ...	...	...	...	...	...	20	...
92	As to the interpretation of the contract.	Executive Engineer.	...	...	...	...	20	20	...
		Executive Engineer.	...	...	...	...	20	20	...
93	As to the construction of plans, drawings, sections and specifications.	Executive Engineer.	...	...	...	...	20	20	...
		Suptg. Engineer ...	...	...	...	...	...	17	17
94	As to any matter not otherwise specifically provided for.	Suptg. Engineer ...	...	...	...	...	...	...	...
		Executive Engineer.	...	...	...	...	20	20	...
S.—As to modification of the contract.									
95	No alteration to be made in the terms of the contract except by supplementary agreement duly stamped and executed.	...	...	...	...	...	...	12 & X	...
As to cancelling and annulling the contract.									
T.—By the Executive Engineer.									
96	For delay ...	...	...	...	...	14	14	8	14
97	For failure to replace bad materials or workmanship after notice.	...	...	...	...	...	...	8	...
98	For failure to replace bad materials or workmanship without notice.	...	...	...	...	...	...	VI	...
99	On withdrawal or transfer of power of attorney granted.	...	...	...	...	16	16	...	16
100	For non-completion of the work or any part thereof by the stipulated date.	...	...	...	...	...	...	8	...
101	For breach of conditions generally ...	...	...	...	...	13	13	...	13
102	At any time (and apparently without assigning any reason).	...	3	VII	VII	...	...	VII	...
U.—By the Contractor.									
103	May be annulled at any time ...	...	3	...	...	...	...	...	...

ANNEXURE B.

NOTES ON SPECIMEN CONTRACT AGREEMENTS RECEIVED FROM EXECUTIVE ENGINEERS.

Form No. M. 169—Piece-work Agreement.

1. Forty-three specimen agreements in this form have been examined.
2. Fourteen of these agreements are drawn up in strict accordance with the intention of the form, and without any manuscript addition other than the manuscript filling in of the schedules and blank spaces, which are filled in appropriately.
3. In two agreements the names of the works, or other local limits of application of the contract, are not specified.
4. In two agreements unimportant interpolations are made in the printed conditions. In one case (a) the words "and of dimensions noted in the tender attached" are inserted after "procurable" in line 3 of condition 1; and in the other (b) the words "if so desired by the contractor" at the end of the first line of condition 2.
5. In two agreements a fourth condition is added in manuscript to the effect that the contractor is to take all materials already purchased for, or at site of, the work, in one case "at cost price" without any mention of what the materials are, and in the other case "as per measurement list, dated _____" without anything to show that the contractor agrees to pay for them, or, if so, what rates.
6. In two agreements a fourth condition is added empowering the Executive Engineer to make deductions from bills or from rates of payment: in one case (a) temporarily at the rate of 8 or 10 per cent. "as the case may be" (whatever that may mean), until work measured by the subordinate has been inspected by the Executive Engineer or the sub-divisional officer, and in the other case (b), whether temporarily or absolutely and finally is not clear, on account of incomplete work: the meaning of this is not very clear, but probably it means that when a rate includes some finishing operation, e.g., sectioning earthwork, the Executive Engineer shall be at liberty to pay short for work not so finished.
7. In one agreement a note, which in substance is partly a condition (very vaguely expressed) as to the payment (by set off) for the value of materials to be supplied by the Executive Engineer, and partly a specification of quality and manner of work, is improperly inserted in the schedule.
8. In the cases referred to in paragraphs 5, 6, and 7 above, the agreements examined were in each case the original documents executed by the contractor, and in no case is the addition, which might easily have been made after the execution of the agreement, attested by the initials or signature of the contractor. In the case referred to in paragraph 7 the addition is in a different handwriting from that of the rest of the schedule, and apparently written in different ink at a different time.
9. In three agreements conditions or instructions, more or less important, have been added below the contractor's signature. In one case the instructions relate to the manner and sequence of carrying on work.
10. In none of the agreements already referred to is there anything implying an undertaking by the contractor to do any definite amount of work or to do any specified thing within any definite time, as the form does not provide for anything of the sort; but in the remaining sixteen agreements such an undertaking is introduced, or is implied by what is probably an improper modification of the form—the form not being intended for an agreement to do a definite quantity of work.
11. In one case this is done by altering the schedule so as to make it show not only rates but quantities and amounts.
12. In two cases (of the same division) of agreements relating to earthwork, it is done by the insertion of a fourth clause to the effect that "if the sectioning is not properly done by a certain date;" in one case "the amount held for the purpose" (which amount is nowhere specified or provided for), and in the other case "the amount on account of 10 per cent." (which is not a very intelligible expression), will be forfeited.
13. In four agreements a fourth clause is added simply to the effect that the work is to be completed by a certain date, without any mention or suggestion of any penalty if it is not so completed.
14. In ten agreements, chiefly from one division, it is shown by the insertion of a further condition to the effect that if the contractor does not complete the work or do work of a certain amount or value, either (a) by a specified date, or (b) within a specified time from a specified event, such as the fixing of the site of the work, then he is to forfeit either (1) his deposit (though in most cases there is no agreement whatever about giving any deposit), or (2) a stated percentage on the total of the estimate, or (3) so many rupees a day until completion, or (4) a specified sum, or (5) his deposit (not provided for however) plus the percentage deduction from bills (also not specifically provided for).

15. In two of these agreements the words "Executive Engineer" in the body of the agreement and in conditions 1 and 3 have been improperly altered to Sub-divisional officer.

16. The additional conditions referred to in paragraphs 12, 13 and 14 are in all cases inserted in such a way that it would be impossible to say positively whether they were inserted before or after execution, and in no case—I am speaking of original documents, not of copies—is the added condition separately attested by the contractors initials or signatures.

16A. Very few of the agreements are properly stamped. Court-fee stamps are generally used; and as regards the value of the stamp, except in one case, no difference is made when a specific sum is pledged as security instead of a deduction from payments.

Form No. M. 170—Petty contracts not exceeding Rs. 2,000.

17. Fourteen contracts in this form have been received and examined. In connection with these the first point to be noticed is the way in which the several blanks and the schedules are filled in.

18. The first blank is that at the very beginning of the agreement for the name of the contractor: in two cases this was not filled in at all.

19. The blank in the third line, which is evidently intended for entry of the name of the work, or other particulars localizing the work to be done, was in two cases (different divisions) filled in with a date "20th March 1885" and "30th June 1887."

20. In the schedule in one case the rates, the essence of the contract, are not entered at all, but only the probable quantities with the remark against them "as per estimate," the estimate, however, not being attached or in any way identified. In another case, the work being the widening of a trace into a bridlepath, the description of work to be done, is not given at all: the intention of course is that the contractor should do all work necessary for the widening, but this should be specified. In scarcely any case is any attempt made (either by taking the contractor's initials immediately below the last entry, or by ruling down from corner to corner below the last entry) to obviate the possibility of an allegation that any entry has been made after execution.

21. The blank in the condition IV, intended to be filled in with a stated percentage, is in most cases so filled in, but too often in figures instead of in words; in a few cases it is filled in with "a deposit of Rs. _____ and _____ per cent.;" in several cases it is left blank, whether deliberately or through carelessness, it is impossible to say.

22. The first blank in condition VI, the use of which is by no means apparent, is sometimes filled in with the contractor's name, and in one case with the words "or his agent;" the last, which makes the agreement provide for fining the agent, is certainly objectionable.

23. The second blank in the same condition is generally filled in, as intended, with a specified sum in rupees, varying from Rs. 10 to Rs. 200, or from about 1 per cent. to about 20 per cent. of the amount of the contract. In one case evidently through carelessness the word "rupees" is entered without any number; and in several cases, either deliberately or through carelessness, the blank is not filled in at all.

24. In several cases the contract is not signed by the contractor at all, but only initialled; one of these cases being, moreover, one in which the contractor's name is not even entered in the opening of the agreement, so that there really is absolutely nothing to show who is the contractor.

25. In several cases the execution of the contract has not been witnessed at all, and in one case the only witness is the Executive Engineer himself.

26. In four cases an additional condition is added providing for completion by a certain date, but without any penalty for non-completion; and in one case a condition is added that "no payment shall be made for earthwork until the masonry is completed." None of the additions are attested, and any of them might have been made after execution.

27. Several of the contracts are not stamped at all; some are stamped with adhesive court-fee stamps, and some with one anna bill stamps.

28. In one agreement the following conditions 4 and 5 are added in the vernacular, namely:—

"4. The above conditions in English having been translated to me in Telugu I bind myself to the same.

"5. I agree to pay the cost of marking out the line, including bamboos, ropes, coolies, &c."

29. On one contract the following additional conditions numbered XII to XV are inserted below the execution, but separately signed by the contractor, namely:—

XII. The contractor shall complete the work section by section and shall dig pits of such sizes and in such places as shall be pointed out to him by the subordinate in charge.

- XIII. The contractor shall report all cases in which the mirassadars object to his taking earth, and shall not dig pits in their lands until he has obtained written orders to do so from the subordinate in charge.
- XIV. The measurements will be pit measurements taken by tape and kel or bank measurements taken by level, whichever shall be deemed most advisable by the officer in charge.
- XV. The contractor shall deposit at the time of signing this agreement Rs. 40, and shall agree to a deduction of 5 per cent. on all bills submitted in his favor until a sum of Rs. 40 has been deducted. This sum, with his deposit Rs. 80 in all, shall be forfeited to Government if the work is not completed by 15th day of February 1889.

(For Form No. M. 171, see paragraphs 54 *et seq.*, and for Form No. M. 172, see paragraphs 58 *et seq.*)

Form No. M. 174—Conditions of a schedule contract.

29A. Thirteen specimen agreements in this form have been received and examined. Five of them (all of them for works) are not accompanied by the schedule and specification referred to in the body of the agreement.

30. Of the eight which are accompanied by schedule and specification four (all from the same division) are for supply of stores or materials only. The schedule and specification seem to include all necessary details; but matters which, according to the ordinary practice in respect of such matters, should be in the schedule, such as enumeration and description of the different articles, are given in the so-called specification and not in the schedule, which is confined to a statement of rates. This seems, however, to be in accordance with the wording of the body of the agreement, namely, "such works and stores as are enumerated and described in the attached specification at the rate for each item in the schedule thereto appended."

31. None of these contracts for supply of materials show where the materials are to be delivered, which is an essential point in such a contract.

32. Of the four contracts relating to works which have schedules attached to them, only two can be said to show at all the amount of work that the contractor undertakes to do; and in one of the two cases this is only to be gathered from the tender and not, as the agreement implies, from "the specifications and schedules attached."

33. In hardly any cases are the schedules and specifications (whether for work or stores) clearly and unmistakably connected with the contract deed in such wise as to prevent all possible question as to their identity; and in some cases they are not even signed or initialed by the contractor.

34. Coming to the details of the agreements, it is observed that in one case "sanctioned estimate" is substituted for "schedule thereto appended" in the third line. The estimate rates should have been entered in a proper schedule. In another case the estimate amount is quoted after the name of the work (in the blank after fourth line) with the addition "exclusive of contingencies;" this probably means that the amount entered is the amount of the estimate less the amount therein provided for contingencies; but it might easily be taken to mean that there is some part of the work that the contractor is not expected to do.

35. In one case the words "supply such works and stores" in the second line are altered to "supply such remaining works and stores." Probably the contract was for the completion of a work already begun by other agency, but in the absence of any schedule of excepted work the alteration is not sufficiently definite, and possibly with such a schedule and with proper reference, in the agreement to excepted items, no alteration should be necessary.

36. In several cases words are added or interpolated at or near the end of the agreement (page 2 of the form) to the effect that the contractor undertakes to do work of a certain value, or a certain quantity of work by measurement, either by a certain date or weekly or monthly as the case may be.

37. In several cases article 1 of the conditions is altered to provide for fortnightly or weekly measurement or submission of bills.

38. In some cases the last clause of article 3, providing for the formation of a guarantee fund, is scored out, other articles in which the guarantee fund is referred to being unaltered, although no other security is provided. In one case the article is altered to provide for a deposit and an additional article added at the end, to the effect that in case of non-completion by a specified date, the contractor is to forfeit the deposit and also pay a weekly fine.

39. In several cases conditions are introduced into the attached specification which have no business there, such as clauses providing for penalties for delay or non-completion; and conditions to the effect that certain materials are to be obtained or supplied in a particular way.

Form No. M. 175—Schedule Contract under Rs. 10,000.

40. Fourteen contracts in this form have been received and examined. The principal point to be noticed in connection with these is the variety of ways of filling in the schedule and the blanks in articles 1, 7, 13, 19 and 20.

41. In only one case is the first column of the schedule filled up, according to intention, to show the number and paragraph of the specification quoted, and it seems doubtful whether there were in all cases any particular specifications in view.

42. In one or two cases the form of the schedule is altered to make it show probable quantities as well as rates, and in one or two others to show quantities, rates and amounts. In the majority of cases the form as given is adhered to, and in many of them there is nothing to show at all definitely what it is that the contractor undertakes to do, the description of the work undertaken, by reference to plan, specification, &c., being altogether insufficient.

42A. In one case a rate is entered as Rs. — per 1,000 cubic feet or Rs. — per cubic yard. The two rates are not, and of course cannot, be absolutely identical. In another case some items are entered without any rates at all; and in a third case lump sums are entered against certain items with a remark that they are only approximate estimates, and that work done will be paid for according to measurement, though at what rate is not apparent.

43. The important blank in article 1, which is presumably intended for the entry and identification of all the attached schedules and specifications by which the character and extent of work to be done are to be evidenced, is filled in a great variety of ways, thus:—

- (a) "in the following specification," meaning in this case, not an attached specification but the schedule in article 5.
- (b) "in the estimate for (name of work)," such estimate not being identified;
- (c) with the name of the work simply;
- (d) "therein," whatever that may mean;
- (e) as "repairing (name of work) estimate No. —,"
- (f) "in the accompanying tender" or "in the tender for (name of work) dated —,"
- (g) "in the sanctioned estimates for (name of work), and in the reports attached thereto;"
- (h) in the estimate, plan and specification for (name of work)."

When the estimate is referred to the amount is sometimes quoted, and in one case the appropriation for the year.

44. It may be observed that there is an obvious misprint, which somewhat obscures the intention of this blank; the word "in" should follow immediately after "described" instead of preceding "as are enumerated." This may perhaps partly account for such entries as c, d and e and show how necessary it is to be minutely careful in drawing up such forms.

45. The blank in article 7 is variously filled in thus—

- (a) "to complete the work by (specified date)" or "to do certain work of a certain value by (specified date) or both;"
- (b) as in (a) and in addition "to forfeit (specified sum or so much a week or month) in case of failure;"
- (c) "to begin work on (specified date) and to do work of (specified value) every month, and to complete work by (specified date);"
- (d) to complete work by (specified date) and to use only Government bricks, tiles and lime supplied at rates prevailing in the division;
- (e) "under the conditions (printed) in page 6."

46. The blank in article 13 is variously filled in thus:—

- (a) "after expenditure of each month;"
- (b) "and paid once a month;"
- (c) "at least once a month;"
- (d) "that is on the 1st and 15th of each month;"
- (e) "not less than one month," whatever that may mean.
- (f) "and paid on or about the (specified dates at monthly intervals);"
- (g) "at least once a month on a day appointed by the Executive Engineer. Measurements to proceed whether contractor or his agent is present or not, and the contractor to accept bills (sic) based on such measurements;"
- (h) "and payments made to him upon the measurement of the subordinate in charge of the work;"
- (i) "both while in progress and after completion;"
- (j) "after each section of work is completed;" what is a section does not appear, and the work is apparently not one that could well be done in sections;
- (k) "and completed by the—."

The intention of the blank is not very clear, but probably it is intended for insertion of words providing for periodical payments. Very few of the entries say anything whatever about payment. Some of the entries can hardly be said to have any meaning at all.

47. The blanks in article 19 are variously filled in as follows:—

- (a) "the sanctioned estimates (not identified) and the instruction of the Executive Engineer or his agent;"
- (b) "specifications, plans, &c." (not identified);

- (c) "the conditions and instructions in the specifications and drawings furnished to him;"
- (d) "plans and sections" (not identified);
- (e) "the order of the Executive Engineer;"
- (f) "the order of A B, Esq." which might be a little awkward if A B, Esq., went away and was succeeded by Y Z, Esq.;
- (g) "the order of the Executive Engineer or his subordinate, and in accordance with sanctioned plans, estimates and specification" not identified);
- (h) "to do work of (specified values) by (specified dates) and to deposit (Rs. —) and to allow a deduction of — per cent. from bills up to a total of Rs. —, to be forfeited for breach of conditions," and *after this* "the contractor further agrees to complete work by (specified date)."

48. In no case can it be said that the plans, estimates, specifications, &c., referred to are properly and satisfactorily identified. This remark applies equally to the entries referred to in paragraph 43.

49. The blank in article 20 is filled up in various ways as follows:—

- (a) "agrees to allow the Executive Engineer to deduct — per cent. of payments;
- (b) "agrees to deposit Rs. —";
- (c) "agrees to deposit Rs. — and — per cent. of the value of work done;"
- (d) "agrees to deposit Rs. — and forego (sic) the same in case of failure to complete the work by (specified date);"
- (e) "agrees to deposit Rs. 600 as a mortgage with possession."

