

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 533	Press Mis.
Dated 11. 8.	1858

B. no - 1-2 / 1

Not to be folded or roughly handled

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Fort Saint George, Financial Consultation, 17th August 1858.

No. 1. From S. D. BIRCH, Esq., Secretary to the Civil Fund; to T. PYCROFT, Esq.,
Chief Secretary to Government, dated 9th August 1858, No. 154.

SIR,

1. With reference to the orders of Government, dated 8th December 1829, I am desired
by the Trustees of the Civil Fund to transmit to
Proceedings of a Quarterly Genl. Meeting of you a Packet No. 1, to the address of Messrs.
the Civil Fund, Charity Branch, held on the Coutts and Co., containing the Printed Proceed-
16th July 1858. ings of the Madras Civil Fund, and to request
that it may be forwarded in the next Government
Packet to the East India House.

2. I am also desired to transmit, for the information of the Honorable the Court of Direc-
tors and the Right Honorable the Governor in Council, six copies of the Proceedings as before
particularized in the margin, contained in the Packet No. II.

No. 2. ORDER THEREON, No. 533; dated 11th August 1858.

Ordered that the Packet to the address of Messrs. Coutts and Co., together with three
copies of the Proceedings received with the foregoing letter, be forwarded to the Honorable
the Court of Directors.

(Signed) T. PYCROFT,
Chief Secretary.

CIVIL FUND—CHARITY BRANCH.

At a QUARTERLY GENERAL MEETING of the SUBSCRIBERS to the CIVIL FUND CHARITY BRANCH, held at the GOVERNMENT HOUSE in the FORT, on Friday the 16th July, 1858.

PRESENT.

Messrs. J. GOLDINGHAM, *Trustee.*

G. L. PRENDERGAST, *Trustee.*

C. R. BAYNES, *Trustee.*

R. D. PARKER.

E. MALTBY, *Trustee.*

S. D. BIRCH, *Secretary.*

G. S. FORBES.

Messrs. J. D. SIM, *Trustee.*

G. F. FULLERTON.

C. A. ROBERTS.

WM. HUDLESTON.

D. F. CARMICHAEL.

AND

M. NORMAN.

Mr. J. GOLDINGHAM is requested to take the Chair.

The Secretary is directed to read the following Report of the Trustees.

REPORT.

1. The Trustees have to report, that Messrs. W. T. Farquhar and W. F. Hathaway, lately admitted on the Civil Establishment of this Presidency, have become Subscribers to the Civil Fund, under the Covenants entered into by them with the Company.

2. The Trustees have also to report, that Messrs. R. S. Ellis, W. H. Arbuthnot and G. B. Tod, being under the necessity of proceeding to Europe on Sick Certificate and having furnished the requisite documents, they have granted them orders on the Agents in England for £300 each.

3. From an Account Current received from the Agents of the Fund in England which accompanied their communication of the 13th February 1858, they learnt that an advance of £200 each was made to Messrs. H. Wood and G. S. Forbes to enable them to return to the Service, and from a letter dated 20th April 1858 that a similar advance was made to Mr. T. Clarke for the same purpose. The Trustees have to report, that Mr. H. Wood has commenced liquidating his debt to the Fund in the mode prescribed by the New Rules.

4. Messrs. Coutts and Co., in their letter of the 13th February 1858, intimated to the Trustees that they had advanced one year's sick absentee allowance to Mr. R. A. Dalyell, as prescribed by Clause 109 of the New Rules; he having been compelled to remain in England beyond the three years of sick leave granted to him by the Government.

5. An application, supported by the necessary documents having been forwarded to the Trustees by Messrs. Coutts and Co., in a letter dated 23rd February 1858, on behalf of Mrs. H. E. Sullivan, for admission on the Fund, the Agents have been instructed to pay her at the rate of £300 per annum from the date of her husband's decease.

6. From the same communication, the Trustees have learnt of the death of Mrs. J. F. Tweedie on the 22nd January last, and of the payment of donations to Messrs. L. C. DeL. Daniell, F. C. Hallett, and J. C. Thomas, by which they cease to be Annuitants on the Fund.

7. By a Marriage Certificate which accompanied a letter, dated 19th April 1858, from Messrs. Parry and Co., the Trustees have learnt that Mrs. L. Daniell was re-married on the 5th January 1858, by which she ceases to be an Annuitant on the Fund.

8. With reference to the Proposition contained in the Proceedings of the Quarterly General Meeting held on the 9th April 1858, "that the opinion of Counsel be taken as to the powers of the parties under the Deed to allow £150 per annum to Mrs. Maitland," the Trustees have to lay before the Meeting the reply* received from the Advocate General, from which it would appear, that in his opinion, the grant, if made under the Deed as it now stands might be supported, as it would be virtually "a provision for extending the objects of the Fund†; but that the more regular way and least open to objection, would be, first to pass a clause or resolution to the effect suggested, and then, under its terms, to make the grant.

