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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. / B.P. No.	4939	Press. / Mis.
Dated	28-8-1877	197 .

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

16th August 1877, No. 1945.

Affrays.

Read the following paper:—

No. 134. *From L. NEILL, Esq., Officiating Under Secretary to the Government of India, Home Department (Public), to the Chief Secretary to Government, dated Simla, 26th July* 1877, *No.* 26—1425.

Extra Official.

With reference to paragraph 6 of Home Department Resolution, No. 1576—85, dated the 1st August 1860, I am directed to forward, for information, the accompanying papers* regarding an affray between four soldiers of the 15th Hussars and some villagers in the Mozuffernugger District.

* To North-Western Provinces and Oudh Government, No. 955, dated 3rd May 1877.
From North-Western Provinces and Oudh Government, No. 555-A, dated 18th May 1877, and enclosures.
To North-Western Provinces and Oudh Government, No. 1332, dated 13th July 1877, and enclosure.

ENCLOSURE No. 1.

From L. NEILL, Esq., Officiating Under Secretary to the Government of India, to the Officiating Secretary to the Government of the North-Western Provinces and Oudh, dated Simla, 3rd May 1877, No. 955.

With reference to page 227 of the selections* from native newspapers published in the Upper Provinces, I am directed to inquire whether there is any truth in the account of a shooting excursion of four European soldiers in the Mozuffernugger District, which is alleged to have resulted in one villager being shot dead and three others wounded.

* Dated 7th ultimo.

ENCLOSURE No. 2.

From C. ROBERTSON, Esq., Officiating Secretary to the Government of the North-Western Provinces and Oudh, to the Officiating Secretary to the Government of India, Home Department, dated Naini-Tal, 18th May 1877, No. 555-A.

In reply to your letter, No. 955, dated 3rd instant, I am directed to submit, for the information of the Government of India in the Home Department, the enclosed copy of a letter (with copy of enclosures) addressed to the Military Department, regarding the affray between four soldiers of the 15th Hussars and some villagers of Rora in the Mozuffernugger District.

No. 553-A, dated the 18th instant.

ENCLOSURE No. 3.

From C. ROBERTSON, Esq., Officiating Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Military Department, dated Naini-Tal, 18th May 1877, No. 553-A.

I am directed to submit, for the information of His Excellency the Governor-General in Council, a copy of the papers marginally noted, regarding a lamentable affray which occurred on the 24th March last at Rora village, in the Mozuffernugger District, between four men of the 15th Hussars and some villagers, resulting in the death of one native and the wounding of three others.

Letter from Commissioner, Meerut Division, No. 80, dated 26th April last.
Finding by Magistrate, Mozuffernugger.

2. The facts will be found fully stated in the Magistrate's finding, and I am to say that after a careful perusal of the papers the Lieutenant-Governor concurs in the conclusions arrived at by the Commissioner.

3. I am to add that, so far as can be judged from the circumstances, if the soldiers had been informed of the General Order prohibiting* shooting near villages, the affray would not have occurred. The Lieutenant-Governor would take this opportunity of again pointing out the great importance of making known and insisting on this order whenever a license to shoot is granted to a soldier. His Honor is assured that all Military authorities must feel the necessity of taking every precaution to prevent the occurrence of such deplorable misunderstanding as the present, the after consequences of which are not less mischievous than their immediate results are fatal.

* G.O. No. 186, Discipline, Bengal Army Regulations.

ENCLOSURE No. 4.

From C. A. ELLIOTT, Esq., Officiating Commissioner of the Meerut Division, to the Officiating Secretary to the Government of the North-Western Provinces, dated Mussoorie, 26th April 1877, No. 80.

I have the honor to forward in original, for the consideration and orders of Government, Mr. Sells' No. 45, dated 21st April, containing the English record of his inquiry into the circumstances of a lamentable affray between the villagers of Rora near Khatauli and four Non-Commissioned Officers of the 15th Hussars Regiment, in which one of the villagers was killed and three wounded by gunshot wounds.

2. The affray arose out of the shooting of a peafowl by one of the soldiers, on which they were set upon and attacked by the villagers, and either by accident or in self-defence their guns went off and three natives were shot.

3. I entirely disagree with Mr. Sells in his views as to the justifiability of the shooting of peafowl near a village by soldiers. But the 15th Hussars is new to the country, and the evidence shows that the Regimental authorities had not been informed by the Military Department of the standing order against peafowl shooting. Whether the authorities of the Regiment or of the station are or are not in fault for not knowing of the general order is a question for the Military Department to decide. But as far as the soldiers go, it seems clear that they did not know that they were transgressing any positive order.

4. This being the case, I think Mr. Sells was right in not committing them for trial. Had they been engaged in an unlawful act, it would not have mattered whether the shooting could or could not be brought home to any one of them. All would have shared alike in the offence. But as they had not been told of the order, their act was not unlawful to their knowledge.

5. I think it is clear that on the whole they did behave with forbearance, and, though I believe (as Mr. Sells does not) that they fired the shots, or some of them, deliberately, I think they did not lose their heads, but fired so as to cripple or terrify rather than to kill, and did not fire till their own lives were positively in danger.

