

## AN INDIAMAN'S MISADVENTURE: THE CASE OF *THE KING v DILLON*

JOHN F. BOURKE\* AND ROSEMARY LUCADOU-WELLS\*\*

### I INTRODUCTION

In 1827, the Honourable East India Company and the Government of Bengal were persuaded by Peter Dillon (1788 – 1847) to sponsor an expedition to investigate the fate of the mariner, Count de la Perouse, who had disappeared on a voyage approximately 40 years earlier. Peter Dillon was commissioned Commander of the Company's survey vessel *Research* and Dr Robert Tytler was appointed ship's doctor for the expedition<sup>1</sup>.

During the expedition, Captain Dillon assaulted the doctor and wrongfully imprisoned him in his cabin.

On arrival in Hobart Town, Captain Dillon refused to allow Dr Tytler ashore. The assistant apothecary, however, managed to obtain legal representation for Dr Tytler and the charges of assault and wrongful imprisonment were eventually heard and proved against Captain Dillon in the Supreme Court of VDL. Captain Dillon was sentenced to two months imprisonment, fines and a good behaviour bond of 12 months.

The paper identifies the penal context of Van Diemen's Land in 1826 and its relationship with India and the Honourable East India Company at that time. The reason for the expedition from India to Van Diemen's Land and the respective contracts of employment of Captain Dillon and Dr Tytler are discussed. The events of the voyage leading to the case in the Supreme Court of Van Diemen's Land are narrated and biographical information about the Captain and the Doctor is provided. The case, judgment and sentence are considered together with various issues arising from the case, including consensual decision-making for mariners, the implications of religious intolerance and the impact of the Captain's behaviour upon the crew.

### II RESEARCH CONTEXT AND METHOD

---

\* LLM (Monash), Lecturer in the Department of Business Law, Macquarie University.

\*\* PhD (Deakin), Postgraduate student of colonial jurisprudence, Murdoch University

<sup>1</sup> *Colonial Times*, 11 May 1827

### A *Issues in the Case*

The case sheds light on the pressures exerted upon colonial mariners. They were welded together as a separate community, vulnerable to the whim of the wind, the stars and the waves. The judgment delivered by His Honour Chief Justice Pedder clarifies the responsibilities of the master of a vessel to those on board. Importantly, it identifies the parameters of the role of the master of a vessel at sea. In particular, the procedure applied by the Supreme Court of Van Diemen's Land emphasizes that the British democratic right to legal representation prevails for civilians at sea.

The case highlights aspects of a contract of employment developed by the Honourable East India Company which allowed its professional employees the luxury of consensual decision-making. It reveals portraits of two men under such a contract of employment - the man who was assaulted, Dr Tytler, and his assailant, Captain Dillon - and their response to the freedom of consensual decision-making.

### B *Methodology*

There is close reading of the primary and secondary sources in an effort to establish the facts of the case and identify the relevant legal issues. Deductive reasoning and contextual analysis are applied to the identified facts and legal issues.

The underlying premise of this method is that contemporary Van Diemen's Land press reports of legal proceedings reveal the facts as perceived from the viewpoint of what were regarded as the ideal predominant values of that particular society in 1827.

### C *Sources Used in the Research*

This paper is based on a mix of primary and secondary materials selected for their relevance, availability and accessibility<sup>2</sup>. There is a subjective element in that the decision for relevance was based upon the personal preference of the researchers.

The case report of *R v Dillon* is sourced from original Van Diemen's Land colonial newspapers - *Hobart Town Gazette* of 14 April 1827, 21 April 1827, 28 April 1827, 1 May and 5 May 1827, and the *Colonial Times* of 11 May 1827 – together with the on-line website of colonial cases compiled by Stefan Petrow and Bruce Kercher<sup>3</sup>.

### D *The Context of Colonial Van Diemen's Land*

<sup>2</sup> Some of the literature relevant to the case is in languages not read by the researchers, e.g. *The Bengal Hurkaru* of 10 and 11 April and 18 May 1828

<sup>3</sup> Petrow, S. and Kercher, B. (eds), *Decisions of the 19<sup>th</sup> Century Tasmanian Supreme Courts*, Macquarie University and University of Tasmania, On-line, [www.law.mq.edu.au/sctas/html](http://www.law.mq.edu.au/sctas/html)

Van Diemen's Land, now known as Tasmania, is a beautiful island situated south of Victoria, Australia, between latitude south 40°44' and 43°39', and longitude east 144°38' and 148°24'. The greatest length from east to west near the 41° is 200 miles. The breadth from north to south near the 147<sup>th</sup> meridian is 185 miles and contains 24,330 square miles – in total the area of the island is 16,777,600 acres<sup>4</sup>.

Van Diemen's Land was founded as a British penal colony. In 1803 Lieutenant Bowen arrived in the Derwent River<sup>5</sup> and in 1804 Lieutenant David Collins arrived at Sullivan's Cove<sup>6</sup> bringing 455 souls from Britain to Van Diemen's Land, including 299 convicts<sup>7</sup>. At that time, prison discipline was introduced. Convict transportation from England ceased on 29<sup>th</sup> December 1853 when the British government rescinded an Order in Council which had authorised Van Diemen's Land to be a penal colony<sup>8</sup>.

By all accounts, Van Diemen's Land was a violent penal colony. For example, in the Van Diemen's Land west coast penitentiary at Macquarie Harbour in 1823 there were 228 convicts and 229 floggings, with a total of 9,100 lashes of the cat-of-nine tails whip<sup>9</sup>. The authorities ordered that this whip be previously steeped in salt water and dried in the sun<sup>10</sup>.

Flogging was the main punishment meted out to convicts who misbehaved, with 12 to 100 cuts being meted out for offences ranging from forgetfulness and sullenness to open subordination<sup>11</sup>. This punishment was inflicted on the naked convicts while they were strapped by the wrists and ankles to the apex and base of a tripod consisting of 7 foot beams, in the prison yard: between strokes of the lash, the warders separated the thongs which were entangled with clots of blood<sup>12</sup>.

Certainly, Van Diemen's Land in 1826 was a harsh land under a harsh administration.

#### E *The Relationship between India and Colonial Van Diemen's Land*

In the 1820's sailing ships from India regularly visited the Van Diemen's Land ports of Port Dalrymple in the north and Hobart Town in the south, to replenish their water supplies from the island's clean spring water. The settlers in Van

---

<sup>4</sup> Wildey, W. B., *Australasia and the Oceanic Region*, (MDCCCLXXVI), 315

<sup>5</sup> Fenton, J., *History of Tasmania*, (1884), 26

<sup>6</sup> *Ibid*, 32

<sup>7</sup> Auchmuty, J. J., '1810 – 1830' in *A New History of Australia*, F. K. Crowley (ed), (1974), 32

<sup>8</sup> Castles, A., *An Australian Legal History*, (1982), 252

<sup>9</sup> Sutherland, H., *Southward Journey*, (1942), 43

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

Diemen's Land at that time relied on the visits of these ships to bring them various luxury and household goods. For example, the brig *Guide* under the command of Captain Ashmore in early May 1827<sup>13</sup> brought to Hobart Town cargo which included:

- 20 boxes of salt petre
- 19 bags of cotton wick
- 150 bags of rice
- 3,000 gunny bags
- 117 parcels of dried ginger
- 6 bales of silk piece goods
- 2 boxes of castor oil
- 56 boxes of Madras soap

All of these commodities were needed in the colony. Salt petre was essential for preserving the limited supplies of local meat that the settlers were producing from the sheep, pigs and cattle they had introduced. Cotton wick was necessary for candles and lanterns. Gunny bags were needed to pack any surplus potatoes and wheat being sent from Van Diemen's Land to the sister colony of New South Wales. Castor oil and ginger were required as medicines. Madras soap was sought after for body cleansing. Silk fabrics were desired by both women and men for clothing requirements. Rice provided a welcome alternative carbohydrate staple to potatoes and wheat flour. Another product from India that was highly prized by the settlers was a species of vegetable tallow for candle-making, which when burned, did not have an unpleasant odour<sup>14</sup>.

