பொ. ப. புது எண். 14

குறிப்பிட்டவர் பொறுப்பிலிருக்கும் பதிவுக் கட்டிலிருந்து எடுக்கப்பட்ட தாள்.

அச்சு / பல்வகை / வாலாயம் என் ——————, தேதி ——————

எடுத்த தேதி.	எதன் பொருட்டு: துறை.	நடப்பு எண்	ஆண்டு.	தாள் எடுக்கும் எழுத்தர் அல்லது சிற்றெழுத்தர் சுருக்கொப்பம்.	திருப்பிக் கொடுத்த தேதி.	சிற்றெழுத்தரின் சுருக்கொப்பம்.

M.R.O. 1—32,400—22-11-30.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 780 A. 781 Press Mis.

210–211

Dated 22nd. May 1866

86/86

Not to be folded or roughly handled

Subject

Of The sentence of death passed on George Baker of St. Thomas Mount commuted to transportation for

Government {1866} of Madras.

JUDICIAL.

Recd. } 1866. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 780-A, 781, 22nd May 1866.

MAY.

Nos. 210—211.

High Court.

The sentence of death passed on George Baker of St. Thomas' Mount, commuted to transportation for life.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—the following papers :—

No. 210. From the Honourable the Chief Justice of the High Court of Judicature at Madras, to His Excellency the Right Honourable the Governor in Council, Fort Saint George, dated 17th May 1866.

I beg to acknowledge the receipt of the letter of the Chief Secretary of the 14th instant, forwarding a letter of the Commissioner of Police, Captain Hearn, and depositions and papers obtained since the trial, relating to the case of George Baker, now in the Penitentiary under sentence of death, and requesting me to favor your Excellency in Council with my opinion, whether the circumstances set forth in those depositions and papers furnish any grounds for commutation of the sentence.

I feel it difficult to do otherwise than return an answer in the negative, and in what I am about to express I beg that it may be understood that I am swayed by considerations which *may* be permitted to operate with the Executive Government in exercising the prerogative of mercy, but which could not have been allowed to influence the mind of the Judge on the trial. There is nothing in the depositions and papers forwarded which would have justified my not passing the extreme sentence of the law.

The only additional material facts which seem deducible from the depositions, are that the convict is a man whose system is liable to be greatly disordered by excess in the use of intoxicating drink. That one of the effects likely to be produced on him whilst under the influence of such drink is violent excitement, impelling him at times to resist and injure persons who might interfere with him; and that recently, before the murder, he had given way not merely to a single act of indulgence in the use of ardent spirits, but had probably been indulging in a debauch during the day and some part of the night before the fatal act, and that the baneful effects of the liquor had been operating on his brain and nervous system for some hours immediately before he shot the unfortunate deceased.

Now what would be the effects likely to be produced in a man of the convict's constitution and temperament by the operation of strong drink on the system kept up for some time, I cannot in the absence of medical testimony venture to say. But it *may* be, looking at some portions of the deposition, that the continued inflammatory action of drink, though not taken at any one time in sufficient quantity to cause actual drunkenness, was likely to disorder the convict's brain and intellect to such a degree as to upset his rational self-control, and excite an impulse to inflict injury on any one interfering with him: and if the depositions taken since the trial, considered with the evidence at the trial, leave on the minds of your Excellency and the Members of Council the impression that such was not improbably the disordered condition of the condemned man on the morning of the murder, and that he *may* have been without the power of self-control at the moment when the deceased man presented himself, I think, considering all the circumstances connected with the case, it is one in which in mercy the sentence may not improperly be commuted to penal servitude.

These are all the observations that I feel myself able to make, though most anxious to aid your Excellency in Council in the discharge of a serious and painful duty. But should you desire it I shall willingly meet and confer with you on the Members of Council on the case.

I return the depositions and papers forwarded for my consideration.

No. 210A. Minute by the Right Honourable the PRESIDENT.

1. The convict, George Baker, was, on the 4th instant, tried before the High Court, was found guilty of culpable homicide amounting to murder, and was sentenced to death.

2. In returning their verdict, however, the Jury recommended the prisoner to mercy, on the grounds of the absence of premeditation to injure the victim of his criminal act before the prisoner saw him and fired the fatal shot.

3. In forwarding the verdict to the Governor in Council the Chief Justice did not recommend it to the favorable consideration of the Council.

4. Mr. Pycroft and Mr. Phillips, to whom the papers were first submitted, recorded their opinions that there were no extenuating circumstances in the case, and that the sentence of death should be carried out.

5. If my view of the case had been reduced to writing at that moment, it would have been conformable to the view of my Colleagues in the Council, but before I had time to record my sentiments, an incident occurred which induced me to defer my decision, and led the Council to suspend the execution of the capital sentence.

6. I received from the Reverend Mr. Goodhart a communication addressed to the Governor in Council, alleging certain circumstances in the previous conduct and mental condition of George Baker, which appeared to justify an inquiry.

7. The inquiry was entrusted to Captain C. Hearn, Commissioner of Police, who, in the discharge of his duty, proceeded to Saint Thomas' Mount, and Bangalore, and who on the 14th instant, submitted the definite results of his investigations.

8. The documents connected with the inquiry having been considered by the Members of Council, were submitted to the Chief Justice, who had conducted the trial, with the request that he would state to the Governor in Council, whether, in his opinion, the circumstances thus elicited, furnished any grounds for commuting the sentence.

9. The reply of the Chief Justice was forwarded to Council on the 17th instant, and on the same day the Chief Justice afforded the Members of Council the further benefit of his advice, in a personal conference at the Council Chamber.

10. From the depositions which have been taken since the trial, I think that the following inferences may be fairly drawn :—

1. That the criminal, George Baker, had from time to time been abandoned to fits of drinking.
2. That indulgence in ardent spirits produced an unusual excitement and disorder in his temperament, which was naturally of a sullen and morose character.

12. From the statement of the Chief Justice, I gather the following opinion, *viz.*, that if the depositions taken since the trial, considered with the evidence at the trial, leave on the minds of the Members of Council, the impression that the inflammatory action of drink, though not producing actual drunkenness, was likely to disorder the convict's brain and intellect to such a degree as to upset his rational self-control, and excite an impulse to inflict injury on any one interferring with him; that such was not improbably the condition of the criminal on the morning of the murder, and that he may have been without the power of self-control at the moment the deceased man presented himself, then, considering all the circumstances of the case, it is one in which the sentence may not improperly be commuted.

13. From the verbal explanation afforded by the Chief Justice I have received the following information:—

1. That the question for the consideration of the Council is really removed to this single issue—

"Was the criminal, at the moment of perpetrating the fatal deed, "probably without the power of rational self-control in consequence "of the effects of drink, or was he not?"

2. That although the fact of proved intoxication at the moment of committing murder cannot be permitted to debar the Jury from finding a verdict of guilty of murder, or the Judge from pronouncing sentence of death, that circumstance would, in England, undoubtedly weigh with the Crown in respect to the mitigation of the sentence, unless there was proof of malice and premeditation on the part of the criminal before the act of drunkenness.

14. The Chief Justice stated that he knew of no case in which a criminal had been executed for murder committed during intoxication without the evidence of antecedent malice, or contrivance.

15. Having the depositions taken since the trial in connection with those taken at the trial before me, and viewing them in connection with the opinion of the Chief Justice stated in writing and verbally, I arrive at the following conclusion.

3. That one of the results of the excessive use of intoxicating drink, was to impel him to resist and injure persons who attempted to interfere with him and control his actions.

4. That during the day previous to the commission of the crime, Baker had been engaged in a debauch, which was not improbably continued during the night and on the early morning of the day itself, and of which the effects, though not discovered in the form of actual drunkenness, may still have been operating on the brain and temper of the criminal when he fired upon the native Policeman, and upon the deceased, an inference corroborated by the evidence taken on the trial.

11. There is no ground for believing that Baker was insane, that he had been subject to delirium tremens, or that in the intervals of drinking he was otherwise than a reasonable and responsible agent, though perhaps of a low order of intelligence.

16. I entertain the opinion that the inflammatory action of drinking may not improbably have produced on the mind of the criminal Baker such a sustained effect, as rendered him, though not actually intoxicated, incapable of rational self-control at the moment at which he fired upon Kelly. And I am therefore of opinion, that the extreme sentence of the law may be commuted to that of penal servitude for life

17. I beg it to be understood, that the only consideration that weighs with me in embracing this conclusion, is the fact of the previous debauch, taken in connection with what I believe to be the peculiar temperament of Baker. I see no evidence of personal malice, or of general criminal premeditation before the commencement of that debauch.

18. If the condition of actual drunkenness without previous criminal premeditation is undoubtedly held in England to give a claim to the mercy of the Crown, although that drunkenness in itself be the voluntary and deliberate act of the criminal, it seems to me that the sustained excitement produced by an excess of drinking, taken in connection with peculiar circumstances of constitution and temperament in the Criminal, may do so too. After much painful reflection and hesitation, I have resolved to give the criminal the benefit of my doubt as to his power of rational self-control at the moment the murder was committed.

I can only hope that this act of mercy towards the criminal may not prove inconsistent with justice to society.

NAPIER.

No. 210B. Minute by the Hon'ble T. PYCROFT, 19th May 1866.

In the above minute His Excellency the President has, in my opinion, given a correct summary of all that has come before Government in connection with the Convict Baker, from the date of his sentence, on the 4th instant, to our conference with the Chief Justice on Tuesday last. Having given my best attention to this painful case in all its bearings, and having discussed it fully with my Colleague and the Chief Justice, I am led, from the consideration of the further facts elicited by Captain Hearn's inquiry, and of the views thereon expressed by Sir C. Scotland in his letter and in his personal communication with us, to modify the opinion held in my previous minute, and to think, that for the reason stated by Lord Napier, the extreme sentence of the law may in this instance not improperly be remitted.

2. It is not without much reflection and no little doubt that I have arrived at this conclusion, and I am aware that much may be urged on the other side. Yet on the whole, weighing all the arguments in favour of and against the commutation of punishment, the balance may, in my judgment, incline to mercy.

I may add that to my mind the upholding of a capital sentence in a case like this should be the *unanimous* act of the Government, and that, whatever my own views might have been on the question *per se*, I should have hesitated to concur in an order for carrying out the last sentence of the law, if one of my colleagues saw cause to dissent from it. That the Judge who presided at the trial appeared to incline in the same direction, would of course bear additional weight with me.

(Signed) T. PYCROFT.

No. 210C. Minute by the Hon'ble H. D. PHILLIPS, dated 19th May 1866.

It is with extreme regret, I find myself unable to adopt the conclusion at which His Lordship the President, and Mr. Pycroft have arrived, regarding the value of the additional inquiry made by Captain Hearn, and the measures by which that inquiry was followed.

2. The papers received from Captain Hearn show, no doubt, that on the evening preceding the murder of Kelly, Baker had been drinking, and it may be that, after breaking Barracks, he continued his potations. I do not, however, find that it has been shown that drinking had lasting effects on Baker, though I observe that the testimony given before Captain Hearn, is by no means concurrent as to what they were generally. Such as it is, I have carefully weighed the record of Captain Hearn's investigation, but I find it impossible to bring myself to the belief that when Kelly was shot, Baker was in that condition of mind which deprived him of the power of rational self-control.

3. The preparations secretly made by him for the bout of Barracks breaking and other dissipation; and the cool, steady manner in which, at 1,000 yards distance, he was able to hit the Peon Nagappa, added to all the subsequent circumstances detailed in evidence, appear to me to show that Baker's brain cannot have been seriously affected by the debauch which preceded the murder.

