

(1) Number of pages 8
(2) Date of repair 10/86
(3) Initials of the Referencer lms

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	574	Press.
B.P. No.		Mis.
Dated	3--4-1868	~~197~~

Not to be folded or roughly handled

D. Man

*Proceedings of the Madras Government, Judicial Department,
3rd April 1868.*

Read the following papers :—

No. 29. Proceedings of Government, Military Department.

Read the following papers :—

Memo. from the Deputy Secy. to Govern- } (Here enter 29th October 1867, No. 321).
ment, Military Prize Department.

From the Government Solicitor. } („ 9th November „ „ 721).

Memorandum from the Deputy Secretary to Government, Military Prize Department, Fort Saint George, to the Secretary to Government, Military Department; dated 29th October 1867, No. 321.

The Prize money of a Native Officer (one Subadar Mootoosawmy of the Sappers and Miners) having been claimed by his widow Handum, as registered heir to property, the Deputy Secretary to Government has the honor to request instructions as to the disposal of this and other similar claims, of which no doubt many will arise on the adjustment of Prize money to Native Infantry Regiments.

2. The deceased Subadar's share of Prize amounts to 2500 Rupees.

3. The opinion of the Advocate General, as recorded in Proceedings of

No. 2367, dated 5th August 1867, and No. 3254, dated 30th August 1867.

Government marginally noted, disposes of claims set up by persons *not* the registered heirs for property, and advises

Government as to the rule to be laid down generally in regard to payment of Prize money; but in the Native Articles of War published in G. O. G., No. 333 of 1861, under Chapter IV. Head "Effects of the Dead" Article III., it would appear that an heir "*nominated in the Regimental Register*" is to be considered the rightful heir to property; the question is accordingly submitted whether the Prize money in such cases can be made over to the nominated heir, certified by extracts from the Regimental Register especially as under Act XXIV. of 1867, Section 34, quoted by the Advocate General, certificates from the Administrator General are *not* obtainable by the claimant, she being a Hindu; the amount also in this case being above the sum specified, *viz.*, one thousand Rupees.

Referred for the opinion of the Advocate General.

2. The General Regulations of the Army require that a Register of nominated

heirs to property shall be kept in every Native Corps, and the effects "in Camp, Garrison or quarters"* of deceased Soldiers are made over by Commanding Officers to the heir so nominated and registered. Arrears of pay and allowances are usually a portion of such effects.

6th November 1867.

From the Government Solicitor, High Court House, Madras, to the Secretary to Government, Military Department, Fort Saint George; dated 9th November 1867, No. 721.

I have the honor to acknowledge the receipt of the Reference Order of Government, dated 6th November 1867, on a Memorandum from the Deputy Secretary to

* "*Sanctioning Orders* 1863.
Articles of War, G. O. G. in India, 17th September.
"It is hereby notified, under the authority of the Government, that the bearing of the 110th and 111th Articles of War for Native Troops, and paragraphs 1, 2 and 3, Section XXXIII., Part II. of the Military Regulations, regarding the duties of Committees of Adjustment, and of Commanding Officers of Native Regiments, refers only to the effects of deceased Soldiers in camp, garrison or quarters, and not to personal property left at the house of a deceased Soldier or other place not within Military jurisdiction."

*Proceedings of the Madras Government, Judicial Department,
3rd April 1868.*

Government, No. 321, dated 26th October 1867, requesting the Advocate General's opinion as to the disposal of claims of registered heirs for property of Native deceased Officers for adjustment of Prize money.

2. I have submitted the matter for the consideration of the Acting Advocate General, and

3. I now forward a copy of his opinion, and his return to the Order and Memorandum above noted.

OPINION.

The Registered Heir is only entitled under Article III. of Act XXIX. of 1801 to the residue of the effects of the deceased, which have been secured on his name and by the Commanding Officer. Prize money does not come under that head. But the nomination in the register would be equivalent to a Will, which in the case of a Hindu need not be in any particular form, and does not require probate. In this particular instance, therefore, if it is certain that the deceased left no sons, and no other Will, and had not already disposed of his Prize money, the Government would probably incur no appreciable risk in paying the Prize money to him.

2. But as a general rule I strongly recommend the Government not to make payments of Prize money to persons who do not possess specific authority to receive it, granted by some Court or Officer, such as the Administrator General. In regard to Hindus, questions may afterwards arise whether the Will was valid as against male relatives. In regard to Mahomedans a Will would only be valid to the extent of 1/3rd of the property against the legal heirs without their consent. Further very large portion of these claims for Prize money have already been sold or mortgaged to creditors, and Government would be greatly embarrassed in dealing with their claims, if payments were hastily made to persons whose representative capacity could be impeached.