The young Van Diemen's Land was able to contribute little in its early years, other than water and fresh supplies of meat for the ships. However the island's unique product at that time was whale oil and in 1827 it exported this commodity to India at 30/0/0 English pounds per ton<sup>15</sup>.

#### F      *The Honourable East India Company*

While Van Diemen's Land in 1827 had very limited products to export, other areas were not so poor. For example, ships regularly sailed through the East Indian Archipelago, an area north-westerly from Melville Island, with numerous islands and islets, extending 4,000 miles in length east to west and 1,300 miles in breadth from north to south<sup>16</sup>. From these eastern parts of the world in the early 19<sup>th</sup> century, came the world's supplies of pepper, cloves, cinnamon, nutmeg, mace, as well as rice, cotton, sugar cane, arrowroot, sago, cocoa-nut, tobacco, flax, beche-de-mer edible birds' nests, pearl shells, gold, silver, tin, lead, diamonds and gutta

---

<sup>13</sup> *The Tasmanian*, 10 May 1827

<sup>14</sup> *The Monitor*, 8 June 1827, 427

<sup>15</sup> *The Tasmanian*, 10 May 1827

<sup>16</sup> Wildey, W. B., above n5, 137

percha<sup>17</sup>. The cargo from the East Indies was so highly prized that ships passing through these parts were targeted by pirates; consequently, the Dutch and Spanish policed and controlled the archipelago in gunboats<sup>18</sup>. All vessels required a Pass issued by the Dutch officials at Anjer Point, the entrance of the straits, to travel through the archipelago<sup>19</sup>. Passenger ships travelling through the archipelago had guns and swords placed on the poop every night ready for any contingency<sup>20</sup>.

The richness of the East Indies attracted the attention of entrepreneurs, in particular English entrepreneurs, who in 1599 founded the Honourable East India Company<sup>21</sup>.

The legacy of the Honourable East India Company is varied: in India it established cricket, English law, the plantation system and gin while it introduced England and Van Diemen's Land to commodities such as chutney, chintz and the vital ingredients for Worcestershire sauce<sup>22</sup>.

### G      *The Reason for the Expedition*

The Honourable East India Company was essentially a profit-making venture, however it also had philanthropic aims, including the financing of substantial works of art, and, in this particular instance, co-sponsoring with the Supreme Government of Bengal, the 1827 expedition to the Malicolo Islands<sup>23</sup> to search for the wreck of Count de la Perouse<sup>24</sup>. This adventurer, alias John Francis Galaup de la Perouse was born in Albi, Southern France in 1741<sup>25</sup>. The Count's last expedition was undertaken in the French frigates *Boussole* and *l'Astrolabe*, a voyage from which he never returned<sup>26</sup>.

His disappearance continues to fascinate to this day<sup>27</sup> as it fascinated the mariner Peter Dillon in 1826 when he anchored at Tukopia in the Solomon Islands<sup>28</sup>. On that earlier voyage, according to Captain Dillon, one of the natives at Tukopia carried a silver sword-sheath which the captain recognized as having belonged to

---

<sup>17</sup> Ibid, 138

<sup>18</sup> Ibid, 140

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Lestock Reid, C., *Commerce and Conquest: a History of the Honourable East India Company*, (MCMXLVIII), 19

<sup>22</sup> Wild, A., *The East India Company: Trade and Conquest from 1600*, (1999), 185

<sup>23</sup> *Colonial Times*, 11 May 1827

<sup>24</sup> McLaren, I. F., *La Perouse in the Pacific*, (1993), xx

<sup>25</sup> Dillon, P., 'Occurrences at VDL' in *Narrative and Successful result of a voyage in the South Seas*, (1829), xii

<sup>26</sup> Ibid, 55

<sup>27</sup> McLaren, I. F., above n 25

<sup>28</sup> Shaw, A. G. L., and Clark, C. M. H., (Eds) *Australian Dictionary of Biography*, (1966), 1, 1788 – 1850, 307

Count de la Perouse<sup>29</sup>. According to Captain Dillon, the natives told him how two ships had been wrecked on the neighbouring island of Vanikoro when “the old men now on Tucopia were only boys”<sup>30</sup>.

Captain Dillon subsequently traveled to Calcutta and at a meeting of the Asiatic Society in Calcutta in November 1826 divulged this information and his belief that the Count's expedition had founded in the Malicolo islands<sup>31</sup>. This information enthused the Asiatic Society and the Supreme Government of Bengal and induced the Honourable East India Company to sponsor an expedition<sup>32</sup> under Captain Dillon's command<sup>33</sup> and contribute its “Indiaman”<sup>34</sup> the survey vessel *Research*, sailing with registration of the Company<sup>35</sup> for the voyage. The generic term “Indiaman” was commonly used to refer to the vessels of the East India Company.

The brig *Research* was an armed vessel carrying 16 guns<sup>36</sup>. The crew consisted of 78 men with 16 languages being spoken on the ship<sup>37</sup>. Captain Dillon himself was armed with his own personal set of pistols.<sup>38</sup> Clearly such arms were needed because the *Research* expedition with Captain Dillon and Dr Tytler to the Malicolo Islands was to sail in the area of the East Indies Archipelago.

#### H      *The Contract of Employment*

The contract of employment for Captain Dillon and Dr Tytler is contained in a document consisting of several paragraphs setting out the specifications for the expedition. It appears to have been developed by a consortium of three: the Supreme Government of Bengal<sup>39</sup>, the Honourable East India Company and the Asiatic Society<sup>40</sup>.

The instructions issued to Captain Dillon were precise: he was to ascertain whether the French frigates *La Boussole* and *l'Astrolabe* under the command of Count de la Perouse were wrecked among islands comprising the archipelago to the northward of New Caledonia, and if so, to make strict enquiries whether any officers and crew

---

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> *Hobart Town Gazette*, 28 April 1827

<sup>32</sup> Ibid

<sup>33</sup> Shaw, A. G. L., and Clark, C. M. H., above n 29, 307

<sup>34</sup> Sutton, J., *Lords of the East, the East India Company and its ships 1600-1874*, (2000), 95

<sup>35</sup> *Hobart Town Gazette*, 28 April 1827

<sup>36</sup> Calder, J. E., *Miscellaneous Calder Papers*, (1828), 533

<sup>37</sup> Ibid, 535

<sup>38</sup> Dillon, P., above, n 26, 26 January 1827, 94

<sup>39</sup> *Colonial Times*, 11 May 1827

<sup>40</sup> *Hobart Town Gazette*, 28 April 1827

of those ships still survived<sup>41</sup>. The expedition was to proceed to sea, heading to either Port Dalrymple or the Derwent, both in Van Diemen's Land, where stores were to be replenished<sup>42</sup> and a refit undertaken if necessary<sup>43</sup>.