6. With these remarks I leave the matter in the hands of Government.

FINDING.

In this case there are so many peculiar features, so many variously conflicting accounts, and so many doubtful points, that it will be as well first to state such matters as are distinctly proved, and may be accepted as unquestionable actual facts. Such are the following:—

(1). That on March 24th Serjeant Forbes, Trumpet-Major Byrne, Farrier-Serjeant Wigg, and Private Leggett, all of the 15th Hussars, left Meerut in the morning by rail for Khatauli on a shooting expedition.

(2). That shortly before sunset on that day, Forbes shot a peafowl on the outskirts, or rather just at the edge of the *village* of Rora (situate about 6 miles to the eastward of Khatauli).

(3). That this act was immediately followed by what I will here term an "encounter" with the villagers.

(4). That in this encounter one man, Medah, was shot dead, and three more, Gangaram, Sagar and Umrao, were severally wounded: Gangaram being shot in the big toe of the left foot, Sagar in *both* thumbs, and Umrao in the right side of the lower part of the chest.

(5). That the four soldiers arrived at the Khatauli Railway Station between 8 and 9 that evening and proceeded to Meerut by a goods train that happened at that time to be at the Khatauli Station.

(6). That about 10 P.M. on that same evening they reported to their Adjutant, Lieutenant Middleton, the fact of their having had an encounter with the natives.

(7). That at that time Serjeant Forbes was suffering from severe injuries, apparently caused by lathi blows, and that Trumpet-Major Byrne was suffering from similar injuries, but to a less extent.

(8). That subsequently a double-barrelled gun and two helmets were delivered up to the police by the villagers.

(9). That on reporting the occurrence of the encounter with the natives, Trumpet-Major Byrne showed to the Adjutant his gun with the trigger guards battered down, apparently by a heavy blow.

All the above are unquestionable actual facts, the evidence by which they are established being so far unimpeachable. But before proceeding to comment upon the evidence as regards the origin and actual features of the encounter, I may here observe that immediately upon receiving information of the affair the District Superintendent of Police proceeded to the spot and made the ordinary investigation, and also promptly traced out the soldiers implicated. The results of this inquiry were at once communicated to the Military authorities, in accordance with the spirit of Section II (11 of Regulation XXV of 1825), and upon their signifying that the case was made over to the Civil power for disposal the present judicial investigation was at once set on foot.

The first point for determination is, how the encounter actually began, and who were the originally provoking parties. The story of the villagers may be succinctly given as follows: that on a peafowl being shot just on the edge of the village homestead, Gangaram, one of the wounded men, remonstrated with the soldiers for shooting in the village; that Forbes pointed his gun at him threateningly, and that he therefore, to save himself, seized hold of it, and that, upon this, the soldier (unquestionably Forbes) pulled the trigger, and shot him in the foot; that then Sagar came forward, (as he himself says, to supplicate, but as the greater part of the native evidence asserts to deal a couple of lathi blows at the soldiers) and was shot deliberately by a second soldier; that then a cry was raised that they should seize the soldiers and take them to the thannah, and that some four or five men started in pursuit, headed by Medah and Umrao slightly in front of the others, that Medah knocked one of the soldier's hat off and was immediately shot by him, and that Umrao was also deliberately shot by another of the soldiers, about 30 yards distance.

According to the version of the four soldiers, as they drew near to the village led by Wigg, who had been to the place on previous occasions, and knew that at this particular spot peafowl were generally to be found, Leggett remained some 200 or 300 yards outside the village, looking for hare, while Byrne, Forbes and Wigg went on towards a place called the Takyas lying between the houses and a pond, an open space of ground on which stands conspicuously and close together a banyan and a tamarind tree; that Forbes shot a peafowl sitting on the tamarind tree, and that just after Byrne went after another peafowl that he spied near the edge of the pond; that as the other two, Forbes and Wigg, were walking off with the dead peafowl, they were beset by three or four natives, one of whom, Gangaram, said the peafowl was his; that two of the men laid hold of the barrels of the gun Forbes was carrying under his arm, and that a struggle for the gun then ensued, in which the gun went off; that before and at the time the gun went off, Forbes received several lathi blows; that a crowd of natives then assembled and beset both Forbes and Wigg; that on the latter calling for assistance Byrne came up, and was himself beset, and that his gun went off from the stroke of a lathi blow that came down on the trigger guard as he was endeavouring to defend himself from blows aimed at his head, and that by another blow his helmet was knocked off; that he and Wigg retreated gradually, covering Forbes' retreat at the same time, but still pressed sorely by an angry mob; that Leggett joining them was also beset, and that in the general melee, or rather in the three melees, for the three assert that they were separately surrounded, Wigg's and Leggett's guns also went off, and that then the natives clustered at one or two spots, and that then the pursuit ceased and the soldiers were enabled without further interruption to reach Khatauli. It may be well to state here that they all deny actually *knowing* at the time that any native had been killed or wounded, though they *imagined* that some must have been injured by the several discharges.