In hardly any case is any attempt made to specify the circumstances in which the deposit or other guarantee fund may be appropriated.

50. In one case the conditions on page 6 of the form are scored out, and the "conditions of a schedule contract" form No. 171 (with articles 1, 3, 9 to 12, and 14 to 18 eliminated) are entered in substitution, with a manuscript condition at the end to the effect that the contractor is to supply all bamboos, pegs and strings for marking out and to be paid therefore at stated rates.

51. In one case the following additional articles are inserted:—

- "and the contractor further agrees not to claim anything extra for scaffolding, as the rates in the estimate allow for scaffolding"
- "and the contractor further agrees to have no further allowance of time on account of bad weather, &c."

52. The blank in article IV and VI of the condition on page 6 are generally filled in according to intention, *i.e.*, the first, with a stated percentage, and the second, with a definite sum; but in one case the words "till completion" and in another the words "in case no security is deposited," are added after the percentage in the first blank; and in another case the second blank is filled up to make the text run "may fine the contractor to the extent he thinks necessary." The first two entries might easily lead to misunderstanding, and the last is objectionable as not being definite, and therefore leaving room for opening the question of what is and what is not reasonable.

Form No. M. 176—Lump sum contract.

53. Only five specimen contracts have been received in this form, and one of them is really a schedule contract, the wording of the body of the agreement having been altered accordingly. The other four are *bona fide* lump sum contracts, and there is nothing particular to notice as to the manner of filling in the form.

Form No. M. 171—Conditions to be attached to a petty contract.

54. Eleven specimen sets of conditions in this form have been examined. In two cases article XX (limiting value of work to be done between any two payments) is scored out; in one case all the articles from I to XIII are scored out, probably because the conditions are attached to a petty contract in form 172, and it was thought that the conditions on the back of that form are a sufficient substitute.

55. The following additional articles have been inserted in one or other of the sets of conditions, namely:—

- (a) "Final payments will be made after the roof has been tested by one rain."
- (b) "Two-fifths of the earthwork must be executed by specified date."
- (c) "The contractor shall show monthly progress of not less than 400 rupees of work."

56. In no case can it be said that the contract or agreement to which the conditions are supposed to be attached is in any way identified, and of the three cases in which agreements have been attached (and sent together with the condition) in two cases the "conditions" are

not referred to at all in the agreement, and in the third case, though referred to, they are not identified in any way.

Form No. M. 167—Agreement of deposit to secure due performance of a contract.

57. Six agreements of deposit in form 167 have been received from the Consulting Architect's office, five of them dated 1883 and the other 1888. Apparently this is the only division in which such agreements have ever been taken, and as the deposits were in each case in cash, whereas the form is intended for a deposit of Government promissory notes, the form has in each case been modified more or less suitably. Unless, perhaps, by accident as regards value, none of the agreements are properly stamped, either as regards value or kind of stamp: they are all stamped with eight anna court-fee stamps.

Form No. M. 172—Petty contract under Rs. 500.

58. Thirteen petty contracts in form 172 have been received and examined. In three cases the form has not been modified or added to. In five cases conditions are added to the effect that the contractor is to complete the work by a certain date or forfeit a specified sum or specified percentages of the estimate; and in two cases conditions are added that the contractor will further be fined for bad work or slow progress.

59. In two cases the contract is for supply of materials (stone or concrete blocks) for which the form is perhaps not very suitable.

60. Only in two cases is any provision made for any kind of security by deposit or deduction.

ANNEXURE C.

Abstract of material points noticed in specimen agreements examined, with remarks thereon.

[N.B.—Throughout this annexure, unless otherwise stated, the references under "Points noticed" are to paragraphs &c., in Annexure B, and under "Remarks" to the paragraphs, &c., of the principal note].

THINGS THAT EXECUTIVE ENGINEERS WANT TO PROVIDE FOR.

Concerning security and appropriation thereof.

Remarks.

1. Might be provided for in instructions (see paragraph 147), but not necessary to mention it specifically in the agreement.

2. Should be provided for in all forms, but the permissible variations in the shape of the penalty should be as few as possible (see paragraph 86).

Points noticed.

1. To provide for the stipulated deposit being taken at the time of executing the agreement (29 XV).

2. To provide specific penalties (in various shapes) for non-completion of work by specified date (14, 45-b, 47-b).

Concerning frequency of measurements and payments.

3, 4 and 5. It seems desirable that the terms of the conditions as to this matter should be as general as possible; and it seems especially undesirable to provide for payments on specific dates which may afterwards prove impracticable (see paragraph 89).

6. It scarcely seems practicable to provide for this in forms of agreement for general use, but the object in view can probably be equally well secured by general conditions empowering the Executive Engineer to defer payments (otherwise claimable) pending completion of connected items of work (see paragraph 89).

3. To provide for more frequent than monthly payments (*e.g.*, weekly or fortnightly) (37).

4. To limit the frequency of monthly measurements and payments (4 b).

5. To provide for payments on specified dates (46 f).

6. To provide for payments on completion of sections of works only.

Concerning conduct and methods of measurements.

7. This can best be met by a general condition in some such terms as article 10 of form M 175 (see paragraph 89-A).

8. This seems hardly necessary except in connection with final measurements, for which a condition in terms of article 17 of form M 174 would probably be suitable (see paragraph 89-A and items 71 to 74 of analysis).

7. To provide for a particular method of measurement (29 XIV).

8. To provide for giving notice of measurements to contractor, and that if he is absent after notice, measurements shall nevertheless be binding (46 g).

Remarks.

9. This may be desirable, unless covered by some general condition as to agency of subordinates. I do not think there is any provision for it in any existing forms (see paragraph 89-A).

Concerning terms of payment and set off.

10. It would hardly be convenient to specify details of this sort otherwise than in schedules, either schedules of work and things to be done or provided, or schedules of excepted items, preferably the latter. I do not think that any clauses in any existing form can be said to cover the provision that the contractor shall lay out work and bear the cost (see items 12 to 28 of the analysis). Perhaps this should be provided for (see paragraph 82).

11 and 12. See paragraph 31 (also paragraph 24 below).

13 to 16. All these provisions may be desirable, but they can all, I think, be covered by one rather wide clause (see paragraphs 89 and 98-A).

Concerning progress and conduct of work.

17 and 18. It seems unnecessary to make provision for such matters, and it would be very difficult to do so in any form of agreement for general use. The usual broad condition that the contractor is to proceed with due diligence, and prosecute the work to the satisfaction of the Executive Engineer, and that he is to comply with the instructions of the Executive Engineer, would seem quite sufficient. If any definite rate of progress is required the contractor can be served with a notice to that effect (see paragraph 81).

19. This can easily be provided for if necessary; which, however, seems doubtful; a plain condition as to time of completion, with general conditions as to progress (as above) being apparently sufficient (see paragraph 82).

20. I do not think any attempt should be made to provide for this in the agreement itself. As regards any points not provided for in the specification, the matter should, I think, be dealt with by notice or instructions to the contractor (see paragraph 81).

21. Existing forms do not recognize any agent or subordinate of the Executive Engineer. This should, I think, be provided for (see paragraph 85).

Points noticed.

9. To provide for measurements by subordinates and payments thereon.

10. To provide that the contractor shall, or as the case may be shall not, bear incidental expenses, such as cost of laying out works or of scaffolding (28, 51).

11. To provide for contractor taking and paying, or allowing for (by set off), certain materials, e.g., materials at site of a work already begun.

12. To provide for payment of materials supplied by the Executive Engineer (7) (45 d).

13. To provide for a reduced rate of payment on account in case of measurements by Subordinates, pending inspection or check measurement by the Executive Engineer or Sub-divisional officer (6 a).

14. To provide for similar reduced rates pending some finishing operation (6 b).

15. To provide for suspension of payment for certain items pending completion of others, e.g., covering earthwork until masonry is completed (26).

16. To provide for postponement of final payment, e.g., until the roof of a building has been tested by rain (55 a).

17. To provide for specified rate of periodical progress (weekly, monthly or otherwise) measured either by quantity or value of work done, or by completed sections of work (55 a and b, 36, 45 a).

18. To provide for a specified value of work being done in the financial year (end of 43).

19. To provide for commencement of work by specified date, or within a specified time from a specified event, such as the fixing of the site.

20. To provide for the manner and sequence of carrying on work and for proceedings of contractor (29, XII and XIII).

21. To provide for work being done in accordance with instructions of the Executive Engineer or of his subordinates (47 e and g).

*Concerning the character of the contract.**Remarks.*

22. There might be no harm perhaps in adding some such words in a condition such as 1 of form 171, but it would then be necessary to be very careful that the dimensions are entered in the document quoted; and on the whole it would perhaps be safer to omit any such words.

23. In such a case it would, no doubt, be proper to indicate the nature of the contract in the general description of the contractor's undertaking; and it would generally be necessary to provide for taking over certain materials (see paragraph 31 of note and paragraph 11 of this annexure).

24. It would probably be convenient to have a clause providing that the materials specified in a certain schedule shall be supplied by the Executive Engineer or obtained from some other source specified in the schedule (see paragraph 31).

Concerning extent of Contractor's risks.

25. This is probably not absolutely necessary, but there would be no harm in making it perfectly clear that the contractor's liability can only be extinguished (as of right) by obstruction on the part of the Executive Engineer or Government, or by their failure to do some necessary or stipulated act (see paragraph 87-A).

Concerning the understanding of the contract.

26. This hardly seems necessary. It must, I think, be assumed that a man will not sign an agreement that he does not understand. It would, however, probably be well to provide vernacular translations of the conditions of the several forms of agreements eventually adopted.

*ESSENTIALS NOT ATTENDED TO AND THINGS WRONGLY DONE.**Concerning the parties to the contract.*

27. The form should be so drawn as to make it practically impossible for such an omission to be overlooked (see paragraph 17).

28. This should be avoided. It may easily result in improper limitation of the contractor's responsibility (see paragraph 16).

29. Obviously the contractor's agent cannot be fined.

30. This should not be allowed as long as the Code allows nobody under the rank of Executive Engineer to execute a contract.

*ESSENTIALS NOT ATTENDED TO AND THINGS (PROPER IN THEMSELVES) WRONGLY DONE.**Concerning definition of work to be done.*

31. This is obviously essential (see paragraph 26).

32. This is a necessary precaution, and easily provided for (see paragraphs 36 and 37).

33. This should be clearly indicated (see paragraphs 28 and 29).

Points noticed.

22. To give greater precision to the conditions as to quality and description of materials contracted for by addition of the words "and of the dimensions noted in the tender, (specification or what not)" (4 a).

23. To provide for the case of a contract to complete a work begun by other agency.

24. To provide that the contractor shall obtain specified materials from a specified source (39, 45 d).

25. To provide that the contractor takes risk of bad weather, &c., (51).

26. To provide evidence that the conditions of the contract have been read by, or translated to, and understood by the contractor (28).

27. Name of contractor omitted in the opening of the agreement (24).

28. Introduction of the Executive Engineer personally by name into the agreement (47 f.)

29. Provision for fining the contractor's agent as if he were a party to the contract.

30. Substitution of the Sub-divisional officer for the Executive Engineer as the representative of the Secretary of State.

*Remarks.**Points noticed.*

34. This is essential in such a contract (see paragraph 48).

35. Should be indicated by schedules, plans and other contract documents (see paragraphs 32 *et seq.*).

36. This is very effectually provided for in the form of schedule in article 5 of form 175. It would be well to adopt this plan (see paragraph 38).

34. Place of delivery not stated in contract for materials (31).

35. Definition of quantity and description of work to be done not sufficiently definite (32, 42).

36. Insufficient identification of specification corresponding to each item of work in schedule (42, 47 *c, b, and d, 48*).

Concerning the consideration.

37. It is obviously essential that the rates should be distinctly specified, and any sort of ambiguity should be avoided.

37. Contract rates omitted from schedule of rates (20), or indefinitely quoted as estimate rates without identification of estimate (34), or alternative rates given for a single item, *e.g.*, at per 1,000 cubic feet and at per cubic yard, (42-A), or lump sum estimate for item intended to be paid for by measurement (42-A).

Concerning security.

38 to 40. Vague references to forfeiture of security, when perhaps no security is provided for in the agreement, or when no specific provision is made for the circumstances in which it may be appropriated, are of very little use (see paragraph 75). It is essential that every contract agreement should provide some security for the due performance of the contract. Such conditions are useless without a penalty for failure.

38. Provision inserted for retention and appropriation of security not sufficiently definite (12, 49).

39. Absence of any provision for security (60).

40. Conditions as to completion inserted without penalty for breach (13, 26).

Concerning execution and attestation.

41. Probably interpolation of clauses should be altogether prohibited; but if it is permitted at all any clause inserted in such a way that it *might* have been inserted after execution should be attested by the initials of all executants (see paragraph 145-A).

42 and 43. Such mistakes as these can of course only be provided against by cautions and instructions (see paragraph 145).

44. Probably *separate* conditions should not be allowed, all necessary conditions being included in the agreement itself, but if they are allowed they should be clearly identified in the same way as schedules and other connected documents.

45. This is obviously objectionable; but it is a sort of thing that can hardly be provided against, if the common sense of the officers concerned is not sufficient security.

41. Additional clauses inserted without attestation by contractor (8, 9, 16, 26).

42. Agreement only initialled by contractor instead of being signed, and sometimes not even initialled (24).

43. Execution not witnessed at all, or witnessed by an incompetent witness, *e.g.*, the Executive Engineer himself (25).

44. Paper of conditions, when separate from the agreement itself, not clearly identified or connected with the agreement (56).

45. Conditions and instructions to contractors inserted below the contractor's signature (9).

Providing for things in wrong places.

46. The first point should be separately provided for (see paragraph 31), and the second should be inserted in the specification (see paragraph 34-A).

47. The first point is quite out of place in a specification, and the second would be better provided for separately (see paragraphs 31 and 34-A).

46. Conditions as to payment for materials supplied by the Executive Engineer, and as to quality of work and manner of doing it, inserted in the schedule of rates (7).

47. Clauses as to penalty, and as to obtaining certain materials in a particular way, inserted in specification (39).

*Remarks.**Points noticed.*

48. Such matters should be dealt with in the specification.

48. Instructions (detailed) as to the manner of carrying on work inserted in the body of the agreement (9). (See also items 41 and 42 above).

Unauthorized and injudicious alterations.

49, 50, 51 and 52. Such alterations are very objectionable. There is always a possibility they may introduce some serious defect into the agreement (see paragraph 10).

49. Piece-work agreements altered to suit contracts to do a definite quantity of work (10, 11, 12).

50. Alteration of lump sum contract form to suit schedule contract (53), and of form of agreement of deposit in respect of Government promissory note to suit a case of cash deposit (57).

51. Scoring out of certain conditions, with or without the substitution of others (54, 38).

52. Introduction of vague and irrelevant matter such as amount of estimate, or words as to inclusion or exclusion of "contingencies" (34) or "till completion" and "in case no security is deposited" (see paragraph 35).

Mistakes and carelessness as to filling in blanks.

53 and 54. Mistakes of this sort should be guarded against by so wording the agreements that the object of each blank space shall be unmistakable, or failing this, by notes at foot or in the margin, or by sample agreements with the alternative modes of filling in clearly shown (see paragraph 132).

53. Date inserted in place where the name of work should have been inserted (19).

54. Various incorrect ways of filling in blanks (43, 45, 46, 47).

55. Blanks left for numbers should be filled in words as well as in figures.

55. Blanks carelessly filled in, or not filled in at all (21, 23). Figures instead of or without words.

Mistakes as to stamps.

56. Unless these instruments can be exempted from stamp duty, instructions on the subject of stamps are very necessary.

56. Various (16-A, 27, 57).

Use of unsuitable forms.

57, 58 and 59. Suitable forms should be provided for all ordinary cases, and there will be no necessity for adapting unsuitable forms by making questionable alterations (see paragraph 10).

57. Form 172 for contract for materials only (59).

58. Lump sum contract for schedule contract (53).

59. Government promissory note deposit form for cash deposit (57).

CONTENTS.

1332

Paras.

1 to 12A.—Introductory Remarks—

1. Previous reference to the subject.
2. Present deficiencies illustrated.
3. Absence of instructions as to use of forms.
4. Diversity of conditions in existing forms.
- 5, 6, & 7. Diversity illustrated.
8. Deficiencies as regards provision for security.
9. Limited use of each kind of form.
- 10 & 11. Want of instructions for guidance of Executive Engineers.
12. Plan of this note stated.
- 12A. Opinions on legal points all derived from the Government Solicitor.

13 to 15.—Elements and variations of Contract Agreements—

13. Elements enumerated.
14. Points to be considered and their influence on the number of forms.
15. Significant variations of conditions.

16 to 18.—Parties to the Agreement—

16. Possible parties stated.
- 16A. Description of Executive Engineers.
- 16B. Description of joint contractors.
- 17 & 18. Significant variations.

19 to 24.—Subject-matter of Contract—

19. Points to be considered.
20. Kind of undertaking.
21. Miscellaneous undertakings.
22. Further information desirable.
23. Nil.
24. Extent of undertaking or obligation.