4. I am fully sensible of the high respect which is due to any view which, at the request of the Government, may have been obligingly expressed by the Chief Justice; but it has seemed to me (perhaps erroneously) that Sir Colley Scotland's sentiments, whether written or spoken, have been most cautiously guarded, and I remain still doubtful whether the late inquiry has favourably impressed him towards Baker.

(Signed) H. D. PHILLIPS.

No. 210D. Order thereon—No. 780-A, Judicial, dated 22nd May 1866.

The papers above recorded relate to the case of George Baker, who was tried before the High Court on the 4th instant, for the murder of a Police Constable named Kelly, was convicted of culpable homicide amounting to murder, and was sentenced to death. The Jury having accompanied this verdict by a recommendation to mercy, the Chief Justice, with his letter of the 7th instant (recorded in the Proceedings of Government, under date the 9th instant), forwarded his notes of the evidence for the consideration of the Governor in Council. The Chief Justice did not support the recommendation of the Jury, and indeed, did not express any opinion with reference to it, further than observing, 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 him 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.

2. The Governor in Council saw nothing in the circumstances of the case, as stated in the evidence taken at the trial, which, in his opinion, furnished grounds for a commutation of the sentence, but before orders could be passed on the Chief Justice's letter, a letter was received from the Reverend Mr. Goodhart (also recorded in the Proceedings of Government of the 9th instant), alleging certain facts in connection with the previous conduct and mental condition of the convict Baker, which appeared to justify an inquiry. The inquiry was entrusted to the Commissioner of Police, who, in the discharge of his duty, proceeded to Saint Thomas' Mount and Bangalore, and examined several persons with reference to the statements made in the Reverend Mr. Goodhart's letter. The depositions taken by Captain Hearn, after having been considered by the Members of the Government, were submitted to the Chief Justice, with the request that he would favour the Government with his opinion, whether the circumstances set forth in those papers, furnished any grounds for commuting the sentence. The reply of the Chief Justice afforded to the Members of Government, the further benefit of his advice in a personal conference at the Council Chamber.

3. The Chief Justice was of opinion that the only additional material facts which were deducible from the depositions were,—

1*st.*—That the convict is a man whose system is liable to be greatly disordered by excess in the use of intoxicating drink.

2*nd.*—That one of the effects likely to be produced on him whilst under the influence of such drink is violent excitement, impelling him at times to resist and injure persons who might interfere with him.

3*rd.*—That recently, before the murder, he had given way not merely to a single act of indulgence, in the use of ardent spirits, but had probably been indulging in a debauch, during the day and some part of the night before the fatal act, and that the baneful effects of the liquor had been operating on his brain and nervous system for some hours immediately before he shot the unfortunate deceased.

4. From the concluding remarks in Sir C. Scotland's letter, and from the further explanatory remarks which he made to the Members of the Government, verbally at his conference with them in the Council Chamber, the Governor in Council gathers it to be the opinion of the Chief Justice, that if the depositions taken since the trial left on the minds of the Members of the Government, the impression that the inflammatory action of drink, though not producing actual drunkenness, was likely to disorder the convict's brain and intellect to such a degree, as to upset his rational self-control, and excite an impulse to inflict injury on any one interfering with him, that such was not improbably the condition of the condemned man on the morning of the murder, and that he may have been without the power of self-control at the moment the deceased man presented himself; then, considering all the circumstances of the case, and especially the absence of any previous malice, the case was one in which the Government might not improperly exercise the prerogative of mercy vested in it by the legislature, and commute the sentence to Penal Servitude.

5. The Governor in Council has given his most careful and anxious consideration to the depositions taken since, as well as to the evidence taken at the trial, in connexion with the remarks made both in writing and verbally by the Chief Justice. There is clearly no ground for believing that Baker was insane, that he had been subject to delirium tremens, or that in the intervals of drinking he was otherwise than a reasonable and responsible agent, though perhaps of a low order of intellect; but the Governor in Council sees reason for entertaining the opinion that the inflammatory action of drinking may not improbably have produced on the mind of Baker, such a sustained effect as rendered him, though not actually intoxicated, incapable of rational self-control at the moment at which he fired the fatal shot, and he is therefore of opinion that the extreme sentence of the law may be commuted to that of Penal Servitude for life. His Excellency in Council desires it to to be distinctly understood, that the only consideration which weighs with him in arriving at this conclusion, is the fact of the previous debauch taken in connection with that he believes to be the peculiar temperament of Baker, and with the absence of evidence of personal malice or of general criminal premeditation before the commencement of that debauch. From the remarks made by the Chief Justice at the conference in the Council Chamber, His Lordship in Council learns that in England the fact of proved intoxication at the moment of committing murder, though it does not afford any legal extenuation of the crime, and cannot affect the verdict of the jury or the sentence of the Judge, would undoubtedly weigh with the Crown as a ground for the extension of mercy, unless there be proof of malice and premeditation on the part of the criminal before the act of drunkenness. This being so, it appears to His Lordship in Council that the sustained excitement produced by an excess of drinking, though not amounting to actual and palpable drunkenness, may, taken in connection with peculiar circumstances of constitution and temperament in the criminal, constitute a claim to the mercy of the Executive Government. The Governor in Council resolves to give the condemned man the benefit of the doubt which exists as to his power of rational self-control at the moment the murder was committed; and accordingly, under the provisions of Section 54 of the Indian Penal Code, His Excellency in Council resolves to commute the sentence of death passed upon the said George Baker into a sentence of Penal servitude for life, under the provisions of Act XXIV of 1855.

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

No. 211. To the Honourable the Chief Justice of the High Court of Judicature, Fort Saint George, No. 781, Judicial, dated 22nd May 1866.

In acknowledging the receipt of your letter of the 17th instant, and adverting to the conference which you were good enough to hold with the Members of the Government on the afternoon of that day, regarding the case of George Baker, now under sentence of death in the Penitentiary, I am directed to inform you, that on full consideration of all the circumstances, His Excellency the Governor in Council has arrived at the conclusion that the case is one in which the Government may not improperly exercise the prerogative of mercy vested in it by the Legislature, and commute the sentence to Penal Servitude for life; and that His Lordship in Council has accordingly been pleased, under the provisions of Section 54 of the Indian Penal Code, to commute the sentence of death passed upon George Baker, into a sentence of Penal Servitude for life, under the provisions of Act XXIV of 1855.

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

No. 48 -

From

Captain C. S. Dearn
Commissioner of Police

To.

The Honble: A. J. Arbuthnott.
Chief Secretary. to Govt:
Fort St. George -

Sir.

With reference to order of Govt: No. 711 of the 9th Inst: I have the honor to state that I proceeded yesterday morning to Saint Thomas Mount, and subsequently in the evening to Fort St George, at both which places I made enquiries upon the points noted in the Order alluded to. I append the statements made by the different witnesses marked from A consecutively in the order in which I took them.

2. With regard to Lieut: Roberts' case and the subject of Gunner George Baker's fits I found great difficulty in obtaining exact information owing to the changes that have taken place both in the Battery and in the Mount Hospital. All the Hospital attendants save the witnesses Walsh and Barnett (G & I) are of recent appointment and the only person likely to possess accurate medical information regarding the fits (which it will be observed did not cause a regular admission into Hospital or any entry in the Hospital records) is Apothecary Stephenson now on Sick Leave at 16 St Johns Hill Bangalore. There has been no recent instance of these fits and enough has probably been gained for the purpose in view.

3. I will now deal with the points of enquiry seriatim. In Lieut: Roberts's Case I have been unable to ascertain the exact reason why Gunner Baker was excused punishment. Lieut A. H. Roberts (at Bellary) is probably the only person who can state this. Corporal Cobham (C) would appear to be mistaken in saying that Baker was brought before Capt: Magrath. This Officer was on the sick List during March 1864 and Capt L. F. Hall (now at Secunderabad) attached to the Battery was performing his duty. The entry in the Extract from Defaulters Book (R) shews that Capt Hall awarded punishment for the minor offence in connection with the matter. Corporal Jones and Bombardier Howell the witnesses (probably to the minor offence only) are no longer with the Battery and it has been found impossible to ascertain by whom Gunner Baker was actually brought up to the orderly Room. Dr MacKay has proceeded to England. The Statement of Gunner Williamson (K) who gave his Evidence very clearly, shews how the matter happened. (See also Statement C) Gunner Baker having broken Barracks at night under the influence of strong intoxication, and being pursued, came suddenly in collision with Lieut Roberts and no doubt struck him. A scuffle ensued in which Lieut: Roberts got the best of it, threw Baker to the ground and held him there. The fall and rough treatment may have produced the fit and subsequent illness in Hospital. (vide Statement of Dr Reid D and certified copy

of Record of the Case E) Doubtless the Battery Officers in dealing with the case felt that Baker had not known what he was doing or whom he was striking for he must have been greatly excited with liquor and the rencontre appears to have been sudden. Looking at the tremendous consequences of a conviction for striking an officer it was perhaps natural that Lieut: Roberts should wish to withdraw the Charge and that Capt: Hall should consent to suppress it. This seems to be the opinion of the present Battery Officers who however have now heard of the matter for the first time. The Statements of witnesses Wolfe and Nutty (A.B.) are pure hearsay and not reliable, but it is possible that Lieut: Roberts did somewhat take the Law into his own hands in retaliation and that he felt this to be an additional reason for withdrawing the Charge. It will be observed that Gunner Williamson (K) speaks to a belief that the Dr had recommended Bakers pardon on the ground that he was not in his proper senses. Baker was probably as irresponsible for his actions that night as a drunken man can ever be, but if the Medical Officer considered that Baker was liable to actual mental infirmity which might lead to the recurrence of such an action he would doubtless have felt it his duty to recommend him for discharge. I have put questions to other men who were on Guard that night but no one was close to the spot and they can give no exact particulars of the occurrence. They corroborate Williamson (K) in stating that a scuffle did take place, that Gunner Baker was brought to the Guard room and that he almost immediately had a fit.

4. The 2nd and 3rd points of inquiry regarding the attempt of Baker to hang himself and his strange conduct for two days previous to the murder are completely disposed of by Williamsons statement (K) Mr Goodhart would appear to have received from the Sailor an exaggerated version of Williamsons conversation on the occasion of his visit to the Penitentiary. It is obvious that no importance can be attached to the story about the rope and to the Punkah hook, and Williamsons fears regarding Bakers conduct previous to the murder simply referred to the probability of his getting into trouble from the drinking bout in which he was obviously engaged.

5. The paper marked (R) is a certified Extract from Defaulters Book showing the various occasions on which Gunner Baker has been punished. He lost his good conduct stripe on the 15th June 1865. and had been six times punished for drunkenness in four years. F is a certified Extract from the Hospital Admissions and Discharge Book shewing all the occasions on which he has been regularly treated as a patient in Hospital. He has but once been treated for drunkenness viz in March 1864. "S" is a letter from the Medical Officer now in Charge of the Battery stating that by the Medical History Sheet Baker has never been under actual treatment for any disorder of the nervous system save on the one occasion following his scuffle with Lieut: Roberts in March 1864.

