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MADRAS RECORD OFFICE.

Government of Madras.

Revenue Board DEPARTMENT.

G.O. No. 876 Press Mis.

Dated 11 4 1862.

36-37 284

Not to be folded or roughly handled

S.K.C.

No. 36. Read the following letter from W. ELPHINSTONE UNDERWOOD, Esq., late of the Madras Civil Service; to the Chief Secretary to Government, Fort Saint George, dated Coonoor, 20th February 1862.

In accepting the annuity, I intimated my intention of claiming the sum at my credit in excess of the half value of my annuity, being equitably and legally entitled thereto. I now prefer that claim* with others which I respectfully solicit Government will be pleased to refer to the Secretary of State for his decision. The delay has been caused by the necessity of obtaining legal opinions. The grounds on which I found my claim are distinct from those on which a decision has been given. I shall refrain from all arguments upon the facts adduced, and I respectfully urge this may not be taken to my detriment or met by arguments to disprove them.

*Proceedings of Government, No. 619, 11th November 1859.

2. I claim the refund, first because I was as far as practicable a dissentient to the new Rules, and the proceedings of the Civil Fund, 4th July 1850, exhibit this. I was in the Chair when they were carried and did not vote but spoke against them, and it was in consequence of the strong manner in which I adverted to their injustice, that Mr. Elliot's letter was recorded. The legal opinion however is that all parties are as much bound, if bound at all, whether they voted for or against the Rules. I do not therefore press this fact.

3. I claim the refund on the ground that the Rule under which it was granted, and which the Privy Council have declared legal is not rescinded. True it was advisedly omitted in the new Rules, and so were others, but *they* are acted upon and in full force and form part of the new Rules, and as the Court rested satisfied with ordering† the refund to be stopped under the impression the law was on their side, they must abide the legal consequences as matters stand, the Rule is not repealed, and the refund was stopped by Order of the Court and Government before the Rule passed, thus the refund is refused by the Court, not by the Rules, they never, were applied or thought of till Mr. Robertson went to law.

†Despatch 16 of 1852, paragraphs 18, 19 and 30.

4. At a special meeting of the Fund, 26th September 1850, the Service absolutely refused to repeal the Rule for a refund, but at a subsequent meeting the Service passed the new Rules under a threat—that if they did not, no more annuities should be given, and under a false statement that there were no assets at the credit of the Fund, and that the grant of refund in past years was illegal. The first is proved not to be true because it is shewn in Statement F, Trustees' letter to Government, 18th July 1851, that 19,90,230-12-4, or twenty lacs were at the credit of the Fund, and the Court in paragraph 26 Despatch 16 of 1852 admits that nineteen lacs are at the credit of subscribers, and in paragraph 6 that considerable loss was incurred by granting annuities of £600 and thus the Court took the assets of the Fund of 1825 to pay the demands of the Fund of 1818, which they agreed to pay from the principal of that Fund made over to them and then robbed us of the refund because they had absorbed the cash balances of twenty lacs at the credit of the Annuity Fund according to their own admission. The second point, the legality of the refund has been decided by the Privy Council.

Despatch 16 of 1852.

5. If then the new Rules debar a refund, which I contend they do not, I claim the refund in equity because the Rules were passed in consequence of incorrect statements and a threat based upon them and because it would be an unparalelled wrong to pay dissentients simply because they were such, and deny the refund to others simply because they took the statements of their masters in good faith.

Robertson and Elliot.

6. I claim the refund as one of those who had money at their credit at the time the Rule was passed under the legal opinion of the four learned gentlemen who gave a legal opinion to the Secretary of State in the following words: "*We think it very possible that the Court in "India and the Judicial Committee would consider the distinction between the case of Robertson*

"*and Stonhouse, (the latter stands for all others) too fine to admit of their recognizing a practical* "*difference.*" The Secretary of State subsequently departed from this opinion on a reference to two of the parties to this opinion, and restricted the refund to the amount at credit of the parties when the new Rules were passed. I submit he is not competent to do this, especially if the parties who gave the opinion *are*, as is probable, the Law advisers of the Secretary of State for India. I claim on the ground of the legal opinion of the four that there is *no practical difference between Robertson and Stonhouse.* Robertson obtained payment up to the date of the decree, that is subsequent to the grant of the annuity, and I claim up to the grant of the annuity to me. The two upon whose opinion Sir C. Wood acted are bound by the opinion they gave with the other two and are not at liberty to qualify it to my detriment.

7. The claim for a refund I admit is confined to those who had *completed their contract,* and had paid more than the half value of the annuity at the time the Rule was passed and this contract must be fulfilled.

8. I observe in fine that the only ground upon which the Court ordered the refund to be stopped was the want of funds and as it is admitted by that authority there were 19 lacs at the credit of subscribers ; this turns out to be no ground and I make my appeal to the justice and honor of the Secretary of State as the "ultimate beneficiary" in the words of the Privy Council : "The true result of this case, with reference to the point now under considera- "tion appears to their Lordships to be that the ultimate beneficiaries under the trust have "authorized the Trustees to hold out to the prior beneficiaries advantages which were not war- "ranted by the trust, and have thereby altered the position of the prior beneficiaries, and their "Lordships think that, under such circumstances, both the Trustees and the ultimate benefi- "ciaries must be liable to make good to the prior beneficiaries, the advantages which have been "so held out to them."

9. The next claim I advance is founded on my memorial to Government dated 2nd May 1857, and I respectfully solicit Government will send to the Secretary of State a statement showing the sum to which I am entitled if my clam is granted.

10. This caim has formed the subject of much special pleading on the part of the Government and the Board of Revenue to which I shall not advert. I now quote the Orders of Government merely observing that it was of no avail *except* to deprive *me* of my allowances. Had the importers paid the duty the Commissariat would have paid them as they did the duty they did pay as in all cases the "purchaser" or in other words the consumer pays the duty. "The most Noble "the Governor in Council having had under "his consideration the foregoing letters* "resolves to direct in conformity with the "suggestions offered by the Commissary General that supplies of Arrack for the Government "should be obtained as usual through the Commissariat Department on precisely the same foot- "ing as before the promulgation of Act VI of 1844, under this Resolution all Arrack purchased "on account of Government by the Commissary General will be exempted from such portion of "duty now payable as will leave the amount to be paid per gallon equal to the general import "duty of 8 per cent. heretofore levied."

* From the Commissary General.

11. If this is a legal order within the purview of Act VI of 1844, I have no claim. If illegal, I cannot be mulcted to the extent of about forty thousand Rupees thereby.

12. It is illegal, first as directing the levy of 8 per cent. duty under Regulation 1 of 1813, repealed by Act VI of 1844.

13. It is illegal, because no part of Act VI of 1844 authorizes Government to exempt a "*purchaser*" from the levy of duty.

14. It is illegal, because it is beyond the power of Goverment to give any orders for the remission of duty except in each particular case, not only is this the Law but is the interpretation of the Law by the Supreme* Government which declared the issue of any order such as I have quoted to be illegal and beyond the province of the Madras Government.

* Minutes of Consultation, Madras Government, 31st July 1856, No. 792, R. D.
Do. 7th October 1856, No. 1,086, R. D.

Proceedings of the Madras Government, Financial Department,
11th April 1862.

15. The legality of the Order of the Madras Government is upheld solely and entirely to prevent me drawing Commission and has no other effect whatever. The Revenue to Government if paid as Sea Custom duty and returned as Sea Custom Revenue would have entitled me to Commission, but it was carried to the credit of Government as Revenue by profits from the sale of Arrack to the Army by the Commissariat and in the Abkarree Revenue from the Arrack supplied to the Collector of Madras.