(Signed) JOHN D. MAYNE,
Acting Advocate General.

7th November 1867.

Order, No. 4494, 13th November 1867.

Ordered that the opinion of the Advocate General, above recorded, be communicated to the Prize Department, for information and guidance.

(True Extract).

(Signed) H. MARSHALL, Major-General,
Secretary to Government.

No. 29A. Proceedings of Government, Military Department.

Read the following papers:—

From the Officiating Deputy Secretary to Government, Military Department.

(Here enter 9th January 1868, No. 9).

From the Government Solicitor.

(Here enter 25th February 1868, No. 110).

Memorandum from the Officiating Deputy Secretary to Government, Military Prize Department, Fort Saint George, to the Secretary to Government, Military Department; dated 9th January 1868, No. 9.

With reference to the opinion of the Advocate General, recorded in Proceedings of Government, No. 4494 of the 13th November 1867, it appears to be necessary that some plain rules for the guidance of Prize Committees should be drawn up by the Government Law Officers, to enable them to submit claims to Prize money made by the representatives of deceased Native Officers and Soldiers. At present, the want of some such rules for guidance has the effect of deterring all claimants

*Proceedings of the Madras Government, Judicial Department,
3rd April 1868.*

from obtaining the Prize money due to deceased Native Soldiers, for Officers do not know what certificate is required, or what steps are necessary to be taken to obtain it. They are consequently unable to advise the claimants how to proceed, and the claimants themselves are equally ignorant on the subject, and cannot understand why, as nominated heirs to property in the Regimental Registrar, they do not receive the Prize money due to the deceased Soldiers.

Referred to the Government Solicitor, with advertence to Proceedings of Government, Military Department, Nos. 3254 and 4404, of 30th August and 13th November 1867.

10th January 1868.

From the Government Solicitor, Madras, to the Secretary to Government, Military Department; dated 25th February 1868, No. 110.

With reference to the Order of Government noted in the margin, and your subsequent communication of the 17th

Dated 10th January 1868, and made on Memorandum from Officiating Deputy Secretary to Government, Military Prize Department, dated 9th January 1868, No. 9.

instant, I have now the honor to forward, herewith, the rules prepared by me, and

approved of by Mr. Advocate General, for the guidance of Prize Committees, in the matter of claims to Prize money by representatives of deceased Native Officers and Soldiers.

2. I return the order above noted.

Rules for the guidance of Prize Committees, in the matter of claims to Prize money, by representatives of deceased Native Officers and Soldiers.

1. If the deceased Native Officer or Soldier, who may have been entitled to Prize money, has, by assignment or otherwise (except by Will), in his life time, disposed of his Prize money, the claim of his representative should not be entertained.

2. If the deceased Native Officer or Soldier has not so disposed of his prize money in his life-time, but has left a Will, the person or persons claiming to be his representative or representatives should be required to produce a probate of the Will granted to him, her, or them, by the High Court of Judicature at Madras, or a certificate granted to him, her, or them, under Act XXVII. of 1869, by the District Court, within the jurisdiction of which either the deceased Native Officer or Soldier shall have ordinarily resided at the time of his death, or, if he had then no fixed place of residence, by the District Court within the jurisdiction of which any part of the property of the deceased may be found.

3. If the deceased Native Officer or Soldier has not disposed of his prize money in his life-time, or bequeathed it by Will, but has died intestate, the person or persons claiming to be his representative or representatives should be required to produce either letters of administration of his estate and effects granted to such person or persons by the High Court of Judicature at Madras, or such a certificate granted to him, her, or them, under Act XXVII. of 1869, by the District Court, as is referred to in the 2nd rule.

4. The District Court abovementioned must be understood to mean the Civil Court of the district. It must be seen that the certificate produced by the representative or representatives either extends to all debts and sums of money due to the deceased, or is expressly limited to the amount of the Prize money to which the deceased was entitled, and for payment of which his representative or representatives is or are a claimant or claimants.

(Signed) H. BROCKMAN,
Government Solicitor.

*Proceedings of the Madras Government, Judicial Department,
3rd April 1868.*

Order, No. 1216, 25th March 1868.

Ordered that the rules received with the foregoing letter from the Government Solicitor be communicated to the Military Prize Department for guidance.

