

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1625A	Press
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121A-121B		
Dated	14-11	1918

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
14th November 1865.

No. 121A. Read the following letter from the Advocate General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 6th November 1865.

I have the honor to report, for the information of His Excellency the Governor in Council, that I appeared at the recent Session to prosecute Moorogasen and Chanee, the prisoners in Case No. 25, charged with culpable homicide, not amounting to murder, under Section 304 of the Indian Penal Code. They were also charged in separate counts, under Sections 326, 338, and 323 of the Code.

2. It appeared that the first prisoner was the brother of deceased, who lived with the prisoners in the same house. On the evening of the 21st September last, a drunken row took place in the house, when the deceased received a blow on the head from an earthen pot filled with water, from the consequences of which he died on the 17th of October. Previous to his death, the deceased made a deposition in which he charged the 2nd prisoner with having thrown the pot at him. It appeared, however, that immediately after the occurrence he said it was his brother. All the independent testimony in the case clearly proved that it was the 1st prisoner, and not the second, whose hand threw the pot. In fact it was thrown at the 2nd prisoner, and struck the deceased just as he was in the act of interposing. The discrepancy between the 1st and 2nd statement of the deceased is readily accounted for by the circumstance that he and the 1st prisoner were brothers, while no connexion existed between the 2nd prisoner and the deceased. It was not unnatural, therefore, that the deceased should seek to exonerate his brother.

3. The wives of both prisoners had been examined by the Committing Magistrate. They could not be witnesses, in the High Court, against their husbands, and they were, therefore, not called. The Jury found the 1st prisoner guilty on the 4th Count, causing hurt, under Section 323; and acquitted the 2nd prisoner, who apparently was the only person sober at the time of the quarrel. The 1st prisoner was sentenced to rigorous imprisonment for one year.

4. I also appeared and prosecuted Maduray and Yagambrum, the prisoners in Case No. 21, charged with stealing bullets, the property of Government, from the Laboratory. The case was clearly proved against both prisoners. The 1st prisoner was sentenced to receive 85 stripes, the 2nd prisoner 95 stripes.

5. In Cases Nos. 6 and 7 against the Malay, Sidden, for murder, I found, on looking over the depositions, that there was no legal proof that the ship *Harriet* was, at the time of the murder, a British ship. The only legal proof of this fact, which it is indispensable to establish, is the production of the original Registry, or an examined copy of it, or a copy purporting to be a certified copy under the hand of the Registering Officer, or the *Certificate of Registry* which sails with the ship. This matter has been recently considered in the case of *Reg. v. Adolph Bjornsen* by the Court of Criminal Appeal, XI Jurist. N. S., p. 589. The *Certificate* had been returned to the Master of the *Harriet*. There was no certified or examined copy of the original Registry in Madras, though inquiry at the Custom House and Master Attendant's Office showed that there were certain entries in their respective Registers, purporting to be extracted from the Ship's Certificate of Registry. These, however, would not amount to legal proof of the character of the ship, a fact incumbent on the prosecution to substantiate.

6. The ship appears to have been last registered at Singapore; and she must have been so in accordance with 3 and 4 Victoria, Chapter 56, and Act X of 1841, or the Merchant Shipping Act, 17 and 18 Victoria Chapter 104, the 2nd part of which applies to the whole of the Queen's dominions.

7. I consequently communicated with the Chief Justice; and it was resolved that, as the ends of justice would necessarily be defeated if the prosecution proceeded to trial with the present defective proof, a motion should be made to put off the trial, founded on an Affidavit of the facts to be made by the Government Solicitor, Mr. Boyson. A copy accompanies.

8. This motion I accordingly made; and as it is very desirable that in such cases as the present there should be as little delay as possible, the case stands adjourned till Wednesday the 3rd of January 1866, in order that the necessary evidence may be supplied.

9. I have now the honor to request that His Excellency in Council will sanction the necessary steps being taken for procuring the evidence above pointed out at the earliest moment practicable.

10. The witnesses have all been required to renew their recognizances for appearance at the trial on the 3rd of January 1866.

11. I would advise that the instructions for the Singapore authorities be prepared by the Government Solicitor, in communication with myself as soon as possible.