16. Legal opinions advise me that the Madras Government had not a shred of authority to pass this order, and I respectfully solicit the Secretary of State will submit the order for the opinion of Counsel by whose decision I am content to abide, assured it cannot be desired to deprive me of what the Law gives me or to uphold the decision of the Madras Government, and enable it to hold money lawfully due to me in its coffers solely upon its own interpretations of right and wrong, and its own dictum. This would be an injustice so palpable I cannot for a moment suppose the Secretary of State to whom the Law permits an appeal would sanction.

17. The next claim I refer to is that contained in my Memorial to the Secretary of State 9th March 1860. In reply to this that high functionary simply referred me to his previous decision which I respectfully submit was no answer to my Memorial. The Secretary of State concurred in opinion with the majority of the Madras Government. When I received that opinion I waited on Sir Charles Trevelyan, and on my representation His Excellency modified his opinion—stated he considered I was entitled to a portion of the money and that if he were in the position of the Secretary of State he would give me not less than ten thousand Rupees. His Excellency advised me to memoralize the Secretary of State, and said that he would support it. I did so and was informed by the Secretary to Government that my Memorial had been forwarded Home by the Bombay Mail accompanied *by a favorable recommendation by this Government* that a part at least of the amount in question should be given to me.

18. As the decision of the Secretary of State in the first instance was based upon the opinion of the majority of the Madras Government, it is I respectfully submit no reply to my Memorial to adhere to that opinion, when the Madras Government had become unanimous and admits that the opinion previously given had not been equitable and recommends that the decision at which it had arrived should be modified.

19. I would respectfully represent that the Commission having been given for 40 years* according to the principle which the Secretary of State applies at Home I should receive compensation for the withdrawal of the Commision, I rest my claim to reconsideration on the Despatch of Government and the following observations of the Board of Revenue :

* See Appendix A.

"Mr. Underwood now points out that he will be a loser to a considerable extent by this "arrangement, the net revenue from Sea Customs having steadily increased ever since, and that "his hardship is enhanced by his compulsory retirement in consequence of his having completed "35 years' service."

"As regards the latter argument, the Board admit that it was not taken into consideration "by them when proposing the alteration in Mr. Underwood's remuneration. It in reality did "not affect the question then, and, moreover, at that time it was doubtful whether the Rule would "be enforced against Officers for whom annuities were not available. This was Mr. Underwood's "position at the time, though the recent grant of extra annuities has since afforded one for his "acceptance."

"As regards the other argument the Board observe that they never intended that the altera- "tion should involve loss to Mr. Underwood." In paragraph 3 of their Proceedings, dated 19th "June 1857, they stated that their object "was not to deprive him of any portion of his emolu- "ments." Their wish was to place him in "the independant and impartial position which "he should occupy between Government and "the Mercantile community, and to prevent his proceedings, however correct and just they might

Paragraph 23, Board's Proceedings 7th April 1857, No. 1,989.

"be, from being imputed to a personal interest in their issue. In these views Government con-
"curred and the fees were commuted accordingly."

"This loss to Mr. Underwood was neither contemplated nor intended, and in fact any
"arrangement involving loss was wholly precluded by the Honorable Court's Despatch, dated
"29th November 1843, No. 22, and quoted in
"the margin, which secured him during his
"tenure of office."

Enclosure in from Government, dated 9th March 1844, R. D., No. 209, in Consultation 25th March 1844, No. 607.

"Under these circumstances, and especially with reference to the above Despatch, the Board
"recommend that Mr. Underwood's application may be complied with, and that the Civil Audi-
"tor may be instructed on his retirement to adjust his salary accordingly."

"The arrangements thus disturbed has so far answered its purpose, that Mr. Underwood
"has occupied the position desired for him during the interval, and this will cease to be the case
"only when Mr. Underwood vacates the appointment. His successor, as already ordered, will
"receive a consolidated salary only."

20. The last case to which I shall advert is the Proceedings of the Madras Government No. 1,137, 25th October 1859. The President, His Excellency Sir C. Trevelyan, entered a Minute inviting his colleagues (on the ground that I had "preserved an unblemished reputa-
"tion during a long course of service") to consider my request that my son should obtain a Cadetship. His Excellency Sir Patrick Grant, Mr. Walter Elliot and Mr. Morehead recorded individual Minutes testifying to the merited reputation which my long and efficient conduct as a public servant had so universally gained for me, and Mr. Morehead observed, "That in my
"estimation there are few members of the Civil Service who have so deservedly earned a title to the
"consideration from the Secretary of State for India which Mr. Underwood seeks to obtain."
The Government forwarded these Minutes to the Secretary of State, who, in his Despatch, No. 174, dated 24th November 1860, stated this application has been recorded.

21. On the occurrence of a vacancy for a Cadet by the resignation of Mr. Rundall, I applied to Sir Charles Wood on public grounds, and the recommendation of the Madras Government to give my son this appointment and received the following reply:

India Office, 13th February 1861.

In reply to your letter of the 8th January, I am directed by Sir C. Wood, to inform you that the vacancy caused by the resignation of Mr. Charles Rundall will *not* as you suppose *be filled up* by the *nomination* of *a Cadet* to the Indian Army, *such appointments have been entirely discontinued* and it is therefore not in Sir Charles Wood's power to comply with your request.

(Signed) J. W. GRENFELL.

The same Mail which brought this letter conveyed a Despatch from Sir Charles Wood *nominating* Mr. Clerk a Cadet to this very appointment who arrived and was promoted to the rank of Ensign.

22. I would further observe that my application to continue another year in the service was refused by the Secretary of State and as to the consideration due to me as a public servant, I appeal to the Proceedings of Government, No. 1,137, 25th August 1859, while permission to remain another year was granted to an Officer in the Civil Service whose claims on the consideration of the Secretary of State were not greater than mine.

23. Upon the grounds above stated I respectfully solicit that the Madras Government will forward copy of this letter to the Secretary of State accompanied by its recommendation, that the claims preferred may receive consideration and that some portion at least of the large sums really due to me amounting to above a lac of Rupees may be awarded to me, especially as I was prevented drawing the fixed salary by compulsory removal from the service.

APPENDIX A.

Extract from a letter from the Secretary to Government, Fort Saint George, to the President and Members of the Board of Trade, dated 29th November 1819, No. 643, sanctioning the Commission and Pay of Collector of Sea Customs, viz., Pay Collector Rupees 1,800, Deputy 1,000, Assistant 525 per mensem.

Commission.

Collector.....	3	per cent.
Deputy.....	1½	do.
Assistant.....	½	do.

1. The Governor in Council approves the principle of making these allowances in a great measure dependent on the public revenue collected by them.

Extract from a letter from the Secretary to the Board of Revenue, to the Chief Secretary to Government, dated 28th July 1821.

2. It would accordingly appear to have been the intention of the Board of Trade that Commission should be drawn on such sums only as were actually paid into the Treasury.

From D. HILL, Esq., Secretary to Government; to the President and Members of the Board of Revenue, Fort Saint George, dated 26th July 1821, No. 794.

3. I am directed to acknowledge the receipt of your Secretary's letter of the 13th ultimo, (24), and to state that, by a reference to the arrangement, agreeably to which the allowances of the Collector of Sea Customs at Madras, his Deputy and Assistant are regulated, it appears to have been intended that they should *fluctuate with the collections*, and that the Governor in Council sees no ground for complying with the request which Mr. Harrington has submitted.

