

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 711	Press ~~Mis.~~
<i>112-114</i>	
Dated 7-5-1866	

21/22

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Government {1866} of Madras.
JUDICIAL.

Recd.

Enclosures

Regd.

} 1866.

Spare copies

G.O., No. 711, 9th May 1866.

711
MAY.

Nos. 112-114.

High Court.—The orders on the recommendation of the Jury for commuting the sentence of death passed upon prisoner George Baker, deferred, pending certain inquiries to be made by the Commissioner of Police regarding the state of Baker's mind.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

No. 112. From the Acting Advocate-General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 7th May 1866.

I have the honor to report, for the information of the Governor in Council, the result of the trial of Reg. v. Baker, which took place in the High Court on the 4th May, before the Chief Justice and a Special jury empanelled under the recent Act XIII of 1865, Section 11. The case was one of great interest, as being the first since, I believe, 1856, in which a distinct charge of murder, as distinguished from manslaughter, was made out against a European, and also as being the first instance of a trial by Special jury under the new law.

2. I have been informed by the Chief Justice that he is himself addressing the Government upon the case, and that he purposes to forward the depositions taken before the Committing Magistrate, and also his own notes of the evidence given in the High Court. It will not therefore be necessary that I should enter into the evidence in much detail, especially as none of the material facts were seriously disputed.

3. The prisoner, George Baker, was a gunner in the Corps of Artillery now stationed at Saint Thomas' Mount. On the night of the 16th March, information was given to the Police that he had deserted, taking his arms and ammunition with him, and they were instructed to apprehend him. Next morning a Native Policeman named Nagappah, who had been directed to look out for him, was informed that he was in a prostitute's house, and on going to the place indicated saw Baker not far from the house. Being alone he did not go up to him, but watched him, and for a little distance followed him. Baker passed within a few yards of him, and Nagappah identified him completely. He had no cap on, and carried no carbine. Baker went into a tope, the same in which the murder was shortly after committed, and immediately afterwards came out of it with a carbine, and fired at the Policeman. The distance was so great that no harm was done, but the line was perfectly accurate; the ball made two bounds, and then struck Nagappah's belt, falling harmless. It was produced in Court, and was the ordinary conical bullet served out to the Artillery.

4. Shortly afterwards, the Inspector of Police, Mr. Mather, Kelly, the head Constable, and two Native Policemen came up. Mather seems to have discredited Nagappah's story that he had been fired at, and, though the party was unarmed they proceeded to arrest Baker. Mather and Kelly went straight on to the tope, while the Natives were sent round to the rear. As Mather and Kelly got up to the tope, the former stopped for a minute, as he says, to make water. The consequence was that Kelly was leading, and passed, before Mather, through a gap in the hedge which bounded the tope. As soon as he had entered the tope, Mather, who was close behind, heard Kelly exclaim, "don't be a fool, Baker!" and instantly the report of a gun and a groan followed. Mather peeped through the hedge, and saw what he believed to be the leg of a man standing near a tree. Hearing the noise of a ramrod, as if a gun was being loaded, he took to flight. He saw neither Kelly nor the man who had fired. In this flight he was joined by the Native Policemen, who had turned back on hearing the discharge. They also had seen no one within the tope.

5. Mather made his way in much haste to Lieutenant West, who turned out a guard and went with it to the tope. Baker was found sitting on a bund, three or four hundred yards from the place where Kelly's corpse was afterwards discovered, with an Artillery carbine in his hand. He made no resistance whatever. The witnesses were of opinion that he had been drinking, but he was perfectly sober and composed when arrested. He offered a cartridge to one of the guard, and said to him, "You had better blow my brains out." He had on his head a Policeman's Cap, which was identified as being the same that Kelly wore when entering the tope. His carbine was loaded, capped, and cocked, and bore the usual traces of having been recently discharged. The carbine was identified by its number as being that which was in his charge. On the end of the ramrod were some drops of blood. Baker had in his possession two packets of ball cartridge, a much larger amount than is ever served out to a single Soldier, and part of which he must, therefore, have obtained or stolen from one of his comrades. Kelly was found dead, lying on his face, and without his cap. He had been shot through the heart, and the bullet had passed out at his back.

6. Upon cross examination some discrepancies were established between the statements of Nagappah and Mather, as to what had passed between them, when they first met after the shot was fired. Also between Mather and Lieutenant West, as to what Mather had first said to him as to his having been himself fired at and pursued. But upon these variances nothing turned. It also appeared that there had been another man in or near the tope about the time when the shot was fired, and that another Artilleryman had been for a very short time in arrest on a suspicion of being connected with Kelly's murder, but that he was immediately released. Upon these facts also nothing turned, as at the close of the case for the Crown, it was not, and indeed could not have been contended, that any one but the prisoner had fired the shot. Finally, it was elicited by the prisoner's Council, that Baker had originally been a remarkably well-behaved man, and had earned a good conduct stripe, but that latterly he had taken to drink, had become irregular in his habits, had lost his good conduct stripe, and had been several times under punishment.

7. Mr. Miller, in addressing the Jury for the defence, dwelt upon the discrepancies just alluded to, as showing that the Jury could not rely upon the accuracy of Mather's memory as to what he had seen or heard when Kelly entered the tope. He also urged that Baker was probably under the influence of excitement produced by drink when he fired, that he did not know what he was doing, and was not responsible for his act. But upon this the Chief Justice interrupted him, and said that he would direct the Jury that drunkenness, if made out, was no defence whatever. In truth the evidence was all against his being drunk, and the fact that he was able to hit Nagappah, at the outside range of his own Carbine, was alone conclusive that the contrary was the case.

8. At the conclusion of the Chief Justice's charge, which was strongly against the prisoner, the Jury at first shewed no inclination to retire. But as the Foreman went round to collect their votes, it became apparent that there was a difference of opinion, and after some delay they asked leave to deliberate. In about half an hour they returned into Court, and obtained from the Chief Justice a statement of the law as to the species of intention necessary to support a charge of murder. They retired a second time, and after a further period of deliberation came back into the Court and stated that they were prepared with their verdict.