There can be no question that the encounter was the result of the shooting of the peafowl by Serjeant Forbes, and it is necessary at the outset to examine whether the villagers had any right to interfere as they did, and whether in shooting the peafowl Forbes committed any unlawful act, offending any religious prejudices, or invading any rights of property. Now no attempt has been made to show that the peafowl, which it appears congregate in good numbers at this particular place, have been ever held sacred. Nor can I find any good ground for holding the peafowl to have been private property. Forbes and Wigg state that Gangaram, who was the spokesman of the villagers, said the peafowl was his, and in this they are supported by Sagar's statement. But Gangaram has in this inquiry made no claim of property and merely says that he told the men not to shoot in the village, but to the jungles. The peafowl, it is allowed by witness 4, are to all intents and purposes wild, and wander about the jungles outside the

village. I cannot therefore see that any rights of property were invaded by the shooting of the peafowl. It must also be observed that Forbes, who (for reasons that will be given presently) has been admitted as a witness in the case, and whose statement has accordingly all the weight that a sworn deposition is presumed to have, states that as he and Wigg drew near to the tamarind tree, they observed four or five natives under the tree, and that during all their preparations for shooting no objection was raised by any of them, nor even till some minutes after the peafowl was shot, and he states that Gangaram was one of those men. And I am here led to record that while the statements of the soldiers, made without the least reserve, have been consistent throughout these two inquiries, those of the natives have shifted about to an extent far beyond what might arise from defective memory: the statements made by some of them, on oath, in this present inquiry are not only hard to reconcile with those made to the District Superintendent of Police, but are absolutely contradictory to them, and I must also record that Serjeant Forbes' evidence has appeared to me from first to last to bear the impress of truth upon it, and has been given in a thoroughly straightforward manner. I have no hesitation whatever in saying that I believe it implicitly, and that, so far as possible, we have in his statements a clear and accurate account of what occurred within his knowledge. And his evidence leaves no doubt in my mind that the aggression in this encounter was on the part of the villagers. And that, although the same men who began the struggle for the gun were at the spot before the shot was fired, they offered *then* no remonstrance. The native witnesses all carefully deny their presence at the time the peafowl was shot; curiously, they seem all to have collected just after, on hearing the report. But on this point I see no reason whatever for calling in question the assertion of Forbes to the effect that villagers were actually on the spot before and at the time of shooting, and that no remonstrance was offered till some minutes afterwards, after the body of the peafowl was lifted off the roof on to which it fell, and had been handed over to the cooly, and the two soldiers, Forbes and Wigg, had begun to retrace their steps and leave the village. The first openly aggressive act was the pulling out the feathers of the bird, in regard to which he is supported by statement of witness Nasiban (4) and witness Ghariba, while it is also admitted by Gangaram himself; and the second was the seizing hold of the guns by Gangaram. Forbes relates minutely how he was holding the gun at the time and has shown (in action) the mode in which it was seized, and I have no doubt whatever as to the truth of his assertion that upon its being seized by Gangaram and "another man too" (a statement of witness Badhe No. 17 by no means an unprejudiced witness) he endeavored to turn the muzzle down to the ground, knowing that the gun was at full cock, and not having the power to uncock it (one of the natives having his hand over the hammer and triggers). And as he says this was done with as much danger to his own feet as to that of the others. His action was, I fully believe, based upon the best intentions, and he would probably have abandoned the gun altogether (as he infers) had it not been a valuable gun lent to him by the Surgeon of the Regiment, Dr. McQuaid. Throughout this struggle Forbes' course of action would seem to have been purely defensive, and the guns going off must be regarded as the purest accident, if it was not indeed solely brought about by his having suddenly to relax his hold on the gun from receiving a heavy blow on the side of his head which for a few seconds stunned him. While the struggle was going on, it is clear from the medical evidence that Forbes received, as stated by himself, several blows, some of a tolerably severe nature. His evidence as regards the particulars of the struggle is worthy of grave attention, and as the medical evidence fully bears out the fact of his having received certainly not *less than five severe* blows, it is probable that, as stated by him, there were more assailants than is admitted by the native evidence. Bási, even (witness No. 6), the uncle of the wounded Sagar, and certainly no impartial witness, here supports his statement and says that there were *others* besides Gangaram struggling with the soldiers, and notably "Umrao" (one of the the wounded men) and "Medah" (the one who was shot dead) and these too, both had lathis he admits. But the native evidence only allows of one lathi blow having been struck at Forbes, viz., by Sagar. All other blows are quietly ignored. At the same time it was reluctantly brought out, that there were others present, Sagar, Bási, Indur, Naina, Meda, Umrao, Kallú, Jowala, Jowahir, Bahala, Mana, Ghesa and Ghariba. As an instance of the exceeding untrustworthiness of the native testimony, I may here note that while *Umrao's* presence at this part of the tragedy is distinctly deposed to by his fellow witnesses, *and though in his deposition recorded at the Dispensary by Mr. [illegible] Assistant Magistrate,* on the 25th March (the day succeeding the affray) he distinctly admitted it, describing the part he played, he now in his evidence utterly denies having been a [illegible] of the struggle with Gangaram, saying that he simply joined in the pursuit of the soldiers afterwards, and besides being assailed with lathi blows, Forbes appears to have received abuse utterly unprovoked from a man, whom he recognizes now in Basi, and it may be here stated that Basi is uncle of one of the wounded men, Sagar, and that when Sagar's evidence was taken, Forbes stated that he recognized him, he thought, as a man who gave him a poke on the stomach with his lathi. And these two are Brahmins, and the Gujars of the village are their jajmans. So far then I find that Forbes was assaulted by several of the villagers in an extremely violent manner and without any provocation so far as the evidence discloses. I cannot consider that they were warranted in acting as they did by any proceeding on his part. Even had the peafowl been [illegible] tame one, their violence would have been utterly unjustifiable. I am inclined to think that witness Basi (6) has unintentionally revealed the

