M.R.O. 1—38,000—16-10-29

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 844 Press ~~MIS.~~

178-180

Dated 27.5.1862 ~~19~~ .

9/10

Not to be folded or roughly handled

Read the following papers:—

No. 178. From Major W. J. WILSON, Commissioner of Police; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Fort Saint George, dated 10th May 1862, No. 48.

I have the honor to annex a List of five Military Convicts at present detained in the Penitentiary pending Transportation to Western Australia under the Orders of Government.

2. As most of these men have been here for upwards of a year, and there is not any prospect of an opportunity of sending them to Western Australia, I beg to submit for the consideration of Government whether it would not be advisable to alter their destination, and to transfer them to the prison at Ootacamund, there to undergo the remaining periods of their respective sentences.

3. As the Penitentiary is merely the place of intermediate custody, these Convicts cannot be kept to hard labor here.

List of European Military Prisoners in the Penitentiary awaiting Transportation.

	Name.	Sentence.	Date of arrival at Penitentiary.	Place of Banishment.	Date of Government Order.
1	William Buckley.	1st October 1860. Four years Penal Servitude.	1860, Oct. 19th..	Western Australia.	1860, November 19th, No. 1,513, Judicial Department.
2	Samuel Summers...	19th December 1860. Four years Penal Servitude.	1861, January 11th.	Do.	1861, Jan. 28th, No. 107, Judicial Department.
3	James Walker....	30th November 1860. Four years Penal Servitude.	1861, February 9th.	Do.	1861, February 14th, No. 190, Judicial Department
4	John Berry.....	4th March 1861. Four years Penal Servitude.	1861, March 21st...	Do.	1861, March 25th, No. 413, Judicial Department.
5	William de Noual Ramus.	20th March 1861. Four years Penal Servitude.	1861, Sept. 9th....	Do.	1861, September 19th, No. 1,170, Judicial Department.

MADRAS, POLICE COMMISSIONER'S OFFICE,
10*th May* 1862.

(Signed) W. J. WILSON, Major,
Commissioner of Police.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
17*th May* 1862.

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

No. 179. From JOHN MILLER, Esq., Acting Government Solicitor, Madras; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Madras, dated 19th May 1862, No. 248.

Dated 17th May 1862, and endorsed on letter from the Commissioner of Police to Government of the 10th idem, No. 48.

1. I have the honor to acknowledge the Order of Government noted in the margin, and its accompaniments.

2. I submitted them for the consideration of the Advocate General and have also conferred with him thereon and I now forward a copy of his opinion.

3. I likewise return the Order above noted and its enclosures.

the opinion of the
General

COPY—OPINION.

I do not quite understand how these five Convicts came to be, as Major Wilson states, under orders for Transportation to Western Australia.

The sentence in each case is Penal Servitude for four years, *not* Transportation; and though Section V of Act XXIV of 1855 authorizes Government to convert a sentence of Transportation into one of Penal Servitude, I know of no authority for converting one of Penal Servitude into Transportation.

I therefore see no objection whatever to the carrying out of the sentence of Penal Servitude upon these five Convicts, if the sanction of the Governor General has been or shall be obtained, according to Sections VI and VIII of Act XXIV of 1855.

17*th May* 1862. (Signed) T. SYDNEY SMYTH,
Advocate General.

(True Copy)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 180. ORDER THEREON, 27th May 1862, No. 844.

In his letter of the 10th instant, the Commissioner of Police recommended that five Military Convicts at present confined in the Penitentiary and awaiting Transportation to Western Australia should be transferred to the prison at Ootacamund, there being no prospect of obtaining passage for them to Western Australia.

2. Major Wilson's letter and the warrant issued by the Chief Justice for the confinement of the Convicts in question in the Penitentiary having been referred for the opinion of the Advocate General, Mr. Smyth remarks that the sentence in each case is Penal Servitude for four years, *not* Transportation, and though Section V, Act XXIV of 1855 authorizes the Government to convert a sentence of Transportation into one of Penal Servitude, he knows of no authority for converting one of Penal Servitude into Transportation.

3. He therefore sees no objection to carrying out the sentence of Penal Servitude upon these Convicts if the sanction of the Governor General has been or shall be obtained according to Sections 6 and 8, Act XXIV of 1855.

