

PRESS SERIES.

G.O., No. 548 A.-548 B.

Dated 9th July 1897.

[Despatch Abstract.]

Kolla Singanna Chetty's Choultry at Benares.

Forwarding to the Board of Revenue and to the Secy General certain correspondence relative to the management of —, and stating that the proposal of the Secy General, Madras, to move the Govt of the N. W. Provinces and A. N. O. to invest all undistributed interest on the original endowment in Govt. promissory notes and to deposit them with him, must be with the approval of Govt.

Letter. Stating that no action can be taken at present under the Benariable Endowments Act VI of 1890 for the admsn of the accumulated savings out of the endowment set apart for —, and requesting the Govt of the N. W. Provinces and A. N. O. to invest in Government securities such further savings of that endowment as may have accrued during the period the choultry was closed and to be the parties to the same.

BACK PAPERS.

G.O.	No.	Department.	Date.
	1-2-28		19-12-98

FURTHER PAPERS.

G.O.	No.	Department.	Date.
	723 1-2-28		



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O P I N I O N

2607

Re Kolla Singanna Chetty's Endowment Benares Choultry
(Vide G.O. No.2815 Misc dated 3rd June 1897 R.D)

On further consideration of the point referred to in the -
aforesaid Government Order I see no reason to change the opinion
expressed by me in para 2 of my former opinion dated 19th April 1897
and I shall now give my reasons somewhat fully. It is observed in
the said order of Government "that Government having received the
trust money, appears to be the trustee that is, the person acting in
the administration of the trust rather than Singanna Chetty's heirs"
I do not see my way to accept this version of the arrangement made in
writing between Singanna Chetty and the Right Honorable the Governor
in Council of Fort Saint George. The reference to the trust money -
received by Government is I presume to the Company's paper of the -
value of 10,000 Sicca Rupees. But the question however is whether it
was transferred in trust or absolutely. The Cowle and Muchilka -
unmistakably show that it was an absolute transfer in consideration
of a perpetual annuity payable in monthly instalments by the East -
India Company to the nominee from time to time of Singanna Chetty,
his heirs and successors .

This annuity is appropriated by Singanna Chetty the author
of the trust to the maintenance of the Choultry built by him at -
Benares. He expressly declares in the last para of his Muchilka that
none of his heirs or successors shall possess any power to alienate
the money to be paid monthly by the Collector of Benares to any other
purpose what—over than the support and repair of the Benares Choultry
erected by him to which the same is exclusively appropriable. As -
regards the Company's paper for 10,000 Rs which was blank endorsed -
and deposited in the office of the Accountant General, "placing the
same entirely at the disposal of the East India Company" the Muchilka
declares that the same "is sold, transferred and disposed of to the
East India Company"- vesting the Governor in Council with full and
ample power to sell, transfer and dispose of the same to any person
whatever or to cancel and destroy the Company's paper at pleasure".

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Thus it will be seen that the trust fund or endowment for the Choultry is not the original amount of 10,000 Rs in the shape of Company's paper which was transferred or rather released to the East India Company, but the annuity which the Governor in Council on behalf of the East India Company undertook to pay in consideration of such transfer or release, the amount of annuity having been fixed not on a mercantile basis, but at a liberal figure in consideration of the Charitable object to which the same was to be dedicated and appropriated by the annuitant. The person to receive the annuity and apply the same subject to the supervision of the Collector of Benares where the Choultry was erected is to be the nominee from time to time of Singanna Chetty and his heirs and therefore it follows that the trustee is - Singanna Chetty and after him his heirs and not Government which has undertaken and is bound to pay the annuity. If the annuity has been withheld by Government for some years for reasons stated, the accumulation thereof with its accretion in the shape of interest, being the fund now in question, cannot be regarded as money held by Government as trustee, that is the person acting in the administration of the trust. No doubt there is a recital in the Cowle and Muchilka of Singanna Chetty having endowed the Choultry with the sum of 10,000 Rs and of his having for that purpose deposited in the office of the Accountant - General Company's paper for that amount blank endorsed &c. Such a recital cannot affect the real nature of the transaction, but even if the Company's paper itself was the endowment and trust fund, it has in the interests of the trust been converted into an annuity. After such conversion the trust will attach to the annuity and not to the Company's paper assuming that the latter was once impressed with trust. It is difficult to see what is the property the ownership of which is vested in Government to which ownership an obligation is annexed (vide definition of trust section 3, Indian Trusts Act, 1882) If the Company's paper is regarded as the property in question the ownership therein has been transferred absolutely to the East India Company without any obligation attaching to such ownership and the Government cannot be regarded as trustee. Even when trust property is transferred on a perpetual lease the rent reserved being payable to the lessor and his heirs for being appropriated and applied to the

