M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 602-603 Press ~~Mis.~~

11-14

Dated 2-5-~~15~~ 1859

Not to be folded or roughly handled

(11-14)

Proceedings of the Madras Government, Judicial Department, from 30th April to 3rd May 1859.

No. 11. Read the following letter from T. S. SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 19th April 1859.

I have the honor to forward for the information of the Honorable the Governor in Council, the accompanying report of the proceedings at the second Criminal Sessions for this year in those cases in which I prosecuted on behalf of the late East India Company or the Crown.

2. Nos. 7 and 8 in the Calendar were two cases in which a cooly Tailor, named Sultan Moideen, was indicted under Act 13 of 1850, for embezzling Military clothing entrusted to him by the Clothing Department for making up. He was convicted in the case first tried, and sentenced to 15 months' imprisonment with hard labor. I considered it therefore unnecessary to offer any evidence in the second case.

3. No. 27 was a case of a similar nature against one Coopoosawmy, with this difference, that he had punctually returned to the Clothing Board all the clothing which he had received direct from the Board, but was charged with having embezzled other clothing which some friends of his had improperly obtained from the Board, and made over to Coopoosawmy to make up for them, contrary to the known terms, and express orders of their Board. The evidence of these three men was open to some suspicion, and Coopoosawmy was acquitted—fairly enough in my opinion.

4. No. 1, was an indictment against one Abdul Khader for conveying a chisel and file to a Convict, (sentenced by the Fouzdaree Udalut to transportation for life for a gang robbery in which a murder had been committed) and thereby enabling him to escape. He was convicted upon clear evidence, and sentenced to 18 months' imprisonment with hard labor. I may mention here, that the Convict had been only temporarily removed to the Police Jail—whence he escaped,—on account of the then state of the Penitentiary which rendered it insecure at that time.

5. No. 4, was a case in which I declined to prosecute. It is the case in which one Syed Ahmud is charged with having stolen three silver Seals of the late Nabob. The chief evidence against the prisoner is his own confession, which I altogether disbelieve. The information I have received has strongly disposed me to believe that this man has been induced to take the guilt on his own shoulders in order to screen a person of much higher station. The prisoner has been acquitted.

6. The last case I have to mention is No. 19, a case of Manslaughter against one James Smith, an Englishman, employed in the Public Works Department, at Negapatam. It appeared by evidence which I considered very clear and satisfactory, that the deceased with 4 comrades brought charcoal for sale; that a blacksmith, named Chinnien, working under the prisoner's orders, bought some at the usual rate, and the prisoner took two baskets for himself, but gave only 3 fanams, instead of 5 fanams, 5 cash, the proper price: that on the deceased remonstrating, prisoner knocked him down, and then gave him a kick on the belly: that deceased's companion ran off for their other comrades, who came up with the blacksmith, and demanded the proper price, on which the prisoner threw a stone at them, again kicked the deceased, and was about to throw water over him, when one of the prisoner's own men interfered and caught hold of him, saying, "if you want to beat, beat me, not that poor man." Deceased then crawled away—assisted by comrades as some said; without assistance according to others—to a neighbouring hut where he lay down, complaining all along of much pain in his belly. He was turned out when the women were about to go out, and passed that night in the open air, near that hut, and died on the same spot about 2 P. M., the next day. The Assistant Apothecary Mr. George Shunker, an East Indian, who seems a very intelligent person, and gave his evidence remarkably well, made a *post mortem* examination, and found that the corpse was that of a perfectly healthy able bodied man, with no trace of disease, and in fact nothing to account for death but bruises about 6 inches in circumference about the navel, with internal injuries to correspond, viz. peritoneum discolored, and about 2 lbs. of blood extravasated, and *partly clotted* (shewing the injury *must* have occurred before death) and the transverse portion of the duodenum *ruptured*, to the extent of one inch. The rupture and the internal hemorrhage were beyond all doubt the cause of death. The prisoner himself challenged all Native Jurors, and so had a Jury of only Europeans and East Indians. The prisoner's Counsel treated the case in quite a jocular manner, and too many of

the Jurors seemed quite to enjoy his jokes though I had done my best to put solemnly before them their duty before God and their country to do equal justice solemnly and impartially, just as much as if the deceased had had the whitest of skins, and had been the first of European Gentlemen in Madras. The learned Judge, in summing up, certainly read over in full his notes of the evidence, but seemed to me to be chiefly anxious to avoid expressing *any* opinion of his own more in favor of one side than the other. The Jury retired for about five minutes and returned with a verdict of Not Guilty.

