

tion of which, enacting that the Court "shall proceed as in cases of prize of war," must be understood to mean, not that in all respects the distribution of booty should be assimilated to that of prize, but merely that the ordinary course of proceeding in prize should be adopted. —All prize belongs absolutely to the Crown, which, for the last 150 years, has been in the habit of granting it to "the takers," who are of two classes, actual captors and joint or constructive captors. Joint captors are those who have assisted, or are taken to have assisted, the actual captors by conveying encouragement to them or intimidation to the enemy. The union of the joint captor with the actual captor under the command of the same officer alone constitutes the bond of association which the law recognises as a title to joint sharing. Community of enterprise does not constitute association, and is equally insufficient as a ground for joint sharing, if the bond of union, though originally well constituted, has ceased to be in force at the time of the capture. Such co-operation as will confer a title to a joint share of prize is also strictly limited to encouragement to the friend and intimidation to the enemy. The distinctions between captures on land and captures at sea, tend to show that in considering joint capture of booty, a wider application that is recognised in prize cases, must be allowed to the term "co-operation;" concerted action on a vaster scale than is feasible at sea being indispensable to a campaign. The rule of sight, too, which prevails at sea, is inapplicable on land. The general rule for the distribution of booty, to be adhered to as far as possible, in accordance with naval prize decisions, is the rule of actual capture. In the case of an army consisting of several divisions, the line of distribution, in analogy to the rule of the naval service, and in conformity to military usage, will be drawn between division and division; that division to be regarded as the actual captor, any portion of which has captured the prize. The association entitling to joint sharing must be military and not political, and must be under the immediate command of the same commander. The co-operation which is necessary as a title to joint sharing, is a co-operation directly tending to produce the capture in question. What tends

to produce the capture cannot be once for all defined, but strict limits must be observed of time, place, and relation. Services rendered at a great distance from the place of capture, acts done long before the capture was contemplated, even though they affect the whole scene of operations, cannot be deemed such co-operation as will give a title to share in booty. Indirect services will be insufficient. To entitle the commander-in-chief to share in booty, he must himself be in the field; but "to be in the field," it is not necessary that he should be actually present with the division that makes the capture; being in the field with one division, he is in the field with all. But, if troops have been placed under the INDEPENDENT command of another, the commander-in-chief, though actually in the field, does not share in booty taken by those troops. No distinction should be made in the right of the general and personal staff to share in booty; in principle, the right of both stands or falls with that of the commander-in-chief, therefore all his staff who are in the field with him are entitled to share. *Banda and Kirwee Booty*, Law Rep. 1 A. & E. 109.

[The report of the case in which the above principles were laid down by Dr. Lushington, fills 160 pages, the judgment alone occupying 140 pages. The case arose out of the military operations undertaken by the British Government in India, for the suppression of the mutiny in that country during the years 1857 and 1858. The evidence adduced consisted of six printed volumes, chiefly correspondence. The booty amounted to about £750,000, and was actually captured by the division under Major General Whitlock, but claims were preferred by the commander-in-chief, and generals commanding other divisions, on the ground that their forces cooperated in the movements of troops which led to the capture of the property. These claims were referred by an order in Council to the Judge of the High Court of Admiralty, Her Majesty having waived her right to the property, and having desired that it should be divided among the forces concerned in the operations. This was the first reference of the kind under the Statute, and our readers will find Dr. Lushington's elaborate judgment well worthy of perusal.]