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purposes of the trust, the lessee certainly does not by such transfer become a trustee. If as I think is the case the annuity with its accretion is the trust property and the only trust property the ownership therein is vested in Singanna Chetty and his heirs and an obligation is annexed to such ownership viz that it shall be exclusively appropriated to the maintenance of the Benares Choultry.

The arrangements recited in the Cowle and Muchilka as to a local agent being appointed from time to time by Singanna Chetty and his heirs for receiving and disbursing the annuity payable at Benares by the Collector who is also to superintend and whenever he deems it necessary to do so to dismiss such agents, cannot affect the position of Singanna Chetty and his heirs as trustees, nor preclude their dispensing with agents and managing the Choultry direct without employing a local agent, subject it may be to the supervision of the Collector. Attention may here be drawn to the portion of the Muchilka which provides that the local Agent is to act under instructions from Singanna Chetty respecting the disbursement of the annuity and that a copy of such instructions is to be furnished to the Collector of Benares in order that he may superintend the Agent and cause the money to be appropriated to the purposes directed by Singanna Chetty. This provision will equally hold good in regard to his heirs. If Singanna Chetty was trustee during his lifetime, it could hardly be contended that on his death he was not succeeded in the office of trustee by his heir, but that Government became trustee assuming for the sake of argument that Government is legally capable of being a trustee and regarded as a person acting in the administration of a trust. (See however Kinlock versus Secretary of State for India in Council L.R. 15 Chancery Division per James L. J, at page 9).

Madras
12th June 1897

V. Bhashyam Iyengar
Acting Advocate General.

(True Copy)

Louise B. B. B.
H. W. Morgan
Government Solicitor.

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(1897) Department

From Ernest Barclay
Government Solicitor
Madras

The Secretary to Government
Revenue Department
Cotacamund

No 338.

Dated 15th June 1897
Recd

Encls 4

Forwarded with enclosures
with reference to the Order
of Government No 2815. This
dated 3rd June 1897 Revenue
Department.

Ernest Barclay
Government Solicitor

Printed
12/7/97

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DD

The Hon. Mr. C. J. C.

12/7/97

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8/7/97

Read C.No.9551/96-

" again O.M.No.51 d/4-3-97

" " G.O.No.2815 d/3-6-97

" also C.No.4358/97

" again G.O. 313 d/19-6-97

" also C.No.4681/97

" again letter to the Chief Secretary
to Govt., N.W.Provinces & Oudh,
No.3138 d/19-6-97.

" also C. No.5022/97

G.O. No. 3487 of 9th July 97.

The papers read above will be
communicated to the Board of Revenue
and the Accountant-General.

2. It appears from the opinions of
the Hon'ble the Advocate-General read
above that a scheme for the administra-
tion of the fund representing the accu-
mulated savings out of the Benares por-
tion of the endowment might be settled
under section 5 of Act VI of 1890 (In-
dia), should an application be made under
section 6 of the Act, by Rao Bahadur --
C.V. Curniah Chetty the present repre-
sentative of the family of the founder
of the endowment. But owing to the li-
tigation now going on between that re-
presentative and his minor sons as to

who should control the family charities,
the Government considers that no action
in this direction is feasible at present.