7. This is the second time within 14 months that Madras Juries, from which Natives have been excluded, have acquitted, in the face of very strong evidence, (and in the case tried in January 1858, in the teeth of a *very strong* charge from Sir C. Rawlinson, Chief Justice, in favor of a conviction) Europeans charged with the death of Natives who were clearly proved to have died—equally clearly proved to have died from external injuries—and equally clearly proved to have been, shortly before their death, in collision with the men charged with having caused their death. Had a special Jury or a Jury partly composed of Natives tried these cases, I am satisfied there would have been a conviction in both. The Native panel however consisted only of 8 names (3 of whom did not answer) while under the present 13th Jury Rule, the prisoner had a right to 10 *peremptory* challenges, and was thus enabled to exclude all Natives. I remarked on this to the Court, and observed that for the ends of justice there ought to be at least 15 Native Jurors on the panel. The majority of the Jurors were either Country born or East Indians, and I do not think that the Natives have any thing like the same confidence in the impartiality or justice of these classes, as they have in the case of Europeans, especially of the upper classes—and I must say I think that the opinion of the Natives on this point is not without foundation.

8. I am not without apprehension that the result of these two cases may seriously shake the confidence of the Natives in the impartiality of Madras Juries, and consequently in the administration of Criminal Justice at Madras in similar cases. Last year at Calcutta, according to the Newspaper reports of the trials, one of the Native Police was stabbed on board a vessel in the river, where he had gone to arrest a seaman: strong evidence was adduced against one seaman, but a Calcutta Jury acquitted him, to the great dissatisfaction of the Natives, especially the Police. Very recently it appears, from the same reports, that 3 sea-faring men, slightly intoxicated, came across some Native Policemen at night, and caught hold of the arm of one, requesting to be shewn their way: the Police commenced a furious assault, and inflicted serious injury on one man whom they left senseless in the street, and then ran away, and the man when taken to hospital was not expected to live. The Police who perpetrated this cowardly assault could notbe discovered, and the papers expressly ascribed their attack to the strong and angry feeling of injustice excited by the unjust acquittal in the case of the murder of the Policeman.

9. To obviate any such consequences here in Madras, it seems to me desirable to consider what course should be adopted in future in similar cases. The two alternatives seem to me to be the enlarging of the Native panel, together with the exercise of the Crown's right of challenge to such an extent as shall leave the Jury composed chiefly of Europeans and Natives half the Jury at least being Natives; or else, to have in each such case a special Jury of English gentlemen.

10. The latter migl t perhaps, at least at first, be the preferable course, for this reason; that it would obviate all risk of injustice on the part of Native Jurors in future cases, by way of retaliation for the past.

11. I need hardly observe that these questions are of a very delicate nature, and such as it is particularly desirable should not come before the Public or the Press unless absolutely necessary, as the discussion of them could hardly fail to give rise to much ill-feeling; but as I felt it my duty to bring these facts as they have occurred to the notice of the Honorable the Governor in Council, I have at the same time thought it right to state fully and freely, my own opinions and suggestions—at whatever risk of personal unpopularity—for such considerations as he may deem them to deserve.

Proceedings of the Madras Government, Judicial Department, from 30th April to 3rd May 1859.

12. With regard to James Smith, I deem it right to forward an Extract from the remarks of the Committing Magistrate, with a view to Government considering whether James Smith is a fit person to be any longer employed by Government in any situation where he is likely to come in contact with Natives.

