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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1428 Press Mis-

21-22

Dated 2—11— 19 1860.

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Not to be folded or roughly handled

No. 21. Read the following letter from the Honorable Sir ADAM BITTLESTON, Kt., Puisne Justice of Her Majesty's Supreme Court, Madras, to the Honorable the Governor in Council, &c., &c., &c., Fort Saint George, dated 20th October 1860.

In compliance with the request contained in your Excellency's letter, bearing date the 15th September last, I have the honor to submit for the information of the Right Honorable the Secretary of State the following observations on the working of the new Jury Rule referred to in his Despatch of the 9th of August last.

2. At the 1st Criminal Sessions of the Supreme Court held after the promulgation of the new Rule, viz., on the 6th July 1859, there were several Europeans for trial; and in one case—that of Peter Leach, a Soldier, charged with the offence of wounding one Veerapen Naicken with intent to do him grievous bodily harm—the Counsel for the prisoner exercised the right of peremptory challenge to the full extent allowed by the Rules, objecting in succession to the first ten Native Jurymen, whose names were called. But in consequence of the new Rule this exercise of the right of peremptory challenge did not exhaust the number of Native Jurymen in attendance; and others being then called and sworn, the trial proceeded before a Jury composed, as usual, of 3 Europeans, 6 East Indians and 3 Natives. The evidence failed and the Jury properly acquitted the prisoner.

3. In the instance above mentioned therefore the new Rule was effectual for the purpose, which the Judges had in view, as that purpose was explained by me in my charge to the Grand Jury at the commencement of the same Sessions; and it was productive of no injustice to the accused. I take the liberty of appending to this report an extract from my charge, which was submitted by me to the Chief Justice before I delivered it, because it explains the precise grounds on which the alteration was adopted by the Judges.

4. At the same and at several subsequent Criminal Sessions of the Supreme Court other Europeans have been tried; but in no instance has the right of peremptory challenge been exercised to its full extent; nor is it likely to be so, whilst the new Rule continues in force and secures the attendance of a larger number than 10 Native Jurors. In a few instances individual Native Jurymen have been peremptorily challenged on behalf of the accused, and of course the particular Juryman objected to has withdrawn; but in every case the trial has proceeded before a mixed Jury, composed of Europeans, East Indians and Natives as above-mentioned; and in no instance has there been any ground for saying that the accused has suffered any injustice at the hands of the Jury.

5. It is right that I should mention that between the July and October Sessions of 1859, a memorial, (of which a copy is appended to this report), agreed to at a public meeting and numerously signed by Native inhabitants of Madras, was forwarded to the Judges of the Supreme Court, requesting such a further alteration of the Jury Rules, as that both the Grand and Petty Jury should always consist of Natives to the extent of one half. The Judges did not directly give any reply to this memorial; but at the commencement of the October Sessions, in my charge to the Grand Jury, I made reference to it and expressed the resolution of the Judges not to comply with that request.

6. On that occasion I stated that the Memorialists were mistaken in supposing that the Judges had altered the 10th Jury Rule in consequence of the acquittal of James Smith at the April Sessions; that the Judges could only exercise the power of altering the Jury Rules with a view to the satisfactory administration of justice, and not with a view to the settlement of jealousies amongst different classes of the community; that the reasonable privilege of the Natives to assist as Jurors in the administration of Criminal Justice was conceded to them, whether the number summoned was 20 or 30; and that as the present constitution of the Jury was highly satisfactory to the Judges, it would be inconsistent in them to make the alteration requested.

7. Since that time nothing has occurred to revive any discussion on the subject; and as far as I can judge, the excitement which did exist regarding it, has happily altogether subsided.

8. One incident has however been adverted to, as bearing upon the question of the general trustworthiness of Native Jurymen. At the April Sessions of this year a wealthy Native was

tried for perjury, and acquitted by a special Jury, consisting wholly of Europeans, both parties having concurred in striking off all Natives; but I do not see how any general inference adverse to the trustworthiness of Native Jurymen can be safely drawn from this circumstance. It argues at all events on the part of the accused no confidence that the Jurymen of his own race and creed would stretch their consciences in his favor.