3. The proposal contained in the -
concluding portion of the Accountant-Ge-
neral's letter No. 1613 dated 22nd May -
1897 meets with the approval of Govern-
ment.

4. The following letter ^{will} be despatch-
ed to the Government of the North West
Provinces and Oudh.

4747

To the B^d of Rev (L.A.)
u u A.G.

Despatch 3-8-97

To

The Chief Secretary to Govt.,

N.W. Provinces and Oudh.

Sir,

In continuation of my letter No. 3138
dated 19th June 1897 and adverting to para
2 thereof, I am directed to forward the -
accompanying copy of the opinions of the
Hon'ble the Advocate-General, from which -
it will seen that for settling a scheme -
under section 5 of the Charitable Endow-
ments Act for the administration of the
accumulated savings out of the Benares -
portion of the endowment, the application
under section 6 of the Act should be made
by Rao Bahadur C.V. Gummiah Chetty, the
present representative of the family of -
the founder of the endowment. But owing
to the litigation now going on between -
Rao Bahadur C.V. Gummiah Chetty and his
minor sons as to who should control the
family charities, no action in this direc-
tion is feasible at present.

2. I am also to invite attention to
the correspondence ending with your let-
ter No. 368/111-865 B., dated 29th March
1894, and to request that, if His ^{Honour} ~~Highness~~
the Lieut. Governor sees no objection, -

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Such further savings out of the Benares
portion of the endowment, ^{as} ~~which~~ may have
accrued between the date on which the --
choultry was closed in April 1894 and that
on which it has been, or will be, reopened
in the current month, may be invested in
Govt. securities and the notes transfer-
red to this Govt., so that they may be --
added to, and ~~deposited~~ deposited with, those
referred to in your letter quoted above
which have already been so transferred.
and which have been
placed in the custody
of the local Accountant-
General.

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39/97

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Government (1897) of Madras.
REVENUE.

Recd.

Enclosures

Regd.

1897.

Spare copies

G.O., No. 548A, 9th July 1897.

JULY.

Kolla Singanna Chetty's Choultry at Benares.

Communicating to the Board of Revenue and to the Accountant-General certain corre-
spondence relative to the management of --, and stating that the proposal of the Accountant-
General, Madras, to move the Government of the North-Western Provinces and Oudh to invest
all undisbursed interest on the original endowment in Government pro-notes and to deposit
them with him, meets with the approval of Government.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from the Chief Secretary to Government, North-West Provinces and Oudh, to the Secretary to the Government of Madras, Revenue Department, dated Allahabad, 24th December 1896, No. 1710—III-865-B:—

I am directed to acknowledge the receipt of your letter, No. 582, dated 30th October 1896, forwarding copies of certain correspondence relative to the management of the choultry in Benares founded by Kolla Singanna Chetty; and requesting to be informed of the circumstances under which this Government withdrew its supervision over the management.

2. In reply, I am to state for the information of His Excellency the Governor in Council, that there was no intention on the part of this Government that the control of the trust should be withdrawn. In the letter from this Government, No. 569, dated 26th March 1891, a copy of a communication from the Board of Revenue of these Provinces who have the control of such trusts was forwarded to the Government of Madras in which enquiry was made whether the representative of the founder was willing to join in an application for the vesting of the Benares trust funds in the treasurer of charitable endowments; and it was at the same time suggested by the Board that one vesting order might be issued to cover the four trusts, including the three in Madras. In your letter No. 762, dated 22nd February 1894, it was said in reply, that the representative of the founder desired that all the trusts should be vested in one order, and the accumulated interest was accordingly transferred to the Government of Madras. I am therefore to request, that, with the permission of His Excellency in Council, it may be stated whether it is proposed to issue one vesting order to cover all four trusts.

3. I am also to state, for the information of His Excellency, that orders have been issued for the resumption of the control of the trust by the Collector of Benares; and to add that it is presumed that arrangements will be made by the Government of Madras for the remittance of the necessary funds to the Collector for payment to the local agent whose name the Collector has been asked to report.

