

2 The Life of Contract Capitalism and the Building of the Colonial Railway

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Capitalism thrives on contracts via the backdoor of a state-led legal regime. Contract laws that guarantee a free exchange of goods, and property laws that ensure the private ownership of assets and public resources, had been the pillars of the capitalist system. The modern state ensured that these laws were not only created but also implemented to protect the interests of the propertied class. However, how these laws came to favour the bourgeois class over the feudal lords and the customary rights of the poor was a conflictual process, and as Tigar and Levy remark, the landed gentry and bourgeois required the state to institute their powers.¹ They argue that contractarian ideology, though a powerful ally of the capitalist system, required courts, judges, and the state on its side to be effective.² From recruiting workers and employees to transacting everyday business with various agents and selling commodities, contracts have become an absolute necessity for capitalism to function and regulate the employer-employee relationships.³ They ensure a regime of secure and trustworthy business, and above all the regime of the 'free market'.

Within the classical political economy that safeguarded and advocated the capitalist system, contracts acquired a prominent place because of their capability of making transactions smooth between two individuals. Adam Smith, an advocate of capitalism and the Scottish Enlightenment, believed that economic prosperity was fuelled when commodities were transacted freely in a market and the actions of the participants were voluntary. Contracts thus combined the essence of two systems: the Enlightenment, which propagated the notion of reason and individualism, and classical political economy, which argued for individual self-interest and free exchange of commodities. It would be unfair to say that contracts were just legal and economic documents, because on those documents lay the burden of a 'free, equal, and rational' society. Although they were to check and punish the crooked, dishonest, and fraudulent behaviours of humans, their role in the post-slavery abolition world gave them a significant meaning which idealized contracts as symbols of freedom.⁴

In 1861, Henry Maine, a Victorian jurist and lawmaker in India, published his now-classic *Ancient Laws* and propounded the theory of

progressive societies moving from 'status' to 'contract'.⁵ Contracts as agreements between two free individuals/parties appeared as harbingers of free wage labour, which liberated society from the 'inhuman vestiges of the past'—slavery, bonded labour, and other coerced labour. The idea of contracts, which classical political economists and jurists put forward in the nineteenth century, was premised on the 'will theory' or the 'consensus' of the two contracting parties. The two parties had obligations that they promised to meet in the future, and because the agreement was between two 'free' individuals, the terms and conditions of the contract were bound by the law.⁶ As a result, laws, economic debates, legal inquiries, and government reports consolidated wage labour as the dominant form of labour relation under capitalism.⁷

This classical liberal framework of the capitalist system operating on the basis of the 'free will' of individuals was questioned by Karl Marx. The production of 'free' wage labour through primitive accumulation (the process of separating people from their means of production) was, Marx argued, achieved by means of 'terroristic' and cruel laws. Marx wrote that 'capital comes dripping from head to toe, from every pore, with blood and dirt'.⁸ Employment contracts, considered essential in producing free wage labour regimes, covered the violent and unequal nature of capitalism with the disguised language of freedom, individuality, and equality. Michel Foucault also talked about how a 'formally egalitarian juridical framework' of the eighteenth century entailed a dark history of disciplinary mechanisms.⁹

A much sharper critique of contracts and contract laws came from legal scholars and practitioners, first from the legal realism school and then from critical legal studies.¹⁰ The realism school challenged the supposed 'equal status' of contracting parties, which they argued was not the case as employment contracts involved the powerless labouring poor.¹¹ By the 1960s and 1970s, a highly critical legal tradition began to emerge, in contrast to the consensus school, which highlighted the role of contracts in economic growth and prosperity. Its representatives argued that through laws, including contract laws, judges and lawyers pushed the interests of the bourgeois/propertied class to the forefront while dismantling traditional rights.¹² This close link between capitalist classes and law was further taken up by legal historians.¹³ Robert Steinfeld's influential work *Coercion, Contract, and Free Labor in the Nineteenth Century* argued that free wage labour was not really 'free'. Wage labour relations in rural and urban England until 1875 operated under contract laws that criminalized a breach of contract by workers and forced them to remain in contract or face prison until the contract was completed.¹⁴ Steinfeld argued that employers used contract laws not so much to punish workers, as to enforce the specific performance of agreed contracts and extract labour. Employers did, though, punish workers when they wanted to set an example and when workers did not complete their terms even after the threat.¹⁵ It is this particular feature of contracts in producing unfree and coercive labour relations within the capitalist system

that has been picked up by Indian historians who have studied the relationship between law, labour, and colonialism. We will deal with this historiography as we progress with Joseph Stephens' contracts—a contractor who worked on the construction of the railway line from Bhusawal to Nagpur in the 1860s. But at the outset, it would be useful to point out the salient features of these scholarly studies.

First, the colonial state made heavy use of contract laws to govern labour relations, despite Henry Maine characterizing India as a 'traditional', 'status', and community-based society.¹⁶ These laws, influenced by the British Master and Servant Acts, were implemented from the very beginning (from the late eighteenth century) to acquire labour for state-managed projects and for European capitalists doing business in or from India. Second, despite contracts being civil matters, criminal breach of contracts and penal punishment remained an essential component of the contract laws until the late 1920s, whereas in England the criminal breach clause was abolished in 1875 leading to the 1875 Employers and Workmen Act. The colonial contractarian ideology appears in these studies to have been evolved as a tool to subordinate 'native' labourers, create unfree labour relations, and protect the economic interests of employers. Third, a variety of general and industry-specific contract laws were established by the colonial state that competed with each other but supported specific industries or labour regimes, such as tea plantations, offshore sugar plantations, domestic servants, indigo peasants, and construction workers. Finally, our understanding of the contractarian ideology and employer-workman relationship in colonial India is derived from contract laws rather than actual contracts. It is here that this essay makes a departure from the existing studies, in terms of both the material analysed and the arguments made.

Labour and the Contractarian Ideology

The Joseph Stephens Archive (JSA) offers a number of contracts between Stephens and artisans, coolies, and labour headmen that nuance our understanding of the power of contracts and the labour-legal history of India. We will see that he uses contracts as a powerful tool to create a disciplined labour force for himself in a very new, uncertain, rural, but competitive labour market. We will also see that workers found various openings and closings of their bargaining power vis-à-vis employers in the light of contracts and an expanding labour market. Contract laws (and implicitly contracts) in India have principally been studied as mechanisms to produce unfree labour regimes and structure the overall labour-capital relationship. Actual copies of contracts from the railway construction sites tell us that they had a wider role in managing everyday work relations and work processes. Their usefulness lay not only in their ability to punish workers through the punitive clauses of the laws but also in their ability to function as self-acting legal tools which, to some extent, governed the issues of

delayed work, usurpation of advanced money, withholding of wages, costs of damage, monetary fines, satisfactory work, and guarantees. Stephens' contracts also articulated significant universal concerns of employers, particularly the assumed dishonesty, laziness, and carelessness of workers—what can be called the capitalist's distrust of the labour class.

Joseph Stephens reached India in 1860 and, after completing his apprenticeship with John Abbott, he began working as an assistant (with the duties of inspection, surveying, and accounting combined) to a small contractor named E. W. Winton and moved to the north-eastern region of Nashik to work on viaducts. During his apprenticeship and early career, Stephens not only learned mathematics, Hindustani, English, letter writing, and engineering, but he also learned how to become a European colonial master. Hunting, playing cricket, employing servants, and writing a daily journal were part of this conditioning.¹⁷ He built his career through the social and political connections of Abbott, whose employment records at the British Library show that he was among the earliest cohorts of assistant engineers of the GIPR, and whose colleagues later supervised, passed, and inspected Stephens' works and contracts.¹⁸ In 1862, Stephens became a subcontractor under a bigger contracting firm named Wythes and Jackson (who were working on Contract No. 12, Chalisgaon to Bhusawal line, 72 miles), and later under Lee, Watson, and Aiton, who were working on the Nagpur extension line (Bhusawal to Nagpur). These jobs pushed Stephens deep into the countryside of the cotton belt in Khandesh region, where he remained until 1869.