9. The Trustees have the honor to lay before the Meeting, the result of the votes received from out-stations on the following Propositions referred to the Service at large, under the Resolution passed at a Quarterly General Meeting held on the 9th April 1858.

(1) That, with reference to Clause 83 of the Deed, a statement of all property left by a deceased Subscriber be transmitted as heretofore to the Trustees, but that they shall be empowered to exclude from the calculations of the Fund a house or moveable property, viz., household furniture, plate and conveyances and such articles, provided that the sworn and proved value of such property shall not exceed £1,500 or Rupees 15,000.

Pro.	Con.
58	10

(2) That, with reference to rule 70 of the Charity Branch, the following scale of allowances be submitted for the favorable consideration of the Service, with a recommendation, that, in the case of children who have lost both parents, it should be substituted for that laid down in the Rules under reference.

Under 6 years of age.....£ 50
From 6 " to 10.....£ 80
From 10 " to 19.....£ 100

Pro.	Con.
66	2

S. D. BIRCH,

Secretary.

Trustees of the
Civil Fund.
J. GOLDINGHAM.
G. L. PRENDERGAST.
C. R. BAYNES.
E. MALTBY.
T. PYCROFT.
W. H. BAYLEY.
J. D. SIM.

The Meeting confirm the Proceedings of the Trustees in the cases of Messrs. R. S. Ellis, W. H. Arbuthnot, G. B. Tod, H. Wood, G. S. Forbes, T. Clarke, R. A. Dalyell, Mrs. H. E. Sullivan, Messrs. L. C. DeL. Daniell, F. C. Hallett and J. C. Thomas, as contained in para. 2 to 6 of their Report.

The votes of the meeting are taken on the following propositions on which the votes of the Subscribers at out-stations are recorded in para. 9 of the foregoing Report :

(1.) " That, with reference to Clause 83 of the Deed, a Statement of all property left by a deceased Subscriber, be transmitted, as heretofore, to the Trustees, but that they shall be empowered to exclude from the calculations of the Fund a house or moveable property, viz. household fur-

niture, plate and conveyances and such articles, provided that the sworn and proved value of such property shall not exceed £1,500 or Rupees 15,000."

	Pro.	Con.
Votes of the Meeting.....	8	4
" from out-stations..	58	10
	<u>66</u>	<u>14</u>

Carried by the required majority.

(2.) " That, with reference to Rule 70 of the Charity Branch, the following scale of allowances be submitted for the favorable consideration of the Service, with a recommendation, that in the case of Children who have lost both parents, it should be substituted for that laid down in the Rule under reference :—

Under 6 years of age.....£ 50
From 6 to 10.....£ 80
From 10 to 19.....£100

	Pro.	Con.
Votes of the Meeting... 12		0
" from out-stations. 66		2
	<u>78</u>	<u>2</u>

Carried by the required majority.

Proposed by Mr. G. F. FULLERTON :

" That under the very uncertain opinion given by the Advocate General as to the power of the Service to make the proposed grant at present, it is considered advisable that a Clause should be added to the Deed enabling the Service to provide for the case of Mrs. Maitland and cases of the same nature."

Seconded by Mr. G. S. Forbes.

Mr. W. HUDLESTON proposes as an amendment :

" That, the opinion of the Advocate General showing that the grant to Mrs. Maitland was not illegal under the terms of the Deed, the Trustees be requested to take measures to carry out the vote of the Service in her case."

Seconded by Mr. E. MALTBY and carried by a majority of 8 to 4.

The thanks of the Meeting are unanimously voted to Mr. J. GOLDINGHAM for his conduct in the Chair.

S. D. BIRCH, Secretary.

J. GOLDINGHAM, Chairman.

APPENDIX.

To
THE HONORABLE COMPANY'S SOLICITOR.
SIR,

1. I am desired by the Trustees of the Civil Fund to request, that you will be so good as obtain the opinion of the Advocate General upon the following case.
2. The widow of a Subscriber to the Madras Civil Fund, married to a Gentleman not in the Civil Service, seeks re-admission to the benefits of the Fund, in consequence of her present husband being afflicted with mental infirmity and incapable of supporting her. The Trustees have proposed, and the Service have consented, to the grant of £150 per annum, on charitable grounds, so long as her husband continues in his present state. As the Deed does not provide for cases like the present, the Trustees are desirous of ascertaining whether the parties under the Deed are empowered to make such a grant.
3. A copy of the Civil Fund Deed is herewith forwarded for reference.