6. I consider that there is ample evidence to the fact that Baker has at least on three occasions suffered from a disorder in the nature of fits brought on by particular acts of drinking. on two of these occasions he must have recovered within twenty four hours and there has been no recent instance of the kind (vide C & I) There is also evidence to shew that he is occasionally but not always, very violent in his cups. This is the case with most men. Witnesses Cobham, Williamson and Simpson (C. K. N) state that he is extraordinarily violent, and Witness Weldon (L) states that he was "curious" at such times so as to excite fear in Weldons mind. Witness Ragle (O) who has slept next to Baker for nine months contradicts this, as do other witnesses. Except in the case of Lieut. Roberts no act of violence against person has been spoken to, beyond the general statement of witness Weldon (L) who could not particularise any instance of seeing Baker strike a comrade. Admitting that he did, I do not think more has been proved than that Baker is one of that class of men who are capable of becoming highly excited and violent when in liquor. It is clearly shewn that he has never suffered from Delirium Tremens, nor has he been an habitual drunkard. I beg to call particular attention to the Statement of Corporal Simpson (N) (who also sleeps on the next cot to Baker) that both he and the Battery generally thought that Baker was not in his right mind. But I am bound to say that this is not borne out by the general evidence. On the

Contrary

contrary I am satisfied that the men of the Battery Generally considered that there was nothing noticeable about Baker in ordinary life and that they looked upon him as in no way different, when sober, from ordinary men. All the Evidence save Simpsons tends to this conclusion. It is perhaps surprising, if the men perceived the drift of the inquiry, that more should not have been found to state that Baker was not ordinarily in his right mind.

7 I do not think there is reason to suppose that habitual intemperance had produced any aberration of mind or tendency to physical disorder in the convict Baker. I think there is Evidence to shew that from his natural constitution and temperament particular acts of excessive drinking might produce a particular disorder in the nature of fits. I also think there is Evidence to shew that he was capable of being very violent and excited when in liquor. I do not think there are valid grounds for assuming that Baker was not completely in his right mind up to the time of his commencing that drinking bout which led to the fatal act of the 17th March. Nor do I think there are valid grounds to assume that Baker was more out of his right mind at the time of the commission of the murder than any man unusually violent and excitable under liquor (but not liable to actual mental disorder) might be said to be when more or less under the influence of a recent debauch. The particular state in which Baker was found

immediately after the crime formed matter of Evidence on the trial. I have expressed my opinion on these points in accordance with the terms of the order of Government, but I forward the whole of the Evidence on which it is based.

8. Bakers conduct in the Penitentiary has been quite rational and he has shewn no symptom of disordered intellect. I append the statements of the medical officer and of the Superintendent of the Penitentiary marked P and Q. I have seen him myself several times in the Penitentiary but he has shewn no inclination to speak. From his look and demeanour I have formed an impression that he is a man of peculiar temperament and of a low order of intellect.

C Mcam
Commissioner of Police.

Madras Police
Commissioner's Office
11th May 1866

T.

N. B. I enclose an Extract just received shewing Bakers medical history - It is nearly identical with the Extract from Admission and Discharge Register marked F.

C. A.

Disp. No 5

No 739

9

No.

No 739

there no sufficient grounds
for a communication of the
evidence, but in consequence
of certain statements which
have since appeared in
the Press the Lord Chief
Justice of Ireland thought
it his duty to call
in the assistance of Sir
Edward Sullivan Attorney
General for Ireland
& Captain Crawford
the Director of
Public Prosecutions
who attended
on the 11th instant
and the depositions &
other papers which accom-
panied it as well
as two other depositions
since given by Edward
Spilsbury Stephenson &
Assistant Apothecary
Anthonio and he submit
that [illegible] as
Lord Chief Justice
Jones in Council with
your opinion whether
~~is compellable in the administration~~
~~evidence is produced should~~
~~would justify~~ a communication
of the evidence produced
upon Sergt Baker.

His Lordship in Council would
be unwilling to dispose

His Lordship in Council
wishes to communicate
& dispose of this
serious case

in a manner which
he feels in these
peculiar circumstances
may [illegible] be

His Lordship
wishes

Judicial 1865 Dept.

No. 739

To

The Honorable
The Chief Justice &
The Judges of the High Court
of Judicature at Fort St. George

Dated 4th May 1866.

From

The Honorable John D. Mayne
Acting Advocate General

To

The Honorable A. J. Arbuthnot
Chief Secretary to Government
Fort Saint George.

Sir,

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 instant, before the Chief Justice and a Special Jury impanelled under the recent Act 13 of 1865. S. 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

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 St. 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 Ragappah, 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 Ragappah 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 Ragappah'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. Madeher, Kelly the head Constable, and two native policemen came up. Madeher seems to have discredited Ragappah's story that he had been fired at, and, though the guard was unarmed, they proceeded to arrest Baker. Madeher and Kelly went straight on to the tope, while the natives were sent round to the rear. As Madeher 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 Madeher through a gap in the hedge which bounded the tope. As soon as he had entered the tope, Madeher, who was close behind, heard Kelly exclaim "Dont be a fool, Baker!" and instantly the report of a gun and a groan followed. Madeher 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 his flight he was joined by the native policeman who had turned back on hearing the discharge. They also had seen no one within the tope.

5. Madeher made his way in much haste to Lieut. Nesh, 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

Kelly's corpse was afterwards discovered, with an Artillery Carbine in his hand. He made no resistance whatever. The witness was 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 Copse. 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 Hagappah and Thatcher, as to what had passed between them, when they first met after the shot was fired. Also between Thatcher and Lieut. West, as to what Thatcher 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 Copse about the time when the shot was fired, and that another artillery man 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 Counsel, 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 Thatcher's Memory as to what he had seen or heard when Kelly entered the Copse. 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 Hagappah, 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

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"

Wm. 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 naturally result in death."

Foreman. "We do not think he intended to do any act which would cause death."

Chief Justice.

"If this is your opinion gentlemen, you ought to have returned a verdict '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

for the last time, and returned their 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. For 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

gun and an extra quantity of ammunition, that he had already fired at one policeman, that he had then re-loaded, and that, even 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 shewn 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 unarmed, 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

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.

I have the honor to be
Sir
Your most Obedient Servant

Adv. Gen's office
7th May 1866

Wm Mayne
Acting Advocate General.

Rex
v.
Pte Reyland.

Crown
The Notary Advocate
Sincra C

S.O. 780 A
S.L. 781.

Thursday
Friday
Saturday

No 993

Reporting the result
of the trial of Pte. v. Baker
at which he was present as the
Prisoner Counsel on the 1st
inst. Cael

For orders

18

A

James Wolfe duly sworn as follows -

I am Quartermaster of the 17th Brigade Royal Artillery. I do not know Gunner George Baker. About two years ago to the best of my recollection I heard it mentioned in the Orderly Room that Gunner Baker had struck the Orderly Officer Lieut. Roberts (now at Bellary) having met that Officer in the road when he was proceeding to Roll Call or some duty. I never heard that Gunner Baker was on duty at the time. My impression was that he was off duty and simply walking along the road. A day or two afterwards not seeing Baker brought up to Orderly Room I inquired from Sergeant Major Kenrick (now Sailor at Coimbatore) or from some other person, I cannot be quite sure from whom, why Baker was not brought up and I recollect that the reply was that Baker had been ad-

Mc Causland were at Orderly Room the
question was asked "Which Baker?" This
and a reply was made that it was
the man who struck Lieut. Roberts.
The Guard Reports were subsequently
searched - I dont know by whom - I
was afterwards told either by the Quar.
Sergeant Hutter or by the
Orderly Room Clerk Macdonald that
the 8 Guard Reports had been searched
and no record of the occurrence found.

D. W. R.

Taken before me at Saint
Thomas this tenth
day of May 1866 -

Justice of the Peace

I was called into Hospital and that the
matter had been hushed up - Shortly
afterwards I heard that Baker had
been admitted into Hospital from the
effects of the beating he had received
from Lieut. A. B. Roberts and that
this was the cause of the matter being
hushed up - The matter did not
come within the scope of my own offices
duties in any way and therefore I
made no particular inquiry - Lieut
A. B. Roberts is a tall powerful man
and I have certainly heard that
he punished Baker severely in return
for the blow he received - My impression
was that Baker intended to strike
his Officer but I know nothing certain
on this point - I do not recollect having
whether or not it was dark at the
time - I was then Quartermaster -
After Kellys murder I recollect that
when Colonel Eaton and Captain

B.

Edward Kelly states

I am Quartermaster Serjeant of the Royal Artillery - I never knew George Baker till the 17th March last when he was brought to the Main Guard in custody for the supposed murder of Constable Kelly on that day - He was handcuffed and seemed quite calm and collected - His face was red but he did not appear to be in a state of liquor. The Serjeant of the Guard had leg irons but Baker said "Let me alone and I will be quiet enough" or words to that effect - So the leg irons were not put on I saw him several times subsequently up to the time when he was made over to the Civil Power - He always seemed quite calm - I put no questions to him and he never mentioned anything about the occurrence.

I recollect hearing in the early part of 1864 that Gunner Baker when on Guard (over the Guard Room I think)

had struck Lieut. Roberts who had then knocked him down with a stick. This was mere rumour - I have no personal knowledge of the matter - If Gunner Baker had been brought up to orderly Room for the offence I should have known of it - I did not hear of his having a fit - I thought he must have been drunk - I was told that Lieut. Roberts had withdrawn his charge - I did not hear the grounds of withdrawal -

I don't recollect any conversation at (since the murder) orderly Room about Baker in the presence of Col. Eaton and Capt. Mc. Causland.

Dr Medley
1st Bris Regt

Taken before me at Saint Thomas this twelfth day of May 1866 -

Justice of the Peace

C

Charles Cobham being duly sworn
deals as follows

I am a Corporal B Battery 23rd Brigade
Royal Artillery - I have known Gunner
George Baker for about 3 years - I am
not aware of anything peculiar in
his character or disposition, or that
he was different from other men - There
was nothing noticeable about him -
I recollect one night early in 1864 I think
just before Captain Maguth went home
Gunner Baker rushed out of Barracks
after Tattoo, which was then at 8½ P.M.
and struck Sergt. Robertt in front
of the guard about 270 yards from
the Barracks - I did not see this - I
heard of it - I knew that he went to
Hospital that night in consequence -
I heard that if he not in Hospital he
would have been brought up to Captain
Maguth where while I there was. I
heard that Baker had had another
fit of drinking - I mean a fit through drinking

a maddish kind of fit - I ford many men get in this way from drink - I dont know if Baker had a regular fit or not - I am not aware that he was much given to drinking - I dont think he was -

I was in Capt. Magraths Office when Lieut. Roberts brought up Gunner Baker* for punishment after he came out of Hospital - To the best of my recollection Lieut. Roberts said that Baker had come out with a stick & struck him - and that he had imprisoned Baker threw him & called for a file of the Guard to take him into custody - Capt. Magrath asked Lieut. Roberts if he wished to prefer the charge - Lieut. Roberts said that he did not. I do not recollect any precise reason being given for this - Capt. Magrath then let Baker off with 7 or 10 days confinement to Barracks - This must be in the Defaulters Book - I think it was not given for the Guard

* Patrick Gunner Baker 2nd Brigade Royal Artillery Came to Lieut. Roberts Office to give Evidence

of Drinking in Office - It would probably be entered for Drinking Barracks or Drinking or something of that kind - I dont recollect that Gunner Baker said anything in his defence - My impression was that he must have been in a mad fit of drink - I saw Baker brought in custody on the day of the murder but I was not close to him at any time on that day - He did not seem to be in a state of liquor - From my knowledge of his general habits I consider him to be a man who get highly excited from drinking - I cannot recollect any particular occasion of seeing him in a state of such excitement but my general impression is that he is that kind of man - Except the matter of Lieut Roberts and the murder I do not recollect any other instances of his acting in an unnatural manner - I consider him a quiet inoffensive man when sober but he was of a revengeful disposition.

Taken before me on oath at Saint Thomas Mount this tenth day of May 1866.