In the early years, Stephens worked in Jalgaon, in particular building a small viaduct at Alasana, currently in Buldana district of Maharashtra. Subcontracting generated substantial profits and gave Stephens the required practical experience to be able to submit tenders for irrigation work in Satara district in early 1864 and get some work at Nandgaon, Sheagaon, and Kajgaon stations.¹⁹ He formed his own construction firm, Joseph Stephens Construction Company, with G. B. Peck as his agent, and sent in tenders for the building of bridges, ginning factories, pump houses, viaducts, stations, and irrigation tanks in Poona, Khandesh, and Berar.²⁰ By 1865, Stephens had emerged as a small contractor working directly on the GIPR's Contract No. 13. Over the years, he commanded hundreds of Indian labourers, artisans, muccadams (the headmen of Indian labourers), and lower European staff, and supervised the construction of arches, railway lines, stations, pump houses, and fencing.²¹ When dealing with Indian workers and artisans, Stephens and his company generally, but not always, relied on contracts to hire workers and services.²²

Alexander Bubb points out that Stephens relied heavily on Vaddars ('Woodaries' or Odde) and Beldars for artisanal and coolie labour. These castes, usually associated with earthwork and tank construction, became the go-to labourers for railway construction in western India.²³ They formed what Ian Kerr calls circulating labour because of their ability to move as

families along the railway construction line, which suited contractors.²⁴ Railways involved about 400,000 construction workers in the early 1860s, and a significant number of this workforce were tribes like the Vaddars, Bel-dars, Maugs, and Dalits (the 'ex-untouchables').²⁵ Because the railway line was being laid down on a large scale in the Bombay Presidency, and particularly in Khandesh region, labour was a scarce commodity, especially skilled and docile labour. And incidents of native labour contractors, headmen, and workers being poached by competing contractors were not unknown. Bubb argues that Stephens and Peck had to placate workers by rewarding hard-working, loyal, and docile workers/headmen with cherimerry (small gifts), brandy, and bonuses.²⁶ We will discuss some instances of labour scuffles as we move on to locate the place of contracts in Stephens' business. In such a tense labour market, contracts came to play a key role in controlling and disciplining labour and shaping the contractor-labour relationship at the railway construction sites.²⁷

Stephens arrived in India in the midst of profound legal controversies over the labour laws. On the one hand, there were officials who wanted to criminalize all breaches of contract with imprisonment, and on the other, officials who saw it as contrary to the liberal ideology and the policy of *laissez-faire* and wanted to criminalize only the fraudulent practice of taking an advance and not fulfilling the contract.²⁸ The latter camp won, and the Workmen's Breach of Contract Act XIII was passed in 1859 to regulate the relationship between employers and artisans/domestic labour/contract hires. This act, initially applied in presidency towns and by the 1870s extended to all parts of colonial India, formed the pinnacle of the contractarian ideology in colonial labour policy. For a long time, historians maintained that the colonial state had no clear-cut labour policy to begin with in the eighteenth century and relied on caste and kinship networks (Indigenous social structures) to recruit, control, and discipline the labour force.²⁹ The implication was that colonial/Western laws and interventions had little effect on the actual labour regime, which was dominated by 'the persistence of status relations based on caste'.³⁰

A number of labour historians have rejected this reductionist understanding of labour relationships in colonial India. Ravi Ahuja, in the context of the late eighteenth and nineteenth centuries, argued that the East India Company state not only had a formidable labour policy by the end of the eighteenth century, produced through colonial regulations, police, and the justice system, but also developed powerful employer-employee contract regulations by the beginning of the nineteenth century, drawing their inspiration from the English Master and Servant laws. These regulations, particularly the Police Regulations of 1811, made the 'misconduct' of servants, workmen, and lascars punishable by a combination of monetary fines, corporal punishment, and imprisonment with hard labour, while their masters merely needed to meet their contractual 'obligations'. Failure to do so invited only monetary fines, leaving the sacrosanct body of the master intact.³¹ Ahuja

argues that there was nothing *laissez-faire* as such in the labour relations of the company with Indian labourers; in fact, they produced, on the one hand, contract laws and wage regulations and, on the other, the powers of local caste headmen and intermediaries who helped to procure, manage, and discipline labour.³²

A much sharper critique came from labour historian Prabhu Mohapatra, who looked at the variety of contract laws (in the weaving industry, tea plantations, and indigo cultivation), including the 1859 Workmen's Breach of Contract Act. Mohapatra argued that the contracting ideology based on the idea of 'free' labour and 'consent' was inherently contradictory in this period. Once 'consent' was given by any means, 'theoretically there was nothing to prevent the most blatant form of servitude'.³³ The customary practice of taking an advance came to be seen as 'consent' by the worker. However, exiting from the contract produced tensions and violence. Breach of a civil contract by workers was penalized through criminal proceedings by the state. The 1859 Act punished the 'fraudulent' behaviour of workmen (the fraudulent intention was deduced from workers deserting work after taking an advance) by sentencing them to up to three months' imprisonment. Mohapatra remarks that the act not only gave employers an upper hand over labour but also converted the customary power of workers to demand an advance into a legal means of binding them.³⁴

A number of scholars have shown that contracts were used by the colonial state and employers to resolve specific problems of labour supply and discipline and, more importantly, to create a large 'unfree' labour market to produce commercial commodities such as textiles, indigo, sugar, and tea.³⁵ They were also used to subordinate and discipline service groups such as servants, boatmen, palanquin bearers, and dak runners.³⁶ Railway construction, especially in the interiors, required a large labour force which not only had to be recruited from local and distant areas, but also needed to be kept content and settled at the construction site. Penal contract laws were so important in these rural areas that a separate law, by the name of Regulation 7 of 1819, came into being in the Bengal Presidency to regulate the work of artisans and workmen. According to that law, workers could be sent to jail for a month for breaching their contracts, and for two months for repeating the offence.³⁷ Rural Bengal was by this time dotted with the presence of various European planters, landowners, and merchants, who produced commodities such as indigo, silk, and tea with the labour of Indians. A similar regulation was introduced in the Bombay Presidency in 1827.

However, this law was repealed in 1862 with the passing of the Indian Penal Code, rendering employers in the countryside powerless. Among those who protested were the railway contractors, who argued that civil actions against deserting and negligent workers were useless as it was a waste of employers' money pursuing lawsuits against workers who had little money or property to pay any damages. Penal punishment was the only effective solution.³⁸ Railway contractors Messrs. Burn and Co. made

a similar argument, adding to it their personal experience of dealing with fraudulent Indian workers. They reported that workers had taken about one lakh of rupees in advance for the work that they had not done, and there was little hope of recovering even one-twentieth of this money through the civil courts. They described the case of a Noonea worker who owed about Rs. 500 to the company, but the case had been going on for 17 months now and nothing was known about the worker's whereabouts.³⁹

A year after the 1859 Breach of Contract Act, whose reach at the time extended only to presidency towns, a new act, specifically intended for railway construction and other public works, was passed. The Employers' and Workmen's Disputes Act IX was passed in 1860, regulating employment relationships between contractors/employers and workers and service providers at construction sites, including railway-, canal-, and bridge-building sites, throughout colonial India.⁴⁰ Such industry-specific contract laws to meet the demands and problems of particular employers remained a key feature of the colonial state, reflecting its direct interest in creating and disciplining labour markets. In the case of tea plantations in Assam, the Assam Contract Act of 1865 overshadowed the general Bengal Native Labour Act III of 1863. While the latter act allowed criminal prosecution of tea workers in the case of refusal or abandonment of their contract, the 1865 Contract Act gave European plantation managers the power to arrest absconding workers. Nitin Varma argues that penal labour laws were made to ensure that workers, once contracted, had no bargaining power, accepted lower wages and poor and unhealthy working conditions, and remained settled on the plantations.⁴¹ The act affirmed what Nitin Varma articulates as the private control of labour by European plantation owners.⁴² Tirthankar Roy and Anand V. Swamy propose that the penal laws in tea plantations were a solution to a specific 'contractual' problem, which was the practice of giving advances to workers in order to recruit them. Where costs of recruitments were significantly higher in terms of bringing workers from northern and central India to Assam, such as in the Brahmaputra Valley and the Surma Valley in Assam, employers used penal laws to minimize the risk of losing upfront recruitment costs. The authors assert that planters in the Dooars region of North Bengal never used penal labour-laws as their costs of recruiting workers from Chota Nagpur were significantly lower.⁴³

Ian J. Kerr, who studied the making of the 1860 Act in great detail, argued that this act, like that of 1859, derived its spirit from the British Master and Servant laws, under which servants could be prosecuted for breaches of contract.⁴⁴ While under the 1859 Act fraudulent behaviour *after taking an advance* was punished, under the 1860 Act, workers could be prosecuted even if no advance had been paid to them. It gave more powers to railway authorities, engineers, and contractors to subordinate workers. Kerr shows that the 1860 Act was a direct response to a wage dispute between workers and contractors building the GIPR railways at Bhor Ghat in 1859.⁴⁵ On the one hand, it allowed the settlement of wages between workers and

contractors, and on the other, it gave contractors the power to prosecute workers who had entered into a voluntary contract to provide goods, labour, and other services, but *neglected* or *refused* to meet the specific pre-determined terms, or *absconded*. A magistrate could impose a fine of Rs. 20, or in lieu of a fine compel *specific performance* of the contract by the worker, and in the case of non-compliance could send the worker to prison for up to two months.⁴⁶