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actual cause of the villager's interference, when on cross-examination he says that on previous occasions soldiers had shot peafowl there, and that *Gangaram had got compensation out of them* for it. If this was Gangaram's object on the present occasion, the fact of his having said nothing about the peafowl being his till *after it was shot* is fully accounted for, and his interference receives a reasonable solution. There has been an attempt on the native evidence to make the firing of the gun a deliberate act, but the witnesses have, on cross-examination, shown that they were utterly ignorant as to how a gun *is* fired off; there can be no question whatever in my opinion that the injury to Gangaram was purely accidental and solely the result of utterly unjustifiable aggression on the part of himself and of some of his fellow villagers. And this being so, Forbes stands at once absolved from all criminality. None of the remaining shots were fired by him, for, when he was half stunned by a blow, the gun left his grasp, and he never saw it again till it was produced in Court. He can, I hold, in no way be held to the very slightest extent answerable for the blood that has so unhappily been shed. And holding this view it has seemed to me proper, simply as a matter of the merest justice, to admit him as a witness in the case. Were this not done, the evidence would have been altogether partial and one-sided. If the view I hold is correct, the villagers have themselves transgressed the law and have, knowing this, given a false color to the case. Their evidence is naturally one-sided, as experience of native evidence in a case of this sort would lead one to expect, and had the Court not been able to admit Forbes as a sworn witness, there would have been nothing to oppose to the large mass of native evidence, but the unsupported statements of the four soldiers, to which there would have been even wanting the weight attaching to sworn allegations, and to an Englishman, it cannot be denied, there is a greater solemnity in an oath than there is to a native witness. The statement of Forbes, recorded as it now has been on oath must certainly carry with it more weight than had it been a simple unsworn affirmation. I have stated above that I cannot find from the evidence that Forbes was guilty of any unlawful act, either in shooting the peafowl or in his subsequent action. Before quitting this subject, it will be as well to consider how the matter is affected by *G.O.*, No. 186 *of* 1876, in which soldiers are in certain cases prohibited from shooting peafowl. Reference to that order shows that permission is not to be given "to soldiers" until it has been ascertained through the Civil authorities that "the country people are not opposed to the shooting of peafowl, or other birds .... considered in certain localities to be more or less of a sacred nature," and the order goes on to say that 'in all cases soldiers are prohibited from shooting in the immediate vicinity of villages or private residences." The action of the soldiers therefore in the present case would seem to be contrary to the direct letter of the latter portion of this order. But the Adjutant of the Regiment distinctly deposes that this order has never been published to the men of the 15th Hussars, and is not entered on their passes, and he goes on further to state that "the shooting of peafowl has been recognized by us as allowable," at the same time he states that it is an understood order that they should not shoot *in villages*, except apparently with the tacit consent of the villagers. In the present case the shooting was certainly in the "immediate vicinity" of the village, and so far the soldiers would seem to have acted contrary to the spirit of the permission given them. But although this would unquestionably aggravate their offence, had they themselves initiated the affray, it cannot make the action of the villagers no less unjustifiable, or their assault less unprovoked. The assault made upon Forbes was utterly unconnected with any idea of their being as soldiers prohibited from shooting at that particular spot, and had they been other than soldiers, say, employés of the Railway Company, the action of the villagers would unquestionably have been the same. For this reason, I am of opinion that however the men may have rendered themselves amenable to punishment *regimentally*, their shooting in the vicinity of the village could not in the present case render them liable to any punishment in the Criminal Court, to which they would not otherwise have been liable, and cannot make their resistance to any *attacks* made upon them less legitimate.

So far then as to the commencement of the affray, and before proceeding further it will be as well to note carefully the nature of the wounds received by the deceased Medah, and the wounded men Sagar and Umrao. These wounds are all of a peculiar nature. Medah received two deep wounds on the left side of the neck each about three-quarters of an inch in diameter and each penetrating *backwards* and *downwards*, and there were [illegible] a number of smaller wounds scattered over the upper part of the chest, and over the left sh[illegible]. The medical evidence states that the two deep wounds seemed to have been caused by the [illegible] of a charge of shot, and the others by single pellets of lead.

Sagar has *both thumbs* wounded, and the Civil [illegible]rgeon stated that in his opinion the shots must have passed *across them* from left *to right*, and there were no other wounds at all.

