

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	737	Press Mis.
²³⁵⁻³⁶ Dated	19-5-	1870

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
19th May 1870.*

No. 235. Read the following Proceedings of the Board of Revenue, dated 13th April 1870, No. 2,496:—

Read the following letter from the Collector of North Arcot, to the Acting Secretary to the Board of Revenue, dated Penmari, 23rd February 1870, No. 76.

ADVERTING to the Proceedings of the Board, dated 8th April 1868, No. 2,699, sanctioning defence of Suit No. 25 of 1868 on the file of the District Moonsiff's Court at Tirpathi, I have the honour to inform you that the Suit in question was subsequently transferred to the Civil Court of Chittoor where judgment has been given, non-suiting the plaintiff and adjudging that plaintiff should pay Rupees 79 to the defendant. I beg to enclose copy of this judgment for the information of the Board, with request that they will sanction, as a special case, Rupees 60 on account of Vakeel's fees, and Rupees 2-0-7 being the writing charge, etc., as the charges under the head "Law Charges" in the Revenue Department have already exceeded the Budget grant for the current official year.

2. The Court will be moved for execution of the Decree.

ENCLOSURE No. 1.

In the Civil Court of Chittoor.

PRESENT :—C. G. PLUMER, Esq., Acting Civil Judge.

Original Suit No. 25 of 1868.

This is a Suit brought to recover Rupees 600 for breach of contract, Rupees 30 for interest, and Rupees 20 on account of charges incurred, total Rupees 650.

This Suit was brought in the Court of the District Moonsiff of Tirpathi, by whom the issues were fixed; but subsequent to the first hearing, the 1st defendant, by Vakcel, moved this Court to transfer the Suit to this Court under the provisions of Section 6 of the Code of Civil Procedure, and this Court ordered transfer accordingly. The plaint sets forth that on the 1st September 1865, the plaintiff executed the Deed of Contract to the 1st defendant, filed in the Suit and marked "D." which instrument contained the following stipulations:—

1. That I shall plant avenue-trees on both sides of the road from Naggery to Pottoor, a distance of 10 miles.
2. That I shall plant 160 trees per mile, 80 on each side at intervals of 22 yards.
3. That these trees shall be of the better sorts of the fruit and timber-trees, viz., Mango, Tamarind, Ilapa, Margosa, Jumblum, etc.
4. That I shall so plant, water, and protect these trees during the two years I hold this contract; that at the expiration of the above specified time, the full tale of avenue-trees shall be handed over to the Revenue authorities, in a promising and well-grown condition.
5. Meanwhile, and to enable me to fulfil the conditions of this contract, I am, and agree, to receive during the above period of two years Rupees 50 a-month from the Government for the purpose of the said contract.
6. Having, as set forth above, agreed to fulfil this contract, which I have entered into with J. D. Robinson, Esq., the Collector of North Arcot, on behalf of Government, I bind myself to plant, rear, and deliver up the full complement of trees above prescribed.
7. In the event of my failing to fulfil any of the above stipulations, or of any of the trees being dead or ill-conditioned, I bind myself to make good such loss as the then Collector, on behalf of Government, may fix.

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8. For the first year I agree to receive Rupees 50 payable monthly, and for the second year I consent that the amount due on the remainder of my contract be withheld until I shall have delivered over and received a receipt in full from the then Collector for the tale of trees which I hereby bind myself to plant. The period of two years alluded to above shall reckon from the 1st instant.

The distance of 10 miles alluded to above is from the gate of the Railway station of Naggery, to the gate of the Railway station of Pottoor.

That the plaintiff fully performed the conditions imposed on him by the said instrument, and received from the 1st defendant the sum of Rupees 50 per mensem as stipulated. That on the 10th October 1867, or one month and ten days after the expiration of the contract, the 1st defendant, through the agency of the 2nd defendant, took possession of all the trees planted by the plaintiff, i.e., 1,600 trees, but that the defendants failed to pay him (plaintiff) the sum due for the second year, although the same was duly demanded. Hence the Suit.

The 1st defendant put in a written statement to the following effect :—

That after several objections had been raised by the plaintiff, the 2nd defendant, under his (1st defendant's) orders, accompanied by two experienced Avenue Pygusts, took charge of the trees planted by the plaintiff under his contract.

That second defendant made a report (filed subsequently marked No. IX, accompanied by a letter marked No. VIII).