Kerr pointed out that additional features of the 1860 Act were the use of special magistrates to settle disputes, summary administration of the law, and a clause barring any appeal against a magistrate's decision. He suggested that while the act might have provided some relief to workers in wage disputes, its purpose was to strengthen the hold of capital over labour and criminalize defiance by workers. However, he found hardly any evidence of this act being invoked at railway construction sites, other than at canal construction sites in Punjab, and even there, the 1859 Act was invoked more.⁴⁷ Mohapatra argues that the effect of these laws lays not so much in their actual implementation, but in their use as a threat to coerce workers into accepting unfavourable and unfree work conditions.⁴⁸

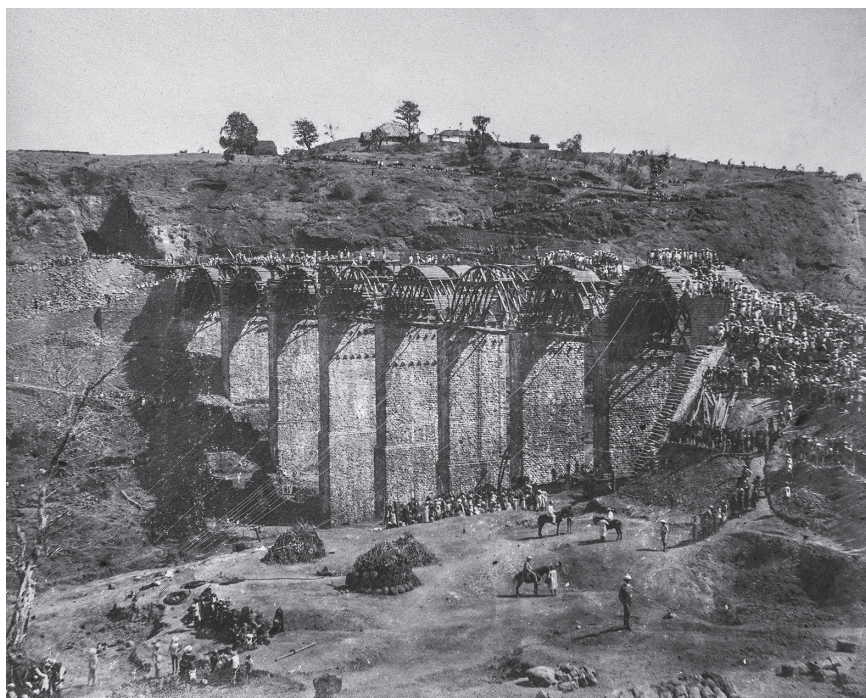


Figure 2.1 Mhow-ke-Mullee Viaduct, 3,000 men employed, Khumnee Hill, 1856.

Source: Photograph by Alice Tredwell, courtesy Huseby Bruk AB.

Joseph Stephens' Contracts

Stephens signed several contracts for services (for the supply of stones, baskets, lime, etc.) and for hire (of workmen and artisans). From the very beginning, he was aware of the implication of the laws described earlier and of the power of contracts. He himself had served under an apprenticeship contract with his brother-in-law and was under contract to various large contractors, and later directly to the GIPR. The whole railway construction operation relied on a series of hierarchical contracts—between the colonial state and the GIPR, between engineers, surveyors, inspectors, skilled railway workers, and the GIPR, between contractors, between contractors and European subcontractors and the GIPR, between European contractors and subcontractors and native worker headmen or goods suppliers.⁴⁹ Contracts ensured that railways were built in a stipulated time, and the work done was accountable in the courts. We find several unsigned contracts and various drafts of contracts in English and the vernacular, suggesting that Stephens wrote these contracts himself and later corrected them. His contracts highlight the role of stamps, bond papers, witnesses, clear terms and obligations, signatures, and dates of contract and delivery of services in shaping the labour-capital relationship at construction sites.

Let us begin by analysing Stephens' earliest contracts with stone suppliers and masons while he was constructing a bridge for the Nagpur extension line near Alasana village in Shegaon Taluka in 1862. The first contract that we find was with a mason headman, Reembhy Casseembhy (dated 16 September 1862).⁵⁰ The contract, on a Re. 1 government-stamped paper, reads as follows (Figure 2.3):

I, Reembhy Casseembhy, hereby agree to complete for Messrs. J. S. Wells and J. S. F. Stephens the masonry in the 7–30 ft girder bridge at 53–23 Nagpur Extension by the 31st January 1863 at the following rates.

Rubble with coursed face work	Rs. 8 and 5 annas per cubic yard
Blocking course	Rs. 16 per cubic yard
Ashlar	Rs. 1 and 4 annas per cubic yard

I Reembhy Casseembhy also agree to have the work taken out of my hand at any time if it should not proceed with sufficient rapidity to give satisfaction to Messrs. J. S. Wells and J. S. F. Stephens.

In case the above mentioned work should not be completed by me by the 31st January 1863 I forfeit 20 Rupees per day for every day exceeding that time.

Witness, L. Pereira (signed by both parties)

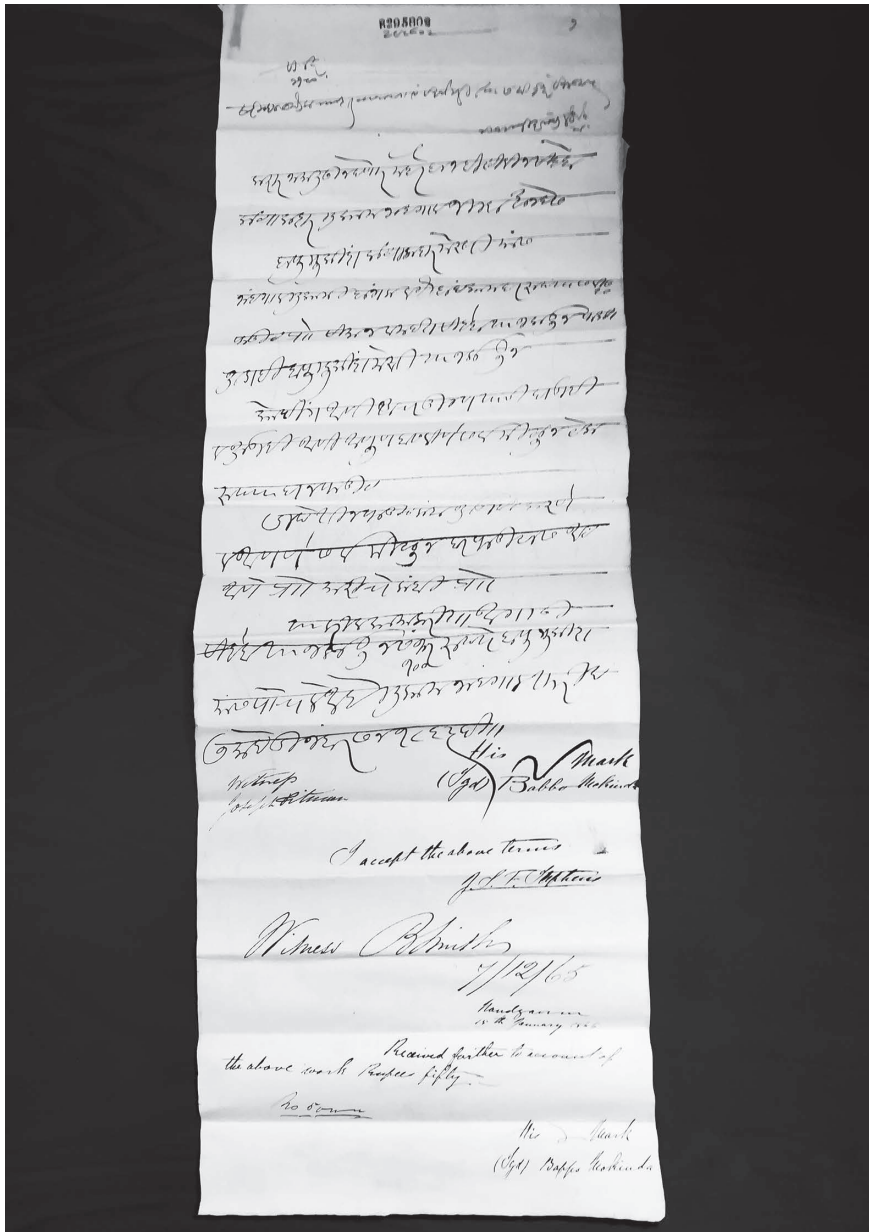


Figure 2.2 Part I, A copy of Stephens' contract in Modi script dating from 1865.
Source: LNU, HA, JSA, Box F1B:1.