Umrao's wound was on the right side between the chest and the abdomen, and two ribs were broken. There was but *one* wound penetrating backwards, and *slightly downwards* and *the ribs broken were the 9th and 10th*. It will be seen that all these wounds present peculiar features, especially those received by Medah and Sagar. From the general nature of the wounds, the Civil Surgeon was of opinion that all were fired at [illegible] *quarters*. This must be inferred from the very slight scattering that took place. And the Civ[illegible]rgeon further states that from the nature of the wounds, they must be thought to have been [illegible]*dental*. This of course must be accepted merely as an opinion. But certainly the peculiar [illegible]ure of the wounds affords some basis for

such an opinion. Medah's wound speaks for itself. It must have been caused by a gun held above the man, with the muzzle rather deflected. Had Medah been kneeling, the wound might perhaps have been caused by a shot, aimed directly at him from the shoulder, but scarcely so if he was standing, and *by all the evidence* Medah is said actually to have been standing *when* he was shot.

The wounds in Sagar's thumbs also present peculiar features, and the manner in which it was caused is still a mystery. It was at first asserted that he was shot deliberately, while *entreating* the soldiers to go away, but from the evidence as now given in Court, the evidence of his fellow villagers even and those no friendly ones to the soldiers, it is now clear that at the time he was shot he was *in the act of dealing* a second blow to one of the soldiers either Forbes or Wigg or Byrne (*vide* witnesses 5, 7, 8, 9, 10, 11, 12, 13, 15,) and that he was one of the leaders in the assault on Forbes, and as noted before, he is recognized by Forbes as a man who at the commencement of the struggle for the guns gave him a thrust with his lathi in the stomach. The shot could unquestionably have been *deliberate*, but if so, it must be said that the aim must have been a very bad one; one thing however is clear that the shot was fired from the side, or some of the discharge must have entered the man's body.

In regard to Umrao's wounds it is clear that the wound was not in the direction that would be expected from a deliberate shot aimed from the shoulder *at a man standing a few yards off*, and at the best, it is hard to imagine that he was more than 10 yards from the muzzle of the gun, the native evidence is mainly to the effect that he was, when fired at, not more than five paces from the gun (*vide* witnesses Nos. 7, 9, 11.) It would seem almost as if the gun must have been fired at a lower level than from the shoulder.

It is now necessary to determine how and by whom these wounds were inflicted, and as that of Medah receives the readiest solution I will take that first. It will be remembered that after the peafowl was shot Byrnes, according to his own statement and those of his comrades, went off towards the pond, leaving Forbes and Wigg together. Wigg, however, when the struggle for the gun began, appears to have been standing a few paces away from Forbes and from *all* the evidence it is clear that he did not take any part in the struggle, upon the struggle becoming serious and upon his assailants proceeding to violence, Forbes states that he called out to Wigg for assistance, but that the latter was himself prevented from joining him by a part of the mob. Forbes states that Wigg was driven back by lathi sticks. Wigg himself makes the same statement and Byrne corroborates it. Hering cries for assistance, as he was himself searching for a peafowl he thought he had shot, he turned back from the tank and came up, passing Wigg and telling him to come to Forbes' assistance, went up to some of the natives who were in possession of Forbes' gun and tried to take it from them. But he was stayed by a blow on the left arm. It will now be advisable to see how far this account is borne out by the evidence of the other side. On page 12, I have already noted the names of 13 men who were present, even according to native evidence at the time Forbes' gun went off, besides Gangaram himself, and although as witnesses they are careful to screen themselves, there can be but little doubt that all took an active part, and there can be also as little doubt that upon the struggle getting serious, others of the villagers also joined them. Experience tells us that when an affray of this nature occurs as many natives as are near, turn out to witness, and if it is a party struggle to take part in it. And in the present case the wound received by Gangaram must have inflamed their ire and made them more eager to revenge. Now no attempt whatever has been made to show that they desired Forbes either to go away quetly or even *to accompany them to the thana*. Blows were showered upon him as shown by the hurt he received, and by the part assigned to Sagar even by the native evidence. But against Forbes no offensive act is proved; from the first he appears to have stood on the defensive. From all this, the evidence of Forbes himself receives weight, and both his and Wigg's statement in regard to the latter also being beset are supported by the evidence of Mussamut Nasiban (No. 4), for we must assume that the *other soldier* there alluded to was Wigg. Byrnes, as we have seen, appears to have come up just as Forbes recovering from the shock caused by the blow on his helmet—a blow which he states would, he thinks, have killed him if it had not [illegible] his helmet—was slinking away with the loss of gun and helmet. Byrne then was himself [illegible] after giving up the idea of recovering Forbes' gun and began to retreat, and while retreating [illegible] (*vide* native witnesses 3, 13 and 15), (and from witness Bahala, we learn that there was a big crowd collected), his helmet was knocked off by a man, identified by the native [illegible] as the deceased *Medah* (*vide* witnesses Bahala 7, Jowahir 10, Jowala 13, Maina 15). This [illegible] almost immediately followed by Medah's being shot dead. Of the native witnesses, No. 5 states that upon Medah delivering his blow "*some one of the soldiers* fired at Medah and he fell." No. 6 says "a soldier shot him," No. 7 "*the* soldier fired at him," No. 8 do., while No. 9 adds that the soldier *fired straight* at Medah, No. 10 states that *one of the others fired*; other witnesses are doubtful as to who it was shot Medah. One thing however is certain that did it depend upon the native evidence we should never have known by whom actually Medah was shot. And [illegible] certain that, standing as he was, Medah could not possibly have received his wounds [illegible] fired direct from the shoulder. But if Byrne's statement is accepted (and this state[illegible]ees with that made voluntarily to the District Superintendent of Police before the [illegible] Medah's wounds was known to him), the curious

