M.R.O. 1—30,000—16-10-32.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1646 Press ~~Mis.~~

545-546

Dated 22nd May 1869

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 22nd May 1869.

No. 545. Read the following letter from the Acting Government Solicitor, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 17th May 1869, No. 251 :—

I HAVE the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate-General's opinion relative to Mr. T. N. Turnbull's (late Overseer in charge of the Wynaad Forest) contract with Mr. vanIngen to cart timber.

Dated 8th May 1869, No. 1,272, Revenue Department, and made on letter from the Officiating Conservator of Forests to Government, dated 4th May 1869, No. 1,353.

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him thereon ; and,

3. I now forward a copy of his opinion, and return the enclosures forwarded with the Order above noted.

OPINION.

I HAVE perused the papers submitted with this reference.

2. I do not see that Mr. vanIngen has brought himself within the verge of the Penal Code, even assuming the facts stated by the Officiating Conservator of Forests to be established, unless, indeed, he can be held to be an abettor of a criminal breach of trust by a public servant. In that view he might be tried before the Principals under Section 20 of the Criminal Amendment Act XVIII. of 1862 ; but in the present instance such a course would be very inconvenient.

3. I am, moreover, as a rule, very indisposed to treat criminally what is matter of civil contract.

4. *Prima facie* Mr. vanIngen has a strong case in his favor. He contracts with the duly authorised Agent of Government ; he holds his acknowledgment of measurements ; he has been paid for his work alleged to have been done.

5. Mr. Prichard, the Acting Government Solicitor, who was present when Mr. vanIngen gave his evidence, was very favorably impressed with the straightforward way in which he gave his deposition ; and he exhibits the utmost frankness and readiness in his proposal to meet the Government if any action is to be taken against him.

6. The case put forward by the Officiating Conservator of Forests is one which it requires not a little credulity to understand. It is not the case of an over-measurement, but an actual charge that *nothing* has been done.

7. This is based on two facts : first that the cart-men or rather one of them, for the other has never been examined, says that the logs he carted were not on behalf of Mr. vanIngen, but in completion of his own contract. The other would probably say the same. It is, however, to be borne in mind that unquestionably these men had received advances from Veerasawmy on account of Mr. vanIngen ; and it appears to me not at all unlikely that they would cart for vanIngen, leaving the completion of their own contract to a future date, as they would be quite sure of that. I put very little trust in their deposition ; for I do not suppose either would make any difficulty in swearing to an untruth, if it suited their own interests, or

they thought it would further a prosecution by their employers in the Forest Department. I make this remark not of course from any knowledge of these individual cart-men; but from my experience of the general worthlessness of the testimony of such a class.

8. There remains the other *fact*, which is of more cogency. I mean that the measurements held by Mr. vanIngen do not correspond with the logs which are at the depôt. This may be capable of explanation. Unexplained it is a very suspicious fact.

9. Though Mr. vanIngen has, as I have said, a strong *prima facie* case, I am far from saying that Government cannot recover the money back from him, if it can be proved that the whole contract was a fraud, and that Mr. vanIngen was from the outset a participator in such fraud. That all parties meant that no work ever should be done, and the money simply be put into Mr. vanIngen's pocket. Mr. vanIngen does not affect to have been on the spot, or have taken any actual part in the carting or measuring. All this appears to have been left to Veerasawmy and Turnbull. He may have been innocent, while the others guilty, especially as a very small portion of the money found its way into his pocket.

10. I think Government would have a very up-hill task in any action they might bring against Mr. vanIngen. I am sure it will at all events be most prudent to wait till we have Mr. Turnbull in India, and the result of his trial is seen.

11. Not that his guilt in respect of the contracts with the purchasers of wood can have any effect upon, or traced as evidence to the question of his or Mr. vanIngen's fraud in his carting contract, which is altogether separate from, and unconnected with, the purchase contracts; but something may come out which shall throw light upon these transactions, and enable me to see my way more clearly towards advising a civil action.

12. Such action, if brought, must be brought in an up-country Court, and I would respectfully submit, having answered the reference in obedience to the Orders of Government, that this is a matter peculiarly within the province of the Government Pleader.

(Signed) J. B. NORTON,
Advocate-General.

14*th May* 1869.

(True Copy.)

(Signed) H. G. PRICHARD,
Acting Government Solicitor.

No. 546. ORDER THEREON, 22nd May 1869, No. 1,446.

Forests, No. 23.

COMMUNICATED to the Acting Conservator of Forests for information and guidance.

2. Major Beddome will observe that the Advocate-General is not of opinion that a Suit against Mr. vanIngen could be brought to a successful issue at present. In the event of any further facts being elicited by future investigation into Mr. Turnbull's case, the matter may be again brought forward for consideration.

Proceedings of the Madras Government, Revenue Department,
22nd May 1869.

3. With advertence to the remark made by the Advocate-General in the concluding paragraph of his opinion, the Government observe that, as the Acting Government Solicitor had already taken part in the proceedings against Veerasawmy Pillay, in connection with which the contract with Mr. vanIngen had been brought forward, it was not deemed advisable to refer the present case to the Government Pleader.

(True Extract.)

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

To the Officiating Conservator of Forests.
,, the Government Solicitor.

Exd. F. R. Bantleman.

Revenue Department

Proceedings of the Madras Government
Under date the 22nd May 1869

Read the following letter
from the Acting Government Solicitor
Madras

Forwarding copy of the Minute
recorded upon Mr. Cantrell's
letter by the Hon. J. N. Sandwith, Esq.
Counsel in charge of the Wynaad
Forest matter & Mr. van Ingen &
Co. Tenders.

(R. & I. 17th May 1869 No. 281.)

1. Communicated to the
Acting Conservator of Forests
for information and guidance.
2. Major Beddome will
observe that the Minute
recorded is not of opinion
that a suit against Mr.
van Ingen could be brought
to an unsuccessful issue at
present.

Govt. of [1869] Madras.

REVENUE.

To

THE OFFICIATING CONSERVATOR
OF FORESTS.
&c., &c., &c.

Dated May, 22nd.

Read. Encl.

G. O., 22nd May 1869, No. 1,446.

MAY.

Nos. 545-546.

Mr. van Ingen's contract in Wynaad Forest.—Advocate-General's opinion that a Suit if instituted against him cannot be brought to a successful issue at present, communicated to Conservator of Forests.

present. In the event of any further facts being elicited by future investigation into Mr Turnbull's case, the matter may be again brought forward for consideration.

(With advertence) to the remark made by the Advocate General in the concluding paree of his opinion, the Govt observe that as the Ad Govt Solicitor had already taken part in the proceedings against Veerasawmy Pillay in connection with which the

the contract with Mr Van Ingen had been brought forward, it was not deemed advisable to refer the present case to the Govt Pleader.—

To the Hble Court of Policy &c &c &c
Govt Solicitor

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