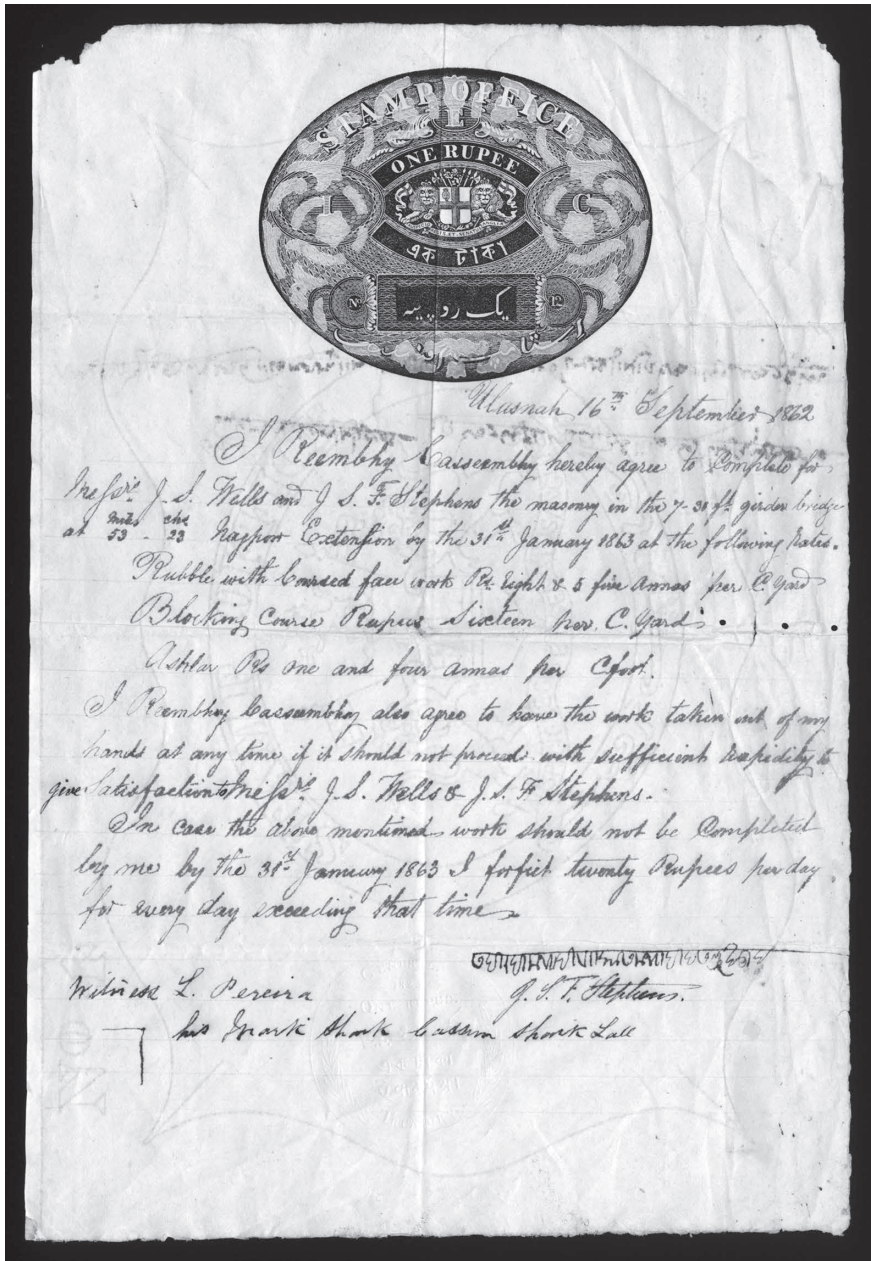


Figure 2.3 Original copy of the contract between Stephens and Reembhy Casseembhy.

Source: LNU, HA, JSA, F1B:1.

Although contracts on a simple sheet of paper or by word of mouth were also contracts in the eyes of the law, Stephens showed more legal awareness.⁵¹ Most of his contracts involved not only the terms and dates of contracts but also names and signatures of witnesses, body marks as marks of identification, signatures and names of both the parties, exact dates, and sometimes stamp paper and validation of the contract by a clerk.

The earlier contract is a classic example of subcontracting at the lowest level between a European and an Indian worker. Stephens' archive answers Kerr's complaint about the difficulty of locating archival material at the lowest level of railway construction. We should remember that these contracts were not a replacement for Indigenous forms of labour control and recruitment; rather, contractarian ideology supplemented and harnessed these power structures.⁵² By subcontracting portions of works to different native mason maistries (gang headmen), Stephens was able to relieve himself of the direct responsibility for recruiting and entering into contracts with individual workers. Rather than reducing dependence on intermediaries, contracts strengthened the position and role of intermediaries vis-à-vis workers and contractors. Subcontracting reduced Stephens' task more to that of a supervisor, inspector, designer, and facilitator. In such a work setup, contracts assumed a significant role, as the actual work depended on the subcontractor's ability to finish the job or provide finished material on time.

The contract presented here reflected Stephens' anxiety about Casseembhy's (in)ability to complete the expected fixed task on the bridge on time and for the pre-agreed wages. The first term in the contract was that in the event that Stephens found the work of Casseembhy [and his workers] slow, he had the right to remove Casseembhy. In such a situation, we get no sense of what would have been the terms of his removal. The second condition was an extension of the first concern of the employer, which was about the work being delayed. A financial penalty clause was added. If the work was not finished on time, Stephens had the right to fine Casseembhy Rs. 20 per day until it was completed. This fine, interestingly, is equal to the total fine a magistrate could impose if a 'fraudulent' mason was punished. We see here that the contract is not just structuring the employer-employee relationship or determining the obligations of the mason, but also encapsulating the anxieties of Stephens and the everydayness of work: wages, fines, work to be done. It is this drive to encapsulate such everyday anxieties of the work process and the uncertainty of work that would receive more attention in future contracts. We could actually read, through these contracts, the conflictual history of railway construction in modern India.

Although signed by the mason Casseembhy, the terms of the contract appear to be one-sided. These were Stephens' conditions. The two 'free' parties were clearly not *equal* parties. The contract reflected Stephens' distrust of Indian workers, embodied his interests, and legitimized his power to fine the mason outside court. While the magistrate could only fine Casseembhy Rs. 20 if he refused or neglected the terms of his contract, Stephens added

another layer of pecuniary punishment (Rs. 20 per day) as part of those terms. He combined the specific performance theory with some form of the monetary damage theory. While the court ensured that the contract terms were met through the specific performance theory, the contract allowed Stephens to claim monetary damages for delays, not just specific performance with a delay. This important aspect of the contractarian ideology remains obscured if we only focus on the law of contract.

This did not mean, though, that Stephens was not equally worried about the desertion of workers or satisfactory completion of the project on time at the pre-agreed cost. Satisfaction is an elusive category and was never clearly set out in contracts. It was defined on a daily basis by Stephens, who was himself under the constant supervision of GIPR inspectors to ensure that he completed his contracts as per the guidelines of the GIPR engineer. The financial penalties stipulated by Stephens reflected the larger hierarchical contractual world of railway construction. Thus, if a contractor failed to complete his tender on time, he was liable to pay a fine of Rs. 200 per week.

Stephens makes no mention of any advance being paid to Casseembhy. Although the 1860 Act did not require such a criterion to prosecute workers for breach of contract, the practice of making an advance payment was rampant. His future contracts included a mention of the exact advance paid. But why did this change occur? First, contractors ensured that the advances paid were mentioned on paper as they were the core of business practice in a competitive labour market; and second, in the case of non-compliance by workers, contractors could approach a magistrate and demand punishment of the worker or strict performance of the clauses under one of the two Acts.

The freedom and concerns of workers were subordinated to the language used by the employer in the contract. The contract does not tell us the fears and anxieties of Casseembhy. Was he worried that Stephens might not pay his exact wages on time? We will see later that this obscuring of workers' concerns in contracts entailed ambiguities in the everyday relationship between labour and capital, which at times took a conflictual turn.

To obtain the stones on which Casseembhy worked, Stephens entered into contracts with Vaddar stone suppliers. We find drafts of four contracts on behalf of his agent Wells with four different Vaddar suppliers. Only one of them was signed. The opening and closing language of these contracts was very similar to that of the one presented earlier. The only difference between the one signed and the three unsigned contracts was as regards the advance payment made and the conditions of employment. In the contract with Cheema Suttoo Woodari, the advance mentioned was Rs. 500; for Balla Nagappa, it was again Rs. 500; for Hanumunta Luximon, it was Rs. 250; and for Bheema Hanumanta, it was Rs. 125. Wells signed the contract with Hanumunta Luximon, although his advance was not the lowest. Perhaps Luximon was more reliable than the others and provided decent stones. However, in his contract, there was an additional clause that did not appear

in the other three. This may have been an important reason why Stephens selected Luximon.

It is further agreed that the said Hanumunta Luximan must remain on the works until his services are no longer required.⁵³

Was Stephens at liberty to add any clause he liked to the contract? It appears so, although only on the basis of negotiations with the workers. Contracts, for him, became legal documents and means by which he navigated the terrain of everyday work, not just the overall structuring of the labour-capital relationship. In his correspondence, Stephens never complained of a short supply of labour or material, but rather of late delivery of services or labour and the quality of the work. Intense competition for hard-working and reliable labourers and good materials, and uncertain working conditions (rain, disease, drought, famine, rural areas being cut off), forced contractors to draft highly unequal contract terms and to go with those suppliers who took a relatively small advance and provided unlimited supplies as per their demands.