Application for compensation for the Pay and Commission falling 25 per cent. below the sum calculated.

No. 37. ORDER THEREON, 11th April 1862, No. 276.

The first 8 paragraphs of the foregoing letter relate to Mr. Underwood's claim to a refund of the amount standing at his credit, as a subscriber to the Civil Service Annuity Fund of 1825, *at the time of his retirement*, in excess of the then half value of his Annuity. This claim with others, formed the subject of the correspondence with the Home Government, noted in the margin; and it was finally determined, under the opinion given by Counsel on the case submitted to them by the Right Honorable the Secretary of State for India, that the amount of excess subscriptions which stood at the credit of Mr. Underwood on the 17th* June 1853 (the date of the passing of the new Rules) with simple interest thereon from that date to the date of refund, should be disbursed to him. This was accordingly done, and the amount actually refunded was reported to be Rupees 5,724-2-6.

To Secretary of State, 11th November No. 28 of 1859.
To do. 25th ,, ,, 30 of ,,
From do. 29th March ,, 21 of 1860.
To do. 28th ,, ,, 6 of ,,
To do. 25th April ,, 7 of ,,
To do. 8th June ,, 12 of ,,
To do. 10th August ,, 20 of ,,
From do. 31st ,, ,, 64 of ,,
From do. 24th November ,, 76 of ,,

* Beyond the half value of his Annuity exclusive of benefits of quarterly payments and payments to date of decease.

Surplus at credit beyond half value of Annuity, on 17th June 1853..	Rs.	4,144	4 4
Simple interest at 5 per cent. per annum from 17th June 1853 to 31st January 1861, the date of refund..	,,	1,57914	2
Total Rupees..		5,724	2 6

2. The Government are not therefore at liberty to re-open the question, especially as the same principle was adopted in finally adjusting the amount of refund to the other members of the Service, Sir V. Stonhouse, Mr. G. S. Hooper, Mr. J. A. Hudleston and Mr. J. Goldingham.

3. The claims adverted to in the remaining paragraphs of Mr. Underwood's letter were considered and disposed of in the Revenue Department, and they will accordingly be referred to that Department for final orders.

Paragraph 9 et sequitur.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

COONOOR, *28th February*, 186[illegible].

To

THE CHIEF SECRETARY TO GOVERNMENT,

Fort St. George.

SIR,

In accepting the Annuity, I intimated my intention of claiming the sum at my credit in excess of the half value of my Annuity being equitably and legally entitled thereto. I now prefer that claim* with others, which I respectfully solicit Government will be pleased to refer to the Secretary of State for his decision. The delay has been caused by the necessity of obtaining legal opinions. The grounds on which I found my claim are distinct from those on which a decision has been given. I shall refrain from all arguments upon the facts adduced, and I respectfully urge this may not be taken to my detriment, or met by arguments to disprove them.

*Proceedings of Govt., No. 619, 11th November 1859.

I claim the refund, first, because I was, as far as practicable, a dissentient to the new Rules, and the Proceedings of the Civil Fund, 4th July 1850, exhibit this: I was in the chair when they were carried and did not vote, but spoke against them, and it was in consequence of the strong manner in which I adverted to their injustice that Mr. Elliot's letter was recorded. The legal opinion, however, is that all parties are as much bound, if bound at all, whether they voted for or against the Rules. I do not therefore press this fact.

I claim the refund on the ground that the Rule under which it was granted, and which the Privy Council have declared legal, is not rescinded. True it was advisedly omitted in the new Rules and so were others, but THEY are acted upon and in full force, and form part of the new Rules, and as the Court rested satisfied with ordering* the refund to be stopped under the impression the law was on their side, they must abide the legal consequences as matters stand: the Rule is not repealed, and the refund was stopped by order of the Court and Government before the Rule passed, thus the refund is refused by the Court—not by the Rules. They never were applied or thought of till Mr. Robertson went to law.

*Despatch 16 of 1852, paras. 18, 19 and 30.

At a Special Meeting of the Fund, 23th September 1850, the service absolutely refused to repeal the Rule for a refund, but at a subsequent Meeting the service passed the new Rules—under a threat—that if they did not—no more Annuities should be given—and under a false statement that there were no assets at the credit of the Fund, and that the grant of refund in past years was illegal. The first is proved not to be true, because it is shewn in statement F. Trustee's letter to Government, 18th July 1851, that 19,90,230-12-4 or twenty lacs were at the credit of the Fund, and the Court in para. 26, despatch 16 of 1852, admits that nineteen lacs are at the credit of Subscribers, and in para. 6 that considerable loss was incurred by granting Annuities of £600 and thus the Court took the assets of the Fund of 1825 to pay the demands of the Fund of 1818, which they agreed to pay from the principal of that Fund made over to them, and then robbed us of the refund, because they had absorbed the cash balances of twenty lacs at the credit of the Annuity Fund, according to their own admission. The second point, the legality of the refund, has been decided by the Privy Council.

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If then the new Rules debar a refund, which I contend they do not, I claim the refund in equity because the Rules were passed in consequence of incorrect statements and a threat based upon them, and because it would be an unparalleled wrong to pay dissentients, simply because they were such, and deny the refund to others, simply because they took the statements of their masters in good faith.

Robertson and Elliot.

I claim the refund as one of those who had money at their credit at the time the Rule was passed under the legal opinion of the four learned gentlemen who gave a legal opinion to the Secretary of State in the following words. "WE THINK IT VERY POSSIBLE THAT THE COURT "IN INDIA AND THE JUDICIAL COMMITTEE WOULD CONSIDER THE DISTINCTION BETWEEN THE "CASE OF ROBERTSON AND STONHOUSE (THE LATTER STANDS FOR ALL OTHERS) TOO FINE TO

"ADMIT OF THEIR RECOGNIZING A PRACTICAL DIFFERENCE." The Secretary of State subsequently departed from this opinion on a reference to two of the parties to this opinion, and restricted the refund to the amount at credit of the parties when the new rules were passed. I submit he is not competent to do this, especially if the parties who gave the opinion *are*, as is probable, the law advisers of the Secretary of State for India. I claim on the ground of the legal opinion of the four that there is NO PRACTICAL DIFFERENCE BETWEEN ROBERTSON AND STONHOUSE.

Robertson obtained payment up to the date of the decree, that is subsequent to the grant of the Annuity, and I claim up to the grant of the Annuity to me. The two upon whose opinion Sir C. Wood acted, are bound by the opinion they gave with the other two, and are not at liberty to qualify it to my detriment.

The claim for a refund, I admit, is confined to those who had COMPLETED THEIR CONTRACT and had paid more than the half value of the Annuity at the time the Rule was passed, and this contract must be fulfilled.

I observe in fine that the only ground upon which the Court ordered the refund to be stopped was the want of funds, and as it is admitted by that authority there were 19 lacs at the credit of Subscribers, this turns out to be no ground, and I make my appeal to the justice and honor of the Secretary of State as the "ultimate beneficiary" in the words of the Privy Council: "The true result of this case, with reference to the point now under consideration, appears to their "Lordships to be that the ultimate beneficiaries under the trust, have authorized the trustees to "hold out to the prior beneficiaries, advantages which were not warranted by the trust, and have "thereby altered the position of the prior beneficiaries; and their Lordships think that, under "such circumstances, both the trustees and the ultimate beneficiaries must be liable to make good "to the prior beneficiaries the advantages which have been so held out to them."