READ—again the following:—

Official Memorandum No. 51.

The Honourable the Advocate-General is requested to favour Government with his opinion on the following case:—

In 1816, one Kolla Singanna Chetty paid, in Government promissory-notes, a sum of Rs. 40,000 absolutely to Government on condition of its paying for ever Rs. 50 a month for the upkeep of each of the four choultries established by him at Madras, Chittoor, Conjeeveram and Benares. The trust was accepted by the Government and a cowle and muchilika were executed to that effect in 1817. Savings to the extent of Rs. 11,500 have, however, accrued from the monthly allowance payable in respect of the Benares choultry and the amount which has been invested in Government promissory-notes is now held by the Government. The questions for opinion are—

(1) Whether a scheme can legally be settled under India Act VI of 1890 for the utilization of the sum of Rs. 11,500 above mentioned, and if so (2) who should make the application under section 6 of the Act for action to be taken thereunder by the Local Government.

2. The following documents are forwarded for perusal and return:—

- (1) Cowle executed by Government.
- (2) Muchilika executed by Kolla Singanna Chetty.
- (3) Memorandum of services to be performed in the Benares choultry.
- (4) Notification of the Government of India, No. 1569, dated 24th October 1890.
- (5) G.O., No. 581, dated 30th October 1896.

(Signed) G. STOKES,
Ag. Secretary to Government.

4th March 1897.

To the Honourable the Advocate-General, through the Government
Solicitor, with copies of the papers referred to
in paragraph 2 of the Official Memorandum.

READ—again the following G.O., Mis. No. 2815, Revenue, dated 3rd June 1897, on endorsement of the Government Solicitor, Madras, No. 261, dated 23rd April 1897, forwarding the following:—

OPINION.

[Re Kolla Singanna Chetty's Endowment, Benares Choultry.]

As regards the first question, i.e., whether a scheme can legally be settled under Act VI of 1890 in respect of Rs. 11,500, there seems no reason to doubt that, under India Act VI of 1890, the sum of Rs. 11,500 which is now in the hands of the Accountant-General of Madras can, on application made in accordance with section 6, be vested, by an order of the Local Government, in the treasurer of charitable endowments for the Presidency of Madras. The maintenance of the Benares choultry and the feeding of a certain number of persons daily therein "a charitable purpose" as defined in section 2 of the Act, notwithstanding that the charitable purpose relates in part to a certain daily religious worship associated with the choultry. The sum of Rs. 11,500 invested in Government securities being the unexpended portion of the annuity which forms the trust fund and the interest thereon is property held in trust for a charitable purpose within the meaning of section 4 of the Act. A scheme can also, on application made in accordance with section 6, be settled by the Local Government under section 5 of the Act, for the administration of the trust fund to be vested in the treasurer of charitable endowments and in such scheme, a person may be appointed to administer the property, regard of course being had in settling such scheme to the wishes of the author of the trust as far as practicable (*vide* sub-section 5 of section 5). In the present case, there is no reasonable ground for any doubt or dispute as to the trust or the wishes of the author of the trust.

2. As regards the second question, I am of opinion that no action can be taken either under section 4 or 5 of the Act without an application being made by the present trustee Rao Bahadur C. V. Cunniah Chetty Garu, the grandson of the author of the trust. The cowle executed by Government in favour of Kolla Singanna Chetty, the author of the trust, and the corresponding muchilika executed by the said Kolla Singanna Chetty clearly show that the trusteeship was to be hereditary in the family though by reason of the residence of the family being in Madras a local agent was to be appointed from time to time by the trustee for the time being, such local agent being, however, subject in the application of the annuity to the purposes of the trust, to the control and supervision of the Collector of Benares and subject to be removed or suspended by the said Collector. The person acting in the administration of the trust within the meaning of clause (a) of sub-section 1 of section 6, is therefore at present Rao Bahadur C. V. Cunniah Chetty Garu, the present trustee. The local agent, if any, is only an agent or deputy of the trustee and the Collector has only the right of supervision under the terms of the cowle and the muchilika, over the administration of the trust. Though the fund in question is in possession of the Accountant-General yet being trust fund, it is legally vested in and held by the trustee.