That that report was to the following effect :—

Almost all the trees are only between six and twelve months' growth, and have been much neglected. Some are planted directly under the shades of other trees. I was therefore obliged to reject more than half the whole number of trees, and beg to annex a statement of the same :—

Number of miles.	The whole number of trees in a mile.	Number approved.	Number rejected.
From Naggery Railway Station to first mile-stone ...	182	149	33
From first mile-stone to Naggery Chuttrum ...	56	18	38
From Naggery Chuttrum to first mile-stone ...	121	51	70
From first mile-stone to second ...	162	84	78
From second to third ...	165	73	92
From third to fourth ...	167	85	82
From fourth to fifth ...	169	58	111
From fifth to sixth ...	168	66	102
From sixth to seventh ...	169	49	120
From seventh to eighth ...	140	51	89
From eighth to Puttoor Station ...	108	54	54
Total...	1,607	738	869

That the 1st defendant found that the proportionate value of the number of trees (738), which fulfilled the conditions of "D." was Rupees 553-0-8, and that as plaintiff had already received Rupees 600 on account, he was, under the terms of "D." liable to refund the difference, viz., Rupees 46-8-0, from which must be deducted Rupees 11-9-11, being a portion of the charges of establishment from the 1st September 1867, the date on which the contract expired, to the 23rd September, the date on which he was first required, in writing, by the 2nd defendant under orders of the 1st defendant to deliver over charge of the avenue-trees.

That the plaintiff is not entitled to recover the sum of Rupees 600, nor the interest Rupees 30, nor is he entitled to the sum of Rupees 8-9-5 claimed as establishment charges, inasmuch as it was by his own persisting in refusing to give over charge that these charges were incurred.

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That the 1st defendant in July 1866, by personal inspection and from local inquiry, ascertained that the plaintiff was not fulfilling the conditions imposed on him by his contract.

That the plaintiff should, for the reasons stated, be non-suited, and that he should be adjudged to pay to 1st defendant the sum of Rupees 34-14-1.

That the 2nd defendant having acted throughout under the orders of the 1st defendant, there is no necessity for him to put in a separate answer, and prays that his name be excluded from the Suit. The 2nd defendant's name was in accordance with the request contained in the concluding paragraph of the written statement of the 1st defendant, and with the consent of the plaintiff, excluded from the Suit.

The first hearing of the case came on, on the 21st July 1868, before the District Moonsiff of Tirpathi, when the following issues were settled :—

1. Whether the plaintiff has duly and completely fulfilled the terms of the contract entered into by him with the 1st defendant.

2. Whether the plaintiff is entitled to recover as sued for the whole of the balance due under the contract.

3. Whether any delay was caused by the plaintiff in handing over to the 1st defendant the avenue-trees in litigation, whether the plaintiff has any occasion to recover out of the amount said to have been defrayed by him for the maintenance of the avenue-trees, the balance after deducting the portion admitted by the 1st defendant.

The Suit came on for final hearing on the 21st September 1869.

The plaintiff examined seven witnesses.

1. Mr. Willix, (plaintiff),
2. Chenganna,
3. Nagayyar,
4. Balajee Row,
5. Chinna Chengadu,
6. Akkama Naidoo,
7. Sivaramiah,

and filed the following Exhibit :—

A. Copy of the memorandum, dated 9th November 1867, written by plaintiff to 1st defendant.

Both parties filed the following Exhibits :—

XIV.—B. Letter written by plaintiff to 1st defendant on the 3rd December 1867.

IV.—C. Letter written by plaintiff to 1st defendant on the 17th September 1867.

I.—D. Contract Bond executed by plaintiff to 1st defendant on the 1st September 1865.

The defendant examined eleven witnesses.

1. Ayavayya,
2. Codundaramiah,
3. Ramasawmy Reddy,
4. Conda Reddy,
5. Veeraragaviab,
6. Poli Naidoo,
7. Nallappa Naidoo,
8. Rama Naidoo,
9. Chenchu Naidoo,
10. Chengama Naidoo,
11. Parasuraman,

and filed the following Exhibits :—

II. Letter written by plaintiff to 1st defendant on the 3rd December 1867.

III. Copy of the letter written by 1st defendant to 2nd defendant on the 6th September 1867.

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- V. Copy of the letter written by 2nd defendant to plaintiff on the 1st October 1867.
- VI. Letter written by 2nd defendant to 1st defendant on the 2nd October 1867.
- VII. Copy of the letter written by 1st defendant to 2nd defendant on the 4th October 1867.
- VIII. Letter written by 2nd defendant to 1st defendant on the 14th October 1867.
- IX. Statement sent by 2nd defendant to 1st defendant regarding the state of avenue-trees.
- X. Letter written by plaintiff to 1st defendant on the 15th October 1867.
- XI. Copy of the official memorandum written by 1st defendant to plaintiff on the 31st October 1867.
- XII. Letter written by 1st defendant to 2nd defendant on the 2nd November 1867.
- XIII. Letter written by 2nd defendant to 1st defendant on the 17th November 1867.
- XV. Copy of the Board's Proceedings, dated 24th June 1859.
- XVI. Receipt, dated 9th January 1868.
- XVII. One Takeed issued by 1st defendant to Sub-Magistrate of Narayanavanam on the 11th June 1866.
One report made by 1st defendant's 2nd witness on the 28th June 1866 to the 1st defendant.
One Urzee written by Sub-Magistrate of Narayanavanam to 1st defendant on the 28th June 1866, enclosing the above report.
- XVIII. Letter written by 1st defendant to plaintiff on the 5th July 1866.
- XIX. One memorandum written by 1st defendant on the 6th December 1867.
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- XX. Takeed issued by Sub-Magistrate of Narayanavanam to Maneagar of Puttoor on the 16th December 1867.