I am,

SIR,

Your obedient servant,

S. D. BIRCH,

Secretary.

23d April, 1858.

To
S. D. BIRCH, Esq.,
Secretary to the Civil Fund Madras,

SIR,

With reference to your letter of the 23d ultimo, relative to the case of a Widow of a Subscriber to the Madras Civil Fund, married to a gentleman not in the Civil Service, seeking re-admission to the benefits of the Fund, in consequence of her present husband being afflicted with mental infirmity and incapable of supporting her, and your letter of the 11th instant on the same subject (which I at once submitted for the consideration of the Advocate General) and to the subsequent communications between the Advocate General, you and myself thereon, I have now the honor to forward you a copy of the Advocate General's opinion and to return the enclosures noted at foot.

I have the honor to be,

SIR,

Your most obedient servant,

J. R. BOYSON,

Solicitor.

The original Civil Fund Deed of 1814.
A printed copy of do.
A do. of the Proceedings of the General Meetings of the Subscribers to the Fund from 1815 to 1824.

MADRAS, 14th May, 1858.

COPY OPINION.

The papers laid before me with reference to the question sent for my opinion, are the Madras Civil Fund Deeds dated respectively 1st July 1814 and 1st May 1818, the Rules of the Civil Service Annuity Fund of 1825, the Revised Rules adopted on the 17th June 1853, a copy of the Covenant executed by Members of the Civil Service, and a volume of the Printed Proceedings of the Meetings of the Subscribers to the Fund.

2. The Deed of 1818, the Rules of the Civil Service Annuity Fund of 1825, and the Revised Rules of the 17th June 1853, it is unnecessary to consider; nothing contained in any of them affects the present question. They relate exclusively to "the Annuity Branch" of the Civil Fund; whereas the present question relates exclusively to "the Charity Branch." These two branches under Clause 5 of the Deed of 1814, are separate and distinct Funds, with separate and distinct Capital Stocks, the former consisting of 5-8ths, and the latter of 3-8ths of the then Capital of the Civil Fund, viz., Star Pagodas 3,46,043 with separate accounts (see Clause 59) and requiring separate and distinct contributions, viz., 4½ per cent. on Salaries &c., to the Civil Fund (see Clauses 43 and 44) and 2½ per cent. on Salaries &c., to the Charity Branch, see Clause 62.

3. The Deed of 1814, is the only one of the documents now before me which specifically affects and regulates the Charity Branch of the Civil Fund, the Clauses which do so extend from 60 to 111 inclusive, and those which refer to Widows and Children included in the Charity Branch extend from 65 to 89 inclusive.

4. None of these Clauses, nor indeed any other in the Deed, either directly or indirectly authorize any grant whatever to a Widow of a Subscriber to the Madras Civil Fund, who has subsequently married a Gentleman not in that Service, but who from mental infirmity is incapable of supporting her. It follows therefore, that any such grant would be a departure from the terms of the Deed of 1814,—a material addition to and variation of its provisions.

5. The next material point to consider therefore is, whether the Deed of 1814 provides for such an addition and variation, and if so, how and by whom such addition and variation can legally be made.

6. The 142d Clause makes express provision for these matters. It contemplates the future expediency of "making other provisions for increasing the number and amount of the Annuities to be payable from and for extending the objects of the said Fund," and it enacts that it shall be lawful "to add to or vary" such parts of the Deed "as may appear necessary for the purposes last referred to."

7. Now I am clearly of opinion that a new Clause authorizing the proposed grant and similar ones in similar cases would fall within the intent and scope of the words "making provisions for extending the objects of the said Fund" and might therefore be lawfully passed, if passed by parties authorized to do so.

8. But according to the Deed of 1814, Clause 142, that authority is reserved only to "three-fourths of the parties to these presents, present or voting by Proxy" at any Special General Meeting to be convened for that special purpose." The words "parties to these presents" means parties who have executed the Deed of 1814, and I am informed that none of the present Members of the Madras Civil Service have in fact done so—nor can they do so now consistently with the terms of the Deed; see Clause 33 in connection with the two next preceding Clauses. It follows therefore that, looking to this Deed alone there are no parties in existence who under the provisions of this Deed, have power to "add to or vary" its provisions, so as to authorize the proposed grant, or to make the grant itself.

9. A very important question however remains behind; namely, how far the Act of the Court of Directors* making it a condition with all their Civil Servants to become Subscribers to both branches of the Civil Funds, the fact that all Civil Servants from that date have so subscribed, and the course of dealing pursued from that date to the present, a period of 35 years by all the Members of the Civil Service, including at first very many who were executing parties to the Deed of 1814, how far these circumstances I say operate to constitute the Members of the Civil Service *virtually* parties to that Deed, though not *executing* parties to it, and I am of opinion they do so operate.

