

Public (1897) Department.

ORDINARY MS.

G.O., No. 1484

DATED 13. 11. 97

INDEXED.

W,
10-11-97

[Despatch Abstract.]

Stating that the Suit by Kooni Hochana
against the Commandant, Nilgiri
Volunteer Rifles and the Secy: of State
for money alleged to be due to him
must be defended as proposed by the
Advocate Genl.; & requesting the
District Magistrate of the Nilgiris to
take the necessary action in the matter

1/2/97

BACK PAPERS.

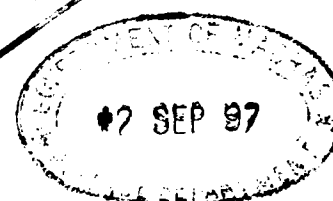
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
C	4246		97				

Public Revenue (1897) Department.

CURRENT No. 3366



From

Order R. no 1675 d/8 Sept 97

The Board of Revenue,
Land Revenue.

Transferred to the
Public Department.

ag. Secy to Govt.

No. 3227. Mis.

Dated 31st August 1897.

Received

Registered

Enclosures

Spare copies.

6 Sep 97

Recd 9/9/97

Regd 9/9/97
Enclor: 2..

SUBJECT.

Submitting for orders of
Government a notice of
suit against the Secretary
of State for the money
due by the volunteer
Corps, Nilgiris.

Recd 5.10 P.M.

3/9

BACK PAPERS.

G.O.	No.	Department.	Date.
	2245	Revenue	1891

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Nilgiri collector's office
Ootacamund 25th August 1891

Re 1117
97

From

J. H. A. Tranchesi Esq. I.C.S.
Collector of the Nilgiris

To

The Secretary of the Commission of
Land Revenue Enquiry

Sir

I have the honor to forward
for the information of the Board
Copy of a notice of suit
threatened against the Secretary
of State and the Commandant
Adjutant Nilgiri Volunteer Rifle
for balance of account due on
the building of the Volunteer's
Armoury at Ootacamund, and

to state that unless instructed
otherwise by the Board I intend to
take no action, as I believe the
Secretary of State is not
responsible for a debt incurred
by a Volunteer Corps.

I have the honor to be,
Sir,
your most obedient

Collector

W. L.

4217
BOARD'S DEL. NO. 4217 OF 1897
LAND REVENUE
1A 27/8

The Collector of the
Nilgiris

The Secretary to the
Commissioners of
Land Revenue
Madras



Dated 25
Apr 25 } Aug 97
Recd

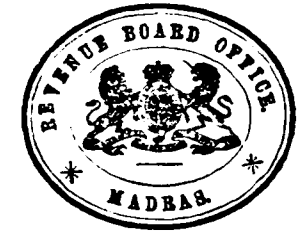
Re 1117
97
Encl - one

Subject
Suit against the Secy of State for India
Soliciting order on a
threatened

4217
Publi
2
3366

CURRENT No 3366

2,000
25-1-97



Proceedings of the Board of Revenue
(Land Revenue),

Dated 30th August. 1897.
No. 3229 Miscellaneous

READ—letter from the Collector of Nilgiris, R.C. No. 1117 of 1897,
dated 25th August 97.

Resolution.

Submitted for the orders of Government.

(True extract)

Reed
Secretary.

To.

The Secretary to Government R.D. with the Collectors'
letter and its enclosures in original.

NOTE FOR THE Chief Secretary
Please see Mr
Tremere's letter.

The Commandant
is appointed by foot
and there would therefore
appear to be a case
against the Secy of State
but the matter is not
clear.

Under paras 175, 518 &
519 A.R.S. vol 12 the Comd
is responsible for all
funds in the Corps, and
the responsibilities of
the Comd are enumerated
in paras 229, 252, 264, 271
273, 325 and ~~para~~ 326
but none of these appear
to cover the present
case.

Submittal & that
the Advocate General
should be consulted.

Encl No 1898 of 11-9-97
Referred to the Adv.

Sent for favour of
Opinion
Report is
to the liability P.T.O.

Note

Please see linked file

20 10
10/9/97

20 10
Please have the
issued 10/9/97

The Sub. Secy has
given it as his
opinion that a contract
being a
contract being a
contract. & therefore
it need seem that
it could be sued.
On this point the
Correspondence on 30.7.57
shows that the Corps
is required to contract
with the Sub. Secy, that is being
that it is treated as
a private party & not
as a public institution. &
does not seem therefore his
opinion of which the Sub. Secy
has said, but it is submitted
that it is well to ask.