At the close of the defendant's case the Vakeel for defendant requested the Court to issue a commission, under Section 175 of the Civil Procedure Code, for the examination by interrogatories of Mr. Hewetson, who is now Deputy-Collector in the South Arcot District. A commission was accordingly issued, and interrogatories sent to the Civil Judge of Cuddalore. A return to this commission was made on the 17th September 1869, when the Vakeel for defendant and the plaintiff in person were heard.

After a careful perusal of the records, and after due consideration of the arguments adduced by plaintiff and defendant's Vakeel, the Court proceeds to pass the following—

Judgment.

1. In deciding this Suit the first thing requisite is clearly to understand the intention of the parties at the time that the contract sued on was entered into. The terms of the contract having been reduced to writing, I must look to the written instrument alone in order to arrive at that understanding.
2. The terms of the document D., which is the instrument referred to, and which has been set forth in extenso above, are, I think, sufficiently explicit, and free from ambiguity.
3. It is fully admitted by the plaintiff that this contract was entered into by him freely, willingly, and with his eyes quite open to the nature of the conditions imposed on him.
4. It is quite plain from the terms of "D." that the performance by plaintiff of those conditions constitutes a condition precedent to any right on his part to sue; before he can recover from the defendant, he must prove the performance by him of his part of the contract.
5. The first point then to be determined is, whether the plaintiff has satisfactorily proved that he has performed the conditions imposed on him by D.
6. In order to determine this point it is necessary closely to examine into the nature of these conditions, and in doing so the written contract should be considered in its entirety.
7. Paragraphs 1, 2, and 3, of the instrument "D." speak for themselves, the important paragraphs inasmuch as they contain the conditions which are binding on the plaintiff are paragraphs 4, 6, and 7.

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8. In paragraph 4 the plaintiff agrees and binds himself as follows:—

"I shall so plant, water, and protect the trees referred to in paragraphs 1, 2, 3, during the two years I hold the contract; that at the expiration of the above specified time, the full tale of avenue-trees shall be handed over to the Revenue authorities in a promising and well-grown condition."

9. And in paragraph 6. "I bind myself to plant, rear, and deliver up the full complement of trees above prescribed."

10. In paragraph 7. "In the event of my failing to fulfil any of the above stipulations, or of any of the trees being dead or ill-conditioned, I bind myself to make good such loss as the then Collector, on behalf of Government, may fix."

11. Now reading the above paragraphs in connection with paragraphs 1, 2, and 3, the only construction of which I think the document "D." admits is this:—

The plaintiff bound himself to plant on each side of the road between the miles specified at certain number of various descriptions of trees fit to form an avenue, as soon after the commencement of the contract, as the exercise of due diligence and an expenditure proportionate to the requirements of the contract would allow; that, during the two years of the contract, he was to water and protect these trees with like diligence and with such expenditure as might be found requisite, and that at the expiration of the contract-term, that is, two years, he was to deliver up to the defendant the full complement of trees in such a condition as would show that the plaintiff had exercised due diligence, had taken every precaution to ensure the well-doing and proper growth of the trees, and in a condition which would enable plaintiff to say, there are the trees, if the same amount of care is taken of them in future, as I have taken of them for the last two years, they promise to furnish such good and sufficient shade as avenue-trees should do.

12. Thus interpreting the contract has the plaintiff proved that he has so fulfilled the conditions imposed on him?

13. I think he has failed to furnish this affirmative proof, and I think further that the defendant's witnesses have proved in the negative that the plaintiff has not so performed the conditions imposed on him as to entitle him to sue defendant.

14. The plaintiff's witnesses consist of plaintiff himself and six others.

15. The plaintiff himself states that at the commencement of the contract, he took measures to carry out its terms by hiring maistries, coolies, etc., etc.; that the planting and fencing the trees over the whole length of the road occupied seven months, at the expiration of which time he employed coolies to water and protect the trees; and that he did so until the expiration of this contract; that those of the trees that died were at once re-placed; and that when he gave over charge to Mr. Hewetson, the trees varied in height from one and-a-half yard to four yards.

16. The plaintiff stated that he kept written accounts of his expenditure, but no such accounts were filed by him; he admits that he received Rupees 50 subsequent to the letter put in by defendant, and marked No. XIV. (this letter contains a demand for Rupees 600), and that his claim on that head ought to be reduced to Rupees 550 in consequence. Plaintiff likewise admits the various documents filed by defendant.

The plaintiff's first witness states that he about four years ago planted trees for plaintiff; the work took seven months he was in charge. Some were then quarter yard, some half yard, some one yard in height, some one or two of the trees per mile were dead.

The second witness states that he looked after trees from April 1866; he employed ten men under him, and kept an account of the payments; he was employed for five or six months when he left. Some of the trees were in a good healthy state, and some not; he on cross-examination states that he has no account to show the number of trees planted.