Captain Dillon was appointed Commander<sup>44</sup>, with the entire command entrusted to him, and "... all on board ...distinctly under (his)orders"<sup>45</sup>.

Dr Tytler was appointed naturalist and medical officer, with the additional role of Recorder of Proceedings and the duty of keeping a separate journal of all occurrences connected with the main object of the expedition<sup>46</sup>. An officer of the French Government, Monsieur Chaigneau, was also to accompany the expedition: he would write confidential reports during the voyage and these would be forwarded unopened to the French Government<sup>47</sup>.

Dr Tytler was to be provided with suitable accommodation and accommodated at the Captain's table on board *The Research*<sup>48</sup>. His 14 year-old son also accompanied Dr Tytler<sup>49</sup>.

Captain Dillon was instructed to communicate with Dr Tytler about official outcomes required from the voyage and to give Dr Tytler 'every assistance' in his scientific research including the provision of accurate details of the ship's position and latitude and longitude every day at noon<sup>50</sup>, and all intermediate times as required by the doctor<sup>51</sup>.

Clearly the expectation was that the voyage would be ethnographic. For example, Dr Tytler was instructed to make drawings of the natives at the Malicolo Islands and to take plaster casts of their heads<sup>52</sup>. He was also instructed to note the manners and practices of the people and collect vocabularies of the native languages.

---

<sup>41</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 1, Dillon, P., above n 26, 68

<sup>42</sup> J. Trotter, Secretary of the Marine Board, Letter to P. Dillon, 9/1/1827, in Dillon, P., above n 26, 78

<sup>43</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 1, in Dillon, P., above n 26, 68

<sup>44</sup> Ibid

<sup>45</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 17, in Dillon, P., above n 26, 73

<sup>46</sup> *Hobart Town Gazette*, 28 April 1827

<sup>47</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 19, in Dillon, P., above n 26, 74

<sup>48</sup> Acting Secretary E. Maloney, 'Letter to G. Chester, Esq., and Members of the Marine Board, 16 November, 1826, in Dillon, P., above n 26, 60

<sup>49</sup> Dillon, P., above n 26, 83-85

<sup>50</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 8, in Dillon, P., above n 26, 72

<sup>51</sup> *Hobart Town Gazette*, 28 April 1827

<sup>52</sup> Ibid

As well, there was a geographic purpose in the expedition. For example, Dr Tytler was required to chart the form and position of the coasts. It was also Dr Tytler's responsibility to collect and make notes on the zoology, botany and mineralogy of the islands they visited.<sup>53</sup> For this he was to be afforded every opportunity to observe natural history, collect and store samples<sup>54</sup>.

The doctor did have some help, for example, a draughtsman, Mr Russell, was given the role of assisting Dr Tytler in making drawings of specimens<sup>55</sup>. He also had an assistant apothecary, Leonard Helmick, who was victualled at the Captain's table<sup>56</sup>.

The expedition had yet another purpose: on a previous voyage to Valparaiso Captain Dillon had brought on board from different islands 11 natives of the South Seas<sup>57</sup>. Lord Combermere had appointed *Research* to return the New Zealand natives home<sup>58</sup> on the expedition to find de la Perouse's wreck.

The return of the 11 South Sea Islanders did not go well: disease spread on board: 4 of the 11 died in Calcutta<sup>59</sup> and 3 more died on the voyage<sup>60</sup>. In fact, an epidemic of measles spread through *The Research*, with members of the crew, including Europeans and the Chief Officer, falling ill<sup>61</sup>. Thus, 7 of the 11 islanders taken around the world by Captain Dillon died on the voyage back to their island home.

Perhaps the requirement in the employment contract which caused most trouble for the expedition was the paragraph which provided for consensual decision-making: Dr Tytler, Monsieur Chaigneau<sup>62</sup>, the Chief Officer and Captain Dillon were to meet and decide any plan before returning to India<sup>63</sup>. This requirement can be identified as consensual decision-making. As such, it can be seen to be inconsistent with the specification that Captain Dillon was commander and "... all on board are distinctly under your orders".<sup>64</sup>

---

<sup>53</sup> Ibid

<sup>54</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 8, in Dillon, P., above n 26, 71

<sup>55</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 9, in Dillon, P., above n 26, 72

<sup>56</sup> Secretary of the Marine Board, Letter to Peter Dillon, 17/1/1827, in Dillon, P., above n 26, 86-87

<sup>57</sup> Dillon, P., above n 26, 17 May 1827, 65

<sup>58</sup> Ibid, n 26, 25 January 1827, 93

<sup>59</sup> Ibid, 102

<sup>60</sup> Ibid, 9 February 1827, 107; 16 February 1827, 109; 26 February 1827, 112

<sup>61</sup> Ibid, 17 February 1827, 110

<sup>62</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 20, in Dillon, P., n 26, 75

<sup>63</sup> Ibid

<sup>64</sup> Marine Board of Bengal to Peter Dillon, 23<sup>rd</sup> December 1826, para 17, in Dillon, P., above n 26, 73

### III KING V DILLON: THE CASE

#### A *The Defendant and the Victim*

The two characters who are the primary focus in this paper are Captain Peter Dillon, the defendant in the action, and Dr Robert Tytler, the man assaulted by Captain Dillon. The assault of Dr Tytler was a criminal matter, thus the prosecution of Captain Dillon was taken by police in the name of the King. Hence, the case is entitled "*The King versus Dillon*" or alternatively, "*R v Dillon*".

#### 1 *Captain Peter Dillon: The Defendant in the Action*

Peter Dillon (1788 – 1847) was the defendant and the assailant in the action. He was born of Irish parents in Martinique on 15 June 1788 and taken by his father to County Heath, Ireland, as a small child<sup>65</sup>. He began his sea career by service in the navy as a youth, and then went on to the merchant navy, serving first as a seaman and then as an officer. He travelled the world as a merchant seaman with much of his work involving the assembling of cargoes for traders in ports in Australia, Fiji, New Zealand and the Society Islands<sup>66</sup>. He was proficient in several Pacific languages, familiar with the various cultures and apparently enjoyed friendly relations with the indigenous people of the Pacific<sup>67</sup> as well as eminent people in France, England, Bengal and New South Wales<sup>68</sup>.

He would have been a formidable sight, being 6 ft 4 inches in height and heavily built<sup>69</sup>. A contemporary account has him as a "tall heavy man of a very full habit and at times having an inclination of blood to the head...and at such times being unusually irritable"<sup>70</sup>.