13. I also deem it due to Mr. Whiteside, with reference to some abusive remarks made concerning him by the prisoner's Counsel, to state that in my opinion he discharged his duty extremely well, showing activity, energy and knowledge of his duty, in a case which had been shamefully slurred over by the Police Ameen, and which the prisoner would probably have succeeded in hushing up, or buying off, but for Mr. Whiteside's activity.

14. It is true that he admitted some hearsay matter into the depositions, such as he ought not to have acted on, or admitted, *if* he had been about to dispose of the case *finally* himself: *but* as this was *not* the case, and he was only in fact collecting information for transmission to Madras, he was quite right in withholding nothing that could throw any light on the case. All Magistrates in the Mofussil should pursue this course in similar cases. The Law Officers of Government, and the Judges, will take care not to let any prisoner be prejudiced by what is not legal evidence, while a Magistrate by taking on himself to exclude information, because in *his* unassisted and unprofessional opinion it is not evidence, may altogether defeat the ends of justice.

Extract from the Proceedings of W. S. WHITESIDE, Esq., Justice of the Peace, dated Negapatam, February 28th, 1859.

"In event however of his acquittal of the charge, I would suggest that the documents of this case be submitted for the consideration of Government as to the advisibility of dispensing with the prisoner's further service in the Department of Public Works, he bears the character of a very violent tempered man in this town, and I think it my duty to mention that his immediate superior Mr. A. Lawford has in the course of private conversation informed me that he had been obliged once to threaten the prisoner that he would remove him altogether from the supervision of certain roads that had been placed under his charge, on account of his propensity to strike and ill-treat the native workmen, employed under him. While this investigation also was going on, the prisoner voluntarily interrupted the witness "Chinnion" in his deposition and protested against his evidence being taken, on the ground that he had a spite against him because that he (prisoner) had a few days while they were working together in a moment of anger flung a hammer at the witness (Chinnion) and had wounded him on the foot, pointing at the same time to the mark that he saw was still to be seen on Chinnion's foot. The negligence and inactivity of the Negapatam Police Ameen in failing to proceed to the spot where deceased's body was lying at so short a distance from his Cutcherry as soon as the 2nd witness informed him of the fact and also in delaying all investigations until the next day seems highly reprehensible and his conduct will be brought to the notice of the Magistrate."

No. 12. MINUTE by the HONORABLE the PRESIDENT, dated 23rd April 1859.

That portion of the Advocate General's report which relates to the death of a Native charcoal burner in consequence of injuries inflicted upon him by James Smith, an Englishman employed in the Department of Public Works, calls for the serious attention of this Government.

It is a painful but undoubted fact that, however obvious the guilt of an Englishman may be, justice is not to be expected in cases of this description from an ordinary Calcutta or Madras Jury composed of Europeans and East Indians.

The remedy suggested for this monstrous evil by the Advocate General is that such cases should be tried by a Special Jury or by a Jury composed partly of Natives.

The opinion of the Judges of the Supreme and Sudder Courts should be taken on this point.

My own reliance, however, is more on preventive than on punitive measures. This high handed insolence of a dominant race is the greatest danger to which a power like ours in India is liable. The founders of our Anglo-Indian Empire were sensible of this; and while a forbearing and courteous demeanour towards the Natives was inculcated with the consistency of a constitutional Law,* every instance of misconduct towards them on the part of a servant of the Go-

*Sir John Malcolm's Instruc ions to the Military Officers employed under him as his Assistants in Malwa are the best Manual on this subject. Sir Thomas Munro directed that a copy of these Instructions should be given to every young Civilian on his first arrival at Madras, and it is so given to this day.

vernment was visited with immediate punishment. In my opinion, in this respect at least, the old policy was the right one; and I anticipate growing danger to our Empire, if, relying upon it's present universal establishment, we forget in what manner it was acquired and can alone be maintained.

I have caused it to be made known throughout every branch of the public service in this Presidency and throughout the Railway and other bodies connected with the public service, that I shall take immediate and decisive action in any case of personal abuse or ill-treatment of Natives by Europeans, and that I shall hold such conduct to be an offence and shall punish it as such.