25 to 31.—Definition of Obligation—Single works—

25. Includes general description and particular definition.
26. General description; localisation of undertaking.
27. General description; extent of undertaking.
28. Unsatisfactory provision in existing forms.
29. Arrangement proposed.
30. Enumeration of things to be done distinct from schedule of rates.
31. Schedule of exceptions.

32 to 39A.—Detailed definition and indication—Single works—

32. Requisites stated.
33. Manner of definition.
34. Prescribed contract documents seldom referred to.
- 34A. Nature of a "specification."
35. Reference to estimates undesirable.

Paras.

32 to 39A.—Detailed definition and indication—Single works—cont.

36. Identification of connected documents.
37. Method of identification proposed.
38. Detailed references to specifications.
39. Resulting opening of agreement for single work.
- 39A. Documents to be scheduled.

40 to 47.—Definition of Obligation—General Contracts for works—

40. Apparently two cases.
41. Two cases not really distinguishable.
42. Is money limit necessary.
43. Points to be considered, duration and completion.
44. Provision as to duration of contract.
45. Provision as to time of completion.
46. Terms considered suitable for agreement.
47. Failure to prepare form of agreement explained.

48 & 49.—Definition of Obligation—Supply of Definite Quantities of Materials—

48. Two cases stated and contract or scheduled documents indicated.
49. Terms of agreement.

50 to 52.—Definition of Obligation—General Contract for Materials—

50. Terms of agreement.
51. Contract documents for supplying contracts not specified in Code.
52. Significant variations due to subject-matter of contract.

53 to 53 D.—Consideration—

53. { Consideration may take three forms.
Condition how to be stated.
- 53A. Nature of liability under a lump sum contract.
- 53B. Significant variations.
- 53C. Doubt as to necessity for combined lump sum and schedule contracts.
- 53D. Payment for extra work.

54 to 61.—Provision of Security—

54. Points to be considered.
55. Permissible forms of security.
56. Code not clear as to personal security of contractor.
57. { Personal security of sureties.
Agreements of deposit not taken.
58. Security for advances.
59. Variations of permissible forms of security.

32

Paras.	Paras.
54 to 61.—Provision of Security— <i>cont.</i>	88 to 89A.—Payments on account and measurements— <i>cont.</i>
60. Combinations of permissible variations.	89. Inconvenient stipulation to be avoided.
61. Restriction of permissible forms and variations expedient.	89A. Methods and procedure for measurements.
62 to 68.—Amount of Security—	90 to 98.—Advances—
62. Points to be considered.	90. Condition of Form 174 at variance with Code.
63. Comparative value of different forms of security.	91. Necessity of defining precautions to be taken.
64. Amount and manner of taking security; present practice not satisfactory.	92. Security provided by existing forms.
65. Security required for two purposes.	93. Permissible forms of security (for advances) to be decided.
66. Expediency of affirming responsibility for proper security.	94. Advances not necessary when readily saleable securities can be pledged.
67. Minimum security deposit suggested.	95. Objection to mortgages of landed property.
68. Latitude as to amount of security.	96. Difficulties as regards mortgages of materials.
69 to 74.—Retention and Disposal of Security—	97. Doubt as to character of mortgages of materials.
69. Security to be retained till completion is certified.	98. Advantages of bonds as security for advances.
70. Disposal of deposit and interest.	98A.—Final adjustment of account—
71. Withholding of interest suggested.	98A. <i>Nil.</i>
72. Effect of proposed change only nominal as regards contractor.	99 to 101.—Special provisions relating to joint Contractors—
73. Effect on deposit account considered.	99. Appointment of attorney necessary.
74. Substitution of notes of other loans.	99A. Manner of signing by attorney.
75 to 79.—Appropriation of Security—	99B. Different cases for which powers-of-attorney may be required.
75. Essential requirements dependent on the law of the matter.	100. Liability of each contractor for performance of contract to be personal.
76. Essential requirements stated.	101. Disputes between contractors to justify termination of contract.
77. Purposes for which security should be appropriate.	102.—Service of Notices—
78. Appropriation of "other sums due."	102. <i>Nil.</i>
79. Doubt as to meaning of "due to the contractor."	103 to 105.—Settlement of disputes—
80 & 81.—Time of Completion—	103. Grounds of disputes to be provided for.
80 & 81. How provided for in different cases.	104. Assessment of damages to be provided for.
82 to 83A.—Technical Details—	105. Assessment of contractor's dues.
82. Condition should be determined by Chief Engineer.	106.—Jurisdiction in respect of Suits—
83. Variety of conditions neither necessary nor desirable.	106. <i>Nil.</i>
83A. Contract, petty contract and piece-work.	107.—Modification of Contract—
84.—Subletting—	107. <i>Nil.</i>
84. <i>Nil.</i>	108 to 115.—Cancelment and suspension of Contract—
85.—Executive Engineer's right of entry—	108. Grounds of cancelment.
85. <i>Nil.</i>	109. Terms of cancelment in case of default of contractor.
86 & 87.—Fines and Penalties—	110. Preferable to oust contractor without cancelling contract.
86. Form of penalty.	111. Payments to contractor on cancelment otherwise than for his default.
87. Penalty to be in addition to deduction for bad work.	112. Valuation of work done in case of cancelment of lump sum contract.
88 to 89A.—Payments on account and measurements—	113. Suspension of work.
88. Cases of schedule and lump sum contracts distinguished.	

Paras.	Paras.
108 to 115.—Cancelment and suspension of Contract— <i>cont.</i>	131 to 133.—Points in connection with which instruction seems desirable— <i>cont.</i>
114. Cancelment on account of contractor's difficulties without actual breach.	133. Separate dealings with individuals contracting jointly.
115. Lapse of contract by death of contractor.	134 to 144.—Stamps—
116.—Execution and witnessing—	134. Agreements how to be stamped.
116. <i>Nil.</i>	135. Ignorance as to value of stamps required.
117 to 130A.—Considerations affecting the number of forms required—	136. Stamp-duty affected by manner of filling up forms of agreement.
117. Inconvenient number of forms possibly necessary.	137. Effect of procedure prescribed in Code 1825.
118. Possible reduction by scheduling security.	138. Classification of contract agreements, and connected forms, for stamp-duty.
119. Possible reduction by separation of agreement in respect of security.	139. Doubtful points.
120. Propriety of separation not proved by existing forms.	140. Duty on instruments coming under several descriptions.
121. Inconsiderate adoption of Government of India forms.	141. Exemption of instruments from stamp-duty recommended.
122. Expediency of adopting the India plan suggested.	142. Other ways of avoiding the stamp difficulty.
123. Certain forms of permissible security not adopted in practice, and some objectionable.	143. Exemption in case of powers-of-attorney and instruments for securing advances.
124. Objections to guaranteed railway stock.	144. Doubt as to liability for stamp-duty in certain cases.
125. Objections to personal security and mortgages of landed property.	145 & 145A.—Execution and Attestation—
126. Form of security recommended for retention, and resulting number of forms.	145. Execution and attestation of agreements.
127. Expediency of adopting the Government of India plan further considered.	145A. Caution required as regards corrections and alterations.
128. Resulting simplification explained.	146.—Registration—
129. Results of the two systems compared.	146. Registration.
130. Detail of forms required—conditions; tenders; security agreement; total number.	147 to 148A.—Security—
130A. Consideration of forms of tenders deferred.	147. Time of depositing stipulated security.
131 to 133.—Points in connection with which instruction seems desirable—	148. Recital of security.
131. Use of forms.	148A. Separate security required in respect of each contract.
132. Adherence to forms and models.	149 to 152.—Tender of payment—
	149. Legal tender of admitted dues.
	150. Strictly legal tender to be made when tender on customary terms is refused.
	151. Provision for payment by cheque.
	152. Not liable when Government has a lien.

1332
17TH JANUARY 1884, No. 140 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.
PUBLIC WORKS DEPARTMENT.

General.
Account.

READ—the following paper:—

G.O., dated 14th January 1884, Mis. No. 75, Judicial.

Read—the following Proceedings of the Board of Revenue, dated 7th December 1883, No. 3707:—

Read—the following paper:—

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the 9th day of October 1883.

PRESENT:—

The Honorable Sir Charles A. Turner, *Kt.*, C.I.E., Chief Justice.
The Honorable Mr. Justice Kernan.
The Honorable Mr. Justice Kindersley.
The Honorable Mr. Justice Muttusami Aiyar, C.I.E.
The Honorable Mr. Justice Hutchins.

Referred Case No. 4 of 1883.

Case referred, under section 46 of Act I of 1879, for decision as to the nature of stamping certain contract agreements, by the Board of Revenue, Madras.

Judgment.

We do not understand that, as is contemplated by the Government, a percentage is actually set apart for the contractor and retained.

We understand the terms of the contract, on which the question arises, to amount to this, that the contractor waives the prompt payment of a percentage of the sum to accrue due to him, and agrees that the Government may set off against it what sums it may be entitled to recover from him by reason of breach of contract. It is not, as has been suggested, a mortgage of the percentage of which present payment is postponed; for the property remains in the Government till the sum necessary to pay the amount retained is paid to the contractor, or at least severed from bulk and assigned for such payment. The contract is an agreement and chargeable with stamp duty as an agreement.

Resolution—dated 7th December 1883, No. 3707.

The decision of the High Court will be submitted to Government with reference to G.O., Revenue Department, No. 984, dated 15th September 1882, and G.O., Judicial Department, No. 1702, dated 27th June 1883.

(A true Copy and Extract.)

(Signed) G. MACKENZIE,
Acting Sub-Secretary.

4
Rev-1892/89
34

ENCLOSURE.

Proceedings of the Board of Revenue, dated 15th September 1883, No. 2774.

READ—the following G.O., dated 14th August 1883, Mis. No. 2148, Judicial:—

Read—the following Proceedings of the Board of Revenue, dated 31st July 1883, No. 2195:—

Read—the following G.O., dated 27th June 1883, Mis. No. 1702, Judicial:—

Read—Endorsement of the Public Works Department, dated 19th June 1883, No. 1148-C, on letter from the Superintending Engineer, VI Circle, dated 13th June 1883, No. 516-T. J., forwarding copies of certain correspondence for opinion as to the nature of stamp to be affixed to the contract agreements.

Order—dated 27th June 1883, Mis. No. 1702, Judicial.

Considering the difference of opinion between the Government Solicitor and the Board of Revenue as to the proper stamp in this case, the Board are requested to refer the case, with their own opinion thereon, to the High Court for decision.

(True Extract.)

(Signed) C. G. MASTER,
Chief Secretary.

To the Board of Revenue, with all papers.

Resolution—dated 31st July 1883, No. 2195.

The Board beg to point out that their view as to the amount of stamp duty leviable on documents of the description referred to was accepted by Government (having the views of the Government Solicitor before them) in the Revenue Department, in their order, dated 15th September 1882, No. 984, and that this order appears to have been overlooked by the Judicial Department, from which the present reference has been made. The Board have no doubt but that the Government Solicitor is incorrect in holding these contracts to be mortgages. Clause 4 of the "Conditions" given in a separate sheet of paper attached to the document now forwarded simply authorises the Executive Engineer to withhold payments for a portion of the work done, from time to time, until the entire work is finished, with a view to secure good work and provide against default; and this provision to withhold payments for work to be done in the future, and which may not after all be executed, cannot be regarded as creating a right over "specified property" as security for the performance of an engagement within the meaning of the definition of "mortgage," given in clause 13, section 3 of the Stamp Act. The "specified property" referred to in the section must clearly be property having actual existence at the time when the contract is made, and cannot refer to a mere right to demand payment for work done. In these circumstances, the Board beg to be informed whether the reference to the High Court should be made.

2. Court-fee labels cannot, of course, be used to denote stamps liable to duty under Act I of 1879.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Secretary.

To the Chief Secretary to Government, Judicial Department,
with all papers returned.

Order—dated 14th August 1883, Mis. No. 2148, Judicial.

The reference to the High Court should be made as directed.

(True Extract.)

(Signed) E. S. LAFFAN,
Acting Under Secretary.

To the Board of Revenue, with all papers.

RESOLUTION—dated 15th September 1883, No. 2774.

Under instructions from Government, the Board resolve to refer for the decision of the High Court, under section 46 of Act I of 1879, the question as to whether deeds of contract for

work to be executed by contractors, drawn up in the form of which a specimen is enclosed, should be stamped as mortgages with possession under article 44 (a) of Schedule I of the Stamp Act, or as agreements not otherwise provided for under article 5 (c) of the same schedule.

2. The Government Solicitor, whom the Government consulted, was of opinion that the documents should be stamped as mortgages with possession, because the provision in the "Conditions" attached to the contract to the effect that the engineer may withhold payment for a certain percentage of the value of work executed to cover compensation for default on the part of the contractor, and as security for the proper performance of the contract, amounted to the creation of a guarantee fund, and a deed of mortgage is defined in the Stamp Act to include every instrument whereby, for the purpose of securing the performance of an engagement, one person transfers or creates to or in favor of another a right over specified property.

3. The Board, however, consider that the provision to withhold payment for a portion of the work to be done in future, and which may not after all be executed, cannot be regarded as creating a right over "specified property" within the meaning of the definition of mortgage given in section 3, clause 13 of the Stamp Act, as "the specified property" must be property having actual existence at the time the contract is made and cannot refer to a mere right to demand payment for work done; and they are of opinion that the document falls under article 5 (c) of Schedule I of the Stamp Act.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Secretary.

Order—dated 14th January 1884, Mis. No. 75, Judicial.

Communicated to the Public Works Department in continuation of G.O., 27th June 1883, No. 1702.

(True Extract.)

(Signed) M. HAMMICK,
Ag. Assistant Secretary.

ORDER—dated 17th January 1884, No. 140 W., Public Works.

Communicated to the officers of the Public Works Department for information and guidance.

(True Extract.)

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

To Superintending Engineers.

To the Consulting Architect to Government.

" General Superintendent, Public Works Workshops.

" Superintendent, Madras Harbour Works.

" Examiner, Public Works Accounts.

" Chief Engineer for Irrigation.

" Consulting Engineer for Railways.

" Examiner, Railway Accounts.

Exd. E. Fernandez.

Spare Copies

GENERAL.
ACCOUNT.

Govt. of (1884) Madras.

PUBLIC WORKS.

Dated January, 17th.

Recd.

Encl.

G.O., 17th Jan. 1884, No. 140 W.

JANUARY.

Contract Agreements

Re nature of stamp to be affixed to cer-
tain —.

REFERENCE TO MADRAS P.D.W. CODE.
PARA. 1630.

P.W.D. FORM
No. M 164.

Agreement for Deposit of Government
Security to cover Advances.

36

AGREEMENT OF DEPOSIT.

Articles of Agreement made and entered into this _____ day
of _____ one thousand eight hundred and _____
between _____ (hereinafter throughout these
presents called the Contractor) of the one part and the Secretary of State for India in Council of
the other part **Whereas** the Contractor has lately contracted with the Executive Engineer
of _____ (acting in the premises by order of the
Governor in Council of Fort Saint George on behalf of the said Secretary of State in Council) for the
execution of certain works in the

Department of Public Works
as per Schedule hereunto annexed and under such contract is from time to time to receive from the said
Executive Engineer divers sums of money as and by way of advances to enable him the Contractor to
prosecute and complete the said works. **AND Whereas** the Contractor in consideration of his receiving
such advances has previously to the execution of these presents deposited with the said Executive
Engineer the following Government Promissory Notes as security for duly accounting for the said
advances that is to say Nos.

THESE PRESENTS WITNESS that in pursuance of the
said contract and in consideration of the said advances so to be made as aforesaid it is hereby agreed
and declared by and between the said parties to these presents in manner following that is to say
that if the Contractor shall and will to the satisfaction of the said Executive Engineer duly pay and apply
all such advances as may be made to him for the purpose of performing the scheduled works and shall
and will as and when required by the said Executive Engineer on demand furnish full and true accounts
and particulars according to the requirements of the said Executive Engineer of his expenditure on or in
connection with the said works and shall and will on demand make good and refund the final balance (if
any) which shall be found due from him on the final adjustment of the accounts in connection with the
said contract and shall and do on demand pay or cause to be paid to the said Secretary of State in Council
his successors and assigns or to the said Executive Engineer for the time being all losses damages costs
and expenses which he or they have sustained incurred or be put to in consequence of the default or failure
by the Contractor to pay or apply or account for as aforesaid then the above-mentioned Government
Promissory Notes shall be returned to the Contractor. But in case default shall in the judgment of the
said Executive Engineer be made by the Contractor or his representatives in duly paying and applying all
such advances as aforesaid or in rendering the accounts or making the payments or making good the losses
damages and expenses hereinbefore mentioned and contained or any part thereof respectively then and in
any such case and immediately thereupon and at any time thereafter it shall be lawful for the said
Executive Engineer for the time being for and on such behalf as aforesaid to sell and dispose of the said
Government Promissory Notes or such part thereof as he shall deem sufficient in that behalf and to apply
the proceeds thereof (after deducting therefrom all expenses attending such sale) in and towards the
liquidation of the liability of the Contractor in respect of such default as aforesaid to which the Contractor
shall and will not object. **AND** it is hereby lastly declared and agreed by and between the said parties to
these presents that until the completion of the said works covenanted to be performed by the Contractor to
the satisfaction of the said Executive Engineer for the time being and until the final adjustment and
settlement of the accounts between the Contractor and the said Executive Engineer and payment of the
final balance (if any) in connection with the said contract the said Government Promissory Notes shall
remain in the hands and custody of the said Executive Engineer for the time being. In witness whereof

1237
3
the Contractor and the said Executive Engineer acting in the premises as aforesaid have set their respective
hands and seals the day and year first above written.