Captain Dillon is said to have assisted in the spreading of the Christian faith to New Zealand in 1814 when the pioneer Church of England priest, Reverend Marsden, of New South Wales, is said to have given Captain Dillon responsibility for developing friendly discourse with the native people, as a preliminary to founding the Church Missionary Society settlement there<sup>71</sup>.

Captain Dillon married a Sydney woman, Mary Moore, on 22 September 1814, eventually having a family of three children and establishing a base in Calcutta in

---

<sup>65</sup> Shaw, A. G. L., and Clark, C. M. H., above n 29, 306

<sup>66</sup> *Ibid*

<sup>67</sup> *Ibid*

<sup>68</sup> *Ibid*, 308

<sup>69</sup> *Ibid*

<sup>70</sup> *The Monitor*, 21 January 1828, 918

<sup>71</sup> Shaw, A. G. L., and Clark, C. M. H., above n 29, 307

1816<sup>72</sup>. He was remarkably successful as a businessman and from 1819 he owned vessels of which he was master<sup>73</sup>.

In Callao in 1824 he gained access to a document that enabled him to publish the first accurate account of the previously mysterious Spanish voyages to Tahiti in the 1770's<sup>74</sup>.

In 1829 Peter Dillon received an annuity for life from the French government and was created Chevalier de l'Ordre Royal de la Legion d'Honneur<sup>75</sup>. He subsequently wrote and published several books<sup>76</sup>.

While the French government generously rewarded Captain Dillon for the result of his voyage, there was not universal acceptance in Australia that Captain Dillon actually did find the relics of Count de la Perouse's last voyage. For example, the cynicism felt by some towards the result of Dillon's expedition is evident in the language used in a report of *The Australian* of 2<sup>nd</sup> January 1828<sup>77</sup>. This newspaper notes that Captain Dillon has returned with the Honourable East India Company ship *Research* from his "cruise" among the Solomon Islands, which "conjecture" has it is where the French navigator Count de la Perouse foundered. Captain Dillon brought up "several ship stores" and "other articles" which he 'procured principally from the natives of the island of Manicolo' and which "from their manufacture" and the "concurring legends" of that group of islands, Captain Dillon "is confident" they formed a portion of the debris of L'Astrolabe, commanded by M. de la Perouse. Clearly, this report, from a Sydney-based newspaper, appears to lack confidence in Captain Dillon's personal claim to have found the remains of La Perouse.

Nevertheless, there were others who did, with the *Monitor* of 21<sup>st</sup> January 1828 castigating "the base servile licensed press of Van Diemen's Land (which) is now exerting its chained and puny voice to vilify Captain Dillon and cast a slur on his late delightful discovery"<sup>78</sup>.

Be that controversy as it may, Peter Dillon's wife Mary died in Paris in 1840, after which time he was cared for by his daughter, Martha, until he died in Paris on 9<sup>th</sup> February 1847<sup>79</sup>. The French government then provided Martha with a passage back to Sydney to join her grandfather, Patrick Moore and her two brothers<sup>80</sup>.

---

<sup>72</sup> *Ibid*

<sup>73</sup> *Ibid*

<sup>74</sup> *Ibid*

<sup>75</sup> *Ibid*

<sup>76</sup> Peter Dillon's publications include: *Narrative and Successful Result; Slanderous Attacks*(London: David Cargill, 1842); *Conquest of Siberia*(1842). Reliance for these titles is the information from Shaw, A. G. L., and Clark, C. M. H., above n 29, 308

<sup>77</sup> *The Australian*, 2 January 1828

<sup>78</sup> *The Monitor*, 21 January 1828, 919

<sup>79</sup> A Shaw, A. G. L., and Clark, C. M. H., above n 29, 308

<sup>80</sup> *Ibid*

2 *Dr Robert Tytler: The Victim in the Action*

Dr Robert Tytler (1787 – 1838)<sup>81</sup> was a surgeon of the Bengal Medical Establishment<sup>82</sup>. He was an officer of the 34<sup>th</sup> Native Bengal Infantry<sup>83</sup> and married the daughter of the German Count Schmeeberg<sup>84</sup>. Records indicate that he and his wife bore three sons and one daughter:

- Ann Christiani Tytler who married Lieutenant John MacDonald of the 50<sup>th</sup> Native Infantry at Gorrckpore on 17 May 1831;
- Lieutenant Robert C. Tytler, born at Allahabad in 1817, who joined the 38<sup>th</sup> regiment of Native Infantry and married Isabella Neilson of Glasgow on the 21<sup>st</sup> January at Merut East Indies.<sup>85</sup> His first marriage ended within months when his wife died and he subsequently married Harriet Earle of Lucknow on 2<sup>nd</sup> March 1848. He died on 10<sup>th</sup> September 1872 and is buried at Simla<sup>86</sup>;
- Captain George Alexander Tytler who joined the 53<sup>rd</sup> Foot Regiment, born in 1814, married Ellen Squire at Agra on 14<sup>th</sup> October 1835, died on 8<sup>th</sup> March 1851 and is buried at Jullundar in the Punjab<sup>87</sup> and
- Colonel John Adam Tytler of the 4<sup>th</sup> Gurkha Rifles, born at Monghyr Bengal on 29<sup>th</sup> October 1825, who married Adelaide Rosse at Naini Tal on 5<sup>th</sup> June 1858 and died on 14<sup>th</sup> February 1880<sup>88</sup>.

Dr Robert Tytler was a medical researcher of note. In particular his research and writing on the disease of cholera provides one of the earliest studies in this area of medicine<sup>89</sup>.

A man is blessed by the lives of his children and Dr Robert Tytler was certainly blessed by his sons. The memorial headstones on the graves of each of his sons refer to their father's valuable work as a member of the Bengal Medical service.

---

<sup>81</sup> Honourable East India Company, (1947), *Appendix A: Pioneer Biographies of the British period to 1947*, [www.andaman.org/Book/app-a/a-tytler.htm](http://www.andaman.org/Book/app-a/a-tytler.htm), 27 May 2009

<sup>82</sup> 'Extract from Proceedings of the Vice President in Council,' reproduced in Dillon, P., above n 26, 56-57

<sup>83</sup> Honourable East India Company, *East India Register and Directory 1832 Bengal*, <http://glosters.tripod.com/offzdiedt.htm>, 27 May 2009

<sup>84</sup> Ibid and above n 82

<sup>85</sup> Fisher, *Fisher's Colonial Magazine and Commercial Maritime Journal*, (May 1843) 3 (11), 128

<sup>86</sup> Honourable East India Company, above n 84

<sup>87</sup> *Ibid*

<sup>88</sup> *Ibid*

<sup>89</sup> Tytler, Robert, *Endemic Cholera: Its Mission and Mystery, Haunts and Havoc, Pathology and Treatment* (1820)

Dr Tytler's son Captain George Tytler was the Assistant Commissioner in the Punjab when he died in his 37<sup>th</sup> year. His death was marked as being a great loss to the Government. His headstone notes he was:

“ever zealous and active in the discharge of his duties. He was most truly upright and conscientious in his duties, emulating the bright example of his father the celebrated Dr Robert Tytler of the Bengal Medical Establishment”<sup>90</sup>.