12. I should notice that there does not seem to have been any evidence gone into by the Committing Magistrate, with the view of establishing the character of the ship *Harriet*. The Chief Justice, who presided at the recent Sessions, remarked, after granting my motion, that it would be desirable that for the future the Magistrate, in all important ship-cases, and specially in capital cases, should communicate with the Public Prosecutor—a suggestion in which I cordially concur. Had this been done in the present instance, the present unfortunate delay would in all probability have been avoided.

13. I appeared and prosecuted Singaravaloo, the prisoner in Case No. 27, charged with culpable homicide not amounting to murder under Section 304, for inflicting grievous hurt under Section 338, and causing hurt under Section 323. The facts were simple. The deceased was quarrelling with a woman in Odacall Street, and altercation took place between the prisoner and the companions of deceased, whereupon deceased used some abusive language to the prisoner, who thereupon struck the deceased a blow with his fist on the back of the neck. The deceased was knocked down by the blow, and his skull fractured by the fall. The fracture resulted in death on the following day.

14. The Jury found the prisoner guilty on the 3rd Count only. Probably this was the extent of his legal guilt. It is not likely that the prisoner had any intention of killing the deceased: the weapon of offence was simply the fist, and it is to be remarked that the blow was not the immediate cause of death. Had not the deceased's head come violently in contact with the ground, death would not have ensued. The Jailer, Mr. Owen, deposed that the prisoner had been twice in custody for assaults. The Judge sentenced him to rigorous imprisonment for 18 Calendar months.

15. I would also desire to mention the case of *Reg. v. Watkins*, charged with having committed criminal house trespass having made preparation to cause hurt,

having used criminal force, and caused hurt, at Bangalore. I did not appear to prosecute in this case, as I did not conceive it was one on which the Government was concerned. But as in my letter to you of the 10th August last, in observing on the case of Mr. Bain, which occurred in Coorg, I remarked, incidentally, that offences committed in Mysore would now have to be committed to Calcutta (vide paragraph 16), His Excellency may desire to know what decision the High Court has come to on the point. At the conclusion of the case for the prosecution, Mr. Miller, the Prisoner's Counsel, argued that the Court had no jurisdiction. I need not trouble His Excellency in Council with Mr. Miller's argument. His point amounted to this that inasmuch as the Treaty with the Rajah of Mysore was made with the Governor General, the Rajah could not be considered to be a Native Prince in alliance with the Government of Madras, so as to bring the prisoner within that criminal jurisdiction of the late Supreme Court which has now devolved upon the present High Court in its original Criminal Side.

16. The Chief Justice remarked as follows:—

"I anticipated that this objection would be taken, and I have therefore looked at the authorities, so that I am able to express a clear opinion. If the objection had prevailed, it would have been of no utility to the prisoner. The late Supreme Court Charter governs me as to the original criminal jurisdiction of the present High Court.

"This case would clearly have fallen within the late Supreme Court's Criminal jurisdiction. It does not fall within the earlier words of the Section. This is not a case in which jurisdiction arises because the offence was committed within the factories subordinate to Port Saint George, or within the territories 'subject to, or dependent on, the Government of Madras,' but then follow these words 'or within any of the dominions of the Native Princes of India in alliance with the said Government.'

"These words are not to be found on the Charter of the Supreme Court of Calcutta, though they are in the Charter of the Supreme Court of Bombay as well as of Madras.

"Let us look at history:—When the Charter of 1800 was granted, neither the Government of Madras nor Bombay had, save in the excepted case of imminent danger, power to make treaties with Native Princes. Even in such case Ch. 52 of 33 Geo. III required the subordinate Government to report the fact to the Supreme Government or the Home Government, in order that it might be ratified. Mysore was in Hyder Aly's and afterwards in Tippoo's possession. In 1799, Seringapatam fell. Two Treaties were thereupon made. One between the Governor General, the Peishwar, and Nizam, called the Partition Treaty. The Rajah was no party to that Treaty. It divided Mysore into four parts between the parties to the Treaty. One share the Peishwar declined, and this was then divided between the Company and the Nizam. Mysore was made an independent kingdom; the present Rajah, then an infant four years old, was placed on the Musund, and a Subsidiary Treaty was made between the Rajah and the Company. Under that Treaty all has been regulated up to the present time. The Treaty was made by the Rajah as an independent Sovereign with the East India Company. Mr. Acheson's valuable collection of Treaties sets it out. It is 'for, and on behalf of, the East India Company,' though executed by the Governor General. When the Treaty was ratified,

the Rajah became in alliance with the East India Company. It can make no difference whether the Treaty was effected by the Agency of the Madras Government or the Bombay Government, or the Governor General. They would all equally be the Agents of the East India Company, binding every branch of the Company's Government. The Rajah was in alliance with the Government of Madras as much as any other British Government in India.

