M.R.O. 1—32,400—29-11-26.

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 79 Press Mis.

Dated 10th February 1858

B. No. 5-6-

Not to be folded or roughly handled

No. 5. From R. E. MASTER, Esq., Acting Secretary Mint Committee; to T. PYCROFT, Esq., Chief Secretary to Government, dated 8th February 1858, No. 32.

SIR,

I have the honor, by desire of the Mint Committee, to forward, for transmission to the Honorable the Court of Directors, a copy of their Proceedings from 8th July to 25th September 1857.

No. 6. To Sir JAMES C. MELVILL, K. C. B., Secretary at the East India House, dated 10th February 1858, No. 79.

SIR,

I am directed by the Right Honorable the Governor in Council to transmit to you, to be laid before the Honorable the Court of Directors, the accompanying Proceedings of the Mint Committee from the 8th July to the 25th September 1857.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

5-6.

Judgment given
29th January 1858

Cp

This is a Suit brought by the Plaintiff Mr. Robertson against the East India Company and the Trustees of the Madras Civil Service Annuity Fund, in which the Plaintiff amongst other things prays, that he may be declared entitled to a refund of the sums he has paid in excess of half the value of his Annuity at the time of his accepting it namely on the 1st. May 1855 - Having so lately delivered Judgment in the Suit of Davies v. The Trustees of the Madras Civil Service Annuity Fund, a case in all important points precisely similar to the present, I do not think it necessary to go again at length over all the grounds on which the present Judgment of the Court is founded - It is true that to that Suit, the East India Company, were not parties - though they should have been - but the case was argued throughout as I then observed, and as I then supposed by some arrangement between the parties as if the East India Company had been the sole defendants -

The Plaintiff's Counsel rested their case, on an alleged Contract between the Plaintiff and the East India Company, the terms of which were to be gathered from the Despatch of the East India Directors of 31st. December 1824 - from the Report of the Trustees of the Madras Civil Service Annuity Fund of 1818 - "On the Annuity plan proposed by the Court of Directors" - and the Despatch of the Directors of November 1826 containing some further terms, and the general confirmation of the Fund - They further contended that the meaning and intention of the parties were clearly established by the unvarying practice of making refunds, which had existed unobjected to from 1834 down to 1851, relying also on the Judgment of this Court in Davies' Case last year -

On the other side it was contended by the learned Counsel for the Defendants the East India Company, that the Despatches and letters of 1824 - 1825 & 1826, did not make the East India Company parties to any Contract - that as far as regarded their contributions to the Fund of 1825, they were volunteers, and that they stood in the same relation to the Fund of 1825, as they did to the pre existing Funds of 1800, 1814 & 1818 -

We cannot adopt this view of the case, on the contrary we abide by the Judgment of the Court in Davies' case and are of opinion that the Letters and Despatches above referred to did constitute a Contract between the parties and that in consideration of the Madras Civil Service consenting to contribute to the Fund, by allowing a deduction of 4 per

cent

cent to be made from their salaries and by extending the period of service from 12 to 25 Years, the East India Company undertook to guarantee to their Servants four Annuities every year, and that all persons on becoming Annuitants, should have their Annuities on paying half their then value and no more.

It may perhaps be as well here to state that were the Plaintiff's claim to be decided solely by a reference to the above documents, and that there were no other means of interpreting the words used or of ascertaining the meaning and intention of the parties, I might as stated in Davis' Case, and in accordance with the opinion of the late Chief Justice of Calcutta, in Blunt v. Halliday, have considered that the arguments for and against a refund, balanced each other too nearly to admit of our finding in the Plaintiffs favor. But the additional facts established in this Suit take it wholly out of the authority of that case such facts as for instance, the unvarying practice of making refunds from 1834 to 1851, inclusive, and some to a very large amount - the express provision in Rule 16 that contributions in excess of the half value, should be refunded and the knowledge of the East India Company.

In order to meet the evidence on the part of the Plaintiff and especially that establishing the practice of making the refunds, and the express provision in the Rules for refunding the excess payments, it was contended by the learned Counsel for the East India Company, that they might not have had any notice either of the refunds or of the Rules (The Defendants Answer I will only observe hardly went that length) It is impossible however to entertain a doubt in the face of the facts proved in this Suit, as to their having had the fullest Knowledge both of the Rules and of the practice of refunding. In addition to the reasons which the Court gave in Davis' Case for coming to a similar conclusion, I may here add, that in this Suit it has been shewn that by a Letter bearing date 14th April 1841 express notice was given of the refunds to Mr. Harris and to Mr. Webb and in the same year 1841. I find the East India Directors, in a Despatch to Bengal dated 1st September 1841 (and the two Funds it should be borne in mind were founded on the same Despatch) using the following words "With respect to a refund of Subscriptions we are disposed to meet the views of the majority of the Subscribers to the extent of confining refunds to the excesses which may have been paid beyond the half value of the annuity such an arrangement being in accordance with the Regulations of the Fund" - thus shewing the interpretation they themselves put on the much disputed words "paying the ½ value of the Annuity and no more"; for it was admitted that at Bengal there was no express Rule as at Madras relating to refunds - I will only observe as regards the printed Rules, which were first printed in their present form in 1838, that on the good faith of the framers and publishers of them, it was distinctly stated that

that not the slightest imputation could be cast — as little was attempted to be shewn that, the recipients of the refunds, many of them Members of the Government at the time of their retiring from the Service, had taken these refunds unknown to or in fraud of the other parties to the agreement.

I do not think it necessary again to report my reasons for attaching but little weight to the arguments founded on the inconvenience likely to arise from adopting the Plaintiff's interpretation of the agreement. It may be true that it may produce inconvenience now; it may hinder so quick a retirement from the Service as may have been speculated on in 1825: it may cause the East India Company's contribution to be larger than was calculated on, the result of the scheme was admitted to be uncertain and the probability of the Madras Fund requiring larger aid than that of Bengal was also admitted in the Original Despatch of the Defendants, owing to the difference of the Salaries at the two Presidencies — But how can the "argumentum ab inconvenienti" be allowed any weight as against the conduct of the parties, and the plain words of the agreement confirmed by the express provision in the 16th Rule guaranteeing a refund and which rule we are of opinion was fully known to and sanctioned by the East India Company as being in accordance with the Regulations, on which the Fund was established.

It was also further contended by the learned Counsel for the East India Company, that this case differed from Davis' Case in this — that there was evidence now before the Court that in June 1853, a large majority of the Madras Civil Service had adopted a new set of Rules, in which no provision was made for any refunding — Under what circumstances however the change took place was not proved, but it was shewn that the Plaintiff had dissented from the change — and had accepted his Annuity with distinct notice of his present claim — How then is the Plaintiff to be deprived of the benefit of his payments made on the faith of an express Rule, and of an unvarying practice of more than twenty years in conformity with it by the act of a majority, whose power so to bind him, was not attempted to be shewn — and certainly no portion of the Despatches or of the original Regulations contain any provision for such a proceeding, one prima facie contrary to all the rules of equity and good faith.

For the above reasons as well as for those more fully set out in the Judgment of the Court in Davis v. The Trustees of the Madras Civil Service Annuity Fund, We are of opinion that the Plaintiff is entitled to a decree, and as far as regards the East India Company, we must declare him to be entitled as prayed.

I must therefore decree that the Plaintiff is entitled to a refund of the excess payment made by him beyond the half value of his annuity on the 28th day of April 1855 — And I must further decree that the Defendant the East India Company do pay on the 1st day of December next the sum of Rs. 39,014 being the amount of such excess and also the sum of Rs.

Rupees 5,075 being the amount of the Interest from the 28th day of April to the day of payment, and that the Defendants to the East India Company pay to the said Plaintiff his Cost of this Suit - I declare also that the Plaintiff is entitled to have his annuity paid to him by the East India Company as prayed.

As regards the other Defendants the Trustees, it will be sufficient to observe, that they were necessary parties to the Suit that they had declined to do the requisite acts to enable the Plaintiff to draw his refund - It was contended by their Counsel, that they were mere Agents and Servants of the East India Company and therefore could not be held responsible for such refusal - We cannot accede to this view: they took upon themselves the Office of Trustees, and as such had independent duties to discharge, and though it is true, that under the Rules their discretionary powers are but small, it is clear that as Trustees and Managers of the Fund, deposited in the public Treasury, and subject to their directions and control (See Rule 23) it was their duty to have drawn the Cheques or necessary order on the Treasurer for the payment of the money due to the Plaintiff - It was urged that it would have been useless for them to have so done, in consequence of Orders issued by the other Defendants the East India Company - We cannot tell that, it may have been so - Still we think it was for them to have done their duty - notwithstanding the fact that their Treasurer was the Sub Treasurer of Fort St. George, a person acting under and bound to obey the Orders of the other Defendants the East India Company - We must therefore decree them to draw all such Cheques or Orders as may be usual or necessary under this Rule to enable the Plaintiff to obtain his refund.

The Chief Justice then remarked that the delivery of the Judgment had been delayed, that the parties might have the benefit of Mr. Justice Davison's full consideration of the Case. That Mr. Justice Davison, concurred in the Judgment he now delivered, though owing to his absence from Madras, he had not seen the exact form in which it was now delivered. -

The Chief Justice also expressed his regret that the facts had not been stated in a special Case.

Supreme Court
Madras
(In Equity)

Andrew Robertson Esqre
and
The East India
Company and others

Andrew Robertson Esqre
and
The East India
Company and others

Copy

Assignment of the depositions
Court at Madras Chambers, the 2nd
Chief Justice on the 16th Octr 1827.

Filed 25 Oct 1827

In the Supreme Court of Judicature at Madras.
(In Equity)

Between Andrew Robertson Esqre Plaintiff
and
The East India Company, John
Goldingham Esqre, Guy Lushington
Prendergast Esqre, Thomas Pycroft
Franklyn Lushington Esqre, George
Ellis Esqre, Alexander John Arbu
Esqre, and James Duncan Sim Esqre
Defendants

The Joint and several Answer of John Goldingham Esqre
Guy Lushington Prendergast Esqre Thomas Pycroft Esqre Frankl
Lushington Esqre George Ellis Esqre Alexander John Arbuthnot Esqre a
James Duncan Sim Esqre Seven of the above named Defendants to
Bill of Complaint of the above named Plaintiff

1 We admit that the Plaintiff was a subscriber to the Madras Civil
Fund of 1818 and that a subscriber by the terms of that fund became qualified
obtain an Annuity of 500 Pounds Sterling upon the completion of 12 years Serv
on payment of the sum of Rupees 20,790 upon the terms and subject to the cond
mentioned and contained in a certain Deed bearing date the 1st day of May 1818 m
which the said fund was established, but for greater certainty as to the terms
conditions of the said Deed we crave leave to refer to the said Deed of the 1st day of
1818 when the same shall be produced.

2. We admit that the Court of Directors of the East India Company wr
a letter to the Government of Fort Saint George dated the 31st day of December
intimate their willingness to sanction and approbate the Establishment of a ne
Annuity Fund for the Civil Service of the Madras Presidency on the footing of a
Scheme for the Civil Service of Bengal sanctioned by the Court of Directors in
to the Governor General of India in Council dated the 8th day of December
but for greater certainty as to the contents and dates of the said letters of
and 31st days of December 1824 these Defendants crave leave to refer to th
when they shall be produced.