The next claim I advance is founded on my Memorial to Government, dated 2nd May 1857, and I respectfully solicit Government will send to the Secretary of State, a statement shewing the sum to which I am entitled, if my claim is granted.

This claim has formed the subject of much special pleading on the part of the Government and the Board of Revenue, to which I shall not advert. I now quote the orders of Government, merely observing that it was of no avail, EXCEPT to deprive ME of my allowances. Had the importers paid the duty, the Commissariat would have paid them, as they did the duty they did pay, as in all cases the "purchaser" or, in other words, the consumer pays the duty. "The most "Noble the Governor in Council having had under his consideration "the foregoing letter,* resolves to direct in conformity with the sugges- "tions offered by the Commissary General, that supplies of arrack for the Government should be "obtained as usual through the Commissariat Department, on precisely the same footing as before "the promulgation of Act VI of 1844, under this resolution all arrack purchased on account of "Government by the Commissary General will be exempted from such portion of duty now "payable as will leave the amount to be paid per gallon equal to the general import duty of 8 per "cent. heretofore levied."

* From the Commissary General.

If this is a legal order within the purview of Act VI of 1844, I have no claim. If illegal, I cannot be mulcted to the extent of about forty-thousand Rupees thereby.

It is illegal first, as directing the levy of 8 per cent. duty under Regulation 1 of 1813 repealed by Act VI of 1844.

It is illegal because no part of Act VI of 1844 authorizes Government to exempt A PURCHASER from the levy of duty.

It is illegal, because it is beyond the power of Government to give any orders for the remission of duty, except in each particular case. Not only is this the law, but is the interpretation of the law by the Supreme* Government which declared the issue of any order, such as I have quoted, to be illegal and beyond the province of the Madras Government.

M. C. Madras Govt., 31st July 1855, No. 792. R. D.
Do. 7th October 1856, No. 1066. R. D.

The legality of the order of the Madras Government is upheld solely and entirely to prevent me drawing commission and has no other effect whatever. The revenue to Government, if paid as Sea Custom duty, and returned as Sea Custom revenue, would have entitled me to commission, but it was carried to the credit of Government as revenue by profits from the sale of arrack to the Army by the Commissariat, and in the Abkaree Revenue from the arrack supplied to the Collector of Madras.

Legal opinions advise me that the Madras Government had not a shred of authority to pass this order, and I respectfully solicit the Secretary of State will submit the order for the opinion of Council, by whose decision I am content to abide, assured it cannot be desired to deprive me of what the law gives me or to uphold the decision of the Madras Government, and enable it to hold money lawfully due to me in its coffers, solely upon its own interpretations of right and wrong, and its own dictum. This would be an injustice so palpable, I cannot for a moment suppose the Secretary of State to whom the law permits an appeal, would sanction.

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As the decision of the Secretary of State, in the first instance, was based upon the opinion of the majority of the Madras Government, it is, I respectfully submit, no reply to my Memorial to adhere to that opinion, when the Madras Government had become unanimous, and admits that the opinion previously given had not been equitable, and recommends that the decision at which it had arrived, should be modified. I would respectfully represent that the commission having been given for 40* years, according to the principle which the Secretary of State applies at home, I should receive compensation for the withdrawal of the Commission, I rest my claim to reconsideration on the Despatch of Government and the following observations of the Board of Revenue,

* See Appendix A.

3. "Mr. Underwood now points out that he will be a loser to a considerable extent by this arrange- "ment, the net revenue from Sea Customs having steadily increased ever since, and that his hardship is "enhanced by his compulsory retirement in consequence of his having completed 35 years' service.

4. "As regards the latter argument, the Board admit that it was not taken into consideration by "them when proposing the alteration in Mr. Underwood's remuneration. It in reality did not affect the "question then, and moreover, at that time, it was doubtful whether the rule would be enforced against Officers "for whom Annuities were not available. This was Mr. Underwood's position at the time, though the recent "grant of Extra Annuities has since afforded one for his acceptance.

5. "As regards the other argument the Board observe that they never intended that the alteration "should involve loss to Mr. Underwood. In paragraph 3 of their proceedings dated 19th June 1857, they "stated that their object 'was not to deprive him of any portion of his emoluments.' Their wish was to "place him in the independent and impartial position which he should occupy "between Government and the Mercantile community, and to prevent his pro- "ceedings, however correct and just they might be, from being imputed to a "personal interest in their issue. In these views Government concurred and the fees were commuted "accordingly.

Para. 23, Board's Proceedings 7th April 1857, No. 1086.

6. "Thus loss to Mr. Underwood was neither contemplated nor intended, and in fact any arrange- "ments involving loss was wholly precluded by the Honorable Court's Despatch "dated 29th November 1843, No. 22, and quoted in the margin, which secure "him during his tenure of office.

Enclosure in from Govt., dated 9th March 1844 R. D., No. 209, in Con. 25th March 1844, No. 607.

7. "Under these circumstances, and especially with reference to the above Despatch, the Board "recommend that Mr. Underwood's application may be complied with, and that the Civil Auditor may be "instructed on his retirement to adjust his salary accordingly.

8. "The arrangement thus disturbed has so far answered its purpose, that Mr. Underwood has "occupied the position desired for him during the interval, and this will cease to be the case only when Mr. "Underwood vacates the appointment. His successor, as already ordered, will receive a consolidated salary "only."

The last case to which I shall advert is the proceedings of the Madras Government, No. 1137, 25th October 1859. The President His Excellency Sir C. Trevelyan entered a minute inviting his colleagues (on the ground that I had "preserved an unblemished reputation "during a long course of service") to consider my request that my son should obtain a Cadetship. His Excellency Sir Patrick Grant, Mr. Walter Elliot and Mr. Morehead recorded individual minutes testifying to the merited reputation which my long and efficient conduct as a public servant had so universally gained for me, and Mr. Morehead observed "that "in my estimation there are few members of the Civil Service who have so deservedly "earned a title to the consideration from the Secretary of State for India which Mr. Underwood "seeks to obtain." The Government forwarded these minutes to the Secretary of State who, in his Despatch No. 174, dated 24th November 1860, stated this application has been recorded. On the occurrence of a vacancy for a Cadet by the resignation of Mr. Rundall, I applied to Sir Charles Wood on public grounds, and the recommendation of the Madras Government to give my son this appointment and received the following reply.

INDIA OFFICE, *February 13th*, 1861.

SIR,

In reply to your letter of the 8th January, I am desired by Sir C. Wood to inform you that the vacancy caused by the resignation of Mr. Charles Rundall, will NOT, as you suppose, BE FILLED UP by the NOMINATION of A CADET to the Indian Army, *such appointments have been entirely discontinued*, and it is therefore not in Sir Charles Wood's power to comply with your request.

I have, &c.,

J. W. GREENFELL.

The same Mail which brought this letter conveyed a Dispatch from Sir Charles Wood NOMINATING Mr. Clerk, a Cadet to this very appointment, who arrived and was promoted to the rank of Ensign.

I would further observe that my application to continue another year in the service was refused by the Secretary of State, and as to the consideration due to me as a public servant, I appeal to the proceedings of Government, No. 1137, 25th August 1859, while permission to remain another year was granted to an Officer in the Civil Service, whose claims on the consideration of the Secretary of State were not greater than mine.