Dr Tytler's son Colonel John Tytler, CB.VC, was awarded medals and bars for his distinguished service at Jowaki, Umbeyla, Lushai, Hazara and Afghanistan<sup>91</sup>, while Dr Tytler's son Colonel Robert C. Tytler, as well as being a soldier, was a naturalist and photographer. Some of his important zoological works include observations on species of Geckos, observations on keeping salt water fish alive for a considerable time and description of a new species of *Paraduxurus* from the Andaman Islands<sup>92</sup>.

It seems fair to conclude, then, that the sons of Dr Robert Tytler had a taste for adventure and a liking for India, and it seems probable that in this they may well have emulated their father.

### B *The Case for the Prosecution*

The prosecution's case was based on the charge against Captain Dillon. It was assault and unlawful imprisonment of Dr Robert Tytler on board ship on the high seas<sup>93</sup>.

The witnesses for the prosecution were Mr Blake, the Chief Officer of *The Research*, Mr Leonard Helmick, the assistant apothecary, and Munro the Captain's clerk. These men gave evidence corroborating Dr Tytler's complaint of assault by Captain Dillon<sup>94</sup>. According to their accounts, the voyage proceeded well until the 26<sup>th</sup> January 1827 when Dr Tytler, as Recorder of Proceedings, asked Captain Dillon for the latitude and longitude of the ship<sup>95</sup>. On this occasion, Captain Dillon took offence. He wrote Dr Tytler an offensive letter, accusing the doctor of inciting mutiny on the ship<sup>96</sup>.

Captain Dillon's behaviour on this occasion was so outrageous that Dr Tytler considered it to be an indication of delirium, and from that time regarded Captain

<sup>90</sup> Honourable East India Company, above n 84

<sup>91</sup> *Ibid*

<sup>92</sup> Tytler, Robert C., 'Observations on a few species of Geckos', 'Observations on keeping salt water fish alive for a considerable time' and Description of a new species of *Paraduxurus* from the Andaman Islands' (1864)

<sup>93</sup> *Hobart Town Gazette*, 28 April 1827

<sup>94</sup> Dillon, P., above n 26, 9 April 1827, 129

<sup>95</sup> *Hobart Town Gazette*, 28 April 1827

<sup>96</sup> *Ibid*

Dillon as a patient<sup>97</sup>. Dr Tytler made the diagnosis based upon incidents prior to the commencement of the 1826 voyage, when Captain Dillon suffered several attacks of what was diagnosed as a “rush of blood to the head,” during which he suffered delirium<sup>98</sup>. While still in port, Dr Tytler had performed what was the appropriate medical treatment at the time for this condition: the removal of 30 ounces of blood<sup>99</sup>. Dr Tytler, together with other medical officers in Bengal, considered that while there was a possibility this condition may recur under the vertical rays of the sun during the expedition, it was unlikely to pose a serious problem during the voyage<sup>100</sup>.

In court, Dr Tytler testified that daily from the 26<sup>th</sup> of January Captain Dillon had made “threatening expressions” to him and that the captain had exclaimed to others on the ship that the doctor was a “mutinous villain” on board<sup>101</sup>.

Dr Tytler also testified that when he next sent the Captain a despatch signed as Recorder of Proceedings, Captain Dillon called to the gunner to bring his blunderbuss, deliver the Doctor out of his cabin, lash him to the capstan and deliver him 5 dozen lashes<sup>102</sup>. Upon receiving an apology from the Doctor, Captain Dillon rescinded the order to have him whipped.

In a letter written by Captain Dillon to Dr Tytler on 26 January - the letter being considered so outrageous in its expressions that the *Hobart Town Gazette* of 28 April 1827 considered it “improper to put in print” - Dr Tytler was accused of inciting a mutiny on the ship<sup>103</sup>.

From that time, Dr Tytler sent the Captain the daily Record of Proceedings signed merely with his name, and not the title of Recorder of Proceedings. This seemed to pacify the Captain<sup>104</sup>.

As Dr Tytler considered Captain Dillon’s behaviour indicated a return of the medical condition he had suffered in Calcutta<sup>105</sup>, he consequently sent an official but confidential letter detailing his confidential medical opinion of Captain Dillon’s state of mind to Mr Blake, the 1<sup>st</sup> Officer of the ship.

A month later, on the 27<sup>th</sup> February, Mr Dudman, the 2<sup>nd</sup> Officer, secretly and without authority, read this confidential medical opinion and subsequently told Captain Dillon. Captain Dillon was enraged: he loaded his pistols and arrested Dr

---

<sup>97</sup> Ibid

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> *Hobart Town Gazette*, 28 April 1827

<sup>103</sup> Ibid

<sup>104</sup> *Hobart Town Gazette*, 28 April 1827

<sup>105</sup> *Colonial Times*, 11 May 1827

Tytler. He did this by giving the doctor a violent blow on the shoulder and saying, "I arrest you in the name of His Britannic Majesty"; Captain Dillon then divested Dr Tytler of his firearms and swords and locked him in his cabin saying, "Consider yourself a prisoner"<sup>106</sup>.

The surviving natives that Captain Dillon had taken from various islands of the Southern Seas during a previous voyage<sup>107</sup> were armed and placed as sentries on continual watch at the Doctor's cabin door. The only time Dr Tytler came out of his cabin was on 14<sup>th</sup> March when he was asked to attend the sick on board ship and did so under guard.

According to records found in the Captain's Diary, on 21<sup>st</sup> March, when *Research* was anchored in the Derwent River estuary, 2 miles from Hobart Town in 15 fathoms of water<sup>108</sup> Dr Tytler wrote to Captain Dillon seeking permission to go ashore at Hobart Town. Captain Dillon refused this request stating to the Doctor that he had civil and criminal charges to prefer against him before a British Court of Justice.

Corroborated testimony revealed that at this time, the ship's assistant apothecary, Leonard Helmick, tried to seek legal assistance for Dr Tytler by sending a written message ashore to legal practitioners. Mr Helmick's written statement was that he had observed assault and ill treatment on board the ship and sought the attendance of legal practitioners. Upon receiving this message, the Solicitor General for Van Diemen's Land accompanied by solicitor Mr Pitcairn, went on board the *Research* to meet their client. However, Captain Dillon refused to allow Mr Helmick access to the legal practitioners. Subsequently, the legal practitioners returned to the Van Diemen's Land Supreme Court where the Solicitor General moved that a Writ of *Habeus Corpus* be granted to Mr Helmick to allow him to come ashore and seek legal redress. The Writ of *Habeus Corpus* is a command to bring the person before the Court<sup>109</sup>.

The Van Diemen's Land Supreme Court granted this Writ<sup>110</sup> and as a consequence, Mr Helmick and eventually Dr Tytler himself were able to leave *The Research*, consult lawyers and eventually have the Doctor's case of assault and false imprisonment prosecuted in the Supreme Court of Van Diemen's Land.

The Solicitor General, Mr Stephen, for the prosecution, relied upon the whole case to show that the assault was clearly proved, being highly aggravated by the language and conduct of Captain Dillon and without justification for the assault<sup>111</sup>.