9. Then ensued a scene such as I have never before witnessed in a Court of Justice. The Foreman said, "Guilty of culpable homicide, amounting to murder, but recommended to mercy." Upon which the following conversation took place:—

Chief Justice.—"Let me know the grounds of your recommendation, that I may lay them before the Government."

Foreman.—"We do not think the prisoner had any premeditated intention to murder Kelly."

Chief Justice.—"Do you mean that he had no such intention before firing the shot?"

Foreman.—“Yes.”

Chief Justice.—“Do you mean that he had no ill-feeling to Kelly on the previous day?”

Foreman.—“Yes.”

Chief Justice.—“I have taken down this as what you say. Recommended to mercy, on the ground that the prisoner had no premeditated ill-feeling to the deceased previous to the day of the death.”

Foreman.—“That is our meaning.”

Mr. Miller.—“Your Lordship has not taken down what the Jury first stated, viz., that the prisoner had no premeditated intention to murder before he fired.”

Chief Justice.—“What is it exactly that you mean gentlemen?”

Foreman.—“We think that he did not intend to murder him at all.”

Chief Justice.—“Do you think that he intended to do him an injury which would probably or actually result in death?”

Foreman.—“We do not think he intended to do any act which would cause death.”

Chief Justice.—“If that is your opinion gentlemen, you ought to have returned a verdict of not guilty.”

The Chief Justice then proceeded to explain how that view of the case would bear upon the other counts of the indictment, after which the Foreman turned round to his associates, and an animated discussion arose amongst them, which lasted for several minutes. It was terminated by the Chief Justice, who requested them to withdraw to their own room. The whole scene produced upon my mind, the impression that the Jury had little, if any, idea what they meant.

10. In another hour the Jury returned for the last time, and returned this verdict, “Guilty of culpable homicide amounting to murder. Recommended to mercy on the ground of absence of premeditation before the act.” Upon this the Chief Justice passed sentence of death.

11. I have been so minute in stating the circumstances which attended the verdict, because I conceive it to be my duty to submit to His Excellency in Council my opinion as to the weight which ought to be attached to the recommendation to mercy. It is with the deepest pain that I feel myself compelled to say, that under all the circumstances of this case, I think that recommendation is entitled to no weight whatever.

12. The recommendation did not proceed upon any doubt as to any of the material facts of the case, which were really undisputed. Nor did it rest upon any extenuating circumstances, for none such existed, or were suggested. It was evidently the result of a simple anxiety to save the prisoner's life; for which purpose the Jury snatched at the absence of a degree of premeditation, which neither the law nor common sense requires to make up the offence of murder. Nor indeed is it easy to see what the Jury really meant. If they thought that he had no intention of firing at all, up to the very moment before Kelly came upon him, it is difficult to see how such an idea can be supported, in the face of the facts, that he had provided himself with a gun, and an extra quantity of ammunition, that he had already fired at one policeman, that he had then re-loaded, and after firing the fatal shot, he a third time prepared himself for resistance, though happily he abandoned the intention when his own officer arrived. But if the Jury meant, as they probably did mean, that when the prisoner fired he had not made up his mind whether the ball was to strike Kelly's heart or his arm, but aimed at him, taking his chance, then the circumstance, though likely enough, is merely one which might be predicated in almost every case of murder by shooting.

13. On the other hand, the case is surrounded with almost every other element of aggravation: the prisoner was one bound by a special tie of allegiance and obedience; he was a man thoroughly acquainted with the power of the weapon which he used; he had shown the most deliberate intention to use it in resisting arrest; and he did use it, without even allowing a moment for flight, against a public officer, acting in the discharge of his duty, and from whom, as being unharmed, he could apprehend

no personal violence. I feel deeply that the pitiable exhibition made by the Jury has deprived their verdict of much of the weight which it would otherwise have had. But there is no doubt as to the facts upon which the verdict was based. Within the last few years several Natives have been hung for murders of no greater atrocity. I cannot but apprehend that the extension of mercy in this case might produce upon the public mind an impression, however erroneous, that a different measure of punishment is meted out to the European and to the Native.

No. 113. From the Hon'ble the Chief Justice of the High Court of Judicature at Madras to the Right Honorable the Governor in Council, Fort Saint George; dated Madras, 7th May 1866.

I beg to forward, for the consideration of your Excellency in Council, a copy of my notes of the evidence in the case of George Baker (No. 6 in the Calendar of the present Criminal Sessions), who was tried before me and a Special Jury, on the 4th instant, and found guilty of culpable homicide amounting to murder. The Jury retired from the Court to consider their verdict, and after being absent for some time returned a verdict finding the prisoner guilty of culpable homicide amounting to murder, with a recommendation to mercy. On my asking the ground of the recommendation, the Foreman gave answers which induced me to think that the Jury entertained doubts as to the prisoner's intention when he fired the fatal shot, which materially affected their verdict.

2. I thereupon again explained to the Jury what, as regards intention, the law required that they should be reasonably satisfied of, and requested them to reconsider their verdict. They retired, and after a second absence for about twenty minutes, returned into Court, and delivered their verdict finding the prisoner guilty of culpable homicide amounting to murder, with a recommendation to mercy, on the ground of the absence of premeditation to injure the deceased man before the prisoner saw him and fired the fatal shot.

3. In passing sentence, I felt myself unable, under the circumstances proved, to allow the recommendation of the Jury to influence my judgment; and sentence of death was passed. The function of mercy rests with your Excellency in Council, and it is now my duty to submit the recommendation of the Jury for consideration, and (if you should think fit) the commutation in mercy of the punishment of death, under section 4 of the Penal Code, to that of Penal Servitude, under Act XXIV of 1855.

4. I ought to add that the manner and answers of the Jury in Court were not unlikely to produce some distrust in the minds of those of the public who were present, and led me to form the impression that some members of the Jury allowed themselves to be governed by feelings of aversion to the punishment of death, and that the verdict with the recommendation to mercy was the result.

5. The sentence of death is respited, to abide the decision of your Excellency in Council in the case.

May 4th, 1866.

The Queen against George Baker.

(No. 6 in the Calendar.)

