

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

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*Proceedings of the Madras Government, Political Department,
from 16th to 22nd July 1859.*

No. 12. Read the following letter from R. SIMSON, Esq., Under Secretary to the Government of India; to the Secretary to the Government of Madras, dated Fort William, the 17th June 1859, No. 3721.

Foreign Department. SIR,

I am directed by the Governor General in Council to forward, for the information and guidance of the Government of Madras, in similar cases, copy of a Notification, dated 10th Ultimo, No. 2639, regarding the trial of Tuffuzul Hossein, formerly Nawaub of Furruckabad, together with copy of a letter addressed on the same date to the Secretary to Government, North Western Provinces on the subject.

No. 2639 OF 1859.

NOTIFICATION.

FORT WILLIAM, FOREIGN DEPARTMENT.

The 10th May 1859.

His Excellency the Viceroy and Governor-General in Council has had under his consideration the proceedings of the Special Commission assembled at Furruckabad, for the trial of Tuffuzul Hossein, formerly Nawab of Furruckabad.

The charges against the prisoner were as follows :—

“ 1st Count.—That he, Tuffuzul Hossein Khan, being a person *owing allegiance* to the British Government, did *rebel* and *wage war* against the said British Government, from the month of June to the end of December 1857, and acted as a leader and instigator in revolt in the Furruckabad District, one of the centres of rebellion during the above period.

“ 2nd Count.—That he, Tuffuzul Hossein Khan, was a *principal* and *accessory before* and *after* the fact, to the murder of many British subjects in the aforesaid District of Furruckabad its neighbourhood, between the months of June and December 1857, in the following instances :—

1st.—To the murder of 40 Europeans, more or less, on the *Maunpoor Kutree*, or sand-bank, in the month of July 1857.

2nd.—To the murder of European ladies and children with Eurasians and Native Christians, about 22 in all, on the *Futtehghur Parade Ground* in the month of July, 1857.

3rd.—To the murder of Kallay Khan, a loyal Sepoy, of the 10th Native Infantry, in the month of July or August 1857.”

4th. To the murder of 2 loyal Seikhs, names unknown, who were killed with Kallay Khan, Sepoy, in the month of July or August 1857.

After a patient, careful, and impartial trial, the Court pronounced the following verdict and sentence.

“ The Court unanimously convict the prisoner Tuffuzul Hossein Khan, Ex-Nawab Raees of Furruckabad, as follows :—

1st Count—*Guilty*.—That is to say, that he, being a person owing allegiance to the British Government, did rebel and wage war against the said British Government, from the month of June to the end of December 1857, and was a principal leader and instigator in revolt in the Furruckabad District, one of the centres of rebellion during the above period.

2nd Count.—*In the first instance, guilty* of being an accessory after the fact to the murder of 40 Europeans, or thereabouts, on the Maunpoor Kutree, or sand-bank on the River Ganges, on or about the 4th of July 1857.

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In the second instance, guilty of being accessory before and after the fact to the murder of 22 persons, or thereabouts, being European, East Indian and Native Christians; men, women and children, on the Futtelghur Parade Ground, on or about the 23rd July 1857.

In the third instance, guilty of being accessory before and after the fact to the murder of Kallay Khan, a loyal Sepoy, of the 10th Regiment, Native Infantry, at Furruckabad, on or about the 29th July 1857.

In the fourth instance, guilty of being accessory before and after the fact to the murder of two loyal Seikhs, names unknown, at Furruckabad, on or about the 29th July 1857.

This Court having found the prisoner guilty as above, do sentence him, Tuffuzul Hossein Khan, to be hanged by the neck till he be dead; and do further adjudge that all his property of whatever description be confiscated; but in obedience to the orders of Government appointing this Commission, the execution of this sentence is suspended until receipt of further orders."

The Governor-General in Council entirely approves and confirms the verdict and sentence of the Court. The former is fully borne out by the evidence adduced on the trial, and the latter is the only sentence which could properly be passed on the criminal.

But it came out on the trial, and was pleaded by the prisoner as a bar to the execution of the sentence, that before his surrender a letter had been written to him by Major Barrow, the Special Commissioner with the Camp of His Excellency the Commander-in-Chief, in which he was invited to surrender; and that in this letter he was told that pardon had been extended to all who had not personally committed the murder of British subjects, and that if he had not personally committed the murder of British subjects, he might surrender without apprehension.