The third witness also worked for plaintiff looking after these trees from October 1866, had ten men and seven or nine women under him. Some of the trees died, and he planted others; he kept an account of all the people employed; he gave over charge in May 1867, when the trees were all in a healthy condition. On cross-examination he says that when he delivered over charge to the fourth witness there were no empty pits.

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The fourth witness was employed about the trees when Mr. Hewetson took charge; he states that then the trees varied in height from half to one yard; that four or five per mile were dead, but had been re-planted; that the trees were healthy; he was employed for nine months and had seventeen men and six women under him; in cross-examination he says he was dismissed because plaintiff would not give him his pay; he admits that when Mr. Hewetson took charge some ten or twelve trees in the miles he worked on were dead, and none were higher than 1½ yard; they were all then in a healthy condition.

The fifth witness states that he worked for plaintiff for one year and-a-half; he watered the trees for one mile; was present when Mr. Hewetson took charge of the trees over five miles; the trees were in good condition and of various heights, from quarter to one yard; there were no empty pits when Mr. Hewetson took charge.

17. Now it will be observed that there are considerable discrepancies in the evidence of those witnesses, who speak to the state of the trees at the time that Mr. Hewetson took charge, and there is a vagueness and looseness of assertions to be observed in the evidence of these witnesses which, in my opinion, renders it unworthy of much weight. No accounts are produced to show the number of coolies employed during the contract-term, or the number of trees planted, and no account is produced to show clearly the condition of the trees when Mr. Hewetson took charge; there is nothing, in fact, to prove that the plaintiff fulfilled the terms of the contract, and that he delivered up to the defendant the full tale of trees in a promising and well-grown condition, beyond the contradictory oral evidence of certain maistries and coolies, wholly unsupported by any accounts; whilst, on the other hand, there is the oral evidence of a number of witnesses, the credibility of some of whom at least is not to be doubted, and their evidence is supported by documents the genuineness of which is not disputed, nor is their correctness impugned. As long back as June 1866, as would appear from the Exhibit No. XVII., the suspicions of the defendant were aroused that plaintiff was not using due diligence to perform the conditions imposed on him by his contract, and that his suspicions were well-founded is apparent from the Exhibit also marked XVII., which is an Urzi addressed by the Sub-Magistrate of Narayanavanam, enclosing a report made by him as to the condition of the trees. From this report it appears that on the 28th June 1866, or nine months after the commencement of the plaintiff's contract, not half the proper complement of trees had been even planted. The Sub-Magistrate was examined as a witness, but he was not cross-examined on this report by plaintiff.

18. Then again there is the evidence of Mr. Hewetson, and there is the report made by him after taking charge of the trees; in this (No. VIII.) he says that "almost all the trees are only between six and twelve months' growth, and have been much neglected; some are planted directly under the shades of other trees. I was therefore obliged to reject more than half the whole number," and he then gives a list showing that he rejected 869 trees.

19. The Report No. IX., which accompanied the above letter, contains a careful analysis showing the number of empty pits and the height of the trees on each mile, and from this it appears that he found 1,554 trees of which 987 were below one yard in height. To his examination Mr. Hewetson stated in answer to question No. 5, "some of the trees had died, and some were withering away," and again, in answer to question No. 6, he says "some of them, i.e., the trees were dead, some were three or four inches high, had just been planted, some were a foot high, others were between three and four feet high."

In answer to question No. 7 asking him to state fully his reasons for rejecting more than half the number of the trees, he says, "well I consider that they were not of a year's growth, the ones I did not reject were over a year's growth."

In answer to question No. 8 he says, "I consider that all the number of trees rejected as well as the dead ones were useless, and would never grow into avenue-trees."

20. Now nothing can be more positive than this evidence, or more clearly show that at the expiration of the contract-term more than half the trees were neither promising as future avenue-trees, nor in a well-grown condition; and this evidence, it should be remembered, is no loose and

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vague assertion made at random, but it is fully supported by the contents of the documents Nos. VIII. and IX. already alluded to, and it is supported by the evidence of the first witness for defendant, a Pygust who was specially appointed to accompany Mr. Hewetson when he took over charge of the trees; that witness says that when Mr. Hewetson took charge of the trees, one-third of the trees were in a good condition, the remaining two-thirds were not in a good condition; they were trees some of six months' growth; some had only been planted about fifteen days; some of the pits were empty; he did not remember the number of young plants, nor how many empty pits, the trees were rejected; they were young and small; they might grow he says with a great deal of trouble.

21. The evidence of the second witness, the Sub-Magistrate of Narayanavanam, has already been alluded to; he further states that he saw the trees ten or twelve days after Mr. Hewetson took charge of them; that in some of the pits there were no trees; that the trees that existed were withered from want of water, and that some of the trees were quite dead.

22. The remaining witnesses for the defendant consisting of the Village Moonsiff, through whose villages the road passes, speak more or less in support of the evidence of Mr. Hewetson; they say, "that when he took charge, some of the trees were stunted for want of water, and some of the pits were quite empty."