The most effectual remedy for this crying evil, however, is beyond the reach of any of the local Indian Governments. It is found by experience that this ὑβρις of race over race is mitigated in proportion as the young Englishmen are cultivated, thoughtful, intelligent persons, and are able to converse with Natives of this country in their own language and to take an interest in them. The key to improvement in this respect is, therefore, to be found in the selection and preliminary training of the young men intended for the Army and the other branches of the service in India. They ought at least to have completed the ordinary English school education; they should be subjected to some comparative test previously to being selected, in order that the most promising candidates may be obtained; and after they have been selected they should not be permitted to embark for India until they have passed an examination in the elements of a Native language (which can be much better learned with the help of a well instructed English Teacher than of a Native Moonshee) and of Indian History and Geography. All young men intended for the Military service ought to go through a short probation and professional training at a Military College, after they have finished their school education; and those who for any reason prove to be unqualified for service in India should be eliminated before they embark.

We who have seen the remarkable progress which has been made in education and general intelligence by the Native youth at the Presidency cities and elsewhere, know how important it is for the consolidation of our Indian Empire that our Nation should be represented in this country by the flower of our British youth, and that adequate motives and facilities to qualify themselves for their high mission should be provided for them.

It only remains for me to propose that James Smith, who is a Corporal in the Sappers and Miners, should be removed from the Department of Public Works and be replaced at the disposal of the Commander-in-Chief—and that it should be ascertained through the Magistrate, whether the murdered man left a widow and children, in order that suitable provision may in that case be made for them.

I shall shortly lay before my Colleagues a plan which I am maturing with the assistance of Lieutenant Colonel Bell, Chief Engineer, Mr. Arbuthnot the Director of Public Instruction, and Captain Winscom of the Madras Engineers, the Principal of the Civil Engineering College for the purpose of filling vacancies in the subordinate establishment of the Department of Public Works with persons of good character who have qualified themselves for the employment by acquiring a knowledge of the elements of Civil Engineering and of the Native languages.

The Advocate General has rendered a valuable public service by the independent statement of fact and opinion contained in his report, and he should be thanked for it.

A copy of that portion of the Advocate General's Report which relates to this subject and of the Proceedings of Government upon it should be sent to the Chief Engineer for his information and guidance, and copies of the whole of the papers should be sent to the Secretary of State for India for his consideration.

(Signed) C. E. TREVELYAN.

No. 13. ORDER THEREON, 2nd May 1859, No. 602.

Resolved that part of para. 6 and paras. 7, 8, 9 and 10 of the Advocate General's letter above recorded, be communicated to their Honors the Judges of the Supreme Court, and to the

Proceedings of the Madras Government, Judicial Department, from 30th April to 3rd May 1859.

Judges of the Court of Foujdaree Adawlut, and that they be requested to favor Government with their sentiments on the suggestion of Mr. T. Sydney Smyth, that cases in which Englishmen may be charged with the murder or homicide of Natives be tried by Juries composed chiefly of Europeans and Natives, half the number at least being Natives—or else that there should be in each case a special Jury of English gentlemen.

2. Resolved also, that James Smith lately employed in the Public Works Department, and a Corporal in the Corps of Sappers and Miners, who by his brutal and reckless conduct unquestionably caused the death of the Native, be removed from the Department of Public Works and be replaced at the disposal of the Commander-in-Chief.

3. Resolved further, that it be ascertained through the Magistrate of Tanjore, whether the deceased left a widow and family, that in such case a suitable provision may be made for them. The Magistrate will state what that provision should be.

4. The thanks of Government will also be conveyed to the Advocate General for the valuable public service which he has rendered by the independent statement of fact and opinion contained in his report.

5. Resolved further, that the above paras. of Mr. T. Sydney Smith's letter and the present orders be communicated to the Chief Engineer for his information and guidance.