3 We admit that true copies of the Court of Directors said letters o
8th and 31st days of December 1824 so containing their said proposal were fo
to the Trustees of the said Madras Civil Service Annuity Fund on the 1st day of
1825 with a letter of that date to them from the acting Secretary of the
Government of Fort Saint George and to which said last mentioned letter we
greater certainty herein crave leave to refer when the same shall be pro

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4. We admit that the said Trustees of the said madras Civil Service Annuity Fund did thereupon prepare a Report upon the papers submitted to them by the Government of Fort Saint George along with their said Acting Secretary's letter to the said Trustees of the 1st day of July 1825 and that such Report was submitted to the Government of madras under date the 22d day of July 1825 and was submitted for the consideration of the madras Civil Service who on the 30th day of July 1825 by a large majority adopted the same but as to the contents and effect of the said Report and for greater certainty as to the date thereof we pray leave to refer to the same when it shall be produced and we admit that the said Report embodies such scheme as in the said Bill in that behalf alleged and was prepared on the footing of the schemes set out in the Court of Directors said letter to the Governor General of India in Council of the 8th of December 1824 adapted by certain modifications to the circumstances of the madras Civil Service and we admit that the Government of madras in a letter to the Trustees of the Civil Fund dated the 26th day of August 1825 sanctioned the operation of the said proposed new Annuity Fund retrospectively from the 1st day of may 1825 and likewise ordered stoppages to be made from the Salaries and Emoluments of the subscribers to the said Fund on account thereof but whether the said Government of madras ever passed or recorded any such minute of consultation under date the 23d day of August 1825 or on any other date as in the Bill in that behalf mentioned we do not know and are unable to set forth as to our belief or otherwise.

5. We admit that under the provisions of the said new Fund and such scheme as aforesaid as evidenced by the papers aforesaid and in the 21st paragraph of a letter from the said Court of Directors to the said Government of Fort Saint George dated the 10th day of November 1826 and to which said last mentioned letter we crave leave to refer when produced four Annuities were to be granted annually to the Civil Servants of the said Presidency of Fort Saint George and we say that such four Annuities were to include any Annuities of 600 Pounds and 400 Pounds under the said Fund to persons who had not (on the 10th day of November 1826) retired from the Service of the said East India Company either by resignation or by an absence of more than 5 years from India as well as those of 1000 Pounds under the said new Fund which said last mentioned Annuities of 1000 Pounds were to be granted to subscribers to the said new Fund who should have completed a service of 25 years on the terms and conditions and under the circumstances in the said papers, report and letters mentioned and set forth and we admit that one of such terms was the payment by each such subscriber as last aforesaid of the amounts required to be paid by and under the provisions of the Court of Directors said letters dated respectively the 8th and 31st days of December 1824 according to his age and according to the Table referred to in the 55th para and exemplified in the 70th paragraph of the said letter of the 8th december 1824 which Table of the valuation of Annuities it is provided in the 62d paragraph of the said letter of the 8th December 1824 was when the said Fund should have arrived at the Twenty fifth year of its operations to be corrected according to the experience of the intervening period and we say that the said 25th year of the said new Funds operations expired on the 1st day of may 1850 and we say that the half value of the said Annuity as provided in the said letter of the 8th day of

of December 1824 was subsequently to the expiration of the said 25 years last aforesaid and on the 20th day of October 1852 by the Court of Directors of the East India Company in their dispatch to the Government of Fort Saint George of that date proposed to be increased by 5 percent on the valuations set forth in the said Table in their said letter of the 8th day of December 1824 mentioned And we say that in the said last mentioned letter certain new Rules for the future management of the said Fund were also set out and proposed by the said Court to the subscribers to the said Fund And we say that the said proposition and rules were thereupon submitted to all the subscribers to the said Fund of whom the Plaintiff was one and that the said proposition and rules were adopted sanctioned and confirmed by the votes of the majority of the said subscribers to the said Fund at a special General meeting of the subscribers to the said Fund held on the 17th day of June 1853 to which said letter and rules for greater certainty herein we crave leave to refer when the same shall be produced and we admit that in one paragraph 54 of the said letter of the 8th December 1824 (that is to say) in paragraph No 57 there occur the words following that is to say "But although in the mode here proposed all servants upon becoming Annuitants will pay half the value of their respective Annuities and no more &c &c" but whether the said letter of the 8th December 1824 considered as a whole does either by itself or when taken in conjunction with the said letters of the 31st December 1824 and 10th November 1826 and the said report amount to an engagement on behalf of the East India Company to grant annually 4 Annuities of 1000 Pounds to subscribers who should have completed a Service of 25 years on payment by each of half the value of the Annuity assigned to him according to his age as specified in the Table referred to in the said letter of the 8th December 1824 or according to the increased valuation fixed upon the said Annuities in the Court of Directors said letter of the 20th day of October 1852 and confirmed by the votes of the majority of the subscribers to the said Fund at the said special General meeting on the 17th day of June 1853 aforesaid We the said John Goldingham Guy Lushington Prendergast Thomas Bayoft Franklyn Lushington George Ellis Alexander John Arbuthnot and James Duncan Esquires Submit as a matter of Law to be determined by this Honorable Court and Crave leave to refer to the said letters Report and proceedings when the same shall be produced.

5. We admit that under the said provisions of the said last mentioned Fund an Account Current was to be kept and was in fact kept of the Amounts stopped from the Salary and emoluments of each subscriber to such fund and that interest at 5 per cent per Annum was to be allowed on the amount so stopped and that when the accumulated amount (including such interest as aforesaid) at the credit of a subscriber on his obtaining an Annuity was less than the half value of such annuity according to the said Table (when in force) set out in paras 55 and 70 of the said Court of Directors letter of the 8th December 1824 the difference was to be paid by way of and under the name of a fine by such subscriber previous to his obtaining his Annuity -

We

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7. We admit that the said Court of Directors by their despatch to the Government of Fort Saint George dated the 10th day of November 1826 Confirmed the Establishment of the said new Fund upon and subject to the terms and conditions in the said despatch mentioned and that (amongst other things) the said dispatch did contain statements which may be construed as being to the purport and effect in the said Bill in that behalf mentioned but for greater certainty as to the contents of the said despatch and the terms and conditions and purport and effect thereof we crave leave to refer to the same when it shall be produced.

8 We admit that the Plaintiff became a subscriber to the said new Fund and that such new Fund is known as the "madras civil Service Annuity Fund of 1825" and that from the time of the Plaintiff becoming a subscriber to the said last mentioned Fund stoppages were made under the aforesaid orders of Government from his salary and emoluments on account of the said last mentioned fund up to the time of his retirement from the service of the East India Company when he accepted an Annuity of 1000 Pounds as in the said Bill mentioned.

9. We admit that the Office of the said madras Civil Service Annuity Fund of 1825 and the monies and funds thereof are under the management and control of a Committee of 7 members of the said Service who are also the Trustees of the said last mentioned Fund and that the chief Secretary to the Government of Fort Saint George and the Accountant General of Fort Saint George are by office members of such Committee and also Trustees and that the other 5 members of such Committee and Trustees are subscribers to the said last mentioned fund and are elected at a General meeting of the said subscribers and we believe that the said Committee or a majority of the members thereof present at a meeting of 5 or more members of such Committee are competent to decide upon all matters relative to the said Fund within the scope and limits of their Authority as contained in the Court of Directors said letters dated respectively the 8th and 31st day of December 1824 and 10th November 1826 and in the said Report and in an address presented to the Honorable Sir Thomas munro Kt & K.B. Governor in Council by the then Trustees of the said Fund on behalf of and with the sanction of the subscribers of the said fund and bearing date the 24th August 1825 and in the Court of Directors said letter of the 20th October 1852, but we are unable to answer further as to our belief or otherwise whether or not such majority are competent to decide in the first instance upon all matters relative to the receipts and disbursements of the said last mentioned fund as well as generally upon all subjects connected with the management of the said last mentioned fund and the due execution of the rules established for its control and management which by such rules may not have been expressly reserved for determination by the General meeting of the subscribers to the said fund, but submit the same as matters of law to be determined by this Honorable Court and we further say that we cannot answer with certainty as to our belief or otherwise whether the decision of the said Committee is liable to

to revesion and control only by the resolution of the said subscribers duly passed at a regular General meeting of such subscribers but submit the same as matters of law to be determined by this Honorable Court and for greater certainty as to the duties and authority of the said Committee and Trustees we crave leave to refer to the Court of Directors said letters dated respectively the 8th and 31st days of December 1824 and the 10th of November 1826 and the 20th October 1852 and the said Report and address above mentioned when the same shall be produced.

10 We admit that the Plaintiff became entitled to and was offered but refused to accept an Annuity of 1000 Pounds in the year 1842 and 43 to commence from the 1st day of may in the year 1843 and that a like Annuity was offered to but refused by him in every succeeding year during his residence in India until the year 1854 and 55 and we admit that such Annuity devolved on the Plaintiff according to the rules of the said madras Civil Service Annuity fund of 1825 and that on 3 of these occasions the Plaintiff expressed his willingness to take and do offer to accept the same provided the amount that he had paid in excess of half the value of his Annuity was repaid to him and we admit that the Trustees and managers of the said fund for the time being do refuse to agree to make such repayment and we believe that the said Plaintiff during there was no prospect whatever of his claim being acceded to did retire from the said service on the 1st day of may 1855 on an Annuity of Pounds 1000 And we admit that the said Plaintiff did in accepting such Annuity expressly in writing protest against the non payment to him of the excess in the said Bill in that behalf mentioned and with a full reservation of all his rights copies of which letters written by him on the subject of his accepting the said Annuity and of his demand of the excess or surplus so paid by him are set out in the Schedule annexed to this our Answer marked with the letter A which schedule we pray may be taken as part and parcel of this our answer and to the originals of which said letters when produced we for greater certainty herein crave leave to refer.

11 We admit that the managers and Trustees for the time being of the said fund through the Secretary of the said fund did furnish the Plaintiff with an account made up to the date of the commencement of his Annuity shewing the sum of Company's Rupees 90,330 Annas 8 and pice 1 at his credit with the said Fund at the time he accepted the said Annuity and we admit that such last mentioned sum was the accumulated amount of such stoppages as are in the said Bill and hereinbefore mentioned with interest thereon at the rate of 5 per cent per Annum but for greater certainty as to the particulars and contents of the said account current we crave leave to refer to the same when it shall be produced.

12 We admit that the above sum at the time the Plaintiff accepted the said Annuity as aforesaid exceeded by Company's Rupees 39674 Annas 15 and pice 5 (not Company's Rupees 39014 and pice 1 the amount in the said Bill mentioned) the sum payable by him for the half value of his Annuity

Annuity according to the prescribed Table in paras 55 and 70 of the said letter of the Court of Directors of the East India Company of the 8th day of December 1824 set out and for certain additional benefits according to the rules of the said service And we say that the said sum of Company's Rupees 90330 Annas 8 and pice 1 exceeded by Company's Rupees 39014 and pice 1 in the said bill mentioned the sum payable by him for the increased value of his said Annuity according to the increased valuation placed thereon by the Court of Directors in their said letter to the Government of Fort Saint George dated the 20th day of October 1852 and subsequently confirmed by the votes of the majority of the subscribers to the said Fund at the said Special General meeting of the said Subscribers held on the 17th day of June 1853 and for the said additional benefits according to the rules of the said Service but whether or not he became thereby entitled to receive back the said sum of Rupees 39,074 annas 15 and pice 6 or the said sum of Rupees 39014 and pice 1 or either of them as such excess as aforesaid we submit as matter of law to the Judgment of this Honorable Court and crave leave for greater certainty in this respect to refer to the said letters of the 8 and 31st days of December 1824 and 10th November 1826 and the said report and the said dispatch of the 20th day of October 1852 aforesaid when the same shall be produced.

13. We admit that the said managers and Trustees although frequently applied to for the same refused and do now refuse to pay the said sum of Rupees 39014 and pice 1 being such excess as aforesaid according to the increased valuation of the said Annuity to the said Plaintiff and we say the only ground for such our refusal has been and is the direction contained in the said letters from the said Court of Directors to the Government of Fort Saint George dated the 20th day of October 1852 and to which for greater certainty herein we crave leave to refer when the same shall be produced.