Signed sealed and delivered by the said
in the presence of

Witnesses.

Signed sealed and delivered by the above-named Executive Engineer of _____
by order of the Governor in Council of Fort Saint George on behalf of the Secretary of State
for India in Council in the presence of

Witnesses.

37

REFERENCE TO MADRAS P.W.D. CODE:

PARA. 1630.

1332

P.W.D. FORM.
No. M. 165.

Agreement for Deposit of Government
Promissory Notes by Third Party.

E. 12
M. 427

38

6
10/10/1921

AGREEMENT OF DEPOSIT.

Articles of Agreement made and entered into this _____ day
of _____ one thousand eight hundred and _____
between _____ (hereinafter throughout these
presents called the Contractor) of the first part _____ of

_____ of the second part and the Secretary of State for India in
Council of the third part. **Whereas** the Contractor has lately to wit on or about the _____ day
of _____ one thousand eight hundred and _____ contracted with the Executive Engineer
of _____ (acting in the premises by order of the
Governor in Council of Fort Saint George on behalf of the said Secretary of State in Council) for the
execution of certain works in the
Department of Public Works as per Schedule hereunto annexed and under such contract is from time
to time to receive from the said Executive Engineer divers sums of money as and by way of advance to
enable him the said Contractor to prosecute and complete the said works and **Whereas** the said

on the occasion aforesaid and at the request and for and on behalf
of the Contractor has deposited with the said Executive Engineer the following Government Promissory
Notes as security for the duly accounting for the said advances by the Contractor. NOW THESE PRESENTS
WITNESS that in pursuance of the said contract and in consideration of the said advances so to be made
as aforesaid it is hereby agreed and declared by and between the said parties to these presents in manner
following that is to say that if the Contractor shall and will to the satisfaction of the said Executive
Engineer duly pay and apply all such advances as may be made to him for the purpose of performing
the said scheduled work and shall and will as and when required by the said Executive Engineer on
demand furnish full and true accounts and particulars according to the requirements of the said Execu-
tive Engineer of his expenditure on or in connection with the said works and shall and will on demand
make good and refund the final balance (if any) which shall be found due from him on the final
adjustment of the accounts in connection with the said contract and shall and do on demand pay or
cause to be paid to the said Secretary of State in Council his successors and assigns or to the said
Executive Engineer for the time being all losses damages costs and expenses which he or they have
sustained incurred or be put to in consequence of the default or failure by the Contractor to pay or
apply or account as aforesaid then the above-mentioned Government Promissory Notes shall be
returned to the said

But in case default shall in
the judgment of the said Executive Engineer be made by the Contractor or his representatives in duly
paying and applying all such advances as aforesaid or in rendering the accounts or making the payments
or making good the losses damages and expenses hereinbefore mentioned and contained or any part
thereof respectively then and in any such case and immediately thereupon and at any time thereafter it
shall be lawful for the said Executive Engineer for the time being for and on such behalf as aforesaid
to sell and dispose of the said Government Promissory Notes or such part thereof as he shall deem
sufficient in that behalf and to apply the proceeds thereof (after deducting therefrom all expenses
attending such sale) in and towards the liquidation of the liability of the Contractor in respect of such
default as aforesaid to which the said _____ shall and will

not object. AND it is hereby lastly declared and agreed by and between the said parties to these presents
that until the completion of the said works covenanted to be performed by the Contractor to the satis-
faction of the said Executive Engineer for the time being and until the final adjustment and settlement
of the accounts between the Contractor and the said Executive Engineer and payment of the final
balance (if any) in connection with the said contract the said Government Promissory Notes shall remain
in the hands and custody of the said Executive Engineer for the time being and the said

or his representatives shall not claim the same IN WITNESS WHEREOF the said

parties to these presents and the said Executive Engineer acting in the premises as aforesaid have set
their respective hands and seals the day and year first above written.

Signed sealed and delivered by the said
in the presence of

1332

Witnesses.

Signed sealed and delivered by the said
in the presence of

Witnesses.

Signed sealed and delivered by the above-named Executive Engineer of _____
by order of the Governor in Council of Fort Saint George on behalf of the Secretary of
State for India in Council in the presence of

Witnesses.

39

REFERENCE TO MADRAS P.W.D. CODE.

PARAS. 1618 AND 1619.

1332

P.W.D. FORM
No. M 166.

Agreement for Forfeiture of Deposit on non-
performance of Contract.

516
17/12/77

100

7
17/12/77

AGREEMENT FOR FORFEITURE OF DEPOSIT ON NON-PERFORMANCE OF CONTRACT.

Articles of Agreement made and entered into this _____ day
of _____ one thousand eight hundred and _____ (hereinafter throughout these
between _____ presents called the Contractor) of the one part and the Secretary of State for India in Council of the other
part. **Whereas** the Contractor has lately contracted with the Executive Engineer of
_____ (acting in the premises by order of the Governor in
Council of Fort Saint George on behalf of the said Secretary of State in Council) for the execution of
certain works in the

Department Public Works as per Schedule hereunto annexed and **Whereas** the Contractor has
previously to the execution of these presents deposited with the said Executive Engineer the following
Government Promissory Notes as security for the due execution of the said contract (that is to say)
No. _____

Now THESE PRESENTS WITNESS
that in pursuance of the said contract it is hereby agreed and declared by and between the said parties
to these presents in manner following that is to say that if the Contractor shall and will well and truly
execute and perform the works contracted to be performed by him and observe perform and fulfil the
contract by him entered into to the satisfaction of the said Executive Engineer for the time being (which
shall be notified by a proper certificate under the hand of the said Executive Engineer for the time being)
AND ALSO if the Contractor or his representatives shall and will pay or cause to be paid to the said Secre-
tary of State in Council his successors and assigns or to the said Executive Engineer for the time being
all losses damages costs and expenses which he or they have sustained incurred or be put to in conse-
quence of the default or failure by the Contractor for the due performance of the contract or in the
execution and completion of the said works or any part thereof then the abovementioned Government
Promissory Notes shall be returned to the Contractor PROVIDED ALWAYS and it is hereby further declared
and the true intent and meaning of the parties hereto is that if default shall be made by the Contractor
in the performance of the said contract to the satisfaction of the said Executive Engineer (to be certified
as aforesaid) or in making good the losses damages and expenses hereinbefore mentioned and contained
or any part thereof respectively then and in any or either of such cases it shall and may be lawful for
the said Executive Engineer for the time being acting on such behalf as aforesaid to sell and dispose of
the said Government Promissory Notes or such part thereof as he shall deem sufficient and apply the
proceeds thereof (after deducting therefrom all expenses attending such sale) in and towards the liqui-
dation of the liability of the Contractor in respect of such default as aforesaid AND it is hereby declared
and agreed by and between the said parties to these presents that until the completion of the said
scheduled works covenanted to be executed and performed by the Contractor to the satisfaction (to be
certified as aforesaid) of the said Executive Engineer for the time being and until the final adjustment of
the accounts between the Contractor and the said Executive Engineer and payment of the final balance
(if any) in connection with the said contract the said Government Promissory Notes shall remain in the
hands and custody of the said Executive Engineer for the time being.

IN WITNESS WHEREOF the Contractor and the said Executive Engineer acting in the premises as
aforesaid have set their respective hands and seals the day and year first above written.

Signed sealed and delivered by the said
in the presence of

Witnesses.

1332

Signed sealed and delivered by the abovenamed Executive Engineer of _____
by order of the Governor in Council of Fort Saint George on behalf of the Secretary of State
for India in Council in the presence of

Witnesses.

21

REFERENCE TO MADRAS P.W.D. CODE.

PARAS. 1618 AND 1619.

1332

P. W. D. FORM.
No. M 167.

Agreement for Forfeiture of Deposit made
by Third Party on non-performance of the
Contract.

8/15
PW4217/18

8
PW4217/18

A 2

AGREEMENT FOR FORFEITURE OF DEPOSIT MADE BY THIRD PARTY ON
NON-PERFORMANCE OF THE CONTRACT.

Articles of Agreement made and entered into this _____ day
of _____ one thousand eight hundred and _____
between _____ (hereinafter throughout these presents
called the Contractor) of the first part of _____ of
the second part and the Secretary of State for India in Council of the third part. **Whereas** the
Contractor has lately contracted with the Executive Engineer of _____ (acting
in the premises by order of the Governor in Council of Fort Saint George on behalf of the said Secretary
of State in Council) for the execution of certain works in the

Department of Public Works as per Schedule hereunto annexed and

Whereas the said _____ on
the occasion aforesaid and at the request and for and on behalf of the Contractor has previously to the
execution of these presents deposited with the said Executive Engineer the following Government
Promissory Notes as security for the due execution of the said contract by the Contractor that is to say
Nos. _____

PRESENTS WITNESS that in pursuance of the said contract it is hereby agreed and declared by and
between the said parties to these presents in manner following that is to say that if the Contractor
shall and will well and truly execute and perform the works contracted to be performed by him and
observe perform and fulfil the contract by him entered into to the satisfaction of the said Executive
Engineer for the time being which shall be notified by a proper certificate under the hand of the said
Executive Engineer for the time being **AND ALSO** if the Contractor or his representatives shall and will pay
or cause to be paid to the said Secretary of State in Council his successors and assigns or to the said
Executive Engineer for the time being all losses damages costs and expenses which he or they have
sustained incurred or be put to in consequence of the default or failure by the Contractor in the due
performance of the said contract or in the execution and completion of the said works or any part
thereof then the abovementioned Government Promissory Notes shall be returned to the said

PROVIDED ALWAYS and it is hereby further declared and the
true intent and meaning of the parties hereto is that if default shall be made by the Contractor in the
performance of the said contract to the satisfaction of the said Executive Engineer (to be certified as
aforesaid) or in making good the losses damages and expenses hereinbefore mentioned and contained or
any part thereof respectively then and in any or either of such cases it shall and may be lawful for the
said Executive Engineer for the time being acting on such behalf as aforesaid to sell and dispose of the
said Government Promissory Notes or such part thereof as he shall deem sufficient and to apply the
proceeds thereof (after deducting therefrom all expenses attending such sale) in and towards the
liquidation of the liability of the Contractor in respect of such default as aforesaid **AND** it is hereby
declared and agreed by and between the said parties to these presents that until the completion of the
said scheduled works covenanted to be executed and performed by the Contractor to the satisfaction
(to be certified as aforesaid) of the said Executive Engineer for the time being and until the final
adjustment of the accounts between the Contractor and the said Executive Engineer and payment of
the final balance (if any) in connection with the said contract the said Government Promissory Notes
shall remain in the hands and custody of the said Executive Engineer for the time being **IN WITNESS**
WHEREOF the Contractor and the said _____ and
the said Executive Engineer acting in the premises as aforesaid have set their respective hands and
seals the day and year first above written.

Signed sealed and delivered by the said
in the presence of

Witnesses.

Signed sealed and delivered by the said
in the presence of

3

Witnesses.

Signed sealed and delivered by the above named Executive Engineer of
by order of the Governor in Council of Fort Saint George on behalf of the Secretary of State
for India in Council in the presence of

Witnesses.

43

REFERENCE TO MADRAS P.W. D. CODE,

EDITION OF 1886.

PARAS. 1344, 1373.

P.W.D. FORM.
No. M 169.

1332

Piece-work Agreement.

8/16
DW. 4217/

44

9
1021892/89

PIECE-WORK AGREEMENT.

I do hereby agree to execute the undermentioned descriptions of work by piece-work in accordance with the conditions noted below, and in consideration of payment being made by the Executive Engineer, _____ Division, at the rate specified in the following Schedule for the quantity of work executed :—

1

CONDITIONS.

The work is to be carried on with due diligence, and all work executed is to be done in a workman-like manner. The material used, when supplied by the party tendering, to be of the best of the several kinds procurable, and in all cases to be subject to the approval of the Executive Engineer for the time being, whose decision as to the rate of progress and the quality of work or material shall be final.

2. The quantity of work executed shall be measured and payment made from time to time, and on the completion of the work, or the termination of this agreement, final measurements will be made, and the account adjusted accordingly.

3. The Executive Engineer may put an end to this Agreement, at his option, at any time, and in the case of bad work or material the Executive Engineer may remove the same and have it replaced, deducting the value of the work rejected or material removed, or the cost of replacing the same, as he may think proper, from any amount due, or that may become due, to the party making this tender.

Signature of the Party }
making this tender. }

Residence _____

Date _____

Witness _____

Accepted by me.

Executive Engineer.

45

REFERENCE TO MADRAS P. W. D. CODE,
EDITION OF 1886.

PARAS. 1373, 1324.

1332
P. W. D. FORM
No. M 170.

1. The question as to whether deeds of contract for work to be executed by contractors should be stamped as mortgages with possession under Article 44 (a) of Schedule I of the Stamp Act, or, as agreements not otherwise provided for, under Article 5 (c) of the same schedule, having been referred to the High Court of Judicature at Madras, it was decided that the contract is an agreement and chargeable with stamp duty as an agreement (G. O., No. 140 W., dated 17th January 1884).

Petty Contracts not exceeding Rs. 2,000.

PETTY CONTRACTS NOT EXCEEDING Rs. 2,000.

hereby agree with the Executive Engineer _____ Division, for the time being, to execute the undermentioned description of work on the _____ in accordance with the conditions noted below, in consideration of payment being made for the quantity of work executed, at the rates specified in the following Schedule:—

*The quantity of work to be executed is to be entered (if the precise quantity is not known, then the best approximation that can be made), with the rates and probable amount in the proper columns.

CONDITIONS.

I. The Contractor is to proceed with the work with due diligence, and all work executed is to be done in the most substantial workmanlike manner, and with materials of the best quality procurable, and in all cases the workmanship and the quality of the materials are to be subject to the approval of the Sub-Divisional Officers and of the Executive Engineer for the time being ; the decision of the latter officer as to the rate of progress, the quality of the work executed, and of materials employed, shall be final.

II. The quantity of work executed shall be measured from time to time, and payment made to account, after deducting the value of materials issued to the Contractor for the work, according to the measurements and rates at which the stock is borne on the books of the Executive Engineer.

III. On the completion of the work, or on the determination of this agreement, final measurements will be made, and the accounts shall be adjusted accordingly. Work executed in excess of that specified above will not be paid for unless specially ordered.

IV. The Executive Engineer for the time being may retain † on the value of the work done as security for the proper performance of the contract.

V. In the case of bad work being executed, or bad materials being used, the Executive Engineer or his agent may remove the same and have the work or materials replaced, deducting the value of the work or materials removed, or the cost of replacing the same as he may think proper, from any amount due, or that may become due, to the Contractor.

VI. In the event of due progress not being made, or of bad work being done, or bad materials being used, the Executive Engineer may determine and end this agreement without further notice, or he may fine the Contractor to the extent of _____ in each case, as compensation for slow work, or for work or material of inferior quality. This fine is in addition to the compensation specified in Article V.

VII. The Executive Engineer may determine and end this agreement at any time. The value of the materials at site, if of approved quality, and not in excess of the requirements of the work, to be in this case paid to the Contractor if the work was not stopped for misconduct on his part.

VIII. If, during the term of the contract, any damage shall happen to the works from any cause whatever or any imperfection become apparent in them, the Contractor shall, within a period specified by the Executive Engineer or his agent, make good such damage or imperfection; or, should the Contractor fail to do so, the Executive Engineer or his agent will be at liberty forthwith to employ other workmen to repair such damage, or make good such imperfection; any extra expense incurred thereby being made good by the Contractor.

IX. The Contractor shall remove from the site of the work, before it is made over to the Executive Engineer, all materials and rubbish, and clean off any dirt that may have accumulated, and shall deliver up the building or work in a clean and fit state for occupation and use.

X. Should any extra work be required which cannot be brought within any of the items of the schedule, the price must be settled before such work is commenced, and a supplementary contract drawn up and signed.

XI. The Contractor shall not carry on any work under the contract on Sundays, unless distinctly ordered to do so by the officer in charge of the work, or by the Executive Engineer.

Date

Signature of Contractor.

Residence.

Witnesses.

CONDITIONS.

(To be attached to a Petty Contract.)

I. The Petty Contractor is to proceed with the work with due diligence, and all work executed is to be done in the most substantial and workmanlike manner, and with materials of the best quality; and in all cases the workmanship and the quality of materials are to be subject to the approval of the Sub-Divisional Officer and of the Executive Engineer for the time being; the decision of the latter officer as to the rate of progress, the quality of the work executed, and of materials employed, shall be final.

II. The quantity of work executed shall be measured from time to time and payments made to account, after deducting the value of materials issued to the Contractor for the work, according to the measurements and the rates at which the stock is borne on the books of the Executive Engineer.

III. On the completion of the work, or on the termination of this agreement, final measurements will be made, and the accounts will be adjusted accordingly.

IV. The Executive Engineer for the time being may retain 10 per cent. on the value of the work done to cover compensation for default on the part of the Contractor and as security for the proper performance of the contract.