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feature of the wounds are at once explained; and Forbes' evidence thoroughly supports this explanation. As we have seen Byrne's hat was knocked off, and as this hat was found by witnesses 23 and 24 at the spot where Medah's body was picked up, there seems to be no doubt that it was Byrne's gun that dealt Medah his death wound. And this view is made still less uncertain by the statements of Byrne's and the other soldiers and by the evidence of Forbes. Byrne was then acting on the defensive retreating backward. And just after his hat was knocked off, another man aimed at him a lathi blow with both hands. To ward off this blow Byrne raised his gun above his head in the ordinary manner, the gun nearly level, the trigger guard uppermost. The lathi lighted on the gun, and the strength with which it was wielded may be gathered from the fact that the trigger guard was battered down in the centre, almost level with the stock (as level indeed as it could go), the triggers broken and the locks inside also broken. The shape of the *curve* shows that the lathi must have been a thick one, and from the appearance of the gun there can be little doubt that the blow would have been a fatal one, had it lighted on Byrne's then uncovered head. The effect of the blow was of course that the gun went off and position of the gun coincides with the direction of Medah's wounds. It must now be mentioned that the distance from where according to the villagers the struggle with Gangaram took place, to the place where according to the villagers as shown by the pools of blood, Medah was shot, has been measured and found to be *no less than* 216 *paces*. The position of the spots is indicated in the rough plan of the locality made on the spot by Mr. Williams, District Superintendent of Police (C in the exhibits). While traversing this distance, Byrne had remained, so far as evidence shows, on the defensive, and for the whole of this distance he and his companions were retreating backwards facing the natives as allowed even by the native witnesses (Nos. 3, 13, 15). There can be no doubt that Byrne's gun was the one that shot Medah, but there is even here a mystery. The breaking of both locks inside supports the view raised by Medah's wounds that *both barrels* went off simultaneously, but Byrne persists in stating, as before mentioned, that he had shot at a peafowl near the tank, and had not loaded again. And had he loaded again after joining his companions it must certainly have been mentioned by the native evidence. But in reality there can be no doubt that he had not an opportunity of doing so. But the whole tenor not only of the soldiers but also of the native evidence leads to the view that it was actually Byrne's gun that killed Medah, and there is no other satisfactory solution. Indeed it is scarcely possible that Medah could have been killed except by a gun held in the way that there is no reason to doubt Byrne's gun was, and one may say impossible that he should have been killed *intentionally*, in the way described by the witnesses, that is by direct aim. He *must* have been killed (we have the assurance of the medical evidence for this) by a gun held in a slanting position with the *muzzle* even higher than his shoulder. The direct cause of Medah's death then I hold to have been a heavy lathi blow aimed at Byrne's head. And I cannot but acquit Byrne of all criminality in the matter.

There remains Sagar's and Umrao's wounds to be accounted for, but these are not so easy of solution. It is impossible to say by whom they were inflicted. Sagar's wound is in its very nature a mystery. It is stated by the greater part of the evidence that he was shot down deliberately by one of the soldiers as he was aiming a second lathi blow at, apparently, Forbes. The difficulty of investigation throughout this case has been greatly increased by the refusal or non-ability of the villagers to identify any of the soldiers, except Forbes. Most of them indeed declined altogether to *attempt* to identify them. And from the native evidence it is utterly impossible to fix Sagar's wound upon any one individual soldier. And although from the native evidence it must be presumed to have been either Wigg or Byrne,—(and more strongly to have been Wigg) the evidence of the villagers is altogether too unreliable as to the actual facts of the affray, to be depended upon in this very important particular. The scene of Sagar's being wounded is set *between* the place where the struggle for Forbes' gun went on and the place where Medah was shot. By the native evidence he is allowed to have been one of the foremost assailants of Forbes, and it is said that he was shot while in the act of dealing a lathi blow (witnesses 5, 7, 8, 9, 10, 11, 12, 13, 15). But when it is attempted to discover *whom* Sagar was assailing, and by *whom* he was shot, the evidence becomes most confused. According to witness Sagar himself, he was supplicating a second soldier (not Forbes) presumably Wigg, when a third soldier, presumably *Byrne*, shot him. According to witness (5) Sagar was assailing Forbes, when the second soldier, standing near, presumably Wigg, shot him. And [illegible]oximately, says Sagar's uncle, witness 6 and also witnesses 7 and 8 and 11 and 13. But a[illegible]g to No. 9, Sagar assailed one of two soldiers *who had guns* and not Forbes, and distinctly [illegible] that the soldier *stopped* the blow on the barrels of his gun and then a *third* soldier shot him. And so say *witnesses* 10 and 15. A third version is given by witness 12, who states that Sagar aimed a blow at the *second soldier* and *that soldier shot* him. It is not to be expected that the statements of all should be perfectly consistent, but it is clear with no certainty can it be said, at which of the soldiers' hands Sagar received his wounds. And it is noteworthy that Umrao, whom even the native evidence shows to have been a ringleader of the villagers, neither in his account of the whole affair given at the dispensary to the Assistant Magistrate, Mr. Scott, nor in his 2nd deposition taken in Court, says anything whatever about Sagar's being shot by any *individual separate* act. It certainly would seem from the tenor of the native evidence that Sagar was shot between the time of the wounding of Gangaram and the death of Medah. But by whom [illegible] shot was fired and whether intentionally