Whatever may have been the meaning of Major Barrow in addressing this letter to Tuffuzul Hossein, and whatever may have been the prisoner's understanding of it at the time, it is certain that on the receipt of it he immediately surrendered. He now claims the fulfilment of the promise of pardon made by Major Barrow, being found guilty not of having personally committed the murder of English subjects, but of having been an accessory before the fact.

The Governor-General in Council entirely condemns and disavows the act of Major Barrow in making a promise, contrary to the Royal Proclamation, and contrary to the express order of the Government, excepting the prisoner from all benefit of pardon. But His Excellency in Council will not suffer it to be said that the prisoner having been induced to surrender on the promise of a British Officer in Major Barrow's position has, in consequence of that surrender, been put to death for a crime of less degree than that which was designated by the Officer as alone rendering him liable to punishment.

The Governor-General in Council has therefore resolved to forbear from carrying out the sentence of the Court on Tuffuzul Hossein, on the condition that he shall immediately quit the British Territory for ever. If he accept this condition, he will be conveyed to the Frontier as a convict under a Military Guard, and there set at liberty. If he refuse the condition, or, if, having accepted it, he shall break it or attempt to break it now, or at any future time, the capital sentence pronounced upon him will be carried out.

By order of the Right Honorable the Governor-General of India in Council.

(Signed) CECIL BEADON,
Secretary to the Government of India.

(True Copy.)

(Signed) CHARLES MACLEOD,
Registrar Foreign Department.

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(COPY.)

No. 2548.

FROM

THE SECRETARY TO THE GOVERNMENT OF INDIA,

TO

THE SECRETARY TO GOVERNMENT, N. W. PROVINCES.

Dated Fort William, 10th May 1859.

FOREIGN DEPARTMENT.

SIR,

I AM directed to acknowledge the receipt of your Letter No. 912, dated the 30th March last, submitting for the consideration and orders of His Excellency the Governor-General in Council, the papers connected with the trial of Tuffuzul Hossein, the late Nawab of Furruckabad.

2nd.—The prisoner was tried at Furruckabad by a Special Commission on the following charges:—

1st Count.—That he, Tuffuzul Hossein Khan, being a person owing allegiance to the British Government, did rebel and wage war against the said British Government, from the month of June to the end of December 1857, and acted as a leader and instigator in revolt in the Furruckabad District, one of the centres of rebellion during the above period.

2nd Count.—That he, Tuffuzul Hossein Khan, was a principal and accessory before and after the fact, to the murder of many British subjects in the aforesaid District of Furruckabad and its neighbourhood, between the months of June and December 1857, in the following instances:—

1st.—To the murder of forty Europeans, more or less, on the Maunpoor Kuttree or sand bank, in the month of July 1857.

2nd.—To the murder of European ladies and children with Eurasians and Native Christians, about twenty-two in all, on the Futtelghur Parade Ground, in the month of July 1857.

3rd.—To the murder of Kallay Khan, a loyal Sepoy, of the 10th Native Infantry, in the month of July or August 1857.

4th.—To the murder of two loyal Seikhs, names unknown, who were killed with Kallay Khan, Sepoy, in the month of July or August 1857.

3rd.—Of the offence laid in the first charge the prisoner has been found guilty.

4th.—On the second charge, he has been found guilty of being an accessory after the fact to the murder of forty Europeans, or thereabouts, on or about the 4th July 1857; and of being an accessory before and after the fact to the murder of twenty-two persons or thereabouts, Europeans, East Indian, and Native Christians, men, women and children, on or about the 23rd of July 1857, and to the murder of Kallay Khan and two Seikhs, on or about the 29th July 1857.

5th.—The Court having found the prisoner, Tuffuzul Hossein, guilty as above, have sentenced him to be hanged, and have adjudged that all his property of whatever description be confiscated; but, in obedience to the orders of Government appointing the Commission, the execution of the sentence is suspended pending the receipt of further orders.