"There is a point which I had expected to have heard urged—in fact it is the only point which could be urged—has any thing occurred since the Treaty to alter the Rajah's position with relation to the British Government? In 1832, in consequence of the disordered state of the Rajah's Government, and his revenues having been squandered, the Government called on the Rajah to give them over his country for their administration. This was done under the Treaty of 1799. It contained two stipulations. One by which the East India Company undertook to support troops and protect the Rajah, in consideration of which the Rajah stipulated that if the revenues should be endangered so as not to afford sufficient payment, the Government might call on the Rajah to hand over his Kingdom for their administration on 10 days' notice. In pursuance of this in 1832, the British Government took possession of the country and administered it by a Commissioner. But the Rajah still has an independent existence; for the Government has to render accounts to him. The alteration of 1832 did not affect the political relationships of the Rajah and the Government. His territories are still in alliance with the Madras Government.

"If it were necessary to go beyond the Supreme Charter, it would perhaps be found that 33 Geo. 3 Ch. 52, Section 67, would have given jurisdiction."

17. The result is that, as regards Criminal offences committed by European British subjects in the Kingdom of Mysore, the High Court of Madras has jurisdiction to try them.

18. What purports to be a report of the Chief Justice's decision appears in this morning's Athenæum. It is a tissue of nonsense. The "Reporters" did not, so far as I observed, make any attempt to take a note of what His Lordship stated; nor could they have understood it, had they tried.

IN THE HIGH COURT OF JUDICATURE AT MADRAS,
ADMIRALTY OF MADRAS.

THE QUEEN,
against.

SIDDEEN, otherwise called PAULEE, charged
with the murder of MICHAEL LUDWIG
GOULART.

I, John Robert Boyson, residing at Nungambakum, within the local limits of Madras, Attorney and Solicitor, and Solicitor to the Government of Madras, make oath and say as follows:—

1. I am now acting as Attorney for the prosecution of this charge.
2. I verily believe that it is material and necessary for the due prosecution of this charge, and for the furtherance of justice that it should be established by sufficient evidence, and to the satisfaction of this Honorable Court on the trial of this charge, that the Barque called the *Harriet*, on board whereof the murder with which the said Siddeen, otherwise called Paullee, stands charged is alleged to have been committed, was at the time of such alleged murder a British vessel.

3. I verily believe that the said Barque was last registered at Singapore in the Straits of Malacca, and that the proper mode of proving that the said Barque was a British vessel at the time of the said alleged murder will be by producing to and before this Honorable Court, on the trial of this charge, the original certificate of the Registry of the said Barque, or an examined copy of the Register of such Barque, or a copy of such Register purporting to be certified under the hand of the Registrar or other person having the charge of the original Register.

4. I verily believe that the said Barque left the Madras roadstead on or about the second day of October last, for the purpose of proceeding to the port of Karikal, and from thence to Singapore aforesaid, and that the Master of the said Barque, at the time of her departure from Madras took with him, on board the said Barque, the said original Certificate of Registry.

5. I verily believe that there is not at Madras aforesaid any such examined or other copy of the said Register of the said Barque as would be admissible in evidence on the trial of this charge, or any sufficient evidence that the said Barque, at the time of the said alleged murder, was British vessel, and that such an examined or other copy of the said Register as would be admissible in evidence can be obtained only from the proper office of Registry at Singapore aforesaid.

6. I verily believe that the trial of this charge cannot be effectually proceeded with until the prosecution is enabled to prove by sufficient evidence that the said Barque at the time of the said alleged murder was a British vessel, and that if the trial be proceeded with in the absence of such evidence, there will be imminent risk of a failure of justice.

7. I further say that if the trial of this charge is postponed to the next ensuing Sessions, the proper steps will be taken for obtaining such needful evidence as aforesaid.