4. The Governor General in Council has appointed Ootacamund as the place of imprisonment for Prisoners under sentence or order of Penal Servitude under Act XXIV of 1855, and the authority thus given has been already acted on in the case of one Prisoner so sentenced, that of Martin Murphy.

5. But the Convicts referred to in the present correspondence were not sentenced under the Act above quoted, (which, with reference to the provisions of Section XIII, would seem not to be applicable to Military offenders,) but under the Mutiny Act, sentence in each case having been passed by a Court Martial.

6. In Section 4 of the Mutiny Act (20 & 21, Vic., Cap. 66) it is declared that whenever a sentence of Transportation or Penal Servitude passed under that Act is to be carried into execution, it is to be notified by the Military authorities to a Judge of the Supreme Court who is to make order for the Transportation or Penal Servitude of the offender; whereupon the Government of the Presidency is "to cause such offender to be removed or sent to some place "or to undergo his sentence within the Presidency or Colony where the offender was so "sentenced or where he may come or be as aforesaid, in obedience to the directions for the "removal or treatment of Convicts which from time to time shall be in force in such Pre-"sidency, &c."

7. The directions in force in this Presidency, for the removal and treatment of Military Convicts, belonging to Her Majesty's Indian Forces are contained in an Order of Her Majesty in Council passed on the 5th June 1855 and are to the effect that "Her Majesty's settle-

"ments in Western Australia, shall be places to which felons and other offenders sentenced "to transportation under the provisions of the said Act shall be conveyed."

8. And by Section III, 20 and 21 Vic. Cap. 3, it is provided that persons sentenced to Penal Servitude "may be conveyed to any place or places beyond the Seas to which offenders "under sentence or order of transportation may be conveyed."

9. Western Australia having been thus declared to be the place to which Military offenders sentenced to Penal Servitude are to be conveyed, it seems doubtful whether until the Order in Council above referred to shall have been rescinded or the Governor in Council shall have been authorized under Section XIII, 20 and 21 Vic., Cap. 66, to appoint some other place for the imprisonment of such offenders, the sentences of the Convicts now under notice, can be legally carried out at Ootacamund.

10. But there might possibly be no objection to their being removed to Ootacamund as a place of intermediate punishment until an opportunity offer for their being conveyed to Western Australia.

11. The Advocate General will be requested to give his opinion on this point and also on the more general question raised in the preceding paragraphs.

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

Exd. F. Cartledge.

the opinion of the
General

H.M.S. Ofpue
23d May 1862.

Sir/Sirs &c

Transportation, except for life or for 14 years and upwards, by sentence of Court, was established by 5 & 6 Vict. Cap 99. and then declared substituted and limited. This Act was repealed by 20 & 21 Vict. Cap ... which altogether abolished sentences of Transportation, substituting therefor Penal Servitude limited, and came into effect from July 1857. The reason for the issue of Act. Assignment Forms dated October 1854 - you will see, &c. &c. the benefit from the Act. Also. Penal

of the Prisoner being of the last
named list: which form was
duly sent to this Office, but being brought
to trial at the Assizes before the
said Officer, was dismissed
from him: and as it appeared
to the Court that under the Statute
of 20 & 21 Vict: Cap 66 the Sentence
of Transportation for Life is for the future
held equivalent with that for the
term of Fifteen years by the
Fifth Section of the Act passed
By the 3d Sec: of 20 & 21 Vict:
Cap: ... Persons sentenced to
Penal Servitude may be dealt
with by Licence
before the Sentence of Transportation may be carried into
effect by the Governor

in this Section specified, per-
sons sentenced to Penal Servitude
have been sentenced to the Sen-
tence of Transportation: - the latter
have been kept in Confinement
Custody, pending a Passage being
procured for them: But as a Ship
has now been appointed by the
Govt: for that purpose the Governor
is of opinion that Prisoners
sentenced to Penal Servitude in
pursuance of the 3d Sec: of
the Act of 20 & 21 Vict Cap 66, - then under
the XXIV Sec: of the same, the Govr: of this
Penitentiary can call upon such Convicts
to undergo their Sentence
to the Intentions for the Sentence and
Treatment of Convicts which from time
to time shall be in force in such Prisons
as they

Henry.

But unless this authority has been removed, or similar powers given to the Govr. of this Presidency, the men could not be removed from there.