V. In case of bad work being executed, or bad materials being used, the Executive Engineer may remove the same, and have the work or materials replaced deducting the value of work, or materials removed, or the cost of replacing the same, as he may think proper, from any amount due, or that may become due, to the Petty Contractor.

VI. In the event of due progress not being made, or of bad work being done, or bad materials being used, the Executive Engineer may determine and end this agreement without further notice; or he may fine the Contractor to the extent of Rupees (50) fifty in each case as compensation for slow work, or for bad work, or for materials of inferior quality; this fine being in addition to the compensation specified in Article V.

VII. The Executive Engineer may determine and end this agreement at any time, should the stoppage of the work be necessary, owing to want of funds or from any other cause whatever, the value of approved materials at site being paid to Contractor.

VIII. If during the term of the contract any damage shall happen to the works from any cause whatever, or if any imperfection shall become apparent in them, the Petty Contractor shall, within a period specified by the Executive Engineer or his Agent, make good such damage or imperfection; or should he fail to do so, the Executive Engineer, or his Agent, will be at liberty forthwith to employ other workmen to repair such damage, or to make good such imperfection, any extra expense incurred thereby being made good by the Contractor.

IX. The Contractor shall remove from the site of the work, before it is made over to the Executive Engineer, all materials and rubbish, and shall clean off any dirt that may have accumulated, and shall deliver up the building or work in a clean and fit state for occupation and use.

X. Should any extra work be required which cannot be brought within any of the items of the Schedule, the price must be settled before such work is commenced, and a supplementary contract drawn up and signed.

XI. The Contractor is not to carry on the work under the contract on Sundays, unless distinctly ordered in writing to do so by the Officer in charge of the work, or by the Executive Engineer.

XII. The Petty Contractor shall conform minutely to the Standard specifications of the Division, and to the designs and specifications prepared for the work by the order of the Executive Engineer, and shall adopt such methods of carrying on the work as shall be ordered by the Executive Engineer or his Agent from time to time.

XIII. The Petty Contractor shall take and use in the work any materials that may be issued to him from the Divisional Stock by order of the Executive Engineer, and the value of such materials, at the rates at which they are borne on the Stock-books of the Executive Engineer at the time of the contract, shall be deducted from any sum due, or that may become due, to the Contractor.

XIV. The Contractor shall provide, without any additional charge, carriage for any materials which may be issued to him in accordance with the above paragraph.

XV. Such materials as are noted in the Schedule to be supplied by this Department will be delivered at the site of the work, or within a radius of a thousand yards of it, at the option of the Executive Engineer.

XVI. All labour and materials required for scaffolding, &c., will be provided by the Contractor without any additional charge for the same; only consolidated rates as agreed upon for work measured when completed shall be paid.

XVII. The Contractor shall be bound to employ proper maistries and supervising establishment on the work, and such as may be approved by the Executive Engineer.

XVIII. The Contractor shall be bound to finish the work by the _____ day of _____ 188 .

XIX. The Executive Engineer's decision as to the quality and measurements of the work and materials, the rates of progress, and the description of artificers and supervising establishment, will be final and binding on the Contractor; on any other point of difference between the Contractor and the Executive Engineer, the matter is to be referred to the Superintending Engineer of the Circle, whose decision shall be final, and no appeal beyond the Superintending Engineer shall be allowed.

XX. The quantity of work done between two payments shall not (at Schedule rate) exceed Rs. _____ and should the Contractor execute work to a greater value, the Executive Engineer shall not be bound to pay for the excess.

XXI. All the necessary tools and plant which may be required for the prosecution of the work are to be supplied by, and at the expense of, the Contractor.

Date _____ 188 .

Signatures of Witnesses.

(1) (Name) _____
(Address) _____

Signature of Petty Contractor. } _____

Residence. _____

(2) (Name) _____
(Address) _____

REFERENCE TO MADRAS P. W. D. CODE.
PARAS. 1373, 1824.
PETTY CONTRACTS UNDER RS. 500.

P. W. D. FORM.
No. M 172.

Original.

Agreement with
for work to be executed on the
as per conditions at back.

(Place.)

(Date.)

Description and Quantity of Work.

Rate.

Probable
Amount.

In charge of the Work.

PETTY CONTRACTS UNDER RS. 500.

P. W. D. FORM.
No. M 172.

Duplicate

Agreement with
for work to be executed on the
as per conditions at back.

(Place.)

(Date.)

Description and Quantity of Work.

Rate.

Probable
Amount.

In charge of the Work.

CONDITIONS.

1. The officer in charge of the work will accept or reject the work executed according to his own judgment.
2. The work will be measured up and paid for from time to time (or on* completion).
3. This agreement may be cancelled at any time by the officer in charge of the work, the Executive Engineer, or the Contractor. If cancelled by the officers of the Public Works Department without any fault on the part of the Contractor, materials collected by the latter for the work will be taken over at a reasonable price, if of good quality, and not in excess of requirements.
4. Should any dispute arise, the matter shall be referred to the Superintending Engineer for arbitration.

Contractor.

In charge of the Work.

* See Code para. 1364.

CONDITIONS.

1. The officer in charge of the work will accept or reject the work executed according to his own judgment.
2. The work will be measured up and paid for from time to time (or on* completion).
3. This agreement may be cancelled at any time by the officer in charge of the work, the Executive Engineer, or the Contractor. If cancelled by the officers of the Public Works Department without any fault on the part of the Contractor, materials collected by the latter for the work will be taken over at a reasonable price, if of good quality, and not in excess of requirements.
4. Should any dispute arise, the matter shall be referred to the Superintending Engineer for arbitration.

Contractor.

In charge of the Work.

* See Code para. 1364.

REFERENCE TO MADRAS P.W.D. CODE.

PARA. 1633.

P. W. D. FORM.
No. 371 M.

Contract for Labor.

1332

50

13
10-11-92/89

CONTRACT FOR LABOR.

WITNESSES.

I, _____ son of _____ inhabitant
of _____ in _____
Zillah _____ do hereby agree and bind myself to perform the conditions of the
undermentioned contract entered into on account of Government with
Executive Engineer at _____ that is to say I agree and bind myself
to execute for the said _____ or the Executive Engineer for the time being within
the period of _____ months from the date of this agreement all the
required of me by the said Executive Engineer at
not exceeding _____ per month in consideration of receiving the
sum of Rs. _____ for every _____ actually executed and being furnished
with _____

I hereby agree to receive payment monthly on the _____ of each month for the work
executed during the previous _____ and admitted to be good by the Executive Engineer or
his Overseer.

In the event of my not executing the work to the satisfaction of the Executive Engineer for the
time being I hereby further agree and bind myself to pay all losses damages and expenses which Govern-
ment may sustain or be put to by reason of work short of the quantity required of me under this contract
being left undone or not done to the satisfaction of the said Executive Engineer at the end of
month from this date

I further make all and every part of this agreement binding upon my heirs and successors.

* I hereby further offer _____ son of _____ inhabitant
of _____ in _____ in Zillah _____ as
my security for the performance of this contract.

Dated this _____ of the month of _____ corresponding with
the _____ of the month of _____

N.B.—I. This deed must bear an *ad valorem* stamp.

II. Two witnesses, who can read and write, must sign the deed at the top as is usual in native papers.

* Or Government paper may be lodged.

REFERENCE TO MADRAS P.W.D. CODE,

EDITION OF 1886.

PARAS. 1356, 1363 and 1373.

P.W.D. FORM.
No. M 174.

Conditions of a Schedule Contract.

51

14
10/11/1892/89

SCHEDULE CONTRACT.

entered into between

and

the Executive Engineer,
Government of Madras.

Division, on account of the

inhabitant of _____ in the Presidency of Madras, do hereby undertake to execute and supply such works and stores as are enumerated and described in the attached Specification at the rates for each item entered in the Schedule thereto appended, such works and stores being on account of the

situated in the _____ Taluk of _____ and
subject to the CONDITIONS printed at back; also to complete and hand over the same in a satisfactory and workmanlike manner to the Executive Engineer or his authorized representative on or before the _____ day of _____ in the year of Christ one thousand eight hundred and _____

Signed sealed and delivered by the said

this _____ day of _____

in the year of Christ one thousand eight hundred _____

and

in the presence of _____

CONDITIONS OF A SCHEDULE CONTRACT

for _____

1332

A bill will be submitted by the Contractor each month for all work executed or stores supplied in the previous month in accordance with the terms of the Specification, and the Executive Engineer will take the requisite measures for having the same tested, and the claim, as far as admissible, promptly settled.

2. No work or stores will be paid for unless thoroughly good and fully in accordance with the Specification, and should, through inadvertence, bad work, or stores be passed and paid for, it will nevertheless be perfectly competent for the Executive Engineer to strike the same out of the account at any future time, and recover the value at any date previous to, or at the time of, granting the final certificate.

3. The bill above alluded to will be submitted in exact accordance with the form supplied by the Executive Engineer, and the rates at which the value of the work or stores is calculated will be those tendered for and accepted and entered in the attached schedule. To allow of a guarantee fund being formed on the part of Government, a deduction of * per cent. from all payments to the contractor is to be made by the Executive Engineer at the time of payment.

4. The Executive Engineer is fully empowered to devote all, or such portion as may be requisite, of this guarantee or reserve fund to making good, bad, or indifferent work on the part of the Contractor in such manner as he may think desirable.

5. Similarly, should over-payments have been inadvertently made on the faith of the Contractor's bill, although checked by the Executive Engineer or his authorized representative, it will be competent for the Executive Engineer to recover the same from the Contractor either by deducting the amount from any account subsequently rendered, or from the guarantee fund.

6. The Contractor is bound to adopt any alteration or addition to the original design, which the Executive Engineer may direct in writing, and execute the same at the same rates as the other portions of the work. He must also at once undo and make good any work which may be pronounced bad, or not in accordance with the Specification.

7. Failing within ten days to conform to the instructions of the Executive Engineer in either of the above cases, that officer has power to execute the work by any agency he may consider desirable at the risk and cost of the Contractor, using, if necessary, any plant or materials which may be collected at site, and paying for the same at his own valuation.

8. Should the Executive Engineer consider that work, although not executed in strict accordance with the Specification, may be allowed to stand, he is empowered to pay for the same at such reduced rates as he may fix, and similarly, in the case of inferior stores supplied, which though not of the quality required by the Specification may yet be passed, he is also empowered to pay for the same at such reduced rates as he may consider equitable. This proceeding is, however, quite optional on the part of the Executive Engineer.

9. The Contractor is bound to provide all requisite plant and thoroughly intelligent agency for the execution of the work, failing in which the Executive Engineer is empowered to supply such machinery or agency (either superintendence, skilled or unskilled labor) as he may consider desirable at the cost of the Contractors removing such as he may object to.

10. Advances may be made to the Contractor to the extent of 80 per cent. of the value of all material, (as assessed by the Executive Engineer) deposited at site and mortgaged to Government, the amount of all such advances being recovered as the materials are utilized, or from the bill for completed work, subsequently submitted.

11. All rejected materials will at once be removed from site by the Contractor to such distance as may be desired, failing in which the Executive Engineer is empowered, after giving ten days' notice in writing to do so himself, recovering the cost of the same from the Contractor.

12. No unsightly pits, refuse stores, or other disfigurements will be allowed to remain in the neighbourhood of any completed work, and, should the Contractor not comply with the instructions of the Executive Engineer to rectify such defects, that Officer may, after ten days' notice in writing, take such measures for their remedy as he may consider desirable, charging the cost of the same to the Contractor.

52

13. The Contractor is obliged to conform to all the legitimate instructions of the Executive Engineer in respect to the above conditions, or such other matters as may affect the safety of the work, failing in which that Officer is empowered, after giving ten days' notice in writing, to take the work entirely into his own hands, declaring the contract cancelled, and employing, if necessary, any materials or plant belonging to the Contractor, which he may consider requisite, paying for the same at his own valuation.

14. The Executive Engineer is similarly empowered to annul the contract should he consider that there has been unnecessary delay on the part of the Contractor in attending to or carrying out the instructions relative to the prosecution of the work or in the supply of stores. In the event of the contract having to be cancelled through non-fulfilment of any of the conditions of the part of the Contractor, the amount or so much thereof as may be necessary of the guarantee fund or other security deposited by the Contractor shall be and remain the property of Government in or towards satisfaction of any loss sustained by Government by reason of such breach of contract.

15. No portion of the reserve or guarantee fund can be demanded by the Contractor till such time as the Executive Engineer grants a certificate of completion of the terms of his contract; but in cases of contracts extending over 12 but not less than 18 months, the reserve may be paid to the Contractor in the last month of official year (provided the contract has been in force not less than six months) under the following conditions:—1st, that the Contractor has completed the terms of his contract both as regards quantity and quality of work performed or stores supplied; and, 2nd, that such payment is not to be considered as a final adjustment of the accounts to date, or to invalidate any of the terms or conditions of the contract.

16. When two or more persons combine to take up a contract, it will be absolutely necessary for them to appoint some one person (either partner or otherwise) to be their accredited agent, and to give him powers-of-attorney to receive payments on account of the work contracted for and to grant receipts; this power-of-attorney to be lodged in the hands of the Executive Engineer. In the event of one or more of the partners in the contract wishing to withdraw this power-of-attorney and to transfer it to some other person, he or they must give one month's warning of this in writing to the Executive Engineer, who may on the receipt of such warning consider himself at liberty at any time within the month to declare the original contract null and void, precisely under the same conditions as for non-fulfilment of work, &c., and thereon, *i.e.*, after giving ten days' notice in writing, take over the work and materials on the part of Government, making such arrangements for its progress as above provided in paragraph 7 of these conditions.

17. The final adjustment must invariably be preceded by a thorough re-measurement of the whole of the work performed, which will be made by the Executive Engineer or his authorized representative and at which the contractor or his accredited agent must be present. For this purpose a written notice will be sent to him at least ten days before the date fixed for the measurement, appointing the day, hour, and place of meeting. Should he not attend to this, the measurements will proceed without him, and will be conclusively binding upon him.

18. The Contractor will furnish, free of charge, all labor and tools required for such examination of the work as the Executive Engineer at any time considers desirable; failing which he may have this done at the Contractor's cost, deducting the charges incurred from his bill.

19. When a dispute arises between the Executive Engineer and Contractor as to either quantity or quality of any work performed, the matter will, at the requisition of the latter, be referred to the Chief Engineer, who shall be empowered to appoint an Officer or Upper Subordinate to measure and examine the work in the presence of the Contractor. Due notice, as in paragraph 17, will be given to the Contractor regarding the time and place of making these measurements, &c., and should he not be present or be represented by a duly accredited agent, the Chief Engineer may decide the case finally on the report furnished to him by the Departmental Officer deputed as above; any objections to the measurements taken, &c., must, moreover, be stated to the deputed Officer, at the time, and a copy of the same in writing forwarded to him for submission with his report to the Chief Engineer at latest within 24 hours.

20. The Contractor shall abide by the decision of the Executive Engineer in case of the occurrence of any dispute or difference (other than that provided for by paragraph 19) arising between him and the Executive Engineer or any officer subordinate to him in regard to the construction of any of the above conditions or to any other question proceeding therefrom and any and every such decision shall be final and conclusively binding on the contractor and shall not be subject to question or review upon any ground whatsoever.

21. Paragraphs 4, 6, 7, 9, 10, and 12 are not to be considered as applicable in a contract for the supply of stores of any kind.

REFERENCE TO MADRAS P.W.D. CODE.

PARA. 1610.

P.W.D. FORM.
No. M 175.

Contracts for Works or Repairs at Schedule
Rates under Rs. 10,000.

53

15
10/10/89 2/89

Not applicable to the supply of stores.

Contracts for Works or Repairs at Schedule Rates under Rs. 10,000.

hereinafter called the Contractor do hereby agree and bind

to perform the conditions of the undermentioned contract entered into with the Secretary of State for India in Council, represented by

Executive Engineer

under the orders of the Governor in Council of Fort Saint George, that is to say, the Contractor agree and bind as aforesaid to execute for the said Secretary of State in the most substantial and workmanlike manner, and with materials of the best quality, and to the complete satisfaction of the said Executive Engineer, or the Executive Engineer for the time being, hereinafter called the Executive Engineer, such of the works mentioned and described

Division acting

in as are enumerated in the following schedules, and such extra work as the Contractor may be called upon to perform;

2. And the Contractor further agree to conform minutely to all subsidiary instructions or drawings issued by the said Executive Engineer;
3. And the Contractor further agree to supply all labor, materials, scaffolding, tools and plant, &c., necessary for carrying on and completing the work to the complete satisfaction of the said Executive Engineer, excepting those enumerated in the schedule, and all such materials, tools, &c., once brought to the work are not to be removed without permission until the completion of the work, and the said Secretary of State shall not be responsible for any loss which may arise;
4. And the Contractor further agree to be responsible for all materials, scaffolding, tools and plant, &c., supplied by Government, and to use them only for the purposes of this contract, and agree to make good any loss, damage, wastage, or undue wear and tear that may take place from whatever cause, or to pay for the same to the said Secretary of State such sum as the said Executive Engineer may determine;

When there are two or more partners, insert the letter s after Contractor; and when there is only one Contractor, insert the letter s after agree.