6. Resolved lastly, that the whole of the papers with the Minute of the Honorable the President, be forwarded to the Secretary of State for India for his consideration.

(Signed) T. PYCROFT,
Chief Secretary.

No. 14. To the Judges of Her Majesty's Supreme Court of Judicature at Madras, dated 2nd May 1859, No. 603.

We do ourselves the honor to forward to you our proceedings of 2nd May 1859, No. 602, and request to be favored with your sentiments on the suggestion of the Advocate General, that cases in which Englishmen may be charged with the murder or homicide of Natives be tried by Juries composed of Europeans and Natives, half the number at least being Natives, or else that there should be in each case a special Jury of English Gentlemen.

(Signed) C. E. TREVELYAN,
(„) PAT. GRANT,
(„) WALTER ELLIOT,
(„) W. A. MOREHEAD.

Exd. F. Cartledge.

Dear Mr Yeroft,

Be so good as to give immediate effect to this Minute, which should be printed with that portion of the Advocate Generals Report which relates to the subject.

The Commander in Chief agrees with me that it would not be advisable to send Corporal Smith home unless he insists upon it—

The Papers should

be placed on the Editors
Table after they have
been disposed of

Sincerely yours
L. C. Grudyer

April 28-59 -

26.4.59

5)

Federal & Equally concurs
in the letters from the
President to give the fullest
protection to the people of that
country from outrages of the
hands of the numerous European
Powers who may be expected to come
to India as Fortunehunters &
adventurers in pursuit
for opening up the resources
of the Country & I shall be
prepared to give our best support
to any well-considered
measures introduced for the purpose

Sincerely

(2. N. 25)

the prospect of [illegible]
removing to the South &c.
between you & Such But before
giving orders on the subject
it will be desireable to see
more his covenant for the
purpose of ascertaining what
provisions have been made
for dealing with him in
case of his misconduct
himself. Should his covenant
not contain [illegible] conditions
it will be necessary to make
arrangements for the interim
of such chances in future

The question of altering the
Constitution of the petty Jury
is a delicate one & must
be approached with due care
& circumspection

In the particular case
referred to the Attorney General
of the trial appears to differ
materially from the public
opinion of which took place
at the time

I think it would be well to
obtain the opinion of the
presiding judge on the
merits of the evidence, if
that can be done with propriety

I shall be glad to have the
views of the judges of the Supreme
& District Courts on the proper course

28th April 1859

My dear Sir Charles

I was not aware
when this Sabine was
before circulation that
Smith was a Soldier-
but I knew it should
certainly have its consideration
his immediate decision

from the Commander
to such a disgrace to
But I acknowledge
that he can inflict upon
being provided with
a passage home -
You will be glad to
hear that Lord
Harris is quite

Club Steamboat April 28/59

Dear Sir Charles Trevelyan,

I entirely concur with your view that Corporal Smith should be summarily dismissed from the service, and declared incapable of being again employed in it; and I beg to enclose a note from Colonel Woods explaining the proper proceeds in the case. I think,

Considering that such a
man will, if he remains
in India, probably do further
mischief, the best plan
will be at Col Woods
suggests to give him his
discharge certificate on
board ship

Believe me
Yours sincerely
J H Kelly

28 April

My Lieutenant

Under the circumstances
the best course to pursue
appears to me
to grant Parkes's order
for his immediate discharge
from the Service.

A part should
be added that into
the circumstances of the Case
a complete report is to be
made to the Admiralty

discharged till he
receives his Des: Certificate
Etc: cannot begin him
outboundship when
he must go whether
he likes it or not.

Yours affy
Edwards

28.