Upon this I refer to the Records of Consultation of Madras Govt. No 274 of 8 Sept. 1855. I will then you the authority of punishing by fetters insubordination on the part of convicts upon this Presidency & forwarding them from thence to Penang or Singapore whence they could be sent to Western Australia. The Penang Govt. has lately declined to receive convicts from this Presidency.

I am Sir
Your obt. Servt.
H. Wheatley
Lieut.
Asst. Adjutant Genl.
Chief Secy.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letts

From the Comr. of Police — R. L. 10th May 1862 No. 48.
Govt. Solicitr — " 19th — do — " 248.

Order thereon 27th May 1862 No 844

In his letter of the 10th instant, the Commissioner of Police recommended that five Military Convicts at present confined in the Penitentiary & awaiting transportation to Western Australia should be transferred to the prison at Ootacamund, there being no prospect of obtaining passage for them to Western Australia.

2. Major Wilson's letter and the enclosure issued by the Chief Justice for the confinement of the Convicts in question in the Penitentiary, having been referred for the opinion of the Advocate General

General, Wm. Smyth remarks that the sentence in each case is Penal Servitude for four years not transportation, and though Sec. V. Act XXIV of 1855 authorizes the Govt. to convert a sentence of transportation into one of Penal Servitude, he knows of no authority for converting one of Penal servitude into transportation

3. He therefore sees no objection to carrying out the sentence of Penal Servitude upon these convicts if the sanction of the Govr. General has been or shall be obtained according to Secs. 6 & 8 Act XXIV of 1855.

4. The Governor General in Council has appointed Otacamund as the place of imprisonment for Prisoners under sentence or order of Penal Servitude under Act XXIV of 1855, and the authority thus given has been already acted on in the Case

of

of one Prisoner is sentenced that of Martin Murphy.

5 But the Convicts referred to in the present correspondence were not sentenced under the Act above quoted, (which with reference to the provisions of Section XIII. would seem not to be applicable to Military offenders) but under the Mutiny Act; sentence in each case having been passed by a Court Martial.

6 In Sec. 4 of the Mutiny Act (20. 21. Vic Cap 6) it is declared that whenever a sentence of transportation or penal servitude passed under that Act is to be carried into execution, it is to be notified by the Military authorities to a Judge of the Supreme Court who is to make order for the transportation or penal servitude of the offender; whereupon the Govt. of the

Presidency

Presidency is to cause
"such offender to be removed
"or sent to some place or
"to undergo his sentence
"within the Presidency, or
"Colony where the offender
"was so sentenced or where
"he may come or be as afore
"said, in obedience to the
"directions for the removal
"or treatment of Convicts which
"from time to time shall be
"in force ~~enforced~~ in such Presidency
"&c."

7 The directions in force in this Presidency for the removal and treatment of Brity Convicts, belonging to H. M. Indian Forces are contained in an order of Her Majesty in Council dated on the 5th June 1855 and are to the effect that "Her Majesty's Settlements "in Western Australia, shall "be places to which felons "and other offenders sentenced "to transportation under the provisions

"provisions of the said Act
"shall be conveyed."

8. And by section III. 20 & 21 Vic. Cap: 3 it is provided that persons sentenced to penal servitude "may be conveyed to any "place or places beyond "the seas to which offenders "under sentence or order of "transportation may be "conveyed."

9 Western Australia having been thus declared to be the place to which Military Offenders sentenced to penal servitude are to be conveyed it seems doubtful whether until the order in Council above referred to shall have been rescinded or the Governor in Council shall have been authorized under Sec. XIII 20 & 21 Vic. Cap. 66. to appoint some other place for the imprisonment of such offenders, the sentences of the

the Convicts now under notice, can be legally carried out at Rottnest.

10. But there might possibly be no objection to their being removed to Rottnest as a place of intermediate punishment until an opportunity offer, for their being conveyed to Western Australia.

11 The Advocate General will be requested to give his opinion on this point and also on the more general question raised in the preceding paragraphs.

To. The Government Solicitor Dated 27th

Jud. 1862. Department.

No. 844.

PROCEEDINGS OF GOVERNMENT.

Dated 27 May 1862.

Rec. 10 June 62 Abs 5/7.

Requesting the Opinion of the Advocate General on certain questions connected with the removal to Cotacamund Prison of 5 Mtz Convicts at present confined in the Penetentiary and awaiting transportation to Western Australia.-

7003] Madras—Printed at the Government Press.