23. The conclusion I have arrived at from a careful consideration of the whole of the evidence is, that the plaintiff has failed to prove the performance by him of the conditions imposed on him by his contract, while the defendant has clearly proved their non-performance, and as these conditions are precedent to plaintiff's right to sue, it follows that the plaintiff must be non-suited.

24. It remains now to be considered whether the defendant is entitled to recover from the plaintiff the amount asked for in defendant's written statement, namely, Rupees 84-13-0, the original sum sought to be recovered from plaintiff by defendant was Rupees 34-13-0, but inasmuch as the plaintiff admitted that he had received a sum of Rupees 50 in addition to the Rupees 600 received by him for the first year of his contract, that amount is added on to the original sum demanded. I see no reason for refusing a decree for this amount; the plaintiff in paragraph 7 of the document "D." agreed to make good such loss as the then Collector on behalf of Government might fix.

25. The defendant (Collector) on the report of the Deputy-Collector, Mr. Hewetson, fixed the amount of loss at Rupees 34-13-0 after making certain deductions on account of the charges of establishment incurred by the plaintiff from the 1st September to 23rd September, the date on which the plaintiff is said to have been first called on to give over charge of the trees. This loss is calculated on the number of trees rejected, and there is no evidence before me to justify my interfering with this calculation; if the plaintiff received Rupees 650, and only handed over to defendant trees of the value of Rupees 553 odd as estimated by defendant, by whose estimate the plaintiff agreed to abide, this Court should not, I think, interfere.

26. It is stated by Mr. Hewetson, in his letter to defendant, to deliver over charge of the trees on the 23rd September, but this demand has not been put in. It appears from the letter (No. V.) written by Mr. Hewetson to plaintiff, that on the 1st October he made written demand to plaintiff to deliver over charge of the trees on Friday the 4th October, and it is clear from the subsequent correspondence that it was the plaintiff's own fault that he was not relieved of all charge on account of the trees on Friday 4th October; up to that time I consider plaintiff to be entitled to the expenses incurred; these expenses, calculated at his own estimate, amount to Rupees 29-0-0.

27. The result of the whole case is that the plaintiff is non-suited, and it is further adjudged that plaintiff do pay to defendant the sum of Rupees 79, and that the plaintiff do bear the costs of the Suit.

Pronounced in open Court this 10th day of January 1870.

(Signed) C. G. PLUMER,
Acting Civil Judge.

*Proceedings of the Madras Government, Revenue Department,
19th May 1870.*

SUBMITTED to Government, together with a copy of Board's Proceeding dated 8th April 1868, No. 2,699, in which was sanctioned the defence of a Suit instituted by Mr. T. H. Willix against the Collector of North Arcot, and M. Hewetson, Zemindary Deputy-Collector of the same district.

2. The Suit arose thus—The plaintiff contracted to plant trees on both sides of the road from Naggery to Puthoor, a distance of ten miles, and to water and protect the trees during two years.

3. For the first year he was to receive 50 Rupees monthly, and a payment in full at the same rate for the second year, on the satisfactory completion of his contract.

4. At the end of the second year, both the Collector and Deputy-Collector considered that the contract had not been fulfilled, and the second year's payment was withheld.

5. Hence the Suit.

6. The Civil Court of Chittoor, to which the Suit was transferred, have now suited the plaintiff, and decreed that he pay to the defendants, Rupees 79 (on account of money paid him in excess of the first year's contract allowance,) and that plaintiff also bear the cost of the Suit.

7. Pending the enforcement of this Decree, the Collector requests sanction for the disbursement of Rupees 62-0-7 for Vakeel's fees, etc.

No. 236.

ORDER THEREON, 19th May 1870, No. 737.

Miscellaneous.

RECORDED.

2. The disbursement of Rupees 62-0-7, pending the enforcement of the Civil Judge's Decree, is sanctioned.

(True Extract.)

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

To the Board of Revenue.
.. the Accountant-General.

Exd. F. R. Bantleman.

No. 2,699.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 8th April 1868.

Read the following letter from J. D. ROBINSON, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Chittoor, 27th March 1868, No. 113, B.

1. With reference to the enclosed copies of summonses, issued in the matter of Original Suit No. 25 of 1868, in the District Munsiff's Court at Tripathy, I have the honour to submit, for the Board's consideration, draft of the answer which I propose to make.
2. Copy of the translation of the plaint in the above suit is transmitted.
3. The Pleader, employed on behalf of Government, has obtained an extension of forty-five days to admit of the necessary sanction being received from the Board for the conduct of the defence.
4. Mr. T. H. Willix, the plaintiff, contracted in a bond, dated the 1st September 1865, (copy herewith enclosed,) to plant avenue trees along both sides of the Imperial road, between Naggerry and Puthoor, for Rupees 1,200 in all, being at the rate of Rupees 50 per mensem for the two years during which the contract was to run. Of the Rupees 1,200, which would be due on the fulfilment of the several conditions made in the Deed of Agreement, Mr. Willix, the plaintiff, was to receive Rupees 600 by regular monthly instalments of Rupees 50, and the (balance Rupees 600) on the transfer of the avenues at the expiration of two years, in the event of the trees fulfilling all requirements as to growth and condition.
5. Mr. Willix has failed to fulfil the conditions of his contract, as will be seen from the report of Mr. W. F. Hewetson, Zemindary Deputy Collector, dated 14th October last, No. 130, copy of which is enclosed. I have thereupon been compelled to adopt the course pointed out in my Memorandum, dated 31st idem, No. 269, to the address of the plaintiff, a copy of which is likewise transmitted for the consideration of the Board.

