

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No.	54	Press
		~~Mis.~~
Dated	13. 2.	1868

B.no 3-4

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Not to be folded or roughly handled

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

No. 3. 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, 6th January 1860, No. 1.

1. I herewith transmit copy of a letter from Mr. A. Robertson, late of the Madras Civil Service, requesting that, under the circumstances stated in his communication, payment may be made to him of the full amount of taxed costs in his action against the East India Company and the Trustees of the Madras Civil Service Annuity Fund and that, on a re-adjustment of the calculation already made, interest may be allowed to him from the 1st December 1857 to the 14th September 1859 on the full amount (principal and interest) adjudged by the Decree of the Supreme Court at Madras.

2. Being of opinion that Mr. Robertson is fairly entitled to interest up to the date of payment on the principal sum awarded to him, I request that you will issue the necessary instructions for paying to him the full amount of his taxed costs in the suit from which the Government Solicitor has deducted the sum of Rupees 3,472-13-8 on the ground of excess of interest paid to him in error.

3. I have declined to comply with Mr. Robertson's application for interest on the consolidated amount of the judgment of the Supreme Court.

From A. ROBERTSON, Esq.; to the Right Honorable the Secretary of State for India in Council.

In the suit of Andrew Robertson *versus* the East India Company and the Trustees of the Madras Civil Service Fund, the Supreme Court of Judicature at Madras decreed the plaintiff "to be 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 further decreed the defendants, the East India Company to pay on the 1st December next (1857) the sum of Rupees 5,075, being the amount of interest from the 28th day of April to the day of payment, and the defendants, the East India Company, to pay the plaintiff his cost in this suit."

On appeal to the Privy Council the decree of the Supreme Court at Madras was confirmed.

In pursuance of the judgment of the Privy Council, the Trustees of the Madras Civil Fund, on the application of my authorized Agent, gave him on my behalf an order on the General Treasury of Fort Saint George for the sum of Rupees 47,541-13-8, being Rupees 39,014 the amount of excess subscription paid by me to the Civil Service Annuity Fund and Rupees 8,527-13-7 interest of 5 per cent calculated from the 1st May 1855 to the 14th September 1859 the date of the order which was duly paid.

For the payment of the costs of suit my Agent was referred to the Government of Madras, and consequently an order was passed by the Government under date the 6th October 1859, (No. 566,) directing the sum of Rupees 4,500-0-10 to be disbursed to the Government Solicitor to enable him to pay my taxed costs in the original action. Instead however of making such payment as required by the original decree, the Government Solicitor furnished to my Agent the accompanying original memorandum in which he declares that "Mr. Robertson was not entitled to any interest subsequent to the date of the Supreme Court's decree or in excess of the Rupees 5,055, and the Trustees therefore paid Dr. Maclean in error Rupees 3,472-13-8 in excess of the proper accounts. This sum will therefore be deducted from the balance now payable in discharge of costs."

It may be inferred from this that the Government Solicitor considered me entitled to interest on the principal sum sued for on the 1st December 1857 and no longer, that being the date specified in the decree on which payment was to be made to me, but the Lords of the Judicial Committee evidently did not so understand the decree of the Supreme Court at Madras, for they say in the opening of their decision, "This is an appeal to the East India Company from a decree of the Supreme Court of Judicature at Madras by which the Court declared the respondent Andrew Robertson to be entitled to a refund or repayment of the surplus or excess paid by him to the Madras Civil Service Annuity Fund as a subscriber to the same Fund with interest

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"from the 28th April 1855 the date to which the respondent's amount was made up by the Trustees of the Fund to the day of payment at the rate of £5 per cent per annum."

I submit that the clear instruction of the Court was to grant what the Bill of Complaint prayed for. It was not for the Court to anticipate that the execution of its decree would be prevented by any demur on the part of the defendants. The amount of interest mentioned in the decree Rupees 5,075 was the amount calculated to the day of payment ordered by the decree, viz., the 1st December 1857. The defendants however did demur and prevented execution by their appeal to the Privy Council, pending which the sum decreed to be due and payable to me on the 1st December 1857 remained unpaid and at the use of Government.

The amount of principal and interest together decreed to be paid on the 1st December 1857, was Rupees 44,069. Instead of interest ceasing to be due from the 1st December 1857 on the principal sum originally sued for, it appears but just that from that date to the date of payment interest should be calculated on the aggregate sum Rupees 44,069. It never could have been the desire of the Honorable the Court of Directors in deferring payment, and so retaining the sum for the use of the Government pending the appeal that I should be deprived of compensation for the use of the money withheld from me in the event of my right to it being affirmed by the Appeal Court.

I conceive that the circumstances require only to be fully weighed in order that I may obtain redress, and therefore solicit that the Government of Madras may be instructed not only to pay to me the full amount of taxed costs in the original suit Rupees 4,500-0-10 which I submit the Government Solicitor irregularly withheld, but to calculate the interest as payable to me on Rupees 44,069 from the 1st December 1857, the date on which that sum ought to have been paid under the decree of the Supreme Court at Madras to the 14th September 1859 the date on which payment of principal and interest was ordered by the Trustees of the Civil Fund, they having already calculated interest as payable only on the sum originally sued for Rupees 39,014 to the date of payment.

I am advised that what I now ask for I am legally as well as morally entitled to, but I am unwilling to press the merely legal question, believing that in consideration of what I have now brought to notice, justice will be fully done to me and that there will be no necessity to have recourse to further legal proceedings.

I request that the original enclosures may be returned to me.

No. 4. ORDER THEREON, 13th February 1860, No. 54.

Resolved, that a copy of the Despatch and its enclosures be furnished to the several Officers named in the margin, for information and guidance, in reference to the Orders of Government dated 6th and 24th October 1859, Nos. 566 and 592, and that the Sub Treasurer be authorized to disburse to the Government Solicitor on his receipt the sum now ordered to be paid to Mr. A. Robertson in adjustment of the full amount of taxed costs in his suit against the East India Company and the Trustees of the Madras Civil Fund.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Financial Department.

Proceedings of the Madras Government.

*Read the following
Despatch from the R. & C.
the Secretary of State for
India in the Judicial De-
partment.*

Dated 6th January 1860.

Order thereon 13 February 1860. No. 54.

*Resolved, that a copy
of the Despatch and its
enclosures be furnished
to the several Officers*

*To the Govd Solicitor
Deputy General
Sub Treasurer
Trustees of the Civil Fund*

*named in the margin
for information & guidance,
in reference to the Orders
of Government dated 6th & 24th*

*October 1859. Nos. 566 & 592,
and that the Sub Treas-
urer be authorized to*

*disburse to the Govern-
ment Solicitor on his*

receipt the sum now

*ordered to be paid to
him.*

*All persons of
name made
known*

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Mr. A. Robertson in ad-
-justment of the full
amount of taxed costs in
his suit against the East
India Company and the
Trustees of the Barrat Co.
and Fund.

JF

To the Govt. Solicitor.
" Accountant General.
" Sub-Treasurer.
" Trustees of the Civil Fund.

Sept 17th

Revised

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Pro of Govt 20 Feb
Financial 1860 Sept

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Proceedings of Govt

21/13 February 1860

7. No 100

Transacting various Affairs with
a copy of the Dispatch from the
Secretary of State in date 17
1860 dated 10 September 1861 and
authorizing the various measures to be
to the Government of India on his receipt
the same more ordered to be paid to the
A. Robertson in adjustment of the full
amount of the said costs which but
against the East India Company
and the Trustees of the Madras
Civil Fund.