---

<sup>106</sup> Ibid

<sup>107</sup> Dillon, P., above n 26, 65

<sup>108</sup> *Ibid* 5 April 1827, 122

<sup>109</sup> Gilmer, W., (Ed.) *The Law Dictionary*, (6<sup>th</sup> Ed. 1986), 157

<sup>110</sup> *Hobart Town Gazette*, 21 April 1827

<sup>111</sup> *Colonial Times*, 11 May 1827

### C *The Case for the Defence*

The primary evidence for the defence was given by Mr Dudman, the 2<sup>nd</sup> Officer, who admitted he had quarreled with the 1<sup>st</sup> Officer, Mr Blake, just prior to informing Captain Dillon of Dr Tytler's confidential professional medical opinion letter written to 1<sup>st</sup> Officer Mr Blake. 2<sup>nd</sup> Officer Dudman admitted that he considered he, himself, was the sole friend of Captain Dillon on board.

The defence tendered documentary evidence of Captain Dillon's private journal. This included reading the entry for January 25<sup>th</sup> that the natives of New Zealand stated their intention to "eat and kill the doctor if he lands in our country"<sup>112</sup>. The Captain wrote that "His Excellency Morgan McMurray" had openly declared that it was his intention to have the doctor grilled as an entertainment for his numerous wives and friends. "His Excellency Morgan McMurray" was the fictitious name Captain Dillon ascribed to one of the eleven natives he had co-opted as guides on the voyage; this man claimed to be a prince<sup>113</sup>. Consequently, Captain Dillon wrote that he would not allow the Doctor to land in New Zealand, and would not mention this matter to anyone because he did not wish to show what 'the poor uncultivated savages of New Zealand were capable of'<sup>114</sup>.

The entry for January 28<sup>th</sup> stated the Captain's intention to have the Doctor flogged 5 dozen lashes or put in double irons.

Mr Gellibrand, in defence of Captain Dillon, addressed the jury for 2 hours, insisting that while there had been an assault, it was a justified assault, because Dr Tytler had made representations that Captain Dillon was mad, and these representations to Mr Blake, the 1<sup>st</sup> Officer, were made to lessen the authority of the Captain<sup>115</sup>.

His Honour Chief Justice Pedder, in summing up the case for the jury reminded them that they were not to try the case by their notions of mutiny or martial law because *The Research* was precisely the same as any merchant vessel trading from London to the British colonies: similarly, Captain Dillon had no more authority over his officers and crew than the master of a merchant vessel<sup>116</sup>.

The question for the jury to determine was first: had any assault been committed and if so, there was a second question to be determined: was there any justification for the assault<sup>117</sup>.

### D *The Judgment and Sentence*

<sup>112</sup> *Hobart Town Gazette*, 5 May 1827

<sup>113</sup> Dillon, P., above n 26, 56-57

<sup>114</sup> *Hobart Town Gazette*, 5 May 1827

<sup>115</sup> *Colonial Times*, 11 May 1827

<sup>116</sup> *Ibid*

<sup>117</sup> *Ibid*

After retiring to consider the case for 1½ hours, the jury found Captain Dillon guilty on the charge of assault and false imprisonment.

Captain Dillon was highly critical of this decision and blamed it on the ignorance of naval life, in that:

The military men who formed the jury and the lawyers who were their advisers could hardly be expected perhaps to form a just opinion of the kind of discipline which is necessary at sea, where the Captain stands alone like an absolute monarch, with nothing to support his power but strict subordination and obedience.<sup>118</sup>

Having received the jury's verdict, it was the task of His Honour Chief Justice Pedder to sentence Captain Dillon. In doing so, His Honour remarked that Dr Tytler had acted with great prudence and discretion.

The Chief Justice relied upon the doctrine of ships' masters at sea laid down by Lord Chief Justice Abbott. His Honour Chief Justice Pedder commented that under the Common Law the master is responsible for the preservation of good order on the ship, with authority over all mariners on the ship, all mariners having the responsibility to obey the master. His Honour reminded Captain Dillon that while the commander of a ship has great power, nevertheless, that power is "not despotic" and must be exercised with "caution, moderation and justice"<sup>119</sup>.

The Chief Justice acknowledged that the master's authority is undoubted, it being absolutely necessary for the safety of the ship and the lives of those aboard<sup>120</sup>. However to avoid the operation of the "passion of his own breast", the master was to seek advice from the person next below him in authority and, when administering punishment, to always secure witnesses to the propriety of his conduct. Referring to the dictum of Lord Chief Justice Abbott, Chief Justice Pedder reminded Captain Dillon that in the case of disobedience the master may lawfully correct mariners in a reasonable manner, as a parent would correct a child or a master would correct an apprentice<sup>121</sup>. However, the master's responsibility to hear the other side of any dispute was essential in order to ensure the operation of natural justice<sup>122</sup>.

Be that as it may, however, His Honour Chief Justice Pedder emphasized that in cases of revolt or attempt to excite revolt on board ship, the master lacked jurisdiction to punish, because these were specific crimes under statute; in such cases the master's role was to arrest the offender and deliver that person to the appropriate legal tribunal in due course<sup>123</sup>.

---

<sup>118</sup> Dillon, P., above n 26, 1 May 1827, 148

<sup>119</sup> *Hobart Town Gazette*, 1 May 1827

<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> Ibid

<sup>123</sup> Ibid

His Honour was critical of 2<sup>nd</sup> Officer Dudman, branding his conduct of the unauthorized disclosure to Captain Dillon of Dr Tytler's confidential letter to the 1<sup>st</sup> Officer as "most wicked"<sup>124</sup>. His Honour regretfully concluded that Captain Dillon had entertained a "violent dislike" of Dr Tytler from the commencement of the expedition and his behaviour had been very oppressive towards the Doctor<sup>125</sup>.

In sentencing Captain Dillon for arrest and its attendant aggravations, His Honour Chief Justice Pedder noted that the arrest of Dr Tytler had been without violence<sup>126</sup>. Nevertheless, His Honour remarked that taking the whole circumstances of the case into consideration, it was clear that Captain Dillon's conduct towards Dr Tytler had been very oppressive and he was therefore bound to mark it accordingly<sup>127</sup>.

The sentence meted out by His Honour was that Captain Dillon be committed to the custody of the Sherriff for two calendar months, pay a fine to the King of 50 pounds, enter into a recognizance himself for 200 pounds, and 2 sureties in 100 pounds each to keep the peace towards Doctor Tytler for 12 months<sup>128</sup>.

Captain Dillon criticized this sentence, blaming it upon the geographical remoteness of Van Diemen's Land and the justice system in genera, commenting:

...this is another instance of the fallibility of judges and rulers and must convey a just idea of the mode in which justice is administered in these remote regions<sup>129</sup>.