ENCLOSURE No. 1.

[Translation.]

TO THE COURT OF THE DISTRICT MUNSIF, TRIPATHY, ZILLAH, CHITTOOR.

Plaintiff,

versus

Defendants.

Mr. T. H. Willix, employed in agriculture, &c., residing in Nattam near the Naggerry Railway station, Chittoor district.

1. J. D. Robinson, Esq., Collector, Chittoor.
2. W. F. Hewetson, Esq., Deputy Collector, Chittoor district, residing in Naggerry, same district.

I. Plaintiff entered into a contract with the first defendant for planting avenue trees, and on the 1st September 1865, plaintiff executed to first defendant a Deed of Contract containing the following conditions:—

1st.—That plaintiff shall plant trees on both sides of the road from Naggerry to Puthoor, a distance of ten miles, 160 trees per mile, eighty on each side, at intervals of twenty-two yards, which trees shall be of the better sorts of fruit and timber trees.

2nd.—That he shall so plant, water, and protect the trees during the two years he shall hold the contract, and that at the expiration of that period the full tale of trees shall be handed over to the first defendant in a promising and well-grown condition.

3rd.—That, in the event of plaintiff failing to fulfil any of the above stipulations, or of any of the trees being dead or ill-conditioned, he shall make good such loss as the first defendant may fix.

4th.—That plaintiff shall receive from the first defendant, during the abovesaid period of two years, 50 Rupees a month; that for the first year he shall receive Rupees 50 monthly; and that for the second year the payment be withheld until plaintiff shall have delivered over and received a receipt in full from the first defendant for the tale of trees plaintiff has agreed to plant.

Govt. of 1870

REVENUE.

THE BOARD OF REVENUE

Ac, Ac, Ac

Dated May, 19th.

Recd.

G. O., 19th May 1870, No. 737.

MAY.

Nos. 235-236.

Suit No. 25 of 1868 instituted by Mr. T. H. Willix.—Board's Proceedings forwarding copy of Judgment in connection with it, recorded. Disbursement of Vakeel's fees, pending enforcement of Decree, sanctioned.

II. According to the above stated conditions plaintiff planted, watered, and protected the trees during the two years of the contract, and fulfilled all the conditions contained in the contract, and for the first year received from the first defendant 50 Rupees monthly.

III. One month and ten days after the expiration of the contract, or on the 10th October 1867, the second defendant, under the instructions of the first defendant, took possession of all the trees planted by plaintiff under his contract, that is, 1,600 trees, but neither of the defendants have paid plaintiff the sum due to him for the second year of the contract, nor given him a receipt for the trees so taken over as stipulated in the contract, although the sum due was demanded from the first defendant.

IV. Plaintiff, therefore, sues the defendants for the following sum, with interest thereon to date of decree and costs:—

	RS.	A.	P.
For the second year of the contract at the rate of 50 Rupees per month for twelve months, from 1st September 1866 to 30th August 1867	600	0	0
Interest on the above sum as demanded by plaintiff from first defendant on the 17th September 1867, at the rate of 12 per cent. per annum, for five months.	30	0	0
Charge of conservancy between the date of expiration of contract, (1st September,) and the date on which the trees were taken over by the second defendant, (10th October,) as notified to the first defendant on the 17th September 1867...	20	3	4
	650	3	4
Remitted	0	3	4
	650	0	0

(Signed) T. H. WILLIX.

(Signed in Telugu) C. CHENCHOW ROW,
Pleader,

I, T. H. Willix, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.
30th January 1868.

(Signed) T. H. WILLIX.

(True translation.)

Filed 31st January 1868.

(Signed in Tamil.) STREEPATHI ROW,
District Munsiff.

(True Copy.)

(Signed) J. D. ROBINSON,
Collector.

ENCLOSURE No. 2.

I, T. H. Willix, residing at Nattam near the Railway station of Naggery, in the division of Narrinavanam, do hereby execute this Deed of Contract for planting avenue trees.

The conditions under which I undertake this contract are as follow:—

1. That I shall plant avenue trees on both sides of the road from Naggery to Puthoor, a distance of ten miles.
2. That I shall plant 160 trees per mile, eighty on each side, at intervals of twenty-two yards.
3. That these trees shall be of the better sorts of fruit and timber trees, namely, Mangoe, Tamarind, Ilappa, Margosa, Jamblum, &c.
4. That I shall so plant, water, and protect these trees during the two years I hold this contract, that, at the expiration of the above specified time, the full tale of avenue trees shall be handed over to the Revenue authorities in a promising and well-grown condition.