9. I understand from Sir Matthew Sausse that by the Bombay Jury Rules, the Jury for the trial of a Christian is still required to be composed exclusively of Christians. This accomplishes directly what was indirectly accomplished by means of peremptory challenges under the Madras Jury Rules previously to the recent alteration. If the result is proper to be accomplished at all, I am disposed to think the direct mode the better of the two; but it seems to me that the Jury Rules, which provide for a mixed Jury for the trial of all offenders, are more in harmony with the course of legislation on this subject (13 Geo. 3, Cap. 63; 7 Geo. 4, Cap. 37 and 2 and 3 Will. 4, Cap. 117) and better adapted to the circumstances of the Presidency Towns, than those which vary the constitution of the Jury according to the race or creed of the person accused; especially if the effect of the latter be to confer a supposed privilege upon a favored class, as to prevent Christians from being tried by any but Christian Jurymen without at the same time providing that the Hindoo or Mahometan Members of the same community should be tried only by Hindoo or Mahometan Jurors respectively.

10. I regret that the continued illness and absence of the Chief Justice prevent him from joining in this report.

To

THE HONORABLE SIR HENRY DAVISON, KNIGHT, CHIEF JUSTICE,

AND

THE HONORABLE SIR ADAM BITTLESTON, KNIGHT, PUISNE JUSTICE
OF HER MAJESTY'S SUPREME COURT OF JUDICATURE AT MADRAS.

The humble Petition of the undersigned Native
Inhabitants of the Presidency of Madras.

RESPECTFULLY SHEWETH,

That your Petitioners appreciating the value of trial by Jury, and fully sensible of the privilege they enjoy in being associated with the working of that important institution, have attentively watched and considered the expression of public opinion elicited by the late trial of James Smith, for having caused the death of a Native at Negapatam, and feel grateful to your Lordships for the modification of the Jury Rules as a consequence of his acquittal; which modification, however, they beg respectfully to state, does not reach the point to which they could desire to see it extended.

2. Your Petitioners deem it inexpedient for them to offer any opinion of their own respecting the verdict returned on that occasion, but they cannot refrain from adverting to the opinion of the Honorable the Governor, recorded in His Excellency's Minute, with reference to it and to the previous acquittal of a similar kind, when all the Native Jurors were challenged and excluded from the Box; that impartial justice was not to be expected in cases of this description from an ordinary Jury composed of Europeans and East Indians; and to the remark of His Lordship, the Presiding Judge in the former instance, that it was such a verdict as he would not have given: nor from confessing their agreement with the observation of the Advocate General, that the result of these two cases may seriously shake the confidence of Natives in the equitable administration of Criminal Justice in Her Majesty's Supreme Court of Judicature.

3. The intention of the Home Government, when directing that Natives should be summoned to serve on the Juries in this country, was, as your Petitioners understood, to place them on an equal footing with their European fellow subjects; to whom previously, this right of

Proceedings of the Madras Government, Judicial Department,
2nd November 1860.

participating in the administration of English law, and justice was restricted: and at the commencement, the change being experimental, the number of Natives brought upon the Panel was considerably less than that of the Christians owing to the East Indians being included in the admission, as forming a distinct class. But, at the present time, when the experiment has so far succeeded, that no accusation of national bias has been brought against the Natives, similar to that charged against the two classes pointed out in His Excellency's Minute; while on frequent occasions, their Lordships the Judges of the Supreme Court have panegyrized the Natives, sometimes apart, and sometimes in conjunction with their fellow Jurors, for having performed their duties with satisfactory propriety, your Petitioners venture to suggest respectfully, that the period of probation has been successfully passed, and the time may be considered as reached when the original intention of Government can be safely and fitly carried out, in establishing the contemplated equality of Her Majesty's subjects in the eye of the law, by so constructing the Panel that it may include the Christians and Natives in equal number, as regards both the Grand and Petty Juries.