Let us look at the language of contracts from 1864 1865. A contract with Shaik Alle Shaik Jullal regarding hedging between Nidungere (Nandgaon) and Jalgaon on the GIPR Contract No. 12 line, dating from 23 September 1864, included the following terms:

The above-mentioned distance to be completed in six weeks and *if I fail to complete* the above works I agree to have the work taken out of my hands and to forfeit Rupees 1 on every ninety-six lineal yards. I have done many or may have done, or receive for the same Rupees six. The work to be executed to the satisfaction of Stephens and the Company's engineers and *fifteen per cent of the value of the work to be retained by Mr. Stephens till the completion of the contract.*⁵⁴

Another contract dated 7 November 1864, with Fukera Yemma and Bicka Beiro, the rubble stone suppliers, stressed that they would supply stones for buildings on the GIPR line between Chalisgaon and Mhaswad station at the rate of Rs. 6 for every hundred stones. '*The stone had to be of a good quality and each stone not to be less than 1/3 of a cubic foot*', the contract stressed. Further, they were bound by a severe deterrent penalty of forfeiting 'one Rupee per hundred cubic feet of all stone delivered in case they stop delivering before they have 5000 cubic feet of stone delivered should that quantity be required.'⁵⁵

The contract with Shaik Alle Shaik Jullal speaks of the everyday nature of work patterns at these construction sites. First, punctual delivery of the work/services was critical. Second, easy removal of the defaulting party and monetary recovery of any losses incurred were ensured before the work commenced, Third, wages were fixed beforehand for the work to be done in

the future. Fourth, wages/costs were only to be paid after the double-layer inspection carried out by Stephens and the GIPR's engineer. And finally, to ensure that all these were achieved smoothly, 15 per cent of the wages/costs were to be withheld until the work had received final approval. The latter was of great significance because of the contractual nature of railway construction in this period. In the event that the company engineer found Stephens' work unsatisfactory, Stephens could force the worker to redo it as per the terms of his contract at no extra cost. Withholding of wages was a popular practice adopted by European and Indian employers to bind, discipline, and coerce workers in factories, plantations, and workshops. Stephens' growing experience of projects informed his negotiations with Indian workers and suppliers, and this, in turn, was reflected in his contracts.

In his contract with Fukera Yemma and Bicka Beiro, Stephens reserved the right not to pay the agreed rates to them if they failed to deliver 5,000 cubic feet of stones '*should they be required*'. Stephens wanted an unhindered, indefinite supply of stones, and the best thing for him was to make sure that the clause was there in the contract. However, apart from withholding of wages, a novel element was added in these two agreements that further subordinated workers. They could forfeit their wages, in full or in part, in the event of non-compliance with the contract. Robert Steinfeld shows that in nineteenth-century America, where laws did not allow the criminalization of breach of contract, employers relied on this popular device and other harsh pecuniary methods to coerce workers to complete their contracts.⁵⁶ Harsh pecuniary measures, Steinfeld remarks, were as punitive as imprisonment and could be more dangerous for workers, as they left them two choices: to continue to provide labour or to go without wages and suffer starvation ('a more disagreeable alternative to labour').⁵⁷ As pointed out earlier, Stephens applied a double layer of punitive measures—using both contracts and laws. But there is an excessive emphasis on pecuniary measures, and contracts worked as self-acting mechanisms.

In his later contracts, we find additional economic means of punishing defiant workers and suppliers. One contract signed in 1867 between Stephens' agent George Peck and the stone supplier Perajee Kerappa stated that Perajee would supply no less than 'twenty brass of good black stone', each brass comprising 100 cubic feet of stone, at the rate of 12 rupees per brass. However, in the event of him failing to do so, the contract imposed a severe monetary penalty:

Should the said Perajee Kerappa not supply the full quality of stone above specified within one month from this date, the said Perajee Kerappa agrees to accept from the said George Peck rupees ten only per brass & this agreement will in such case be considered null & void.⁵⁸

The power to end the contract lay with the employer, and with no risk of them suffering punitive measures. In another contract dated 23 October 1866,

with the lime suppliers Rajaram Chintaman and Mahomedjee Hakimjee, Stephens devised yet another economic measure to secure his interests. Here, he demanded a third-party guarantor. The two were to supply best-quality lime to Stephens at Akola station at a fixed rate and had taken an advance. The contract included an agreement with the guarantor and stated:

I Durjeebhoy Doorabjee hereby bind myself to become security in the sum of Rupees two hundred for the due fulfilment of the above contract.⁵⁹

Chintaman and Hakimjee may have been new to the profession or the region, and hence a guarantee was required. Nevertheless, we have seen how Stephens' contracts tightened his grip over Indian workers and suppliers, ranging from imposing pecuniary fines to securing a guarantor, and from withholding to forfeiting of wages. We need to view these measures in the light of his relationship with workers and suppliers on the ground. This may give us some clue as to why contracts were so important in building the railway and sustaining colonial capitalism.

Contracts and Everyday Work Relations

Stephens' correspondence with his father, George, tells us that something went wrong with one of his contracts in early 1864. Consoling his son, his father wrote, 'You must be careful in future contracts to have a clause binding them to provide materials in proper time, or to pay a heavy fine in damages.'⁶⁰ It is interesting to see how a father based at a Danish university, who has never been to India, is counselling his son on how to administer his relationship with Indian workers.

In the early years, when he was working under Lee and Watson on the bridges on the Nandura—Jalamb—Alasana—Shegaon line, Stephens seems to have employed coolies, masons, and stone dressers without a written contract. If he did enter into such contracts, these have not survived in the archive. His daily jottings in his diary give an account of the relationship he had with labour contractors in the early days. The diary records that he had employed masons of the headmen Sultanbhoy and Succarams to dress stones at Jalamb quarry and workers of the headmen Yemmas, Ebrahim, Peragees, and Sapanas at the Alasana and Moregaon bridges.⁶¹ One group produced the required stones and the other built the bridges. Uninterrupted working by the two groups was necessary for Stephens' own contract.

Stephens usually settled wages at the end of the month. He invited workers to his bungalow where he kept all his accounts. In his diary, he noted that the days wages were paid were usually full of tension and conflict. On 20 April 1863, Vaddar masons of Sultanbhoy and Succarams, who worked at the Jalamb quarry extracting and dressing stone, came to his bungalow demanding their pay. It was a bit early for their monthly wages,

Ahola
October 23rd 1866 -

We the Undersigned Bagawan
Chintamon and Mohomedjee Hakimjee hereby
agree to deliver to Mr. J. S. F. Stephens at Ahola
Railway Station fifty bundles (40 cubic feet each)
of the best description of lime free from all coarseness
and other impurities, within forty five days from
this date, at Rupees fourteen annas eight per bundle -
We have further received this day from Mr.
J. S. F. Stephens the sum of Rupees two hundred
as an advance to further the above contract -

Witnessed
M. Surwain's Mite
म. सुरवाय मिते

रत्नारामवड्डकमुथर
His Mark -
(Sd) Mohomedjee Hakimjee
I Durgabhoj Doodabjee hereby bind myself to
become security in the sum of Rupees two
hundred for the due fulfilment of the above
contract -

Witnessed of
M. Surwain's Mite
म. सुरवाय मिते

म. सुरवाय मिते
म. सुरवाय मिते

Figure 2.4 Contract with lime supplier, with a third-party guarantor contract.
Source: LNU, HA, JSA, F1B:1.

but Stephens was willing to pay them. However, a wage dispute arose. He wrote that while 15 workers of Succarams took the wages offered, Sultanbhoy's workers refused to accept them.⁶² It is possible that Stephens may have made deductions for absence and laziness, as records of daily attendance by workers and the amount of work done were kept by a clerk. The workers do not seem to have agreed to these deductions. Anyhow, they left his bungalow late in the night without a settlement. The next day, they did not show up for work at the quarry. 'The men have refused to work', noted a worried Stephens.⁶³ This was perhaps his first direct encounter with workers' protests. Although it was the day of a native festival, Stephens was sure that Sultanbhoy's men had rebelled. Succarams' men had also joined the protesters. Stephens was ill, but he was worried that work on the bridge might stop if stones did not reach the site on time. He had to seek the help of other labour contractors. A sick Stephens met Ebrahim and Yemmas and asked if they could provide men who could work at the quarry and continue to supply stones. Ebrahim and Yemmas agreed to do so.