5. Meanwhile, and to enable me to fulfil the conditions of this contract, I am and agree to receive, during the above period of two years, Rupees 50 a month from Government, for the purposes of the said contract.

6. Having, as set forth above, agreed to fulfil this contract which I have entered into with J. D. Robinson, Esq., the Collector of North Arcot, on behalf of Government, I bind myself to plant, rear, and deliver up the full complement of trees above prescribed.

7. In the event of my failing to fulfil any of the above stipulations, or of any of the trees being dead or ill-conditioned, I bind myself to make good such loss as the then Collector on behalf of Government may fix.

For the first year I agree to receive Rupees 50 payable monthly, and for the second year I consent that the amount, due on the remainder of my contract, be withheld until I shall have delivered over and received a receipt in full from the then Collector for the tale of trees which I hereby bind myself to place.

The period of two years alluded to above shall reckon from the 1st instant.

The distance of ten miles, alluded to above, is from the gate of the Railway station of Naggery, to the gate of the Railway station of Puthoor.

Witness my hand, this first day of September, A. D. 1865.
In the presence of Zaheroodeen Ahamed.

(Signed) T. H. WILLIX.

(True Copy.)

(Signed) J. D. ROBINSON,
Collector.

ENCLOSURE No. 3.

PROPOSED ANSWER.

DISTRICT MUNSIF'S COURT AT TRIPATHY.

Original Suit No. 25 of 1868.

Plaintiff.

versus

Defendants.

Mr. T. H. Willix, resident of Naggery, in
the district of North Arcot.

1. J. D. Robinson, Esq., Collector of North Arcot.
2. W. F. Hewetson, Esq., Deputy Collector in charge of Zemindary Tracts, North Arcot.

1. The first defendant would point out to the Court that the plaintiff is not entitled to receive the sum for which he sues.

2. The plaintiff entered into a written engagement with first defendant, acting on behalf of Government and as the custodian of the District Local Funds, dated 1st September 1865, wherein he binds himself to plant 1,600 avenue trees on either side of the Imperial road lying between the town of Naggery and the Puthoor Railway station, being a distance of ten miles at the rate of eighty trees on each side of the said road. In the said Deed of Contract, the plaintiff further binds himself to water and protect the trees thus planted during the two years for which the contract was to run, and at the expiration of that period to deliver over, to the Revenue authorities, the stipulated complement of trees in a promising and well-grown condition. Second defendant, the Divisional Officer and local representative of the Collector, was instructed by first defendant to take over, with the aid of two experienced Avenue Pygists, named Iyaviah and Gauisa Rao, expressly associated with him for the purpose, charge of the trees, which, under the terms of his contract, were to be delivered by plaintiff.

3. After several objections taken by plaintiff to the arrangements by which he was required to deliver over the trees to second defendant, instead of to first defendant, which will be discussed further on with reference to the interest items charged in plaintiff's bill of charges now sued for, the tree

were finally taken charge of by second defendant acting as the Collector's representative in the transaction. In communicating the results of the transfer thus effected, second defendant reported, "Almost all the trees are only between six and twelve months' growth, and have been much neglected. Some are planted directly under the shades of other trees. I was, therefore, obliged to reject more than half the whole number of trees, and beg to annex a statement of the same:—

Number of miles.	The whole number of trees in a mile.	Number approved.	Number rejected.
From Naggerry Railway station to first milestone	182	149	33
From first milestone to Naggerry Chuttrum	56	18	38
From Naggerry Chuttrum to first milestone	121	51	70
From first milestone to second	162	84	78
From second to third	165	73	92
From third to fourth	167	85	82
From fourth to fifth	169	58	111
From fifth to sixth	168	66	102
From sixth to seventh	169	49	120
From seventh to eighth	140	51	89
From eighth to Puthoor Railway station	108	54	54
Total.....	1,607	738	869

4. Under the terms of the 7th Article of the bond in question, the first defendant, as representative of Government, found that the proportionate value of the number of trees which fulfilled the stipulated requirements as to growth and condition, that is, 738, was Rupees 553-8-0, and decided that, as plaintiff had already received Rupees 600 on account, he was, under the terms of his engagement, liable to refund the difference being Rupees 46-8-0. From the difference thus to be refunded plaintiff was declared entitled to deduct Rupees 11-9-0, being a portion of the charges of establishment claimed by him in his letter, dated 15th October 1867, as due for the interval between the 1st September, the date on which the contract expired, and 23rd idem, the date on which he was first required in writing, by the second defendant acting under the immediate instructions of the first defendant, and as his local representative, to deliver over charge of the avenue trees in question.