3. As it however appears from the papers accompanying the reference that Rao Bahadur C. V. Cunniah Chetty Garu is claiming the fund from the Accountant-General, it may be assumed that he does not want the Government to take any action under the Act. I may add that, under the terms of the cowle and the muchilika already referred to, the Government is perfectly justified in withholding the accumulated fund and the annuity from the present trustee who appears to have practically closed the choultry in 1894. The Government in 1817 undertook to pay in perpetuity an annuity of Rs. 600 to Kolla Singanna Chetty and his heirs not simply in consideration of an absolute transfer to Government of Government securities to

the value of Rs. 10,000 but also in consideration of the said annuity being applied to the up-keep and maintenance of a choultry—an institution which was then the policy of the Government to encourage and it was expressly provided that such annuity was payable to the trustee's local agent by the Collector, who was to cause the money to be appropriated by the local agent to the purposes of the trust and to prevent its misappropriation. But for such provisions, which were intended to ensure the maintenance of the choultry and the effectual carrying out of the charity, Government certainly would not have stipulated to pay in perpetuity a liberal annuity of Rs. 600. It also appears from the papers that Mr. Cunniah Chetty's estate is now under litigation between him and his minor sons, that Mr. Firth has been appointed Receiver of the Estate by the High Court pending the suit and that he has requested Government to stay action in the matter of Mr. C. V. Cunniah Chetty's claim to the fund until the result of a reference he has made to the High Court as a Receiver is known. Such reference, the exact nature of which is not stated, appears to have been made before August 1896, and I do not know whether it is still pending or how it has been disposed of. If notice of such reference be given to Government the whole matter may be laid before the High Court for such order as it may deem fit to pass. If the fund in question is not dealt with by an order of the High Court in the suit now pending it may eventually become necessary for Government to have a suit instituted in the High Court under section 539 of the Code of Civil Procedure for settling a scheme for the management of the charity and for appointing a new trustee if necessary. A part of the subject-matter of the trust being now in the hands of the Accountant-General of Madras the High Court of Madras will have jurisdiction under section 539 of the Code of the Civil Procedure though the choultry is situate in Benares.

MADRAS,
19th April 1897.

(Signed) V. PHASHYAM IYENGAR,
Acting Advocate-General.

Order—Mis. No. 2815, Revenue, dated 3rd June 1897.

With reference to paragraph 2 of the Honourable the Advocate-General's opinion, it is observed that Government, having received the trust money, appears to be the trustee, that is the person acting in the administration of the trust, rather than Singanna Chetty's heirs. These heirs having merely the power to appoint and dismiss the managers of the choultries, which are the objects of the trust, cannot, it appears to Government, be called trustees. With these observations the papers will be returned to the Honourable the Advocate-General for further consideration of this point and opinion.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Honourable the Advocate-General,
through the Government Solicitor,
with C. No. 3406 and enclosures.

Read—also the following letter from W. H. MICHAEL, Esq., Officiating Accountant-General to the Government of Madras, to the Secretary to Government, Revenue Department, dated 22nd May 1897, No. 1613:—

With reference to G.O., Mis. No. 2101, dated the 27th of April 1897, I have the honour to state that, out of the interest which has accumulated on the Government promissory-notes for Rs. 11,500 deposited with me in trust for the Kolla Singanna Chetty's choultry at Benares, I have purchased additional notes for Rs. 1,400 and that the investment now in my hands aggregates Rs. 12,900. I take this opportunity to refer to the correspondence recorded in Madras, G.O., No. 581, Revenue, dated 30th October 1896, from which it will appear that the interest on the original endowment of 10,000 Sicca rupees in respect of the choultry at Benares has not been disbursed for a long time by the North-West Provinces Government and to enquire whether Government wish that such arrear interest and further interest should also be invested. The interest is payable monthly at Benares and is not in my hands or under my control. The North-West Provinces Government might be moved to make the investment through the Local Accountant-General and to deposit the notes from time to time with me along with those already placed in my custody.