(1)

Thursday 11th

My dear Mr Charles

I have had the
[illegible] doubt of
[illegible] conduct of the prop
[illegible] or matter unpleasant duty
of [illegible] it as the [illegible]
[illegible] in our favour.
I am [illegible] to express
[illegible] because on
this occasion [illegible]
[illegible] recation of former
[illegible] but feel it unparticular
[illegible] desire to follow out
[illegible]
Yours
Mr Mr Charles
K.C.B.

with reference to an article that
out for trial — by the
terms of the covenant
entered into at the Lisbon Mo:
Where I referred to the trial
was at the reference to Platter
on the character of Pierre Gaudy
the Inquiries Canton Mercht.
Not that I saw any great
absence of the evidence of
pieces, which are always more
or less liable the cases of

by right nation.
attention has become
of by court as
following the letter of
The by-path and in the trial
of matters there were cure.
probably be both
the public to protect their
verdict took in the interval.
long process of the after
calling on finding for the
head of the body in an after

thought, the consequent
difficulty of overlooking on the
bench in a state of
decomposition & the future
to prove that the trunk was
the body of the man who had
been kicked. The Prosecuting
the presiding judge seemed
to favor the argument of
the Pros. Counsel & this of
the Plaintiff is a just reflection
of the jury.
I have offered only to prepare
for the subject for the opinion
of the judges of the Supreme Court
for your Honor

Walter Wilcox

back to the Court
Clerk
Yours Sincerely
Walt Wilcox

14

See my
Report

Resolved that para 6 to 11 and the Q & A and
appended pon Mr Whitesides proceedings
& communicated to H.P.W.D.—

PWD.

JP.

At this stage it is merely an order of reference & I
do not take it as the intention of Govt may wish
to entertain it on the principles of Govt. There
- see Mr Smyth's report at Serial —
also for his opinion on Whether any mea-
- sures should be taken in regard to the Addo.
- Cook Jewards remarks in para 9-10-11

JP

That portion of the Advocate Generals' report which relates to the death of a native charcoal burner in consequence of injuries inflicted upon him by James Smith an Englishman employed in the Department of Public Works calls for the serious attention of this Government.

It is painful but undoubted fact that, however obvious the guilt of an Englishman may be, justice is not to be expected in cases of this description from an ordinary Calcutta or Madras jury composed of Europeans and East Indians.

The remedy suggested for this monstrous evil by the Advocate General is that such cases should be tried by a special Jury or by a jury composed partly of Natives.

The opinion of the Judges of the Supreme and Sudder Courts should be taken on this point.

My own reliance, however, is more on preventive than on punitive measures. This high handed insolence of a dominant race is the greatest danger to which a power like ours in India is liable. The founders of our Anglo-Indian Empire were sensible of this; and, while a forbearing and courteous demeanour towards the Natives was inculcated with the consistency of a Constitutional law, every instance of misconduct towards them

† [note] Sir John Malcolm's Instructions to the Military Officers employed under him as Resident in Malwa are the best Manual on this subject. Sir Thomas Munro directed that a copy of these Instructions should be given to every young Civilian on his first arrival at Madras, and it is so given to every Party of English Gentlemen

them on the part of a servant of the Government was visited with immediate punishment.— In my opinion, in this respect at least, the old policy was the right one; and I anticipate growing danger to our Empire, if, relying upon its present universal establishment, we forget in what manner it ~~has~~ was ~~been~~ acquired and can alone be maintained.

I have caused it to be made known throughout every branch of the Public Service in this Presidency, and throughout the Railway and other bodies connected with the Public Service, that I shall take immediate and decisive action in any case of personal abuse or ill-treatment of Natives by Europeans, and that I shall hold such Conduct to be an offence and shall punish it as such.

The most effectual remedy for this crying evil, however, is beyond the reach of any of the local Indian Governments. It is found by experience that this ~~evil~~ of race overpace is mitigated in proportion as the young Englishmen are cultivated, thoughtful, intelligent persons, and are able to converse with the Natives of the Country in their own language and to take an interest in them. The key to improvement in this respect is, therefore, to be found in the selection and preliminary training of the young men intended for the Army and the other Branches of the Service in India. They ought at least to have completed the ordinary English School Education; they should be subjected to some Comparative test previously to being selected, in order that the most promising Candidates may be obtained; and after they have been selected they should not be permitted to embark for India until they have passed an Examination in the Elements of a Native Language (which can be much better learned with the help of a well instructed English Teacher than after a native Moonshee) and of Indian history and geography. All young men intended for the Military Service ought ~~[illegible]~~ to go through a short probation and professional training at a Military College, after they have finished their School Education; and those who for any reason prove to be unqualified for Service in India should be eliminated before they embark. [illegible]