5. The plaintiff's claim for the second instalment of Rupees 600, the balance to which he would have been entitled, had the conditions of his bond been fulfilled, is, for the above stated reasons, untenable, as is also that for Rupees 30 on account of interest; neither is plaintiff entitled to the Rupees 8-9-5, which he claims as charges of Establishment, inasmuch as he did, by his own act, and at his own risk, delay the transfer of the trees for that interval, by refusing to effect it through the agency appointed by the Collector. In explanation of the circumstances under which his letter to plaintiff, dated 31st October 1867, was written, first defendant may mention, for the consideration of the Court, that, having occasion to visit Puthoor in , he then ascertained, from a personal inspection of several miles of avenue in that neighbourhood, and from local inquiry, that the conditions of the contract were not being fulfilled by plaintiff, either in respect to the time of planting, or the arrangements for fencing in and watering the trees, then but recently put down.

6. The first defendant, therefore, moves the Court to nonsuit plaintiff with costs, and to give judgment in his favour for Rupees 34-14-1 overpaid to plaintiff.

7. No separate appearance or answer being required on the part of second defendant in this suit, as he acted under the orders of the first defendant on behalf of Government—vide Circular Order, No. 300, page 299, Mr. Dalryell's edition—the Court is moved to exclude his name from the list of defendants.

The several documents herewith filed will prove the facts.

(Signed) J. D. ROBINSON,
Collector.

ENCLOSURE No. 5.

From W. F. HEWETSON, Esq., Deputy Collector, Zemindary Tracts, to the Collector of North Arcot, dated Naggerry, 14th October 1867, No. 130.

1. With reference to your letter of the 4th instant, No. 733, on the subject of the transfer of avenues, planted from Naggerry Railway station to Puthoor, I have the honour to inform you that I have called upon Mr. Willix the third time to be ready at Puthoor, on Thursday morning last, to deliver over charge of the avenues to me, which he has refused to do, and even told me in person that he will not make over the avenue himself until he has received "a written authority from the Collector."

2. I have also forwarded to Mr. Willix copy of your letter under reply, together with extracts of those passages in your former letters, in which I am constituted your agent in this transaction.

3. Mr. Willix having declined to acknowledge the authority thus delegated to me, I, as requested by you, took charge of the avenues with the aid of two Pygusts mile by mile myself in three successive days. Almost all the trees are only between six and twelve months' growth, and have been much neglected. Some are planted directly under the shades of other trees. I was, therefore, obliged to reject more than half the whole number of trees, and beg to annex a statement of the same:—

Number of miles.	The whole number of trees in a mile.	Number approved.	Number rejected.
From Naggerry Railway station to first milestone	182	149	33
From first milestone to Naggerry Chuttrum	56	18	38
From Naggerry Chuttrum to first milestone	121	51	70
From the first milestone to the second	162	84	78
From second to third	165	73	92
From third to fourth	167	85	82
From fourth to fifth	169	58	111
From fifth to sixth	168	66	102
From sixth to seventh	169	49	120
From seventh to eighth	140	51	89
From eighth to Puthoor Railway station	108	54	54
Total...	1,607	738	869

4. I have issued an order to the Sub-Magistrate of Naraiyanavanam to send strict orders to the several Village Moonsiffs, through whose villages this road passes, to take care of these trees until further orders. I also request that you will be so good as to send me an order to employ four coolies on 3½ Rupees a month for some time, as, in the absence of any such arrangement, the present trees will be dried up in no time.

(True Copy.)

(Signed) J. D. ROBINSON,
Collector.

ENCLOSURE No. 6.

ABSTRACT.—Copy of Summons issued to second defendant Mr. Hewetson, Deputy Collector.

ENCLOSURE No. 7.

ABSTRACT.—Copy of Summons issued to first defendant.

ENCLOSURE No. 8.—Official Memorandum.

The Board sanction the defence of the suit on the usual terms, and approve of the Draft Answer.
(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Collector of North Arcot.

Copy to the Accountant General.

Exd. J. Wright.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 8th April 1868.

Received

No. 2,699.

Sanctioning defence of Suit No. 25 of 1868,
on the file of District Moonsiff's Court at Triplichy,
in North Arcot district, on the usual terms, and
approving of Draft Answer of Collector.

1868.

Department.

Enclosed with Proceeding of the Board
of Revenue to the Collector of North Arcot
of 12th April 1868.
No. 2496.

No.

No.

Rev. Department
92

77-737.

Proceedings of the Madras Government
Under date the 19th May/70

Read the following
Proceedings of the Board
of Revenue.

Subj. letter from Collector
forwarding copy of judgment in
Suit No. 25 of 1868 on file of Chittoor
District Court in North Arcot Dist.
instituted against Govt. by Mrs. J. H.
Willis, for recovery of amount due
on account of revenue trees planted
by him, now-suiting plaintiff &
requesting sanction for disburse-
ment of Rs. 62-4-7 for vakile
fee &c, pending enforcement
of decree.

(F.C. 13th April/70 No. 2496)

Recorded.

2 The disbursement
of Rs. 62-4-7 pending
the enforcement of
the

P. D.

Apr.

The Civil Judge's
decree, is sanctioned.

OK.

11

14 To the Order of Revenue Dec. 30 May
6 the Accountant General

at

By the