14. We admit that Mr Charles Harris in the Bill mentioned was a subscriber to the said Annuity fund of 1818 and that the said Mr Charles Harris afterwards became a subscriber to the said Annuity fund of 1825 And we admit that he did in November 1834 and whilst he was a subscriber to the said last mentioned fund accept the offer of an Annuity from such fund and that he did thereupon on finding by the account furnished to him by the Trustees of the said last mentioned fund that the amount at his credit in the books of the said fund exceeded the amount payable according to the said table in the 55th and 70th paragraphs of the said Court of Directors letter of the 8th December 1824 set out for the said Annuity which he had so accepted by the sum of Company's Rupees 51492 annas 6 and pice 11 claim repayment of such excess And we admit that this claim was the first of its kind that had then arisen and that it was considered and decided by the then Committee of management and Trustees of the said last mentioned fund who came to such decision we believe but further or otherwise are unable to answer or set forth in the belief that they were then acting in the exercise of and pursuant to the power and authority in that behalf in the 9th paragraph of the said Bill mentioned and on reference to the terms of the said Court of Directors said

said letter of the 8th December 1824 that the excess was due to him and ordered it to be repaid to him And we admit that the said decision as last aforesaid was never questioned at any regular General meeting of the said subscribers to the said last mentioned fund but whether or not such committee was or was not justified in disposing of such claim or whether in acting as aforesaid they did or did not exceed the scope of their authority as such committee or Trustees we submit as matters of law for the consideration and Judgment of this Honorable Court.

15 We admit that the said Accountant General and Chief Secretary for the time being as Ex Officio members of the Committee of the said Fund were parties to that decision but as respects the statement in the said bill contained that such Ex Officio Trustees were Trustees on behalf of the said Government of Fort Saint George we severally say that we know of no direct words or passage in any or either of the said Court of Directors said letters dated respectively the 8th and 31st days of December 1824 and the 10th November 1826 or in the said report or in any rule or paper relating to the said last mentioned fund or the control or management thereof which defines or describes the said Ex Officio Trustees as Trustees on behalf of the said Government or East India Company but we say that Sir Timothy Vansittart Stonhouse when Accountant General of Fort Saint George and as such an Ex Officio Trustee of the said Fund did by a minute in writing bearing date the 3rd day of July 1847 for the reasons therein set forth decline to be any longer an Ex Officio Trustee of the said Fund and that the fact of such his resignation was

Announced by the then Trustees of the said Fund in their report to the Subscribers to the said Fund at a General meeting of such Subscribers held at Madras on the 7th day of October 1847 whereupon it was proposed and carried unanimously that the fact of the resignation of one of the Ex Officio Trustees should be reported to the Government of Fort Saint George with a request that they would inform the Trustees whether or not in their opinion an Ex Officio Trustee of the said Fund could legally relinquish his Trust And we say that the then Trustees of the said Fund caused their Secretary to forward an Extract of the said last mentioned resolution to the Secretary to the Government of Fort Saint George together with a letter dated the 20th day of October 1847 requesting that the same might be laid before The most noble the Governor in Council at Fort Saint George and that the Trustees might be favored with the opinion of Government on the principle involved in the said Resolution And we say that the Government by minutes of consultation dated the 9th day of November 1847 a copy of which was forwarded to the then Trustees of the said Fund by the Chief Secretary to the Government of Fort Saint George were of opinion that the retention of the office of Ex Officio Trustees by the Deed of 1825 appeared to be obligatory And we further say that in obedience to such expressed opinion Sir Timothy Vansittart Stonhouse notwithstanding his retirement as aforesaid continued thereafter to act as an Ex Officio Trustee of the said Fund during the period he retained the office of Accountant General of Fort Saint George to which said original minute

Report

& part proceedings and letters we for greater certainty herein crave leave to refer when the same shall be produced and we submit as matters of law to the Judgment of this Honorable Court whether such Ex officio Trustees were or were not Trustees on behalf of the said Government of Fort Saint George or East India Company And we also admit that the payment of the excess to the said Mr Harris of Rupees 3492 annas 6 and pice 11 was duly exhibited in the accounts furnished in regular course to the Madras Government and the Court of Directors of the said East India Company in the words and figures following (that is to say) "Amount prepaid to Mr C Harris being the over payment of the fine due by him Rupees 3492 annas 6 and pice 11" but for greater certainty as to the entry of such payment in such accounts we crave leave to refer to the said accounts when the same shall be produced.

16 We admit that subsequent to the making of the said refund to Mr Charles Harris and in the year 1838 a pamphlet headed "Madras Civil Service Annuity Fund established on the 1st May 1825" and purporting to be the Rules of such Fund was printed and published with the knowledge and under the authority and orders of the then managers and Trustees of the said last mentioned fund including the then Ex officio managers and Trustees of the said fund and that Paragraph 16 of such Pamphlet contained the following words then for the first time introduced into the Rules of the said Fund "but should the contribution been excess such excess shall be refunded" but for greater certainty as to the contents of the said pamphlets we crave leave to refer to the same when it shall be produced And we further say that previous to the printing of such pamphlet as last aforesaid no rules regarding the said last mentioned fund other than those contained in or evidenced by the papers above in paragraphs 3 and 4 of this our Answer mentioned has ever been framed or promulgated as the rules of such fund and that we are unable to state whether the said words so as aforesaid contained in paragraph 16 of the said pamphlet were intended to embody the said decision upon Mr Charles Harris's said claim but we believe that the said last mentioned managers and Trustees intended such words to be considered as a rule to be in future followed and acted upon and by the said Rules intended the said pamphlet for the information and guidance of the members of the Madras Civil Service and all concerned.

17 We admit that copies of the said last mentioned pamphlet were forwarded by the then managers and Trustees of the said last mentioned fund to the Government of Fort Saint George with a letter dated the 30th day of August 1838 and that a copy of the said last mentioned letter together with copies of the said last mentioned pamphlets were forwarded by the Government of Fort Saint George to the Court of Directors of the East India Company with an extract from the minutes of consultation of the said Government dated the 5th day of September 1838 and numbered 412 but for greater certainty as to the dates and contents of the said last mentioned letter and by extract we crave leave to refer to the same when they shall be produced and we submit to the Judgment of this Honorable Court whether by the means aforesaid the said Government of Fort Saint George and the said Court of Directors or either of them had or has not full notice of the said Rules so made as aforesaid in the said pamphlet.

18. We admit that in every case of retirement and acceptance of an annuity as in the said bill mentioned subsequent to the case of Mr Charles Harris and previous to the Plaintiffs case with the exception of the case by William Done David Esquire when

when objection to any such refunds as in the Bill stated was taken for the first time by the said managers and Trustees of the said last mentioned fund to every subscriber to the fund of 1818 who had paid to the said fund of 1825 and whose subscriptions inclusive of interest at 6 per cent per Annum calculated to the date upon which he obtained an annuity exceeded the half value of such annuity according to the said table in paras 55 and 60 of the said letter of the Court of Directors dated the 8th day of December 1824 mentioned had such excess paid to him by the managers and trustees for the time being of the said last mentioned fund on his accepting an annuity but we say that the objection so as last aforesaid then for the first time taken by the said managers and Trustees of the said fund was not the first time such objection had and the same objection having been first raised and taken in the year 1830 by one of the ex officio Trustees of the said fund as is hereinafter mentioned.

19th We admit that the list contained in the said bill of Annuitants who have received such excesses as in the said bill mentioned from the managers and trustees for the time being of the said last mentioned fund is a correct list and that the persons therein named were such Annuitants as in the said bill mentioned and that such persons did respectively receive from the managers and Trustees for the time being of the said last mentioned fund the respective sums of money in the said bill mentioned as and for such excesses aforesaid.

20 We admit that all the refunds in the said bill mentioned together with another refund hereinafter more particularly mentioned and made in the year 1830 to Mr William Oliver of the Madras Civil Service were entered and stated in the words and figures hereinafter set forth in the said last mentioned accounts

And we also admit that the refunds to Mr Charles Harris and Mr A Webb were also respectively mentioned (as hereinafter more particularly mentioned) in a letter dated the 14th day of April 1831 addressed by the then Trustees of the said last mentioned fund to the then Governor in Council of Fort Saint George and by him transmitted to the said Court of Directors and that the accounts of the last mentioned fund which were from time to time furnished by the managers and Trustees for the time being of such fund to the Government of Fort Saint George for the information of the said Court of Directors contained entries of the refunds in the said bill mentioned in the words and figures following and that such accounts were for the respective years hereinafter placed opposite to each such entry (that is to say)

1834.	Amount repaid to Mr C Harris being the over payment of the fine due by him		3492 6 10
1838	Amount repaid to Mr A Webb being the over payment of the fine due by him		9221 9 11
1843	Amount repaid to Mr C M Lashington being the over payment of the fine due by him		24269 10 3
1845	Amount repaid to Mr John Bird being the over payment of the fine due by him		30577 15 10
1848	Amount repaid to Mr F Chanier being the over payment of the fine due by him		33934 4 2
	Amount repaid to Mr J Waters being the over payment of the fine due by him		7054 9 10
1850	Amount repaid to Mr H Dickenson being the over payment of the fine due by him		46589 1 7

amount

Amount repaid to Mr G. D. Drury being the
due by him
Amount repaid to Mr A maclean being the
due by him
1857. Amount repaid to Mr J E I Boileau being
fine due by him

And we say that the said letter of the 14th of April
above mentioned as therein referred to contains
it to say)" In conclusion we have to state that
"fund of 1818 and 1825 conjointly exceed the fine
"annuity from the latter the excess has been re
"In 1834/35 to Mr C Harris Rupees 54 92. 6. 11 } in t
"In 1837/38 to Mr A Mabb 9221. 9. 11 } the
"uniform the practice in this respect at all t
"not concurring in the foregoing letter will reco
"if required by Government will be laid before
such refunds as aforesaid ever was specifi
Court of Directors and that the practice of m
challenged by the said Court of Directors
to be true (as in the said bill is alleged) that
or objected to by the Europeen managers an
that in the year 1850 objections were mad
Baronet who was then the Accountant Genera
Accountant General was then an ex officio
the two several refunds that were made
said G. D. Drury and Alexander maclean and
to writing by the said Sir Timothy Van Sittart Stonehouse
on or brought to the notice of the Government of Fort Saint George or of the said
Court of Directors and we say that in addition to the refunds in the said bill
mentioned the Sum of 213 Company's Rupees 6 Annas and 3 fuse was refunded
on the 23 day of February 1836 by the then managers and Trustees of the said
last mentioned fund to Mr William Oliver who was a subscriber to such fund
on his returning from the service of the said East India Company and accepting
an Annuity from such fund and that such refund was entered and exhibited
in the accounts of the said last mentioned fund which were furnished by the
managers and Trustees of the said fund to the Government of Fort Saint George
for the information of the said Court of Directors in the words and figures following
Amount repaid to Mr William Oliver being the over payment of the fine due
"by him Two hundred and thirteen Rupees Six Annas and three fuse" and that
such refund was not a refund of any excess of the aggregate amount of Mr
Oliver's actual subscriptions to such fund and interest for the same at 6 per cent
per Annum over or beyond the half value (according to the table hereinbefore
mentioned) of his said Annuity but was in fact a refund of an Amount over
paid

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over payment of the fine
27 8 9 0 11 9
over payment of the fine
6 4 9 8 10 4
the over payment of the
9 6 2 3 6 10
1841 with reference to the repayments
the words and figures following (that
when the subscriptions to the annuity
payable by any individual claiming an
aid to him in the rare instances noted
margin - we notice this merely that
Honorable Court of Directors may render
Presidency & the Accountant General
his dissent in a separate minute which
them" And we admit that not one of
ally challenged or objected to by the said
aking such refunds was never -
until February 1850 but we deny it
such refunds were never challenged
Trustees of such fund for we say
by Sir Timothy Van Sittart Stonehouse
of Fort Saint George and as such
manager and Trustee of such fund to
the said last mentioned year to the
that such objections were reduced
but were never acted
of Fort Saint George or of the said
to the refunds in the said bill -
Rupees 6 Annas and 3 fuse was refunded
and Trustees of the said
who was a subscriber to such fund
East India Company and accepting
such refund was entered and exhibited
which were furnished by the
Government of Fort Saint George
Directors in the words and figures following
over payment of the fine due
three fuse" and that
aggregate amount of Mr
for the same at 6 per cent
according to the table hereinbefore
refund of an Amount over
paid

paid by me to be by Mr Oliver beyond the Amount due from him by way of fine to make up with his subscriptions and such interest as aforesaid) the half value (according to the said Table) of this said Annuity.