READ—again the following G.O., Mis. No. 3137, Revenue, dated 19th June 1897:—

Read—the following letter from H. F. EVANS, Esq., I.C.S., Chief Secretary to Government, North-West Provinces and Oudh, to the Secretary to the Government of Madras, Revenue Department, dated Naini Tal, 28th May 1897, No. 588—III-865-B:—

With reference to correspondence ending with the letter from this Government No. 1710—III-865-B, dated 24th December 1896, relative to the management of the choultry in Benares founded by Kolla Singanna Chetty, I am directed to state, for the information of His Excellency the Governor in Council, that Gauri Shankar, the person who had previously acted as the local agent of the trust at Benares, has been appointed to receive and disburse the monthly payments; and to request that the date from which the monthly allowance for the trust should be drawn at Benares may be estimated at a very early date. The last payment made by the Collector of Benares, amounting to Rs. 160-13-4 was in July 1894; and the balance Rs. 81-9-1 was made over to the local agent, of which due intimation was given to the Government of Madras by the Collector.

2. I am also to invite your attention to paragraph 2 of the letter quoted above, and to request that, with the permission of His Excellency in Council, this Government may be informed if it is proposed to issue one vesting order to cover all the four trusts founded by Kolla Singanna Chetty.

Order—Mis. No. 3137, Revenue, dated 19th June 1897.

Ordered that the following letter be despatched to the Government of North-West Provinces and Oudh.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

READ—again the following letter from the Acting Secretary to the Government of Madras, Revenue Department, to the Chief Secretary to Government, North-Western Provinces and Oudh, dated 19th June 1897, No. 3138:—

I am directed to acknowledge the receipt of your letters, No. 1710, dated 24th December 1896, and No. 588, dated 28th May 1897, relative to the management of the choultry at Benares founded by Kolla Singanna Chetty and, in reply to paragraph 3 of the earlier communication, to point out that, under the orders of His Excellency the Governor-General in Council contained in the marginally-noted correspondence, it is the Collector of Benares that has to disburse from the Benares treasury the sum of Rs. 50 per mensem to the agent for the time being appointed by the representative of Singanna Chetty to conduct the charity at that station, and that no remittance of funds from this Presidency appears to be necessary.

2. With reference to the enquiry in paragraph 2 of the same letter, I am directed to observe that, as the promissory notes for Rs. 40,000 originally deposited by the Government to pay for ever Rs. 50 per mensem for the maintenance of each of the four choultries founded by him, there is no longer any property to be vested in the treasurer of charitable endowments. As regards, however, the sum which represents the accumulated savings out of the Benares portion of the endowment, the Advocate-General to the Government of Madras, who was consulted on the point, is of opinion

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that a scheme for the administration of this fund might be settled under section 5 of Act VI of 1890 (India), should an application be made under section 6 of the Act. The question as to who should make the application under the last mentioned section is still under reference to the Hon'ble the Advocate-General and, on receipt of his reply, a further communication will be addressed to your Government.

3. Referring to paragraph 1 of your letter of the 28th ultimo, I am directed to state that payment of the allowance may be resumed from 1st July 1897.

READ—also endorsement of the Government Solicitor, Madras, dated 15th June 1897, No. 338, forwarding the following:—

OPINION.

[Re Kolla Singanna Chetty's Endowment, Benares Choultry (vide G.O., Mis. No. 2815, Revenue, dated 3rd June 1897)].

