

[E.]
57-17-12-02

Educational (1905) Department.

ORDINARY PRINTED.

G.O., No. 203.

DATED 2-3-05.

N. P.

[REDACTED]

[Despatch Abstract.]

*Recording copies of the minutes of the
of vacancies in the Provincial
of the*

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government {1905} of Madras. EDUCATIONAL.

Recd.

Regd.

1905.

Enclosures

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ORIGINAL

G.O., No. 203, 30th March 1905.

N. P.
ORIGINAL

MARCH.

University of Madras.

Recording correspondence regarding the filling up of vacancies occurring in the Provisional Syndicate of the —.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—the following paper :—

Memorandum No. 106, Educational, dated 21st February 1905.

The Indian Universities Act, 1904, section 12, clause (p), authorizes the Senate upon the publication of a declaration under clause (h) that the Body Corporate of the University has been constituted in accordance with the provisions of the Act, to appoint a Provisional Syndicate to conduct the executive business of the University until the Syndicate has been constituted under the Act. A question has now arisen whether vacancies occurring in the Provisional Syndicate can be filled up in the same manner as that in which the Provisional Syndicate was constituted or by any other means. The Honourable the Advocate-General is requested to be so good as to advise the Government on the point.

(By Order.)

A. GALLETTI,
Ag. Assistant Secretary to Govt.

To the Government Solicitor.

From the Government Solicitor, Madras, dated 2nd March 1905, No. 261.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 2nd March 1905 :—

OPINION.

I am of opinion that the provisions of section 12 (p) of the Indian Universities Act, 1904, providing for the appointment of a Provisional Syndicate are spent so far as regards appointments to the Syndicate. The Provisional Syndicate appointed under this section is to conduct the executive business of the University until the Syndicate has been constituted under the Act. There is no express provision in the Act as to how vacancies on the Provisional Syndicate are to be filled up, and possibly the Legislature did not contemplate that there would be any necessity to fill up such vacancies. The Act does not require any particular number of members to constitute a quorum, and therefore the number who usually act will do—*Lyster's case* L.R. 4., Eq. 233 and see 22 Mad., 481. Should it become necessary to fill up vacancies it must, in my opinion, be done by framing a provisional regulation under section 25 (1) as the case can hardly be said to fall within section 25 (2) (b).

J. P. WALLIS,
Advocate-General.

ORDER—No. 203, Educational, dated 30th March 1905.

Recorded.

(True Extract.)

H. D. TAYLOR,
Ag. Secretary to Government.

EDUCATIONAL DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 203, EDUCATIONAL, DATED
30TH MARCH 1905.

[SUBJECT.—*Vacancies in the Provisional Syndicate of the Madras University.*]

Extract from the Hindu, dated 16th February 1905.

"Two members of the Provisional Syndicate of the Madras University are leaving Madras on long leave. Dr. Maitland and Mr. J. H. Stone might well have avoided the inconvenience of fresh election by the Senate by declaring in time their intention to be absent from Madras on long leave. Who will elect members in their places? Is it the Senate or the respective Faculties?"

Answer:

No one has power to elect anyone in their place.

A. GALLETTI—20-2-05.

Look up this point please.

H. D. TAYLOR—17-2-05.

Under clause (p) of section 12 of the Indian Universities Act, 1904,

"The members of the Syndicate holding office at the commencement of this Act shall continue to conduct the executive business of the University until the publication of the said declaration: and upon such declaration the Senate shall in such manner as the Chancellor may direct, appoint a provisional Syndicate to conduct the executive business of the University until the Syndicate has been constituted under this Act."

* Under clause (h) (that the Body Corporate of the University has been constituted).

The constitution of the Syndicate under the Act can be done only after the necessary regulations have been passed—*vide* sub-sections (1) (c) and (2) of section 15 and clause (b) of sub-section (2) of section 25.

The members of the Provisional Syndicate will remain in office till these regulations are passed and till an election is duly held and as these members were appointed by the Senate and not by the Faculties any vacancy in the Provisional Syndicate should apparently be filled up in the same way. Please see section 21 of the General Clauses Act, 1897 (India). Section 14 is inapplicable in this case.