4. Your Petitioners conceive that the sub-divisions now obtaining of Europeans, East Indians, and Natives, are neither correct nor necessary; inasmuch as Europeans and East Indians are two component parts of one and the same Christian community; and if it be fair and requisite that each sub-division should be represented separately, and by a parity of number, your Petitioners are of opinion that the same distinction should be drawn between the Hindus and the Mahomedans, the two grand division of the Native community; which are each far more numerous not merely than either of the two Christian sub-divisions, but than the entire community to which both sections belong. It is therefore not more than just to the Natives, nor less than fair towards the Christians, that the Panel should be constituted of one-half taken from the one, and one-half taken from the other class; or, of four parts, selected in equal proportions from each sub-division in the two communities; either of which arrangement would clearly demonstrate that all Her Majesty's subjects are legally held to be upon one even footing of equality.

5. The only objection to this decisive modification that occurs to your Petitioners as possessing validity, is, whether the Natives are able to furnish from their body a sufficient number of respectable and intelligent members, qualified to fill the places which your Petitioners are naturally desirous to see occupied by their fellow countrymen. In the year 1827, and for sometime following, while the experiment was in its infancy, it is quite possible they were not able: but, during the interval of thirty-two years, education has advanced by rapid and continuous strides; so that even the Natives have not only founded and taken the management of schools in which English is taught, for the express benefit of their indigent countrymen, but have departed so far from ancient customs as to set on foot Seminaries for the instruction of their female childern; while other unmistakeable ameliorations and improvements have taken place, and are still progressing, in Native society. Consequently, a proposal which would have been premature and inadmissible in 1827, can hardly be deemed unjustifiable or indiscreet in 1859.

6. Your Petitioners may further strengthen the position they have taken up by reference to the fact, that the vast bulk of all the prisoners committed for trial, as well as of the witnesses both for the prosecution and defence, are necessarily Natives; as well as by alluding to the circumstance every way deserving your Lordship's attention, that, in England, foreigners are allowed the privilege of being tried by a Jury one-half of which is composed of their own countrymen. Your Petitioners therefore are not asking for a concession which is without established precedent, but one which is admitted and acted upon as a recognized principle of Justice within all Her Majesty's Courts in England; and what is permitted to foreigners there, they hope and trust your Lordships will not refuse to Her Majesty's dutiful and loyal Native subjects in this part of British India.

7. Your Lordships having already admitted the propriety of modifying the 10th of the Jury Rules, so far as to add to the number of Native Jurors, your Petitioners respectfully request that your Lordships will be pleased to extend the modification, in such a manner, that the Native communities may in future constitute a moiety of both the Grand and Petty Jury Panels.

Extract of Charge to the Grand Jury referred to in paragraph 3 of the accompanying Report.

Few words will suffice to explain what has been the action of the Supreme Court in regard to this matter, and what has been the object which the Judges have desired to attain by altering the 10th Jury Rule.

I need not take you through the history of trial by Jury in this Court, you are aware that by the Charter power was conferred upon the Judges to hold a Court of Gaol Delivery and to summon Juries for the trial of prisoners, but only British subjects (not including in that term either Natives or East Indians) were to be summoned as Jurymen. However, as time advanced and more liberal views respecting the Government of India were adopted, the exclusion of Natives and East Indians from the Jury box was deemed unnecessary and impolitic and under rules, which the Judges were authorized to frame, it has long been the practice in this Court to summon both Natives and East Indians as well as Europeans to serve on the Juries at the Sessions. There is no rule of Court prescribing the proportions in which each of those 3 classes shall be represented in the Jury box, but the practice is to call and swear upon each Jury 3 Europeans, 6 East Indians, and 3 Natives; and I believe that the Jury so constituted has been found to be a perfectly satisfactory tribunal.

This is the 3rd Sessions at which I have been called upon to preside, so that my experience is not great, but so far as it goes, the result of it is to have impressed me very favorably with the efficiency of the Jury so constituted.

