M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT

G.O. No.	44	Press ~~Mis.~~
Dated	16 - 1 - 1929	

Not to be folded or roughly handled

Fort Saint George, Political Consultation, 13th January 1859.

No. 27. EXTRACT FROM THE MINUTES OF CONSULTATION in the Judicial Department under date the 7th January 1859, No. 19.

Read Diary, Judicial Consultation, 11th January 1859, Nos. 18 and 19.

Read an extract paragraph from a Letter from the Secretary to the Government of India with the Governor General to the Chief Commissioner, Punjab, containing observations on certain questions regarding the interpretation to be placed, and the course of action to be taken, upon some of the provisions of the Act recently declared in the Royal Proclamation.

No. 28. ORDER THEREON, No. 44; dated 11th January 1859.

To be Recorded

(Signed) T. PYCROFT,
Chief Secretary

Exd. J. A. Wilson

No. 19.

Extract from the Minutes of Consultation under date the 7th January 1859.

Read the following letter

From G. F. EDMONSTONE, Esq., Secretary to the Government of India, with the Governor General ; to the Chief Commissioner, Punjab, dated Allahabad, 13th December 1858, No. 5208.

Fo eign Department,

SIR,

Certain questions having been referred for the consideration of His Excellency the Right Honorable the Governor General, respecting the interpretation to be placed, and the course of action to be taken, upon some of the points of the Amnesty declared in the Royal Proclamation, I have the honor to communicate to you, for your information, in continuation of my letter No. 4443, dated the 8th Ultimo, the following observations on the subject, which have been elicited by the reference.

2. The first question is as to the meaning of the term "British subjects," as used in the Proclamation—whether it is to be understood in its restricted sense, as limited to European British subjects, or in its wider sense, as extending to all the subjects of the British Crown?

With regard to this point, I am directed to subjoin an extract (paragraphs 6, 7, 8 and 9) from a letter addressed, under date the 18th Ultimo, No. 549, to the Government of Bombay, conveying the opinion of His Excellency the Governor General as to the construction of the term "British subjects." You will be guided by His Lordship's interpretation until otherwise advised.

"6. With reference to para. 5, there is no doubt that literally and legally, the murder of British subjects includes the murder of those who are Natives of India, as well as of those who are English. But the Governor General is strongly of opinion that, in justice and in policy, some distinction is to be drawn between the two cases. Many Natives have lost their lives by acts which were undoubtedly acts of murder, but which originated in old quarrels, or party feuds, or were brought about without premeditation, and committed, at a time when the restraints of law and Government were removed, amongst a people who have ever been careless of their own lives and of the lives of their neighbours; although they had hitherto learnt to respect the life of an Englishman.

"7. In such cases, to pursue enquiry respecting every rebel suspected of being a partner in murder, would be to keep numberless towns, villages, and districts in a ferment, and would inspire the community generally with little confidence in the true value and spirit of the Proclamation; and as conviction would be very difficult, the country would, in most places, be kept in agitation without any satisfactory result.

"8. Therefore the Governor General desires that, as a general rule, Officers of Government should not closely investigate cases in which life has been taken under circumstances such as I have described, but that they should allow the suspected rebel to benefit by the Amnesty.

"9. In cases where the act has been committed without provocation, in a cold-blooded, deliberate manner, or with circumstances of peculiar aggravation, His Lordship would wish it to be dealt with as at any other time."

3. The Governor General has not felt that the Government is at liberty to give a more restricted sense to the term in question, because although one effect of such an interpretation would be to reduce the number of punishable persons, another effect would be to make the spirit of the Proclamation more exclusive, and to exhibit the Crown as less considerate of the lives of its Indian subjects than the literal, and, as His Lordship believes, legal meaning of the words used by the Crown warrants; and this, not only as regards its Indian subjects of pure Native birth, but also as regards those of mixed blood and of the same faith with ourselves, who have suffered certainly in no less a degree than their fellow subjects of pure English birth.

4. Still it is practically impossible, and for reasons of policy most unadvisable, to pursue each case of murder committed upon a Native, or to hold in hand punishment for all perpetrators of such crime. And it is this consideration which guided the instructions to the Government of Bombay, as above cited.

5. The second question is as to the precise sense of the words "*directly* taken part in the murder," &c.

The Governor General attaches the utmost importance to the word "directly" in the above passage of the Proclamation. In a hypothetical case of a Regiment whose Officers were shot down by the men, though it cannot be proved who fired, although His Lordship does not consider it necessary that a Sepoy should be proved to have fired his musket at an Officer, in order to bring him within the scope of the word "directly," His Lordship does consider it necessary that something more should be proved against him than the fact of his having been present in the ranks at the time of the murder. His Excellency thinks it should be shown that the Sepoy took an active part in aiding and abetting the murder.

6. In the opinion of the Governor General, it certainly is not in the spirit of the Amnesty that the guilt of the act should be spread over those who were neither perpetrators nor instigators of it.

7. In cases of murder other than those of the murder of Officers by mutineers, the same rule should govern the application of the words "directly taken part;" the spirit of the term "directly" being in all cases carefully kept in view, in order that mercy may not be stinted.

8. Many Civil Officers, however, may have no means of ascertaining what took place on a particular occasion of mutiny at some distant Stations; and the Governor General is of opinion that it will probably be necessary hereafter to institute enquiry by a special tribunal into the cases of the murder of Officers by their Regiments.