P. T. THARYAN—17-2-05.

I don't think section 21, General Clauses Act, is applicable to the case: it covers notifications, orders, rules and by-laws but *not* appointments.

2. The question here is: Has the Senate *exhausted* the power given it by the Universities Act, section 12, clause (p), to appoint a Provisional Syndicate? In the absence of a provision in the Indian Statute-Book similar to section 32, sub-section

† "The effect of this sub-section is to make the insertion of the words 'from time to time' usually unnecessary. These words were formerly inserted for the purpose of removing the application of the doctrine that a statutory power is exhausted by its first exercise unless its repetition is expressly authorized."

(1) of the Interpretation Act (our section 14 is a narrower rule and applies only to Governments), it would probably be held that the power has been exhausted. See the note † to section 32 (1) of the Interpretation Act on page 352 of Ilbert's Legislative Methods and Forms. The Advocate-General might be consulted.

A. GALLETTI—18-2-05.

It would be as well to obtain the Advocate-General's opinion. The question is really one for His Excellency the Chancellor and for the Senate, but His Excellency might wish to be guided by the opinion of the Honourable the Advocate-General in the matter.

H. D. TAYLOR—18-2-05.

The draft placed below is submitted for approval.

P. T. THARYAN—19-2-05.

A. GALLETTI—20-2-05.

Issue.

H. D. TAYLOR—20-2-05.

[Memorandum No. 106, dated 21st February 1905.]

From the Government Solicitor, No. 261, dated 2nd March 1905.

Papers.

H. D. TAYLOR—3-3-05.

Submitted.

P. T. THARYAN—3-3-05.

A. GALLETTI—3-3-05.

Submitted to His Excellency the Chancellor.

2. Please see extract from article in the *Hindu* of 16th February 1905. Also Advocate-General's opinion.

3. The Advocate-General considers that the provisions of section 12 (p) of the Indian Universities Act are spent, and that if it be found necessary to fill up vacancies on the Provisional Syndicate, it must be done by framing a provisional regulation under section 25 (2) (b).

H. D. TAYLOR—3-3-05.

I do not feel at all sure that the Advocate-General is right. Vacancies will have to be filled up in accordance with existing by-laws. See section 12 (s) of the new Act.

A. GALLETTI—5-3-05.

Please refer to existing by-laws.

H. D. TAYLOR—6-3-05.

The existing by-laws governing the election of members of the Syndicate are Nos. 90-93, pages 37 and 38 of Vol. I of the Calendar for 1904-1905. Under section 12 (s) of the new Act these by-laws continue in force until modified or repealed and re-enacted. It is however respectfully submitted that they can be utilized only for the constitution of a Syndicate under the Act and not for filling up vacancies in the Provisional Syndicate. The constitution of a Syndicate under the Act can under the existing by-laws take place only at the annual meeting in August next—by-law 90. The two vacancies referred to will or should therefore remain unfilled till August next.

P. T. THARYAN—6-3-05.

It is submitted that the by-law under the old Act which provided for the filling of vacancies in the Syndicate died a natural death when the old Syndicate to which the by-law applied was slain—*vide* section 12 (p)—by the declaration under section 12 (h) published in the *Gazette of India* on 1st December 1904. The by-law will be resuscitated when the Syndicate proper is revived but it cannot, it is submitted, be construed as referring to a Provisional Syndicate which is the creature of an Act not enacted when the by-law was framed: for the framers of the by-law could not have had in mind a Provisional Syndicate which had not at the time of the framing even an embryonic existence, and they could not have known that a Provisional Syndicate would ever take the place of a Syndicate proper. Section 12 (s) does not affect the construction, except in one particular, of previously existing by-laws; it does not amend or alter them or bring them up to date except in one particular: it merely says they are to continue to apply as before: the one particular in which it affects their construction is that they must be deemed to have been issued under the provisions of the new Act corresponding with the provisions of the old Act under which they were actually issued, *i.e.*, under provisions for forming a Syndicate proper. Section 12 (s) is after all not a special provision: it only repeats General Clauses Act, 1897, section 24.