Upon the grounds above stated I respectfully solicit that the Madras Government will forward copy of this letter to the Secretary of State, accompanied by its recommendation that the claims preferred may receive consideration, and that some portion at least of the large sum really due to me, amounting to above a lac of Rupees, may be awarded to me, especially as I was prevented drawing the fixed salary by compulsory removal from the Service.

I have the honor to be,
Sir,
Your most obedient humble Servant.

W. H. Underwood

APPENDIX A.

Extract from a letter from the Secretary to Government Fort St. George, to the President and Members of the Board of Trade, dated 29th November, 1819, No. 643, sanctioning the Commission and Pay of Collector of Sea Customs, viz., Pay Collector Rupees 1,800, Deputy 1,000, Assistant 525 per mensem.

Commission.	*Per Cent.*
Collector.....3	do.
Deputy.....1½	do.
Assistant..... ½	do.

1. The Governor in Council approves the principle of making these allowances in a great measure dependent on the public revenue collected by them.

Extract from a letter from the Secretary to the Board of Revenue, to the Chief Secretary to Government, dated 28th July 1821.

2. It would accordingly appear to have been the intention of the Board of Trade that Commission should BE DRAWN ON SUCH SUMS AS WERE ACTUALLY PAID INTO THE TREASURY.

No. 794.

To

THE PRESIDENT AND MEMBERS OF THE BOARD OF REVENUE.

GENTLEMEN,

Application for compensation for the pay and commission falling 25 per cent. below the sum calculated.

3. I am directed to acknowledge the receipt of your Secretary's letter of the 13th ultimo (24), and to state that, by a reference to the arrangement, agreeably to which the allowances of the Collector of Sea Customs at Madras, his Deputy and Assistant are regulated, it appears to have been intended that they should *fluctuate with the collections*, and that the Governor in Council sees no ground for complying with the request which Mr. Harrington has submitted.

(Signed) D. HILL,
Secretary to Government.

FORT ST. GEORGE, *26th October*, 1821.

Harlow 12 March

My dear Pratt

I send the letter I
cannot describe to you how
much it may future
comfort or life depends
upon the success of this
one & some Hundred Pounds
have now to be raised &
to me & Cromwell Affairs
from wh you & others

Dear Sir

I received your letter
dated the 15th inst
and am sorry to find
that you have
been so unfortunate
as to lose your
watch. I am
sorry to say that
I cannot help you
in the matter
as I do not know
where it is likely
to be found
but I do not think
it is at all likely
that it will be
found in the
neighbourhood
of Mr. Elder's
premises

Yours truly

N B. The answer to be sent
to Mr U care of Smith + Elder

15

Toronto, 28th February 1862

To

The Chief Secretary to Government

Fort Saint George

Sir,

In accepting the annuity I intimated my intention of claiming the sum at my credit in excess of the half value of my annuity, being equitably and legally entitled thereto. I now prefer that claim with others which I respectfully solicit Government will be pleased to refer to the Secretary of State for his decision. The delay has been caused by the necessity of obtaining legal opinions. The grounds on which I found my claim are distinct from those on which a decision has been given. I shall refrain from all arguments upon the facts adduced and respectfully urge that this may not be taken to my detriment or not by arguments to disprove them.

2. I claim the 1st and 2nd first because I was as far as practicable a dissentient to the new Rules and the proceedings of the Civil Fund 4th July 1850 exhibited this. I was in the Chair when they were carried and did not vote but spoke

against

against them and it was in consequence of the strong manner in which I adverted to their injustice, that Mr Elliots letter was recorded. The legal opinion however is that all parties are as much bound, if bound at all whether they voted for or against the Rules. I do not therefore press this fact.

3. I claim the refund on the ground that the Rule under which it was granted, and which the Privy Council have declared legal is not rescinded. True it was advisedly omitted in the new Rules, and so were others but they are acted upon and in full force (and) form part of the new Rules, and as the Court rested satisfied with ordering the refund to be stopped under the impression the Law was on their side, they must abide the legal consequences as matters stand, the Rule is not repealed and the refund was stopped by Order of the Court and Government before the Rule passed, thus the refund is refused by the Court not by the Rules they never were applied or thought of till Mr Robertson went to Law.

4 At a special meeting of the Fund 26th September 1850 the Service absolutely refused to repeal the Rule for a refund, but at a subsequent meeting the Service passed the new Rules under a threat — that if they did not — no more annuities should be given — and under a false statement that there were no assets at the credit of the Fund, and that the grant of refund in past years was illegal. The first is proved not to be true because it is shewn in statement F° Trustees letter to Government 18 July 1851 that 19,90,230 " 12 " 4 or Twenty Lacs were at the Credit of the Fund and the Court in Para 28 Dispatch 16 of 1852 admits that Nine Lacs are at the Credit of subscribers and in para. 6 that considerable loss was incurred by granting annuities of 600 £ and thus the Court took the assets of the fund of 1825 to pay the demands of the fund of 1818 which they agreed to pay from the principal of that Fund made over to them and then robbed us of the refund because they had absorbed the cash balances of Twenty Lacs at the Credit of the Annuity fund according to their own admission. The second point the legality of the refund has been decided by the Privy Council.

5 If then the new Rules debar a refund which I contend they do not, I claim the refund in equity because the Rules were passed in consequence of incorrect statements and a threat based upon them and because it would be an unparalelled wrong to pay dissentients simply because they were such and deny the refund to others simply because they took the statements of their Masters on good faith.

6 I claim the refund as one of those who had money at their credit at the time the Rule was passed under the legal opinion of the learned

Counsel

Gentlemen who gave a legal opinion to the
Secretary of State in the following words:-
"We think it very possible that the Court in
"India and the Judicial Committee would
"consider the distinction between the case of
"Robertson and Monhouse (the latter stands
"for all others) too fine to admit of their recogni-
"zing a practical difference". The Secretary
of State subsequently departed from this opinion
on a reference to two of the parties to this opinion
and restricted the refund to the amount at
credit of the parties when the new Rules were
passed. I submit he is not competent to do
this especially if the parties who gave the opinion
are, as is probable, the Law advisers of the
Secretary of State for India. I claim on
the grounds of the legal opinion of the Court that
there is no practical difference between
Robertson and Monhouse. Robertson
obtained payment up to the date of the decree
that is subsequent to the grant of the Annuity
and I claim up to the grant of the Annuity alone.
The Two upon whose opinion Sir C. Woodlaces
are bound by the opinion they gave with the other
two and are not at liberty to qualify it to my
detriment.

7 The claim for a refund I submit is confined to those who had completed their contract and had paid more than the half value

of

of the annuity at the time the Rule was passed and their Contract must be fulfilled.

8 I observe in fine that the only ground upon which the Court ordered the refund to be stopped was the want of funds and as such is admitted by that authority there were 19 Lacs at the credit of Subscribers this turns out to be no ground and I make my appeal to the justice and honor of the Secretary of State as the "ultimate beneficiary" in the words of the Privy Council. "The true result of this case with "reference to the point now under consideration "appears to their Lordships to be that the ultimate "beneficiaries under the trust have authorized "the Trustees to hold and to take prior beneficiaries "advantages which were not warranted by the "trust, and have thereby altered the position of "the prior beneficiaries and their Lordships "think that, under such circumstances both the "Trustees and the ultimate beneficiaries must "be liable to make good to the prior beneficiaries "the advantages which have been so held and to "them."

9 The next claim I advance is founded on my Memorial to Government dated 2d May 1865 and I respectfully solicit Government will send to the Secretary of State a statement showing the sum to which I am entitled if my claim is granted &c.