Those who have seen the remarkable progress which has been made in Education and general intelligence by the Native Youth at the Presidency Cities and Elsewhere know how important it is for the consolidation of our Indian Empire that our Natives should be represented in this Country by the Flower of our British Youth and that adequate motives and facilities to qualify themselves for their high Mission should be provided for them.

It only remains for me to propose

that James Smith, who is a corporal in the Sappers and Miners, should be removed from the Department of Public Works and be replaced at the disposal of the Commander-in-Chief [illegible] and that inquiry should be made by the Magistrate where the murdered man left a Widow and Children, in order that it should be ascertained through the [illegible] resolved [illegible]

suitable ^ may, in that case, be made for them—

~~and also for the Superintendent of the Presidency~~

I shall shortly lay before my Colleagues a plan which I am maturing with the assistance of Mr Arbuthnot the Director of Public Instruction and Captain Winscom of the Madras Engineers the Principal of the Civil Engineering College, for the purpose of filling vacancies in the Subordinate Establishment of the Department of Public Works with persons of good Character who have qualified themselves for employment by acquiring a knowledge of the Elements of Civil Engineering and of the native languages.

The Advocate General has rendered a valuable public service by the independent statement of fact and opinion contained in his report, and he should be thanked for it.

A Copy of that portion of the Advocate Generals' Report which relates to this subject and of the Proceedings of Government upon it should be sent to the Chief Engineer for his information and guidance — and Copies of the whole of the Papers should be sent to the Secretary of State for India for his Consideration.

Ld — Mundy

Madras 23 April 1859 — I should think the remedy proposed to save both the Advocate Generals letter the safest course to pursue — Ly

(7)

interfered

or else that there should be
it should or should not Resolved
Is Resolved Resolved
to to
Hussey Hussey

Judicial Department

No 602

Proceedings of the Madras Government
Dated 2d May 1859.

Read the following papers.

Letter from the Advocate Genl. / Sent under 19th April 1859 /

Minute by the Hon: the Presid.t / " " 23d " " /

Order thereon,

W.C.G. W.C. W.dt.

April 1859. Rd.

Resolved that part of para 6, & paras 7-8-9 and 10 of the Advocate General's letter above recorded, be communicated to their Honors the Judges of the Supreme Court, and to the Judges of the Court of Foujdaree Adawlut, and that they be requested to favor Government with their sentiments on the suggestion of Mr. J. Sydney Smyth, that cases in which Englishmen may be charged with the murder or homicide of Natives be tried by Juries composed chiefly of Europeans, and Natives half the number at least being Natives. — Or else that there should be Passed in each case a Special Jury of English Gentlemen

d - not to be printed in the Minutes.

The last case I have to mention is No 19, a case of manslaughter against one James Smith, an Englishman employed in the Public Works Department at Negapatam. It appeared by evidence which I considered very clear and satisfactory that the deceased with 4 comrades brought charcoal for sale: that a blacksmith, named Chinniah, working under the Prisoner's orders, bought some at the usual rate, and the Prisoner took two baskets for himself, but gave only 2 fanams, instead of 5: 5, the proper price: that on the deceased remonstrating Prisoner knocked him down, and then gave him a kick in the belly: that deceased's companion ran off for their other comrades, who came up with the blacksmith, and demanded the proper price, on which the Prisoner threw a stone at them, again kicked the deceased, and was about to throw water over him, when one of Prisoner's own men interfered

Copy of Govt. & Proc.
Judicial. 2d May 1859. Rec'd.

Minute by the Hon'ble the Presidency

Dated 23d April 1859.

No 602.

Adverts to the Advocate General's report relating to the death of a Native Charcoal Burner, in consequence of injuries inflicted upon him by James Smith an Englishman employed in the Public Works Department at Negapatam.