#### E *Issues Raised by the Case*

Several issues emerge from the case. Exploration of each of these contributes to a clearer understanding of the case itself as well as the life of colonial mariners. Additionally, through an investigation of these various aspects raised in the case, light is shone upon interesting aspects of the inner nature of the developing society of Van Diemen's Land. The issues considered in this Paper are:

1. Unrealistic Expectation of Dr Tytler's Workload
2. The Impact of the Captain's Behaviour on the Crew
3. The Defendant's Defamation of the Court and Chief Justice
4. The Defendant's Reputation in Hobart Town
5. Intolerance of Religious Difference

#### 1 *Unrealistic Expectations of Doctor Tytler's Workload*

---

<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> Ibid

<sup>127</sup> Ibid

<sup>128</sup> Ibid

<sup>129</sup> Dillon, P., above n 26, 1 May 1827, 148

Implicit in the case is the unrealistic expectation of an employee's workload. Dr Tytler was required to attend to the duties required of ship's surgeon, botanist, naturalist, mineralogist, ethnographer, as well as being Recorder of Proceedings. Clearly, he was overworked. Such a conclusion is reached by taking account of the circumstances surrounding subsequent to the trial.

While Captain Dillon was imprisoned, the 1<sup>st</sup> Officer and M. Chaigneau together wrote to the Van Diemen's Land Court stating their view on the inadvisability of Captain Dillon and Dr Tytler sailing together again<sup>130</sup>. Clearly, Dr Tytler agreed. The Doctor travelled to Sydney on the *Port Albion* while Captain Dillon remained incarcerated<sup>131</sup> and thence continued on to India.

Dr Tytler was succeeded as surgeon for the remainder of the *Research* voyage by Mr Griffiths, while a replacement botanist and naturalist were sought in Sydney<sup>132</sup>. This can be seen as an indication that the Honourable Company's original expectation that the ship's surgeon would also perform the work of botanist, naturalist, mineralogist, ethnographer and Recorder of Proceedings throughout the voyage was unrealistic and not capable of being realized, regardless of the talent and expertise of the individual.

## 2 *The Impact of the Captain's Behaviour on the Crew*

Dr Tytler was not the only crew member who left the *Research* after the case at Hobart Town. All of the Europeans in the crew of the *Research* refused to sail from Hobart Town with Captain Dillon,<sup>133</sup> including his clerk. The 1<sup>st</sup> Officer requested the Captain to find a replacement for him<sup>134</sup> and resigned<sup>135</sup> from the *Research* to join the brig *Guide* sailing for Bengal<sup>136</sup>. Just prior to Captain Dillon's sailing out of the Derwent another five crew members left the *Research*<sup>137</sup>. The assistant apothecary, Leonard Helmick, left the *Research* on 24<sup>th</sup> May 1827 and refused to return<sup>138</sup>, despite efforts by Captain Dillon to take legal action to compel him to do so. The Magistrates of Hobart Town refused to put Mr Helmick back on board<sup>139</sup>, a decision based probably as much upon their cognizance of the legal principle which prevents a contract for personal service from being forced, as it was upon the potential danger to the apothecary from Captain Dillon.

---

<sup>130</sup> Ibid, 5 June 1827, 155-156

<sup>131</sup> Ibid, 9 June 1827, 159

<sup>132</sup> *The Monitor*, 1 June 1827, 421

<sup>133</sup> Dillon, P., above n 26, 17 June 1827, 166

<sup>134</sup> Ibid, 29<sup>th</sup> April 1827, 145

<sup>135</sup> Ibid, 30<sup>th</sup> April 1827, 145

<sup>136</sup> Ibid, 17 June 1827, 163

<sup>137</sup> Ibid, 20 June 1827, 169

<sup>138</sup> Ibid, 7 June 1827, 157

<sup>139</sup> Ibid

Clearly, the behaviour of the Captain to the Doctor during the voyage impacted in a negative way upon the entire crew, resulting in a severe loss of confidence.

### 3 *The Defendant's Defamation of the Court and Chief Justice*

It is not unusual for unsuccessful litigants to be critical of the Court and its officers.

Captain Dillon was defamatory of Van Diemen's Land *per se* - referring to it as "one of the most corrupt spots on the globe"<sup>140</sup> - and the Supreme Court in particular, identifying Chief Justice Pedder of that Honourable Supreme Court as a Judge Advocate<sup>141</sup> and the six military officers of the 40<sup>th</sup> Regiment who comprised the jury as a "court martial"<sup>142</sup>. The Captain remarked that Chief Justice Pedder was "pliable"<sup>143</sup> and that His Honour depended upon the Lieutenant Governor to formulate court decisions<sup>144</sup>.

In reality, His Honour Chief Justice Pedder was held in high regard both during and after His Honour's long period of office. The *Sydney Morning Herald* noted in 1827, the year of *R v Dillon*, that London had reported back to Sydney upon the excellent work of His Honour Chief Justice Pedder.

### 4 *The Defendant's Reputation in Hobart Town*

Although Captain Dillon was apparently trusted by the French government, evidence suggests this was not the case in Van Diemen's Land, where his trustworthiness regarding credit appears to have been under a shadow, particularly in Hobart Town. For example, when he attempted to exchange Promissory Bills on the Government of Bengal for cash to meet his ship's disbursements, he was refused by the merchants of Hobart Town<sup>145</sup>. The Lieutenant Governor also refused to advance the Captain any funds on the Bengal Government<sup>146</sup>. Instead, the Lieutenant Governor undertook to have the Commissariat advance Captain Dillon 4,000 Spanish dollars (the equivalent of 866/13/4 English sterling pounds at the time) on exchange for the equivalent Bills drawn on the Secretary of the Honourable East India Company in Leaderhall Street, London<sup>147</sup>. It can be inferred that both the Lieutenant Governor and the merchants of Van Diemen's Land realized that the Secretary of the Honourable East India Company would be more likely to assume responsibility for the victualling of its ship than the Bengal Government.

---

<sup>140</sup> Ibid, 20 June 1827, 169

<sup>141</sup> Ibid, 24 April 1827, 135

<sup>142</sup> Ibid

<sup>143</sup> Ibid, 1 May 1827, 146 and 1 June 1827, 150

<sup>144</sup> Ibid, 24 April 1827, 142-143

<sup>145</sup> Ibid, 10 April 1827, 130

<sup>146</sup> Ibid, 11 April 1827, 131

<sup>147</sup> Ibid, 130

The Commissariat apparently similarly lacked confidence in Captain Dillon's credit, requiring a bottomry bond on the ship before advancing the 4,000 Spanish dollars<sup>148</sup>. A bottomry bond is a contract, usually executed in a foreign port by the master of a vessel, for repayment of advances made to supply the necessities of the ship, together with the agreed rate of interest; the surety for the performance of repayment is a pledge on the keel or bottom of the ship itself<sup>149</sup>. In a bottomry bond the principal and interest are only repayable when the ship successfully completes its voyage<sup>150</sup>; thus, while the Commissariat may have doubted the Captain's credit, there was no doubt about his ability as a mariner to successfully and safely return his vessel to its home port.

The two sureties for Captain Dillon at the Commissariat were Mr Lord and Mr Bethune<sup>151</sup>, both merchants of Hobart Town who obviously had much to gain from the ship being victualled from their stores. The visit of these merchants to the Captain while he was in gaol<sup>152</sup> can be interpreted as part of their strategy to ensure the custom of the Captain. However, Captain Dillon flattered himself that their visit was motivated by moral support for him<sup>153</sup>. His interest in their family connections in England, such as one merchant having a brother who was a member of the English parliament<sup>154</sup>, can be read as an indication that Captain Dillon was impressed by social position and power.