C. Means
Justice of the Peace

Thomas Bapett Reid Hall

I am Surgeon 17th Brigade Royal Artly.
I have been at the Hermit since
October last - I know Gunner George
Baker - He has been in Hospital twice
since I have been at the Hermit - neither
time from the Effects of drinking - I did
not consider that there was anything
peculiar about the man - I can furnish
a Certificate Extract from the Hospital
Admission and Discharge Book from
which it appears that Gunner Baker
has only once been in Hospital from
the Effects of drinking since June 1863.
I produce the case book shewing that
he was admitted in the night of the
12th March 1864 under the influence
of liquor - I believe the record of the case
to be in the handwriting of Dr. Mackay
proceeded to England - In my opinion
the symptoms described indicate ex-

Shewn by cover
Boyd

Section of the brain produced probably by excessive drinking - They certainly do not indicate Delirium Tremens or Epilepsy or what might be called fits - It is scarcely possible that Gunner Baker can ever have been admitted for Delirium Tremens without an entry being made in the Books - There is nothing in the recorded case of the 13th March to indicate habitual drinking - The effects are simply those of that particular bout -

Ralph Read
Surgeon 7th Brigade R.A.

Taken before me at St. Thomas's Barrack this tenth day of May 1866.

C. Mears
Justice of the Peace

Re-examined -

Men are frequently admitted at night under the effects of intoxication and discharged in the morning without any entry in the Books.

Ralph Read
Surgeon 7th Brigade R.A.

C. Mears
10th May 1866

William Henry Mc Causland states -

I am a Captain in the Royal Artillery - Persons men would not be taken to Hospital simply because they were drunk - They would be confined in the cells with drunken men in the guard room - They would only be taken to Hospital if actually requiring Medical aid from the effects of drink -

W. H. McCausland Captain
Staff Officer Royal Artillery.

Taken before me this 10th day of May 1866

C. Mears

Case of Sumner G. Baker

1864
March
15th

In Case Private ~~Scott~~ Christian
of Co. "C" 1st Louisiana
was brought into Hospital
about Midnight on the 15th from the
Guard under the influence
of liquor - He had been very
violent requiring several men
to hold him - He was seen
after coming to Hospital by
Asst Surgeon Owen who ordered
an emetic of Zinc Sulph: but
it was found impossible to get
him to swallow it - He soon
became quiet and seemed in-
clined to sleep — Towards
morning he appeared in a comatose
state - At my visit I found
I could not rouse him. His pupils
were dilated and sluggish
Skin is warm - Pulse full - Soft.

A turpentine Enema was
ordered which acted freely,
freely but produced no
change in the symptoms -
A blister was then applied
to the back of the neck and

calomel gr III with Ol. Cretom: Mxt I
placed on his tongue and cold
water applied to his head.
There was a good deal of
twitching of the muscles
particularly of the hands and
arms — When the blister
took effect he gradually became
sensible — Continued dull
all day but answered questions
when looked — The twitching
of the muscles continued —
his bowels have freely moved three
times — This morning he says
he feels better but has pain at
the top of his head — There is
much less muscular twitching.
Pulse full. Cold water
bladder kept to head —
Is better — quite sensible but 16th
has a vacant expression —
The muscular twitching is
gradually disappearing —
Says he has only slight pain
R. Jaw — No dedricens

18th hardly moving. Complains this
~~Morn~~ of very slight pain in
head but says he feels giddy
when walking — Bowels open
Blister not healed —

20th Blister healed

22nd Dressed

True Copy

R Rutherford

Surgeon 17th Regt

St Thomas Mount
10th May 1876

Admissions of Gunner Geo: Baker No 6 Battery 23 Bde AA

Date of Admission	Date of Discharge	Disease.
	1863	
6th June 1863	10th June 1863	Ulcus.
24th June 1863	2nd July 1863	Ulcus
4th July 1863	8th July 1863	Febris Ephemera
24th September 1863	2nd October 1863	Furunculus.
	1864.	
14th February 1864	5th March 1864	Varicocele.
7th March 1864	11th March 1864	Varicocele
15th March 1864	22nd March 1864	Ophiasitas - ✕ - Left Scutis case
20th April 1864	30th May 1864	Gonorrhœa C.L.
4th June 1864	12th August 1864	Syphilis Primaria
19th September 1864	27th September 1864	Contusio
9th November 1864	12th December 1864	Syphilis Primaria.
	1865	
2nd January 1865	5th January 1865	Rheumatism Acute.
6th January 1865	17th January 1865	Gonorrhœa.
4th May 1865	17th May 1865	Gonorrhœa
19th August 1865	29th August 1865	Syphilis Primaria
	1866.	
10th January 1866	17th January 1866	Syphilis Primaria
15th February 1866	19th February 1866	Febris Intermittens

Surgeon's Report

Surgeon 17 Brigade AA

G.

Thomas Walsh being duly sworn states as follows.

I have been Hospital Serjeant since July 1862. I know Serjt Baker. I recollect his coming into Hospital at the time when I heard that he had struck Lieut. Roberts. I know nothing about that matter save from mere rumour. I cannot recollect if Baker had fits in that occasion or not. To the best of my recollection Baker had been in Hospital twice with fits. A man may be brought in dead drunk at night and discharged in the morning if sober without any entry in the Hospital Books. This frequently happens. I considered that Bakers fits were caused by drink & bad temper combined. He had a kind of working countenance. I think I have seen him twice like this. I have certainly seen him since. He seemed very excited. Mr. Stephenson the Apothecary now on Sick Leave at Bangalore knows

probably
know all about it - I knew Baker
pretty well - I considered him a very
good man - I did not consider him
an habitual drunkard - I never
saw him drunk outside the Hospital
only on three or two occasions when
he came in with fits produced in my
opinion by drink - I never saw him
with delirium tremens but to the best
of my recollection he was once in Ward
very violent, and had to be kept
quiet by force - I suppose that on those
occasions he must have come in at
night & gone out in the morning, other-
wise his name would appear on the
Hospital Books - I live in the Com-
pound & am called up whenever
cases come in - I saw Baker brought
in custody on the day of the murder.
He passed within 15 feet of me -
He seemed quite calm & had no

such appearance as when he came
into Hospital with fits - I think the
last occasion of his coming in from this
cause was about 2 years ago - I advised
him not to come in in that way any
more as he was merely bringing fits
on himself.

J. Baker

Taken before me on oath this
10th. day of May 1866 at Saint
Thomas's Mount

C Mann
Justice of the Peace

H

Scannell?

William Scannell being duly sworn
deposes as follows -

I am a gunner of the Royal Artillery
I was with George Baker the evening
previous to the murder - I parted
with him at Moors Pawnbrokers at 8 P.M.
He left me there & started back to Bar-
racks - He had been drinking but was
much - He did not seem to be drunk
He was quick in speech & a little hot
in his religion - He was not angry
or excited - I did not see him again
that evening or next day, except that
I could see him from the canteen when
he was prisoner in the Main Guard.
I was not close to him & observed
nothing particular in his appearance.
I knew him for 6 months -
I have never seen him in a violent
or excited state - I have seen him

drunk at least twice. He was not violent on these occasions but came quietly to barracks. He was drunk but knew what he was doing. He walked steady enough but I knew he was drunk by his appearance & because I knew he had been drinking in the canteen. I never recollect observing anything to make me think he was not in his right mind. There never was anything particular about him. I did not consider him a quarrelsome man though he was once confined for fighting in Barracks. I did not consider him an habitual drunkard.

×

Taken before me on oath at St. Thomas's Barrack this tenth day of May 1866

The mark of William Scannell.

Thos Mann
Justice of the Peace

I.

Edmund Barrett Hall

32

I am Hospital Clerk. Besides the cases entered at Christmas in the Hospital Books I distinctly recollect two occasions on which Gunner George Baker was brought to Hospital suffering from fits produced I believe by drink. To the best of my recollection this was in 1864. I perfectly recollect that he was brought in each time at night and discharged the following day. Hence the absence of entry in the Admission & Discharge Book. Each time he was struggling & grinding his teeth as if in fits. He could not get him to speak. He could not walk. He had to be carried. Each time he came in the time about 8 P.M. I cannot say after how many hours he was discharged but it might be any time during the following day. Patients are kept under

observation 24 hours - Upon then discharged their names are entered in the Book - I don't know how soon George Baker came to his senses. He was not violent -

J D Barrette

Taken before me at St. Thos.
Mount Elgin 16th day of
May 1866

Justice of the Peace

K

33

John Williamson states as follows -

I am a Gunner in No 6 Battery 2nd Brigade Royal Artly: I have known George Baker since May 1863 - about 8 months ago about 8 P.M. I was sitting with several other men outside the Barracks. Baker told us he had erected a Gymnasium in the Barracks & hoped we would become members - He was under the influence of liquor but not actually drunk - We took no notice - I thought it was chaff - He left with us the latter & then went to bed - I somehow got to bed - He left the 3rd or from me - In the morning I observed a rope hanging from the Punkah hook in the centre of the barracks. This was 8 or 9 ft from me so it might have been there the night before without my observing it - I made some remark about it to the men who were near - Baker was there but said nothing - About an hour afterwards he came up to me & said that he had intended to hang himself the night before

Evt while waiting for the men in bar-
racks to go to sleep he had fallen asleep
himself - I did not ask him the reason.
He seemed still under the influence
of liquor - He said nothing more on
the subject - I made no report of the
matter - I did not think he had
any real intention of hanging himself
nor do I think so now - Otherwise
of course I should have reported it.
Baker is very quiet when sober - When
in drink he is mad - different to any
man I have in Barracks - Even after
a little liquor I have seen him rush
about violently & tear off his clothes
I have seen him do this 5 or 6 times
I have also seen him wash himself.
& go to Parade quite steady a few hrs.
after having been in such a
state - I have served with him for
3 years but have never seen him
with delirium tremens - I cannot know
him assert anyone save Lieut.

Roberts - 2 or 3 days before the murder
Baker asked me to write some letters
for him - He gave me letters from his
brother, from his brother or brother in law I
don't know which - I answered these
out of my own head, Baker perhaps
putting in a word or two - I also wrote
a letter to a comrade - Baker did not
dictate but told me a few heads of what
I was to write - He was under the in-
fluence of liquor - not pt to go to Parade.
I have not seen the Revd. Mr. Goodhew.
I had some conversation with the
Jailer at the Penitentiary - They only
spoke about Baker during the 2 or 3 days previous
to the murder was left - he should get
into the guard room - at I saw that he
was having a bout - Since his sentence
the Jailer sent for me to
the Penitentiary & told me if things
turned out badly to write to his mother
& say he was dead - but not to let her
know how it occurred - He blamed drink
for what had happened - He spoke
quite rationally - He said he could re-
collect taking the cartridges up to

out of Barracks* but he made no reference to the actual deed - how did I. I recollect being on guard one night about March 1864 - I saw a number of men in the Horse Lines running as if in pursuit of some one - I saw one man running towards the guard room & another man coming in front of the first towards the guard room. They came into collision - Someone called to the guard - an escort was sent & it was found that Lieut. Roberts had stunned Baker on the ground - Lt. Roberts report that Gunner Baker had knocked him down with a stick. I heard nothing about Lieut. Roberts knocking Baker down - Baker was taken to the guard room & the Apothecary was sent for - Previous to his coming Baker had a fit - I did not see him but heard him struggling & moaning. He was taken to the hospital - When he came out he had the back of his head

* on enquiring also under the Guard Room Book & perceive in the Prisoners Journal

shaved - He told me he expected 7 years Penal Servitude - I knew that he got off with a few days confinement to Barracks but - I never knew why he got off so cheap - but all thought that the Doctor had reported that he was not in his proper senses - & that this was the reason of his getting off -

I saw Baker the night before the murder at Tattoo Roll Call - I noticed nothing particular about him - I did not speak to him

J Williamson

Taken before me at Dundrum this 16th day of May 1866

C Lum.