or by accident, the evidence fails to clear up. The wound was unquestionably given at close quarters, and the nature of it throws doubt upon its being caused by deliberate aim. Sagar had *already given one blow*, before he fell, and he must have been at the time he was shot close to the soldier he was assailing; and there must have been others close round. This being so, it is strange, considering the curious nature of his wounds, that others were not struck too. But there seems to have been little or no scattering of shot. The thumbs were almost blown off, as if they must have been quite close to the muzzle of the gun. Part of the native evidence would be almost consistent with the idea that he was one of Byrne's assailants (witnesses 9, 10, and 15,) and received a portion of the discharge of his gun. The position of the hands at the time the thumbs were shot must have been peculiar, they must have been close together, and the thumbs must almost have been side to side. No attempt now is made to show that he was supplicating the soldiers when shot, and indeed it is improbable that the soldiers would have deliberately aimed at an unoffending man, when there were others actively assailing them. But then the manner of his holding a lathi must have been peculiar for his thumbs to have been in the position they are said to have been, and so too the wounds are not easily reconciled with the idea that he may have been seizing the muzzle of one of the guns, and that it went off just after being *pulled* away from his grasp. And yet this might be if it be imagined that he was standing at the side of the gun with his hands close together, clasped over the barrels with the thumbs underneath. In this case if the barrels slipped through his hands by a violent pull and the gun went off at the same time, the result might have been such as he actually received. But by whose gun the injury was caused and at what time and place, and whether intentionally or by accident, must remain a mystery.

With regard to Umrao's wounds there seems to be no doubt that it was the *last* inflicted. From the blood found at the spot it seems to have occurred about 20 or 30 yards further from the village than where Medah fell, more in the direction of the Khatauli road, and it was in this direction that the soldiers were retreating. Here, too, the nature of the wound gave the Civil Surgeon the idea rather of an accidental than of a deliberate shot, and here, too, it must have been at very close quarters. And the unreliability of the native evidence is in no point clearer than this. For while the evidence now states that Umrao was at some distance off, and *running* when fired at (witnesses passive), and he himself *now* states the same, in his original deposition taken at the dispensary he states that he had *seized hold of one of them by his coat* when he was fired at. There can, I consider, be no question that Umrao was shot by either Leggett or Wigg's gun. But by which of them the evidence altogether fails to determine. And this is not a case in which an alternative charge could be drawn up, or in which any of the men could be made answerable for the act of the others. Even if criminal offence (for arguments sake) was committed, the man who committed it would be solely responsible. I hold it to be clear from the whole of the inquiry that the soldiers were retreating to avoid attack. They had no common criminal intention, and none can be charged or punished for any criminal act done by the others. There is no reliable ground to go upon by way of proof as to the actual author of Sagar's and Umrao's wounds; and this being so, conviction could not possibly ensue. Even were one or other of the soldiers *distinctly* chargeable with Umrao and Sagar's wounds, there would still remain the question whether the acts were deliberate or accidental, and whether, even if adjudged deliberate, they were not covered by the right of private defence. The men were followed up by an enraged mob with lathis for a distance of 200 yards. One of them had been severely beaten, and the others had been sorely beset, and one of these had narrowly escaped a blow which in all probability would have terminated his life. They had, as would appear even by the native evidence, no opportunity of parley offered. The villagers say that they only wished to seize them and take them to the thannah, but the unprovoked way in which Forbes was violently assailed would naturally lead them to expect little but continued violence. And the fury with which they beset Byrne would naturally increase this apprehension. They retreated backwards, and facing the mob each one, it would seem from their statements and from Forbes' evidence, separately beset and thronged. And thus they retreated for no less a distance than 200 yards. Three of them had loaded guns, but even from [illegible] evidence it is clear that two of them at any rate did not attempt to use them as weapons [illegible] all this time, and it is doubtful whether even Umrao's death can be regarded as a [illegible]. Leggett was himself beset and assailed, and yet he had been entirely unaggressive, [illegible] joined his comrades as they were retreating, and only *just* before Medah was shot by [illegible] gun discharging, and his own gun went off, there had, it seems to me, been considerable [illegible] up to this point, and this is in favor of the view that the wound of Umrao may have been caused by an accidental discharge. I see no reason for distrusting Leggett's statement that he himself received a blow on the helmet, and received one also on the muzzle of his gun. Now if as alleged by him the gun was seized hold of, an accidental discharge was no improbable thing, and the right barrel would naturally more readily go off than the left, simply because from being more frequently discharged the "pull" gets lighter. There seems no reason for questioning the accuracy of Wigg's and Leggett's statements as to both of their guns going [illegible] were this not the case, it is doubtful whether they would have affirmed it. And it is impossible this being so, to say by whose shot Umrao was wounded. Much more is it impossible [illegible] whose gun it was that inflicted Sagar's wound. Setting apart therefore the question [illegible] der the acts were accidental or deliberate, and