On 23 April, however, Sultanbhoy visited Stephens' bungalow and promised to get his men back to work. Stephens cancelled the verbal contract given to Ebrahim and his men. The same evening, workers of Peragees and Sapanas who were working on the Alasana bridge came over to his bungalow demanding their wages. It was almost the end of the month for the wages, which were usually settled around the 25th. But these workers also refused to take the wages offered.⁶⁴ As before, perhaps they could not agree on the amount of work they had done, the days they had attended work, and the fines they had incurred. Next day, when Stephens went to inspect the work, he found that Peragees' and Sapanas' workers had not turned up. Workers failed to appear the next day as well.⁶⁵ It was hot, but Joseph decided to ride his horse to Jalamb (about 9 km from Alasana) to check whether Sultanbhoy's men were at work at the quarry. He reported that they were being lazy and that the work was progressing very slowly.

The matter of payment arose again on the Saturday afternoon, 2 May 1863, when Sultanbhoy's men demanded their wages. This time, after a lot of trouble, a settlement was reached.⁶⁶ The wage dispute with the Alasana bridge workers had also been settled, as they were back at work, but Stephens noted that they were being 'lazy'. On 21 May 1863, he wrote: 'Rode to the 10-4 foot culvert at Ullusna [Alasana] and gave the men a bullying about lasyness [laziness] in my absence.'⁶⁷ In the next three to four days, Joseph remeasured all the work and the quality of the stones, and paid the workers' wages.

A similar event had occurred at the Moregaon bridge site, where masons had downed tools and refused to work. It happened on a Saturday that was a holiday, but word spread that the workers had rebelled. On Monday, Sultanbhoy's men did not turn up. Stephens was forced to enter into a verbal contract with Beerubhoy to supply his men. He wrote, 'Asked Sultanbhoy's men to come to work and they refused in presence of Louis [a

labour agent] and one Peragies men'.⁶⁸ As much as it was an insult to Stephens, these people were key witnesses to the workers' defiance. Next day, he contacted Sultanbhoy via Louis and asked why he was not sending his men to work. Sultanbhoy told him that they had nothing to eat and were demanding wages, to which Stephens replied, 'I could not believe it to be the case but if it really was so I would gladly give his men Rs. 2 each if they would start work.'⁶⁹ Sultanbhoy said he would ask his men and get back to him in the evening, but Stephens heard nothing. Pressed for labour, Stephens sent his men to look for Sultanbhoy. The latter sent the reply that his men would not come unless they were paid full wages and their arrears. Stephens, unwilling to lose his control over them, threatened that if they did not return to work the arrears of wages would be forfeited.⁷⁰ On 20 May, Stephens secured masons from other sources. He sent Louis Pereira to Naggery (Nagzari) to look for masons, met Beerubhoy, and gave a letter of recommendation (character) to Kasebhoy in return for masons.⁷¹ Next day, Beerubhoy's masons came to work, and Ebrahim also promised to send his, setting aside the recent last-minute cancellation by Stephens.⁷² The contractor Lee accused Stephens of snatching his masons from Naggery, which means that some of the masons from there had also joined Stephens' work.⁷³ Work started with full force. Soon, on 23 May, Sultanbhoy visited Stephens to settle the account, demanding to have a look at his workers' attendance sheets, which Stephens refused to show him. In return, Sultanbhoy refused to hand back chisels—masonry tools provided by Stephens (Figure 2.5).⁷⁴ Stephens continued to suffer from the lack of masons until a new gang of Vaddars joined him on 8 June.⁷⁵ We should not see these conflicts as arising only between headmen and Stephens. Rather, they indicate the presence of a deeper tussle between workers and headmen, workers and Stephens, and Stephens and headmen. However, the lowest grades of workers were in a seamless web of exploitation at the hands of contractors, overseers, and muccadams. It was not only contractors who denied and cut their wages, but also muccadams who extracted a portion of workers' wages for absence and re-employment.⁷⁶

These two incidents suggest how fluid and uncertain mofussil labour markets were, where workers had significant bargaining powers because they worked as a group and owing to a competitive labour market, and contractors like Stephens had to rely on a network of worker headmen to get their work done. References to the paper economy are also very interesting, with contractors not just writing contracts and keeping records of wages and attendance, but also writing letters of recommendation for good worker headmen. We see that workers refused unfair wages, contested the claims of employers, and threatened to desert their work. In such a scenario, stricter contracts and laws became a critical tool in controlling and subordinating the power of labour.

We also find that mere contracts, wage advances, and threats of prison and withholding of wages could not ensure a regular flow of work. Stephens

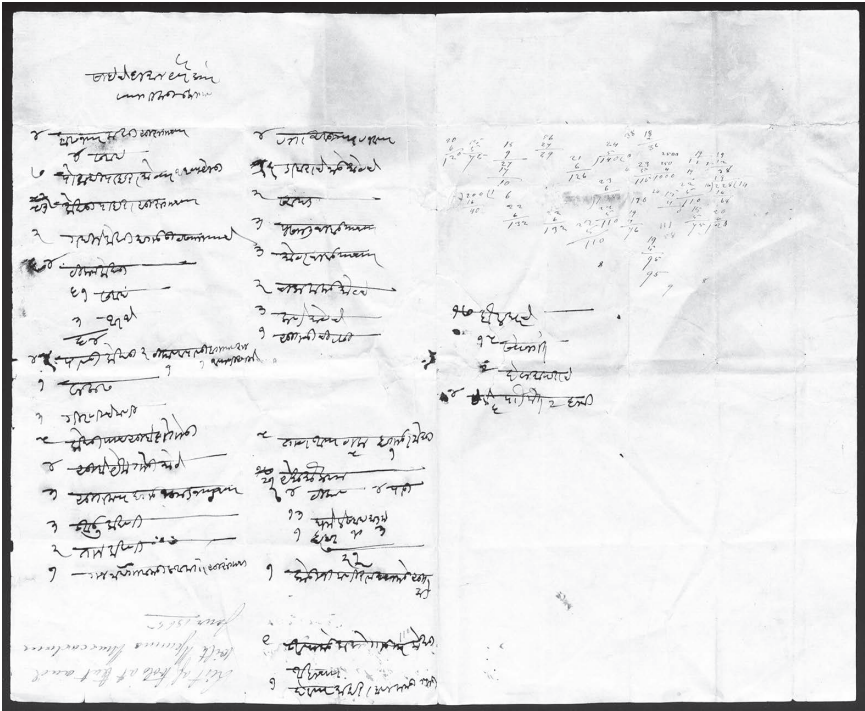


Figure 2.5 List of tools and tent and with Yemma Muccadam, January 1865.

Source: LNU, HA, JSA, F1B:1.

trained and disciplined the labour force through his daily inspections, supervisory visits, ‘bullying’, employing agents who supervised work, precise instructions, settling conflicts among workers, paying wage arrears on time, and sharing brandy with headmen and workers.⁷⁷ Often, he found to his surprise that workers had absented themselves without notice, and only realized this when he visited the worksite in the morning or the evening. In the afternoons, he usually took rest. The attendance registers that he kept were filled in by the native headmen, whose loyalty he had to secure by higher wages, or by a clerk. Workers absented themselves on customary holidays such as Nag Panchami, Muharrum, or Diwali, or on a rainy day without notice.⁷⁸ He often complained that workers did not work in his absence as they would do in his presence.⁷⁹ When he found that work was slow, he abused and scolded the workers. At one point, when he was experiencing labour problems due to the defiance of workers, he noted in his diary, ‘Gave Saccaram a blowing up at Moorgaum for not getting on with the work.’⁸⁰

These conflicts and negotiations must have informed young Stephens' understanding of the emerging labour-contractor relationship, as he used contracts as a tool to suppress workers' bargaining powers and resistance at work. From 1864, he put native labour contractors under agreements. We have draft copies of two such contracts. On 2 June 1865, he entered into an agreement with Garwa Jovana and Kundo Amuda Muccadams, who were to supply workmen at Amravati station and had taken an advance of Rs. 130.⁸¹ On 12 June 1865, he drafted another agreement with Gorwapa and Kundo Amunda (already under agreement with him) to meet his growing demand for labour. The contract went:

Mr. Gorwappa and Kundo Amunda have this day received from Mr. JSF Stephens *a further advance of Rupees one hundred as advance* to procure sixty workpeople (40 men 20 women) and hereby bind themselves to retain the above number of men if required on Mr. Stephens works at Oamrawattee as long as he may want them.⁸²

The role of muccadams (headmen) was to supply the required number of workmen and to make sure that they finished the work properly. It is interesting to note the dual functions of the contract—protecting the advance offered and procuring a constant supply of labour, both male and female. Underlying these terms was the contractors' assumption that the Indian worker was dishonest.⁸³ While it is true that advances had become a tool used by the colonial state and employers to subordinate labour,⁸⁴ a huge advance itself needed to be protected in a competitive labour market. Williamson (probably an agent of Stephens looking over the work at Shegaon station) wrote to Stephens on 22 October 1865, stressing that workers had been away due to Diwali and that the supplier of chunam (lime) was not responding to his repeated requests. Workers had come to his place demanding payment of wages in a dissatisfied tone. He wrote that if their wages were not paid, they would leave the work. Instead of paying the wages, he gave an advance of one rupee to unskilled workers and two rupees to skilled workers. Even after that, the workers seemed dissatisfied and did not turn up for work the next morning. We do not know whether he threatened them with legal proceedings. But in the case of the chunam supplier, he did threaten to take legal action. It was only after that he supplied the chunam.⁸⁵ Perhaps it was after this incident that he asked for a third-party guarantor for Chintaman and Hakimjee (Figure 2.4). The amount of the guarantee (Rs. 200) matched the advance paid. This innovative contract term was part of Stephens' ability to negotiate the everyday risks of the profession and the labour-capital relationship.

