M.R.O. 1—29,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 99 Press ~~His~~

169-170

Dated 25 - 1 ~~19~~ 1868

4/4

Not to be folded or roughly handled

Gen

Proceedings of the Madras Government, Judicial Department, 25th January 1866.

No. 169. Read the following Proceedings of Government in the Military Department, dated 15th January 1866, No. 164.

Communicating correspondence on the subject of deporting women of abandoned character, the wives and daughters of Soldiers. (Vide Proceedings, Military Department, dated 15th Jan. 1866, Nos. 284 & 285.)

No. 170. ORDER THEREON, 25th January 1866, No. 99.

Communicated to the Commissioner of Police, and to the Inspector General of Police, for information.

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

To the Commissioner of Police.
" Inspector General of Police.

Ed. J. Tulloch.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

From the Deputy Secretary to the Government of India, Military Department, Fort William, 4th December 1865, No. 90; to the Secretary to Government, Military Department, Fort Saint George.

Letter from the Secy. of State for India,	*No.* 108,	*dated*	*7th April* 1865.
,, ,, *Adjutant Genl.,*	*No.* 810*E*,	*dated*	*9th September* 1865.
,, *to the Advocate Genl.,*	,, 595,	*dated*	*29th Sept*, 1865.
,, *from the Offg.* ,,		*dated*	*29th November* 1865.

I am directed to transmit to you, for the information of His Excellency the Governor in Council, the annexed copy of correspondence as per margin, on the subject of the deportation of soldiers' wives of abandoned character.

Military Despatch from the Right Honorable the Secretary of State for India, India Office, London, 7th April 1865, No. 108; to His Excellency the Right Honorable the Governor General of India in Council.

1. I have received and considered in Council your Military letter, No. 485 of the 21st December 1864, forwarding copy of correspondence which has taken place on the subject of the proposed establishment of Penitentiaries in India, for the reception of European women, the wives and daughters of soldiers, whose mis-conduct might render their confinement in such institutions desirable or necessary.

2. I observe that the whole subject has received from your Government very careful consideration, and that, with a view to such legislative action as was necessary for the compulsory committal of such women, a draft bill was prepared; but I learn that in the opinion of your Government, the difficulties and expense of carrying out any scheme of the nature proposed promise to be so great, and the result so incommensurate, that you doubt the expediency of proceeding any further in the matter.

3. The only alternative, as regards European women whose habitual mis-conduct renders it impossible to allow them to remain in the lines of the Regiment to which their husbands or fathers belong, seems to be to send them to England, and after a full consideration of the whole subject, you are of opinion that this would be not only the most economical, but the least objectionable way in which to deal with the question at issue.

4. The objections which have been heretofore urged to the practice of sending such women to England, remain in their full force, and have been again pointed out in a letter* from His Royal Highness the Field Marshal Commanding-in-Chief, to whom your despatch has been communicated.

* 23*rd February* 1865.

5. Upon a careful consideration, however, of the correspondence now forwarded, I am led to the conclusion, that the course proposed by your Government is unavoidable, and past experience shows that cases of this nature are not of frequent occurrence. It must, however, be borne in mind, that one of the obvious objections to this course is the premium upon misconduct which may be held out by the prospect of a free passage home, which is in many cases a boon to a woman of good character.

6. I have to desire, therefore, that in every case of this nature, before the ultimate step of sending a woman home is adopted, she shall undergo every punishment to which her misconduct may have rendered her liable, and that in cases where mis-conduct is not of such a character as to be punishable by law, every care be taken to obviate as far as possible the objections which I have pointed out.

Women and Children.

From the Adjutant General, Head Quarters, Simla, 9th September 1865, No. 810E; to the Secretary to the Government of India, Military Department.

With reference to your memorandum, No. 199 of the 29th May last, giving cover to a letter from the Right Honorable the Secretary of State for India, on the subject of the disposal of erring wives of soldiers, I have the honor, by desire of the Commander-in-Chief, to forward the accompanying opinion of the Judge Advocate General, that the orders conveyed cannot be carried into execution without the full consent of the party concerned.

2. It would appear, His Excellency desires me to say, that the legal objections thus shown, may interfere very considerably with the execution of the measure which has been desigined, for the purpose of ridding cantonments of abandoned female characters.

JUDGE ADVOCATE GENERAL'S OPINION IN THE CASE OF MRS. PHILLIPS.

"In reply to the question put in the Adjutant General's memorandum, No. 5700E, dated 19th "August, (instant) *viz.*, whether, in the event of compulsory measures becoming necessary, Mrs. "Phillips (wife of Serjeant Phillips, a women of abandoned character, whom her husband desires "to get rid of) should be sent to England, under the ruling of the Government letter No. 199 of "21st May last, by the Civil or Military Authority, I am of opinion that neither the Civil nor the "Military authority has power to deport to England this woman by the use of compulsory mea-"sures, or even against her consent."

"It may be added, that Mrs. Phillips is not subject to Military Law, in any sense which gives "the Military Authorities power to remove her from one place to another, or to restrain her "movements."

(Signed) G. CLIFFE HATCH, Lieut.-Colonel,
Judge Advocate General.

From the Officiating Secretary to the Government of India, Military Department, Fort William, 29th September 1865, No. 595; to the Advocate General.

In transmitting the correspondence marginally noted, regarding the power to send home European women of abandoned character, the wives or daughters of soldiers, I am desired to request that you will favor Government with your opinion on the subject, a reference having, it will be observed, been made to Government in the case of the wife of a Serjeant Phillips.

No. 201D, dated 20th May 1865.
Adjutant General, No. 810E, dated 9th September 1865.

2. I am to solicit the return of the enclosures with your reply.

From the Officiating Advocate General, Calcutta, 27th November 1865; to the Officiating Secretary to the Government of India, Military Department.

In reply to your letter, No. 595 of date 29th September 1865, with enclosures, (received 30th ultimo), I have the honor to state that, with the consent (which for greater safety should be taken in writing) of the husbands, married women might be sent to England, so long as in doing so, no breach of the peace or anything that would lead to the action of the criminal law occurred. The husband's consent would be a bar to a civil action, which could only be brought by himself; and it might be pleaded by way of leave and license—still a married women would, I apprehend, be released in case a writ of *Habeas Corpus* were issued on the ground of her being in restraint—clearly no violence in compelling her to proceed to England would be legally justifiable.

As regards the daughters of soldiers, I know of nothing that would legally justify their deportation, any more than that of any other person. Any proceeding of the kind would be actionable, and there would be a clear remedy by writ of *Habeas Corpus* if such a person were in custody in the local limits of the Presidency towns. It will be seen therefore that I generally concur in the opinion expressed by the Judge Advocate General.

The enclosures with your letter are herewith returned.

ORDER, No. 164, 15th January 1866.

Communicated to the Commander-in-Chief, with reference to previous correspondence.

(True Extract.)

H Marshall *Major General.*

Secretary to Government.

To the Adjutant General.
" Quarter Master General.
" Controller of Military Accounts.
" Judicial Department, for information. Sent 10 spare Copies.

Erd. J. E. Cashart.

Judicial 186 C. Department.

No. 164

PROCEEDINGS OF GOVERNMENT. in Military Department

Dated 15th January 1866
Rec'd 17th

No 167
Communicating correspondence on the subject of deporting women of abandoned character, the wives & daughters of Soldiers

Sent to 30 Jany.

25 January 1866 No 199
Communicating the opinion of the Judge Advocate General on the subject of deporting women of abandoned character

Sept 25th

169. 170.

With two Orders