M.R.O. 1—29,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 303 Press Mis.

260-261

Dated 28 : 2 : 19 86

3/4

Not to be folded or roughly handled

No. 260. Read the following letter from the Advocate General, to the Chief Secretary to Government, Fort Saint George ; dated 13th February 1866.

I do myself the honor of reporting for the information of His Excellency the Governor in Council the result of the trial of one W. Napoleon Baghley, tried yesterday by the High Court, for Criminal breach of Trust.

2. The prisoner was employed in the Department of Public Works, and stood charged with having criminally misappropriated Rupees 143-15-1, Public money.

3. In October last his accounts were examined. In November he wrote to his superior Officer that his Cash chest had been robbed. He also accused his writer, bandyman, and another of having committed the robbery.

4. He was charged by the Magistrate with having committed this latter offence of bringing forward a false charge, as well as with his own criminal misappropriation.

5. He was convicted and sentenced to four years' rigorous imprisonment.

6. Under these circumstances he was not tried for offence of having preferred a false charge, which formed the subject of a separate indictment.

7. I had conferred with the Public Prosecutor on this case before the commencement of the Sessions, and obtained a perusal of the charges and the evidence. There was nothing in the case which seemed to me to necessitate my special interference, and I therefore intimated to the Public Prosecutor my intention to leave the prosecution to him.

8. It has occurred to me since, that possibly His Excellency the Governor in Council may desire to lay down some general rule with regard to the appearance of the Advocate General in Criminal Cases in which the property of the Government is concerned.

9. In reading through the Records of this office, I find that there has been considerable change of practice in this respect. In former years, there used to be a formal communication made to the Government, and its sanction obtained before the Advocate General appeared to prosecute in any case. Subsequently, the Judges appear to have requested the Advocate General to appear in Capital Cases. This was conceded, though it was pointed out that the services of the Advocate General could not be demanded as a right. But as there was no Public Prosecutor in those days, the Advocate General was willing to assist the Judges in the onerous duty of trying a Capital Case, especially onerous perhaps when the prisoner was defended.

10. After this, it appears to me that without any communication with Government on the point, the Advocate General has exercised a discretion in determining what Cases he should appear in, reporting the result after each Sessions of all Cases in which he was concerned.

11. Practically he probably appeared in all Cases in which Public money was concerned, however small the amount, or ordinary the facts of the Case.

12. There was then no Public Prosecutor, and in the absence of this important Officer, discretion was perhaps most soundly exercised by appearing in *every* Case in which the property or money of the Government formed the subject of the charge.

13. Now that the office of Public Prosecutor has been instituted, it appears to me desirable that the Government should lay down some definite rule for the observance of the Advocate General by directing him either to use his own discre-

recall yours

tion, or to appear in all Cases in which the Public money or property is concerned, without reference to the amount or facts.

14. In Capital Cases the practice appears to me to be now well established. Formerly the Advocate General used not to appear in such Cases, unless there was something very heinous or aggravated, or of more than usual public interest, in the crime. And now that there is a Public Prosecutor, such a rule might perhaps be reverted to. But I am not prepared to advise it. The presence of the Advocate General, acting directly and avowedly on behalf of the Crown in such Cases, appears to me to be likely to produce a good effect towards the repression of that class of crimes.

No. 261. ORDER THEREON, 28th February 1866, No. 303.

Communicated to the Department of Public Works.

2. The Governor in Council is of opinion that the Advocate General may fitly be left to exercise his own discretion in regard to the Cases, not being Capital Cases, in which he should appear for the prosecution. The Government agree with Mr. Norton that the present practice, according to which the Advocate General conducts the prosecution in all capital Cases, should be adhered to.

(True Extract).

Chief Secretary.

To the Public Works Department.
" Advocate General.

xd. R. H. Lee.

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

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Public Works Dept
Advocate General } despd 5/3

18-7-11
22-7-12
19/8/67
20-1-22

Legl 1866. *Department.*

No. 303.

PROCEEDINGS OF GOVERNMENT.

Dated 26 February 1866.

260-261.