21. We admit that the said refunds to Messrs Lushington Peel Chaner Waters Deedes Pinson, Drury Maclean and Porteau hereinbefore and in the said bill respectively named were made when the available assets of the said last mentioned fund together with the full Amount of the Annual contribution of 150,000 Company's Rupees promised by the said Court of Directors in their said despatch of the 10th of November 1826 were together with such Annual contribution as last aforesaid insufficient to make up the amount required to be carried to such appropriate fund as in the said bill mentioned in order to provide for the 4 Annuities of 1000 Pounds each granted yearly as aforesaid and we admit that the deficiency or Amount required to provide the said 4 Annuities every year was supplied by the Government of the Presidency of Fort Saint George out of the Revenue of the said Presidency but whether the Court of Directors said despatch of the 10th of November 1826 does or does not contain such guarantee as in the said bill in that behalf alleged we submit as matter of law to be determined by this Honorable Court and we believe that such deficiency as last aforesaid was so supplied by the said Government under the authority supposed to be contained in such despatches as in the said bill in that behalf mentioned but whether really so contained we submit as matter of law for the determination of this Honorable Court.

22. We admit that the said Court of Directors in their despatch to the Government of India N°5 of 1850 and dated the 6th of February 1850 did (amongst other things) admit as in the said bill in that behalf mentioned and we also admit that in a previous despatch to the Government of India N°29 of 1841 dated 1st September 1841 and referred to in the said despatch N°5 of 1850 the said Court of Directors referring to the case of the Bengal Civil Service Annuity fund (amongst other things) stated as follows "with respect to refunds of Subscription we are disposed to do "meet the views of the majority of the subscribers to the extent of conferring "refund to the epoch which may have been hereon the half value of the "Annuity such an arrangement being in accordance with the regulations of the "fund" but for greater certainty as to the contents and dates of the said despatches N°5 of 1850 and N°49 of 1841. we crave leave to refer to the same when they shall be produced and we submit as matter of law for the consideration and judgement of this Honorable Court whether by the said last mentioned despatches or either of them the said Court of Directors did virtually or in fact assent to the decision of the managers and Trustees of the said last mentioned fund in the case of Mr C Harris hereinbefore and in the bill mentioned or sanction the practice that ensued thereon and was subsequently followed.

23 We admit that the said Court of Directors in their said despatch N°5 of 1850 desired (amongst other things) that the Government of India would give the subject thereof their best consideration with a view of procuring an alteration in the rules of the Civil Service Annuity funds at Madras and Bombay in order that the principle of refunding might be abolished.

24 We admit that a copy of the said despatch N°5 of 1850 was forwarded by the said Court of Directors to the Government of Madras together with a despatch N°3 of 1850 dated the 6th February 1850 and that such last mentioned despatch was to the purport and effect in the said bill mentioned but for greater certainty as to the contents of the said last mentioned despatch we crave leave to refer to the same when it shall be produced

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25. We admit that in consequence of the said last mentioned despatches the question "whether or no the praatice of refunding hitherto allowed shall be abrogated" was put to the votes of the madras Civil Service by a circular from the Secretary to the said last mentioned fund dated 14th August 1850 and accompanied by an Extract from the proceedings of the then managers and Trustees of such fund dated 31st July 1850 and to which said circular and Extract we crave leave (for greater certainty) to refer when they shall be produced.

26. We admit that the alteration so proposed in such question as last aforesaid was negatived on the 26th September 1850 at a special meeting of the members of the madras civil Service

27. We admit that the said Court of Directors in their despatch to the Government of Fort Saint George dated 29th may 1851 did state and direct to the purport and effect in the said bill in that behalf mentioned but for greater certainty as to the contents of the said last mentioned despatch we crave leave to refer to the same when it shall be produced.

28. We admit that on the 19th day of July in the year 1852 William Done Davis a member of the said madras Civil Service and a subscriber to the said madras Civil Service Annuity Fund of 1825 did accept an annuity of 1000 Pounds and that he did afterwards demand from the then managers and trustees of the said fund the refund of the over or surplus payments inclusive interest at 5 per cent per Annum calculated up to the date upon which he accepted the said Annuity in excess of the like of value of the said annuity according to the said table hereinbefore mentioned and which excess we admit amounted to the sum of 8793 Rupees and 2 Annas.

29. We admit that the Trustees for the time being of the said last mentioned fund did refuse to pay such excess or surplus as last aforesaid and that the said William Done Davis thereupon exhibited his bill of complaint in this Honorable Court against the said Trustees and we also admit that such proceedings were afterwards had in the said suit that the same came on to be heard in this Honorable Court on the 28th day of July 1855 and that on the 7th day of August 1855 a decree was passed by this Honorable Court whereby it was declared that the said William Done Davis was entitled to a refund of such surplus or excess and that the said Trustees were thereby directed to pay the same to the said William Done Davis with the costs of his said suit

30 We admit that the said Trustees did accordingly pay to the said William Done Davis the said surplus or excess in the said bill mentioned and such costs as aforesaid

31 We admit that at the time of filing the bill in this suit we were the managers and trustees for the time being of the said Civil fund and that the said Guy Lushington Prendergast as Accountant General of Fort Saint George and the said Thomas Pycroft as the Chief Secretary to the Government of Fort Saint George were at the time aforesaid by Office managers and trustees of the said fund but whether or not they were such by Office Trustees on behalf of the Government of Fort Saint George and the Defendants the East India Company or either of them we submit as matter of law to the Judgment and consideration of this Honorable Court And we the said John Goldingham Guy Lushington Prendergast Franklyn Lushington George Elles Alexander John Arbuthnot and James Duncan Esrs for ourselves say that since the filing of the said bill and on or about the 9th day of may last past the said Thomas Pycroft left India

India on Sick months leave for the purpose of proceeding to Europe where we believe he now is and that he is not now a Trustee of the said fund and that Edward Malthy Elgee has been appointed acting chief Secretary to the Government of Fort Saint George in the place and stead of the said Thomas Pycroft and is now as such acting chief Secretary as aforesaid by Office a Trustee of the said fund in the place and stead of the said Thomas Pycroft.

32. We do not know and are unable to answer as to our belief or otherwise but submit the same as matters of law to the Judgment of this Honorable Court whether or not the managers and trustees of the said last mentioned fund are liable to pay the amount of the said surplus or excess in the said bill mentioned to the Plaintiff out of the Annuity funds in their hands or whether or not the East India Company are liable to make good the deficiency if any.

33. We do not know and are unable to answer as to our belief or otherwise whether or not the said East India Company did or do refuse to pay the Plaintiff such surplus or excess in the said Bill and hereinbefore mentioned or that the East India Company do refuse if in fact they have refused to pay the same for the reason in the bill in this cause in that behalf mentioned And we say that the Madras Civil Service Annuity fund is not to the best of our belief in an Insolvent state but is now in a position to meet and discharge all the liabilities to which it is by the rules of the said fund subject but we say that if the principle of refunding all sums paid in excess of the half value of the said Annuities be to Subscribers to the said fund be insisted on and carried out that the present assets of the said fund will we believe not be sufficient or the said fund be in a condition to pay and discharge the several Annuities and among others that of the Plaintiff charged upon the said fund And we say that we believe that the said fund's present inability to pay and discharge the several Annuities together with the surplus or excess of subscriptions beyond the half value of the said Annuity in the said Table hereinbefore mentioned partly resulted from the affairs of the said fund having been conducted on erroneous calculations and principles and not in conformity as we believe with the correct provisions of the said Scheme and rules so as aforesaid laid down by the said Court of Directors and partly from the surplus or excess of such subscription having been absorbed together with the said subscriptions amounting to such half value of such Annuity in the General assets of the said fund and carried to the credit of the appropriate fund to secure the said Annuities payable thereout the East India Company making up the deficiency or deficiencies only And we say that the said East India Company on the 4th day of July 1827 and on the 28th day of July 1838 and again on the 20th day of November 1844 were expressly applied to by the then managers and Trustees of the said last mentioned fund by letters calling attention to the accounts of the said funds and the calculations and principles on which they were kept pointing out what they conceived to be erroneous and asking for explicit instructions as to the exact data and principles upon which the calculations of the said fund should be made and the said accounts kept and the said managers and trustees at the same time submitted the said accounts and calculations specially to the Court of Directors in order that they might be strictly scrutinized by the said Court of Directors and that the errors if any might be pointed out and corrected to which said letters and accounts when the same shall be produced we for greater certainty crave leave to refer and we say that

that no Answers were received to the said last mentioned letters or any of them and that the Court of Directors did not direct any alterations or point out any corrections to be made in the said calculations and accounts And we say that we believe that if the affairs of the said fund were calculated and made up in strict accordance with the said rules and the principles therein contained there would be found ample to the credit of the said fund wherewith to pay the Plaintiff not only the excess over the half of the value of his said Annuity which he has paid as hereinbefore mentioned but also to refund the excess paid by every other subscriber to the said fund and also to pay all the annuities at present and hereinafter to become chargeable on the said fund and among them the Annuity of the Plaintiff but we submit to the Judgment of this Honorable Court whether or not if there shall be found any deficiency in the assets of the said fund the East India Company is bound to make good the same under the terms and conditions of their agreement in the said bill mentioned and referred to

34. We do not know and are unable to state whether or not the East India Company assert that the said Madras Civil Fund is in the nature of a mutual Insurance Company and that they are only the Bankers of the subscribers and not liable to make good any deficiency which may at present exist or may hereafter exist in the assets of the said fund whereby the due and regular payment of the Annuitants on the said fund may become impracticable and that any loss in consequence of such deficiency must fall and be borne by the subscribers to the said fund but we admit that the said fund is not in the nature of a mutual Insurance Company but was created and sanctioned we believe by the said East India Company for the purpose of stimulating and rewarding their servants the members of the said Madras Civil Service for their long service but we do not know and are therefore unable to state whether or not in fact the Plaintiff and other Civil Servants of the East India Company upon the faith of the representations contained in the East India Company's letters referred to in Paragraph 2 of the said bill or especially upon the representations made by them set out in paragraph 7 of the said bill that they would secure the payment of 41 Annuities yearly did agree to contribute to the said Annuity fund save that we believe that it was on the faith of the said letters and representations that the members of the Madras Civil Service generally contented and agreed to contribute to the said last mentioned fund And we admit that the East India Company have always exercised and claimed to exercise and did exercise by the Court of Directors and Government of Fort Saint George a controul over the management of the affairs of the said fund (but not by the ex officio Trustees or managers of the said fund as in the said bill alleged) and by having transmitted all proceedings and accounts submitted to them in England And we admit that they did by a dispatch of the Court of Directors of the East India Company to the Madras Government dated the 1st of February 1842 direct contrary to the wishes expressed of persons of the then Trustees and managers of the Civil Fund of 1825 for the time being that Messrs Anderson Sinclair Babington and Stuart Mostyn Marlock as in the Bill stated respectively retired members of the Madras Civil Service should be allowed an Annuity of 500 Pounds per Annum each chargeable on the assets of the Annuity fund of the year 1818 and not on the fund of 1825 as in the bill stated And we deny that the said Court of Directors further declared in such dispatch to the effect in that behalf in the Bill mentioned a true Copy of

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of which dispatch is in the words and figures following (that is to say)

No 4 of 1842

Our Governor in Council

at

Fort St George

No 121

Extract from the minutes of Consultation dated 5th April 1842

Resolved that this dispatch be communicated to the Trustees of the Civil Fund in reference to their Secretary's letter of the 16th September last.

Reply to Para 2 of Financial Letter dated 21st September 1841 respecting admission of Mr B. Harrison the Rt R. Anderson Mr A Sinclair Dr BG. Babington and Mr I. Hutt to Annuities.