whether if the latter, they were or were not covered by the legal right of private defence. I consider that the inflicting of the wounds cannot possibly be brought home to any particular individual soldier, and, this being so, no conviction could possibly take place. Could the infliction of the wounds be brought home distinctly to one or other of the men, the questions of whether they were covered by the right of legal defence, and of whether the acts were purely accidental, would beyond doubt be questions for determination by a higher Court. But it is simply a matter of speculation whether Sagar met with his injuries from Wigg's gun, or from Byrne's or from Leggett's; and it is equally matter of speculation whether Umrao received his wounds from Wigg or from Leggett. And the one man cannot be made answerable for the acts of the other. In the case of Medah's death, *but the native evidence been trusted* and had not the wounds inflicted to a certain extent spoken for themselves, and had not the condition of Byrne's gun supported his statement, he would unquestionably have been open to the charge of culpable homicide (leaving out of the question any plea of the right of private defence). This being so, it is clear that the villager's evidence as to the intentional nature of the shot must be received with the very greatest caution.

I have endeavoured to sift the evidence carefully, and have bestowed much anxious thought upon the case. As the result I can find no *proof* of any criminal act having been committed by either Byrne, Wigg, or Leggett, and no evidence against either of them individually of having fired the shot that wounded Umrao and Sagar, and this being so, I have no option but to direct their discharge.

Trumpet-Major Byrne, Farrier Serjeant Wigg, and Private Leggett are released accordingly and are directed to return to their regiment.

Serjeant Forbes, who has already been discharged and made a witness in the case, is also directed to return to his regiment.

MOZUFFERNUGGER,
19th April 1877.

(Signed) A. SELLS,
Offg. Magistrate and Justice of the Peace.

ENCLOSURE No. 5.

G.O., No. 122, dated 28th May 1877.—Discipline.

Notwithstanding the instructions contained in G.O., No. 186 of 1876, cases have occurred in which life has been lost from soldiers disobeying the prohibition against shooting peafowl in the vicinity of villages or private residences.

2. One of these cases having been proved in a Civil Court against soldiers of the 15th Hussars, the Commander-in-Chief directs that all permission to carry arms for shooting purposes be suspended in the case of that regiment for one year.

3. His Excellency warns all regimental authorities, that the privilege now enjoyed by soldiers of carrying arms for sporting purposes must inevitably be cancelled, unless Commanding Officers take effective measures to protect the public safety, and to carry out the instructions contained in the above-quoted order.

4. Every shooting pass given to a soldier shall have the prohibition against shooting peafowl in the vicinity of villages or private residences printed upon it, and any breach of this order shall be treated with the greatest severity.

ENCLOSURE No. 6.

From A. P. HOWELL, Esq., Officiating Secretary to the Government of India, (Home Department, Public), to the Secretary to the Government of the North-Western Provinces and Oudh, dated Simla, 13th July 1877, No. 1332.

I am directed to acknowledge your letter, No. 555-A, dated the 18th May last, forwarding certain papers on the subject of an affray which occurred at Kora, a village in the Mozuffernugger District, between some of the villagers and four men of the 15th Hussars, while the latter were engaged in shooting peafowl in the vicinity of the village.

2. In reply, I am to forward a copy of certain orders passed by His Excellency the Commander-in-Chief with the view of preventing the recurrence of such accidents. The Government of India consider that these orders, if strictly adhered to, will prevent such accidents in future, and the Military Department will no doubt see that the attention of the Officers Commanding Regiments, newly arriving in the North-Western Provinces, is at once drawn to the above orders.

No. 135. ORDER THEREON, 16th August 1877, No. 1945.

Communicated to the departments of the Secretariat for information, in continuation of G.O., dated 24th August 1860, No. 1253; also to the District Magistrates.

(True Extract.)

Chief Secretary.

To the Revenue Department.
„ the Military Department.
„ the Public Works Department.
„ all District Magistrates.

Exd. T. O'Connor.

Revd. Depat.

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Govt. of [1877] Madras.

No. 3809

JUDICIAL.

To

THE REVENUE DEPARTMENT,

&c., &c., &c.

Dated August, 16th.

Issued —24

Recd. —24?

Encl.

G.O., 16th August 1877, No. 1945.

AUGUST.

Nos. 134-135.

Misc 28-8-77 n 4939.

Affrays.—Communicating letter from Government of India forwarding papers regarding an affray between four soldiers of the 15th Hussars and some villagers in the Mozaffernugger District.