10. Clauses 31, 32 and 33, of the Deed of 1814, clearly contemplate and provide for future Civil Servants becoming parties to it and give them the option of doing so, and also six months

* Dispatch dated 17th January 1823.

after their arrival in India within which to make their choice. It was however purely optional with them to do so or not, prior to the 17th January 1823, and accordingly up to that date (as appears from the letter of the Secretary to the Honorable Company's Solicitor, dated 11th May 1858) the Secretary of the Civil Fund used regularly to address all newly arrived Members of the Service, and invite them to join the Fund.

11. From that date however, subscription to the Fund having become compulsory, this practice altogether ceased. No Member of the Civil Service was ever afterwards invited to become a Subscriber, nor ever executed the Deed of 1814, but yet all Members of the Service as well those who had not, as those who had executed that Deed, from that time outdealt with that Deed as if all who were Subscribers to the Funds which that Deed established and regulated were parties to it, and had full power to add to and vary its provisions. Thus I find that three Clauses (50, 51 and 95,) were altogether *rescinded*; the two former on the 13th July 1825, the latter in July 1838; I find that for Clause 92, a new Clause was substituted, on the 5th July 1838; that Clause 64 was materially extended on the 11th January 1834, and Clause 65, also on the 16th July 1828, while six others were more or less modified. [I omit here the extension of Clause 68 in 1820, because, as occurring prior to 1823, it was probably done by parties who had either actually executed or promised to execute the Deed of 1814, in which case the alteration of that Clause would not affect the present question.]

12. These alterations of the Deed of 1814, were made at the regular periodical public Quarterly Meetings of the Members of the Madras Civil Service, they extended over a period of 13 years from 1825 to 1838, they were published to the whole Service and to those who had retired from it in the Printed Proceedings of those Quarterly Meetings, and for a period of 35 years none of these alterations, nor the right of the parties, Subscribers to the Funds, but not having executed the Deed of 1814, to make them have ever been questioned.

13. I am of opinion that looking to this long and unquestioned course of dealing amongst all parties having an interest in the matter and the circumstances out of which it arose, that it cannot now be questioned by any who have hitherto assented to it; and that if, "at a Special General Meeting to be called for that purpose" "three-fourths of the Subscribers to the Civil Funds present or voting by proxy at" such Meeting, agree to a Clause authorizing such a grant as that now proposed, that they have power to pass it under the provisions of Clause 142, and that when it is passed the proposed grant may then be made.

14. In calling the Meeting and conducting its proceedings, regard should be had to the provisions of Clauses 15 to 23.

12th May, 1858.

(Signed) THOS. SYDNEY SMYTH,

Advocate General.

(True copy.)

J. R. BOYSON,

Solicitor.

J. R. BOYSON, Esq.,

The question put in my letter of 23d April, does not appear to the Trustees to be clearly answered. It was whether under the present terms of the Deed the grant referred to, could be made.

The Advocate General says the Service have the power to add a Clause to the effect required, but that was not exactly the point that was in doubt.

May 29th, 1858.

Your's sincerely,

S. D. BIRCH.

MADRAS, 3rd June, 1858.

S. D. BIRCH, Esq.,

I submitted your note of the 29th ultimo relative to the question put in your letter of the 23rd April, (together with the Advocate General's opinion of the 12th of May) for the further consideration of the Advocate General, and in his reply to me, he says as follows. "It seems to me that the question is answered in para 13. I think that under the terms of the Deed, the Service have the power to make the grant in question, but in the way there pointed out, viz., by first passing a Clause or resolution to the effect suggested, and then, under its terms, making the grant to the Lady in question."

"This seems to me the safest way, and most in accordance with the tenor of the Deed of 1814, which does not appear to me to contemplate the making of exceptional grants for individual cases not met by any Clause in, or to be hereafter incorporated with, the Deed. I think the grant if made under the Deed as it now stands, and without the new Clause I have suggested, might be supported as it would be virtually a 'provision' for extending the objects of the Fund, but I think the way I have suggested, would be the more regular way, and least open to question, or objection."

I trust this further explanation will remove your difficulty, and am,

Your's sincerely,

J. R. BOYSON.

N^o 533.

Ordered that the Packet
to the address of Mess^{rs} Coutts and Co.,
together with three copies of the Proceedings
received with the foregoing letter, be
forwarded to the Hon^{ble} the Court of
Directors.

Fort St George, 2
11 August, 1858. 3



Test
Collection

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From 17 August 1858. 3
L. L. M. No 353. 2