From Contract Laws to Actual Contracts

Let me elucidate the salient points of this essay by referring to a debate between Jairus Banaji and Neeladri Bhattacharya. We have seen that

classical political economy and liberal interpretations had pushed a manufactured understanding of the contract as a voluntary engagement between two legally equal and free parties. Contracts were and are presented as a critical facilitator of the transition from slavery and coerced and forced labour to free wage labour. Employers bought labour power from workers, who sold their labour for their own survival. This buying of labour power with money was carried out with the help of a nineteenth-century legal reinvention: contracts. The worker sold his or her labour power for a limited period; otherwise, he or she would be 'converting himself [herself] from a free [wo]man into a slave, from an owner of a commodity into a commodity'.⁸⁶ As per this logic, coercion and force were inconsistent with the ideology of a contractual relationship and were a relic of the past. We have seen that this understanding had been powerfully challenged by realist and critical legal studies scholars, and by legal and labour historians such as Robert Steinfeld, Prabhu Mohapatra, and Ravi Ahuja, among others. Building upon Karl Marx, Jairus Banaji added his critique of the liberal readings of contracts. He argued that contracts are voluntary only 'in appearance'. Underneath the illusion of freedom lie coercion, unequal power relations, and inability on the part of the worker to enter into a contract on an equal footing.⁸⁷ He suggested that coercion is pervasive under capitalism, and to make sense of the reality on the ground, he distinguished 'relations of production' from 'forms of exploitation'. His understanding allows us to make sense of the presence of hired wage labour under the feudal mode of production and feudal bondage labour under capitalist relations.⁸⁸ Banaji points out that wage labour relations under capitalism were not particularly 'free', as these relations involved various forms of control over labour. Debt servitude and advance wage payments were means by which workers were integrated into capitalism and their will and labour power controlled.⁸⁹ Banaji's arguments are critical to understanding the labour relations that were developed in the construction of the GIPR railway. What was essentially happening at these construction sites was a tightening of employers' control over wage labour which, itself, was in and out of the primitive accumulation process, depending on the availability of work. When not hired, construction workers slipped back into the agrarian world to work as farmers and labourers. Ian Kerr called these construction workers semi-proletarians and semi-peasants.⁹⁰

Neeladri Bhattacharya questioned Banaji's understanding of law, contract, and capitalism as being modular in nature, even though Banaji attempted to move out of a reductionist and fixed understanding of the labour-capital relationship. He argued that, for Banaji, as for the critical legal studies scholars, law appears to be no more than a form of deception, an illusion of freedom and rights, while underneath it reproduces the class interest of the exploiter.⁹¹ Bhattacharya rereads Marx to suggest that law has a 'constitutive presence' and a field of 'dialogue and struggle' in which workers reconstitute the terms of their subordination and integration into capital, question their logics in everyday practice, and interpret 'the illusion

of freedom' for the benefit of their own interests.⁹² Bhattacharya's critique is centred on an understanding that the subordination of the worker to capital is not a given phenomenon (the model), but is historically constituted through contestation, power struggles, cultural mediation, and reinterpretation from below (the practice). This essay's findings suggest that contracts derived their meanings and contents in specific historical settings. Workers and work presented new challenges to employers, which were reflected in their contracts. The fascinating work of Z. M. S. Siddiqi shows that, although Indian labour contract laws created unfree labour relations and tied workers into slavery-like work conditions, there was always scope for a liberal interpretation of the 1859 Breach of Contract Act, and judges exercised it and dismissed employers' unjust complaints.⁹³

Nevertheless, neither Banaji nor Bhattacharya refer to any specific contracts, their changing language, or ways in which workers give or are disciplined to give their assent to a new work regime or question it. When we analyse the contents of contracts, we find that their meanings were not just limited to sustaining or producing and questioning an unfree labour regime. The role of the contract appears to be wider, more complex, and more specific to local situations. The building of colonial railways without contracts would have been a slower process. Stephens completed most of his big contracts on time and got paid. Contracts and a favourable state and legal structure certainly contributed to his profits and the rise in his fortunes immediately after the launch of two powerful acts: the Act of 1859 and the Act of 1860, which criminalized desertion by workers and gave employers legal power to coerce them to fulfil their contracts as per the will of employers.

This study has drawn attention to material that forces us to move our discussion from contract laws to the actual contracts, and from there to analyse the labour-capital relationship. Contracts and contract laws did become tools of employers and the state to tie workers into unequal work conditions, restrict their autonomy, and subordinate them to the logic of capital. But there is a need to integrate contracts, laws, customs, workers' resistance, and everyday work relations into a seamless web which, at one and the same time, resolved and complicated this labour-capital relationship. When we dig deeper into the language of contracts, we find that issues such as satisfactory work, the details of wage advances, withholding of wages, security money and guarantors, employers' anxieties and fears about Indian workers, and delivery of work of good quality and on time were critical for employers. The latter were not simply interested in criminal breaches of contract; rather, they were interested in using contracts as self-acting powerful legal documents to govern the everyday work regime. Tirthankar Roy and Anand V. Swamy's arguments, discussed earlier, suggests that employers with higher cost for labour recruitment sought penal labour laws of varying degree to protect their 'upfront investment'.⁹⁴ Although the advance was not a criterion for criminal breach of contract in the 1860 Act relating to labour

and services at the construction sites, their reading of contractual labour laws from the perspective and needs of business/industry (tea in this case) opens up an alternative interpretation in legal-business history. A reading of Stephen's contracts shifts our attention from laws to transaction documents, which offer a comprehensive understanding of the emerging work regime on railway construction sites and their close relationship with the contractarian ideology. His contracts refer to employers' varied concern and anxieties, which included labour insubordination, loss of wage advance, wage disputes, non-completion of projects on time, and irregular delivery of specified services and products.

The railway construction work regime of the 1860s was also supported by other mechanisms to discipline labour. Whereas the legitimacy of the contract's power as a legal document was derived from the labour laws, the laws did not alone define the scope and power of a contract. The contracts empowered employers to frame the quotidian conditions of the work, which the law was incapable of doing. As a result, employers were able to utilize both the force of the labour laws and of the contract. We see that, while Stephens and his agents relied on the ultimate threat of imprisonment and legal proceedings for completion of tasks and services, the contract itself included penalty clauses that were far harsher than the punishment laid down in the law. Such clauses, referring for example to fines for delays, the need for a guarantor who guaranteed the advance payment and punctual and satisfactory completion of the work, and withholding of a portion of wages/costs, show contracts to have been very much part of the work process, taking away the anxieties of everyday business.

Stephens' contracts also offer powerful evidence to weave into a larger history of capitalists' distrust of labour. Distrust was the subterranean logic that allowed employers to empower themselves against workers through legal and extra-legal means. The fear that workers would steal, rebel, abscond, or be lazy has guided and motivated employers throughout history to invent various mechanisms to control and discipline labour. Contracts and laws are just one of those mechanisms. Others have included withholding of wages, everyday frisking, religious and non-religious moral lessons, schooling, biometrics, and camera surveillance.⁹⁵

Workers are recalcitrant bodies, and labour power is not easily extractable. Once contracted, workers responded to employers' expectations and behaviours in ways that challenged the terms of their contracts. The differing language of contracts suggests that workers had the power to challenge employers' expectations, defy their orders by not attending work, demand wages at unusual times, refuse to accept unfair wages, and transfer their work to other contractors. If employers did not pay wages or advances on time, workers, often collectively, demanded their wages and arrears, surrounded employers, and threatened to leave work. They demanded increases in wages even after signing their contracts.⁹⁶ And Stephens used contracts as a powerful antidote to tame these recalcitrant behaviours. However, he also

used extra-legal tools such as beating, refusing to pay wages, and denying future work to insubordinate workers.

Acknowledgements

I would like to thank Professors Prabhu Mohapatra and Gunnell Cederlöf, and other participants of the workshop ‘The Underbelly of the Empire: Workers, Contracts, and the Social Economy of the Industrial Turn’ (December 2019) for giving their valuable feedback on this chapter. An extended discussion with Professor Mohapatra helped me to revise the chapter.