1st We regret to observe from the documents accompanying these Paras that the Trustees of the Civil Fund have declined to give effect to the opinion expressed in our dispatch of the 2d July last.

2d Presuming that the statement of the Trustees that Mr Harrison was not a Subscriber to the fund of 1800 is correct, we concur in the rejection of his claim but we repeat to the four other Gentlemen to whom the dispatch above mentioned referred we continue of the opinion therein expressed Viz that they may properly be admitted to Annuities upon the fund of 1800 and that the system of transfer need no longer be observed we accordingly direct that as vacancies occur irrespective of transfer they be admitted to Annuities upon their fulfilling the obligations they may have entered into for the repayment under the established rules of any sums received by them from the charity branch of the funds either of 1800 or 1814 which we cannot but regard as one and the same Institution, distinct from the Annuity fund.

3 The claims of the widows of families of any of these parties upon the Charity Branch of the fund we leave for the decision of those to whom the management of that branch is expressly committed.

We are

London 1st February 1842

Your loving Friends

(Sgd) George Lyall

" F.L. Lushington

To

The Trustees of the Civil Fund.

And we admit that in obedience to such order and directions as contained in such dispatch the said above mentioned persons were allowed and paid Annuities of 400 Pounds per Annum respectively from the assets of the fund as in 1818 notwithstanding such opinion but whether such payment was contrary to the wishes of the Subscribers to the fund we do not know and are unable to state as to our belief or otherwise

3d We admit that the said East India Company are subject to the Jurisdiction of this Honorable Court, and that the said John Salomons Guy Lushington Prendergast Franklyn Lushington George Ellis Alexander John Arbuthnot and James Dunsan now residing within the Presidency of Madras are therefore subject to the Jurisdiction of this Honorable Court, and we say that the said Thomas Pycroft at the time of filing the said Bill was also subject to the Jurisdiction of this Honorable Court, and that we and the said Thomas Pycroft are the Defendants in this suit And we further say that from the year 1840 (exclusive) down to the present time it has been the practice of the Subscribers to the said fund

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at their first quarterly General meeting in each year to elect two provisional Trustees at the same time with and in addition to the 5 ordinary Trustees hereinbefore mentioned for the purpose of succeeding to the place or places of any ordinary Trustee or Trustees who may leave Madras and that during the period last aforesaid it has been the practice of the Trustees for the time being of the said Fund to call in one of such provisional Trustees to supply the place of any ordinary Trustee who may have left Madras with the intention of being absent therefrom for more than 3 months and that during the period last aforesaid no Trustee who had been absent from the Presidency of Madras for more than 3 months has again returned he[s] place of Trustee or acted as a Trustee during the current year. And we say that since the filing of this bill the said Alexander John Arbuthnot having left Madras on duty for a period of more than 3 months Robert Deane Parker a member of the Madras Civil Service and a subscriber to the said Fund as one of the Provincial Trustees elected at the last General meeting has been called in and is now a Trustee of the said Fund in the place and stead of the said Alexander John Arbuthnot.

Wallace & Ritchie

A. N. Ritchie
Solr for Trustees.

Sworn to by the said John Colquhoun, Guy Lushington Prendergast, Franklyn Lushington, Alexander John Arbuthnot and James Duncan Sim at Madras this 28th day of July 1857. Before me
Henry Gamble
Commissioner

Sworn to by the said George Ellis this 29th day of July 1857. Before me.
Henry Gamble
Commissioner

J. Colquhoun
G. L. Prendergast
F. Lushington
George Ellis
A. J. Arbuthnot
J. D. Sim.

The Schedule A to which the foregoing Answer refers.

Madras 23d October 1852

Sir

I have the honor to acknowledge the receipt of your letter under date the 15th instant requesting to be informed whether I agree to take one of the 4 Annuities now open for acceptance.

Before replying to the question I shall feel obliged if you will acquaint me whether in the event of my accepting an Annuity the Trustees will refund to me on retirement on or after the 1st May 1853 the amount of my subscription in case of the amount payable for an Annuity as on that day my decision will depend.

I request that you will at the same time let me know what the difference would be as I am not aware how much by the rules of the Institution is one half of the value of an Annuity at what my age would be in May 1853. Vide 55.

I have the honor to be
Sir
Your most obedient Servant
A Robertson

To
S. D. Pinch Esqre
Secretary to the Civil Fund
Madras.

16

Vallair 17th November 1852

To

J. D. Disch Esqre
Secretary to the Civil Fund Madras.

Sir

I have the honor to acknowledge the receipt of your letter under date the 9th instant informing me that the despatch of the Honorable the Court of Directors No 16 of 1851 prohibits the refund of excess subscriptions unless the existing state of the annuity fund permit of it, which it does not at present and transmitting a memo exhibiting the probable amount which will have been paid by me on the 1st May 1853 beyond the half value of an annuity of £ 1000 payable to the date of decease and by quarterly payments

Together with this communication I transmit my acceptance of one of the 4 annuities open to the Service on condition of my being allowed the refund of the excess of my subscriptions beyond one half of the value of an annuity £ and beg leave to prefer a claim to this on the fundamental principles of the constitution of the fund as laid down by the Honorable Court.

I would here observe with all respect that when I became a subscriber to the annuity fund I did not become a party to a joint assurance association the benefits to be derived from which were contingent on the future prosperity of the fund but I subscribed to certain Terms the principle of which as laid down by the Honorable Court was that "all servants upon becoming Annuitants would have to pay half the value of their respective annuities and no more" That the civil annuity fund is exclusively that of the Honorable Court and not of the Civil Service was shewn in the proceedings on the admission of Mr Kutt and others to annuities not provided for by the original terms on which the fund was established.

It is unnecessary to revert to all that has been advanced and might be advanced again to shew that those who agree to become parties to the Honorable Courts annuity fund do so on the plain and simple understanding that under no contingency whatever were they to pay more than half the value of an annuity according to age when entitled to it after a certain period. It is necessary for me only to observe that I have fulfilled the agreement on my part which entitles me to one of the 4 annuities now open as guaranteed by the court it is upwards of thirty five years since I arrived in the country my actual residence in the Country much exceeds the period required and my subscription to the fund are greatly in excess of half the value of an annuity of £ 1000.

20 June 1817

Having fulfilled the conditions of the agreement on my side I respectfully solicit the fulfilment of them on behalf of the Honorable Court I now prefer a claim to an annuity of £ 1000 at half its value and I ask that I may have it at half its value "and no more" the surplus of interest and subscription appearing at my credit with the fund being repaid to me on my retirement from the Service between the 1st may and 1st July 1853.

I seek for that from the known justice of the Honorable Court and the consideration they evince for their servants in every department I may confidently trust that subscribers to the Civil Service annuity fund will not be regarded in a light less deserving consideration than were the subscribers to the native Pension fund who when that fund could no longer meet its engagements received back from the justice of the Court their subscriptions with interest the annuities already granted being at the same time continued at the expense of Government.

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I would in conclusion request that the Trustees will do me the favor to submit this letter for the consideration of the Right Honorable the Governor in Council when reporting the names of those Gentlemen to whom Annuities may fall this year -

I have the honor to be
Sir
Your most obedient Servant
A Robertson

To
The Secretary to the Civil Fund
Madras

Sir

I have the honor to acknowledge the receipt of your letter tendering for acceptance one of the Annuities declared to be available from the 1st May next -

Until the receipt of that communication I was under the impression that no change here to new place in the rules already in force the changes which have been proposed to the service not having been published by the Honorable the Court of Directors as required by rule 30 of the regulations of the fund -

As the introduction of the proposed new rules before the allotment of the Annuities at present under offer might be hereafter advanced as a technical objection to my claims I beg leave to enter my protest against the enforcement of them before they receive the formal sanction of the Honorable Court.

Under this protest I request that you will inform the Trustees that I am ready to accept one of the Annuities now tendered provided they are prepared to pay to me on my retiring from the service the amount which may be at my credit in the accounts of the fund in excess of the half value of an Annuity payable to a Civil Servant at the age which I shall then have attained.

I have the honor to be
Sir
Your most obedient Servant
A Robertson

Wallair
11th October 1853

Wallair 28th September 1854

To The Secretary to the Civil Fund
Madras

Sir

I have the honor to acknowledge the receipt of your letter under date the 19th instant tendering for my acceptance one of the Annuities which will be available on the 1st May 1855 and to request that you will inform the Trustees of the Civil Fund that I am quite ready to avail myself of this offer on the condition of their allowing me the refund of the amount over [illegible] with interest as formerly allowed to those members of the Civil Service who obtained a refund of over subscriptions I do not conceive that any votes of the majority of the Civil Service for the introduction of new Regulations can affect a right acquired and asserted before the recent changes in the Civil Fund rules were even proposed.

I have the honor to be
Sir
Your most obedient Servant
A. Robertson

(18)

To

Valtaur 17th October 1854.

The Secretary to the Civil Fund
Madras

Sir

I have the honor to acknowledge the receipt of your letter under date the 7th instant and in consequence of the Trustees again declining to entertain a conditional application for an Annuity to apply for one of the Annuities available on the 1st may 1855 under quoted and with the full reservation of all my rights.

It is my desire to secure the full amount of Annuity -

I was born on the 28th November 1799

Should this form of application be objected to which I do not expect I request that you will send an answer to my address by the 30th instant under cover to M. N. V. Arbuthnot at Madras.

I am,
Sir
Your most obedient Servant
A Robertson

Supreme Court
Madras
In Equity

Filed 29th July 1857

Andrew Robertson Esq
vs
The East India
Company and others.

Copy

The Joint Answer of
John Sebbingham Esqre and others.

159/8
Ex 2001

Boyson
Hon Cor Solr

In the Supreme Court of Judicature at Madras

(In Equity)

In the Vacation next after the 4th Term in the year of our Lord 1857.

Bowan. Andrew Robertson Esqre Plaintiff

And

The East India Company John Goldingham Esqre Guy Lushington Pindergast Esqre Thomas Sycroft Esqre Franklyn Lushington Esqre George Ellis Esqre Alexander John Shadwell Esqre and James Duncan Sim Esqre Defendants.

To The Honorable Sir Christopher Rawlinson Knight Chief Justice

And

The Honorable Sir Henry Davison Knight one of Her Majesty's Justices of this Honorable Court.

Sheweth

The humble Petition of The East India Company the Defendants above named.

I That on or about the 28th of March 1857 the Plaintiff above named exhibited his bill of Complaint in this Honorable Court against your Petitioners and the other Defendants above named whereby after stating as therein appears the said Plaintiff prayed Firstly. That he the Plaintiff might be declared by the Decree of this Honorable Court to be entitled to a refund or repayment of such surplus or rejects as in the said bill mentioned with interest thereon from the 28th of April 1855 at the rate of 6 per cent per Annum and that the amount of such Interest should be ascertained under the direction of this Honorable Court. Secondly. That your Petitioners and the Defendants the Trustees and managers of the Madras Civil Service Annuity fund might be declared by the Decree of this Honorable Court liable to pay the Plaintiff such Annuity of 1000 Pagodas per Annum as in the said bill mentioned to the time of his death and that they might be directed to pay the same. Thirdly That the Defendants might be directed to pay the Sum of Rupees 39014. and piece 1. being the amount of such surplus rejects and such interest as aforesaid to the said Plaintiff with the costs of this Suit. and Fourthly For further relief as upon reference to the said bill now upon the records of this Honorable Court well more fully and at large appear.

II. That your Petitioners appeared to and put in their Answer to the said bill as upon reference to the said Answer now remaining on the records of this Honorable Court will more fully and at large appear.

