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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

.....*Revenue*.....DEPARTMENT

|          |           |       |
|----------|-----------|-------|
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| Dated    | 11.7.1875 | 196   |

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,  
1st July 1875.*

No. 1. Read the following Proceedings of the Board of Revenue, dated 17th May 1875, No. 1,319, Forest No. 90:—

Read the following letter from A. McC. WEBSTER, Esq., Acting Collector of South Canara, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Mangalore, 24th March 1875, No. 585:—

As promised in paragraph 8 of my predecessor's letter to Board, dated 24th July 1874, No. 1,403, I have the honor to briefly note the facts of the case alluded to and to request the Board's orders thereon.

2. In 1869 one Hammad Byari entered into a contract with the Forest Department agreeing to float down and deliver over at Mangalore 239 logs of mango-wood in consideration of his receiving Rupees 400. Of the 239 logs, only 200 were made over to his charge for transport, and of these he delivered only 172 logs at the stipulated place. He thus left his contract unfulfilled in respect of the remaining 28 logs.

3. In 1870 he got this contract cancelled, and entered into a fresh one whereby he undertook to float down to Mangalore, by the end of December 1870, the 28 logs remaining undelivered as aforesaid. The fresh bond fixed the consideration payable to the contractor on the 200 logs at Rupees 334-11-2, of which ~~the contractor had already received Rupees 232.~~ The balance of Rupees 42-11-2 was made payable to him on his furnishing adequate security for the due fulfilment of the contract. He subsequently delivered 12 logs out of the 28, and having never performed the rest of the contract was complained against for breach of contract under Act XIII. of 1859. The prosecution, however, failed, as his omission was not held to be a criminal offence.

4. Forester Mr. Goudie then, without obtaining any orders from his superior who was at the time absent from the district on duty, sued the Contractor in the Munsif's Court at Pattur. This proceeding was entirely of his own motion and unauthorized. On Mr. Cherry's return to the district, the unauthorized proceeding of the Forester attracted his attention, and being of opinion that the value of the logs had been over-estimated, he endeavoured to effect a compromise. The defendant was willing to come to terms with the department, and on the 2nd November 1872 he made the following written proposal\* to the Deputy-Conservator, viz., "as you told \* \* that the suit filed against me from your office may be compromised I \* \* have amicably settled the matter by agreeing to pay at the rate of Rupees 3 per log and also the Court costs thereon." In the letter† of acceptance the Deputy Conservator so modified and added to the proposal as to leave no room for doubting what the liability actually incurred by the Contractor was. He was told that he had to pay into the Taluk Treasury at Uppinargady Rupees 54 (apparently a mistake for Rupees 48) on

\* A literal English translation of the original is enclosed.

† Dated 3rd December 1872 (translation enclosed).

*Proceedings of the Madras Government, Revenue Department,  
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account of the value of the logs, and to the Deputy-Conservator of Forests Rupees 54-9-0\* on account of the costs of the proceedings taken to realize the value of the wood. The Contractor did not reply to this last communication; but in July 1873, or nearly seven months afterwards, he went to the Uppinangadi Taluq Tahsildar and offered to pay Rupees 27, stating that that was all he owed to Government under the last-mentioned contract.

5. The money was not accepted, and the unfulfilled portion of the contract was never afterwards performed, nor was the money paid up.

6. It appears that by a clerical mistake the number of logs was put down as 18 instead of 16 in the Deputy-Conservator's letter of acceptance; so that the Contractor owes—

According to Mr. Cherry's contention—

|                       | RS. | A. | P. |
|-----------------------|-----|----|----|
| Value of logs .. .. . | 48  | 0  | 0  |
| Cost of suit .. .. .  | 54  | 9  | 0  |
| Total .. .. .         | 102 | 9  | 0  |

According to his opinion—

|                                             | RS. | A. | P. |
|---------------------------------------------|-----|----|----|
| Value of nine logs .. .. .                  | 27  | 0  | 0  |
| Proportionate costs of suit thereon .. .. . | 4   | 14 | 7  |
| Total .. .. .                               | 31  | 14 | 7  |

I am of opinion that though the Contractor's letter of compromise and Mr. Cherry's uncorrected acceptance of it virtually completed a fresh contract, it would not be upheld in Court, as one of the two documents should be stamped, and neither was stamped at the time, and we cannot now stamp the Contractor's letter.

7. It will therefore, I think, be best to take what the Contractor is now willing to pay, and to write the balance off the accounts. Forester Goudie is certainly liable to make good the loss, as he filed the suit without orders; but, considering the small amount of his pay and that he filed the suit in ignorance of the orders forbidding such action, I think he should not be severely dealt with.

8. I have delayed reporting on this matter, as I hoped that I should have been able to arrange it satisfactorily; but, as the Contractor absolutely refuses to pay more than his proportionate share of the costs, I now submit the case for the orders of the Board.

EXHIBIT No. 1.—Translation of Contractor's Petition.

EXHIBIT No. 2.—Translation of Deputy-Collector's letter of acceptance.