The Advocate-General (the Crown Prosecutor with him) opens the case for the Prosecution.
Mr. Miller for the Prisoner.

Nagappa.—I am a Deputy Constable in the Mofussil Police at the Mount. On 17th March last, I saw the prisoner just opposite to the House of a whore, Caicasee, about 8 a.m. I went in search of him to apprehend him, by the order of the Inspector, for desertion. No other Policemen was with me. Prisoner was standing. He had white pantaloons on, and boots, but no hat or coat. He had no arms. As I had no one to assist me, I stood under a tree, about 6 or 7 yards off him. After he saw me he went towards the rear of the whore's house, and towards Noble Chary tope.

He went near a Palmyrah tree. I went near the tree, and he called me, I did not go. I went to the road in order to send word to the Main Guard to tell where prisoner was. The Palmyrah tree was about 500 feet from the tope. I saw prisoner go inside the tope. He came out again in a quarter of an hour with a gun. In the meantime I had got to an old Mosque on the road, this was about 1,000 feet from the prisoner. Prisoner stood near a prickly Pear there opposite to the tope. I was looking on at him and he lifted up the carbine and levelled it in this way towards me, and fired. Before I turned after hearing the report the bullet hit the ground twice, and at the 3rd bound it struck my belt on the left side. I picked up the ball and returned to the road. The ball made no mark. As soon as the report of the gun was heard the people stopped there. I shewed the bullet. The prisoner went back into the tope. Constable Ismail Khan then came up, I related to him the whole of the story and gave him the bullet, and sent word to the Main Guard. Ismail left, and Soobroyaloo, another Constable, came up. I mentioned all to him, and told him to mention all to the Inspector and Serjeants. Afterwards the Inspector Matcher, and the Head Constable Kelly, and Soobroyaloo came. I reported to the Inspector what I had seen. Inspector doubted my word and said something to me. Then self, Kelly, the Inspector, Soobroyaloo, Monaur Khan, went near the tope, we five together. Then Inspector ordered us, myself and the two Native Constables, to go by the right hand side of tope, and said he and Kelly would go by the left. We separated in that way. I went about 20 or 30 feet and then I heard the report of a gun from inside the tope, I heard also the noise as if a man fell down. We three returned to see what was the matter. I saw the Inspector walking fast, as soon as he saw me he said "Kelly dead." We three ran along with the Inspector. He told us to go and see the place from which the gun was fired. Before I returned to go I heard the sound as if a gun was loading. After I said that, I and the two Peons went towards the rear of the tope, as we were going people came from Noble Chary. I did not see the prisoner again. This is the bullet. I saw it two days after I gave it up.

Cross Examined.—I never saw prisoner before that day. The whore told me it was Baker. The talk with her was in the street as far from the house as the witness box is from the road. I did not see the prisoner when I spoke to her. I made inquiries of her for Baker and she took me where the prisoner was. She said she knew a man named Baker, and he is in my house. The prisoner's back was not turned when the woman pointed him out. The tope was behind him, and about 600 feet off. There were houses and a street between the rising ground and the tope. Prisoner was standing in the back yard attached to the woman's house. There was no wall or hedge round it. He was the only Soldier I saw that morning; another Soldier was lying in the inner side of the house. I looked over the wall in front and saw the Soldier. There was no Tannah nearer than a mile. The Main Guard was three quarters of a mile off. I did not see the Soldier that I saw inside the house after I peeped over the wall. I lost sight of the prisoner, for 5 or 6 minutes it may be. I was in front of the house and prisoner came round by the back and got into the road before me, as far as the witness box is from the (Registrar's) Table. I saw men passing along the road. The Palmyrah tree was as near the tope as I am now to the "Screen." I followed Prisoner about 300 feet. I did not meet any person. I was as far from Prisoner as the near outer door when he called me; as soon as he called me he turned towards the Tope. He said, "come here, come here." I turned round from time to time as I came to the road to look at Prisoner. He did not go inside the Tope before I got to the road. I saw Prisoner go near the Tope but did not enter it, and I saw him come out of it. The Mosque is about 150 feet from the road on the other side. I saw the Gun as soon as I saw Prisoner come out of the Tope. I did not move when I saw the Gun levelled at me. I heard the report immediately. There was a mound at the Mosque about as high as two men, and I wanted to get on that to see Prisoner. I did not state on a former occasion, that before I could turn and speak to people on the road I heard the report of a Gun. I said after I heard the report, and before I could speak to people on the road, the bullet came towards me. There were people coming along the road, but not near enough to be spoken to, when I heard the report. I did not say on a former occasion that I had not my face turned fully towards Prisoner, and did not see in which direction Prisoner pointed the Gun before the report. But I said the point of his Gun was towards me, but I did not know what he aimed at. I said I was looking at him before hearing the report, and that it was then I turned, but not to speak to some people. I said that I turned to call the people, not to speak, I did not say I heard the report and I then turned my face to the Prisoner. I said as soon as I heard the report I turned and looked towards people.

Question—Whether he said, "no sooner I heard the report and before I could turn, the bullet came off." (The Prisoner being about 1,000 English feet from him when he fired.)

Answer.—What I said was "before I turned and when I was in the act of turning, the bullet came off." The Inspector was running fast towards where I was when I saw him after we separated, I ran with him as far as from this to the door. He told me to go back, when in the act of turning, I heard that sound.

Re-examined.—The answers I have spoken of I said in the Magistrate's Court.