Justice of the Peace

I

36

Jurors Verdict

I am a Juror Royal Navy.
I know George Baker - I was with him
at Knows Barbary the evening before
the murder - He was a good deal in
liquor about 6 P.M. but not violent.
I went to Barracks about 8 P.M.
When I left Baker was still in liquor
but better than before - I saw him in
Barracks at 9. He was still the
worse for liquor but not so drunk
I saw him in Baker Case his clothes were in liquor.
I did not like to go near him at such
time as I thought he was not sensible
especially after drinking 2 or 3 days.
I know Deen Quin Strike his comrade.
I considered him violent tempered
when in liquor

Weldon

Taken before me at Knockers
this 6th day of May 1866

C Mann
J. P.

M.

John Murphy states

I am a Gunner of the Royal Artillery -
I was Orderly over Gunner Baker
in Hospital the night he had the
scuffle with Lt Roberts - Gunner Baker
did not speak to me all night - He seems
to have been drinking but I did not
notice that he was in a fit - He was
not violent - I have frequently seen him
in Liquor but never saw him violent -
I had twice before been Orderly over
Gunner Baker when he was sent to
Hospital at night with fits - I believe
they were caused by drink - He was
not violent on those occasions - I al-
ways considered Baker right in his
mind up to the murder unless when
he was in drink - During the fits
Baker foamed at the mouth & it took
2 or 3 men to hold him down - I heard
I have said that he was violent - I
did not quite understand -

Taken before me this 10th day of May 1866

J. Murphy

C Adams - L.P. -

N

38

Samuel Simpson Hallett

I am a Corporal Royal Artillery - I know Kent Gunner Baker had a scuffle with Lieut. Roberts - I came up immediately afterwards. I heard Kent Lt. Roberts struck Baker - Baker had a fit - He was struggling & foaming at the mouth. I have sent him to Hospital with such fits 2 or 3 times - I & Runnacles sent him last also been sent by other Non Commd Offrs - At such times he can neither walk nor stand - He foamed at the mouth tears his clothes & tries to bite people - I have never known him have Delirium Tremens - Except when he had these fits he was extraordinarily violent in liquor - I called the Sutler's Roll about 9 P.M. on the evening before the murder - Gunner Baker stood up & answered his name - I afterwards warned him

fondly next day - He said "All right - I'll be there" - He was then lying on his cot - I did not observe that he was in liquor - I have sometimes thought that Baker was not right in his mind & that was the general opinion in the Battery. Sometimes he would talk quite low & then suddenly holler at the top of his voice - This & the fits & the way in which he carried on with Lieut. Roberts made me think he was not right in his mind - He was a smart soldier on Parade & always turned out clean -

C Simpson Corpl

Edward Ingle states

I am a Gunner of the Royal Artillery. I have slept next cot to Gunner Geo Baker for 9 months - Corporal Simpson cot is on the other side - Before the murder I never considered Baker mad or at all wrong in his mind - I have never heard this said in the Battery - I have only twice seen him drunk - He was in no way obstreperous I may have seen him in liquor at other times - He was never violent - I was never afraid to go near him I never saw him tear his clothes - I saw Gunner Baker at Tattoo Roll call the Evening before the murder - I thought he had been drinking but he was not very bad - He answered his name - I lay down & fell asleep - I know nothing more -

Taken before me this 10th day of May 1866 -

C Mears
J. P.

his
X
mark of Edward
Ingle

P.

William Henry Harris sworth

I am a Surgeon in the Imperial Army and am in Medical charge of the Penitentiary - I know the prisoner George Baker - He has not been under medical treatment since his entrance into the Penitentiary and I have only exchanged a few words with him. Though I have seen him several occasions passing through the Wards. From what I have seen and heard I have no reason to suppose that his intellect is disordered in any way.

W. H. Harris Surgn.

Taken before me at Rockhampton this 10th day of May 1866

C. Lilburn
Justice of the Peace

Q

Edward Owen Esqr

I am Keeper of the Pendleton Penitentiary. The convicted Prisoner Gunner Jorge Baker is under my charge - Since he has been in the Penitentiary he has manifested symptoms of a disordered intellect. He speaks very little but what he does say is quite rational and sensible - I have noticed nothing peculiar in his manner except that he is somewhat cautious - I have found nothing to make me think that he is otherwise than quite right in his mind in any respect. He seems very penitent, but only refers to the matter generally, saying that had he read the Bible he would not now be in trouble - He has never mentioned Kelly's name or referred to the particulars of the occurrence -

Taken before me at Pendleton
This 11th. day of May 1866.

Justice of the Peace

BATTERY DEFAULTERS BOOK.

Brigade Number and Name. } 7th Separate Battery Enlisted 28th March 1862 Joined 18

Place	Date of Offence	Cause of Drunkenness	OFFENCE	By whom reported, and Names of Witnesses.	PUNISHMENT awarded.	By whom ordered.	REMARKS
Hamilton	25th July 62		Found in Possession of Liquor & Not Parading	Lieut Major	14 days Confinement	Lt Colonel Hatch	
Hamilton	25th March 62		Absenting himself from Battery Parade without Leave	Capt Major	14 days Confinement	Lt Colonel Hatch	
Hamilton	12th August 62	2	Drunk & Disorderly	Capt Thomson	Admonished	Lt Colonel Hatch	
			Discharged by Purchase				
Hamilton	25th August 62		Absenting himself from Battery Parade on 25th March 1862 & 26th March 1862	Capt Thomson	3 days Confinement & 28 Hours Extra Drill	Lt Colonel Hatch	
			Discharged by Purchase				
Hamilton	25th August 62		Absenting himself from Battery Parade on 25th March 1862 & 26th March 1862	Capt Thomson	3 days Confinement & 28 Hours Extra Drill	Lt Colonel Hatch	
			Discharged by Purchase				
Hamilton	25th August 62		Absenting himself from Battery Parade on 25th March 1862 & 26th March 1862	Capt Thomson	3 days Confinement & 28 Hours Extra Drill	Lt Colonel Hatch	
			Discharged by Purchase				

To be carried over to the following Page

Place	Date of Offence.	Cases of Drunkenness.	OFFENCE	By whom reported and Name of Witness	Brought to Guard-house by	FUNISHMENT awarded	By whom ordered.	REMARKS
Quebec	12th Jan'y 64		Quits Barrack without leave	Capt Mc Cormick	Capt Mc Cormick	7 days Confinement to Barracks	Capt Mc Cormick	✕ Lieutenant's Case
Montreal	1st Feb'y 64		Absent from Tattoo	Capt Mc Cormick	Capt Mc Cormick	11 D.P. March 1 Co at Quebec	Capt Mc Cormick	
St Johns Province of Canada	2nd Feb'y 64		Absent from Tattoo & Absent without leave	Capt Mc Cormick	Capt Mc Cormick	15 days C.B.	Lieut Col Bagot	
Montreal	10th Feb'y 64		Quits Barrack without leave	Capt Mc Cormick	Capt Mc Cormick	10 days C.B.	Lieut Col Bagot	
Co	11th Feby 64		Absent from Tattoo	Lieut Bolton	Lieut Bolton	4 days C.B.	Lieut Col Bagot	
Co	13th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	6 days C.B.	Lieut Col Bagot	
Co	14th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	10 days C.B.	Lieut Col Bagot	
Co	16th Feby 64		Quits Barrack without leave	Capt Mc Cormick	Capt Mc Cormick	Corp.l 7 days Stoppages 5 days C.B.	Capt Mc Cormick	
Co	16th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	17th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	18th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	19th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	20th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	21st Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	22nd Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	23rd Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	24th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	25th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	26th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	27th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	28th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	29th Feby 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	1st March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	2nd March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	3rd March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	4th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	5th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	6th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	7th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	8th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	9th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	10th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	11th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	12th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
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Co	14th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	15th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	16th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	17th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	18th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	19th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	20th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
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Co	29th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	30th March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	31st March 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	1st April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	2nd April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	3rd April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
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Co	5th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	6th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	7th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	8th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	9th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	10th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
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Co	15th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	16th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
Co	17th April 64		Absent from Tattoo & Absent without leave	Lieut Bolton	Lieut Bolton	7 days C.B.	Lieut Col Bagot	
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Brigade Major's Office Quebec 23rd March 1864

Brigade Major

S. Fort St. George
10th May 1864.

Sir

With reference to Gunner George Baker of the Battery under your command, I have the honor to state that his Medical Statistical sheet does not shew any admission to hospital for the treatment of any affection of the nervous system, except in March 1864, when he was eight days under treatment for Sciriositas, the result of a debauch.

I have the honor to be
Sir
Your most obedt Servt
A. Sylvester
Surgeon 60 Rifles

Officer Commanding
Battery R. A.
Fort St. George

Form F.)—*continued.*

MEDICAL HISTORY—*continued.*

Name *Geo. Butler* Regimental Number *711*

Station, Garrison, Barrack, General Hospital, &c., with *Date of Arrival.*	No. in Admission and Discharge Book.	Date of Attack. Year	Mo.	Day.	Date of Recovery. Year.	Mo.	Day.	Diseases. (a) Primary. (b) Secondary.	Duration of Diseases. Days.	Completed Years of Age.	Service.	Treatment, Class of Remedies.	Observations: Circumstances in or by which Disease was induced.
	278	63	7	4	63	7	8	Feb. Eph.	5	20	1 10/12	Laxatives Salines	Climate
	371	63	9	27	63	10	2	Furuncle	6	21	2	Local	Unknown
	55	64	2	17	64	3	5	Varicocele	18	21	2	— do —	a blow on the saddle on duty
	84	64	3	7	64	3	11	— do	5	21	2	do	
	92	64	3	15	64	3	22	Ebriositas	8	21	2	—	Beer & Assault
	133	64	4	20	64	5	30	Gonorrhoea	41	22	2 8/12	Usual	Obvious
	192	64	6	4	64	8	12	Syph. Pd. P.	70	22	2 10/12	do	do
	352	64	9	19	64	9	27	Contusio	9	22	2 11/12	Dressing	Accident not on duty
	412	64	11	1	64	12	12	Syph. P. (a)	42	22	3	Usual	Contagion
	2	64	12	20	Decision changed Rheum. chr.								Atmospheric
	3	65	1	1	65	1	17	Gonorrhoea	29	22	3	Usual	Contagion
	124	65	4	19	65	5	17	do	29	22	3 1/2	do	do
	144	65	8	17	65	8	29	Syph. Prim.	13	23	3 10/12	do	do
	2	66	1	7	66	1	17	Syph. Prim.	11	23	4	do	Contagion
	12	66	2	14	66	2	19	Feb. Int.	6	23	4	[illegible] &c.	Climate

(Form F.) T No. 3

MEDICAL HISTORY.

No 7 Battery 23 Brigade RA Regiment or Corps RA

Regimental Number 1711 6 Name George Baker

Enlisted { on 28 October 1861 / at Maidstone

Birthplace { Parish Reading / County Berks / Country. England

Age (last Birthday) 19 Years

Former Trade or Occupation Laborer

General Remarks
On his Habits and Conduct in the Service, Temperance, &c.