6th.—The Governor-General in Council has carefully read and considered the proceedings of the Court, and the other documents enclosed in your letter, and entirely concurs in the opinion of the Lieutenant-Governor that the trial has been patiently, considerately, and judiciously conducted, and that the prisoner has had every opportunity given to him of making his defence. His Excellency in Council also agrees with the Lieutenant-Governor in thinking "that both Messrs. H. D. Robertson and H. W. Hammond, who acted as public prosecutors, "and the Judges Messrs. Batten, Ross and Wynyard, are entitled to the thanks of the Government for the careful, conscientious and efficient performance of a most laborious, difficult, and "important duty." His Excellency in Council requests that those thanks may be offered to the Judges and public prosecutors accordingly.

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7th.—Moreover, the Governor-General in Council entirely agrees in the finding and sentence of the Court which are fully borne out by the evidence adduced on the trial, and which (so far as the confirmation of the executive Government may be rendered necessary by the instructions given to the Commission) are hereby confirmed. The prisoner is clearly brought within the category of those who have directly taken part in the murder of British subjects, and who are excluded from mercy by the express terms of the Queen's Proclamation.

8th.—But there are circumstances connected with the case which compel the Governor-General in Council to depart from the plain course of procedure in dealing with this criminal, and to resolve that, unless he shall reject the condition presently to be explained, the sentence of death shall not be carried into execution.

9th.—It appeared in the course of the trial that on the 5th January a letter was written on the part of Major Barrow, the Special Commissioner with the Camp of His Excellency the

TRANSLATION OF MAJOR BARROW'S LETTER, TO EX-NAWAB OF
FURRUCKABAD, DATED 6TH JANUARY 1859.

Nawab Saheb, Gracious to your sincere friends, Nawab Mahomed Tuffuzul Hossein Khan, Saheb, may God Almighty preserve him.

After (the usual expression of) desire for an interview, let it be apparent to your exalted understanding, that your English letter addressed to Moonshee Debee Pershad, has passed under the Huzoor's perusal.

The Proclamation of Her Gracious Majesty the Queen, whose Kingdom may God perpetuate, must have passed before your high observation. If you (ap.) have not been personally concerned in the murder (Kuth) of English people, please present yourself with your connections without hesitation. The Government has forgiven the offence of all except those who have been personally concerned in the crime of killing English people. You should confer the honor of a visit in conjunction with Moonshee Fuzh Ullee. Finis.

P. S.—And please not to think of the expiry of the term of the Proclamation, for, whereas the Proclamation had not as yet passed under your observation, yet when it came to your notice, you were pleased to comply with it (tamul furmaee.) Finis. It may therefore be said that the Proclamation has been complied with on your part before the expiry of the term.

Rupees 10,000 upon his person. Yet this man is approached by the Commissioner in the Commander-in-Chief's Camp with such compliments as "Gracious Nawab," "May God Almighty preserve him," "his exalted understanding," "the honor of a visit" from him, &c.

With every allowance for Oriental forms, the use of such language on such an occasion required explanation, and this Major Barrow was immediately called upon to give. His reply is remarkable. Writing on the 5th March, he says,

"The Nawab of Furruckabad stood charged with the highest crimes. To secure his person for trial on these, appeared to me to be most desirable. In communicating with him, I therefore avoided all minor points, and preserved the usual mode of address, rather than issue peremptory orders that might appear more fitting to a man whose name was so notoriously connected with crime of the deepest dye. In adopting this course, I had in view that the Nawab should not in any way be alarmed, or imagine, as had often previously been the case, that he was prejudged."

Again in a letter of the 30th of March, he says,

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"I take the opportunity of respectfully remarking that in addressing the rebel Nawaub, both as regards the style and matter, I trust some consideration may be given to all the circumstances at the time. We had been singularly unfortunate in capturing any of those who were stained with the deepest crimes of the late rebellion, and I was especially anxious to secure this Nawaub. To write to a man, therefore, who had formerly held his high position as a proscribed traitor appeared to me injudicious at a time, when we were straining every nerve to overcome the distrust all had imbibed as to the sincerity of the terms offered by the Amnesty."