A. GALLETTI—7-3-05.

It might in any case be difficult to apply old by-law 92 to the Provisional Syndicate—as the by-law states that the new member shall be elected for the remainder of the current year. Will the Honourable the Advocate-General please state whether he considered the provisions of section 12 (s) in giving his opinion?

H. D. TAYLOR—9-3-05.

To the Honourable the Advocate-General through Government Solicitor.

Telephonic message from the Advocate-General, dated 14th March 1905.

Reference u.o. 166-D, dated 10th March 1905. How was the Provisional Syndicate appointed under section 12 (p) of the Act?

Put up Act please.

2. Was it not by notification under 12 (p)?

H. D. TAYLOR—14-3-05.

A copy of the Indian Universities Act is submitted. The Provisional Syndicate was appointed by the *Senate* under instructions issued by His Excellency the Chancellor. A copy of these instructions has been obtained from the Registrar's office and is submitted. The instructions were not published in the Gazette.

P. T. THARYAN—16-3-05.

H. D. TAYLOR—16-3-05.

UNIVERSITY OF MADRAS.

By virtue of the authority vested in him under section 12 (p) of the Universities Act, 1904, the Chancellor of the Madras University directs that the Senate do proceed in the following manner to appoint a Provisional Syndicate to conduct the executive business of the University until the Syndicate has been constituted under section 15 of the Act.

A voting paper will be sent to each Fellow of the University who will record thereon his vote for eight members, and return it to the Registrar on or before 2nd January 1905. The votes will be tabulated by the Registrar under the supervision of such Fellows as the Chancellor may direct. The eight Fellows who receive the largest number of votes will, with the Vice-Chancellor and the Director of Public Instruction, constitute the Provisional Syndicate. In the event of ties the Chancellor will exercise his vote.

While any *ex-officio* or ordinary Fellow is eligible for membership of the Syndicate, the Chancellor would suggest the election of the present Syndics as seven of the eight until the election by the Faculties under section 15 (1) (c) can be accomplished. The Faculties have still to be constituted, but it is desirable that the elected Syndics should represent the different branches of study in the proportion set out by present by-law 90.

GOVERNMENT HOUSE, MADRAS,
13th December 1904.

J. THOMSON,
Chancellor.

Voting paper for the Election of the Provisional Syndicate under section 12 (p) of the Indian Universities Act, 1904 (VIII of 1904). The names of all the Fellows are given on the back hereof.

Names of the Candidates voted for. (Please write distinctly.)	1
	2
	3
	4
	5
	6
	7
	8
Name of Voter	
Signature of Voter	

List of Fellows published in the Notification of the Government of India, No. 109, dated 1st December 1904.

THE SENATE.

CHANCELLOR.

His Excellency the Governor.

VICE-CHANCELLOR.

The Hon'ble Sir Charles Arnold White, *Kt.*

FELLOWS.

EX-OFFICIO.

The Chief Justice of the High Court of Judicature at Madras.
The Bishop of Madras.

The Ordinary Members of the Council of the Governor of Madras.
The Director of Public Instruction in Madras.

ORDINARY.