Tilly

10 This claim has formed the subject of much special pleading on the part of the Government and the Board of Revenue which I shall not advert. I now quote the order of Government merely observing that it was of no avail except to deprive me of my allowances. If the importers paid the duty the Commissariat would have paid them as they did the duty they did pay as in all cases the "purchaser" or in other words the consumer pays the duty. "The most "Noble the Governor in Council having had "under his consideration the foregoing letter resolves "to direct in conformity with the suggestions offer- "ed by the Commissary General that supplies of "Arrack for the Government should be obtained "as usual through the Commissariat Department "on precisely the same footing as before the promul- "gation of Act VI of 1844, under this Resolution all "Arrack purchased on account of Government "by the Commissary General will be exempted from "such portion of duty now payable as will leave "the amount to be paid per gallon equal to the "General import duty of 8 per cent heretofore levied."

11 If this was a legal order within the purview of Act VI of 1844 I have no claim. If illegal I cannot be mulcted to the extent of about forty thousand Rupees thereby.

12 This illegal first as directing the levy of 8 per cent duty under Regulation 1 of 1813 repealed by Act VI of 1844.

13. It is illegal because no part of Act VI of 1844 authorizes Government to exempt a "Purchaser" from the levy of duty.

14 It is illegal because it is beyond the power of Government to give any orders for the remission of duty except in each particular case. Not only is this the Law but is the interpretation of the Law by the Supreme Government which declared the issue of any order such as I have quoted to be illegal and beyond the province of the Madras Government.

15 The legality of the order of the Madras Government is upheld solely and entirely to prevent me drawing Commission and has no other effect whatever. The Revenue to Government if paid as Taxation or Rent returned as Sea Customs Revenue would have entitled me to Commission but it was carried to the credit of Government as Revenue by profits from the sale of Arrack to the Army by the Commissariat on the Abkaree Revenue from the Arrack supplied to the Collectors of Madras

16 Legal opinion as to me the Madras Government had no power to order a bond to pass this order as I respectfully consider to be necessary of if I have will submit the order for the opinion of Counsel by whose decision I am conscientiously assured it cannot be desired to deprive me of what the Law gives me to uphold the decision of the Madras Government and withhold money

Lawfully

lawfully due to me in its Coffers solely upon its own interpretations of right and wrong, and its own dictum. This would be an injustice so palpable I cannot for a moment suppose the Secretary of State to whom the Law permits an appeal would sanction.

17. The next claim I refer to is that contained in my Memorial to the Secretary of State 9 March 1860. The reply to this that high functionary simply referred me to his previous decision which I respectfully submit was no answer to my Memorial. The Secretary of State concurred in opinion with the majority of the Moors Government. When I received that opinion I waited on Sir Charles Trevelyan and on my representation His Excellency modified his opinion - stated he considered I was entitled to a portion of the money and that if he were on the Commission of the Secretary of State he would give me not less than Ten Thousand Rupees. His Excellency advised me to Memorialize the Secretary of State and said that he would support it. Added so and was informed by the Secretary to Government that my Memorial had been forwarded Home by the Bombay Mail accompanied by a favorable recommendation by this Government that a part at least of the amount in question should be given to me.-

18. As the decision of the Secretary of

of State in the first instance was based upon the opinion of the majority of the Moors Government I respectfully submit no reply to my Memorial be adhere to that opinion, when the Moors Government had become unanimous and admits that the opinion previously given has not been equitable and recommends that the decision at which it had arrived should be modified.

19. I would respectfully represent that the Commission having been given for 40 years according to the principle which the Secretary of State applied at Home I should receive compensation for the withdrawal of the Commission, I rest my claim to the consideration on the Despatch of Government and the following observations of the Board of Revenue.

"Mr Underwood now points out that "he will be a loser to a considerable extent by this "arrangement, the net revenue from Sholapur having "steadily increased ever since, and that his salary is "enhanced by his compulsory retirement in consequence "of his having completed 25 years service."

"As regards the latter argument the "Board omit that it was not taken into consider "ation by them when proposing the alteration in Mr "Underwood's remuneration. If it really did "not affect the question then, and, moreover, at that time "it was doubtful whether the rule would be enforced

against

"against Officers for whom Annuities were not available. This was Mr Underwood's position at the
"time, though the recent grant of Extra Annuities
"has since afforded one for his acceptance."

"As regards the other argument the
"Board observe that they never intended that
"the alteration should involve loss to Mr Underwood.
"In paragraph 3 of their Proceedings, dated 19 June
"1857, they stated that their object "was not to de-
"prive him of any portion of his emoluments." Their
"wish was to place him in "the independent and
"impartial position which he should occupy
"between Government and the Mercantile Community
"as to prevent his proceedings however correct and
"just they might be, from being imputed to a personal
"interest in their issue. In these views Government
"concurred and the fees were commuted accordingly."

"Thus loss to Mr Underwood was
"neither contemplated nor intended, and in fact any
"arrangement involving loss was wholly precluded
"by the Honorable Court's Despatch, dated
"29 November 1843. No 22, and quoted in the margin,
"which secured him during his tenure of Office."

"Under these circumstances, and
"especially with reference to the above Despatch,
"the Board recommend that Mr Underwood's
"Application may be complied with, and that the
"Civil Auditor may be instructed on his retirement
"to adjust his salary accordingly."

"The arrangement thus disturbed

has

"has so far answered its purpose, that Mr Underwood
"has occupied the position desired for him during
"the interval, and this will cease to be the case only
"when Mr Underwood vacates the appointment.
"His successor, as already ordered, will receive
"a consolidated salary only."

20 The last case to which I shall advert is the Proceedings of the Madras Government No 1137. 25 October 1859. The President His Excellency Sir C. Trevelyan entered a minute inviting his Colleagues (on the ground that had "preserved an unblemished reputation during a long course of service") to consider my request that my son should obtain a Cadetship. His Excellency Sir Patrick Grant Sir Walter Elliot and Mr Morehead recorded individual minutes testifying to the merited reputation which my long and efficient conduct as a Public Servant had so universally gained for me and Mr Morehead observed. "Though in my "estimation there are few members of the Civil Service "who have so deservedly earned a title to the consider-"ation from the Secretary of State for Chairman" "Mr Underwood's claim on this score" the Government forwarded these minutes to the Secretary of State who in his despatch No 17 dated 22 Novem-ber 1860 stated that application had been recorded.

21. On the occurrence of a vacancy for a Cadetship by the resignation of Mr Randall I applied to Sir Charles Wood on public grounds

and

and the recommendation of the Madras Government to give my son this appointment and received the following reply.

India Office Feb: 13. 1861.

Sir

In reply to your letter of the 8th January I am directed by Sir C. Wood to inform you that the vacancy caused by the resignation of Mr Charles Randall will not as you suppose be filled up by the nomination of a Cadet to the Indian Army such appointments have been entirely discontinued and it is therefore not in Sir Charles Woods power to comply with your request.

I have &c
J. W. Grenfell

The same mail which brought this letter conveyed a Despatch from Sir Charles Wood nominating Mr Charles a Cadet to their very appointment who arrived and was promoted to the rank of Ensign.

22 I would further observe that my application to continue another year in the service was refused by the Secretary of State and as to the consideration due to me as a public servant

27

servant I appeal to the Proceedings of Government No 1137, 25. August 1859 while permission to remain another year was granted to an Officer in the Civil Service whose claims on the consideration of the Secretary of State were not greater than mine.