5. And the Contractor further agree to execute the several kinds of work at the rates mentioned in the following schedule:—

6. And the Contractor further agree that any extra expense incurred owing to neglect or omission, or the neglect or omission of any of them,* may be deducted from any sum due or to become due on this contract, or may be recovered from security;
7. And the Contractor further agree to proceed with the works with due diligence, and
8. And the Contractor further agree that if due diligence be not used in carrying out the work; or if the work or any part thereof be not completed at the time agreed upon; or if it should appear to the said Executive Engineer that any work has been executed with unsound, imperfect, or unskilful workmanship, or with materials of an inferior or unsuitable description, and the Contractor shall, on demand, omit forthwith to rectify, reconstruct, and replace the same at own expense; the said Executive Engineer may forthwith determine and end this contract without further notice, and may employ other persons to perform the work or remove the material aforesaid, which shall be considered as rubbish, and the Contractor shall have no claim for payment for the same, and hereby agree to make good any expense thereby incurred;
9. And the Contractor further agree not to bring any bad, inferior, or unsuitable material or scaffolding on the premises, and agree that if so brought, the Executive Engineer may forthwith remove the same, and treat it as rubbish, without value, and recover the cost so incurred under this contract, and the Contractor shall have no claim for compensation;
10. And the Contractor further agree that all work is to be measured net by standard measure, and according to the rules and custom of the Public Works Department in the Presidency, without reference to any local custom;
11. And the Contractor further agree that no work is to be sublet without the permission of the said Executive Engineer given under his hand;
12. And the Contractor further agree that the price of any altered or extra work must be agreed upon in writing before it is commenced, or the said Executive Engineer may, if he so please, employ other persons to carry out such work; and that no alteration can be made in the terms of this contract, except by supplementary stamped and duly executed agreement;
13. And the Contractor further agree that the work is to be measured up as soon as possible
14. And the Contractor further agree to make out and furnish to the said Executive Engineer bills, in duplicate, in the proper form at the rates mentioned in the above schedule within seven days after the measurements have been made, and payment for ninety per cent. thereof is to be made as soon as the bill has been checked and corrected by the said Executive Engineer;
15. And the Contractor further agree to execute no work on Sundays without written permission;
16. And the Contractor further agree that the said Executive Engineer shall be sole judge of the quality of the materials, and the soundness or nature and sufficiency of the works provided, done and executed in pursuance of this contract;
17. And the Contractor further agree that the Superintending Engineer of the Circle shall similarly be the sole arbitrator and judge in case of dispute between the Contractor and the Executive Engineer with reference to the quantity or measurements of work executed, or rate of progress, or the construction and meaning of plans, working drawings, sections and specifications connected with the work;

* If there is only one Contractor, erase the words "or the neglect or omission of any of them."

18. And the Contractor further agree not to pay or give, or offer to give, any bribe, gratuity or reward to any subordinate, clerk, or other person employed in the Public Works Department, under penalty of forfeiture of security, and all moneys due on account of this contract;
19. And the Contractor further agree to execute the works in conformity with

1332

and the Contractor further

as security for the due performance of this contract.

Witnesses to Signature.

CONTRACTOR.

If the Executive Engineer signs, he should sign "as Agent for the said Secretary of State."
The blanks are to be carefully filled up in manuscript.

55

CONDITIONS.

I.—The Contractor is to proceed with the work with due diligence, and all work executed is to be done in the most substantial workmanlike manner, and with materials of the best quality procurable, and in all cases the workmanship and the quality of the materials are to be subject to the approval of the Sub-Divisional Officers and of the Executive Engineer for the time being; the decision of the latter officer as to the rate of progress, the quality of the work executed, and of materials employed, shall be final.

II.—The quantity of work executed shall be measured from time to time, and payment made to account, after deducting the value of materials issued to the Contractor for the work, according to the measurements and rates at which the stock is borne on the books of the Executive Engineer.

III.—On the completion of the work, or on the determination of this agreement, final measurements will be made, and the accounts shall be adjusted accordingly. Work executed in excess of that specified above will not be paid for unless specially ordered.

IV.—The Executive Engineer for the time being may retain on the value of the work done as security for the proper performance of the contract.

V.—In the case of bad work being executed, or bad materials being used, the Executive Engineer or his Agent may remove the same and have the work or materials replaced, deducting the value of the work or material removed, or the cost of replacing the same, as he may think proper, from any amount due, or that may be due, or become due, to the Contractor.

VI.—In the event of due progress not being made, or of bad work being done, or bad materials being used, the Executive Engineer may determine and end this agreement without further notice, or he may fine the Contractor to the extent of in each case as compensation for slow work, or for work or material of inferior quality. This fine is in addition to the compensation specified in Article V.

VII.—The Executive Engineer may determine and end this agreement at any time. The value of the materials at site, if of approved quality, and not in excess of the requirements of the work, to be in this case paid to the Contractor if the work was not stopped for misconduct on his part.

VIII.—If, during the term of the contract, any damage shall happen to the works from any cause whatever or any imperfection become apparent in them, the Contractor shall, within a period specified by the Executive Engineer, or his Agent, make good such damage or imperfection; or, should fail to do so, the Executive Engineer, or his Agent, will be at liberty forthwith to employ other workmen to repair such damage, or make good such imperfection; any extra expense incurred thereby being made good by the Contractor.

IX.—The Contractor shall remove from the site of the work before it is made over to the Executive Engineer all materials and rubbish, and clean off any dirt that may have accumulated, and shall deliver up the building or work in a clean and fit state for occupation and use.

X.—Should any extra work be required which cannot be brought within any of the items of the Schedule, the price must be settled before such work is commenced, and a supplementary contract drawn up and signed.

XI.—The Contractor shall not carry on any work under the contract on Sundays, unless distinctly ordered to do so by the Officer in charge of the work, or by the Executive Engineer.

Date

Signature of Contractor.

Witnesses

Conditions of a Lump Sum Contract.

332

56

16
Nov 1892/29

LUMP SUM CONTRACT

entered into between

and the Executive Engineer,
of Madras.

Division, on account of the Government

inhabitant of
execute for the sum of Rupees
all the work in

in the Presidency of Madras, do hereby undertake to

situated in the Taluk of
as set forth in the accompanying Plans, Estimates, and Specification, and subject to the CONDITIONS
printed at back; also to complete and hand over the same in a satisfactory and workmanlike manner
to the Executive Engineer or his authorized representative on or before the day
of in the year of Christ one thousand eight hundred and

Signed, sealed, and delivered by the said
this day of in the year of Christ
one thousand eight hundred and in the presence of

1332

CONDITIONS OF A LUMP SUM CONTRACT

FOR

A bill will be submitted by the Contractor each month for all work executed in the previous month in accordance with the terms of the Specification, and the Executive Engineer will take the requisite measures for having the same tested, and the claim, as far as admissible, adjusted if possible before the expiry of ten days from the presentation of the bill. Should the Contractor be unable to prepare the bill himself, the Executive Engineer will depute a subordinate to measure up the work performed in presence of the Contractor, whose countersignature to the measurement list will be a sufficient warrant to the Executive Engineer to prepare the bill for him from that list.

2. No work will be paid for unless thoroughly good, and fully in accordance with the Specification, and should, through inadvertence, bad work be passed and paid for, it will nevertheless be perfectly competent for the Executive Engineer to strike the same out of the account at any future time, and recover the value at any date previous to, or at the time of, granting the final certificate.

3. The bill above alluded to will be submitted in exact accordance with the form supplied by the Executive Engineer, and the rates at which the value of the work is calculated will be those entered in the attached schedule of rates. To allow of a guarantee fund being formed on the part of Government, a deduction of 10 per cent. from all payments to the Contractor is to be made by the Executive Engineer at the time of payment.

4. The Executive Engineer is fully empowered to devote all, or such portion as may be requisite, of this guarantee or reserve fund to making good, bad, or indifferent work, on the part of the Contractor, in such manner as he may think desirable.

5. Similarly, should over-payments have been inadvertently made on the faith of the Contractor's bill, although checked by the Executive Engineer or his authorized representative, it will be competent for the Executive Engineer to recover the same from the Contractor, either by deducting the amount from any account subsequently rendered or from the guarantee fund.

6. The Contractor is bound to adopt any alteration or addition to the original design which the Executive Engineer may direct in writing, and execute the same at the same rates as the other portions of the work. He must also at once undo and make good any work which may be pronounced bad, or not in accordance with the Specification.

7. Failing within ten days to conform to the instructions of the Executive Engineer in either of the above cases, that officer has power to execute the work by any agency he may consider desirable at the risk and cost of the Contractor, using, if necessary, any plant or materials which may be collected at site, and paying for the same at his own valuation.

8. Should the Executive Engineer consider that work, although not executed in strict accordance with the Specification, may be allowed to stand, he is empowered to pay for the same at such reduced rates as he may fix; but this proceeding is quite optional on his part.

9. The Contractor is bound to provide all requisite plant and thoroughly intelligent agency for the execution of the work, failing in which the Executive Engineer is empowered to supply such machinery or agency (either superintendence, skilled or unskilled labor) as he may consider desirable at the cost of the Contractor, removing such as he may object to.

10. Advances may be made to the Contractor to the extent of 80 per cent. of the value of all materials (as assessed by the Executive Engineer) deposited at site and mortgaged to Government, the amount of all such advances being recovered as the materials are utilized, or from the bill for completed work subsequently submitted.

11. All rejected materials will at once be removed from site by the Contractor to such distance as may be desired, failing in which the Executive Engineer is empowered, after giving ten days' notice in writing, to do so himself, recovering the cost of the same from the Contractor.

12. No unsightly pits, refuse stores, or other disfigurements will be allowed to remain in the neighbourhood of any completed work, and should the Contractor not comply with the instructions of the Executive Engineer to rectify such defects, that Officer may, after ten days' notice in writing, take such measures for their remedy as he may consider desirable, charging the cost of the same to the Contractor.

57

13. The Contractor is obliged to conform to all the legitimate instructions of the Executive Engineer in respect to the above conditions, or such other matters as may affect the safety of the work, failing in which that Officer is empowered, after giving ten days' notice in writing, to take the work entire'ly into his own hands, declaring the contract cancelled, and employing, if necessary, any materials or plant belonging to the Contractor which he may consider requisite, paying for the same at his own valuation.

14. The Executive Engineer is similarly empowered to annul the contract should he consider that there has been unnecessary delay on the part of the Contractor attending to or carrying out the instructions relative to the prosecution of the work. In the event of the contract having to be cancelled through non-fulfilment of any of the conditions on the part of the Contractor, the amount or so much thereof as may be necessary of the guarantee fund or other security deposited by the Contractor, shall be and remain the property of Government in or towards satisfaction of any loss sustained by Government by reason of such breach of contract.

15. No portion of the reserve or guarantee fund can be demanded by the Contractor till such time as the Executive Engineer grants a certificate of completion; but in cases of contracts extending over 12 and not less than 18 months, the reserve may be paid to the Contractor in the last month of the official year [provided the contract has been in force not less than 6 months] under the following conditions—1st, that the Contractor has fulfilled the terms of his contract both as regards quantity and quality of work; and, 2nd, that such payment is not to be considered as a final adjustment of the accounts to date, or to invalidate any of the terms or conditions of the contract.

16. When two or more persons combine to take up a contract, it will be absolutely necessary for them to appoint some one person [either partner or otherwise] to be their accredited agent, and to give him powers-of-attorney to receive payments on account of the work contracted for and to grant receipts; this power-of-attorney to be lodged in the hands of the Executive Engineer. In the event of one or more of the partners in the contract wishing to withdraw this power-of-attorney and to transfer it to some other person, he or they must give one month's warning of this in writing to the Executive Engineer, who may, on the receipt of such warning, consider himself at liberty at any time within the month to declare the original contract null and void, precisely under the same conditions as for non-fulfilment of work, &c.; and thereon, *i.e.*, after giving ten days' notice in writing, take over the work and materials on the part of Government, making such arrangement for its progress as above provided in paragraph 7 of these conditions.

17. The final adjustment must invariably be preceded by a thorough remeasurement of the whole of the work performed, which will be made by the Executive Engineer or his authorized representative, and at which the Contractor or his accredited agent must be present. For this purpose a written notice will be sent to him, at least ten days before the date fixed for the measurement, appointing the day, hour, and place of meeting; should he not attend to this, the measurements will proceed without him, and he will be conclusively bound thereby.

18. The Contractor will furnish, free of charge, all labor and tools required for such examination of the work as the Executive Engineer, at any time, considers desirable, failing which he may have this done at the Contractor's cost, deducting the charges incurred from his bill.

19. When a dispute arises between the Executive Engineer and Contractor as to either quantity or quality of any work performed, the matter will, at the requisition of the latter, be referred to the Chief Engineer, who shall be empowered to appoint an Officer or Upper Subordinate to measure and examine the work in the presence of the Contractor. Due notice, as in paragraph 17, will be given to the Contractor regarding the time and place of making these measurements, &c.; and should he not be present or be represented by a duly accredited agent, the Chief Engineer may decide the case finally on the report furnished to him by the Departmental Officer deputed as above; any objections to the measurements taken, &c., must, moreover, be stated to the deputed officer at the time, and a copy of the same in writing forwarded to him for submission with his report to the Chief Engineer at latest within 24 hours.

20. The Contractor shall abide by the decision of Executive Engineer in case of the occurrence of any dispute or difference (other than that provided for by paragraph 19) arising between him and the Executive Engineer or any Officer subordinate to him in regard to the construction of any of the above conditions or to any other question proceeding therefrom, and any and every such decision shall be final and conclusively binding on the Contractor, and shall not be subject to question or review upon any ground whatsoever.

REFERENCES TO MADRAS P.W.D. CODE.

PARA. 1633.

P.W.D. FORM
No. M 177.

Bond with Sureties to secure the due performance of the Contract.

1332

58

516

17
Rev 10/2/89

BOND WITH SURETIES TO SECURE THE DUE PERFORMANCE OF THE CONTRACT.

Know all men by these presents that we

are held and firmly bound unto the Secretary of State for India in Council in the sum of Rupees
for which payment well and truly to be made we bind ourselves our
heirs and representatives jointly and every two of us bind ourselves our heirs and representatives jointly
and each of us binds himself his heirs and representatives severally firmly by these presents sealed with
our respective seals dated this _____ day of _____ One Thousand
Eight Hundred and _____

WHEREAS the said
(hereinafter throughout these presents called the Contractor) has lately contracted
with the Executive Engineer of _____ (acting in the premises for and on behalf
of the said Secretary of State in Council) for the execution of certain works in the Department of Public
Works as per Schedule hereunto annexed and marked A AND WHEREAS it was agreed that the said
Contractor with two sufficient sureties should enter into and execute such Bond as above written as
security for the due performance by the Contractor of his said contract and the said

and _____ have accordingly as such
sureties agreed to execute the said Bond with such condition as hereunder written. NOW THE CONDITION
of the above-written Bond is such that if the said Contractor shall and will well and truly execute and
perform said contract and truly observe perform abide by and fulfil all and every the rules terms and
conditions to be fulfilled observed performed and abided by on his part and in the said Schedule set forth
to the satisfaction of the said Executive Engineer for the time being (which shall be notified by a proper
certificate under the hand of the said Executive Engineer for the time being) and also if the said
Contractor or his representatives shall and do on demand pay or cause to be paid to the said Secretary
of State in Council his successors and assigns or to the said Executive Engineer for the time being all
losses damages costs and expenses which he or they have sustained incurred or be put to in consequence
of the default or failure by the said Contractor for the due performance of the said contract or in the
execution and completion of the said works or any part thereof then the above-written Bond shall be void
otherwise to be and remain in full force and virtue.

(Signature and Seal of Contractor) _____

Seal

Signed sealed and delivered by the said
in the presence of

(Signatures of two Witnesses.)

(Signature and Seal of first Surety) _____

Seal

Signed sealed and delivered by the said
in the presence of

(Signatures of two Witnesses.)

(Signature and Seal of second Surety) _____

Seal

Signed sealed and delivered by the said
in the presence of

(Signatures of two Witnesses.)

REFERENCE TO MADRAS P.W.D. CODE.

PARAS. 1617, 1618, AND 1633.

P.W.D. FORM.
No. M. 178.

Contract Bond.

332

59

18
1892/89

CONTRACT BOND.

I know all men by these presents that I [Name]
of am held and firmly bound unto
Her Majesty's Secretary of State for India in Council in the penal sum of
Rs. of lawful money of British India to be paid to Her [Enter amount]
Majesty's Secretary of State for India in Council for which payment I bind myself
my heirs executors and administrators by these presents sealed with my seal
dated this day of in the year of Christ [Date and month]
One Thousand Eight Hundred and and I hereby agree with [Year]
the said Secretary of State in Council that if any suit shall be brought touching
the subject-matter of this obligation or the condition hereunder written in any
Court subject to the superintendence of any High or Chief Court established by
Royal Charter or any Act of the Governor-General of India in Council other
than the High Court of Judicature at Madras in its original jurisdiction the same
shall and may at the instance of the said Secretary of State in Council be removed
into tried and determined by the said High or Chief Court in its extraordinary
Original jurisdiction.