### 5 Intolerance of Religious Difference

Was it just the consensual decision-making that triggered Captain Dillon's attack upon Dr Tytler? Perhaps not, because some evidence encourages an inference that, to some extent, Captain Dillon's dislike of Dr Tytler could have had its roots in religious difference. For example, Captain Dillon demonstrated an un-ecumenical approach towards religion, in that he did "not consider it proper"<sup>155</sup> to encourage attendance at divine service held on board ship because of the various species of religious beliefs – Roman Catholic, Presbyterians and Muslims. This attitude seems to be at odds with philosophy underpinning the requirement of *The Book of Common Prayer*, where Masters of vessels at sea were required to conduct Morning and Evening Prayers daily, as well as special services<sup>156</sup>.

Also, Captain Dillon displayed intolerance of protestant religious difference in his comment that Dr Tytler was "much addicted to evangelical and theological

---

<sup>148</sup> Ibid, 161

<sup>149</sup> Anderson, W. S., (Ed) *Ballentine's Law Dictionary*, (3<sup>rd</sup> Ed., 1969), 150

<sup>150</sup> Gilmer, W., above n 110, 53

<sup>151</sup> Dillon, P., above n 26, 10 June 1827, 160

<sup>152</sup> Ibid 2 June 1827, p150

<sup>153</sup> Ibid

<sup>154</sup> Ibid

<sup>155</sup> Ibid, 28 January 1827, 97

<sup>156</sup> Church of England, *The Book of Common Prayer of the Church of England*, (1662), 344

discussion” and through this had “ingratiated himself into favour of the Lieutenant Governor of Van Diemen’s Land, and was consequently regarded at headquarters as quite a saint”<sup>157</sup>.

On the otherhand, Reverend Philip Connolly, the Roman Catholic Chaplain in Hobart Town, visited Captain Dillon in prison and subsequently petitioned Lieutenant Governor Arthur to release the Captain<sup>158</sup>. This strongly suggests that Captain Dillon was, at the very least, inclined towards Roman Catholicism.

The fact that twenty years after the case, in December 1841, Captain Dillon wrote and published in London, slanderous attacks on the Wesleyan missionaries<sup>159</sup> adds weight to the inference that Captain Dillon’s different religious philosophy fuelled his persecution of Dr Tytler on board *Research*.

After his release from prison, Captain Dillon continued to despise Dr Tytler, recording in his diary that he had intended to apprehend the Doctor as a deserter<sup>160</sup>.

On the otherhand, Dr Tytler’s attitude towards Captain Dillon was one of forgiveness, perhaps based upon his professional medical opinion that Captain Dillon was subject to fits of temporary derangement<sup>161</sup>. Records reveal that Dr Tytler’s forgiving and charitable attitude towards Captain Dillon included endeavouring to obtain the Captain’s early release from prison. To this end, Dr Tytler’s legal Counsel, Mr Steven, visited Captain Dillon while he was in prison seeking an undertaking that he would keep the peace with Dr Tytler<sup>162</sup>.

#### IV CONCLUSION

The investigation of the case *The King v Dillon* provides insight into two complex contexts: the life of colonial mariners and the developing British penal colony of Van Diemen’s Land. While one was on the high seas and the other was an island, there are characteristics common to both contexts. For example, from each, escape was difficult, the community was relatively small, the inhabitants were far from ‘home’ and their lives were under the command of the one who ruled.

His Honour Chief Justice Pedder’s judgment clarifies the responsibilities of the master of a vessel to those on board. Implicitly, it offers a perspective of the ideal to be followed by all who are in positions of authority: to hear the other side, to act reasonably and, above all, acknowledge the endurance of the Rule of Law and the supremacy of the Courts of Law.

<sup>157</sup> Dillon, P., above n 26, 11 April 1827, 132

<sup>158</sup> Ibid, 7 June 1827, 156

<sup>159</sup> Cargill, D., *A refutation of Chevalier Dillon’s Slanderous Attacks on the Wesleyan Missionaries in the Friendly Islands*, (1842), 2

<sup>160</sup> Dillon, P., above n 26, 31 May 1827, 173

<sup>161</sup> *The Gleaner* 17 May 1827, 3

<sup>162</sup> Dillon, P., above n 26, 4 June 1827, 155

The exploration of the case also reveals the ramifications of the corporate model of consensual decision-making developed by the Honourable East India Company. .

#### A *Colonial Mariners at Sea*

The case clearly shows the pressures that beset mariners in colonial times. Such men were closely confined on a vessel for long periods at sea. It was a work environment closed and separate from the rest of the world. However, in such an environment of danger they not only worked but they also lived.

Colonial mariners had committed themselves to their work, possibly due in part to a desire for adventure, and an extraordinary excitement deriving from fear of the unknown and the ever-present treachery of the high seas.

However, investigation of this case suggests that while mariners were prepared to be at the whim of the vicissitudes of nature, they were not prepared to tolerate improper leadership from the Captain of the vessel. The important qualities and responsibilities conferred on the role of Captain are emphasized in the judgment and practiced by the crew in voluntarily leaving Captain Dillon's vessel in Hobart Town.

#### B *Insistence on the Rule of Law*

The colonial Supreme Court of Van Diemen's Land upheld the essentials of justice in which each party is entitled to legal representation and a fair trial. Dr Tytler was accorded access to justice through police prosecution of the assault he suffered. Captain Dillon was also accorded access to justice in that he had legal representation; he was heard and had his day in Court. A jury made the decision based on the testimonial and documentary evidence tendered. Those precious seeds of the British system of justice had been planted in Van Diemen's Land and were flourishing in its colonial Supreme Court.

#### C *Ramifications of Consensual Decision-making at Sea*

The philanthropic outreach of the Honourable East India Company in sponsoring the expedition to find the remains of Count de la Perouse's expedition reveals a highly commendable corporate model wherein global philosophy transcends entrepreneurial profit-making.

The Company's attitude to the decision-making structure it gave its employees is forward-thinking for its time. It provided a power structure enabling consensual decision-making by a responsible team of professionals. Taking a broad view, it is reasonable to identify such decision-making as a technocracy. Each of the professionals was responsible for controlling the enterprise of the voyage through the contribution of his specific technical and professional talents.

On the *Research*, this team consisted of Captain Dillon, 1<sup>st</sup> Officer Mr Blake, M. Chagneau and Dr Tytler. These four men were required to meet and discuss before effecting any change of plans. Thus, the Honourable East India Company had confidence in the professional abilities and capacities of each of these four men to make decisions appropriate to the primary aim of the voyage, that is, to investigate Count de la Perouse's final voyage.

The evidence produced in the case reveals that Captain Dillon was unable to cope with consultative leadership, where discussion and team decision-making are essential. In hindsight, with two highly independent men such as Captain Dillon and Dr Tytler, consensual decision-making was probably unlikely to succeed. Indeed, the case also casts serious doubts about the appropriateness of consensual decision-making for vessels. After all, "The Mariner hath his will".<sup>163</sup>

---

<sup>163</sup> Coleridge Taylor, S., *The Rhyme of the Ancient Mariner, Part the First*