Sydney Smyth Esq. Advocate Genl. to Govt. of Fort St. George
Dated 19th April 1859
Rec'd 2d May 1859

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interfered and caught hold of him, saying "if you want to beat, beat me, not that poor man" – Deceased then crawled away, assisted by Comrades as some said; without assistance according to others – to a neighbouring hut where he lay down, complaining all along of much pain in his belly. He was turned out when the women were about to go out, and passed that night in the open air, near that hut, and died on the same spot about 2. P.M. the next day. The Assistant Apothecary Mr George Shumaker, an East Indian, who seems a very intelligent person, and gave his evidence remarkably well, made a post mortem examination, and found that the corpse was that of a perfectly healthy able bodied man, with no trace of disease, and in fact nothing to account for death but bruises about 6 inches in circumference about the navel, with internal injuries to correspond, viz: peritoneum discoloured, and about 2 pounds of blood extravasated, and partly clotted (shewing the injury must have occurred before death) and the transverse portion of the duodenum ruptured, to the extent of one inch. The rupture and the internal hæmorrhage were beyond all doubt the cause of death. The Prisoner himself challenged all Native Jurors, and so had a Jury of only Europeans and East Indians. The Jury retired for about five minutes and returned with a verdict of Not Guilty.

The remaining paras 7-8-9-10 and 11 communicated in full.

2. Resolved also that James Smith lately employed in the Public Works Department, and a Corporal in the Corps of Sappers and Miners and recklessly who by his brutal conduct unquestionably caused the death of the native ~~Chinnien~~ be removed from the Department of Public Works and be ~~dismissed the service of~~ replaced at the disposal of the Commander in Chief.

3. Resolved further that it be ascertained thro' the Magistrate of Tanjore whether the deceased ~~Chinnien~~ left a widow and family – that in such case a suitable provision may be made for them. The Magistrate will state what that provision should be.

4. The thanks of Govt will also be conveyed to the Advocate General for the valuable valuable public service which he has rendered by the independent statement of fact and opinion contained in his report.

5. Resolved further that the above paras of Mr T. Sydney Smyth's letter and the present orders be communicated to the Chief Engineer for his information and guidance.

6. Resolved lastly that the whole of the papers with the Minute of the Hon'ble the President be forwarded to the Secretary of State for India for his consideration.

Judge of the Sup Court
Fonjdaree Adawlut
Advocate General
Military Dept.
Dep. P.W.
Adjutant Genl
Magistrate of Tanjore

Sent 2d

JP

Dispd 2d May

Judicial Department

No. 603.

The Hon'ble Sir H. Davison, Knight,
Chief Justice, &
The Hon'ble Sir A. Bittleston, Knight,
Puisne Justice.
H. M. Supreme Court of Judicature.

Hon'ble Sirs -

We do ourselves the honor to forward to you our Proceedings of 2d April 1859 No. 602, & request to be favored with your sentiment on the suggestion of Hon'ble Sydney Smyth, that cases in which Englishmen may be charged with the murder or homicide of Natives be tried by Juries composed of Europeans & Natives, half the number at least being Natives — or else that there should be in each case a Special Jury of English Gentlemen.

We have &c

H. Advocate Genl

W. H.

Fort St George
2d May 1859.

Rd 3d May 1859
Pubd 3d Do.

Proceedings of Govt 3 Regy
Judicial 1859 dd 2d May
Rec'd in Regy 3d May
No. 602.

Proceedings of Govt
Judicial Dept

Dated 2d May 1859

F No. 769
F No. 798.
941

Judicial 1859 Defendt

No. 603

The Honble Sir H Davison Kt
Chief Justice
The Honble Sir A Cattlestone Kt
Puisne Justice
H.M. Supreme Court of
Judicature

Dated 2nd May.

Rec'd 30 May
1859. R. 603

Judt. Dt. 2nd May
Rt. 30 May

No. 16 of 1859

Respts to in No. 9 of 1859.

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