Dalzeil Fitaroy Matcher:—

I am Inspector of Mofussil Police. On 17th March, I gave instructions about the Prisoner Nagappah. I went to the Moor's Paracherry, from information received from Nagappah. Kelly, the deceased, and Soobroyaloo went with me to the Paracherry. Nagappah we met at the Paracherry, he said something to me. I went towards a Tope with Kelly and Soobroyaloo and Nagappah, Monaur Khan may have been there. It was his beat. This was between 8 and 9 p.m. When near the Tope, myself and Kelly went in one direction, and Nagappah and Soobroyaloo in another. We had information that Gunner George Baker had left the Barracks with his Arms and Ammunition. After we separated, I stopped at the first gap in the edge round the Tope. I stopped to answer a call of nature. Kelly went on a little further, and stopped at the next gap, about 12 paces in advance. I was buttoning my trousers and walking towards Kelly. I saw Kelly enter the gap. Instantly I heard the words, "Baker, don't be a fool," and the report of a Gun and a groan followed. When I heard the report, Kelly was a little on the other side of the hedge. I could see him through the hedge. I went back to the first gap and peeped through the hedge. I saw the leg of a person behind a Coconut tree in the Tope, about 24 paces from me. The first gap was about 12 paces from where I saw Kelly last. I heard a noise similar to the noise of an iron ram-rod loading a Gun. Being unarmed I made my escape, after that the first person I saw was Lieutenant West. I did not meet any other of the Constables before I met West, but I heard their voices, which appeared close. When I heard the voices, I called out Kelly was shot, to make their escape. I went to Lieutenant West's house, about 500 yards from the tope. I told West what had happened and asked for arms and a horse. He placed a revolver before me, and telling me I was in a confused state of mind, told me to stop in his house and he would go for armed men. I stopped there until the men came. I followed the men and Lieutenant West as far as the Paracherry. At the Paracherry the men halted, then they went off again, and I stopped there till the man was taken. In about an hour I saw Lieutenant West returning with, I believe Lieutenant Forster, Head Constable Byrne and some other people said something, thereupon I went into the tope and there I saw Kelly's body. He was dead, with his face towards the earth. I observed a bloody discharge on his coat, and a hole in the coat on left side (just here). The body was just in the same place as I had last seen Kelly alive, about two feet from the hedge. The tree at which I observed, as I thought, the leg of a man, was at 12 paces from the place I found the body. Kelly's cap was gone. He had it on when I last saw him. This I believe to be the cap. It is the cap of a Police Officer of his rank. I saw the body between 11 and 12. A Military Court assembled an hour afterwards. I saw Doctor Smith, and saw the body turned over in his presence, at 2 or 3 p.m. that evening. I saw the prisoner. This cap was handed to me by Comarasawmy during the time the Court was assembled. I subsequently gave it to Captain Morton, and he gave it back to Gunner Murphey.

Cross examined.—I think I had seen Prisoner before, but I am not sure. We separated just at the tope. I never lost sight of Kelly. I saw him fall. I did not tell Lieutenant West that I had been shot at. Byrne is the only other Head Constable in my division wearing such a cap as this. I was in uniform and so was Kelly at the time. I did say on a former occasion that Kelly turned towards the entrance to the gap and went out of my sight into the gap. I meant that I could not see him distinctly. The hedge was a thick hedge. As we went towards the tope, I remarked that George Baker had gone out of the barracks with his Carbine and Ammunition, being St. Patrick's day, to have a skirmish, and that was the reason we went unarmed. Another person was taken up thinking he was in the tope at the time. He is a Soldier in the Artillery, I don't know his name.

Re-examined.—I saw this man in the tope. He was brought in whilst the Military Court was going on in the tope. He was released at the tope.

Matthew R. West.—I am Lieutenant in the Royal Artillery, and quartered at the Mount. On the 17th March last, I arrested the Prisoner. Inspector Matcher came to me and told me something, and in consequence, I went to the Barracks and got an escort. I went to Moor's Paracherry. I saw several people there, Europeans, Natives, and Gunners. In consequence of something I was told, I ordered the men to load their Carbines, which they did. I went forward in the direction of the tope. Captain Forster overtook me. He said stop here, and I will go on. I was then eighty yards from the nearest corner of tope. I halted there some time. Captain Forster rode along the hedge looking to see if he could any one; when he got to furthest corner of the tope he made a motion with his hand and started off at a gallop; I ran after him, and the men too. Just as I got to the corner, Captain Forster disappeared behind the bund of the Tank. We went on round the tope, and as I went I saw a man sitting some distance on my left on the bund of a Paddy Field. I went up to him and told him he might as well give himself up quietly and not kick up a row. Then he gave up his Carbine to one of the escort. The Prisoner is the man. He had on trousers, shirt, cap with a straight peak with a silver Crown, no coat. It was a similar cap to this. The Carbine was one like this produced. I told the Corporal to take charge of the Prisoner, and I left. Before I left, almost immediately after Prisoner gave up the Carbine, he said, "here Corporal, fall in a file of men and take these men to the guard." He also said to one of the escort, "you have got a loaded Carbine, you may as well shoot me." After the

prisoner had gone away about 7 or 8 yards from where I stood, Prisoner drew out a package, and said "you did not know I had this, did you?" Prisoner held out the packet. I did not go inside the tope.

Cross examined.—The Inspector told me he had been shot at. I did not know the prisoner. There is another man of the name of Baker in the same Battery. The tope was behind my house. I don't think any other man was taken up on suspicion of the murder, but I saw another soldier in custody afterwards. Some one came and told me, there was a man lying under a tree. This was just as I saw the prisoner sitting. The bund on which prisoner was sitting was 100 yards from the nearest part of the tope. Inspector Matchor told me a peon was shot. He was in a state of great alarm. I thought the man was close after him. I think the prisoner had been drinking, but he was not drunk. I was with him about seven minutes. One minute he seemed very much excited, and another minute very much dejected. This was St. Patrick's day. Prisoner was the only man I know of who had deserted.

Re-examined.—Prisoner belongs to No. 6 Battery of 23rd Brigade. The carbine was on full-cock when the prisoner gave up the carbine. I put the ram-rod down and it appeared to be loaded, and it was capped.

Parker Smith.—I am Assistant Surgeon doing duty with the Artillery at the Mount. On the 17th March a peon came to me. I went to a tope about a mile and a quarter from my house. I saw the body of a man lying on his face and quite dead. The feet appeared to reach within six inches of the slope of the fence. His clothes were saturated with blood over the left loin, there also I noticed a slight tear in the coat. It was a white drill tunic. I turned the body on its back, and found the coat to be blood-stained over the right breast, and there also I found another small hole. I opened the tunic and had the body exposed. I found small holes corresponding with the holes in the coat. These presented the appearance of a gun-shot wound. The one in front was smaller than the one behind and rounder, and the edges were turned inwards, whereas the edges of one in the loin were more jagged and turned outwards. In my opinion the bullet entered the breast. I made *post mortem* examination in the *post mortem* room in the hospital on the same day. I found the bullet had passed in at the right side of the sternum, between the fifth and sixth ribs, passed backwards and downwards and towards the left, entering the heart, diaphragm, left lobe of the liver, stomach, and had grazed the left kidney and passed out through the muscles at the back. The body otherwise was that of a very healthy man. The death must have been instantaneous. A ball such as this would produce the wounds I saw, I can't say positively at what distance the shot must have been fired. This carbine is sighted for 300 yards.