On further consideration of the point referred to in the aforesaid Government Order, I see no reason to change the opinion expressed by me in paragraph 2 of my former opinion, dated 19th April 1897, and I shall now give my reasons somewhat fully. It is observed in the said order of Government "that Government having received the trust money, appears to be the trustee, that is, the person acting in the administration of the trust rather than Singanna Chetty's heirs." I do not see my way to accept this version of the arrangement made in writing between Singanna Chetty and the Right Honourable the Governor in Council of Fort St. George. The reference to the trust money received by Government is, I presume, to the Company's paper of the value of 10,000 sicca rupees. But the question however is whether it was transferred in trust or absolutely. The cowl and muchilika unmistakably show that it was an absolute transfer in consideration of a perpetual annuity payable in monthly instalments by the East India Company to the nominee from time to time of Singanna Chetty, his heirs and successors.

This annuity is appropriated by Singanna Chetty, the author of the trust, to the maintenance of the choultry built by him at Benares. He expressly declares in the last paragraph of his muchilika that none of his heirs or successors shall possess any power to alienate the money to be paid monthly by the Collector of Benares to any other purpose whatever than the support and repair of the Benares choultry erected by him to which the same is exclusively appropriate. As regards the Company's paper for Rs. 10,000, which was blank endorsed, and of the East India Company, "the muchilika declares that the same "is sold, transferred and disposed of to the East India Company" "vesting the Governor in Council with full and ample power to sell, transfer and dispose of the same to any person whatever, or to cancel and destroy the Company's paper at pleasure." Thus it will be seen that the trust fund or endowment which was transferred or rather released to the East India Company, but the annuity consideration of such transfer or release, the amount of annuity having been fixed not on a mercantile basis, but at a liberal figure in consideration of the charitable object to which the same was to be dedicated and appropriated by the annuitant. The person to receive the annuity and apply the same subject to the supervision of the Collector of Benares where the choultry was erected is to be the nominee from time to time of Singanna Chetty and his heirs and therefore it follows that the trustee is Singanna Chetty and after him his heirs and not Government which has undertaken and is bound to pay the annuity. If the annuity has been withheld by Government for some years for reasons stated, the accumulation thereof with its accretion in the shape of interest, being the fund now in question, cannot be regarded as money held by Government as trustee, that is the person acting in the administration of the trust. No doubt there is a recital in the cowl and muchilika of Singanna Chetty having endowed the choultry with the sum of Rs. 10,000 and of his having for that purpose deposited in the Office of the Accountant-General Company's paper for that amount, blank endorsed, &c. Such a recital cannot affect the real nature of the transaction, but, even if the Company's paper itself was the endowment and trust fund, it has in the interests of the trust been converted into an annuity. After such conversion the trust will attach to the annuity and not to the Company's paper, assuming that the latter was once impressed with trust. It is difficult to see what is the property the ownership of which is vested in Government, to which ownership an obligation is annexed (*vide* definition of trust, section 3, Indian Trusts Act II of 1882). If the Company's paper is regarded as the property in question, the ownership therein has been transferred absolutely to the East India Company without any obligation attaching to such ownership and the Government cannot be regarded as trustee. Even when trust property is transferred on a perpetual lease the rent reserved being payable to the lessor and his heirs for being appropriated and applied to the purposes of the trust, the lessee certainly does not by

such transfer become a trustee. If, as I think is the case, the annuity with its accretion is the trust property and the only trust property the ownership therein is vested in Singanna Chetty and his heirs and an obligation is annexed to such ownership, viz., that it shall be exclusively appropriated to the maintenance of the Benares Choultry.