9. In connection with the subject of the treatment of men belonging to Regiments which murdered their Officers, I have to refer you to the enclosure of my letter No. 5061.

10. The third question is as to the admission of suits, Criminal and Civil, on account of wrongs done to individuals during the rebellion.

The 9th paragraph of the letter addressed to the Government of Bengal, a copy of which was enclosed in my letter to you No. 4443, dated the 8th Ultimo, deals with this point. Wherever such acts of wrong have been done in prosecution or support of the rebellion, the Governor General is of opinion that they should be pardoned and ignored.

11. In the case of villagers who have lived on plunder for months, and whom, upon their return to their villages, their plundered neighbours may wish to sue and to have punished, it being implied that the acts of plunder were committed in a District where rebellion was at the time uncontrolled, the Governor General is of opinion that such acts should be pardoned.

12. The same rule does not apply to a case in which similar acts were committed in a quiet part of the country, but where the Civil power had become indirectly weakened by the rebellion. The Governor General does not think that, in such a case, the suit could be rejected; but the Magistrates should do all in their power to bring about an accommodation without process of law.

13. The fourth question regards the property of those who, coming within the Amnesty, may submit before the 1st January, in cases in which the first steps towards confiscation shall already have been taken.

The Governor General is of opinion that there can be no doubt that the person thus submitting himself, and not being in the excepted classes, will save his property.

14. Where confiscation has taken place, the 7th paragraph of the enclosure of my letter No. 4443, dated the 8th Ultimo, prescribes cases in which the sentence should be reconsidered. The Governor General is of opinion, that the Proclamation does not entitle an owner to restitution after actual adjudication; but His Excellency thinks that it will be in the spirit of the Proclamation that, in the cases described in the paragraph just referred to, the sentence should be reconsidered. If the property has not only been confiscated, but awarded to others, or disposed of, reconsideration cannot take place.

15. The fifth question relates to the fining of Village communities for offences committed during the rebellion. Does the Amnesty condone those offences?

The Governor General is of opinion that no fines should be imposed where the inhabitants have returned to their homes and peaceful pursuits; and His Excellency is averse from imposing such fines even where murder of British subjects shall have been committed in a village, the individual perpetrators being unknown. The Governor General considers that it is contrary to the spirit of the Amnesty that the innocent should suffer for the guilty wherever this can be

avoided; and it could scarcely be assumed, in any case with which His Lordship is acquainted, that all were guilty.

16. But the Governor General thinks that it is quite just and reasonable that a village or town should be required to restore public buildings which were destroyed by the inhabitants, and that a fine should be levied from them for this purpose. This would be not so much a penal fine as a bare restitution; and it is more fair, in His Lordship's opinion, that those buildings should be restored by the particular community which bore the chief part in destroying them, and which now needs them again, than that the expense should fall upon the country at large. The Governor General has already authorized the levying of fines in such cases in Oudh.

17. The sixth question relates to mutineers or rebels in custody, or whose trials are pending. Is the Amnesty to apply to them?

This question is answered by paragraph 5 of the enclosure to my letter No. 4443, dated the 8th Ultimo, according to which the benefit of the Amnesty is extended to those who, not being of the excepted classes, are now in our hands, although this may not be due to any submission or surrender on their part. The only condition prescribed is that such persons shall consent to return, and shall in fact return, to their homes and peaceful pursuits.

18. In regard to rebels and mutineers already convicted and undergoing sentence, the Governor General has no doubt that the Amnesty does not extend to them. But His Lordship desires me to take this opportunity to express his conviction that, both in policy and in justice, a revision of many of the sentences under which men have been transported and imprisoned will be necessary. His Excellency thinks, however, that this measure should not be undertaken at the present time. For the moment, we have enough to do to watch the results of the pardon given to those who are unconvicted, and of the disbandment of the disarmed Regiments. Any considerable remission or relaxation of sentences legally passed should be reserved till the Districts still disturbed have been reclaimed to order.

No. 610.

Home Department, Allahabad, the 13th December 1858.

Forwarded for the information of the Government of Madras.

(Signed) G. F. EDMONSTONE,
Secy. to the Govt. of India, with the Govr. Genl.

Order.—Resolved that a copy of the foregoing communication be furnished to the Court of Foujdaree Udalut, to the Commissioners appointed under Acts XIV of 1857 and XXII of 1858, and to the several Magistrates in the Provinces for information and guidance, as also to the Military and Political Departments, in continuation of the papers communicated in Extract Minutes Consultation dated 1st Ultimo, No. 1696.

(True Extract and Copy.)

T. PYCROFT,
Chief Secretary.

To the Judges of the Court of Foujdaree Udalut.
,, Commissioners under Act XIV 1857.
,, Provincial Magistrates.
,, ~~Military and~~ Political Departments.

Exd. F. Cartledge.

Can 7 Dec/58.
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For 852 Com. 15 Jany
Political Dep. Sept

Extract Minutes Consultation
in the Judicial Dept. 19.

9/7
2/10 Jan/59.

No 114.

Communicating copy of a letter from the Govt to the Govt of India with the Govr General to the Chief Commissioner, Punjab, containing observations on certain questions respecting the interpretation to be placed, and the course of action to be taken, upon some of the points of the Amnesty declared in the Roy[illegible] Proclamation of 1/11/58, to be recorded.

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