Cross examined.—The hedge was sloping about half a right angle. I think there was a hedge at the top, I can't tell the height of the bank. The sternum was slightly grazed.

William Fleming.—I am a Gunner. On the 17th March last I went out with Lieutenant West. I saw prisoner sitting near a tope alongside a tree. He had on a cap, not an Artilleryman's cap. It was a cap similar to this. He had a carbine, I took it from him. It was on half-cock and capped. The carbine had the number 20 on it. This has No. 20 on it. I saw prisoner give some papers to Gunner Murphy. I don't know what they contained. I am sure the carbine was on half-cock. I gave it over to Lieutenant West immediately. Prisoner continued to wear the cap until he got to one of the prison-rooms in the barracks. I came back from the barracks and saw Kelly's body. The head was inside the tope and his feet outside the gap. There was no cap on the body. I belong to Prisoner's Battery. I have known him since October 1862. He was a very steady man at first, latterly he got into a little trouble and into the guard-room occasionally, I don't know what it was for.

William Ferns.—I am a Corporal of Royal Artillery. On the 17th March I saw the prisoner beyond the tope. I followed Lieutenant West's party. I got to prisoner about four or five minutes after they did. I saw Gunner Fleming get the Carbine from the prisoner. I received it from Lieutenant West. This is the Carbine. It was loaded, and on half-cock and capped. It appeared as if it had been recently fired. I believe the Carbine would carry 900 yards. I saw nothing else given up. After I put the prisoner in the Guard-room, I ordered Fleming to search the prisoner, and Fleming and Murphy gave me two packs marked 25 and 52. I did not open them. They are packets of ammunition. Fleming gave me also 23 caps, here they are. The Carbine was deficient of a snap-cap. There were three marks of blood on the ram-rod; one near the top, one in the centre and one near the bottom.

Cross-examined.—Baker belongs to my Battery. I recollect prisoner being confined in Guard-room before the 17th March. That was for being absent for one night, and he gave himself up the following morning. On the 17th March he appeared to have been drinking, but did not appear excited. I was with prisoner for about an hour. I was fifteen or twenty paces off when prisoner called out "fall in a file of men and march me to the guard." I heard prisoner talking to others whilst I was with him. He was sitting talking. I know another Artillery man named Baker. He is in prisoner's Battery. I know another Baker in No. 7 Battery. I have no recollection of any other man of that name being absent the day before the 17th. No man is allowed more than 10 rounds and 11 caps. I have never known any of the men take their Carbines out. The prisoner's gun is marked F, 23-20. The other Baker in my Battery is named John.

John Murphey.—I am a Gunner. I was one of the escort with Lieutenant West. After the Carbine was given up I took prisoner to the Barracks. On my way to the Barracks he gave me a parcel, No. 52. I did not examine it. This is the one. It appears to contain ammunition. I escorted him to the cell. In the cell he gave me another parcel, No. 25, similar to the other. This is the one. He gave me one single cartridge on the ground where he was captured, and he said, load your piece and blow my brains out. I said I was already loaded. The Nos. on the cartridge correspond with the Carbine Nos. I did not examine the Carbine. The cartridge appeared to me to be suited to the Carbine.

Cross-examined.—I have known prisoner three or four years. I know when he had a good conduct badge, he has lost it between six and seven months. I can't say that he lost it for drunkenness. He certainly drinks. I have seen the prisoner the worse for drink often enough. I had occasion to confine him for drunkenness six or seven months ago. I was acting Bombardier at the time. I have not known him to be out without leave drinking. He seemed, on the 17th March, as if he had been drinking. He was perfectly sober when he was captured. I judged he had been drinking by his appearance. He did not appear excited, I saw nothing unusual in his manner. He spoke quite coolly to me.

Henry Summers.—I am a Serjeant of No. 6 Battery at the Mount. Prisoner was in my Battery. This carbine was in charge of the prisoner, on the 17th March 1866. I took charge on the 15th March, and the Carbine was in his charge then. I have known prisoner since 1862. I don't remember him having a good conduct badge.

John Cusack, Serjeant Major.—I saw prisoner on the 17th March after he was brought in. I was present at the search, and I saw a cap and a round of ammunition taken out of his pocket. The cap was one similar to this. It was handed to me and I handed it to Serjeant Byrne. I gave the round of ammunition to Corporal Ferns.

Cross-examined.—I have known Baker since the 29th May last. Prisoner has been lately confined more than once or twice. Once for absence and the other for drunkenness. I am not positive that I have seen him drunk. He was lying down on the guard bed. He seemed quiet enough while the cap was taken away, but he resisted the escort in taking the ammunition. He struck very hard, and I was obliged to get another party in. I got him in immediately after, and locked the door. He appeared very much excited. This was an hour and half after I heard he had been brought in.

Hugh Byrne, Head Constable of the Mofussil Police.—I got a cap like this from Serjeant Cusack, and I gave it to Comarasawmy.

Comarasawmy.—I am a Police Constable at the Mount. I got the cap from last witness. I gave it to Inspector Matchor.

Case for the Prosecution.

Mr. Miller for the prisoner addresses the Jury.

Verdict.—Guilty of culpable homicide amounting to murder, with a recommendation to mercy on the ground of absence of premeditation to injure the deceased before the prisoner saw him and fired the fatal shot.

Sentence of death passed.

NOTE by the Honourable T. PYCROFT, dated 8th May 1866.

I have read all these papers with great care.

2. I observe that His Honor the Chief Justice simply submits the recommendation of the Jury for consideration, and, if the Government see fit, for commutation of punishment, but he does not support it.

