

## MADRAS RECORD OFFICE.

Government of Madras.

*Financial* DEPARTMENT.

G.O. No. 210

Press  
~~Mis.~~

Dated 12.5.18 60

B.No. 9-10

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Financial Department,  
for the month of May 1860.*

No. 9. Read the following Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India, to His Excellency the Honorable the Governor in Council, Fort Saint George, dated London, 29th March 1860, No. 21.

1. With reference to your Despatches in this Department, dated 21st and 27th October, 10th, 11th and 25th November 1859, Nos. 24, 25, 27, 28 and 30, on the subject of the claims preferred by Sir V. Stonhouse and others, to refunds of their surplus subscriptions to the Madras Civil Service Annuity Fund, I forward for the information and guidance of your Government copy of a case which has been submitted to Counsel, in reference to these claims and of the opinion given thereon.

2. I would observe, however, that the legal opinion appears to state inaccurately the case of Mr. Hooper; as according to the papers forwarded by you, a considerable surplus, in excess of the half value of his Annuity, was at his credit at the time of the passing of the new Rules in 1853.

CASE.

*For the Secretary of State for India in Council.*

Counsel are requested to refer to the accompanying copy of a case dated December 1859, to the Despatch from the Madras Government of 27th October 1859, and its enclosures therein referred to, and to the point of the judgment of the Privy Council in Robertson's case.

Since the preparation of the accompanying case, three Despatches from the Madras Government upon the same subject matter, dated respectively, 10th, 11th and 25th November 1859, have been received, copies of which are sent herewith.

And judgment in the case of Bolders as Counsel are aware has been delivered, the accompanying extract from which alone appears to have much bearing upon the present subject.

Your opinion is requested

(1st.) Whether Mr. Daniel Elliot's claim to a refund would in all probability be supported by the Court in India and by the Judicial Committee of the Privy Council.

(2nd.) Whether the claims of Sir Vansittart Stonhouse, Mr. Goldingham, Mr. Hooper, and Mr. Underwood respectively or any of them are in any and what way affected by the judgment in Robertson's case.

(3rd.) Whether all Members of the Madras Civil Service who have not had the offer of an Annuity previously to the passing of the Rules of 1853 are bound by these rules whether as assenting, neuter or dissenting parties.

1. It appears from the Documents furnished that Mr. Daniel Elliot, like Mr. Robertson, tendered his acceptance of an Annuity, on the condition of his receiving a refund, in the year 1852 before the passing of the new rules, and protested against the application of such rules to his case. We think therefore that the question on Mr. Elliot's claim is concluded by the judgment in the Privy Council in Robertson *versus* the East India Company and that his claim must be allowed.

2 & 3. The judgment in Robertson's case (Print P. 37) states that the position of the subscribers was much altered by the publication and continuance of the rule as to refunds and their Lordships (paragraph 39,) held that "the Company, though not bound by any positive alteration of the rules, are precluded by their conduct from disputing the right of the respondent to have the excess of his subscriptions beyond the half value of his Annuity refunded to him."

Independently therefore of the operation of the new rules passed in 1853, the title of all the subscribers to refunds is established. But we think that it is clearly to be inferred from the judgment that special circumstances are requisite to prevent the operation of the new rules which do not allow refunds.

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In the particular case of Mr. Robertson, their Lordships held that he had before the new rules were passed, acquired a title to the refund of the excess of his subscriptions, because in the year 1852, he had accepted the Annuity on condition that the excess of his payments should be refunded to him, and that such title was unaffected by the new rules of 1853.

In the cases of Sir V. Stonhouse, Mr. Goldingham, Mr. Hooper, and Mr. Underwood, this special circumstance which occurred in the case of Mr. Robertson does not exist, and we think as a matter of law that the claim in respect of refunds which any one of them might previously have had ought to be held to be taken away by the new rules. There is, however, as appears from the documents a distinction between the case of Sir V. Stonhouse and that of the other three gentlemen. It seems that Sir V. Stonhouse at the time of the passing of the new rules, had paid in excess of the half value of the Annuity according to his then age, while the others had not so paid in excess. We think it is very possible that the Court in India and the Judicial Committee would consider the distinction between the case of Sir V. Stonhouse and that of Mr. Robertson too fine to admit of their recognising a practical difference, and we would advise the Secretary of State in Council to pay his claim and that of others in precisely the same situation rather than incur the risk of an adverse decision.

The claims of all those subscribers who had not paid in excess of the half value of the Annuity at the time of the passing of the new rules should be resisted, as we think that such subscribers are clearly bound by those rules whether they were present at the meeting at which they were passed or not and whether they assented or dissented at the time.

(Signed) RICHARD BETHELL.  
( " ) E. J. LLOYD.  
( " ) WILLIAM FORSYTH.  
( " ) W. HENRY MELVILL.

No. 10. ORDER THEREON, 12th May 1860, No. 210.  
From the Trustees, 3rd Sept. 1859, No. 239.

" " 13th Oct. " " 286.  
" " 25th " " " 291.  
" " 5th Novr. " " 302.

Resolved that a copy of the above Despatch and of its enclosure be forwarded to the Trustees of the Civil Fund in reference to their letters as per margin.

2. The Government do not clearly gather from these papers whether the claim of Sir V. Stonhouse and of any other Civil Servants who may be similarly circumstanced, is to be admitted only to the extent of the surplus standing to their credit when the Rules of June 1853 were passed—or to the full amount overpaid at the date of retirement from the service, with interest in either case to the date of repayment, and a further reference will be made to the Secretary of State upon the subject.

3. Meanwhile the Trustees are requested to report what Gentlemen who either now are in the service or have retired from it (without being allowed the refund) had a surplus to their credit on the passing of the New Rules of 1853, and to submit a statement showing what was the amount of such surplus in each case on the 17th June 1853, and what it would be if calculated to the date of the party's succession to an Annuity in the case of Annuitants or, in the case of those still in the service, to the present date—with interest to the present date in all the above cases.

(Signed) T. PYCROFT,  
Chief Secretary.

Exd. F. Cartledge.

*Financial Department.*

*Proceedings of the Madras Government*

*Read the following Despatch from  
the Right Honorable the Secre-  
tary of State for India.—*

*(Here enter 29th March, 1860)*

*Order thereon 12th May 1860 No. 210.*

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tent of the surplus stand-  
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the Rules of June 1853  
were*

Forwarded to the  
Govt. of India 15 May  
1861 240 39-

No of Govt 20 May  
Financial 1860 Dept 18

No. 210.

Proceedings of Govt

27 May 1860.

7 M 238.

" " 357.

" " 571.

Directing that  
a copy of the 205  
= fact from the  
= Govt of India 15 May  
March and of the  
enclosures relating  
to the closure referred  
by Govt 21. 21. 1860  
and that be paid  
= forwarded to the Govt  
of the Govt of India