The condition of the above-written Bond is such that if the said [Name]
his executors or administrators
shall will and truly execute the work described in a certain
signed by Executive Engineer [Name]
of and dated the day [Date]
of and numbered² and referred [Month]
to in a certain tender signed by the said and [Name]
dated the day of and numbered and [Date and month]
which tender has been accepted by the Government according to the terms and at
the rates mentioned in the said¹ and tender
and shall well and truly perform and abide by all the terms and condition in the
said¹ and tender contained to be performed and
abided by on the part of the Contractor then the above-written Bond or obligation
shall be void otherwise the same shall be and remain in full force and virtue.

... .. [Signature of Contractor]
Signed sealed and delivered by the
said in
the presence of

... .. [Signatures of two Witnesses]

¹ If the document signed by the Executive Engineer be not in the nature of a specification, it should be described according to its true character, as, for instance, "Draft Contract."

² It will be well to number both specification and tender in order to prevent any possible mistakes as to identity and, when practicable, the bond should be annexed to the specification and tender.

³ Care should be taken that this Bond be sealed as well as signed by each party executing it. If the Contractors constitute a firm, each member of the firm should sign and seal it in his individual name. If any member be absent, e.g., E. F., a Power-of-Attorney from him authorizing the execution of Deeds or Bonds should be produced, and the Deed should be signed and sealed in the name of the absent partner (e.g., E. F.) by his Attorney (e.g., A. B.), and not in the name of the Attorney.

Contract Security Mortgage of Landed Property to secure performance of Contract.

19
1892/89

CONTRACT SECURITY MORTGAGE.

This Indenture made the _____ day of _____ one thousand eight hundred and _____ between _____ (hereinafter throughout these presents called the Contractor) of the one part and the Secretary of State for India in Council of the other part. **Whereas** the Contractor has lately contracted with the Executive Engineer of _____ (acting in the premises for and on behalf of the said Secretary of State in Council) for the execution of certain works in the Department of Public Works as per Schedule hereunto annexed. And whereas the Contractor in consideration of receiving the said contract has previously to the execution of these presents agreed to convey by way of mortgage the lands hereditaments and premises hereinafter described and contained. NOW THIS INDENTURE WITNESSETH that in pursuance of the said recited agreement the Contractor doth hereby grant and convey unto the said Secretary of State in Council his successors and assigns ALL THAT

and all deeds pattaahs and instruments of title and the reversion and reversions, remainder and remainders, rents, issues and the right title and interest of him the Contractor in and to and upon the said land hereditaments and premises hereinbefore described and hereby conveyed TO HAVE AND TO HOLD the said land hereditaments and premises with the appurtenances unto and to the use of the said Secretary of State in Council his successors and assigns for ever but subject nevertheless to the proviso for redemption hereinafter contained that is to say PROVIDED ALWAYS and it is hereby declared and it is the true intent and meaning of these presents and of the said parties hereto that if the Contractor shall and will well and truly execute and perform the works contracted to be performed by him and observe perform and fulfil the contract entered into to the satisfaction of the said Executive Engineer for the time being (which shall be notified by a proper certificate under the hand of the said Executive Engineer for the time being), AND ALSO if the Contractor or his representatives shall and will pay or cause to be paid to the said Secretary of State in Council his successors and assigns or to the said Executive Engineer for the time being all losses damages costs and expenses which he or they shall have sustained incurred or been put to in consequence of the default or failure by the said Contractor for the due performance of the said contract or in the execution and completion of the said works or any part thereof the said Secretary of State in Council shall and will at the request and cost of the Contractor his heirs or representatives re-convey the said land hereditaments and premises together with the appurtenances thereof to the Contractor his heirs and representatives for ever PROVIDED ALWAYS and it is hereby further declared and the true intent and meaning of the parties hereto that if default shall be made by the Contractor in the performance of the said contract to the satisfaction of the said Executive Engineer (to be certified as aforesaid) or in making good the losses damages and expenses hereinbefore mentioned and contained or any part thereof respectively then and in any such case and immediately thereupon or at any time thereafter it shall be lawful for the said Secretary of State in Council or the said Executive Engineer for the time being (acting in such behalf as aforesaid) and notwithstanding the dissent or opposition of the Contractor his heirs or representatives to enter into and use and (whether in or out of possession) to make sale and absolutely dispose of the said land hereditaments and premises or any part thereof either by public auction or by private contract and for such price or prices as to the said Executive Engineer for the time being shall appear reasonable with liberty to buy in the same or any part thereof and for effectuating any such sale, it shall be lawful for the said Executive Engineer for the time being to make sign seal deliver and execute and register all necessary deeds conveyances and assurances whatsoever. And it is hereby further declared by and between the parties to these presents that such deeds conveyances and assurances made or executed under or by virtue of these presents shall be good valid and effectual whether the Contractor shall or shall not join therein or assent thereto and shall bind the Contractor his heirs and representatives and all other persons claiming under him. And it is hereby further declared that the power of sale hereinbefore contained shall and may be exercised and that all things to be done in pursuance thereof shall be good valid and effectual notwithstanding any decree of any Court of Law or Equity for barring or foreclosing the equity of redemption of the Contractor his heirs or representatives shall have been previously obtained (but this power of sale is in addition to the ordinary remedies by foreclosure and otherwise). And that the receipts in writing of the

3
Executive Engineer for the time being for all monies to arise from any such sale shall be good and sufficient discharges to the persons paying the same and shall exonerate such persons from all responsibility in respect of the application or non-application of the same nor shall he or they be bound to enquire whether the sale was regular or authorized under these presents. And the said Secretary of State in Council and his successors shall stand and be possessed of and interested in the monies to arise from such sale In Trust in the first place to retain all costs and expenses of sale and then to retain for the use of the Government of India such sum as in the judgment of the said Executive Engineer for the time being shall reasonably represent the loss or damage caused by the default on the part of the Contractor which was the occasion of the power of sale being exercised and then In Trust to pay the surplus (if any) to the Contractor his heirs or representatives IN WITNESS WHEREOF the Contractor and the said Executive Engineer for the time being have set their respective hands and seals the day and year first above written.

Signed sealed and delivered by the said

in the presence of

1332
Witnesses.

Signed sealed and delivered for and on behalf of the Secretary of State for India in

Council by the abovenamed Executive Engineer of

in the presence of

Witnesses.
61

REFERENCE TO MADRAS P.W.D. CODE.

PARAS. 1618, 1619, AND 1633.

P.W.D. FORM
No. M 180.

1332

Contract Security Mortgage of Landed Pro-
perty by Third Party to secure performance of
Contract.

E.4
160271
187

12

20
10/11/1892/189

CONTRACT SECURITY MORTGAGE OF LANDED PROPERTY BY THIRD PERSON
TO SECURE PERFORMANCE OF CONTRACT.

This Indenture made the _____ day of _____
One Thousand Eight Hundred and _____ BETWEEN _____
(hereinafter throughout these presents
of the second part and the Secretary of State
for India in Council of the third part **Whereas** the Contractor has lately to wit on or about the
day of _____ One Thousand Eight Hundred and _____
contracted with the Executive Engineer of _____
(acting in the premises for and on behalf of the said Secretary of State in
Council) for the execution of certain works in the Department of Public Works as per Schedule hereunto
annexed **AND Whereas** the said _____ on the occasion
aforesaid and at the request and for and on behalf of the Contractor and to secure the due performance of
the said contract by the Contractor agreed to convey by way of mortgage the lands hereditaments and
premises hereinafter described and contained Now THIS INDENTURE WITNESSETH that in pursuance of the
said recited Agreement and for the considerations aforesaid he the said _____
at the request of the Contractor doth hereby grant and convey unto the said Secretary of
State in Council his successors and assigns ALL THAT

and all deeds pattahs and instruments of title and the reversion and reversions remainder and remainders
rents issues and the right title and interest of him the said _____
in and to and upon the said land hereditaments and premises hereinbefore described and thereby conveyed
TO HAVE AND TO HOLD the said land hereditaments and premises with the appurtenances unto and to the use
of the said Secretary of State in Council his successors and assigns for ever but subject nevertheless to the
proviso for redemption hereinafter contained that is to say PROVIDED ALWAYS and it is hereby declared and
it is the true intent and meaning of these presents and of the said parties hereto respectively that if the
Contractor shall and will well and truly execute and perform the works contracted to be performed by him
and observe perform and fulfil the contract by him entered into to the satisfaction of the said Executive
Engineer for the time being which shall be notified by a proper certificate under the hand of the said Exe-
cutive Engineer for the time being AND ALSO if the Contractor or his representatives shall and will pay or
cause to be paid to the said Secretary of State in Council his successors and assigns or to the said Executive
Engineer for the time being all losses damages costs and expenses which he or they have sustained incurred
or be put to in consequence of the default or failure by the Contractor in the due performance of the said
contract or in the execution and completion of the said works or any part thereof the said Secretary of State
in Council shall and will at the request and costs of the said _____

his heirs or representatives reconvey the said land hereditaments and premises together with the appurte-
nances thereof to the said _____
his heirs and representatives for ever PROVIDED ALWAYS and it is hereby further declared and the true
intent and meaning of the parties hereto is that if default shall be made by the Contractor in the performance
of the said contract to the satisfaction of the said Executive Engineer (to be certified as aforesaid) or in
making good the losses damages and expenses hereinbefore mentioned and contained or any part thereof
respectively then and in such case and immediately thereupon or at any time thereafter it shall be lawful
for the said Secretary of State in Council or the said Executive Engineer for the time being (acting in such
behalf as aforesaid) and notwithstanding the dissent or disapprobation of the said _____

his heirs or representatives to enter into and upon and whether in or out
of possession to make sale and absolutely dispose of the said land hereditaments and premises or any part thereof
either by public auction or by private contract and for such price or prices as to the said Executive Engineer
for the time being shall appear reasonable with liberty to buy in the same or any part thereof and for effectua-
ting any such sale it will be lawful for the said Executive Engineer for the time being to make sign seal
deliver and execute and register all necessary deeds conveyances and assurances whatsoever AND it is hereby
further declared by and between the said parties to these presents respectively that such deeds conveyances
and assurances made or executed under or by virtue of these presents shall be good valid and effectual
whether the said _____ shall or shall not join therein
or assent thereto and shall bind the said _____

his heirs and representatives and all other persons claiming under him AND it is hereby further declared that the power
of sale hereinbefore contained shall and may be exercised and that all things to be done in pursuance thereof
shall be good valid and effectual notwithstanding that no decree of any Court of Law or Equity for barring or
foreclosing the equity of redemption of the said _____
his heirs or representatives shall have been previously obtained (but this power of sale is given in addition
to the ordinary remedies by foreclosure or otherwise) and that the receipt in writing of the said Executive
Engineer for the time being for all monies to arise from any such sale shall be good and sufficient discharges
to the person paying the same and shall exonerate such person from all responsibility in respect of the appli-
cation or non-application of the same nor shall he or they be bound to enquire whether the sale was regular
or authorized under these presents and the said Secretary of State in Council and his successors shall stand
and be possessed of and interested in the monies to arise from such sale IN TRUST in the first place to retain
all costs and expenses of sale and then to retain for the use of the Government of India such sum as in the
judgment of the said Executive Engineer for the time being shall reasonably represent the loss or damage
caused by the default on the part of the Contractor which was the occasion of the power of sale being
exercised and then IN TRUST to pay the surplus (if any) to the said _____

his heirs or representatives IN WITNESS WHEREOF the Contractor and the said _____
and the said Executive Engineer for the time being have set
their respective hands and seals the day and year first above written.

(Signature and Seal of Contractor)

Seal

Signed sealed and delivered by the said _____
in the presence of

(Signatures of two Witnesses.)

(Signature and Seal of Mortgagor)

Seal

Signed sealed and delivered by the said
in the presence of

(Signatures of two Witnesses.)

(Signature and Seal of Executive Engineer)

Seal

Signed sealed and delivered for and on behalf of the Secretary
of State in Council by the above-named Executive Engineer of
in the
presence of

(Signatures of two Witnesses.)

REFERENCE TO MADRAS P.W.D. CODE.

PARAS. 1630 AND 1633.

P. W. D. FORM
No. M 181.

Contract Security Mortgage of Landed
Property to secure Advances.

64

21
Dec 1892/1893

CONTRACT SECURITY MORTGAGE OF LANDED PROPERTY TO
SECURE ADVANCES.

This Indenture made the _____ day of _____ one thousand eight hundred and _____ Between _____ (hereinafter throughout these presents called the Contractor) of the one part and the Secretary of State for India in Council of the other part. **Whereas** the Contractor has lately contracted with the Executive Engineer of _____ (acting in the premises by order of the Governor in Council of Fort St. George on behalf of the said Secretary of State in Council) for the execution of certain works in the _____ Department of Public Works as per Schedule hereunto annexed and under such contract is from time to time to receive from the said Executive Engineer divers sums of money as and by way of advance to enable him the Contractor to prosecute and complete the said works. And **Whereas** the Contractor in consideration of his receiving such advances has previously to the execution of these presents agreed to convey by way of mortgage the lands hereditaments and premises hereinafter described and contained. Now this Indenture witnesseth that in pursuance of the said recited agreement and in consideration of the advances to be received under the said contract the Contractor doth hereby grant and convey unto the said Secretary of State in Council his successors and assigns all that

and all deeds patahs and instruments of title and the reversion and reversions remainder and remainders rents issues and the right title and interest of him the Contractor in and to and upon the said land hereditaments and premises hereinbefore described and hereby conveyed to have and to hold the said land hereditaments and premises with the appurtenance unto and to the use of the said Secretary of State in Council his successors and assigns for ever but subject nevertheless to the proviso for redemption hereinafter contained that is to say provided always and it is hereby declared and it is the true intent and meaning of these presents and of the said parties hereto that if the Contractor shall and will to the satisfaction of the said Executive Engineer duly pay and apply all such advances as may be made to him for the purpose of performing the said scheduled work and shall and will as and when required by the said Executive Engineer on demand furnish full and true accounts and particulars according to the requirements of the said Executive Engineer of his expenditure on or in connection with the said works and shall and will on demand make good and refund the final balance (if any) which shall be found due from him on the final adjustment of the accounts in connection with the said contract and shall and do on demand pay or cause to be paid to the said Secretary of State in Council his successors and assigns or to the said Executive Engineer for the time being all losses damages costs and expenses which he or they have sustained incurred or be put to in consequence of the default or failure by the Contractor to pay or apply or account as aforesaid the said Secretary of State in Council shall and will at the request and costs of the Contractor his heirs or representatives reconvey the said lands hereditaments and premises together with the appurtenances thereof to the Contractor his heirs and representatives for ever provided always and it is hereby further declared and the true intent and meaning of the parties hereto is that if default shall be made by the Contractor or his representatives in duly paying and applying all such advances as aforesaid or in rendering the accounts or making the payments or making good the losses damages and expenses hereinbefore mentioned and contained or any part thereof respectively then and in any such case and immediately thereupon or at any time thereafter it shall be lawful for the said Secretary of State in Council or the said Executive Engineer for the time being (acting in such behalf as aforesaid) and notwithstanding the dissent or disapprobation of the Contractor his heirs or representatives to enter into and upon and (whether in or out of possession) to make sale and absolutely dispose of the said land hereditaments and premises or any part thereof either by public auction or by private contract and for such price or prices as to the said Executive Engineer for the time being shall appear reasonable with liberty to buy in the same or any part thereof and for effectuating any such sale it will be lawful for the said Executive Engineer for the time being to make sign seal deliver and execute and register all necessary deeds conveyances and assurances whatsoever. And it is hereby further declared by and between the parties to these presents that such deeds conveyances and assurances made or executed under or by virtue of these presents shall be good valid and effectual whether the Contractor shall or shall not join therein or assent thereto and shall bind

the Contractor his heirs and representatives and all other persons claiming under him. And it is hereby further declared that the power of sale hereinbefore contained shall and may be exercised and that all things to be done in pursuance thereof shall be good valid and effectual notwithstanding that no decree of any Court of Law or Equity for barring or foreclosing the equity of redemption of the Contractor his heirs or representatives shall have been previously obtained (but this power of sale is given in addition to the ordinary remedies by foreclosure or otherwise) and that the receipt in writing of the said Executive Engineer for the time being for all moneys to arise from any such sale shall be good and sufficient discharges to the person paying the same and shall exonerate such person from all responsibility in respect of the application or non-application of the same nor shall he or they be bound to enquire whether the sale was regular or authorized under these presents and the said Secretary of State in Council and his successors shall stand and be possessed of and interested in the moneys to arise from such sale. In trust in the first place to retain all costs and expenses of sale and then to retain for the use of the Government of India such sum as in the judgment of the said Executive Engineer for the time being shall reasonably represent the loss or damage caused by the default on the part of the Contractor which was the occasion of the power of sale being exercised and then in trust to pay the surplus (if any) to the Contractor his heirs or representatives in witness whereof the Contractor and the said Executive Engineer for the time being have set their respective hands and seals the day and year first above written.

Signed sealed and delivered by the said

in the presence of

Witnesses.

Signed sealed and delivered by the above-named Executive Engineer of _____

by order of the Governor in Council of Fort Saint George on behalf of the Secretary of State for India in Council in the presence of

Witnesses.

REFERENCE TO MADRAS P.W.D. CODE.

PARAS. 1630 AND 1633.

1332

P.W.D. FORM.
No. M. 182.

Contract Security Mortgage of Landed Property by Third Party to secure Advances.

82
PW 427/89

66

22
PW 427/89

CONTRACT SECURITY MORTGAGE OF LANDED PROPERTY BY THIRD PARTY TO SECURE ADVANCES.