3. He adds, indeed, his impression that the recommendation to mercy in the case of some members of the Jury proceeded from their having allowed themselves to be governed by feelings of aversion to the punishment of death. The whole circumstances of the case, and all the considerations connected with it, are clearly and fully set out by the Acting Advocate General. It is with great pain that I feel myself constrained to agree in the conclusion, at which he has arrived, that "the recommendation of the Jury is entitled to no weight whatever," that there are no mitigating or extenuating circumstances, and that the sentence of death should be carried out.

(Signed) T. PYCROFT.

Note by the Honorable H. D. PHILLIPS, dated 9th May 1866.

There appears to have been an entire absence of motive or provoking cause for the prisoner's act, which was as determined as it was deliberately perpetrated. Nothing that is in evidence against him supplies what, to my mind, can be regarded as an extenuating circumstance, and I am at a loss to trace on what ground the Jury have rested their recommendation to mercy. For these reasons, and because the Chief Justice has pointedly abstained from supporting that recommendation, I would allow the law to take its course.

2. I have had no difficulty in forming the above conclusion, but the case might have been otherwise. Had I felt that the matter was a doubtful one, it seems to me that the letter of the Acting Advocate General would, to some extent, have affected any small chance the prisoner would have had of my recording an opinion in favor of mercy. It strikes me that the Acting Advocate General is out of order in contending that mercy should not be shown. His duty was to submit a report of the trial, and there, as I view it, his duty ended.

(Signed) H. D. PHILLIPS.

No. 113-A. From the Reverend E. S. GOODHART, to the Right Honorable the Governor in Council, Fort Saint George; dated Madras, 9th May 1866.

Having been connected, as Chaplain of the Penitentiary, with the prisoner George Baker, now under sentence of death for murder, I am anxious to make your Lordship acquainted with a few facts in reference to the case, which have recently come to my knowledge, and which appear to me to merit consideration in the final decision as to life or death. On inquiry at the Mount yesterday, I learnt from the Hospital Officers that Baker was some time since subject to fits, and that he has several times been treated in the Hospital for *delirium tremens*. I learnt moreover, that on one occasion, some few months since, an Officer, Lieutenant Roberts, now in Bellary, was struck by Baker, whilst going his rounds to the guard at night, and that subsequently Baker had some sort of fit and was treated in the Hospital; on his discharge from which he was, on the intercession of the Doctor (Dr. Mackay, now in Kurnool) excused punishment, on the ground of not having known what he was about.

2. Gunner Williamson, now in the Fort, is also able to state that on one occasion he prevented Baker from hanging himself, and that two days previous to the crime for which he is condemned, his conduct was so strange as to excite fear in his (Williamson's) mind. Williamson can, I think, give other particulars which may throw light on the state of Baker's mind, as they have been in the same Battery since Baker joined. My own impression is, and my opportunities of judging have been more than usually favorable, that there is a wildness and excitability about the man Baker which, when stimulated, as it doubtless has been, by vicious habits, amounted at times to temporary insanity. His conduct on this miserable occasion seems to bear this out. He was, according to the witnesses, not drunk; and yet his acts, especially as regards the cap taken from Kelly, were either the acts of a drunkard or a mad man. So, again, he re-loaded his Carbine but made no attempt to fire it off again, and after, at first, quietly submitting, struggled like a mad man in the guard room.

Your Lordship will, I am sure, excuse me for bringing these facts before your notice. I have no morbid desire, whatever, to save the life of a sane and fully responsible man who causes the death of another; but this certainly appears to me to be a case in which there is room for doubt as to the real condition of the man's mind.

No. 114. ORDER THEREON—No. 711, Judicial, dated 9th May 1866.

Before passing orders on the recommendation of the Jury, that the sentence of death passed upon the prisoner George Baker should be commuted, His Excellency the Governor in Council thinks it desirable that a careful inquiry should be made

into the facts stated in the letter from the Reverend Mr. Goodhart above recorded, and he resolves to entrust the inquiry to Captain C. Hearn, the Commissioner of Police.

2. The points which should be embraced in the inquiry are as follows:—

1st.—The assertion that, some months ago, Baker struck an Officer (Lieutenant Roberts) when going his rounds at night, and subsequently had a fit, which led to his being placed under treatment in Hospital, and to his having afterwards been excused punishment, on the ground of not having known what he was about.

2nd.—The assertion that Gunner Williamson, now in the Fort, on one occasion, prevented Baker from hanging himself.

3rd.—The assertion that, two days previous to the commission of the crime for which he is under sentence, Baker's conduct was so strange as to excite fear in Williamson's mind.

3. Captain Hearn will institute such inquiry on these points as will enable him to satisfy himself and to inform Government whether or not there are valid grounds for assuming that Baker was not in his right mind at the time of the commission of the murder. Captain Hearn will observe that, in the Reverend Mr. Goodhart's letter, Baker is alleged to have suffered from *delirium tremens*. He will ascertain whether there is reason to suppose that any aberration of mind, or any physical disorder, such as the fit alluded to, with which he has been affected, are attributable in whole or in part, to intemperate habits. He will examine any officers and other persons, both at the Mount and in Fort Saint George, who may be able to furnish information on the several matters adverted to. The Officer Commanding the Centre Division will be requested to issue immediate instructions to the Officers under his command to do everything in their power to facilitate the object of the inquiry entrusted to Captain Hearn.

4. Captain Hearn will also make such inquiries at the Penitentiary as will enable him to ascertain whether, during Baker's incarceration there, he has manifested any symptom of a disordered intellect.

(True Extract.)

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Madras 7th May 1866.

To

The Right Honorable Lord Napier, K. T.
The Governor in Council

8^{ea} 8^{ea} 8^{ea}
Fort Saint George.

Right Honorable Sir,

I beg to forward for the consideration of your Excellency in Council a copy of my notes of the evidence in the case of George Baker (N^o 6 in the Calendar of the present Criminal Sessions) who was tried before ~~me~~ and a Special Jury on the 14th instant and found guilty of culpable Homicide amounting to murder. The Jury retired from the Court to consider their verdict and after being absent for some time returned a verdict finding the Prisoner guilty of culpable Homicide amounting to murder with a recommendation to mercy. On my asking the ground of the recommendation the Foreman gave answers which induced me to think that the Jury entertained doubts as to the Prisoner's intention when he fired the fatal shot, which materially affected their verdict.

