

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 693	Press
24-25	~~Mis.~~
Dated 2. 6. 1860.	H

4/5

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,

2nd June 1860.

No. 24. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George, dated May 26th, 1860, No. 555.

Dated 14th May 1860, No. 600, on letter from the Magistrate of the Godavari District to Government of 30th April 1860, No. 190.

1. I have the honor to acknowledge the Order of Government noted in the margin and the papers which accompanied it.

2. I laid them before the Advocate General for his consideration and subsequently conferred with him on the subject.

3. I now forward a copy of his opinion and return the enclosures above noted.

COPY—OPINION.

On perusing these papers, my first impression was that Mr. Duffin ought to be committed to take his trial for manslaughter, on the ground that, though it is clear he was unjustifiably attacked, and certainly acted in self-defence, after running away from and firing in the air to deter his assailant, yet it is not at all certain that he might not have saved his own life and disabled his assailant, without shooting him dead: not clear in fact, that the taking his assailant's life was necessary for the preservation of his own.

Upon the whole, however, as the two Magistrates, who investigated the case, (and carefully, notwithstanding the reception of much that ought never to have been received as evidence) have come to the conclusion that it was a case of justifiable homicide, I do not think that the interests of public justice would be served by putting Mr. Duffin on his trial, *unless* there was a reasonable probability, judging from the depositions, that a jury would or ought to convict him. Without such a probability, it appears to me on the contrary that his trial and acquittal might rather have an unfavorable effect on the minds of the Native community, though without any just grounds for such effect. Now I cannot say that I see the least chance of a conviction. Mr. Duffin had offered all he had—had run away, in hopes of reaching his horse and so escaping, till he was nearly overtaken, his pursuer was frantic with rage and quite intoxicated and pursuing him with a knife capable of inflicting serious, if not mortal, injury and Mr. Duffin himself in a mortal fright hardly capable of knowing what he did. Had he had retained any self-possession, he might very probably have knocked his pursuer down with the butt end of his gun or, if compelled to fire, have disabled him by a wound in the arm or leg—but, breathless and terrified, he fired almost at random, and death was the result. I, therefore, do not advise any further proceedings.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 25.

ORDER THEREON, 2nd June 1860, No. 693.

Resolved that the above letter and its enclosure be communicated to the Magistrate of Rajahmundry, in reference to his letter of the 30th April last, and that he be informed that, under the opinion given by the Advocate General, the Government do not intend to take any further proceedings in the case.

2. Resolved also that a copy of the letter from the Magistrate and opinion of the Advocate General, with the translated depositions (the latter to be returned) be forwarded to Sir W. O'Shaughnessy and that his attention be requested to the remarks in the two concluding paragraphs of Mr. Purvis' letter.

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

3. The Government cannot but notice the delay which has taken place in reporting this occurrence. The event happened on the 24th March. The decision of the Head Magistrate was given on the 4th April, but the proceedings were not sent up to Government by the Magistrate until the 30th of that month. The cause assigned, viz., the time occupied with translations of the depositions, cannot be accepted, as the depositions are not of any great length.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial Department.

of the Madras Government

Read again letter from the
Magistrate of the Godavari
District dated 30th April and re-
corded in the Pro: of Govt: 14th May
1860 N^o 600.

Read also the following letter
from the Govt: Solicitor

[Here enter 26th May/60 N^o 555.]

Order thereon 2^d June 1860 N^o 893.

Resolved that the
above letter and its enclosure
be communicated to the
Magistrate of Rajahmundry
in reference to his letter of the
30th April last and that he be
informed that under the opi-
-nion given by the Advs. Genl:
the Govt: do not intend to
take any further proceedings
in the case.

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Resolved also that
a copy of the letter from the
Magistrate

Magistrate and opinion of
the Advo. Genl.; with the
translated depositions
(the latter to be returned)
be forwarded to the Superin-
tendent of the Elec.
Telegraph, and that his
attention be requested to
the remarks in the two
concluding paras of Mr.
Purvis' letter.

3. The Govt. cannot
but notice the delay which
has taken place in report-
ing this occurrence. The
event happened on the 24th
March. The decision of
the Head Magistrate was
given on the 4th April, but
the proceedings were not
sent up to Govt. by the
Magistrate until the 30th
of that month. The
cause

cause assigned viz. the
time occupied with trans-
lations of the depositions
cannot be accepted, as
the depositions are not of
any great length.

JP

To the Magt^r of Rayabmundry
" Govt. Solicitor
" Superintendent of
Elec. Telegraphs, India & Ceylon.
with Magt^r & orig^l depositions

} Dep^t

10 June 1851

Judicial 1850 Depts

No. 93

Proceedings of Court

of 22 June 1850.

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