2. The distribution of the Banda and Kirwee prize having been already greatly delayed, it is desirable that the disposal of applications from Native Officers and Soldiers for probate of Wills or for Certificates under Act XXVII. of 1860 should be facilitated as much as possible. The Judicial Department will be requested to bring this to the favorable notice of the Courts concerned.

(True Extract).

(Signed) H. MARSHALL, Major-General,
Secretary to Government.

No. 30. ORDER THEREON, 3rd April 1868, No. 574.

Ordered that copy of the foregoing papers be furnished to the Honorable the Judges of the High Court, and to the Civil Judges of the several districts.

(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.
" Civil Judge of

Ed. F. B. Bancroft.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

*Memo. from the Deputy Secretary to Govern-} Here enter 29th October 1867, No. 321.
ment, Military Prize Department,..... }
From the Government Solicitor..... } 9th November, .. 721.*

Memorandum from the Deputy Secretary to Government, Military Prize Department, Fort Saint George, 29th October 1867, No. 321; to the Secretary to Government, Military Department.

The Prize money of a Native Officer (one Subadar Mootoosawmy of the Sappers and Miners) having been claimed by his widow Ilandum, as registered heir to property, the Deputy Secretary to Government has the honor to request instructions as to the disposal of this and other similar claims, of which no doubt many will arise on the adjustment of Prize money to Native Infantry Regiments.

2. The deceased Subadar's share of Prize amounts to 2,500 Rupees.

3. The opinion of the Advocate General, as recorded in Proceedings of Government marginally noted, disposes of claims set up by persons not the registered heirs for property, and advises

No. 2387, dated 5th Aug. 1867, and No. 3254,
dated 30th Aug. 1867.

Government as to the rule to be laid down generally in regard to payment of Prize money; but in the Native Articles of War published in G. O. G. No. 333 of 1861, under Chapter IV Head "Effects of the Dead" Article III, it would appear that an heir "nominated in the Regimental Register" is to be considered the rightful heir to property; the question is accordingly submitted whether the Prize money in such cases can be made over to the nominated heir, certified by extracts from the Regimental Register especially as under Act XXIV of 1867, Section 31, quoted by the Advocate General, certifies from the Administration General are not obtainable by the claimant, she being a Hindu; the amount also in this case being above the sum specified, viz., one thousand Rupees.

Referred for the opinion of the Advocate General.

2. The General Regulations of the Army require that a register of nominated heirs to property shall be kept in every Native Corps, and the effects "in Camp, Garrison or Quarters" of deceased Soldiers are made over by Commanding Officers to the heir so nominated and registered. Arrears of pay and allowances are usually a portion of such effects.

6th November 1867.

From the Government Solicitor High Court House, Madras, 9th November 1867, No. 721; to the Secretary to Government, Military Department, Fort Saint George.

I have the honor to acknowledge the receipt of the Reference Order of Government, dated 6th November 1867, on a memorandum from the Deputy Secretary to Government, No. 321, dated 29th October 1867, requesting the Advocate General's opinion as to the disposal of claims of registered heirs for property of Native deceased Officers for adjustment of Prize money.

2. I have submitted the matter for the consideration of the Acting Advocate General, and
3. I now forward a copy of his opinion, and also return the Order and memorandum above noted.

OPINION.

The Registered Heir is only entitled under Article III of Act XXIX of 1861 to the residue of the effects of the deceased, which have been secured on his account by the Commanding Officer. Prize money does not come under that head. But the nomination in the register, would be equivalent to a Will, which in the case of a Hindu need not be in any particular form, and does not require probate. In this particular instance, therefore, if it is certain that the deceased left no sons, and no other Will, and had not already disposed of his Prize money, the Government would probably incur no appreciable risk in paying the Prize money to him.

2. But as a general rule I strongly recommend the Government not to make payments of Prize money to persons who do not possess a specific authority to receive it, granted by some Court or Officer, such as the Administrator General. In regard to Hindus, questions may afterwards arise whether the Will was valid as against male relations. In regard to Mahomedans a Will would only be valid to the extent of 1-3rd of the property against the legal heirs without their consent. Further very large portion of these claims for Prize money have already been sold or mortgaged to creditors, and Government would be greatly embarrassed in dealing with their claims, if payments were hastily made to persons whose representative capacity could be impeached.

(Signed) JOHN D. MAYNE,
Acting Advocate General.

7th November 1867.

ORDER, No. 4404, 13th November 1867.

Ordered that the opinion of the Advocate General, above recorded, be communicated to the Prize Department, for information and guidance.

(True Extract.)