- | | |
|--|--|
| 1. The Reverend W. Miller, M.A., LL.D., D.D., C.I.E. | 35. Mr. A. W. Bishop, Ph.D. |
| 2. The Reverend Canon Sell, D.D. | 36. M.R.Ry. J. P. Kotilingam Avargal, M.A. |
| 3. Mr. John Cook, M.A. | 37. Sir P. N. Krishnamurti, B.L., K.C.I.E. |
| 4. Sir V. Bhashyam Aiyangar, B.A., B.L., <i>Kt.</i> , C.I.E. | 38. Mr. Francis J. E. Spring, M.A.I., C.I.E. |
| 5. The Most Reverend Archbishop Colgan, D.D. | 39. The Reverend James Russel, M.A. |
| 6. Mr. James Bourdillon Bilderbeck, M.A. | 40. The Hon'ble Mr. P. S. Sivasami Aiyar Avargal, B.A., B.L. |
| 7. The Reverend J. Cooling, B.A. | 41. M.R.Ry. S. Venkobachariyar Avargal, B.A. |
| 8. Mr. John Adam, M.A. | 42. M.R.Ry. A. Sitarama Aiyar Avargal, B.A. |
| 9. Mr. J. R. Henderson, M.B., F.L.S. | 43. The Hon'ble Mr. Justice Boddam. |
| 10. The Hon'ble Sir S. Subramanya Aiyar, B.L., K.C.I.E. | 44. Mr. W. B. deWinton, C.I.E. |
| 11. The Reverend J. D. W. Sewell, s.J. | 45. M.R.Ry. Savur Mangesha Rau Avargal, B.A. |
| 12. M.R.Ry. C. Sankaran Nayar Avargal, B.A., B.L., C.I.E. | 46. M.R.Ry. A. Periyaswami Mudaliyar Avargal, B.A. |
| 13. Mr. Joseph Henry Stone, M.A., F.R.H.S. | 47. M.R.Ry. J. M. Velu Pillai Avargal. |
| 14. Mr. Reginald Arbouin Nelson, M.A., LL.M. | 48. Mr. H. J. Allen, M.A. |
| 15. Mr. A. Crichton Mitchell, D.Sc., F.R.S.E. | 49. M.R.Ry. H. Rangappa Avargal, B.A., M.B., C.M. |
| 16. Surgeon-General William Richard Browne, M.D., I.M.S. | 50. M.R.Ry. L. D. Swamikannu Pillai Avargal, M.A., LL.B. |
| 17. Nawab Imad-ul-mulk Saiyid Husain Bilgrami, B.A. | 51. The Hon'ble Mr. J. E. P. Wallis, M.A. |
| 18. Mr. H. J. Bhabha, M.A. | 52. M.R.Ry. P. S. Ganapati Aiyar Avargal, B.A. |
| 19. M.R.Ry. Rao Bahadur Kunathamakar Nagoji Rau Pantulu Garu, B.A. | 53. The Hon'ble Mr. V. C. Desikachariyar Avargal, B.A., B.L. |
| 20. Mr. Richard Llewelyn Jones, M.A., F.R.A.S. | 54. M.R.Ry. V. Krishnaswami Aiyar Avargal, B.A., B.L. |
| 21. Lieutenant-Colonel John Maitland, M.D., I.M.S. | 55. The Hon'ble Mr. Andrew Edmond Castle-stuart Stuart, F.L.S., F.G.S., F.R.G.S. |
| 22. M.R.Ry. K. Ramanujachariyar Avargal, M.A., B.L. | 56. The Venerable Archdeacon Hyde, M.A., A.K.C. |
| 23. M.R.Ry. Bhimanakunta Hanumanta Rau Avargal, B.A. | 57. Mr. J. A. Yates, M.A. |
| 24. The Reverend W. Skinner, M.A. | 58. Mr. F. J. Wilson, A.M.I.C.E. |
| 25. M.R.Ry. Samuel Sathianathan Avargal, M.A., LL.D. | 59. Mr. H. T. Keeling, A.M.I.C.E. |
| 26. M.R.Ry. L. C. Williams Pillai Avargal, B.A. | 60. Mr. J. G. Tait, M.A. |
| 27. Muhammad Aziz-ud-din Husain Sahib Bahadur, Khan Sahib. | 61. Mr. W. H. James, B. Sc. |
| 28. M.R.Ry. Rao Bahadur Malur Rangachariyar Avargal, M.A. | 62. M.R.Ry. P. T. Srinivasa Aiyangar Avargal, M.A. |
| 29. Lieutenant-Colonel A. J. Sturmer, I.M.S. | 63. Mr. R. Littlehailes, B.A. |
| 30. The Hon'ble Mr. Justice Benson, M.A., LL.B. | 64. M.R.Ry. K. B. Ramanathan Avargal, M.A., B.L., L.T. |
| 31. The Reverend M. Phillips, Ph.D. | 65. M.R.Ry. Subbarama Aiyar Subramanya Aiyar Avargal, B.A. |
| 32. Lieutenant-Colonel J. L. VanGeyzel, M.B., I.M.S. | 66. M.R.Ry. C. Krishnan Avargal, B.A., Bar-at-law. |
| 33. Lieutenant-Colonel Walter Gawen King, C.I.E., M.B., C.M., D. Ph., I.M.S. | 67. M.R.Ry. Joseph Satya Nadar Avargal, M.A., M.L. |
| 34. M.R.Ry. M. R. Ramakrishna Aiyar Avargal, B.A., B.L. | 68. M.R.Ry. T. V. Seshagiri Aiyar Avargal, B.A., B.L. |
| | 69. M.R.Ry. V. C. Seshachariyar Avargal, B.A., B.L. |