But at the last Sessions, when the Jury were being called, who were to try the case of James Smith, charged with manslaughter, the learned Counsel for the prisoner exercised his right of challenging peremptorily all the Native Jurors, and there being only some 7 or 8 in attendance, the consequence was that the trial took place before a Jury differently constituted from any of those by which the other cases in the Calendar were tried, and whereas all the Natives who were tried for various offences during the Sessions were tried by Juries on which only 3 Natives sat, the remaining 9 being Europeans and East Indians, the European who was charged with the offence of having unlawfully caused the death of a Native was tried by a Jury consisting wholly of Europeans and East Indians, and from which every Native had been studiously excluded. I regretted this at the time; I thought the effect of the proceeding was to attach an unjust stigma upon the body of Native Jurors, and I made inquiry of Mr. Norton, the Clerk of the Crown, how it was that so few Native Jurors were in attendance.

I then found that the practice was not to summon more than about 10 Natives out of the 42 (the whole number of Jurymen which the Sheriff under the then rule was obliged to summon for service on the Petty Jury) and I at that time expressed my opinion that the Jury Panel ought to be sufficiently enlarged and a sufficient number of Natives summoned to deprive a European of the power of excluding Natives altogether by peremptory challenge—that is, challenge without any cause assigned.

The trial proceeded and the Jury found a verdict of not guilty. I find no fault with that verdict; and I make no imputation against the Jury. Indeed I thought it my duty, when the Judges of this Court were subsequently called upon to reply to a communication received from the Government on the subject, to add an expression of my opinion respecting the particular case of James Smith solely for the purpose of relieving the Jury as far as I could, from any imputation, thinking that my silence might be interpreted into an assent to the charge which had been imputed or implied against them. Yet even *this* with singular inconsistency, as it seems to me, has been made a ground of complaint by those who consider that the impartiality of the European and East Indian Jurymen has been unjustly attacked. Attacked by the Judges of the Supreme Court it certainly has not been—and to those who seem to be apprehensive that the independence of the Supreme Court has been in some measure surrendered in this matter to the wishes of Government, it may be consolatory to know that previously to any communication from the Government it was my intention to have consulted the Chief Justice on the propriety of altering the 10th Jury Rule so as to secure the summoning of such a number of Natives as would prevent their entire exclusion by peremptory challenge on the part of the accused.

Proceedings of the Madras Government Judicial Department,
2nd November 1860.

The Chief Justice however was absent from Madras at the time; and sometime before his return to Madras a communication was addressed by the Government to the Judges requesting their opinion as to certain proposed alterations in the constitution of the Juries to try the particular class of cases therein referred to.

We were decidedly of opinion that it was inexpedient to make any special provision for a different constitution of the Jury in one particular class of cases; but consistently with this principle, we thought it right to increase the whole number of Jurors summoned, and to require that of those summoned a certain proportion should be Natives—so that 10 peremptory challenges should not exhaust the whole Native Panel.

The alteration of the 10th Jury Rule, therefore, has no connection whatever with any imputation against the impartiality of the European and East Indian Jurymen of Madras, and was made by the Judges not because they entertained any distrust of those Jurymen, but on the ground that the power of excluding altogether Native Jurymen—which the existing practice placed in the hands of any prisoner—was inexpedient and unjust as conveying an unwarranted stigma upon the trustworthiness of the Native Jurymen. In selecting *twenty* as the number of Native Jurymen to be summoned for each Sessions, we had regard to the number of peremptory challenges (10) and the probable number of accidental absentees—(say 4 or 5)—and we thought that the object of preventing the exhaustion of the Panel by peremptory challenges could not be secured by summoning any less number.

It has been objected to the alteration of the 10th Jury Rule, that it will enable a prosecuting Counsel to pack the Jury with 8 or 9 Natives to 3 or 4 Europeans or East Indians, and it is suggested that Europeans on their trial before a Jury so constituted would not be fairly tried by a Jury of their peers.