11th.—This is an open straight-forward avowal of the motive that dictated the style in which the letter was written. The Governor-General in Council is very far from imputing to Major Barrow that the same motive influenced him in framing those portions of his letter, where the errors are not of style but of substance. His Excellency in Council knows that Major Barrow is incapable of any act unworthy of a high-minded English gentleman, and he attributes those still graver errors to carelessness alone, so far as Major Barrow is concerned. But, it cannot be denied that this admission of the animus with which Major Barrow wrote is calculated to furnish grounds for very painful imputations against the Government.

12th.—The second point to be noticed is the departure in the letter from the terms used in the Hindoostanee Translation of the Royal Proclamation. This departure consists in the omission of one word "Shareek" and the insertion of another "Mutakib."

The language of the Proclamation is that clemency will be extended to all offenders except those "who have directly taken part in the murder of British subjects." Major Barrow's letter promises pardon to the Nawaub, if he have not "personally perpetrated the murder of English people." For, although in the Court's translation of Major Barrow's letter, he is made to say that the Nawaub will be pardoned, if he has not been personally concerned in the murder of English people; yet His Excellency in Council is satisfied after the most careful enquiry that, in their ordinary acceptation and as they would be understood by a Native of India, the words used by Major Barrow have a narrower meaning, and signify actual and personal participation as a principal in the crime. The effect, therefore, of these alterations, is, that by Major Barrow's letter, mercy is extended to all such as have not, in their own persons murdered Englishmen, women, or children; and that, whereas the Proclamation excepts from the Royal clemency all who have directly taken part in the murder of British subjects, whether as principals or accessories; by Major Barrow's letter, principals alone are excluded from mercy, while accomplices, both direct and indirect, are excepted from punishment.

13th.—Another point to be noticed in Major Barrow's letter is, his announcement that the Government has pardoned the crimes of all, except those who have murdered English people. In saying this, he puts out of sight the leaders and instigators in revolt, of whom the Proclamation declares that their lives alone can be guaranteed to them; and of whom the prisoner, whether guilty of directly taking part in murder, or not, was one. This is a substantial departure from the terms of the Proclamation, for which no inaccuracy of translation can account.

14th.—Lastly, in the concluding paragraph of his letter, Major Barrow bids the Nawab not to think of the expiration of the term specified in the Proclamation, as any impediment to his coming in. This part of the invitation is not cited as an error on Major Barrow's part. He acted in accordance with the intention of Government, in so writing, but it shows that the letter was not an idle or supererogatory one; for, without this intimation from Major Barrow, and if left to judge from the text of the Proclamation alone, the prisoner would have had no cause to believe, that the benefit of the Proclamation was still open to him. In enlarging the indulgence of the Proclamation, as he enlarged it in this last paragraph, Major Barrow acted very properly: but it is difficult to suppose that the prisoner was influenced by the last paragraph of the letter and not by the other parts of it, and, if he was influenced by the other parts of it, he was grievously misled. It is inconceivable, that a person in the position then occupied by the prisoner receiving a manuscript letter of very recent date, signed by the Special Commissioner, and addressed particularly to him and to his case, should not have attached at least as much weight to it, as to any printed General Proclamation, dated two months previously.

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15th.—Explanations have been laid before the Government, with the object of showing that the prisoner was induced to come in, not by Major Barrow's letter, but by the Queen's Proclamation; that Major Barrow did not intend to depart from the substance of the Proclamation, or to alter its terms; that the prisoner after his surrender believed that he would be dealt with according to the Proclamation and that the plea founded on the letter, was an after-thought. But these explanations are not, in the judgment of the Governor-General in Council, satisfactory or sufficient to refute the charge of having taken undue advantage of the prisoner's confidence in the words of Major Barrow, or to mitigate the reproach of bad faith which such a charge conveys.

16th.—The broad features of the case are these; that a high functionary of the Government of India, appointed to be the exponent of the course which the Government was taking to carry out the purpose of the Queen's Proclamation, addressed to a notorious rebel and suspected murderer, a letter full of kindly and flattering terms, inviting him to surrender; that this letter, referring, as it did to the Queen's Proclamation, and professing to express the meaning of it, did, in fact express something very different; that it omitted one important word of the Proclamation, and inserted another, the effect of which was unduly to soften and relax the conditions of the Proclamation to all those, whose share in the murder of British subjects was not that of principals—And that, immediately upon receiving this invitation, the criminal obeyed it, and submitted himself to trial.