Height	5.9½ inches.
Circumference of Chest (over the Nipple)	34 inches.
Spirometer	inches.
Weight	146 lbs.
Dynamometer	lbs.
Small Pox Marks	No.
Vaccination Marks	Yes.
When Vaccinated	[illegible]
Hair	Brown.
Pulse (regular)	74 beats.
Respiration	20 inspirations.
Muscular Development ...	[illegible]

Rank and Dates of Promotion; also Dates of Transfer to other Regiments.

Dates of Punishment; and whether Corporal or by Imprisonment.

The above was his state when examined on Nov. 4. 1862 [illegible] Surgeon RA
(Signature)

Station, Garrison, Barrack, General Hospital, &c., with *Date of Arrival.**	No. in Admission and Discharge Book.	Date of Attack. Year.	Mo.	Day.	Date of Recovery. Year.	Mo.	Day.	Diseases. (a) Primary. (b) Secondary.	Duration of Diseases. Days.	Completed Years of Age.	Completed Years of Service.	Treatment. Class of Remedies.	Observations. Circumstances in or by which Disease was induced.
Warley Barracks	635	1861	12	5	1862	12	18	Furunculus	14	18	1	Tonics	Debility
"	2140	62	3	6	62	5	13	Amygdalitis	8	19	—	Tonics	Cold
"	548	62	6	14	62	6	27	Gonorrhœa	14	19	—	Injection	Contagion
Hornchurch	225	63	6	6	63	6	10	Tonsilitis	6	20	1½	Tonics	Exposure to Weather
6 Bde 62	250	63	6	21	63	7	2	Boil	10	20	1½	Poultice	Debility

In addition to the record of sickness, the date of the following events should be recorded:—(1) Death and Cause of Death in the Service. (2) Discharge on Pension or Temporary Allowance for Life or for a Term of Years. (3) Discharge by Purchase or other cause of the kind. (4) Promotion to the rank of Commissioned Officer. (5) Capture, Desertion, &c.

* This column should be filled up in all cases when the Soldier remains any length of time at the Station, even if he has no attack of Sickness while there.

Place

Madras
14th May 1866

Christian Ireland Assistant Apothecary

I am an Assistant Apothecary attached to Presidency Medical Stores I was employed in the General Hospital from April 1863 till about March or April 1865 when I was removed to Bangalore & after staying a fortnight was removed to the Medical Stores where I have been about a year - I knew 2 Bakers in the Artillery - I don't know which of them it is who is now under sentence of death - One Baker had red hair the other was a fair tall man who was frequently in Hospital He came into Hospital once, I think in 1864, when it was reported that he had struck an Officer & had been let off on the intercession of Dr. Mackay - I was in the ward when Baker spoke to Dr Mackay asking him to intercede with Col. Selby - I think Baker said

that he had been under the influence of liquor & could not account for his actions - As far as I recollect Dr. Keeling said that he would do his best but could not promise - I know no more in this point - His case was recorded - I cannot state at this distance of time what was the nature of his complaint on that occasion - The case did not impress itself on my memory in any way - I really cannot recollect anything about it - I should require that Baker up I saw him. I have often seen him in Hospital. He generally came in with Venereal. I never noticed anything particular about him - I did not think him insane - I thought him eccentric because he used to gesticulate when talking with others & go away & sit by himself in a sulky mood - I may have seen him 3 or 4 times

∧ I don't recollect up if was from drink

The other patients did not contract much with him in consequence - I did not consider that he had any mental aberration, but that he was of peculiar temperament - I think I recollect his being in Hospital once or twice from the effects of drink - The case book will show - My memory does not serve me - If a patient is discharged within 24 hours his name is not entered in the Hospital Books - Baker may have been brought & discharged in this way without entry - I cannot recollect - There are 3 Apothecaries - We all attend evening & night work by turn so that we have every 3rd night or duty - I don't recollect any particular symptoms about Baker when in Hospital from drink - I can't recollect when he became - I cannot recollect any particulars in evidence of his coming, but I have a general impression that he did come once or twice from drink - I think

He was was brought into Hospital from fits, the effect of drink - I cannot say exactly because many men come in in that way - I mean with fits either real or pretended - When confined in the Guard room for drink they very frequently vomit-sick - I have seen real fits from drinking in some men. Perhaps in 3 or 4 cases - I cant call to mind that I ever saw Baker in this state - The symptoms of such fits arising from drink are various violence & convulsive twitching of the limbs - The pain would be more or less effected according to the temperament of the individual - An emetic would be administered - A man might recover by simple rest - I consider that this state is brought on by the excessive amount of alcohol imbibed - I don't consider that there is anything remarkable about such fits, but I cannot recollect seeing

more than 3 or 4 men that attended. One man out [illegible] a dinner - When he indulges in drink he [illegible] noisy sometime fits - He is now at Bangalore - I cannot recollect any other named - I never heard that Baker was out in any way disordered in intellect. It never occurred to me to fix on any particular Baker at the murder when I heard of the occurrence - I cannot call to mind seeing Baker held down on a cot - I have seen so many men held down on cots. Many men are so violent when brought in drunk that they are obliged to be tied down to the cot pending the medical officer arrival If a knife was lying near I think a man in this state would be capable of striking anyone with it - If a man knew what he was about at such times he would not exist so I consider that they don't know what they are about - At such times men cant walk

or from any distance - They would staggger & fall down - Men in this state they are always carried into hospital by General men - If Baker's brain had been in any way affected when he was treated by Dr Buckley it would of course be entered in the case - If there had been any symptom of mental infirmity likely to recur this would of course be entered - I consider that the fits in the 3 or 4 men I have alluded to were caused by excess of drinking acting upon some peculiarity of constitution - I have often spoken to Baker & he always replied rationally - Beyond this I never noticed anything in him different from ordinary men - Men in the state I have described from fits could not be relieved by any sudden shock - They could only re-

cover by voiding the contents of the stomach or by a somewhat protracted rest - My memory is good and I generally recollect any peculiar case that comes to Hospital - I cannot say that I considered Baker more likely to commit murder than anyone else.

Geo Burtonwood

Taken before me this 16th day of May 1866 -

Thomas
Justice of the Peace

Deposition of
Apothy: Adams

Bangalore
13th May 1866

Robert Frederick Stephenson Hales

I am 2nd Apothecary attached to the 17th Brigade Royal Artly: - I have had general superintendence of the Hospitals at St. Thomas Mount from September 1862 till October 1865 when I went on Sick Leave and again from 16th Jany 1866 up to the end of February. I know two Bakers - One a red haired man - The other George Baker was tall, with peculiar small eyes - I know that his Christian name was George - I believe there was a third Baker at the Mount whom I dont know & when I heard of the murder I could not tell which Baker had done it (I being then at Bangalore) but I had an impression that it was then Geo Baker, because he was a moody man - I mean that he was distant & taciturn and I never liked to speak to him - My duties did

not fine me actual medical charge of patients but I used to go round & look after them coll & condition generally & in case of emergency if no Medical Officer was present I used to treat patients - I hardly recollect holding a regular conversation with Baker - but I have spoken to him & his replies were always abrupt - I may have seen the name "George" Baker in the papers, but there may be often George Bakers & the reason why I fixed on that man in my own mind as the murderer was that I always took a dislike to him from the time he came into Hospital under great excitement & looking very fierce from the effect of drink - & there was something in his general appearance which kept me from speaking familiarly to him as I used to other patients - I can recollect how often Baker has been in Hospital from drinking - He was well known in Hospital but generally came in from Venereal disease

or some affection of the testicles - The first time that I recollect Baker coming to Hospital from drink was in 1863 - He was brought to Hospital at night labouring under great excitement from the effects of drink - He would be quiet a few minutes & then want to get up & box & wrestle with the men - I gave him an emetic and sent for Dr. Muckay - I heard nothing about his taking an Officer at that time - I think he was more than one day in Hospital but my recollection is that not [illegible] - This may perhaps have happened in 1864 when Dr. Muckay was in charge - I think Dr. Muckay had given over charge at the very beginning of 1864 but I cannot be certain about dates - This is the only instance, from my own personal knowledge & recollection, of Baker being treated in Hospital for the effects of drinking - I don't recollect any subsequent occasions - He may have been brought without my seeing him - he would be treated by the Apothecary on duty, not by me - Mr. Antonio was Apothecary Medical Store at Bradford may know

about this - I evolved-learning that Baker had got into trouble for striking an Officer & that he came to Hospital to get-rid of it - I think this was in the Early part of the present year - I did not learn that he had had a fit after striking the Officer. I heard nothing more - I have suffered severely from head affection & my Memory is somewhat-impaired - It is just possible that what I heard in the Early part of this year, about-striking an Officer may have been a reference to some past-event but - I do not-think so - I most-certainly never-heard any-thing about his having struck an Officer at the time when he was treated in Hospital for drunkenness by Dr. Mackay. On that occasion I considered that-Baker was suffering under a peculiar irritation of the brain from the effects of drink - I never saw a similar case - After the operation of the emetic (I had to repeat the dose) all the symptoms disappeared. He became calm & rational & fell asleep. I first saw him being held down by several men on a cot - He appeared to be out of his mind & unable to recognise people - He did not-say anything but-looked very wild - He did not-foam at the mouth. He had the physical power to walk & run - We were afraid that if he broke away he would jump through the Hospital window - This lasted 2 or 3 hours till the 2nd emetic operated - I cant-call it-actually a fit as there was no actual convulsion - It was doubtless caused by the presence of alcohol in the Stomach acting on a peculiar natural constitution. The only case at all resembling it was of a man who had had an Stroke & whose brain was something similarly affected by liquor - He took much on Officer & was sent to the Penitentiary & thence to Haileybury Prison - This was in Dr. John. Hones time. about 1862/63 I dont-think Baker was in such a state when first brought-to Hospital as to have been able to load & fire a gun - but I cant give a decided opinion - I dont-think that anything short of wording the contents of the Stomach or long rest & sleep could have brought

I cant remember his name - Howard Seabrook

Baker into a calm state - I don't think a sudden shock would do it because the physical causes would still be in operation - It was not delirium tremens - I never heard of his having delirium tremens - From my personal observation of him in Hospital I should not have thought him an habitual drunkard, but I have heard that he was addicted to drinking - I consider that similar results to those I have described might follow any sharp drinking in Baker's case, because there must have been something peculiar in his constitution to produce this state - because from his calm morose manner I thought he was susceptible of violence - I never saw him angry or excited at any other time in Hospital - I did not think he was mad or out of his mind ordinarily but a man who would be more prone to attacks of madness than ordinary men - I never heard anything particular being said about Baker or that his comrades thought him peculiar - His attack in no way resembled epilepsy - I do not recollect hearing that Dr Buckley had recommended Baker for pardon because he was not in his right senses - I heard nothing at all then about Baker's being an Officer - If there had been anything in his case to indicate actions insanity it would have been entered in the detailed "Case" drawn out by the Medical Officer - Baker was dangerous at that time - It would not have been safe to go near him - He might have wounded a man with a knife in trying to escape - I don't say he would have been unconscious of the act but he was to private that he would not have cared - I don't think he was sufficiently calm in his body to have been able to load a gun - I do not think his brain would be

permanently effected by attacks like this, but only while the influence of the liquor lasted. He never said any thing to me which indicated disordered intellect. I consider that Baker's attack proceeded from physical peculiarity of constitution & not from disordered intellect - but I was under the impression that he was a man who could not be trusted when in liquor and who would be reckless.

W^m Stephenson
2^nd Apothecary

Taken before me & acknowledged to be correct this 13^th day of Jany 1864.

