

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 171

Press
MS.

287-288.

Dated 31.1.1865 19

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

31st January 1865.

No. 287. Read the following Proceedings of Government in the Military Department, dated 18th January 1865, No. 223.

Communicating correspondence regarding the claim to Prize Money, of Prisoner J. Berry of the European Jail at Ooty, and referring the same for the decision of the Government of India, with reference to the opinion of their Advocate General, dated 10th August 1863. (Vide Proceedings, Military Dept., dated 18th Jan. 1865, Nos. 413—416.)

No. 288. ORDER THEREON, 31st January 1865, No. 171.

Communicated to the Inspector General of Jails, and to the Session Judge of Ootacamund.

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

To the Inspector General of Jails, } With No. 2967 of 1863, Military Depart
,, Session Judge of Ootacamund, } ment.

Ed. T. O'Connor.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers :—

From the Inspector General of Jails, 5th December 1864, No. 372; to the Chief Secretary to Government, Judicial Department, Fort Saint George.

I have the honor, in reference to the Order of Government, (No. 2967, 16th September 1863,) relative to the claim of Berry to Prize Money which was held to be forfeited consequent on his conviction, to submit a letter from Mr. Innes, from which I am led to question the correctness of the advice under which the Order of Government referred to, was passed. I think it likely that the facts of Berry's case were misapprehended, and trust that the Government will be pleased to consider the case favorably.

From L. C. INNES, Esq., Session Judge, in charge of the European Prison, Ootacamund, 3rd December 1864, No. 120; to the Inspector General of Jails.

I have the honor to bring to your notice, that one John Berry, a Prisoner in the European Jail under my charge, and formerly a Private of the 1st Madras Fusiliers, claims his share of Prize Money for the capture of Pegu and Lucknow. He has in his possession two Medals, one for Pegu, and one with two Clasps for Lucknow. This claim, together with Prize Certificates and accompanied by an Acquittance Roll, according to the form laid down in the Fort Saint George Gazette, was submitted to the Prize Committee some months ago, no direct answer however was ever received to the application, but a copy of the Proceedings of the Madras Government, No. 2967, dated 16th September 1863, was forwarded to the Officer in charge of the Jail, in which the Advocate General observes correctly, that, under the old Law, *i. e.*, prior to 1st January 1862, "a conviction for felony worked a forfeiture of the Goods and Chattels of the Felon to the Crown, &c., 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* become forfeited to the Crown."

2. Berry was convicted prior to the 1st January 1862 and was sentenced to four years Penal Servitude for striking a Non-Commissioned Officer (a Lance Corporal.) This offence is not a felony, and could not entail forfeiture; nor is there any other ground in Berry's case upon which he could be justly subjected to loss of his Prize Money.

3. I have the honor therefore to re-submit the Bills, and request that you will forward them to the proper Authority.

Referred to the Military Department.

FORT SAINT GEORGE,
17th December 1864.

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

From the Advocate General, Calcutta, 6th October 1864; to the Officiating Secretary to the Government of India, Military Department.

I have the honor to acknowledge receipt of your letter, No. 480 of 20th June, relative to a question as to the forfeiture of Prize Money by Soldiers convicted of felony.

2. The opinion you refer to of the 10th August 1863, must have been given by Mr. Graham while acting for me—not being able to procure a copy of the whole opinion, I am not sure whether Mr. Graham intended his observations as to the necessity of an actual adjudication of forfeiture to apply to a case of conviction of such an offence as waging war against Her Majesty. But I am quite clear that the conviction itself in such a case carries with it the forfeiture, and that an express adjudication of forfeiture would be unnecessary, and in fact incorrect.

3. The expression "liable to forfeiture" used in the 61st Section of the Penal Code, has not been very happily chosen, but the Section evidently refers to offences which, by the express language of the Code, are punished with forfeiture of property in addition to death or transportation for life. Thus, in the case of waging war against the Queen, the offender on conviction is not merely "liable to forfeiture," but (see Section 121) shall forfeit all his property. The forfeiture is not discretionary with the Court under Section 62, as it would be in a case of murder.

4. In any case therefore in which a Soldier is under the Penal Code convicted of waging war against the Queen, or collecting men, &c., with the intention of waging such war, he, upon the conviction, forfeits all Prize Money, though nothing may be said about forfeiture in the conviction. I may add that in cases under the 126th or 127th Sections, the particular forfeiture must be expressly imposed by the sentence.

MILITARY DEPARTMENT, THE 13TH DECEMBER 1864.
No. 445.

Copy of the above forwarded to the Secretary to Government, Fort Saint George, Military Department, for the information of His Excellency the Governor in Council, with reference to Colonel Marshall's letter, No. 1695 of the 18th May last.

By order,
(Signed) A. JOHNSON, Major,
Asst. Secy. to the Govt. of India.

ORDER, No. 223, 18th January 1865.

The question raised by the Inspector General of Jails in connection with Prisoner Berry's claim to Prize Money, being of a general nature, ordered that it be referred for the decision of the Government of India, with advertence to the opinion of their Advocate General, recorded in Proceedings of Government, 16th September 1863, No. 2967.

2. Ordered, further, that the letter from the Government of India above recorded be communicated, with the previous correspondence on the subject, to His Excellency the Commander-in-Chief, the Prize Department and the Controller of Military Accounts.

To the Secy. to the Govt. of India, Mily. Dept. | Here enter 18th Jan. 1865, No. 224.

(True Extract.)

Marshall
Secretary to Government.

To the Judicial Department. *With 10 separate copies*

- " Adjutant General, with letter to Government of India, No. 1695 of 1864.
- " Prize Department, with do.
- " Contr. of Mily. Accts., with do.
- " Military Accountant.
- " Judge Advocate General.

Ed. T. Stubbs.

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No. 171 - 31st May 1865
Communicated to the In-
specter Genl. of Jails & to
the Session Judge of Oota-
cannund.

W. A.

The Inspector Genl. of }
Jails } with No. 2967 }
" Session Judge of } of 63. Mily. Dept. }
Ootacannund. }

Proc. 28 Sept. 1863. 11206-21

Recd. 7 Sept.

India 1863. Department.

No. 223.

PROCEEDINGS of GOVERNMENT.
in the Military Dept.

Dated 18.7.63. Secy.

No. 152

Having come before us upon
the claim of the
S. Henry of the
to determine the
issue for the decision of the
Government of India, with
the opinion of their
dated 10.6.

287. 288.