M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 627 Press ~~M.R.O.~~

8—7

Dated 29—6—~~19~~ 1687

Not to be folded or roughly handled

No. 8. Read the following letter from J. R. BOYSON, Esq., Honorable Company's Solicitor; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 23rd May 1857, No. 271.

SIR,

I have the honor to state that in obedience to the orders of Government, I submitted the Extracts from Minutes of Consultation, noted in the margin, and the papers therein referred to for the opinion of Mr. Dale.

Mins. Cons. dated 21st April 1857, No. 453, Judl. Dept.
Mins. Cons. dated 21st April 1857, No. 454, Judl. Dept.

I now forward a copy of Mr. Dale's opinion on these papers.

The Extract from Minutes of Consultation, under date the 13th Instant, No. 552, did not reach me until the 19th Instant, *after* Mr. Dale had written his opinion, and consequently this Extract Minutes Consultation No. 552, has not *yet* been before *him*.

I have since carefully perused Mr. Dale's opinion, and the papers referred to in Extract Minutes Consultation, No. 552, and think that the submission of these papers to Mr. Dale may be deferred until I am in a position to lay before him the further evidence and information which he considers it desirable to obtain.

I therefore beg to suggest that a copy of Mr. Dale's opinion be forwarded to the Acting Magistrate of Malabar, with a request that he will instruct Mr. Cullin to make the further enquiries, obtain the further evidence, and afford the additional information which Mr. Dale has pointed out and asked for: and that I be furnished in due course with a copy of the result of this reference for submission to Mr. Dale, with Extract Minutes Consultation No. 552.

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

OPINION.

1. I have perused the accompanying Extract from Minutes of Consultaton, 27th April 1857, No. 453, with the Enclosures, as also (since their return) the papers forwarded from the Mauritius.

2. Three questions present themselves from the statements there made; Murder, Piracy, and Kidnapping.

3. As regards the kidnapping, I observe that the Master as been brought to trial, on one or more of the charges and been fined. It appears to me, to be an inadequate punishment for so grave an offence, fraught as has been seen with such fearful consequences.

The papers, however, do not show, that the Kat Syrang or Pilot, has been punished. It is quite clear, that Captain Rodriguez, could never have succeeded in getting the coolies if it had not been for the assistance of the Pilot, and it appears to me that, if any thing, he is the more culpable of the two.

4. As regards any crime of piracy, or even robbery, I entertain strong doubts, whether either offence has been committed. I do not credit the statements, regarding the coolies having been regularly paid, and their good treatment; doubtless deception was practiced by the coolies to get Captain Rodriguez ashore on the 14th September, and some force used to detain him, and to make him land the money; as also to take the coolies to the Malabar Coast; but, I place sufficient reliance on the general truthfulness of the statements given before Mr. Cullin, that the coolies and creoles were paid by Captain Rodriguez himself, on an adjustment of the accounts by Madame Hugon; doubtless coercion was used and probably threats held out, but if that be the real state of facts, no indictment for the robbery could in my opinion, be sustained. Then, as regards any charge of piracy, I again credit the general truthfulness of the statements, which disclose that, whatever might have been the state of duress in which the Captain and his Officers and Crew were in, and whatever might have been the threats held out, the Captain's passion for gain obtained the mastery, and that he required, and obtained, payment of passage for every individual cooly he took away from the Island of Chouette or Sud Est; doubtless the coolies were armed, and did keep watch day and night; but if my surmises be correct, it follows no charge of piracy could be sustained.

5. At any rate, with the evidence as now before me, I cannot advise any of the parties being prosecuted for those offences, or either of them.

6. As regards the charge of murder; I apprehend no body can entertain a doubt, that that crime has been committed. If only a portion of the statements regarding the cruelties exercised on those unfortunate creatures be true, no very great surprise can be experienced at the result; I believe the murder was not pre-meditated. I give credence to the general outline of the case, elicited by Mr. Cullin. I do not, however, go the full length with the Advocate General of the Mauritius, as to the weight that such circumstances would have on a Court or Jury; there is one point in the evidence on which I entertain serious doubt, (and to which I allude hereafter,) but I am of opinion, there is abundant evidence to convict some five of the Prisoners now in custody, as the actual murderers; of course this could only be done by admitting one (or two perhaps) of the Prisoners as approvers.