Why should not?

20 10 10/9/97

Public (1897) Department.

CURRENT No. 3557

From

The Govt. Secretary
Madras

No. 552

Dated 22 Sept.

Received 23 - } 97

Registered 23 -

Enclosures C. H. 3366 Enclosure

Spare copies -

SUBJECT.

Forwarding opinion re the
liability of the Govt. of State to
be made to a party to a suit
by one Horner Ocharina against
the King's Vol. Rifle Corps.

Order

of the Secy of State to be
made made a party to
the proposed suit.

AV. 1079/92.

10/8/97

Cpy to the DAG, with. D. 14/9.
reference to G.D. no 1000
P.D. d. 30-7-97

Recd from the Secy of State
15/9/97
late in the evening of 14/9

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

N

The liability of the Secretary of State to be made a party to a suit by one Mooni Hoochana (vide Memorandum, No 1008, Public Department, dated 11th September 1897.

Opinion

The notice given under section 424 of the Code of Civil Procedure by the Contractors Counsel does not, as required by that section, state what the cause of action is against the Secretary of State in Council of India, nor am I able to ascertain from the papers sent to me what such intended cause of action is. The claim is stated to be for work done for, and materials supplied to the Nilgiri Volunteer Rifles in connection with its armoury at Ootacamund, Nilgiri.

2. In the first place, the Volunteer Rifles does not seem to be a corporate body (vide Act XX of 1869 & Act X of 1896), and secondly it does not appear on what grounds the Government is sought to be made liable for a claim against the Members of the corps. Possibly the work was undertaken and materials supplied by the contractor at the request of Colonel R. E. Cox, the Commandant and Major C. J. W. Grant V. C. the Adjutant of the Nilgiri Volunteer Rifles. If so, they will of course be liable for the amount claimed, if it be really due. If, as I presume, no contract was entered into with the contractor on behalf of the Secretary of State in Council by the Governor-in-Council, or by the Commandant and the Adjutant of the corps by order of the Governor in Council (vide sections 1 & 2 of statute 22 & 23 Victoria Ch-41) the Secretary of State cannot be joined as a party defendant in the proposed suit, unless under any rules or departmental orders of Government the cost of building or repairing armouries for the use of Volunteer corps is payable out of the Government treasury. The fact that money grants are made by Government to Volunteer corps to enable them to provide armouries, Magazines etc, and that the Government has a lien on the bildings to the extent of the grant made in the event of a corps ceasing to exist or wishing for any reason to dispose of the

building,

building, can give no cause of action to the contractor -
against the Secretary of State in Council of India.

Madras)
21st September 1897.)

V. Bhashyam Iyengar
Offg: Advocate General

(True copy)

M. Morgan

Acting Government Solicitor.

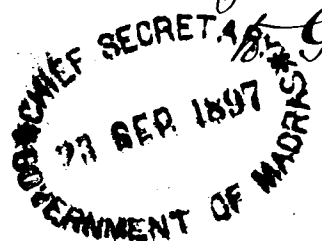
(1897) Department.

From

William Morgan
Acting Government Solicitor
Madras

To

The Chief Secretary
Government
Ostacammund



N° 552

Dated 22nd September 1897
Recd

Enclos 3.

Forwarded with enclosures
with reference to the Memorandum of
Government N° 1898. Public
dated 11th September 1897.

W. Morgan

Ag: Government Solicitor

[Pub.
29.
2,000-5-8-97.]

Public (1897) Department.

W. Morgan
22.9.97

CURRENT No. 3490

From

Endt N° 1955 dated 21st Sept. 1897 The D.A.G.
Order

Referred to the
Advocate General
in continuation of
N° 1898 Public of
11th September 1897

No. A
D. 14642

Dated 18th Sept.
Received 20
Registered 20
97

1/2 order
Advnapp.
By Under Secy

Enclosures 3
Spare copies -

TO BE RETURNED
WITH REPLY.

Cy
20/9/97

To Govt Solicitor

Copy to the D.A.G. (2)

SUBJECT.

Forwarding for favour of opinion
letter from the Commandant Lieut
Volunteer, Rifer with enclosures
regarding the payment due for
the building of the new Armory.

SA
the whole file sent up
20/9/97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

R E
We have already
used a similar reference
into the for Solicitor
General's office
20/7/97

To Colonel R. E. Cox, Commandant Nilgiri
 Volunteer Rifles
 of Ootacamund, Nilgiris.