The arrangements recited in the cowl and muchilika as to a local agent being appointed from time to time by Singanna Chetty and his heirs for receiving and disbursing the annuity payable at Benares by the Collector who is also to superintend and whenever he deems it necessary to do so to dismiss such agents, cannot affect the position of Singanna Chetty and his heirs as trustees, nor preclude their dispensing with agents and managing the choultry direct without employing a local agent, subject, it may be, to the supervision of the Collector. Attention may here be drawn to the portion of the muchilika which provides that the local Agent is to act under instructions from Singanna Chetty respecting the disbursement of the annuity and that a copy of such instructions is to be furnished to the Collector of Benares in order that he may superintend the Agent and cause the money to be appropriated to the purposes directed by Singanna Chetty. This provision will equally hold good in regard to his heirs. If Singanna Chetty was trustee during his lifetime, it could hardly be contended that, on his death, he was not succeeded in the office of trustee by his heir, but that Government became trustee assuming for the sake of argument that Government is legally capable of being a trustee and regarded as a person acting in the administration of a trust. (See how- ever Kinlock *versus* Secretary of State for India in Council, L. R. 15, Chancery Division, per James, L.J., at page 9).

MADRAS,
12th June 1897.

(Signed) V. BHASHYAM IYENGAR,
Acting Advocate-General.

ORDER—No. 548A, Revenue, dated 9th July 1897.

Miscellaneous.

The papers read above will be communicated to the Board of Revenue and the Accountant-General.

2. It appears from the opinions of the Hon'ble the Advocate-General read above that a scheme for the administration of the fund representing the accumulated savings out of the Benares portion of the endowment might be settled under section 5 of Act VI of 1890 (India), should an application be made under section 6 of the Act, by Rao Bahadur C. V. Cunniah Chetty, the present representative of the family of the founder of the endowment. But owing to the litigation now going on between that representative and his minor sons as to who should control the family charities, the Government considers that no action in this direction is feasible at present.

3. The proposal contained in the concluding portion of the Accountant-General's letter No. 1613, dated 22nd May 1897, meets with the approval of Government.

4. The following letter will be despatched to the Government of the North-West Provinces and Oudh.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).
the Accountant-General.

Exd. P. Seshtharam.

40 Copies.

1897.

NORTH-WESTERN PROVINCES AND OUDH

From

The Government of Fort St. George.

Recd.

Enclosures

Regd.

1897.

Spare copies

Letter, No. 548B, 9th July 1897.

JULY.

Kolla Singanna Chetty's Choultry at Benares.

Stating that no action can be taken at present under the Charitable Endowments Act VI of 1890 for the administration of the accumulated savings out of the endowment set apart for —, and requesting the Government of the North Western Provinces and Oudh to invest in Government securities such further savings out of that endowment as may have accrued during the period the choultry was closed and to transfer the notes to this Government.

No. 548B, REVENUE, 9TH JULY 1897.

REVENUE DEPARTMENT.

From

THE HON'BLE MR. G. STOKES, I.C.S.,
Acting Secretary to the Government of Madras,

To

THE CHIEF SECRETARY TO GOVERNMENT,
NORTH-WEST PROVINCES AND OUDH.

Ootacamund, 9th July 1897.

SIR,

In continuation of my letter No. 3138, dated 19th June 1897, and advertg to paragraph 2 thereof, I am directed to forward the accompanying copy of the opinions of the Hon'ble the Advocate-General, from which it will be seen that for settling a scheme under section 5 of the Charitable Endowments Act for the administration of the accumulated savings out of the Benares portion of the endowment, the application under section 6 of the Act should be made by Rao Bahadur C. V. Cunniah Chetty, the present representative of the family of the founder of the endowment. But owing to the litigation now going on between Rao Bahadur C. V. Cunniah Chetty and his minor sons as to who should control the family charities, no action in this direction is feasible at present.

2. I am also to invite attention to the correspondence ending with your letter No. 388—III-865 B., dated 29th March 1894, and to request that, if His Honour the Lieutenant-Governor sees no objection, such further savings out of the Benares portion of the endowment, as may have accrued between the date on which the choultry was closed in April 1894 and that on which it has been, or will be, re-opened in the current month, may be invested in Government securities and the notes transferred to this Government, so that they may be added to, and deposited with, those referred to in your letter quoted above which have already been so transferred and which have been placed in the custody of the local Accountant-General.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) G. STOKES,
Ag. Secretary to Government.

Encl. P. Seetharam.

20 Copies.