7. The point on which I entertain the doubt before alluded to, is the identity of the body. No moral doubt can exist on the point; but no Court would convict men of such a crime, and under the circumstances, unless the body were clearly identified; and although the approvers would give evidence of a character that would, if they were ordinary witnesses, be sufficient on that point; yet I consider, that the body should be fully identified by independent evidence, as a point on which the approvers should be corroborated.

8. Madame Hugon did not see the body, and Monsieur Dumazel only saw some feet with shoes on, and legs, a parasol, and a great coat. He says the feet and legs "were recognized by us, as being those of Mr. Hugon, as he was the only white man on the Island." He does not even say, that he was able to recognize the shoes or parasol, or great coat as belonging to Monsieur Hugon, and as those, that were worn and used by that gentleman on the day he left Chouette. He says "the shoes and clothing were also recognized by the Creoles who accompanied me," but unfortunately those Creoles have not been examined; nor is it stated where they are.

9. I will now refer to the statement of the circumstances attending the exhumation of the body, contained in Acting Commander Peyton's Despatch, dated the 27th January 1857, para. 2. Captain Peyton, and the Officers who accompanied him, and probably Mr. Thomas A. DeCruz did not know the deceased; so they could not identify the body. As I gather the Creole, Auguste Pampan was the only other person who was present, and in all probability, he was the only person then there who could identify the body.

10. Now as regards the evidence of Monsieur Dumazel, it amounts to very little; it is quite consistent with his statement, that the feet and legs were not those of Monsieur Hugon; and that that gentleman may be still alive; the body of a white man MIGHT have been buried there from some ship, without the knowledge of Monsieur Dumazel; but even the sex of the body, to which the feet and legs were (doubtless) attached, is not shewn. How far the Creoles might have been enabled to supply the defects, and identify the articles found with the body, it is impossible for me to judge.

11. Captain Peyton's statement shews, that on the body being exhumed, there was nothing but the skeleton left; from which I infer, that all identification by means of the features was lost.

12. Auguste Pampan has not been examined; nor is it shewn, where he is; in all probability, he might give evidence sufficient to supply this point.

13. It would have been extremely desirable; if Esteven, and the 4 Caffres who accompanied him, had been examined; they should be present at the trial, if possible, or as many of them as practicable; especially Esteven.

14. If the body were sufficiently identified, the evidence would be, as follows: The approver or approvers would state the arrival at Lubine of Monsieur Hugon on the 16th August, and then relate what passed; how Monsieur Hugon was killed, and by whose hands; also what was done with the body, his clothes, parasol, &c., and the subsequent acts of the murderers, &c. Then the independent evidence would shew, the departure of Monsieur Hugon from Chouette on the morning of the 16th August; his non return; the despatch of the 2nd boat to Lubine; the acts, and sayings of the coolies to the Creoles, who went in search. The return of the coolies to Chouette, their admission, &c. The finding of the body, and its identification, as also the finding of the clothes, parasol, axe, &c., with the identification of the former as belonging to Monsieur Hugon, and having been worn, and used by him, when he left Chouette; and

Fort St. George, Judicial Consultation, 2nd June 1857.

the axe identified, as the instrument used by the Prisoners or one of them, in the commission of the crime.

15. I am of opinion that with such evidence the Prisoners would be convicted.

16. And that the offence would be murder and not manslaughter.

17. There is considerable difficulty in determining who should be committed, &c., from the confusion of names introduced into the depositions; and until that confusion is cleared up, it will be impossible to say who should be committed, and which of the Prisoners might be admitted as approver. All who were present at the murder, and were either active or passive, while it was committed, or who took part in concealing the murder, should be committed for trial.

18. I would, however, recommend that Mr. Cullin be requested to make out, a statement of the names of the whole of the persons on the Island of Lubine at the time of the murder, with the whole of their aliases, and the countries or villages to which they belonged; that then he should have the witnesses before him, and the Prisoners; and by supplemental depositions, identify the several Prisoners spoken to by each witness, by the names or several aliases or their villages, &c., as shewn in his list or statement; or in some other way, shew which of the Prisoners each witness is speaking of.