C Mann

Further examined -

If I had known that Baker had received a heavy fall that night in a struggle with Lieut. Roberts I do not know that I should have attributed

the state in which he was to the fall because a fall would produce stupor and Baker was in a state of wild excitement. I do not recollect that he became in a comatose state at any time while I was tending him that night but I left him after the operation of the trephine & the apothecary on duty took my place. I do not recollect any symptoms betokening congestion of the brain. I think the trephine would not be given to a patient with congestion of the brain. I have still a vivid impression of the state of wild excitement which Baker was in and I sent for Dr Brackenbury because I thought the case so peculiar. It might have been called temporary madness from drink. I have seen men drunk & talkative in liquor but this man was silent, as far as I recollect, but wild and dying to hit people. I don't think that excessive drinking would necessarily always

produce the same symptoms in Baker as on this occasion - but from his peculiar constitution he would probably always be more or less affected in a different way to ordinary men -

When I heard of the murder it struck me that Baker must have been drinking & that while in that state he must have become reckless. It is hard to say whether he would have become violent - It did not strike me to volunteer any information about Baker because I thought all particulars would be obtained from the hospital. The Apothecary on duty received Baker that night. I cannot recollect his name. Then I went to him. I told Dr Mackay the ordered the 2nd Emetic & the stomach pump till it took effect.

(if it was the Baker I knew)

W Stephens Dr

Taken before me & acknowledged to be correct this 13th day of January 1868.

C Adams

Police Magistrate & Justice of the Peace

2nd Apothecary

Jeapolation of
capolley - Stephenson

The convict George Baker was, on the 4th instant, tried before the High Court, was found guilty of culpable homicide amounting to murder, and was sentenced to death. In returning their verdict, however, the Jury recommended the prisoner to mercy on the ground of the absence of premeditation to injure the victim of his criminal act- before the prisoner saw him and fired the fatal shot.

In forwarding the verdict to the Governor in Council the Chief Justice did not recommend it to the favourable consideration of the Council - Mr. Pycroft & Mr. Phillips to whom the papers were first submitted recorded their opinions that there was no extenuating circumstances in the case and that the sentence of death should be carried out.

If my view of the case had been reduced to writing at that moment, it would have been conformable to the view of my Colleagues in the Council but before I had time to record my sentiments, an accident-

occurred which induced me to defer
my decision and led the Council to
suspend the execution of the capital
sentence.

I received from the Revd W. Goodhart
a communication addressed to the Governor
in Council alleging certain circumstances
in the previous conduct and mental
condition of George Baker which appeared
to justify an inquiry.

The inquiry was entrusted to Capt.
C. Hearn Commissioner of Police, who,
in the discharge of his duty, proceeded
to Saint Thomas's Mount, and Bangalore,
and on the 14th Inst. submitted the
definitive results of his investigations.

The documents connected with the
inquiry having been considered by
the Members of Council were submitted
to the Chief Justice, who had conducted
the trial, with the request that he would
state to the Governor in Council, whether,
in his opinion, the circumstances thus
elicited, furnished any grounds for
commuting the sentence.

In reply the Chief Justice has forwarded
Council on the 17th Instant - and on the
same day the Chief Justice afforded
Members of Council the further benefit
his advice in a personal conference
the Council Chamber -

From the depositions which have been taken
the trial, I think that the following
inferences may be fairly drawn,

1. That the criminal George Baker had
from time to time been abandoned to fits
of drinking.

2. That in dulgence in ardent spirits
produced an unnatural excitement
and disorder in his temperament
which was naturally of a sullen and
morose character.

3. That one of the results of the excessive
use of intoxicating drink was to
impel him to resist and injure persons
who attempted to interfere with him
and control his actions -

4. That during the day previous to the
commission of the crime Baker had
been engaged in a debauch which
was not improbably continued
during the night and on the early
morning of the day itself, and of
which the effects, though not discovered

in the form of actual drunkenness may still have been operating on the brain and temper of the criminal, when he fired upon the native Policeman, and upon the deceased an inference corroborated by the evidence taken on the trial.

There is no ground for believing that Baker was insane, that he had been subject to delirium tremens, or that in the intervals of drinking he was otherwise than a reasonable and responsible agent, though perhaps of a low order of intelligence.

In the statement of the Chief Justice I gather the following opinion - viz:

That if the depositions taken since the trial considered with the evidence at the trial leave on the minds of the Members of Council the impression that the inflammatory action of drink through and producing actual drunkenness was likely to disorder the convict's brain and intellect to such a degree as to upset his rational self-control and excite an impulse to inflict injury on any one interfering with him,

that such was not improbably the condition of the criminal on the morning of the murder and that he may have been without the power of self control at the moment the deceased man presented himself to him, considering all the circumstances of the case, it is one in which the sentence may not properly be commuted.

From the verbal explanations afforded by the Chief Justice I have received the following information -

1. That the question for the consideration of the Council is really reduced to this single issue,

"Was the criminal, at the moment of "perpetrating the fatal deed, probably "without the power of rational "self-control, in consequence of the "effects of drink, or was he not?"

2. That although the fact of proved intoxication at the moment of committing murder cannot be permitted to debar the Jury from finding a verdict of guilty of murder or the Judge from pronouncing sentence of death in that circumstance, as in England,

undoubtedly ~~invariably~~ weigh with the Crown in respect to the mitigation of the sentence unless there was proof of malice and premeditation on the part of the criminal before the act of drunkenness -

The Chief Justice stated that he knew of no case in which a criminal had been executed for murder committed during intoxication without the evidence of antecedent malice, a contrivance -

During the depositions taken since the trial in connection with those taken at the trial before me, and viewing them in connection with the opinions of the Chief Justice stated in writing and verbally I entertain the following conclusion -

I entertain the opinion that the inflamatory action of drinking may not unfrequently have produced on the mind of the criminal Baker such a sustained effect as rendered him, though not absolutely actually intoxicated, incapable of rational self-control at the moment at which he fired upon Kelly - and I am therefore of opinion that the extreme sentence of the law may be commuted to that of penal servitude for life -

I beg it to be understood that the only consideration that weighs with me in coming to this conclusion, is the fact of the previous debauch - taken in connection with that Station to be peculiar temperament of Baker - I see no evidence of personal malice or of premeditation before the commencement of that debauch -

If the condition of actual drunkenness without previous criminal premeditation is held in England to give a claim to the mercy of the Crown - although that drunkenness in itself be the voluntary and deliberate act of the criminal, it seems to me that the sustained excitement produced by an excess of drinking, taken in connection with peculiar circumstances of constitution and temperament in the Criminal may do so too - After much careful reflection & hesitation I have resolved to give the criminal

the least fear of any doubt as to his sober
rational self-control at the moment
the murder was committed.
I can only hope that this act of mercy
towards the Criminal may not prove
therein is to be with justice to Society.

Yr faithfully

In the above Minute HE the President has, in my opinion, put as a correct summary of all the law can be upon the subject in connection with the Convict Baker from the date of his sentence on the 4th inst to our conference with the Chief Justice on Thursday last. Having given my best attention to this painful case in all its bearings and having discussed fully with my colleagues and the Chief Justice I am led from the consideration of the facts elicited by Capt. Hearn's inquiry and of the views thereon expressed by Sir C Scotland in his letter and in his personal communication with us, to modify the opinion held in my previous Minute and to think that for the custom stated by Lord Kapier the extreme sentence of the law may in this instance not improperly be remitted.

It is not without much reflection and no little doubt that I have arrived at this conclusion and I am aware that much may be urged in the opposite sense on the whole weighing all the arguments in favor of and against the commutation of punishment the balance of mercy in my judgment inclines to mercy.

I may add that to my mind the capital holding sentence of a capital sentence in a case like this should be the unanimous act of the government - and that whatever my own views might have been on the question per se I should have hesitated to concur in an order for carrying out the last sentence of the law if one of my colleagues saw cause to dissent from it - That the Judge who presided at the trial appeared to the Chief in the same direction would of course be additional weight with me.

It is with extreme regret I find myself unable to adopt the conclusion at which Her Lordship, the President, and Mr Pycroft have arrived regarding the value of the additional testimony made by Captain Hearn and the manner by which that testimony was followed.
The papers received from Captain

Mears threw no doubt; that on the morning preceding the murder of Kelly, Baker had been drinking, and it may be that, after breaking Barracks, he continued his potations. I do not, however, find that it has been shown that drinking had lasting effects on Baker, though I observe that the testimony given before Captain Mears is by no means concurrent as to what they were generally. Such as it is, I have carefully weighed the most of Captain Mears's cross-examination, but I find it impossible to bring myself to the belief that when Kelly was shot, Baker was in that condition of mind as to deprive him of the power of rational self control.

The preparations evidently made by him for the hunt of barrack breaking and the deportation; & the cool, steady manner in which at 1000 yards distance, he was able to hit the Pen Nafaspa, added to all the subsequent circumstances detailed in evidence appear to me to show that Baker's brain cannot have been seriously affected by the debauch which preceded the murder.

I am fully sensible of the high respect which is due to any view which, at the end of the 3rd day, may have been obliquely suggested by the Chief Justice; but it has seemed to me (perhaps erroneously) that his Honour's sentiments, whether written or spoken, have been most cautiously framed and I remain still doubtful whether the latter sentence has favorably impressed him towards Baker

W. Wheeler
19 May 66

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.

Nagappah - Sam 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 where 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 wheres house and towards Noble Chary Tope - He went near a Palmyra 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

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in a ¼ of an hour with a gun - In the mean time I had got to an old Mosque on the Road this was about 1000 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 turned to go I said 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 Charn - 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 enquiries 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

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 3/4 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 (Registrars) Table- I saw
men passing along the road- The Palmyrah
Tree was as near the Tope as I am now
to the "Jeremy"-

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I followed Prisoner about 300 feet. I did ~~not~~
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 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 2 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~~ 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

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 1000 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

Said in the Magistrates Court.

Dalzeil Fritzroy Mutcher.

I am Inspector of Mofussil Police on 17th. March I gave instructions about the Prisoner to Nagappa. I went to the Moor's Parcherry, from information received from Nagappah. Kelly the deceased and Soobroyaloo went with me to the Parcherry. Nagappa we met at the Parcherry. He said something to me. I went towards a Tope with Kelly and Soobroyaloo and Nagappa. Nagappa I think may have been there. It was his beat. This was between 8 & 9 A.M. when near the Tope, myself and Kelly went in one direction and Nagappa 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 hedge round the Tope. I stopped to answer a Call of Nature. Kelly went on

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a little further and stopped at the next Gap about 12 paces in advance - I was buttoning my trowsers and walking towards Kelly - I saw Kelly enter the Gap - Instantly I heard the words - "Baker don't be a fool" & 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 Cocoanut 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 Lieut^t 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 Lieut^n West's house about 500 Yards from

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 Parcherry At the Parcherry 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 Police 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 2 feet from the hedge The tree at which I observed as I thought the leg of a man was at 12 paces from

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 & 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. His 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 Murphy

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

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Tope I remarked that George Baker had gone out of the barracks with his Carbine and ammunition being St. Patrick 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 dont know his name.

mined. 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

R. West. I am Lieutenant in Royal Artillery and Quartered at the Mount On 17th March last, I arrested the Prisoner Inspector Malcher came to me and told me something, and in Consequence, I went to the Barracks and got an Escort. I went to Moors Carcherry. 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 Foster overtook me. He said stop here and I will go on. I was

there

thirty Yards from the nearest Corner of Tope I halted there some time. Captain Forster rode along the hedge looking to see if he could see 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 man too. Just as I got to the Corner Captain Forster disappeared behind the bund of the Tank. I 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 trowsers, 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 pull in a pill of man and take these man to the guard". He also said to one of the Escort "You have got a loaded Carbine you may as well shoot me"

after

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.

