M.R.O. 1—33,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1538 Press ~~Mis.~~

205-206

Dated 23.9.1863 .

3/4

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 23rd September 1863.

No. 205. Read the following Proceedings of Government in the Military Department, dated 16th September 1863, No. 2,967.

Communicate the opinion of the Advocate General, Calcutta, on the question of European Soldiers being entitled to receive Prize Money when they are undergoing Penal Servitude. (Vide Proceedings Military Department, dated 16th September 1863, Nos. 297 and 298.)

No. 206. ORDER THEREON, 23rd September 1863, No. 1,538.

To be recorded.

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

Ed. T. O'Connor.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers :—

From the Examiner Prize Accounts, Fort William, 21st August 1863, *No.* $\frac{587}{L}$; *to the Deputy Secretary to Government, Military Department, Fort Saint George.*

With reference to your letter, No. 87, dated 25th April last, I have the honor to annex a copy of the Advocate General's opinion, whether European Soldiers undergoing Penal Servitude in Jail, are entitled to receive their shares of Prize Money, together with a copy of Government docket, No. 356, dated the 17th instant, also bearing on the subject.

OPINION.

There is a distinction between the effect of a conviction for Felony under the old law and a conviction for an offence under the Penal Code since 1st January 1862. By the law of England, a conviction for Felony worked a forfeiture of the Goods and Chattels of the Felon to the Crown, and whatever doubts might arise on the question of the applicability of the law of forfeiture to this country, if it were mooted for the first time, it had been long settled in practice here, that the law of forfeiture in the case of convictions for Felony in the Supreme Court was in force. European Soldiers could only have been tried by that Court, or by Court Martial following the substantive law of that Court for crimes committed in this country. I am of opinion therefore, that the shares of Prize Money belonging to such Soldiers convicted before 1st January 1862, of crimes known as felonies, became forfeited to the Crown.

The Penal Code, however, recognizes no distinction between felonies and lesser crimes, putting all on the same footing as offences, and giving a discretion to the Judge to declare a forfeiture of all the property of a person convicted of an offence punishable with death, or the forfeiture during imprisonment of the income of the pr perty of a person convicted of an offence for which he shall be sentenced to seven years' imprisonment (Section 62), and the Judge is [illegible] answered to inflict fines, which of course, may be levied on any property belonging to [illegible] Under the present law, therefore, it will depend on the above conditions whether Prize Money belonging to a convicted Soldier is forfeited or not, but unless a forfeiture has been adjudged at the time of sentence, no such effect will necessarily result from the mere conviction of any offence.

2. I am clearly of opinion that the fact of a subsequent conviction of a Soldier, even accompanied with forfeiture, and whether under the old or present law, cannot debar the right of an Assignee for value of Prize Money gained by the Soldier, provided the assignment were made *bonâ fide* and not in contemplation or in fraud of the conviction.

18*th June* 1863. (Signed) J. GRAHAM.

From the Officiating Deputy Secretary to the Government of India, Military Department, Fort William, 7th August 1863, *No.* 119 ; *to the Advocate General.*

In transmitting to you, letter No. $\frac{494}{L}$, dated 24th June last, from the General Prize Committee, submitting copy of your opinion relative to the forfeiture of the property of Soldiers convicted of Felony, I am directed to request the favor of your stating, as a doubt has been suggested, whether this Department is right in concluding that the 2nd paragraph of your opinion refers to convictions by Court Martial just as much as to those by a Civil Tribunal, *i. e.*, that in your opinion no forfeiture of the property of a European Soldier has legally resulted from his conviction, since the 1st January 1862, of any crime whatever by a Court Martial, unless the Court has distinctly adjudged such forfeiture as part of the sentence; and that this will be the case as long as the present Penal Code remains unaltered.

2. The return of the enclosures with your reply, is requested.

From the Officiating Advocate General, Calcutta, 10th August 1863; *to the Officiating Deputy Secretary to the Government of India, Military Department.*

In reply to your letter, No. 119, of 7th instant, with enclosures, (herewith returned) I have the honor to state that your Department have rightly understood my opinion of 18th June last, as having reference to convictions, since 1st January 1862, of European Soldiers, as well by Courts Martial as by the late Supreme Court, or present High Court. The trial of Soldiers for crimes other than Military, proceeds under 146th Article of War before Courts Martial, when the offence has been committed more than 120 miles from a Presidency, merely as a measure of general convenience; but the substantive law of the Court Martial is the law of England as modified by the law applicable to India, that is the Penal Code, and the trial and its results must accordingly be governed by and follow the latter law.

No. 356.

Copy of the above forwarded to the General Prize Committee, with reference to their letter No. $\frac{494}{L}$, dated 24th June 1863.

MILITARY DEPARTMENT, *the 17th August* 1863.

(Signed) B. E. BACON, Major,
Offg. Depy. Secy. to the Govt. of India.

ORDER, No. 2967, *16th September* 1863.
Communicated to the Commander-in-Chief and Departments concerned.
(True Extract.)

Deputy Secretary to Government.

To the Adjutant General.
" Controller of Military Finance.
" Military Accountant.
" Prize Department.
" Judicial Department.

Lieut. T. Stubbs.