Notice is hereby given, agreeably with the provisions of Section 424 of the Civil Procedure Code, that it is the intimation of Mr Mooni Harchana, of Commercial Road, Ootacamund, Nilgiris District, to commence a suit against the Secretary of State in Council, with Colonel R. E. Cox, the Commandant, and Major C. W. Grant V.C. the Adjutant of the Nilgiri Volunteer Rifles for the recovery of a sum of rupees Four Hundred and nine, unless paid up in two months from this date together with such further interest and costs as the Court shall allow, for balance of an account due to the said Mooni Harchana for work done for, and materials supplied to the Nilgiri Volunteer Rifles as particulars in account rendered in connection with the Corps' Armoury at Ootacamund, and interest on the same account for six months at the rate of six per centum per annum.

For Mr Mooni Harchana
 by T. S. Sidhu
 Barrister at Law
 his Counsel.

Ootacamund
 August 20/97

Statement by Sergeant Major C. Kirkby
Kilgini Hunter Rifle

About the end of August 1896, or early in September, I noticed that the Contractor's Carpenters were not putting in proper work, & that they were trying to hide defects in the boarding etc.

This I reported to Mr. L. Skame of the Q. W. D., who was looking after the building of the Ammunition for us, he being a member of the Corps.

Mr. Skame cautioned the Contractor, but after a short time afterwards the Contractor was found allowing further inferior work to be put in. On this Mr. Skame put his own men on to complete the flooring. It looked very well for a short time, but very soon the wood began to show that it was unseasoned. It soon went so bad that it became absolutely dangerous, through the sides of the boards having warped up badly. I had personal experience of this, as one of the projections tripped me up, & falling against a stool I seriously injured my leg. I was under medical treatment for this for nearly three months, & it has left a life scar.

The walls of the large Ammunition Room began to blister very badly by pieces of lime that had not been properly mixed.

turning off hands from
plastering.

The walls of the Armoury workshop
had some of the plastering not properly
attached to the bricks.

Chas. Kirkby Capt Major
Mifflin Vt. Rifles

Ottawa
6th September 1897

Volunteer
Board
Ottawa Vt. Rifles

Statement by the Adjutant, Mifflin
Volunteer Rifles, regarding the Contractor,
Moori Achena's work on the Armoury.

The estimate was drawn up at P.H.D.
rates which are higher than the Local
Land Board or Municipality rates, and which
provide for nothing but seasoned wood and
the best workmanship.

With regard to the floor:-

The joists were unevenly laid with un-
seasoned wood which has warped.

The floor was badly laid from
the beginning - boards of unequal thickness
were used; after the Contractor persisted in
putting in bad workmanship, the laying
was taken out of his hands and the floor
was properly laid.

The floor was good for about two
months, but the wood was unseasoned and
warped so badly that the Corps & crew could
not be held on it for about two months
and applications for the hire of the room had

Pub

2.

3491

the refused on account of the warping
of the boards
harch.

In February it was considered that the
wood had dried to a certain extent and
Messrs P. Thompson & Co relaid the floor at
cost to the Corps of Rs 557.12.6

With regard to the walls:-

The plastering in the Armourers shop
came off in large ^{slabs} and one fourth
of the wall plastered by the Contractor
redone at the expense of the

entering in the main room
ough carelessness in mixing
the mortar, this had to be repaired by
P. Thompson also at the expense of the
Corps.

Two of the upper ventilating windows
were broken on being opened.

On account of this large extra expense to
which the Corps has been put on account of the bad
workmanship and inferior material employed by
the Contractor Messrs. Achena, Rs 250 was
deducted from his bill for Rs 7110.4.3

He has now filed a suit for the recovery of this
and interest on account of delayed settlement

C. J. Grant Major Adjutant I. T. R.

Robert Cox.
Colonel
Commandant Nilgiri M.R.

Through Southern District

No. 387

OOTACAMUND,

4th Sept. 1897

FROM

Colonel R. E. Cox

Commandant, Nilgiri Volunteer Rifles,

TO

The Deputy Assistant General
Madras. Command

SIR,

I have the honor to report, that
the Contractor employed by me to build the
Armoury of the Corps under my Command,
has instituted a suit against the Secretary
of the Corps in Council, not myself or the Adjutant.
2. This suit is for the recovery of a sum
deducted by me from his bill on account
of bad workmanship and material, employed
by him in the construction of the Armoury.
3. I have the honor to request permission to
defend the suit.