Notes

- 1 Michael E. Tigar and Madeleine R. Levy, *Law and the Rise of Capitalism* (New York: Monthly Review Press, 2000).
- 2 *Ibid.*, ch. 17.
- 3 To understand the history of the evolution of the modern-day employer-employee contract relationship see, Simon Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment, and Legal Evolution* (Oxford: Oxford University Press, 2005), pp. 41–109. They alert us to the fact that the English contract laws have medieval and early modern origins. Seeing them as inventions of capitalism is ahistorical.
- 4 Amy Dru Stanley, *From Bondage to Contract Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998).
- 5 Henry Sumner Maine, *Ancient Law* (London: Murray, 1861).
- 6 Julian S. Webb, ‘Contract, Capitalism and the Free Market: The Changing Face of Contractual Freedom’, *Law Teacher*, 21/1 (1987), pp. 23–31. Daniel Song, ‘From Status to Contract (and Back?): A Historiography of Contract Law and the Transition to Capitalism’, *Ex Post Facto*, XXII/Spring (2013), pp. 127–8.
- 7 M. R. Anderson, ‘Work Construed: Ideological Origins of Labour Law in British India to 1918’, in Peter Robb (ed.), *Dalit Movements and the Meanings of Labour in India* (New Delhi: Oxford University Press, 1999), pp. 87–120.
- 8 Karl Marx, *Capital: A Critique of Political Economy*, 1, trans. Ben Fowkes (London: Vintage, 1977), pp. 925–6.
- 9 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Vintage, 1995).
- 10 For an insightful analysis of these positions, see Song, ‘From Status to Contract’.
- 11 Song, ‘From Status to Contract’, pp. 129–31.
- 12 Song, ‘From Status to Contract’; Morton J. Horwitz, *The Transformation of American Law* (Cambridge: Harvard University Press, 1977).
- 13 Tigar and Levy, *Law and the Rise of Capitalism*.
- 14 Robert J. Steinfield, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001), pp. 47–62. See also Deakin and Wilkinson, *The Law of the Labour Market*, pp. 75–76, who argue that although the Employers and Workmen Act (1875) had removed the criminal breach of contract clause, workers could still be sent to jail for 40 days under the 1869 Debtors Act in case they failed to pay damage to employers.
- 15 *Ibid.*, pp. 74–84.
- 16 See Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton: Princeton University Press, 2010).

- 17 Linnaeus University (LNU), Huseby Archives (HA), George Stephens Archive (GSA), E1:3a, Letters from George Stephens to Joseph Stephens for the year 1860–1.
- 18 Abbott was appointed in 1857 along with 11 other officials. The list included Edward Dangerfield (surveyor), who later supervised Joseph's work. See The British Library, India Office Records (BL, IOR), List of Agreements No. 1 (officers), L/AG/46/12.
- 19 LNU, HA, Joseph Stephens Archive (JSA), F1A:1, Telegram from Abbott, 27 April 1864. On the making of Joseph Stephens as a contractor, see Alexander Bubb, 'Class, Cotton, and "Woddaries": A Scandinavian Railway Contractor in Western India, 1860–69', *Modern Asian Studies*, 51/5 (2017), pp. 1369–93.
- 20 LNU, HA, JSA, F1A:1, Letter from Joseph Stephens, 15 February 1865.
- 21 Huseby Estate, Joseph Stephens' diary 1862, January 1862 entries.
- 22 Bubb, 'Class, Cotton, and "Woddaries"', p. 1385.
- 23 *Ibid.*, pp. 1387–8.
- 24 Ian J. Kerr, 'On the Move: Circulating Labor in Pre-Colonial, Colonial, and Post-Colonial India', *International Review of Social History*, 51/S14 (2006), pp. 85–109; Bubb, 'Class, Cotton, and "Woddaries"'; Ravi Ahuja, 'Labour Unsettled: Mobility and Protest in the Madras Region, 1750–1800', *Indian Economic & Social History Review*, 35/4 (1998), 381–404; Ravi Ahuja, 'Labour Relations in an Early Colonial Context: Madras, c. 1750–1800', *Modern Asian Studies*, 36/4 (2002), pp. 793–826.
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- 26 Bubb, 'Class, Cotton, and "Woddaries"', pp. 1391–2.
- 27 See Ian J. Kerr, *Building the Railways of the Raj 1850–1900* (New Delhi: Oxford University Press, 1995); Ian J. Kerr, 'Labour Control and Labour Legislation in Colonial India: A Tale of Two Mid-Nineteenth Century Acts', *South Asia: Journal of South Asian Studies*, 27/1 (2004), pp. 7–25.
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- 29 Peter Robb (ed.), *Dalit Movements and the Meanings of Labour in India* (New Delhi: Oxford University Press, 1999), Introduction; M. R. Anderson, 'Work Construed: Ideological Origins of Labour Law in British India to 1918', in Robb (ed.), *Dalit Movements*, pp. 87–120; Dipesh Chakrabarty, *Rethinking Working-Class History: Bengal, 1890–1940* (Princeton: Princeton University Press, 2000).
- 30 Prabhu Mohapatra, 'From Contract to Status? Or How Law Shaped Labour Relations in Colonial India 1780–1880', in Jan Breman et al. (eds), *India's Unfree Workforce: Of Bondage Old and New* (New Delhi: Oxford University Press, 2009), pp. 96–125.
- 31 Ravi Ahuja, 'The Origins of Colonial Labour Policy in Late Eighteenth-Century Madras', *International Review of Social History*, 44/2 (1999), pp. 159–95.
- 32 *Ibid.*, pp. 176–7, 185–95.
- 33 Prabhu Mohapatra, 'Regulated Informality: Legal Constructions of Labour Relations in Colonial India, 1814–1926', in Sabyasachi Bhattacharya and Jan Lucassen (eds), *Workers in the Informal Sector: Studies in Labour History, 1800–2000* (New Delhi: Macmillan India Limited, 2005); Mohapatra, 'From Contract to Status?', pp. 96–125.
- 34 Mohapatra, 'Regulated Informality'.
- 35 Mohapatra, 'From Contract to Status?'; Prasannan Parthasarathi, *The Transition to a Colonial Economy: Weavers, Merchants and Kings in South India, 1720–1800* (Cambridge: Cambridge University Press, 2008); Nitin Varma, *Coolies of Capitalism: Assam Tea and the Making of Coolie Labour* (Berlin: De Gruyter, 2017); Hugh Tinker, *A New System of Slavery: The Export of Indian Labour Overseas 1830–1920* (London: Hansib, 1993).

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- 37 Mohapatra, ‘Regulated Informality’.
- 38 National Archives of India, Delhi, Home Department, Judicial Branch, Proceedings 13 January 1863, Prog. No. 10–12, Repeal of Sec. V Regulation 7 of 1819, Letter from Sir Wemyss, Bart, Beharampur, to R. J. Scott, dated 15 August 1862, 8. I am thankful to Nitin Varma for providing me a copy of this file.
- 39 *Ibid.*, Letter from Messrs. Burn and Co. Railway Contractors to S. C. Bayley, Collector and Magistrate of Shahabad, dated 25 August 1862.
- 40 Maharashtra State Archives, Public Works Department, Railway, 1860, Vol. 23, No. 364, File, Act IX of 1860 Regarding the speedy settlement of disputes between workmen engaged on railways and their employers.
- 41 Varma, *Coolies of Capitalism*, ch. 2.
- 42 *Ibid.*, pp. 48–66.
- 43 Tirthankar Roy and Anand V. Swamy, *Law and the Economy in Colonial India* (Chicago: University of Chicago Press, 2016), pp. 105–13.
- 44 Kerr, ‘Labour Control’; Mohapatra, ‘From Contract to Status?’, pp. 116–17. For a detailed analysis of master—servant relations in Britain and contracts in the nineteenth-century Anglo-American world, see Steinfeld, *Coercion, Contract, and Free Labor*.
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- 47 Kerr, ‘Labour Control’, pp. 19–21.
- 48 Mohapatra, ‘From Contract to Status?’, p. 121.
- 49 Bubb, ‘Class, Cotton, and “Woddaries”’. See also the chapter by Radhika Krishnan in this volume.
- 50 LNU, HA, JSA, F1B:1, Contract dated 19 September 1862.
- 51 Mohapatra, ‘From Contract to Status?’, p. 119.
- 52 See also Ahuja, ‘Origins of Colonial Labour Policy’; Nitin Sinha, ‘Contract, Work, and Resistance: Boatmen in Early Colonial Eastern India, 1760s–1850s’, *International Review of Social History*, 59/S22 (2014), pp. 11–43.
- 53 LNU, HA, JSA, F1B:1, Contract dated 29 September 1862.
- 54 *Ibid.*, Contract dated 23 September 1864, emphasis mine.
- 55 *Ibid.*
- 56 Steinfeld, *Coercion, Contract, and Free Labor*, p. 17.
- 57 *Ibid.*, pp. 17–19.
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- 59 *Ibid.*, Contract dated 23 October 1866.
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- 63 *Ibid.*, 21 April 1863.
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- 65 *Ibid.*, 25 April 1863.
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- 73 Ibid., 1 June 1863.
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