I thereupon again explained to the Jury what as regards intention the law required that they should be reasonably satisfied of, and requested them to

reconsider

reconsider their verdict. They retired and after a second absence for about twenty minutes returned into Court and delivered their verdict finding the Prisoner guilty of Culpable Homicide amounting to murder with a recommendation to mercy, on the ground of the absence of premeditation to injure the deceased man before the Prisoner saw him and fired the fatal shot.

In passing sentence I felt myself unable under the circumstances to allow the recommendation of the Jury to influence my judgment. A sentence of death was passed. The function of mercy rests with your Excellency in Council, and it is now my duty to submit the recommendation of the Jury for consideration, and (if you should think fit) the commutation in mercy of the punishment of death under Section 4 of the Penal Code, to that of Penal Servitude under Act XXIV of 1855.

I ought to add that the manner and answers of the Jury in Court were not unlikely to produce some distrust in the minds of those of the public who were present, and led me to form the impression that some members of the Jury allowed themselves to be governed by feelings of aversion to the punishment of death, and that the verdict with the recommendation to mercy was the result.

The sentence of death is respite to abide the decision of your Excellency in Council in the case.

I have the honor to be,

Honorable Sir,

your most obedient servant.

W. Scott

B. E. Hotel

9/5/66

My Lord,

Having been connected
as Chaplain of the Penitentiary
with the prisoner George
Baker now under sentence
of death for murder I
am anxious to make your
Lordship acquainted with
a few facts in reference to
the case which have recently
come to my knowledge and

Judicial robes Defiant

from
The Chief Justice of the
S. & W. High Court. London.

17/3 May 1866

Dear

My dear

With reference to
the case of Geo. Baker who
was in the 1st inst. tried
& found guilty of capital
murder on 17th 1866, I have
forwarded for consideration
the report submitted of the
jury & jury.

Yours truly

which appear to me to
merit consideration in the
final decision as to life or
death. On enquiring at the
Munro yesterday I learnt
from the Hospital Officers
that Baker was some time
since subject to fits and
that he has several times
been treated in the Hospital
for delirium tremens. I learnt
moreover that on one occasion
some few months since an
officer Lieutenant Roberts
now in Bellary was struck
by Baker whilst going his

rounds to the guard at
night and that subsequently
Baker had some sort of
fit and was treated in the
Hospital, on his discharge
from which he was, on the
intercession of the doctor,
(Dr. McQuay now in Munro)
excused. punishment on the
ground of not having known
what he was about.
Gunner Williamson now in the
Fort is also able to state
that on one occasion he
prevented Baker from hanging
himself and that two days

previous to the crime for
which he is condemned his
conduct was so strange as
to excite fear in his (Williamson's)
mind. Williamson can I think
give other particulars which may
throw light on the state of
Baker's mind as they have
been in the same Battery
since Baker joined. My
own impression is and my
opportunities of judging have
been more than usually favorable
that there is a wildness and
excitability about the man
Baker which when stimulated
as it doubtless has been by

vicious habits amounted
at times to temporary
insanity. His conduct on
this miserable occasion seems
to bear this out. He was
according to the witnesses not
drunk and yet his acts
especially as regards the caps
taken from Kelly were either
the acts of a drunkard or
a madman. For again he
reloaded his carbine but made
no attempt to fire it off
again and after at first
fiercely submitting struggled

to the man in
the prison.

Your Lordship will I am
sure excuse me for bringing
these facts before you notice
I have no marked desire
whenever to save the life
of a sane and fully
responsible man who caused
the death of another but
this certainly appears to me
to be a case in which there
is room for doubt as to
the real condition of the
man.

man's mind

I have the honor to remain
your Lordship's faith & obdt
E. S. Goodhart

Insinal 1066 Dep't

From
Rev. E. S. Fordham

25 Aug 77
23 9 Aug 78

No 1045

Wm. J. T. T. T.
Certain facts rela-
-ting to prisoner of
War under sentence
of Death by the High
Court

113.

Memo

The old Rules allowed
3 years sick leave, of
2 years counted for Pension.

The new Rules also
allow 3 years sick leave
but none of it counts
for Pension.

What Mr. Cowen
wishes is that if he were
obliged to take leave
under the new Rules,
for say 15 months, he
would either have to serve
for that period at the
expiration of his leave
or be content to retire
on a retiring allowance.

rule clause II Section of 200 £ a year. When
6, page 8. Art. All as
on retirement of the Rules (Reg.)

on 1/3 pay.

And thus he would

if he were at liberty to get
the leave under the old rule,
as the 15 months leave
we count towards Pension
and complete 20 years
service, he wd be entitled
to retire at once ^{on the expiry of the leave} on a
 $\frac{1}{3}$ Pension under the
old Rule or 400 £
per annum. his pay
being 1200 £ a year -
I do not see how the
Suggestion of the Examiner
of Claims meets the case -

Note.

1 year at once on
half pay - which
might be extended
in succession periods
of 6 months each
to 2 years - the 2^d year
on $\frac{1}{3}$ pay.

Mr. Conner, Judge of
the Small Cause
Court, Madras, is
threatened to go away
on S. C. & Complain
of the hardship
entailed on him
by the new Leave Rule.

He has been 19
years in the Service
and by the old rule
which he was in force
up to 1863 he could
now get two years Sick
Leave, which would
have been reckoned as
Service for all purposes
for pension.

And thus he would

have become entitled
on expiration of his leave
to a pension of $\frac{1}{3}^d$
of his pay - or to
£400 per an.

And during his
leave of two years
he would receive
£1000 as absentee
allowance -

By the new
rules on the other
hand he can get
2 years leave - but
they do not count

for pension - Con-
sequently he ^{can} ~~must~~
~~leave~~ only get
for his present service
or if he returns and
completes his 20 years
service for that period -

a pension of 200 £ -
his annu - and he
must complete 25 yrs
service before he can
get 400 £ per an.