Major General,

Secretary to Government.

To the Military Prize Department.
 .. Government Solicitor.
 .. Adjutant General.
 .. Controller of Military Accounts.
 .. Judge Advocate General.

Ed. J. E. Cashart.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

From the Offg. Depy. Secy. to Govt., Milly. Dept. Here enter 9th January 1868, No. 9.

From the Government Solicitor..... 25th February .. 110.

Memorandum from the Officiating Deputy Secretary to Government, Military Prize Department, Fort Saint George, 9th January 1868, No. 9; to the Secretary to Government, Military Department.

With reference to the opinion of the Advocate General, recorded in Proceedings of Government, No. 4404 of the 13th November 1867, it appears to be necessary that some plain rules for the guidance of Prize Committees should be drawn up by the Government Law Officers, to enable them to submit claims to prize money made by the representatives of deceased Native Officers and Soldiers. At present, the want of some such rules for guidance has the effect of detaining all claimants from obtaining the prize money due to deceased Native Soldiers, for Officers do not know what certificate is required, or what steps are necessary to be taken to obtain it. They are consequently unable to advise the claimants how to proceed, and the claimants themselves are equally ignorant on the subject, and cannot understand why, as nominated heirs to property in the Regimental Registrar, they do not receive the prize money due to the deceased Soldiers.

Referred to the Government Solicitor, with advertence to Proceedings of Government, Military Department, Nos. 3254 and 4404, of 30th August and 13th November 1867.

10th January 1868.

tary to Government, Military Department.

With reference to the Order of Government noted in the margin, and your subsequent communication of the 17th instant, I have now the honor to forward, herewith, the rules prepared by me, and approved of by Mr. Advocate General, for the guidance of Prize Committees, in the matter of claims to prize money by representatives of deceased Native Officers and Soldiers.

2. I return the order above noted.

Rules for the guidance of Prize Committees, in the matter of claims to prize money, by representatives of deceased Native Officers and Soldiers.

1. If the deceased Native Officer or Soldier, who may have been entitled to prize money, has, by assignment or otherwise (except by will), in his life time, disposed of his prize money, the claim of his representative should not be entertained.

2. If the deceased Native Officer or Soldier has not so disposed of his prize money in his life-time, but has left a will, the person or persons claiming to be his representative or representatives should be required to produce a probate of the will granted to him, her, or them, by the High Court of Judicature at Madras, or a certificate granted to him, her, or them, under Act XXVII of 1860, by the District Court, within the jurisdiction of which either the deceased Native Officer or Soldier shall have ordinarily resided at the time of his death, or, if he had then no fixed place of residence, by the District Court within the jurisdiction of which any part of the property of the deceased may be found.

3. If the deceased Native Officer or Soldier has not disposed of his prize money in his life-time, or bequeathed it by will, but has died intestate, the person or persons claiming to be his representative or representatives, should be required to produce either letters of administration of

His estate and effects granted to such person or persons by the High Court of Judicature at Madras, or such a certificate, granted to him, her, or them, under Act XXVII of 1860, by the District Court, as is referred to in the 2nd rule.

4. The District Court also mentioned must be understood to mean the Civil Court of the District. It must be seen that the certificate produced by the representative or representatives either extends to all debts and sums of money due to the deceased, or is expressly limited to the amount of the prize money to which the deceased was entitled, and for payment of which his representative or representatives is or are a claimant.

H. BROCKMAN,
Government Solicitor

Order, No. 1246, 25th March 1868

Ordered that the rules received with the foregoing letter from the Government Solicitor be communicated to the Military Prize Department for guidance.

2. The distribution of the Banda and Kirwee prize having been already greatly delayed, it is desirable that the disposal of applications from Native Officers and Soldiers for probate of wills or for certificates under Act XXVII of 1860 should be facilitated as much as possible,--the Judicial Department will be requested to bring this to the favorable notice of the Courts concerned.

(True Extract.)

W. H. D. General,
Secretary to Government.

By the Military Prize Department
Judicial Department
Adjutant General
Controller of Military Accounts

20th April 1868

Ordered that the foregoing papers be furnished to the British and Civil judges of the High Court, and to the Civil judges in the several Districts.

20th April 1868
to the British and Civil judges of the High Court, and to the Civil judges in the several Districts.

W. H. D. General,
20th April 1868

10th April 1868
to the British and Civil judges of the High Court, and to the Civil judges in the several Districts.

10th April 1868

to the British and Civil judges of the High Court, and to the Civil judges in the several Districts.