23. Upon the grounds above stated I respectfully solicit that the Madras Government will forward a Copy of this letter to the Secretary of State accompanied by its recommendation that the claims preferred may receive consideration and that some portion at least of the large sums peculiarly due to me amounting to above a Lack of Rupees may be awarded to me especially as I was prevented drawing the fixed salary by compulsory removal from the Service.

I have the honorable
Sir
Your most Obedient humble Servant
W. Stephenson Underwood

Appendix A.

Extract from a letter from the Secretary to Government Establishments to the Resident at Bombay, dated 28th February 1821.

2. I am directed to request that you will be pleased to furnish this Office with an account of the Collections and Disbursements on account of the Public Revenue, specifying the Heads under which they may have been severally brought to account.

Denominations	Per Annum.
Collector	3 do.
Deputy	1½ do.
Assistant	½ do.

6. The Governor in Council observes that from the Returns of the Establishments allowed to the Collectors and Deputy Collectors, it appears that the Collectorships of Surat, Broach, Kaira, Ahmedabad, Dholka, Cambay, Jambusar, Ankleshwar, Amod, Hansot, Broach, Jhagadia, Wagra, Olpad, Kim, Mandvi, Mahuwa, Umrut, Sachin, Gandevi, Nowsari, Variav, Kamrej, Palsana, Mahidpur, Amalsad, Pardi, Umbergaon, Dharampur, Nasik, Chandore, Peint, Sinnar, Ahmednagar, Jamkhed, Sholapur, Indapur, Poona, Satara, Wai, Karar, Nagpur, Chanda, Ramtek, Broach, Surat, Ahmedabad, Kaira

No 1914.

To

The President and Members
of the Board of Revenue

Gentlemen,

I am directed to acknowledge
the receipt of your Secretary's letter of the
13th Instant (24), and to state that, by
reference to the arrangement, agreeably
to which the allowances of the Collector
of Customs at Madras, his Deputy
and the Assistants are regulated, it appears
to be understood that they should
reside within the Garrison and
that the Garrison Commandant
from whom an application for the request
which Mr Harrington has submitted.—

Fort St. George
26th October 1821.

I have &c.
(Signed) B. Hill
Secretary to Government

Memo: on Mr. R.W. Underwood's claim to a refund of the sum standing at his credit in excess of the half value of his Annuity.

Fro: 11 November 1859. No 619.

Seen: on a letter addressed to the Civil Fund dated 31 October 1859, Mr. Underwood referring to his acceptance of an Annuity of 1000£ per annum from the 1st of May 1860. said he thought it right to mention, with a view to prevent all possibility of question hereafter that he considers "himself legally & equitably entitled to, & shall claim a refund of whatever sum may stand at the credit of his account, as a Subscriber to the Civil Service Annuity Fund of 1825, at the time of his retirement, in excess of the then half value of his Annuity; & that under these circumstances his acceptance of the Annuity is without prejudice to his right to such refund". The Trustees, in submitting

Read 11th Nov 1859

Sign. R.W. Underwood Esq.

Sign. [illegible]

Sir 21st

Civil Service Annuity Office
Somerset House
London
21st November 1859

Sir,

I am directed by the Trustees of the Civil Service Annuity Fund to acquaint you that they have received your letter of the 11th instant, and to inform you that they have no objection to your receiving the sum standing at your credit in excess of the half value of your Annuity.

I am, Sir,
Your obedient Servant,
[illegible]
Secretary

R.W. Underwood Esq.

Letter 5 November 1859 - N° 302.

submitting this application stated that it was the first occasion of Mr Underwood applying for an annuity, though he became qualified for one in the year 1847/48 - that he was present at the Meeting of the 17th June 1853 at which the Rules abrogating the practice of refund were passed, & voted in their favor - & that no surplus subscription remained at his credit at the time.

2 Mr Underwood's application with the letter of the Trustees was forwarded for the consideration & orders of the Secy. of State for India, & attention drawn to the correspondence & opinions of the Advocate General on Sir W. Stanhouse's claims submitted with the Despatch of the 21st October N° 24 of 1859 -

To Secy. of State 11 Nov. N° 280 of 1859.

Letter dated 16th Nov. 1859 N° 592 -
Orders thereon - 19th " " " 610.
Despatch - 25 " " " 630

3 Subsequently Mr Underwood addressed the Govt. & requested that they would take steps so that the Secy. of State might not pass an order on his letter to the Secy. to the Civil Fund (which merely intimated his intention to prefer a claim) until he had stated the grounds upon which his claim to a refund was preferred. He said that he made this request, as from the account sent to him by the Secy. to the Civil Fund, there was a balance at his credit when the Rule was passed, whereas the Secy. stated there was none. A copy of this letter was transmitted to the Secy. of State in continuation of the former Despatch.

Note. 25 Nov. N° 630 of 1859.

4 In his Despatch of the 29 March 1860 - N° 91. the Secy. of State acknowledged the receipt of the above two letters together with those relating to the claims of Sir W. Stanhouse

&

& others, & forwarded for the information & guidance of this Court, a copy of a case which had been submitted to Counsel in reference to those claims & of the opinion given thereon, with one observation that the Legal opinion appeared to state inaccurately the case of Mr. Hooper.

5 The case submitted to Counsel, as regards the present claims, was,

Whether the claims of Sir Fawcett Stanhouse, Mr. Goldingham, Mr. Hooper & Mr. Underwood respectively, or any of them are in any & what way affected by the judgment in Roberts's case.

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 proclaimed by those Rules, subscribers or non subscribers, are entitled to the benefit of those Rules.

6 The opinion given by Counsel was.

The judgment in Roberts's case states that the position of the subscribers was much altered by the publication & continuance of the rules as to refunds & their Lordships held that the Company, tho' not bound by any positive declaration 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.

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

& in the cases of Sir F. Stanhouse, Mr. Goldingham, Mr. Hooper, & Mr. Underwood, the special circumstances, which occurred in

in the case of Mr Roberts, does not exist, & we think as a matter of law that the claims in respect of refunds which any one of them might previously have had or 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 W. Stanhouse & that of the other three gentlemen. It seems that Sir W. Stanhouse 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 Sudlow & the Superintendents would consider the distinction between the case of Sir W. Stanhouse & that of Mr Roberts too fine to admit of their recognising a practical difference, & we would advise the Secy. of State in Council to pay his claims & that of others in precisely the same situation, rather than incur the risk of an adverse decision.

3 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

which they were passed or not, & whether they assented or dissented at the time.

7 In communicating these papers to the Trustees of the Widows Fund the Govt: observed that they did not clearly gather from them whether the claims of Sir W. Stanhouse & of any other Widows Servants who might be similarly circumstanced was 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 prepaid at the date of retirement from the service, with interest in either case to the date of repayment. & a further reference would be made to the Secretary of State upon the subject.

Rder of Govt 12 Aug 60 - No 210. 8 Meanwhile the Trustees were 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

was formerly stated, & the surplus interest at 5 per Cent to the date of payment would have to be calculated on the larger amount. They accordingly submitted an amended Statement shewing out according to this altered mode of valuation, to be substituted for that forwarded with their letter of the 23rd ulto. & observed that it had been carefully ascertained that no further claims could be advanced under this interpretation of the legal opinion. & in this Statement the surplus at credit of Mr Underwood beyond the half value of his annuity (exclusive of the special advantages of quarterly payments, viz, on 17th June 1853, the date of the passing of the new rules

From Secy: to the Civil Fund
23rd May 1860. No 1141

of the New Rules of 1853," & to submit a Statement shewing what was the amount of such surplus in each case on the 17th June 1853, & 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.