During his two
years absence he
would receive 975 £
as absentee allow-
ance -

Thus it will be
seen that under
the new rules Mr
Gosser ^{loses 25 £}

~~loses 25 £~~
as absentee allowance
and practically ~~loses~~
~~loses~~ six years
service -

In ^{his} ~~then~~ despatch
of the 18 Jan'y 1865
No 1, the Sec'y of State
expressed himself
in the following terms,
on a memorial from

Mr. Ferrand, First
Uncovenanted As-
sistant in the first
Office, Military
Dept.

"Mr. Ferrand
points out that the
application of the
new rules might
render it necessary
for him in order to
obtain a pension, to
serve for a longer
period than was re-
quired by the old
rules. In the case
of any Uncovenanted
Servant, so circum-
stanced, who was
appointed prior to
the promulgation of
the new rules, and
who may con-

sider entitled to fa-
vorable consideration
I shall not object to
your paying a pen-
sion after he has
completed the period
of service required by
the old rules, in the
event of his health
rendering it necessary
for him to retire from
your service - pro-
vided he has not
"at any time availed
himself of the tempo-
rary leave by the new
Leave Regulations."

Mr. Grier has
never taken leave
but has wished to
take advantage of
the benefits of the

new leave rules &
his case only. I hear
from Mr. Ferrand
in these respects -
viz. that Mr. Ferrand
^{under the new rule}
will have to serve
again a period
of 2 years sick leave
while Mr. Cuvier
has not yet had any
sick leave - and
that Mr. Ferrand
has deprived of
5 years service at
the commencement
of his service while
Mr. Cuvier's loss will
be at the end of
his service. These
differences are
clearly immaterial
the practical result

being identical in
both cases.

The literal word-
ing of the Despatch
would seem to imply
at first sight, that
the concession was
intended to be li-
mited to cases where
the entire loss of
pension would be
entailed by ap-
plying the new rules.
But this obviously
is not the case for
Mr. Ferrand - even
under the new rules
was entitled to
200 francs & his
complaint was
not that he would
or might lose a
pension altogether -
but that he would

have to serve 2-7
longer for his half
pay period under
the new than under
the old rules.

It seems to me
therefore that for
May, as the Exam
of claims reports - give
Mr. Corcoran the benefit
practically
of the old rules.

I know little of
him personally but
he has the character
of a forth-right
talking & working
officer. His health
is utterly broken
and it would be
very hard at the
close of 19 years
service to apply

The balance of claims
for Mr. Corcoran
comes fully within the
scope of the old rules.

which with any
extension up to 2 years
that may be granted -
(the first year on half
and the second on 3/4
pay) will be allowed
towards pen-
sion.

the new rules to him
with the alternative
of thereby either de-
priving him of 200 £
per an. or of com-
pelling him to serve
6 years more in India
to get 400 £ per an.

All that the
Govt can do honestly
is, I think, to tell
him that they
will ~~recompense~~ pay
him one year
Lick Cert. to be te-
nured to the order
of the Home Govt.
to a home notice his
case will be im-
mediately brought
as deserving of

Special consideration. This being the first case which has occurred under the Despatch, it would scarcely be safe to settle it off hand, though the terms of the Despatch would warrant this course.

It will also be as well to say that the ^{proposed} Reserve to themselves the right when the proper time arrives to fix the amount of pension which will be awarded to Mr. Crier. (This)

Mr. Crier's case is a very hard one indeed. I should think he treated specially in the manner proposed by the Committee.

23 June 66

W.D.

will bar any action similar to that in the Home Despatch that the ^{proposed} Reserve have fettered themselves by their action.

or else requested

J. D. S.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters.

From the Hon: the Chief Justice - Here enter 7 May 1866
" the Rev E. S. Goodhart - " - 9 - do -

Order thereon 9 May 1866. No 711.

Before passing orders on the recommendation of the jury that the sentence of death passed upon the prisoner George Baker should be commuted, His Ex: the Governor in Council thinks it desirable that a careful enquiry should be made into the facts stated in the letter from the Rev. Mr Goodhart above recorded and he resolves to entrust the enquiry to Capt. C. Keam, the Commissioner of Police.

The points which shall be embraced in the enquiry

are

112-114

Keam with Hon. Secy. Dept. No 1045/66
9 May 1866 O.S. 711.

are as follows:-

1st The assertion that some months ago Baker struck an Officer (Lt Roberts) when going his rounds at night and subsequently had a fit which led to his being placed under treatment in Hospital and to his having afterwards been excused punishment in the ground of not having known what he was about.

2nd The assertion that Gunner Williamson now in the Fort on one occasion prevented Baker from hanging himself.

3rd The assertion that two days previous to the commission of the crime for which he is under sentence, Baker's conduct was so strange as to excite fear in Williamson's mind.

3. Captⁿ Hearn will institute such enquiry on these points

points as will enable him to satisfy himself and to inform Government whether or not there are valid grounds for assuming that Baker was not in his right mind at the time of the commission of the murder. Captⁿ Hearn will observe that in the Rev^d Mr Goodhart's letter, Baker is alleged to have suffered from delirium tremens. He will ascertain whether there is reason to suppose that any abnormality of mind or any physical disorder such as the fit alluded to, with which he has been affected, are attributable in whole or in part to intemperate habits. He will examine any Officers and other persons both at the Mount and in Fort St George who may be able to furnish information on the several matters alluded to. The Officer Commanding the

the Centre Division will be requested to issue immediate instructions to the Officers under his command to do every thing in their power to facilitate the object of the enquiry entrusted to Capt Hearn.

Capt Hearn will also make such enquiries at the Penitentiary as will enable him to ascertain whether during Baker's incarceration there he has manifested any symptom of a disordered intellect.

Dated 9 May 1866.

PROCEEDINGS OF GOVERNMENT.

2

No. 711

General 1866. Department.

despatch Capt C. Hearn, Com^d of Police
with copy of Mr Fordham's letter

despatch Mr. Depar.

despatch { Officer Commanding Centre Div.
Officer Commanding City S. I. Division.