These are the facts; and it must not be said, as in the event of the prisoner's execution, it will infallibly and with truth be said, that although the crime proved against the prisoner was less in degree than that which the Commissioner had designated to him, as alone reserved for punishment, his life was, without scruple, taken. The Governor-General in Council cannot consent, so to use the opportunity which the prisoner's prompt response to Major Barrow's invitation, and his fairly presumed faith in that Officer's representations have placed within the reach of the Government.

17th.—It may be said, indeed, that even if sentence of death be remitted, and a less extreme sentence substituted, advantage will still have been taken of the prisoner's acceptance of Major Barrow's invitation, and the full promise of the letter will still be unperformed. Undoubtedly the terms of that letter are such, that they cannot be entirely fulfilled. To give a pardon without qualification, to the prisoner, on the ground that Major Barrow announced that Government had pardoned the crimes of all, except those who had murdered English subjects, is impossible. The safety of the community, the highest of all laws, forbids the re-instatement of such a criminal in the possession of his former freedom and power. Neither is it possible to replace him in the condition in which he stood when he obeyed Major Barrow's call. The province to which he had fled for refuge, has been brought back to order; the rebels with whom he was associated, have surrendered, or have been dispersed; the whole aspect of affairs is changed. On the other hand, it is to be remembered, that when the prisoner gave himself up, he was already a proscribed rebel, a fugitive, and penniless. His possessions had been confiscated long before.

18th.—Having regard to all these features of the case, the course which the Governor-General in Council has resolved to adopt as most consonant with a fair consideration of the circumstances, under which, finally, the criminal surrendered himself, with the duty of the Government to its loyal subject, and with reason, is to forbear to carry out the sentence of death against the prisoner, on the condition that he shall immediately quit the British Territory, and shall never return to it.

19th.—I am accordingly directed to request, that on the receipt of these orders at Furruckabad, the prisoner, Tuffuzul Hossein, may be called into open Court before the Magistrate of the District, and informed that, notwithstanding his proved guilt and the justice of his sentence, his life will be spared, on the condition that he shall quit the British Territory for ever. He is to be told, that if he accepts this condition, he will be conveyed to any point on the exterior Frontier of British India to which he may desire to go;—that twenty-four hours will be given to him to determine what that point shall be;—that two servants, but no other persons whatever of his own following, will be allowed to accompany him;—that he will be set at liberty immediately beyond

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the Frontier, with a sum of money for his support; and that if, after that day, he shall ever again set his foot on British Territory, or on the Territory of any Native State within the limits of British India, measures will be taken for his apprehension, or for the surrender of his person; and he will be executed under the sentence of the Court.

20th.—He is also to be told, that a maintenance will be proved for his immediate female relatives, so long as they shall reside in such place as the Government may approve.

21st.—On the expiry of twenty-four hours, the prisoner will again be called into open Court before the Magistrate. If he accepts the condition, he is at once to be conveyed as a convict, under a trustworthy native guard, commanded by an intelligent English Officer, to any point on the Frontier of India that he may select, and there set at liberty with a sum of Rupees 1,000 for his subsistence. His two servants, if he choose to take them, will be conveyed with him. If, whilst professing to accept the condition, he should declare his inability or unwillingness to select any place for his liberation, he is to be conveyed to the Frontier of Nepaul beyond the Raptée, near to the spot where he surrendered, and is to be set free there. If within the time specified, the prisoner does not accept the condition proposed, or, if having accepted it, he shall break or attempt to break it, by endeavouring to escape, or otherwise, the sentence of death may be carried out.

(Signed) CECIL BEADON,
Secretary to the Government of India.

(True Copy.)

(Signed) CHARLES MACLEOD,
Registrar Foreign Dept.

No. 13.

ORDER THEREON, 18th July 1859, No. 431.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. A. P. W. Begbie.

Recd of Secy to Govt
Calcutta 1859 Deptt
Secy
The Under Secy to
Govt of India
3421.

Of 14th June } 1859.
Ref of July }
Encls: 2.

No 563
Transmits for
information & guidance
in similar cases copy
of a Notification regard-
ing the trial of Sub-
adar Major Gov-
ernment Nabob of
Surrehabad. -

No 12131
To be recorded
10 July 1859. J. J.

29 July 12 1/3