19. I believe there were 17 coolies on the Island of Lubine at the time, independently of the 2 men who rowed the boat; Veloo and Veloyden and a Creole altogether twenty. No mention is made by the coolies of the Creole, who, it appears by the papers from the Mauritius, was likewise on the Island; enquiry might be made regarding him; I collect, however, there were only 19 or at most 20 people on the Island at the time; yet, from the confusion in the names as given in the depositions, one might be led to suppose there were 31. This can be readily remedied by the course I have recommended.

20. I think it would be desirable, if Mr. Cullin at the same time, took statements or supplementary depositions from the witnesses who were at Chouette, shewing more particularly, the conduct of each of the coolies on their return from Lubine, on the night of the 16th or morning of the 17th August; and their admissions. These would be useful as guiding in the selection of an approver or approvers.

21. The only point that appears to remain for consideration, is where are the Prisoners to be tried. Since writing my former opinion, I have had occasion to consider the Regulation II of 1829. If the Prisoners are Native subjects of this Government, I am of opinion, that the Governor in Council has the power to direct, that they should be brought to trial before any of the Criminal Courts within this Presidency, or they may be committed to the Sessions holden by Her Majesty's Judges in the Supreme Court; or lastly the Prisoners may be handed over to the authorities at the Mauritius.

22. I have not had any practice in the Sessions Courts, so cannot speak from *actual* experience; but I apprehend there is less technicality used than in the Supreme Court and probably with a tolerably clear chain of evidence, less chance of the Prisoners escape, by a trial conducted there; than there would be on a trial by a Jury in the Supreme Court.

23. If it be determined not to put that Regulation in force, then there is the alternative to bring the Prisoners and the witnesses from Cochin to Madras; soliciting the Mauritius Government to send the remaining witnesses from the Mauritius and the Six Islands, up here; or to send the Prisoners and witnesses from Cochin direct to the Mauritius, leaving the Mauritius Government to collect such further evidence as the Advocate General may deem requisite.

24. This latter course appears to me the easiest.

25. In either case, some difficulty may arise in getting the witnesses either from, or to, the Mauritius; but I apprehend, if the Magistrate at Cochin were to bind the witnesses over to give evidence at the Mauritius, in a similar manner to that, which he would pursue if committing to the Supreme Court, and a vessel were speedily provided for them, but little difficulty would be made on their part to go. Of course, they must be assured of being brought back, so soon as the trial is over.

26. I notice several of the depositions are headed as though taken from the Prisoners; and no caution introduced in the heading; this should be explained.

(Signed) CLEM. DALE,

Madras, May 19th, 1857.

(True Copy.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

No. 9. ORDER THEREON, No. 629; dated 29th May 1857.

Resolved that these papers be sent to the Acting Magistrate of Malabar for his information and guidance in reference to paras. 17 to 20.

2. Resolved also that the Company's Solicitor be meanwhile requested to invite Mr. Dale's attention to Acts 7 of 1854, and 17 of 1856, as his opinion makes allusion only to Regulation 2 of 1829.

(Signed) E. MALTBY,
Acting Chief Secretary.

Exd. F. Cartledge.

No 629

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Fort St George,
29th May 1857

Copy to Magistrate of Malabar Disp. 25th
to — H.C. Solicitor —

C. 21st April 1856 No 60461.
62763

Secl. Dr. to Eng. 20 Dec.
No 26 of 1857

Para 9
Reports in No 5 of 1858.
P. 8.

e 26 May
R 27 "

8/9

In Dy: Com: 2nd June
Judl. 1857 Depart.

629

From

The Honble. Compy's Solicitor

No 271

Df 23rd May 1857.
R/ 26th — " —

Encl. No 835

FtA-978.

Suggests that a Copy of Mr Dale's Opinion be forwarded to the Agt Magt of Malabar, with a request that he will instruct Mr Collins to make farther Enquiries, and afford the additional information which Mr D has pointed out & asked for, and requests to be furnished with a Copy of the result ——

By
W. H. Ewan Order