III That such further proceedings were had in the said cause that the same was at issue and came on to be heard before this Honorable Court on the 23d 24th and 25th days of September 1857 whereupon and upon debate of the matter and divers witnesses having been examined and certain Evidence put in on both sides a decree dated the 16th of October 1857 was passed by your Honorable Court whereby your Honorable Court did declare that the said Plaintiff was entitled to a refund or repayment of the surplus or excess paid by the said Plaintiff to the Madras Civil Service Annuity Fund as in the said bill in this cause mentioned as a subscriber to the said fund with interest thereon from the 28th day of April 1855 to the day of payment at the rate of 5 per centum per Annum and did decree that your Petitioners should on or before the 1st day of December then next pay to the said Plaintiff the sum of Rupees Thirty nine thousand and fourteen (39014) being the amount of such surplus or excess as aforesaid and also the sum of Rupees Five thousand and fifty five (5055) being the amount of such Interest as aforesaid making together the sum of Rupees Forty four thousand and sixty nine (44069) and did declare that your Petitioners were liable to pay to the said Plaintiff his Annuity of Rupees 1000 per Annum up to the time of his death. And did decree that your Petitioners should pay the same accordingly to the said Plaintiff. And did further decree that your Petitioners should pay to the said Plaintiff his costs of this suit to be taxed by the master of this Honorable Court And did further decree that the said Defendants John Solbingham Guy Lushington Prendergast Thomas Pycroft Franklyn Lushington George Ellis Alexander John Arbuthnot and James Duncan Sim as the managers and trustees of the said fund should draw such cheques or orders and do all such other acts as might be necessary to enable the said Plaintiff to receive the said sums of money so decreed to be paid to him as aforesaid by your Petitioners

IV That your Petitioners are advised and humbly conceive that the said decree or determination of your Honorable Court is erroneous and contrary to Equity and Justice and they conceive themselves to be aggrieved thereby for the following (among other) reasons.

1st Because the 2 several Deeds Poll in your Petitioners Answer mentioned and bearing date respectively the 1st of July 1814 and the 1st of May 1818 which together with the Rules by which the Madras Civil Fund was governed on the 1st of July 1825 subject to the modifications suggested by your Petitioners Court of Directors in their despatch to the Government of Madras of the 31st of December 1824 so far as the same were adopted by the members of the Madras Civil Service) were the basis on which your Petitioners agreed to aid in establishing the present Civil fund not only contain no provision for any such refund as the Plaintiff's bill claims, but do contain express provision to the contrary.

2d. Because the said Civil fund was instituted and ought to have been conducted by the Trustees and managers thereof under the provisions in the said 2 deeds Poll contained as modified in the manner in the 16th paragraph of your Petitioners Answer mentioned and inasmuch as none of the said provisions original or modified guarantee or provide for any such refund as by the Plaintiff's bill is claimed and your Petitioners never directly or indirectly agreed to make or grant any such refund neither the said Trustees nor the Subscribers to the said Civil fund had any authority to pay any such refund or to make any direction or rule for the payment thereof so as to bind your Petitioners.

Because

3rd Because your Petitioners never gave any such guarantee as in the said bill in that behalf alleged.

4th Because your Petitioners were not parties to the introduction of the words in the said bill and in your Petitioners Answer particularly mentioned into the 16th paragraph of the said civil funds rules and because such introduction was an essential addition to and alteration of the provisions and rules under which the said civil fund was established and carried on and such addition and alteration was not made agreeably to the provisions under which any such addition or alteration was authorized to be made and because such addition and alteration never received the sanction and approval of your Petitioners Court of Directors and your Petitioners have never acquiesced therein and because therefore such addition and alteration was not legally made and never was binding on your Petitioners.

5th Because your Petitioners had no legal notice that any of the sums paid by the said Trustees to the several Annuitants in the said bill mentioned were paid to them as or for such refunds as in the said bill claimed, inasmuch as the several abstracts of accounts from time to time forwarded by the said Trustees to the Government of Madras and your Petitioners Court of Directors and the said Trustees letter to the Government of Madras of the 14th of April 1841 describe each of such payments as an amount repaid for an over payment of a fine due by the said several Annuitants respectively such description being altogether contrary to the real facts of the case and calculated to mislead your Petitioners and such as could not and did not convey to them the real nature and character of such payments and because notice even if given in the most express terms could not create any liability on the part of your Petitioners to pay or provide for the payment of any such refund for to make good any deficiency in the assets of the civil fund created by the payment of such refund by the said Trustees.

6th Because the sums paid by the Government of Madras to the said Trustees to supply the deficiencies in the 21st paragraph of the said bill mentioned were not so paid for the purpose of meeting of the several refunds in the said bill mentioned or any or either of them but were paid on the requisitions of such Trustees (which requisitions made no mention of or reference to any refund whatever) for the sole and specific purpose of enabling such Trustees to effect the object in their said requisitions mentioned that is to say to provide for the 41 Annuities granted as in your Petitioners Answer mentioned and were paid to such Trustees on account generally and subject to future adjustment.

7th Because your Petitioners Court of Directors made the proposition contained in their said despatch of the 31st of December 1824 and expressed their willingness to contribute to the augmentation of the said civil fund for the purpose (amongst others) of enabling and inducing your Petitioners Senior Civil Servants to retire from your Petitioners service earlier than they otherwise could do and thus at by consequently making way for the advance of your Petitioners junior Civil Servants securing to your Petitioners the services of Europeans in the most vigorous period of their lives which purpose would be defeated in a great measure by a system of making such refunds as in the said bill mentioned.

8th Because

8th Because the Plaintiff is bound and concluded by the rules which were duly passed on or about the 17th of June 1853 by the then Subscribers to the said Civil Fund and by those rules the Plaintiffs right to such relief as by his said bill he claims (if any such right ever existed) was taken away before he accepted an Annuity from the said Civil Fund

9th Because your Petitioners never undertook or agreed to pay any sum or sums to or in respect of the said Civil Fund beyond an Annual contribution equal to the amount yielded within each year by the subscription of 4 per cent on the official incomes of the subscribers to such fund and the allowance of interest at 6 per cent to be computed annually upon the balance belonging to such fund but subject nevertheless to be increased by such further contribution as might or may be required in addition to such contributions of subscribers to enable such fund after the liquidation of the proper and legal charges for management to grant such number of Annuities not exceeding 4 per Annum as might or may be applied for and accepted under the conditions and rules in force for the Government of such fund And also subject to such adjustment as in the despatch from your Petitioners Court of Directors to the Government of India of the 8th of December 1824 and the despatch from your Petitioners Court of Directors to the Government of Madras of the 10th of November 1826 was mentioned And because your Petitioners never engaged or rendered themselves liable for the due carrying out the objects of such fund or for any failure in the fulfilment thereof or for any mismanagement on the part of the Trustees of such fund and your Petitioners ought not therefore to have been decreed to pay the 2 sums in the said decree mentioned amounting together to the sum of 44069 Rupees to have been declared liable to pay to the Plaintiff his annuity of 1000 Pounds per Annum to the time of his death.

10th Because the said decree is inconsistent and at variance with the case of the Plaintiff as made by his bill inasmuch as in the said 32nd paragraph of his said bill the Plaintiff alleges that the said Trustees are the parties liable to pay to him out of the Annuity funds in their hands the amount of the surplus or excess claimed by him and that your Petitioners are merely liable to make good the deficiency if any.

11th Because there was no evidence before your Honorable Court at the hearing of this cause as to the state of the annuity funds in the hands of the said Trustees at the date of such hearing and for all that appeared such funds at the time of the said hearing and at the date of the said decree were fully sufficient to pay to the Plaintiff the surplus or excess claimed by his bill in addition to his Annuity of 1000 Pounds per Annum in which case such funds and not the said Petitioners ought to pay the same to the Plaintiff supposing him to be entitled thereto.

12th Because by the said decree your Petitioners are decreed to pay to the Plaintiff the sums thereby decreed to be paid and the said Trustees are directed to draw such cheques or orders and do all such other acts as might be necessary to enable the Plaintiff to receive such sums whereas the said Trustees have no authority of your Petitioners or any power to enforce payment thereof if drawn nor have such Trustees power to do any act which would be compulsory on your Petitioners for enabling the Plaintiff to receive such sums of money from your Petitioners.

(4)

13th Because by the said Decree your Petitioners are directed to pay to the Plaintiff not only his costs of suit as against your Petitioners but also his costs as against the other Defendants the said Trustees who were co Defendants with your Petitioners who severed in their defence and appeared at the hearing which they need not have done; and at such hearing and by their Answer admitted the Plaintiffs whole case the costs of which said defence and appearance ought to have been borne either by the said Civil Suit or by such Co Defendants were Trustees or by such Co Defendants personally.

For all which reasons as well as for others.

Your Petitioners pray leave to appeal to Her Majesty in Council against the said Decree bearing date the 16th day of October 1857 upon such terms as your Honorable Court shall be pleased to direct.

And your Petitioners shall ever pray &c.

T. L. Smyth

Seal

J R Boyson
Hon Co's Solr

Sealed with the Common Seal of the said East India Company this and with the authority of the Right Honorable George Francis Robert Lord Harris Governor of Fort Saint George in Council at Madras in the presence of

T Pycroft
Chief Secry to Govt

5

Supreme Court
Madras
(In Equity)

Andrew Robertson Esq
vs
The East India
Company and others.

Copy

Petition of Appeal.

7/59/D
In No 61

Boyson
Hon Col Solr

8th Because the Plaintiff is abo
were duly passed on or about the 17
to the said Civil Fund and by those
as by his said bill he claims) if an
away before he accepted an Annu
9th Because your Petitioners neve
or sums to or in respect of the said C
-bution equal to the amount yield
of 4 per cent on the official in ex
and the allowance aforesaid at 6
upon the balance belonging to suc
increased by such further con
in addition to such contributions
after the liquidation of the proper
to grant such number of Annu
might or may be applied for and
in force for the Governance of
adjustment as in the dispatch fro
to the Government of India of the
dispatch from your Petitioners
madras of the 10th of November 182
Petitioners never engaged or rendered
the objects of such fund or for any
for any mismanagement on the par
Petitioners ought not therefore to
in the said decree mentioned an
44069 Rupees to have been d
his annuity of 1000 Pounds per A
10th Because the said decree i
case of the Plaintiff as made by
paragraph of his said bill the P
are the parties liable to pay to he
hands the amount of the surplus
your Petitioners are merely liable
11th Because there was no evide
at the hearing of this cause as to
hands of the said Trustees at the
appeared such funds at the time
the said decree were fully sufficient
or excess claimed by his bill in ad
per Annum in which case such
to pay the same to the Plaintiff
12th Because by the said decree
Plaintiff the sums thereby decreed
directed to draw such cheques or
might be necessary to enable the
the said Trustees have no authority
of your Petitioners or any power to
have such Trustees power to do any
Petitioners for enabling the Plaintiff
your Petitioners.

ment and considered by the rules which
of June 1853 by the then Subscribers
rules the Plaintiff's right to such annu
(if such right ever existed) was taken
fully from the said Civil Fund
we undertook or agreed to pay any sum
Civil Fund beyond an Annual contri-
d within each year by the Subscription
mes of the Subscribers to such fund
per cent to be computed annually
h Fund but subject nevertheless to the
ibution as might or may be required
of Subscribers to enable such fund
and legal charges for management
ties not exceeding 4 per Annum as
accepted under the conditions and rules
such Fund And also subject to such
m your Petitioners Court of Directors
8th of December 1824 and the
ourt of Directors to the Government of
India mentioned And because your
themselves liable for the due carrying out
failure in the fulfilment thereof or
t of the Trustees of such Fund and your
have been decreed to pay the 2 sums
mounting together to the sum of
already liable to pay to the Plaintiff
Annum to the time of his death
inconsistent and at variance with the
his bill inasmuch as the said 32nd
Plaintiff alleges that the said Trustees
out of the Annuity Funds in their
or excess claimed by him and that
to make good the deficiency if any
nce before your Honorable Court
the state of the Annuity Funds in the
date of such hearing and for all that
the said hearing and at the date of
ent to pay to the Plaintiff the surplus
tion to his Annuity of 1000 Pounds
Funds and not the said Petitioners ought
closing him to be entitled thereto
your Petitioners are decreed to pay to the
to be paid and the said Trustees are
orders and do all such other acts as
Plaintiff to receive such sums whereas
to draw cheques or orders on the funds
refuse payment thereof if drawn nor
which would be compulsory on your
to receive such sums of money from

13th Because by the said Decree your Petitioners are directed to pay to the Plaintiff not only his costs of suit as against your Petitioners but also his costs as against the other Defendants the said Trustees who were co-Defendants with your Petitioners who severed in their defence and appeared at the hearing which they need not have done; and at such hearing and by their Answer admitted the Plaintiffs whole case the costs of which said defence and appearance ought to have been borne either by the said Cestui que use whereof such co-Defendants were Trustees or by such co-Defendants personally. For all which reasons as well as for others.

