M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 3210 Press Mis.

267-26+

Dated 18th December 1869

Not to be folded or roughly handled

No. 267. Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 13th December 1869, No. 386:—

I HAVE the honour to acknowledge receipt of the Order of Government, Revenue Department, noted in the margin, forwarding certain papers to me for report on the claims arising out of the cancelment of a lease of stone-quarries in North Arcot. I have carefully considered these papers, and submit the following remarks thereon.

Dated 4th December 1869, No. 3,109.

2. Assuming that the granting of the original lease by the then Head Assistant Collector, and its renewal by the Collector after the first cancellation, were within the ordinary powers of these officers, respectively, the leases made by them must, I think, be considered to have been legally binding on the Government, and therefore the cancellation of the leases is ground for a suit against Government, for breach of contract. At any rate a suit would undoubtedly lie against these officers personally, and I presume that Government would support them, as their action in the matter was perfectly *bonâ fide*. Hence, the only legal question to be considered is as to the damages which would be recoverable in such a suit as above referred to.

3. There is some confusion in the papers before me as to the dates of the various transactions. At paragraph 9 of the Collector's letter, embodied in the above Proceedings, it is stated that the lease was not disturbed until June 1868; but this appears to be a mistake, for I gather from the report of the Acting Sub-Secretary to the Board of Revenue, dated 5th October 1868, and from the other papers, that Mr. Wilkinson stopped the lessees from working the quarries in February 1867, shortly after he had granted the lease; so that, though the lease was not formally cancelled until after the Order of the Board in May 1868, practically the lessees only enjoyed the benefit of their lease for a very short time. However, this is only important as affecting the amount of damages, and does not affect the principle upon which they must be calculated; and I shall proceed to state what, in my opinion, that is.

4. The rule for estimating damages for breach of contract which prevails in the English Courts, and would no doubt be followed in this country, is that such damages only are recoverable as may fairly and reasonably be considered as arising naturally, (*i.e.*, according to the usual course of things,) from the breach of contract itself; or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it—(see the cases of Hadley *v.* Baxendale, 9 Exch. 341, and Fletcher *v.* Tayleur, 25 Law Journal Reports, Common Pleas, page 65). On this principle the damages claimed by the stone-quarry contractors for loss alleged to have been sustained by reason of the failure of a contract with Gajaraja Moodelly are altogether too remote. There are many English cases in which a similar claim has been disallowed. Thus, in an action for breach of contract to deliver a certain article in a specified time, it was held that the plaintiff could not recover the amount he had been compelled to pay as damages to a third party to whom he had contracted to deliver

the same article—(Portman *v.* Middleton, 27 Law Journal, Common Pleas, page 231); and in that case the contract with the third party had been made previously to that which was the subject of the action, which makes the case much stronger than the present one. It never could be just to saddle one of the parties to a contract with a liability for all the penalties, however rigorous to which the other may choose to make himself liable in his engagement with a third party: yet this is what must be contended for, if the stone contractor's claim on this head is to be maintained. I think therefore that, even if the contract with Gajuraja Moodelly and the loss arising from its breach were undoubted facts, that loss could not be an element in estimating the damages to be paid to the stone contractors by Government.

5. On the same principles the damages claimed for loss alleged to have been sustained on contracts with Narrainsawmy Chetty and Condapah Chetty are too remote to be recovered in a Court of Law; and this claim is more untenable than the other, because these contracts are only connected in the most indirect manner with the stone-quarry leases.

6. The claims made in respect of Vakeel's fees, the printing of a Petition to Government, and conveyance and rail charges, are equally, in my opinion, untenable in law as damages arising out of the breach of contract complained of.

7. I agree with the Collector and Head Assistant Collector in thinking that the claim for Rupees 575 for stones alleged to have been quarried by the claimants and carried away by others, has neither law nor reason to support it.

8. What damages, then, are the claimants entitled to for the breach of contract involved in the cancelment of their lease? I think that applying the above principles, they are entitled to recover such of the advances made to gang-maistries stone-cutters, etc., as are shown to be irrecoverable; these losses may be said to arise naturally out of the breach of contract itself. Besides this, they are entitled to damages for the loss of their bargain, and it seems to me that the proper measure of those damages is the profit which, in the ordinary course of things, they would have made if the lease had not been cancelled. I have no means of estimating what this might amount to; but I should think those on the spot would have no difficulty in doing so. The rate at which they were quarrying stone during the time they had the monopoly, the price of stone, and the cost of quarrying and delivering it, are facts easily ascertained, and afford all the data required for estimating the probable profit. No doubt the amount claimed by the contractors (Rupees 5,000) on this head is much in excess of the real amount. If they brought a suit they would have to make out their damages in this way by strict proof, or if the matter is arranged amicably, this question, being one purely of fact, might well be submitted to arbitration. Either way, the result would probably be to reduce the amount considerably.

9. I think the claimants are entitled to interest on their deposit-money. The invitations to them to come and receive it do not, as observed by the Board, amount to legal tender; and besides at the time they were made the lease was not formally cancelled, and even after it was, they were hardly in a position to apply for a return of their money until the final Order of Government, cancelling the revived lease granted by Mr. Robinson, for until that time no doubt they were in hopes the lease would after all be given to them.

Proceedings of the Madras Government, Revenue Department,
18th December 1869.

10. As I have remarked above I have no means of estimating even approximately the amount of probable profit, which I consider to be the right measure of the claimants' damages; but looking at their own estimate of it and at the other items, which as above, I think, must be allowed to them, I should say that the sum named by the Collector (Rupees 3,500) would be a liberal satisfaction of all claims.

No. 268. ORDER THEREON, 18th December 1869, No. 3,210.

Miscellaneous.

COMMUNICATED to the Board of Revenue, with reference to their Proceedings, under date 16th November 1869, No. 8,468.

2. The Government concur with Mr. Handley in the opinion expressed at the close of the last paragraph of his letter, and request the Board to authorize the Collector to offer the claimants Rupees 3,500 in full satisfaction of their claims.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.
,, the Accountant-General.

Exd. F. R. Bantleman.

REVENUE DEPARTMENT.

No. 4219

From [illegible]

Dated 13th Dec. 1869.

FOR ORDERS.

[illegible]

Govt. of (1869) Madras.

REVENUE.

To

THE BOARD OF REVENUE.

&c., &c., &c.

Dated December, 18*th*.

Recd., *Encl.*

G. O., 18th December 1869, *No.* 3,210.

DECEMBER.

Nos. 267-269.

Stone-quarries in North Arcot.—Report of the Government Pleader on the claims arising out of the cancelment of the lease, with orders thereon.

№ 3210. 47

8 Decr 1869

1. C.C. to the Bd of Rev
in the reference to their
proceedings, under date
16 November 1869 No 8148

2. The first cause with
Mr Hannaby in the opinion
expressed at the close
of the last para of his
letter, and request the
Board to authorize the
Collr to offer the claimants
Rs 3500 in full satisfaction
of their claims

Lest from rules

Mr Hannaby
3 — Govt Pleaders
6 — Stamp Duty