The affair seems to have been mismanaged throughout: the criminal prosecution of the Contractor who failed to float the logs was wrong; the civil suit then instituted was unauthorized; the compromise attempted was a mistake; and the agreement drawn up was irregular. Under the circumstances, it seems better to

*Proceedings of the Madras Government, Revenue Department,  
1st July 1875.*

accept what the Contractor is willing to pay, and to write the remainder off as loss, and the sanction of Government will be requested for this course. Forest Officers should be warned that they will be held responsible in future for the costs incurred in unauthorized legal proceedings. No suits are to be issued without the sanction of Government or the Board.

(A true Copy and Extract.)

(Signed) H. E. STOKES,  
Acting Secretary.

No. 2. ORDER THEREON, 1st July 1875, No. 282.

Forests, No. 1.

APPROVED and sanctioned.

(True Extract.)

(Signed) A. MACGREGOR,  
Acting Secretary to Government.

To the Board of Revenue.  
„ the Officiating Inspector of Forests.

Edw. L. O. Shanker.

FOREST No. 90.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th May 1875, No. 1,319.

Read the following letter from A. McC. WEBSTER, Esq., Acting Collector of South Canara, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Mangalore, 24th March 1875, No. 585 :—

As premised in paragraph 8 of my predecessor's letter to Board, dated 24th July 1874, No. 1,403, I have the honor to briefly note the facts of the case alluded to and to request the Board's orders thereon.

2. In 1869 one Hammad Byari entered into a contract with the Forest Department agreeing to float down and deliver over at Mangalore 289 logs of mango-wood in consideration of his receiving Rupees 400. Of the 289 logs, only 200 were made over to his charge for transport, and of these he delivered only 172 logs at the stipulated place. He thus left his contract unfulfilled in respect of the remaining 28 logs.

3. In 1870 he got this contract cancelled, and entered into a fresh one whereby he undertook to float down to Mangalore, by the end of December 1870, the 28 logs remaining undelivered as aforesaid. The fresh bond fixed the consideration payable to the contractor on the 200 logs at Rupees 354-11-2, of which he acknowledged to have already received Rupees 292. The balance of Rupees 62-11-2 was made payable to him on his furnishing adequate security for the due fulfilment of the contract. He subsequently delivered 12 logs out of the 28, and having never performed the rest of the contract was complained against for breach of contract under Act XIII. of 1859. The prosecution, however, failed, as his omission was not held to be a criminal offence.

4. Forester Mr. Goudie then, without obtaining any orders from his superior who was at the time absent from the district on duty, sued the Contractor in the Munsif's Court at Puttur. This proceeding was entirely of his own motion and unauthorized. On Mr. Cherry's return to the district, the unauthorized proceeding of the Forester attracted his attention, and being of opinion that the value of the logs had been over-estimated, he endeavoured to effect a compromise. The defendant was willing to come to terms with the department, and on the 2nd November 1872 he made the following written proposal\* to the Deputy Conservator, viz., "as you told \* \* that the suit filed against me from your office may be compromised I \* \* have amicably settled the matter by agreeing to pay at the rate of Rupees 3 per log and also the Court costs thereon." In the

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letter † of acceptance the Deputy Conservator so modified and added to the proposal as to leave no room for doubting what the liability actually incurred by the Contractor was. He was told that he had to pay into the Taluk Treasury

at Uppinangady Rupees 54 (apparently a mistake for Rupees 48) on account of the value of the logs, and to the Deputy-Conservator of Forests

\* Of this Rupees 48-9-0 were advanced from Forest funds and the rest, Rupees 6, are claimed by the Vakil engaged in the suit as his fees.

Rupees 54-9-0\* on account of the costs of the proceedings taken to realize the value of the wood. The Contractor did

not reply to this last communication;

but in July 1873, or nearly seven months afterwards, he went to the Uppinangadi Taluq Tahsildar and offered to pay Rupees 27, stating that that was all he owed to Government under the last-mentioned contract.

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According to Mr. Cherry's contention—

|               | Rs. | A. | P. |
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| Value of logs | 48  | 0  | 0  |
| Cost of suit  | 54  | 9  | 0  |
| Total         | 102 | 9  | 0  |

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|                                     | Rs. | A. | P. |
|-------------------------------------|-----|----|----|
| Value of nine logs                  | 27  | 0  | 0  |
| Proportionate costs of suit thereon | 4   | 14 | 7  |
| Total                               | 31  | 14 | 7  |

I am of opinion that though the Contractor's letter of compromise and Mr. Cherry's uncorrected acceptance of it virtually completed a fresh contract, it would not be upheld in Court, as one of the two documents should be stamped, and neither was stamped at the time, and we cannot now stamp the Contractor's letter.

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Enclosure No. 2.—Translation of Deputy-Conservator's letter of acceptance.

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(A true Copy and Extract.)

Acting Secretary.

To the Officiating Chief Secretary to Government, Revenue Department,  
.. the Acting Collector of South Canara.

Copy to all other Collectors of Forest Districts,  
.. to the Inspector of Forests.

Ed. E. C. Shunker.

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Forest No. 20

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