4. The documents as per margin, bearing

A Notice of Institution of Suit. Thereon on this matter,
B Statements with regard to are attached.

the workmanship by

The Adjutant

Deputy Major

5. As only Rs 250 out of the Rs 537.12.0 was deducted
from his bill I consider he has been very liberally dealt
6. I was absent on leave when the work was
being carried out.

I have the honor to be
Your obedient servant

Robert Cox.

Colonel
Commandant Nilgiri V.R.

8-9-97
3807-

II

Continued

34398
SEP 97
SOUTHERN DISTRICT

Story No. 16548
Recd 10 SEP 1897
Branch BT 10 10-9-97

Edward [Signature]

Prison General,

Command

Oracacumb

18 September 1897

The Chief Secretary to the Govt of Madras
Public Department

Forwarded for favor of opinion
as the contract appears to have been entered
into by the Officer Commanding the corps
without any previous reference to the local
Government.

CHIEF SECRETARY
20 SEP 1897
GOVERNMENT OF MADRAS

Atkinson
Bilgamb,
D. C.

Yours very truly

Pub.
29.
3,000-4-3-97

Public (1897) Department.

CURRENT No. 3661

From

The Govt. Solicitor

Order

No. 561

Dated

Received

Registered

Enclosures

Spare copies

29 } 9-97
30
30

Pat. C. No. 3490

with such subd.

SUBJECT.

Forwarding with
ref. to memo. No.
1955 of 21-9-97 the
opinion of the advocate
general re the suit by
Mooni Hochana against
the Commandant, Nilgiri
Vol. Rifles & others.

Recd 630 PM 21/17

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Re

Memo &

Suit by Mooni Hochana against the Commandant Nilgiri Volunteer Rifles and others (vide G. O. No 1955 Public, dated 21st September 1897)

OPINION.

1. The papers now sent to me make it clear that the Contractor was employed by Colonel R. E. Cox, Commandant, Nilgiri Volunteer Rifles, without any reference to the Local Government. I have therefore - nothing to add to my opinion already communicated on 21st, September 1897 that the Contractor has no cause of action against the Secretary of State for India in Council.

2. I take it that the present reference is made to me in consequence of the Commandant requesting the permission of Government to defend the suit. Where the defendant in a suit is a public officer, the public officer may, under Section 423 of the Code of Civil Procedure, make a reference to Government before answering to the plaintiff and under Section 426 Government may, if it deems fit, undertake the defence of the suit. Even should Government undertake the defence of the suit, the decree, if given in favour of the plaintiff, would be only against the public officer, and not against the Government. And it will be ~~in the~~ in the discretion of Government with reference to the merits of each case whether or not it will undertake to satisfy such decree.

3. In the present case the question which arises is whether - Colonel R. E. Cox in his capacity as the Commanding officer of the Nilgiri Volunteer Rifles is a "public officer" within the meaning of that expression as it is defined in Section 2 of the Civil Procedure Code. A Commissioned officer in the Military forces of Her Majesty while serving under Government is included under that definition. I presume that this description does not apply to the Commanding officer of a Volunteer Corps. If, however, Colonel R. E. Cox receives any allowance as the Commanding officer of the Nilgiri Volunteer Rifles, he would be a "public officer" within the said definition as an "officer remunerated by fees or commission for the performance of a public duty". In any event it seems to me that -

I don't know where to get this information, please look to refer or consult. Please direct Mr. Perkins, the 2nd H. B. made telephone. 21st 11/9/97

technically he is a "public officer" within the meaning of the Civil Procedure Code, for one of his duties as a Commanding officer is, under Section 15 of the Indian Volunteer Act XX of 1869 to "take or receive property on behalf of Government" namely, arms, ammunition, accoutrements and uniform (vide the last para of the definition of "public officer" in Section 2 of the Civil Procedure Code)

4. Even if he be a "public officer" he has no authority as such - public officer to bind Government by any contract which he may enter into for the purposes of a Volunteer Corps without being authorised by Government to enter into such contract on behalf of Government. As regards the defence of the suit brought against him, Government of course is not bound to undertake the defence on his behalf, if, in its opinion, any amount which may be decreed against him should not be - paid out of the public treasury, but out of the funds belonging to - the corps. In the present case, however, as the Secretary of State for India in Council is likely to be joined as a party defendant, as intimated in the notice given on behalf of the Contractor under Section 424 of the Civil Procedure Code, Government will have to undertake - the defence of the suit on its own behalf by contending that the - Contractor has no cause of action against Government. If the defence of the suit on behalf of the Commanding officer and the Adjutant be left in their hands, it is not improbable that Counsel who may represent them would plead that they should be exonerated from the - suit, and that the contractor, if he has any claim, should prosecute - the suit only against Government.