List of additional Fellows nominated by the Chancellor and published in the *Fort St. George Gazette* of 13th December 1904.

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|--|--|
| 1. Diwan Bahadur the Hon'ble R. V. Srinivasa Aiyar Avargal, B.A. | 8. M.R.Ry. M. Viraraghavachariyar Avargal B.A. |
| 2. M.R.Ry. S. Rangayya Chetti Garu, B.A. | 9. Rev. C. W. A. Clarke, M.A. |
| 3. Diwan Bahadur C. Ramachandra Rau Sahib, B.L. | 10. Mr. T. R. Scott, B.A. |
| 4. Rev. L. B. Wolf, M.A., D.D. | 11. Mr. H. K. Beauchamp, C.I.E. |
| 5. Mr. A. A. Hall, M.A. | 12. Mr. W. E. Hoare, M.A. |
| 6. Diwan Bahadur N. Subrahmanyam Avargal, B.A., B.L. | 13. Rev. E. M. Macphail, M.A., B.D. |
| 7. Rev. G. Pittendrigh, M.A. | 14. Rev. W. I. Chamberlain, Ph.D. |
| | 15. Mr. H. S. Duncan, M.A. |
| | 16. Nawab Muhammad Raza Khan, Khan Bahadur. |

To the Honourable the Advocate-General.

OPINION.

My previous opinion was given without reference to the by-laws as I was not aware that there were any dealing with the subject. By-law 92 requires that in the event of a vacancy occurring in the Syndicate a new member shall be forthwith elected by the faculty for the remainder of the year. "The faculty" must mean the faculty which originally nominated the member who vacates his seat (by-law 90). On inquiry I now find that the members of the Provisional Syndicate under the directions of the Chancellor, dated 13th December 1904, were elected by the Senate voting as a body and not by faculties. It is therefore not possible to say that any particular member represents any particular faculty and that in his resignation his successor must be elected by that faculty. This by-law therefore appears to be inapplicable to the case of a vacancy in the Provisional Syndicate.

J. P. WALLIS—18-3-05.

Submitted.

P. T. THARYAN—20-3-05.

A. GALLETTI—21-3-05.

Resubmitted to His Excellency the Chancellor with reference to his note of 5th March 1905.

H. D. TAYLOR—22-3-05.

It appears from this that the vacancies on the Syndicate cannot be filled up until the Senate have framed regulations for that purpose.

2. The Vice-Chancellor and the Director of Public Instruction should know this. Let the file be sent to them u.o. for perusal.

A[MPHILL]—25-3-05.

To the Hon'ble Mr. Justice Benson.

To the Director of Public Instruction.

H. D. TAYLOR—27-3-05.

Seen.

R. S. BENSON—27-3-05.

I saw in the newspapers of last *Mail* that the Secretary of State replying to a question in the House of Commons said that under the law the Senate can make only one appointment of a Provisional Syndicate.

A. G. BOURNE—28-3-05.

Recorded.

H. D. TAYLOR—30-3-05.

The draft has been copied on a separate paper and is placed below.

P. T. THARYAN—30-3-05.

A. GALLETI—30-3-05.

[G.O., No. 203, Educational, dated 30th March 1905.]

[E.
12]

1,000-21-9-04.

EDUCATIONAL DEPARTMENT

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STATEMENT WITH DETO.

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