Your Petitioners pray leave to appeal to Her Majesty in Council against the said Decree bearing date the 16th day of October 1857 upon such terms as your Honorable Court shall be pleased to direct.

And your Petitioners shall ever pray &c.

T. S. Smyth

Seal

J. R. Poyston
Hon Co's Solr

Sealed with the Common Seal of the said East India Company by and with the authority of the Right Honorable George Francis Robert Lord Harris The Governor of Fort Saint George in Council at Madras in the presence of

T. Pycroft
Chief Secry to Govt

No. 307 of 57.

In the Supreme Court of Judicature at Madras.

(In Equity)

Vacation after the 4th Term 1857.

Present

The Honorable Sir Christopher Rawlinson Knight Chief Justice

And

The Honorable Sir Henry Pavison Knight.

One of Her Majestys Justices.

Friday the 16th day of October 1857 and in the 21st year of the Reign of Her Majesty Queen Victoria.

Between Andrew Robertson Esqre ——— Plaintiff

And

The East India Company, John Goldingham Esqre **Guy Lushington Prendergast** Esqre **Thomas Pycroft** Esqre **Franklyn Lushington** Esqre **George Ellis** Esqre **Alexander John Arbuthnot** Esqre and **James Duncan Sim** Esqre ——— Defendants

Filed 7 Oct Rawlinson

L.S.

This Cause coming on the 23d 24th and 25th days of September 1857 to be heard and debated before the Supreme Court of Judicature at Madras in the presence of Counsel learned on all sides. **Upon opening** the Bill of Complaint exhibited by the above named Plaintiff and the Answer of the Defendants The East India Company and the joint and several Answer of the Defendants John Goldingham Guy Lushington Prendergast Thomas Pycroft Franklyn Lushington George Ellis Alexander John Arbuthnot and James Duncan Sim respectively thereto **and** upon hearing read as Evidence for the said Plaintiff the following passages in the said joint and several Answer of the said Defendants John Goldingham Guy Lushington Prendergast Thomas Pycroft Franklyn Lushington George Ellis Alexander John Arbuthnot and James Duncan Sim that is to say from the words "We admit that" in paragraph 1 to the words "be produced" in the same paragraph from the words "We admit that" in paragraph 2 to the words "be produced" in the same paragraph from the words "We admit that" in paragraph 3 to the words "be produced" in the same paragraph from the words "We admit that" in paragraph 4 to the words "on account thereof" in the same paragraph from the words "We admit that" in paragraph 5 to the words "intervening periods" in the same paragraph from the words "And we admit" in the said paragraph 5 to the words no

"no more for ye" in the same paragraph from the words "we admit that" in paragraph 6 to the words "his annuity" in the same paragraph from the words "we admit that" in paragraph 7 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 8 to the words "Bill mentioned" in the same paragraph from the words "we admit that" in paragraph 9 to the words "and fifty two" in the same paragraph from the words "we admit that" in paragraph 10 to the words "leave to refer" in the same paragraph from the words "we admit that" in paragraph 11 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 12 to the words "set out" in the same paragraph from the words "we admit that" in paragraph 13 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 14 to the words "mentioned fund" in the same paragraph from the words "we admit that" in paragraph 15 to the words "that decision" in the same paragraph from the words "And we also admit" in the said paragraph 15 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 16 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 17 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 18 to the words "an annuity" in the same paragraph from the words "we admit that" in paragraph 19 to the words "exceeds as aforesaid" in the same paragraph from the words "we admit that" in paragraph 20 to the words "and fifty" in the same paragraph from the words "we admit that" in paragraph twenty one to the words "said presidency" in the same paragraph from the words "we admit that" in paragraph 22 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 23 to the words "be established" in the same paragraph from the words "we admit that" in paragraph 24 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 25 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 26 to the words "Civil Service" in the same paragraph from the words "we admit that" in paragraph 27 to the words "be produced" in the same paragraph from the words "we admit that" in paragraph 28 to the words "two annas" in the same paragraph from the words "we admit that" in paragraph 29 to the words "said Suit" in the same paragraph from the words "we admit that" in paragraph 30 to the words "costs aforesaid" in the same paragraph from the words "we admit that" in paragraph 31 to the words "said fund" in the same paragraph from the words "but we admit" in paragraph 34 to the words "long service" in the same paragraph and from the words "we admit that" in paragraph 35 to the words "Honorable Court" in the same paragraph **and** upon hearing read also as Evidence for the said Plaintiffs the following passages in the said Answer of the said Defendants The East India Company that is to say from the words "And these Defendants" in paragraph 10 to the words "be produced" in the same paragraph from the words "they admit that" in paragraph 16 to the words "these Defendants" in the same paragraph from the words "These Defendants admit" in paragraph 22 to the words "these Defendants" in the same paragraph from the words "they believe" in paragraph 25 to the words "when produced" in the same paragraph from the words "they admit that" in paragraph 26 to the words "Civil Service" in the same paragraph from the words "they believe" in paragraph 27

27 to the words "the Plaintiff" in the same paragraph from the words "They say that" in paragraph 28 to the words "bill mentioned" in the same paragraph from the words "they admit that" in paragraph 29 to the words "Civil Guns" in the same paragraph from the words "these Defendants have" in paragraph 30 to the words "Charles Harris" in the same paragraph from the words "These Defendants say" in paragraph 31 to the words "when produced" in the same paragraph from the words "they admit that" in paragraph 33 to the words "be produced" in the same paragraph from the words "They admit that" in paragraph 34 to the words "and twelve" in the same paragraph from the words "They believe" in paragraph 35 to the words "an annuity" in the same paragraph from the words "They believe" in paragraph 36 to the words "such years" in the same paragraph from the words "They say that" in paragraph 37 to the figures "9623. 6. 10" in the same paragraph from the words "the Presidencies" in the same paragraph from the words "and they say" in paragraph 38 to the words "and fifty" in paragraph 39 to the words "They admit that" in the same paragraph from the words "They admit that" in paragraph 40 to the words "forty seven" in the same paragraph from the words "They admit that" in paragraph 41 to the words "be produced" in the same paragraph from the words "They admit that" in paragraph 42 to the words "Civil Service" in the same paragraph from the words "They admit that" in paragraph 49 to the words "two annas" in the same paragraph from the words "They have been" in paragraph 50 to the words "be hereby alleged" in the same paragraph from the words "They have been mentioned" in the same paragraph from the words "They admit that" in paragraph 52 to the words "fifty three" in the same paragraph from the words "These Defendants" in paragraph 59 to the words "Insurance Company" in the same paragraph from the words "These Defendants" in paragraph 62 to the words "twenty five" in the same paragraph from the words "These Defendants" in paragraph 63 to the words "twenty five" in the same paragraph and from the words "They admit that" in paragraph 65 to the words "this court" in the same paragraph. **And** upon hearing read also as evidence for the said Plaintiff the following passage in the said bill that is to say from the words "That the" in paragraph 19 to the figures "9623. 6. 10" in the same paragraph **and** upon hearing read the admissions in writing of the Solicitors for the said Plaintiff and Defendants respectively **and** upon hearing the examination and cross examination viva voce of the following witnesses that is to say Sylvester Douglas Birch and Robert Cornelius Hart severally produced sworn and examined on behalf of the said Plaintiff **and** upon hearing read le Keweke as evidence for the said Plaintiff the exhibits marked respectively **E. F. H. I. J. K. L. Q. V. W. X. Y. Z. A. B. C. D. G. M. N. S. T. U. V.** a. b. c. and d. **and** upon hearing read also as evidence for the said Defendants The East India Company the exhibits marked respectively **C D G M N S T Y Z. A. G. H. V. J. B. C. O. P. L.** and **M.** - **and** upon hearing the examination viva voce of Jesse Roy Mailer a witness produced sworn and examined on behalf of the said Defendants Colm Colborne Guy Lushington Prendergast, Thomas Pyot, Franklyn Lushington George Elley Alexander Colm Arbuthnot, and James Duncan Sim **and** upon hearing read also as evidence for the said last mentioned Defendants the exhibits marked respectively **P. V. A.** and **No 3.** **and** upon hearing the admission at the Bar of Counsel for the said Plaintiff and Defendants respectively that the refunds to the Light under mentioned retired members of the Civil Service were entered in accounts annually

annually forwarded to the court of Directors in the words and figures following that is to say

"1843. Amount repaid to Mr C.M. Lushington being the over payment of the fine due by him ____ 24269 10 3

"1845. Amount repaid to Mr John Bird being the over payment of the fine due by him ____ 33577 15 10

"1848. Amount repaid to Mr H. Chamier being the over payment of the fine due by him ____ 33934 4 2

" Amount repaid to Mr G. I Waters being the over payment of the fine due by him ____ 7054 9 10

"1850 Amount repaid to Mr H. Dickinson being the over payment of the fine due by him ____ 46589 1 7

" Amount repaid to Mr G.D. Drury being the over payment of the fine due by him ____ 27890 11 9

" Amounts repaid to Mr Maclean being the over payment of the fine due by him ____ 6498 10 4

"1851 Amount repaid to Mr F.E.J Bileau being the over payment of the fine due by him ____ 9623 6 10

and upon the late admission that "the Plaintiff voted against the adoption of the new rules which were put to the General meeting of the Subscribers to the said fund on the twentieth June one thousand eight hundred and fifty three" whereupon and upon debate of the matter and hearing what was alleged by the Counsel on all sides and the said cause having stood over until this day for Judgment This Court doth declare that the said Plaintiff is entitled to a refund or repayment of the surplus or excess paid by the said Plaintiff to the Madras Civil Services Annuity fund in the said Bill in this cause mentioned as a Subscriber to the said fund with interest thereon from the 28th day of April 1853 to the day of payment at the rate of 5 per centum per Annum. And this Court doth decree that the said Defendants The East India Company do on or before the 1st day of December next pay to the Plaintiff the sum of Rupees Thirty nine thousand and fourteen (39014) being the amount of such surplus or excess as aforesaid and also the sum of Rupees Five thousand and fifty five (5055) being the amount of such Interest as aforesaid making together the sum of Rupees Forty four thousand and sixty nine (44069) and this Court doth declare that the said Defendants The East India Company are liable to pay to the said Plaintiff her Annuity of Pounds 1000 per Annum up to the time of his death. and this Court doth decree that the said Defendants The East India Company do pay the same accordingly to the said Plaintiff. and this Court doth further decree that the said Defendants The East India Company do pay to the said Plaintiff her costs of this suit to be taxed by the master of this Honorable Court. and this Court doth further decree that the said Defendants John Colquhoun Esq Lushington Prendergast, Thomas Prescott, Frank Kleyn Lushington George Ellis Alexander John Arbuthnot and James Duncan Sim as the managers and Trustees of the said fund do draw such cheques or orders and do all such other acts as may be necessary to enable the said Plaintiff to receive the said sums of money so decreed to be paid to him as aforesaid by the said Defendants The East India Company.

By the Court

(Sgd) Wilkins & Shaw
Pltffs Solicitors

(Sgd) D Shaw
Chief Clerk
to the Registrar

4

Supreme Court
Madras
(In Equity)

Amaru Robertson Esq
vs
The East India
Company and others

(Copy)
Decree.

7 Sept
Ser 1861

Boyson
Hon Co's Solr

In the Supreme Court of Judicature at Madras.