5. Having regard to these circumstances, Government may perhaps - deem it desirable that the defence of the suit should be undertaken by Government itself on behalf of all the defendants on the understanding that the decree, if any, which may be passed in favour of - the Contractor, should be satisfied out of the funds belonging to the corps. If this course be adopted, the Government Pleader, who will - appear for all the defendants, should be instructed to put in two - separate written statements, one on behalf of the Secretary of State for

India in Council, and the other on behalf of the Commandant and the - Adjutant.

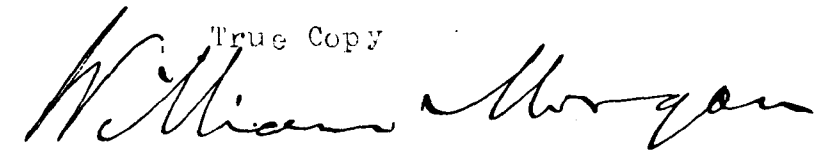
V. Bhaskaran Iyengar

Offg: Advocate General.

M a d r a s.

27th September 1907.

True Copy



Ag: Government Solicitor

(1897) Department

From
William Morgan Esq
Acting Government Solicitor
Madras

To.
The Chief Secretary to
Government
Cotacamund

N^o 561

Dated 29th September 1897
Received

Enclos:

Forwarded with enclosures
with reference to the Order of
Government N^o 1955. Public
dated 21st September 1897

William Morgan
Acting Government Solicitor

[G.
25]

7000-2-2-97

H. E. THE GOVERNOR.

THE HONBLE MR. BLISS, C.I.E.

THE HONBLE MR. GROSE, C.I.E.

not put in
4 Books removed
from this file
2/10/97
C. No.

25-10-97

Public DEPARTMENT.

3366, 3550, 3490 & 3661

SUBJECT.

The Nilgiri Volunteer Rifles
threatened suit against
the Secy of State

FOR ORDERS.

Communications
from the Bd of Res and
the Dy. Adjt. Genl regarding
a threatened suit by

Mooni Hochama against
the Secy of State with the
Consent of the Nilgiri Vols,
and the opinion of
the Advocate General
thereon are submitted
for perusal and orders
with special reference to
para 5 of CS661

N2
N2
with ref to para 34
that current it is observed
that the Madras Vol.
guards is the only Vol
corps within the Presidency
with a paid
Commandant

in

In his letter flagged
D^r M^r Trimmer here
stated he intended
to take no action
in the matter.

CW
5.10.7
The Advocate
stated that
Govt. should be represented
in any way, if only
prevent a capital decrease
of the Treasury, State.
Orders are submitted that
the Solicitor Advocate
should represent the
Govt. should defend the
Govt. in behalf of the
the public, on the understanding
that the Corps should
pay, should be added
upon - a check the
Govt. pleader has shown
being with the case on
behalf of the Treasury of State.
Mr. Trimmer's proposal
looks nothing to not be
accordance with the advice
of the Advocate General.

AK
5/11/97

It is submitted that this
is what should be done.
The contractor has not yet filed
the suit: he is responsible, is
merely borrowing "but if he
is not, he does not seem to
have much of a case.

8/10/97

He must be defended as proposed in para.
5 of the Adv. Gen's opinion of the 27th Sept.
1897.

8.11.97

[G
24
1,000-18-9-97.

Public DEPARTMENT.

Papers to be read in proceedings:--

Again G.O., No.	, dated	189 .
Again G.O., No.	, dated	189 .
Current No.	3366 of 1897, dated	31st Aug: from the Secy of Rev, L.R. this Rev Dept
" "	3550 " 1897, "	22d Sept, " the Govt Solicitor
" "	3490 " 1897, "	18th Sept, " the D. N. S.
" "	3661 9/1897 .	27th Sept " the Govt Solicitor

Cb. ORDER. No. 14848/13-11-97
allis

H.E. the Governor in Council
considers that the suit should
be defended as proposed in
para 5 of the Advocate Gen's
opinion of 27th Sept 1897,
and the Secy of Rev will
be requested to take the
necessary action

(from orders)

MA
8.11.97.

CW.
8.11.97

MSP.
5/11/97

To
The Dn. Milgins as C3661 & others
" Govt Solicitor 9 = all
" Rev Dept 9 = all
" D.N.S. 9 = all except C3661(2)

copied
as per
13/11/97
5/11/97

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

A	A	A	A	A	A	A
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