This Indenture made the _____ day of _____ between _____ (hereinafter throughout these presents called the Contractor) of the first part _____ of the second part and the Secretary of State for India in Council of the third part. Whereas the Contractor has lately to wit on or about the _____ day of _____ one thousand eight hundred and _____ contracted with the Executive Engineer of _____ (acting in the premises by order of the Governor in Council of Fort Saint George on behalf of the said Secretary of State in Council) for the execution of certain works in the _____ Department of Public Works as per Schedule hereunto annexed and under such contract is from time to time to receive from the said Executive Engineer divers sums of money as and by way of advance to enable him the Contractor to prosecute and complete the said works and Whereas the said _____ on the occasion aforesaid and at the request and for and on behalf of the Contractor agreed to convey by way of mortgage the land hereditaments and premises hereinafter described and contained. Now THIS INDENTURE WITNESSETH that in pursuance of the said recited agreement and in consideration of the advances to be received by the Contractor under the said contract he the said _____ at the request of the Contractor doth hereby grant and convey unto the said Secretary of State in Council his successors and assigns all that

and all deeds pattahs and instruments of title and reversion and reversions remainder and remainders rents issues and the right title and interest of him the said _____

in and to and upon the said land hereditaments and premises hereinbefore described and hereby conveyed to have and to hold the said land hereditaments and premises with the appurtenances unto and to the use of the said Secretary of State in Council his successors and assigns for ever but subject nevertheless to the proviso for redemption hereinafter contained that is to say Provided always and it is hereby declared and it is the true intent and meaning of these presents and of the said parties hereto respectively that if the Contractor shall and will to the satisfaction of the said Executive Engineer duly pay and apply all such advances as may be made to him for the purpose of performing the said scheduled works and shall and will as and when required by the said Executive Engineer on demand furnish full and true accounts and particulars according to the requirements of the said Executive Engineer of his expenditure on or in connection with the said works and shall and will on demand make good and refund the final balance (if any) which shall be found due from him on the final adjustment of the accounts in connection with the said contract and shall and do on demand pay or cause to be paid to the said Secretary of State in Council his successors or assigns or to the said Executive Engineer for the time being all losses damages costs and expenses which he or they have sustained incurred or be put to in consequence of the default or failure by the Contractor to pay or apply or account as aforesaid the said Secretary of State in Council shall and will at the request and cost of the said _____

his heirs or representatives reconvey the said land hereditaments and premises together with the appurtenances thereof to the said _____

his heirs or representatives for ever. Provided always and it is hereby further declared and the true intent and meaning of the parties hereto is that if default shall be made by the Contractor or his representatives in duly paying or applying all such advances as aforesaid or in rendering the accounts or making the payments or making good the losses damages and expenses hereinbefore mentioned and contained or any part thereof respectively then and in such case and immediately thereupon or at any time thereafter it shall be lawful for the said Secretary of State in Council or the said Executive Engineer for the time being (acting in such behalf as aforesaid) and notwithstanding the dissent or disapprobation of the said _____

his heirs or representatives to enter into and upon and (whether in or out of possession) to make sale and absolutely dispose of the said lands hereditaments and premises or any [part thereof either by public auction or by private

contact and for such price or prices as to the said Executive Engineer for the time being shall appear reasonable with liberty to buy in the same or any part thereof and for effectuating any such sale it will be lawful for the said Executive Engineer for the time being to make sign seal deliver and execute and register all necessary deeds conveyances and assurances whatsoever. And it is hereby further declared by and between the said parties to these presents respectively that such deeds conveyances and assurances made or executed under or by virtue of these presents shall be good valid and effectual whether the said _____ shall or shall not join therein or assent thereto and shall bind the said _____ his heirs and representatives and all other persons claiming under him. And it is hereby further declared that the power of sale hereinbefore contained shall and may be exercised and that all things to be done in pursuance thereof shall be good valid and effectual notwithstanding that no decree of any Court of Law or equity for barring or foreclosing the equity of redemption of the said _____ his heirs or representatives shall have been previously obtained (but this power of sale is given in addition to the ordinary remedies by the foreclosure or otherwise) and that the receipts in writing of the said Executive Engineer for the time being for all moneys to arise from any such sale shall be good and sufficient discharges to the persons paying the same and shall exonerate such persons from all responsibility in respect of the application or non-application of the same nor shall he or they be bound to enquire whether the sale was regular or authorised under these presents and the said Secretary of State in Council and his successors shall stand and be possessed of and interested in the moneys to arise from such sale. In Trust in the first place to retain all costs and expenses of sale and then to retain for the use of the Government of India such sum as in the judgment of the said Executive Engineer for the time being shall reasonably represent the loss or damage caused by the default on the part of the Contractor which was the occasion of the power of sale being exercised and then In Trust to pay the surplus (if any) to the said _____ his heirs or representatives. In witness whereof the said Contractor and the said _____ and the said Executive Engineer for the time being have set their respective hands and seals the day and year first above written.

Signed sealed and delivered by the said _____
in the presence of _____

Witnesses.

Signed sealed and delivered by the said _____
in the presence of _____

Witnesses.

Signed sealed and delivered by the above-named Executive Engineer of _____
by order of the Governor in Council of Fort Saint George on behalf of the Secretary of State
for India in Council in the presence of _____

Witnesses.

CIRCULAR No. 16 of 1888.

1332

From

MAJOR C. H. P. CHRISTIE, R.E.,

EXAMINER, P. W. ACCOUNTS, MADRAS.

To

ALL SUPERINTENDING AND EXECUTIVE ENGINEERS.

Madras, 1st October 1888.

The following is forwarded to all Superintending and Executive Engineers for information with the remark that paragraphs 5, 6, 7 and 8 apply equally to contract agreements.

C. H. P. CHRISTIE, Major, R.E.,

Examiner, P. W. Accounts, Madras.

Copy of letter from the Examiner, Public Works Accounts, Madras, to the Superintending Engineer, II Circle, No. 534 S.E.-2, dated 30th August 1888.

I have the honor to acknowledge the receipt of your letter No. 1059, dated the 25th July 1888, making certain inquiries on the subject of the mortgage bonds to be executed in accordance with the rules of Appendix K of the Madras P.W.D. Code by members of the P.W. Department as security for advances made for building houses, and, in reply, I have the honor to state as follows:—

2. The mortgages in question are mortgages without possession, item 44 (b) of the first schedule to the Stamp Act (Act I of 1879), and the mortgage deeds are chargeable with duty as bonds (*vide* item 13 of the same schedule), that is to say—

		Stamp Duty.		
		RS.	A.	P.
When the amount of value secured does not exceed	Rs. 10	0	2	0
When such amount or value exceeds Rs. 10 but does not exceed	50	0	4	0
When such amount or value exceeds Rs. 50 but does not exceed	100	0	8	0
And for every Rs. 100 or part thereof in excess of Rs. 100 up to	1,000	0	8	0
And for every Rs. 500 or part thereof in excess of	1,000	2	8	0

1/11/88

68

3. Under Section 1 of the Registration Act (Act III of 1877) registration of such deeds is compulsory whenever the value of the property (not necessarily be it observed the amount advanced) is of the value of Rs. 100 and upwards.

4. The cost of reconveyance would include (1) legal charges, if any, incurred for drawing the reconveyance, and (2) the stamp duty thereon.

(a) As regards the first, Government will be asked to instruct the Government Solicitor to prepare a form of reconveyance, and when this has been done there will probably be no necessity for any legal charges.

(b) With regard to the second point, the duty is that on a reconveyance of mortgaged property, item 53 of the schedule to the Act, and is as follows:—

Proper Stamp Duty.

RS. A. P.

(a) If the consideration for which the property was mortgaged does not exceed Rs. 1,000

The same duty as a conveyance (No. 21) for the amount of such consideration as set forth in the reconveyance, that is to say (*vide* item 21).

When the amount of the consideration for such conveyance as set forth therein does not exceed

50 0 8 0

When it exceeds Rs. 50 but does not exceed

100 1 0 0

For every Rs. 100 or part thereof in excess of Rs. 100 up to

1,000 1 0 0

(b) If the consideration exceeds Rs. 1,000 the stamp duty is Rs. 10.

The following examples will perhaps help to make clear the manner of calculating the stamp duty both for mortgage deeds and for reconveyances when the consideration exceeds Rs. 100—

Consideration for Mortgage.	STAMP DUTY	
	On Mortgage Deed.	On Reconveyance.
Rs. 250 = Rs. 100 + Rs. 100 + part of Rs. 100.	8 As. + 8 As. + 8 As. = Rs. 1-8-0.	Rs. 1 + Rs. 1 + Rs. 1 = Rs. 3.
Rs. 950 = Rs. 100 + 8 times Rs. 100 + part of Rs. 100.	8 As. + Rs. 4 + 8 As. = Rs. 5.	Rs. 1 + Rs. 8 + Rs. 1 = Rs. 10.
Rs. 1,000 = Rs. 100 + 9 times Rs. 100.	8 As. + 9 times 8 As. = 8 As. + Rs. 4-8-0 = Rs. 5.	Rs. 10, and the same for any amount exceeding Rs. 900.
Rs. 1,500 = Rs. 1,000 + Rs. 500.	Rs. 5 + Rs. 2-8-0 = Rs. 7-8-0.	
Rs. 1,600 = Rs. 1,000 + Rs. 500 + part of Rs. 500.	Rs. 5 + Rs. 2-8-0 + Rs. 2-8-0 = Rs. 10.	

5. The stamps both on mortgage deeds and on reconveyances must be impressed. Court-fee stamps or any other adhesive stamps are useless and would only be wasted.

6. Under section 16 of the Stamp Act all instruments chargeable with duty and executed in British India must be stamped before or at the time of execution, and as stamps can only be

impressed by the Superintendent of Stamps, Madras, all instruments, the duty on which must be denoted by impressed stamps, should be sent to him for the purpose before execution.

7. Instruments to be stamped may be sent to the Superintendent of Stamps either (1) through the Treasury Deputy Collector, remitting the stamp duty into treasury at the same time, or (2) direct to the Superintendent of Stamps, together with the treasury receipt for stamp duty previously paid into the Collector's treasury.

8. No instrument, the duty on which must be denoted by an impressed stamp, can be stamped after execution; but Sections 38 and 39 of the Stamp Act provide that if any instrument chargeable with duty, and which is not duly stamped, is produced by any person, of his own motion, before the Collector, within one year from the date of its execution or first execution; and if such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same; and if the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity; he may (section 39) certify, by endorsement thereon, that the proper duty (stating the amount) has been levied in respect thereof, and the name and residence of the person paying the same; and every instrument so endorsed is admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped.

No. 1912

OFFICE OF THE EXECUTIVE ENGINEER,

Buckingham Canal,

Madras Port, 5th February 1889

From 1332

1332

C. VINCENT Esq.,

EXECUTIVE ENGINEER,

Buckingham Canal Division,

To

The

Superintending Engineer
and Civil

Sir,

ENCLOSURE.

I have the honor to represent
the following circumstances
In para 6 of his Circular No. 16 of
1888 the Examiner P. W. Accounts
states that all deeds requiring to be
stamped must be stamped before
or at the time of execution with
an impressed stamp, which can
only be impressed by the Superintendent
of Stamps, Madras, and he accordingly
requested that all instruments
should be so impressed before
execution.

70

70

2. With reference to these remarks

I pointed out to the Examiner
that laying the duty of obtaining the
necessary impressed stamp on to
Contractors & piece-workers would
lead to difficulty and delay in the
execution of agreements, and suggested
that a No. of Stamped agreements
should be kept in the Division Office
ready for execution, the cost of the
stamps being debited in the accounts
to "Miscellaneous Advances" & recovered
from the Contractors. —

3. In reply the Examiner objected
that the value of the stamp required
is not uniform, but depends on the
form of agreement and upon the
amount of security deposited and
that consequently it is scarcely
practicable to keep on hand a stock
of stamped forms. —

4. In answer to this I informed
the Examiner that 9 out of 10 agree-
ments entered into in this Division,
and

x No. 1691
22/12/88

x No. 10-22 of
15/1/89

x No. 43 P. 2
of 31/1/89

and probably in other Divisions
also, are on the ordinary piece-work
agreement form which all require
an 8 anna stamp. ¹³³² Three or four hundred
such agreements are signed in this
Division yearly, and it was, I said,
perfectly impossible to get petty Contractors
to send in blank agreements to Madras
to receive an impressed stamp. Unless
therefore the procedure I recommend-
ed could be sanctioned, agreements
will have, I maintained, to be signed
unstamped. —

5. In his final reply the Examiner
requested that I would submit my
proposals to Government through the
ordinary channels. —

6. It seems to me there would be no
difficulty in retaining a stock of
stamped forms in each Division
Office. The No. & class of agreements
concluded each year in each Division
would probably not vary very

71

71

Considerable

considerably, so that the stock of stamped forms required to be kept for annual use could be estimated with substantial accuracy. As to the impossibility of imposing on piece-workers the duty of getting their agreements stamped in Madras before execution, there can I think be no question. And therefore unless some such procedure as I have recommended is possible, the majority of piece-work agreements, which also means I imagine the majority of all agreements, will have to be executed unstamped, and will therefore, I suppose, be legally invalid. —

I have the honour to be
 Sir
 Your most obedient servant
 C. J. J. J.
 Executive Engineer
 B. C. C. C.

347 B.C. 1332
 1332

Submitted to the Chief Engineer
 Public Works Department for
 of order, with the intention that
 the same should be approved & taken
 into consideration.

Rept. Engr's office
 16th February 1882

72

72

21 FEB 1889
W. A. COOKE

From
C. VINCENT Esq.,
EXECUTIVE ENGINEER,
Buckingham Canal Division.

No. 827 C of 19th Feb 1889

To C
For favour of
remarks

To
The Superintendent
2nd Class
Bengal

Dated 5th February 1889
Despatched
Received

SECRETARY TO GOVERNMENT
P. M. DEPARTMENT, MADRAS

17 FEB 89
P. M. DEPARTMENT, MADRAS

No. 1912 ENCLOSURE

No. 265 D of 28th Feb 1889

To W.

There can be no doubt that it is exceedingly difficult to comply with the provisions of the rules framed under the Stamp Act, which require all instruments of the kind in question to be stamped before execution with a stamp which can be impressed only by the Superintendent of Stamps Madras, and as far as I can discern they hardly ever have been complied with anywhere.

2. The objection to keeping a stock of stamped forms is that the value of stamp required depends on the form of the agreement as to security that is, principally upon

Needs requiring
to be stamped

Representing
Circumstances
on Examination
clears up 16 of
our

36715
14-2-89

whether it is or is not a mortgage within the meaning of the definition of a mortgage in the Stamp Act. I have dealt with this matter at some length in my note on the contract question forwarded with my office note No. 2742 dated 13th. December 1888. If a piece work agreement is drawn up exactly as the form presupposes that it will be drawn up, it will require always an 8 anna stamp; but as often as not Executive Engineers introduce additions and alterations touching security which make it a mortgage, and then the stamp duty may be a good deal more than 8 annas. The keeping of a stock of stamped forms would almost certainly involve the Executive Engineers in some degree of responsibility for the correctness of the stamp, which would, I think, be objectionable.

3. Moreover, I am not at all sure that the Superintendent of Stamps will undertake to impress blank instruments. He may require them to be printed instead on stamped paper, an operation which it is hardly desirable to undertake at a time when the revision of the forms is under consideration.

4. In my opinion, as I have already stated in my note referred above, the proper course is to make

the Government of India to exempt
such instruments from stamp duty.
There can, I think, be no question that
the end the duty, and perhaps
more than the duty, is repaid by
Government, just as much as any other
of the contractors' expenses.

h/c

c.

2/2
2/2

Reg 1/3/89



REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

1332

Read Memorandum from the Public

Works Department, dated 8th March 1889, No 1197 Co-
regarding the question whether all Contract
Deeds executed by Contractors in P.W. Deptt.
Shd. bear impressed Stamp or that
Govt. of India be moved to exempt such in-
struments from Stamp Duty.

Order thereon 26th April 1889, No 2671.

The attention of the Public Works
Department is invited to the notification of
the Government of India, dated 22nd March
1889, No: 1519, republished on page 217 of the
Fort Saint George Gazette (Part I), dated 2nd
April 1889.

(For Extract)

Chilton
Secretary to Government

74

74

To

The P.W. Department
with enclosures returned.

Chilton

at home 8-2-89
New York 17-1-89

238.21.1011

PHC 8-217

1573-2003-4217-

1332 W. 1/2 1/2 1/2 1/2

The foregoing
The foregoing
and can be of the
the circle and
the circle and
the circle and
the circle and
information and
guidance

1332 W

18.5.89

18.5.89

8.21

1332 W. 1/2 1/2 1/2 1/2

1332 W. 1/2 1/2 1/2 1/2

1332 W. 1/2 1/2 1/2 1/2

74

1332 W. 1/2 1/2 1/2 1/2
1332 W. 1/2 1/2 1/2 1/2
1332 W. 1/2 1/2 1/2 1/2
1332 W. 1/2 1/2 1/2 1/2

1332 W. 1/2 1/2 1/2 1/2

1332 W. 1/2 1/2 1/2 1/2