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 dont think any other man was taken up on suspicion of the Murder. but I saw another Soldier in Custody afterwards. Some one came & 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 a 100 yards from the nearest part of the Tope. Inspector Malcher 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 7 minutes. One minute he seemed very much excited and

another

another minute Very much dejected - This was
the Patrick 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 asistant Surgeon D. D: with the
Artillery at the mount - On the 17th March a
Peon came to me - I went to a Topee about a
mile and ½ from my house - I saw the body
of a man lying on his face and quite dead -
The feet appeared to reach within 6 inches of
the slope of the fence - His clothes were saturated
with blood over the left loin - there also I noticed
a slight tare 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

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 the
one in the loin were more jugged 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
same day - I found the bullet had passed
in at the right side of the Sternum between
the 5 and 6 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 thro' 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 cant say positively at what distance
the

the shot must have been fired - This Carbine is Sighted for 300 yards -

Cross Examined - The hedge was sloping about ½ a right angle - I think there was a hedge at the top I cant tell the height of the bank - The sternum was slightly grazed -

William Fleming - I am a Gunner - On 17th March last I went out with Lieutenant West I saw Prisoner Setting near a Tope along side a Tree - He had on a Cap not an Artillery mans 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 dont 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 Tope and his feet outside the Gap - There was no Cap on the body - I belong to Prosocier'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 dont know

know what it was for.

William Fems - I am a Corporal of Royal Artillery - On 17th March I saw the Prisoner beyond the Tope I followed Lieutenant West's party - I got to Prisoner about 4 or 5 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 packages 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 3 marks of blood on the ram rod One near the top, one in the center and

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 Carbine out. The Prisoners gun is marked F. 23. 70, the other Baker in my Battery is named John

John Murphy. 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 Barrack 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 appear to me to be suited to the Carbine.

Cross examined. I have known Prisoner 3 or 4 years. I know when he had a good Conduct badge. he has lost it between 6 and 7 months. I cant say that he lost it for Drunkenness. He certainly drinks. I have seen

seen the Prisoner the worse for drink often enough. I had occasion to confine him for drunkenness 6 or 7 months ago. I was acting Bombadier 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 sergeant of A°. 6 Battery at the Mount. Prisoner was in my Battery. His 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 dont remember him having a good conduct badge.

John Cussack Sergeant 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 pound 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 pound of ammunition to Corporal Kerns.

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 ½ after I heard he had been brought in.

Hugh Byrne Head Constable of the Municipal Police. I got a cap like this from Serjeant Cussack and I gave it to Commaraswamy.

Comaraswamy. I am a Police Constable at the Mount. I got the cap from last witness I gave it to Inspector Matcher

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.

Judicial Depart

Nos. 993 & 994

From the Hon: the Chief Justice — dy 7 May 1866.
" the Ag Advocate General — 7 — do —

For order &c.

I have read all these papers with great care —

I observe that His Honor the Chief Justice simply submits the recommendation of the Jury for consideration and if he prefers it for commutation of punishment — but he does not express it —

He adds in a letter his impression that the recommendation to mercy in the case of some members of the Jury proceeded from their having assumed something to the prisoner's advantage by stating at common law the punishment of death

Judc Pbb Depft
Nos 993 & 994

the whole circumstances of the case and all the considerations connected with it are clearly and fully set out by the Att. Advocate-General. It is with great pain that I feel myself constrained to express to the conclusion to which he has arrived, that the recommendation of the Jury is entitled to no weight whatever, that there are no mitigating or extenuating circumstances & that the sentence of death should be carried out —

May 8/66 J. Wylde

There appears to have been an entire absence of motive or provocating cause for the Prisoner's act, which was a deliberate & premeditated one. Nothing that is in evidence against him (subsequent conduct, long ago) can be regarded as an extenuating circ.e, and I am at a loss to know on what ground the Jury have rested their recommd.n to mercy. For these reasons & because the Chief Justice has pointedly abstained from supporting that recommendation, I cannot allow the law to take its course.

I have had no difficulty in forming this 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 A. G. General proved to some extent of your favour & if there was any small chance the Prisoner would have had of my recommending a favourable mercy. It strikes me that the A. General's order in contending that mercy should not be shown. His duty was to submit

Jud.e for
Mercy

a report of the trial of Mena as
ordered by his dept. Student.
9 May 1866.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers.

Letter from the Acting Advocate General. —	17 May 1866.
Proc. of Govt. Jud. Deptt.	9 May 1866.
Letter from Commissioner of Police	11 May 1866.
Letter from the Chief Justice of the High Court. —	17 May 1866.

Order thereon 22d May 1866 No. 780. A

N.

W.H.

The papers above recorded relate to the case of George Baker who was tried before the High Court on the 4th instant for the murder of a Police Constable named Kelly, was convicted of culpable homicide amounting to murder and was sentenced

sentenced to death. The
Jury having accompa-
nied this verdict by
a recommendation to
mercy, the Chief Justice
with his letter of the
7th instant (recorded in
the Prov. Sec. Govt under
date the 9th instant) for-
warded his notes of the
evidence for the considera-
tion of the Governor in
Council. The Chief
Justice did not suppot
the recommendation of
the Jury and indeed
did not express any
opinion with reference
to it further than
observing that the manner
and answers of the
Jury in Court were not
unlikely

unlikely to produce some
distrust in the minds of
those of the public who
were present and led
him to form the impression
that some members of the
Jury allowed themselves
to be governed by feelings
of aversion to the punish-
ment of death, and that
the verdict with the
recommendation to mercy
was the result.

2 The Governor in
Council saw nothing
in the circumstances of
the case as ~~stated~~ disclosed in
the evidence taken at
the trial which in his
opinion furnished Grounds
for a commutation of
the sentence, but before

orders

orders could be passed
on the Chief Justice's letter
a letter was received
from the Revd Mr
Goodhart (also recorded
in the Hon. of Govt of the
9th instant) alleging
certain facts in connexion
with the previous conduct
and mental condition
which appeared to jus-
-tify an enquiry. The
enquiry was entrusted
to the Commissioner of
Police who in the dis-
-charge of his duty pro-
-ceeded to St. Thomas'
Mount and Bangalore
and examined several
persons with reference
to the statements made

in

in the Revd Mr Goodhart's
letter. The depositions
taken by Captain Hearn,
after having been con-
-sidered by the members
of the Govt. were sub-
-mitted to the Chief Justice
with the request that he
would favor the Govt.
with his opinion whether
the circumstances set
forth in those papers
furnished any grounds
for commuting the sen-
-tence. The reply of the
Chief Justice is con-
-tained in his letter
of the 17th instant, on which
day the Chief Justice
afforded to the members
of Govt. the further
benefit of his advice
in a personal conference

at

at the Council Chamber

3. The Chief Justice was of opinion that the only additional material facts which were deducible from the depositions were,

1st that the convict is a man whose system is liable to be greatly disordered by excess in the use of intoxicating drink.

2d that one of the effects likely to be produced on him whilst under the influence of such drink is violent excitement, impelling him at times to resist and injure persons who might interfere with him.

that

3d that recently before the murder he had given way not merely to a single act of indulgence in the use of ardent spirits, but had probably been indulging in a debauch during the day and some part of the night before the fatal act, and that the baneful effects of the liquor had been operating on his brain and nervous system for some hours immediately before he shot the unfortunate deceased.

4. From the concluding remarks in Sir C. Scotland's letter and from the further explanatory

explanatory remarks
which he made to the
members of the Govt.
verbally at his Conference
with them in the
Council Chamber, the
Governor in Council
gathers it to be the
opinion of the Chief
Justice that if the
depositions taken
since the trial left
on the minds of the
members of the Govt.
the impression that
the inflammatory action
of drink, though not
producing actual
drunkenness, was likely
to disorder the convict's
brain and intellect
to such a degree as

to

to upset his rational
self-control and excite
an impulse to inflict
injury on any one
interfering with him;
that such was not
improbably the condition
of the condemned man
on the morning of the
murder, and that he
may have been without
the power of self-control
at the moment the
deceased man presented
himself; then considering
all the circumstances
of the case and especially
the absence of any
previous malice, the
case was one in which
the Govt might not
improperly exercise
the prerogative of

mercy

mercy vested in it by the legislature, and commute the sentence to Penal servitude.

3 The Governor in Council has given his most careful and anxious consideration to the depositions taken since, as well as to the evidence taken, at the trial in connexion with the remarks made both in writing and verbally by the Chief Justice. There is clearly no ground for believing that Baker was insane, that he had been subject to delirium tremens, or that in the intervals of drinking he was otherwise than a reasonable and responsible agent, though perhaps of a low order of intellect, but the Governor in Council sees reason for entertaining the opinion that the inflammatory action of drinking may not improbably have produced on the mind of Baker such a sustained effect as rendered him, though not actually intoxicated, incapable of rational self control at the moment at which he fired the fatal shot, and he is therefore of opinion that the Extreme Sentence

of the law may be commuted to that of penal servitude for life. His Excellency in Council desires it to be distinctly understood that the only consideration which weighs with him in arriving at this conclusion is the fact of the previous debauch taken in connection with what he believes to be the peculiar temperament of Baker and with the absence of evidence of personal malice or of general criminal premeditation before the commencement of that debauch. From the remarks made by the Chief Justice at the conference in the Council Chamber, His Lordship in Council learns that in England

England the fact of proved intoxication at the moment of committing murder, though it does not afford any legal extenuation of the crime and cannot affect the verdict of the Jury or the sentence of the Judge, would undoubtedly weigh with the Crown as a ground for the extension of mercy unless there be proof of malice and premeditation on the part of the Criminal before the act of drunkenness. This being so, it appears to His Lordship in Council that the sustained excitement produced by an excess of drinking though not amounting to actual

actual and palpable drunkenness may, taken in connection with peculiar circumstances of constitution and temperament in the Criminal, constitute a claim to the mercy of the Executive Govt. The Governor in Council accordingly resolves to give the condemned man the benefit of the doubt which exists as to his power of rational self-control at the moment the murder was committed, and accordingly under the provisions of Section 54 of the Indian Penal Code, His Excellency in

Council hereby commutes the sentence of death passed upon the said George Baker into a sentence of Penal servitude for life, under the provisions of Act XXIV of 1855.

By R.

Judicial 1865. Department.

No. 760 A

PROCEEDINGS OF GOVERNMENT.

Dated 22nd May 1865

Press No. 4266, G. M.—12-4-65—500.

Depch in Mcl 22/5

No. 781 Jud. Depch.

To

The Honorable Sir [illegible] Scotland Kt.
Chief Justice of the High Court of
Judicature.

Honble Sir,

In acknowledging the receipt of your letter of the 17th instant, and adverting to the conference which you were good enough to hold with the members of the Government on the afternoon of that day, regarding the case of George Baker now under sentence of death in the Penitentiary, I am directed to inform you that on full consideration of all the circumstances, His Excellency the Governor in Council has arrived at

at the conclusion that the case is one in which the Government may not improperly exercise the prerogative of mercy vested in it by the Legislature, and commute the sentence to Penal Servitude for life; and that His Lordship in Council has accordingly been pleased, under the provisions of Section 54 of the Indian Penal Code, to commute the sentence of death passed upon George Baker into a sentence of Penal Servitude for life, under the provisions of Act XXIV of 1855.

Fort St. Geo:
22nd May, 1866

Judicial 1866 Dept

No 781

To

The Honorable
The Chief Justice.

Dated 27th May 1866.