(In Equity)

Between Thomas Robertson Esqre Plaintiff

and

The East India Company John Goldingham Esqre Guy Lushington Prendergast Esqre Thomas Pycroft Esqre Franklyn Lushington Esq George Ellis Esq Alexander John Shuthnot Esqre and James Duncan Sim Esqre

Defendants.

We the Solicitors for the Plaintiff and Defendants above named Do hereby agree to admit at the hearing of this cause the following copies of Documents without production of the Originals and that the Originals thereof were duly signed and executed and that such of them as are stated to have been dispatched sent or delivered were so dispatched sent or delivered respectively saving all just exceptions to the reception of such documents as Evidence in the cause.

A 4th March 1789. Extract from letter from the Court of Directors of the East India Company to the Madras Government.

B 1st September 1800. Deed under which the Madras Civil Fund of 1800 was established

C 1st July 1814. Deed under which the Madras Civil Fund of 1814 was established

D 1st May 1818. Deed under which the Madras Civil Fund of 1818 was established

E 8th December 1824. Letter from the said Court of Directors to the Government of India.

F 31 December 1824. Letter from the said Court of Directors to the Madras Government

G 5th January 1825. Proceedings of Quarterly General meeting of the Subscribers to the Fund.

H 1st July 1825. Letter from the Madras Government to the Trustees of the Fund

I 22 July 1825. Report of the said Trustees upon the Papers submitted to them by the Madras Government along with the last mentioned letter

J 22 July 1825. Letter from the said Trustees to the Madras Government.

K 22d August 1825. Minute by President of Madras Government on the said Report of said Trustees.

L 23d August 1825. Extract from minutes of Consultation of the Madras Government.

M 24th August 1825. Proceedings of Special meeting of Subscribers to the Fund

N 24th August 1825. Letter from the said Trustees to the Madras Government

O 24th August 1825. Circular from the said Trustees to Annuitants upon and Subscribers to the Fund.

(1)

P 26th August 1825. Letter from the madras Government to the said Trustees.
Q 10th November 1826. Letter from the said Court of Directors to the madras Government
R 4th July 1827. Letter from the said Trustees to the said Court of Directors
S 10th October 1835. Proceedings of Quarterly General meeting of the Subscribers to the Fund and Statements thereto annexed Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors.
T 19th October 1836. Proceedings of Quarterly General meeting of the Subscribers to the Fund and Statements thereto annexed Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors
V 1838 Pamphlet Published in 1838 and headed "madras Civil Servrs Annuity Fund established on 1st may 1825"
V 28th July 1838. Letter from the said Trustees to the madras Government and Statements thereto annexed.
W 30th August 1838. Letter from the said Trustees to the madras Government
X 4th September 1838. Extract from minutes of consultations of the madras Government No 412
Y 14th October 1839. Proceedings of Quarterly General meeting of the Subscribers to the Fund and Statements thereto annexed Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors
Z 14th April 1841. Letter from the said Trustees to the madras Government.
Aa 2nd July 1841. Letter from the said Court of Directors to the madras Government
Bb 16th September 1841. Letter from the said Trustees to the madras Government
Cc 1st February 1842. Letter from the said Court of Directors to the madras Government
Dd 22nd July 1842. Letter from the said Trustees to the madras Government
Ee 15th October 1842. Letter from the Secretary to the Fund to Plaintiff
Ff 5th October 1843. Proceedings of Quarterly General meeting of the Subscribers to the Fund and Statements annexed Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors
Gg 7th October 1843. Letter from the Secretary to the Fund to Plaintiff
Hh 23rd October 1844. Letter from the Secretary to the fund to Plaintiff
Ii 20 November 1844. Letter from the said Trustees to the madras Government and Statements there to annexed
Jj 30th July 1845. Letter from the said Court of Directors to the madras Government.
Kk 15th October 1845. Proceedings of Quarterly General meeting of the Subscribers to the fund and Statements annexed Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors
Ll 23rd June 1847. Letter from the said Court of Directors to the madras Government.
Mm 3rd July 1847. Sir T.V. Stonhouse's minute expressing his desire to resign the Office Sam & Office Trustee of the fund
Nn 7th October 1847. Proceedings of Quarterly General meeting of the Subscribers to the fund
Oo 26th October 1847 Letter from the Secretary to the fund to the madras Government
Pp 9th November 1847 Extract from minutes of Consultation of the madras Government.

Qq 12th October 1848. Proceedings of Quarterly General meeting of the Subscribers to the fund and Statements annexed thereto Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors.

Rr 6th February 1850. Letter from the said Court of Directors to the madras Government No 3 of 1850.

Ss 6th February 1850. Letter from the said Court of Directors to the Government of India No 5 of 1850.

Tt 4th July 1850. Proceedings of Special General meeting of the Subscribers to the fund

Uu 31st July 1850. Extract from the proceedings of the said Trustees.

Vv 14th August 1850. Circular from the Secretary to the fund to the Subscribers to the fund

Ww 26th September 1850. Proceedings of Special General meeting of the Subscribers to the fund

Xx 16th October 1850. Proceedings of Quarterly General meeting of the Subscribers to the fund and Statements thereto annexed Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors

Yy 21st October 1850. Letter from the Secretary to the fund to Plaintiff

Zz 20th May 1851. Letter from the said Court of Directors to the madras Government No 12 of 1851.

Aa 18th July 1851. Letter from the said Trustees to the madras Government and Statements thereto annexed

Bb 27th August 1851. Letter from the said Court of Directors to the madras Government No 16 of 1851.

Cc 20th October 1851. Letter from the Secretary to the fund to Plaintiff

Dd 12th October 1852. Proceedings of Quarterly General meeting of the Subscribers to the fund and Statements thereto annexed. Copies whereof were forwarded to the madras Government for transmission to the said Court of Directors.

Ee 15th October 1852. Letter from the Secretary to the fund to Plaintiff with Declaration and Table annexed

Ff 20th October 1852 Letter from the said Court of Directors to the madras Government No 16 of 1852.

Gg 23rd October 1852. Letter from Plaintiff to the Secretary to the fund

Hh 9th November 1852. Letter from the Secretary to the fund to Plaintiff and Copy of memorandum transmitted therewith

Ii 17th November 1852. Letter from Plaintiff to the Secretary to the fund

Jj 17th November 1852. memorandum signed by Plaintiff and written at foot of the letter from the Secretary to the fund to Plaintiff under date 15th October 1852.

Kk 9th December 1852 Letter from the Secretary to the fund to Plaintiff

Ll 17th June 1853. Proceedings of Special General meeting of the Subscribers to the fund

Mm Revised Rules adopted and passed at the last mentioned meeting (and being the rules forwarded with the Letter from the said Court of Directors to the madras Government dated 20th Octr 1852 No 16)

(3)

N, 20" September 1853. Letter from the Secretary to the fund to Plaintiff
O, 11" October 1853. Letter from Plaintiff to the Secretary to the fund
P, 28" October 1853. Letter from the Secretary to the fund to Plaintiff and copy of the Secretary's letter of 17" November 1853 to the Honorable D. Eliott Edgar annexed.
Q, 25" September 1854. Letter from Plaintiff to the Secretary to the fund
R, 7" October 1854. Letter from the Secretary to the fund to Plaintiff
S, 17" October 1854. Letter from Plaintiff to the Secretary to the fund
T, 8" November 1854. Letter from the Secretary to the fund to Plaintiff
U, 28" April 1855. Letter from the Secretary to the fund to Plaintiff
V, 30" April 1855. Account current and memorandum furnished to Plaintiff by the Secretary to the fund.

We do hereby also agree to admit at the hearing of this cause.

That previous to the printing in 1838 of the Pamphlet mentioned in the Bill and headed "Madras Civil Service Annuity Fund Established on the 1st May 1825" no Rules regarding such Fund other than those contained in or evidenced by the papers mentioned in the last Indea Company's Answer in this suit had ever been framed or promulgated as the Rules of such fund.

That in 1850 objections were made by Sir Timothy Vankittart Stonhouse Baronet who was then the Accountant General of Fort Saint George and such Accountant General was then an ex-officio manager and Trustee of the Fund of 1825 to the several refunds that were made in 1850 to George Dominico Drury and Alexander Madeira Edgar and that such objections were reduced to writing by Sir Timothy Vankittart Stonhouse but were never acted on or brought to the notice of the Government of Fort Saint George or of the said Court of Directors and that in addition to the refunds in the Bill mentioned the sum of 213 Company's Rupees 6 Annas and 3 fice was refunded on the 23rd of February 1836 by the then managers and Trustees of the Fund of 1825 to Sir William Oliver who was a Subscriber to such Fund on his returning from the Service of the East India Company and accepting an annuity from such fund and that such refund was entered and exhibited in the accounts of such Fund which were furnished by the managers and Trustees of such fund to the Government of Fort Saint George for the information of the Court of Directors in the words and figures following "Amount repaid to Mr William Oliver being the over payment of the fine due by him 213. 6. 3" and that such refund was not a refund of any excess of the aggregate amount of Mr Oliver's actual Subscriptions to such Fund and Interest for the same at 6 per cent per Annum over or beyond the half value according to the Table in the Bill mentioned of his said Annuity but was in fact a refund of an Amount over paid by mistake by Mr Oliver beyond the Amount due from him by way of fine to make up (with his Subscriptions and such interest aforesaid) the half value (according to the said Table) of his said Annuity.

That from the time of its Establishment (in 1825) up to the present time the Bengal Civil Service Annuity Fund of 1825 always has been fully solvent and able to provide Annually for the full number of Annuities to be granted from it and that in the year 1841 it possessed a large accumulation of Surplus Funds.

That the Pamphlet marked W1 contains a true copy of the Special Case which was agreed upon and argued before the Supreme Court at Calcutta in the action brought by Mr Plowden of the Bengal Civil Service against the managers of the Bengal Civil Service Annuity Fund and a true Report of the Judgment

(4.)

Judgment delivered by the 3 Judges of that Court upon such Special case. And that this Pamphlet may be cited in the same manner and to the same extent as an ordinary reported case at the hearing of this suit.

Dated this 22nd day of September 1857

(Signed) Wilkins and Shaw
Plaintiffs Solicitors

(Signed) A. M. Ritchie
Solicitor for the Trustees

(Signed) J. R. Poynter
Respondents Solr.

No 74

Memorandum.

With reference to the Special Memorandum from the Chief Secretary to Government to The Honorable Company's Solicitor of the 14th of December last, and that from the latter to the former dated 12th ultimo, The Honorable Company's Solicitor has the honor to forward herewith for the purpose of being kept in the Government Office, a Copy of the Joint Answer of the Trustees of the Coal Fund, the Admissions, the Judgment of the Supreme Court, the Decree and the Petition of Appeal in the suit noted in the margin.

a Robertson
15
The East India Co
and others.

I have &c
J. A. Boyton
Hon Co's Sol.

Madras
5th February 1858

To The Chief Secretary to Government

Copy
Admission of Documents
Boyton
Hon Co's Sol.

Supreme Court
Madras
(Ecclesiastical Side)

Between Robertson Esqr
(in)
The East India Company
and others
Defendants.

Maine Branch
10-2/2/58.
Supt-to-give-11/2/58

46

Financial Department.

No. 19

To Sir James C. Melvill K. C. B.
~~The~~ *Secretary at the*
East India House.

Sir,

I am directed by the Right Honble the Governor in Council to transmit to you, to be laid before the Honorable the Court of Directors, the accompanying Proceedings of the Mint Committee, from the 5th July to the 25th September 1857.

I have &c.

Fort St. George,
10 February 1858.

copy to the Board of Comrs. S

Financial. 1858. Depch. Recd from Govt. Fort St. George Coll. Madras.

8/5/
2/6/2/58

Encls.

Encls. to Govt. Fort St. George Depch. dated 10th Feby. 1858.

Proceedings of the Mint Committee from the 5th July to the 25th September 1857.

11 pages

6/6/58

Letter rec'd Feb 16/58

87 to Com 15th February.
Financial 1858 Despatches

No 79

To
The Secretary of the
East India House

10th February 58

5 V 6

5-6