(Signed) J. R. BOYSON.

Sworn to by the said John Robert Boyson at
Madras, this sixth day of November 1865,
before me.

In open Court.

(Signed) B. BROOKS.

(True Copy).

(Signed) J. B. NORTON,

Advocate General.

No. 121B. ORDER THEREON, 14th November 1865, No. 1625A.

The Governor in Council requests that, as suggested in the 11th paragraph of the foregoing letter, the Government Solicitor will prepare, as soon as possible, in communication with the Advocate General, a draft of the instructions which should be sent to the authorities at Singapore, for the purpose of procuring evidence of the fact that the Ship *Harriet* was a British Ship at the time that the murder referred to was committed.

2. The attention of the several Magistrates of Town Police will be drawn to the suggestions made in the 12th paragraph.

3. A copy of those parts of the Advocate General's letter which refer to the case of Regina versus Watkins will be sent to the Government of India, with reference to the Chief Secretary's letter of the 23rd August last, No. 1163.

(True Extract).

Chief Secretary.

To the Government Solicitor.

- " Magistrates of the Town Police. *Pras 5612.*
- " Commissioner of Police.
- " Military Department.

Exd. J. H. Burns.

7 v

Memorandum

On the trial of Siddow alias Panlu,
a Malay by and before the High Court of Judicature
at Madras, in its Admiralty Jurisdiction, for the
murder on board the Barge "Carriett", whilst
lying in the Madras Roadstead, of M. L. Goularte
her Master and one Chaw her Lascar, it will be
imperatively necessary to prove by legal evidence
that the "Carriett" at the time of the alleged
murder was a British vessel.

It is known at Madras that
the "Carriett" was last registered at Singapore,
but it is not known at Madras whether she was
there registered under the provisions of the 3 and 4
Victoria, Chapter 66, and Act 10 of 1861 passed by
the Government of India or under the provisions
of the Merchant Shipping Act of 1854.

If the "Carriett" was registered at
Singapore under the provisions of the 3 and 4 Victoria,
Chapter 66, and Act 10 of 1861, the proper mode of
proving such Registration, and that the "Carriett"
was in consequence a British vessel, will be
by the production before the High Court of
"a copy of the Register purporting to be certified
under the hand of the person having the charge of
the Original Register" as provided by Section 8
of Act XV of 1862 of the Government of India.

If, on the other hand, the "Carriett"
was registered at Singapore under the provisions
of

of the Merchant Shipping Act of 1862 the proper mode of proving such Registration and that the "Harriet" was in consequence a "British" vessel will be by the production before the High Court of a copy of the Register purporting to be certified under the hand of the Registrar or other person having the charge of the original "Register," as provided by the 107th Section of the Merchant Shipping Act of 1862.

Whatever may be the authority under which the "Harriet" was in fact registered, it will be desirable for the Government of the Straits to send with the certified copy of the Register a copy or copies, as circumstances may render necessary, certified in like manner of the Declaration or Declarations made by the owner or Owners of the vessel.

November 14th 1865

[Sd.] J. P. Boydon
Government Secretary.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Advocate General
Dated 6th November 1865.

Order thereon. No. 2002/65. N^o 1625A.

The Governor in Council requests that as suggested in the 11th para of the foregoing letter the Government Solicitor will ^{as soon as possible} prepare in communication with the Advocate General a draft of the instructions which should be sent to the authorities at Singapore for the purpose of procuring evidence of the fact that the ship "Harriet" was a British ship at the time that the murder referred to was committed.

The attention of the several Magistrates of Town Police will be drawn to the suggestions made in the 12th para

I question very much the necessity of this. I am quite certain that it was held by the Judge in London that any crime committed in Harbour was cognizable by the Courts of the country where the vessel was, and I am quite certain that they adjudicated and maintained their right to do so in cases of crimes committed on board American vessels in London Harbour.

I have not yet seen the instructions - but I see little objection to them.

W.D.W.

3. A copy of
those parts of the Advocate
General's letter which refer to the
case of Regina versus Watkins
will be sent to the Government
of India with reference to the
Chief Secretary's letter of the
23rd August last. N: 1163.

[Signature]

To the Govt. Solicitor —
— " — Magistrates of the Town of
— " — Commissioners of Police.
— " — Military Dept.