From Secy: to Civil Fund
14th July 1860. No 196

9 In reply to this requisition the Trustees reported that the operation of the legal opinion on which the Home Govt. had determined to act would include Messrs Goldingham & Underwood, as well as the Gentlemen whose names were formerly reported, while the surplus at the credit of these last Gentlemen on the 17th June 1853 would be somewhat larger than was

amount of their subscriptions was admissible, & if it were, whether the surplus was to be calculated up to the 17th June 1853, or to the date of their retirement from the Service. It was at the same time pointed out that Messrs Goldingham & Underwood were both present at the Meeting of 17th June, & voted in favor of the adoption of the new Rules.

From Secy of State 24 Novr 1860 No 76. 11 In reply to this reference, the Secy of State furnished, for the information & guidance of Govt, the following Case & opinion of Counsel thereon:

1st Whether under the circumstances explained in the letters from Mr Sudlestan of 14th July 1860 & Mr Goldingham of 3d May 1860, the claim of Messrs Goldingham &

Surplus at credit Rs: 4144-4-4
Interest " -1475-11-4
Total Rs: 5619-15-8

rules) with simple Interest at 5 per cent per annum from that date to 31st July 1860 was shown to be Rs: 5619-15-8. And also the amount of the sum at his credit under the new Rules of 1853, on the date of his accession to an annuity with simple Interest at 5 per cent per annum from date of retirement to 31st July 1860 was entered at Rs: 45695-1-8.

Surplus at credit Rs: 45130-15-6
Interest " 564-2-2
Total Rs: 45695-1-8

To Secy of State 10th Augt No 20 of 1860 10 The foregoing letter & its enclosure were forwarded in reference to previous correspondence, to the Rt. Hble the Secy of State, & orders solicited whether under the circumstances explained the claims of Mr Underwood (with that of Mr Goldingham) to refund of the surplus amount

& Underwood to refund of the surplus amount of their subscriptions, be admissible.

2ly Whether in the event of the former question being answered affirmatively, the surplus is to be calculated up to the 17th June 1853, or to the date of their retirement from the service.

Opinion of Counsel.

We have carefully considered this case, with reference to the claims submitted to the consideration of Counsel by Messrs Holdingham & Underwood.

The question as to the admissibility of these claims is not free from difficulty. In the opinion which we wrote in January last, we advised that the claims should be admitted of those who at the time of the passing of the new Rules had paid in excess of the half value of their annuities according to their respective ages, & under the circumstances explained in the documents, on the 17th June 1853 paid in excess of the amount which was fixed as the half value of the annuity by the Rules of 1825 (as published in 1838) & which was the whole sum which they were required to pay under such Rules in order to entitle them to the annuity.

It might certainly be contended, & very possibly with success, that inasmuch as the service had, by passing the new Rules on 17th June 1853, agreed to alter & enhance the price at which annuities were thereafter to be taken, the only claims to be refunded should be limited to what ever surplus might exist of subscriptions beyond the half value of an annuity calculated at the enhanced price which the subscribers were by the new Rules required to pay. We cannot however say that this is free from doubt, & on the whole, we are of opinion that it would be safer to admit the claims of Messrs Holdingham & Underwood to a refund of the surplus standing to their credit on the 17th June 1853 over & above the amount which they would have been respectively required to pay under the old Rules of 1825 in order to entitle them to the Annuity.

&c

& they were authorised to refund to Messrs. Holdsworth & Underwood the amounts to which they were respectively entitled under the decision therein contained & to refund to Govt. the exact sums paid to them.

13 In their letter of the 12th February 1861 No 39. the Managers of the Fund furnished a Statement of the refunds made under the above authority. The amount actually paid to Mr Underwood was shown to be Rupees 5,724-2-6 viz:

Surplus at credit beyond half value of Annuity on 17th June 1853	Rs: 4,144-4-4.
Simple Interest at 5 per cent per annum from 17th June 1853 to 31st Jany: 1861, the date of refund	1,579-14-2
Total Rupees	5,724-2-6

S. D. C.
1st April 62.

In finally adjusting the amount of refund to the other three Gentlemen Sir R. Stothouse Mr Hooper & Mr Studleston the same principle should of course be adopted, & the half value of their respective Annuities on the 17th June 1853, should be calculated exclusively of the value of the additional advantages of quarterly payments & payments to date of decease for which an additional but optional payment would have been required.

For the reasons stated in our opinion of 1st August last we think that the refunds to Sir R. Stothouse Mr Hooper Mr Studleston, Mr Holdingham & Mr Underwood, should be limited to the surplus which stood to their credit respectively on the 17th June 1853, over & above the half value of their respective Annuities calculated as before mentioned.

12 A copy of the above Despatch & its enclosure was furnished to the Managers of the Civil Fund

S

Memorandum
on Mr W.C. Underwood's
claim to a refund of the
sum standing at his credit
in excess of the half value
of his annuity.

Financial Dept.

Proceedings of the Kadnavy Govt.

Read the following
letter from W.C. Underwood Esq. late of the Kadnavy Civil Service

(dated 28th February, 1862)

Rde thereon 11th April 1862 & 276

The first 8 paras of the foregoing letter relate to Mr W.C. Underwood's claim to a refund of the amount standing at his credit as a Subscriber to the Civil Service Annuity Fund of 1826, at the time of his Retirement, in excess of the then half value of his Annuity. With other, this claim formed the subject of the correspondence with the Home Government, noted in the margin, and finally determined, under the opinion given by

Ellc

Fin. Sec. to Govt. No 25 of 1859
Do do 25 " " 31 " "
Hom. do 29 January 21 of 1860
Fin do 28 " " 6 " "
Do do 25 April 7 " "
Do do 8 June 12 " "
Do do 10 August 20 " "
Hom. do 31st " " 64 " "
Hom. do 24 Nov. 76 " "

by Counsel on the case submitted to them by the R. H. the Secretary of State for India, that the amount of ~~Capex~~ Subscriptions & Donations of Mr Anderson standing at the credit on the 1st June 1853 (the date of the passing of the Act 16 & 17 Vict. c. 95) with simple interest thereon from that date to the date of Repayment, should be directed by him accordingly done, and the amount actually Repaid and now Payable to the Rt. Hon. Sir J. C. Colquhoun.

5724-2-0

2. The Govt. are not at liberty to depart from the Rule laid down by the Act of Parliament for final Award.

Therefore to re-open the question, especially as the same principle was adopted in finally adjusting the amount of Deposit to the other Proprietors of the Service, Sir C. Malcolm, Rt. Hon. J. Mostyn, Sir C. R. Pasley, Sir J. Colquhoun & Mr. J. Gubbins.

Sir

Respecting the Calculation of the Annuity equivalent to Annuity of quarterly payments and payments to date of Decease &c.

Surplus at credit beyond Calculation of Annuity on 1st June 1853 ——— Rs. 4144-4-4
Simple Interest to period of Annuity from 1st June 1853 to 1st January 1861 the date of Repayment ——— 1579-11-8
Total Rs. 5724-2-0

para 9 at Requisition

3. The claim advanced in the Remaining paras of Sir Anderson's letter were considered and disposed of in the Minute of Sir J. Colquhoun of the 27th ult. according to which he proposed to state the Amount for final Award.

To the Revenue Dept. B with Sir J. Anderson's letter Dated 9th

Watt