The privilege of the Crown to direct Jurymen to stand aside, as they are called, upon going through the Panel for the first time, is one of those which, like that of having the last word, has been preserved in our Criminal Courts from ancient times, and it is rarely exerted now, when it is perfectly well understood that the duty and the aim of a prosecuting Counsel is not to secure a verdict but to assist the Court in arriving at a just decision, whilst the duty of a defending Counsel is by all legitimate means to secure an acquittal.

But assuming the privilege in question to be exercised in any particular case, it is unlikely that as many as 8 or 9 Native Jurymen would remain after the prisoner had challenged 10 peremptorily—if allowance be made for accidental absentees—and in any case it is *inconceivable* that 3 or 4 Europeans honestly believing that the evidence did not justify a conviction could be induced by the Native majority to consent to a verdict of guilty. I have heard it said that the Native Jurymen would be disposed to yield too readily to the Europeans serving with them, but I think there is little danger of even a majority of 8 or 9 Natives being able to turn a verdict against the conscientious conviction of 3 or 4 Europeans. They might of course prevent a verdict of acquittal, and the discharge of the Jury would render a second trial necessary. The accused might therefore sustain serious inconvenience, but it must be remembered that this could only happen in a case which had passed through the ordeal of the Grand Jury, and that it is as much in the power of a single Native Juryman to prevent a verdict of acquittal as it would be in the power of a majority of 8 or even 11. The objection, in truth which is made to the alteration of the 10th Jury Rule, opens a much wider question than was perhaps intended by the objectors, namely, the question whether Natives are to be trusted as Jurymen at all. There are probably some persons to be found in Madras who will not hesitate to answer that question in the negative, but at every Sessions of Gaol delivery held in this Court for many years past, Native inhabitants of Madras have been summoned and sworn and served upon Juries in conjunction with their European and East Indian fellow citizens with credit to themselves and advantage to the public. And I believe that we should be doing great injustice to the Native community of Madras if we were to give any sanction to the idea that it could not furnish at least 20 at each Sessions, well qualified by intelligence and trustworthiness to assist as Jurymen in the administration of justice, whether the accused be European or Native, and whether the injured party be European or Native.

I have no apprehension that the alteration which has been made in the Jury Rules will have the effect of depriving any European or East Indian of a perfectly fair trial in this Court (whatever the offence with which he may be charged), and I still consider that it introduces a decided improvement upon the old practice.

But the new Rule which we have framed has been transmitted to England for the approval of the Home Government; and all persons who are interested in the matter have the opportunity of making any representation they please to the Secretary of State upon the subject.

No. 22. To the Honorable Sir ADAM BITTLESTON, Kt., Puisne Justice, Her Majesty's Supreme Court of Judicature, dated 2nd November 1860, No. 1,428.

HONORABLE SIR,

We have the honor to acknowledge receipt of your letter of the 20th instant, furnishing us, in the absence of His Honor the Chief Justice, with a report on the working of the new Jury Rule, in reference to the Right Honorable Sir Charles Wood's Despatch of the 9th August last, No. 29. Copies of your letter and of its enclosures will be duly forwarded, for submission to Her Majesty's Government.

We have &c.,

(Signed) W. A. MOREHEAD.
(,,) PAT. GRANT.
(,,) E. MALTBY.

Exd. F. Cartledge

No. 1428.

The Honble Sir Adam Bittleston —
— &c &c Puisne Justice,
H. M's. Supreme
Court of Judicature.

Honble Sir —

We have the honor to acknowledge receipt of your letter of the 20th instant, furnishing us, in the absence of His Honor the Chief Justice, with a report on the working of the new Jury Rule, in reference to the Rt. Honble Sir Charles Wood's Despatch of the 9th August last No. 29. Copies

Copies of your letter
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will be duly for-
warded, for submis-
sion to H. M. Govt.

Fort St George,
2d November 1810.

Exd. F. Cartledge.