M.R. G. 1—39,000—16-10-99.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	3091	Press Mis.
165-166 Dated	12-12- ~~19~~ 1868	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 12th December 1868.

No. 165. Read the following Proceedings of the Madras Government in the Judicial Department:—

Communicating letter from the Advocate General, reporting the result of a case prosecuted by him at the last High Court Sessions, connected with the Post Office, and calling the attention of all Heads of Offices at the Presidency to the order in 1856, laying down the course to be observed by Government officials in instituting criminal prosecutions. } (Here enter 30th November 1868, No. 1,817.)

No. 166. ORDER THEREON, 12th December 1868, No. 3,091.

Miscellaneous.

Communicated to the Board of Revenue, Director of Revenue Settlement, Superintendent of Revenue Survey, Officiating Conservator of Forests, Inam Commissioner, and Superintendent Chinchona Plantations.

(True Extract.)

(Signed) F. BRANDT,
Under Secretary to Government.

To the Board of Revenue,
" the Director of Revenue Settlement,
" the Superintendent of Revenue Survey,
" the Officiating Conservator of Forests,
" the Inam Commissioner,
" the Superintendent Chinchona Plantations, } With Proceedings Judicial Department, No. 1,817.

Exd. S. T. Augustin.

Govt. of 1868 Supplies.

To

REVENUE.

THE BOARD OF REVENUE,

&c., &c., &c.

Dated December, 11th.

Read.

G. O., 11*th* December 1868, No. 3,091.

DISTRICT.

Nos. 165-166.

Criminal prosecution against Public Ser-
vants.—Order regarding the course to be pursued
in their institution, communicated to Officers con-
cerned.

Proceedings of the Madras Government, Judicial Department,
30th November 1868.

No. 269. Read the following letter from the Advocate General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 4th November 1868.

I have the honor to report, for the information of His Excellency the Governor in Council, that I yesterday appeared to prosecute the prisoners charged with breaking open a letter, with intent to appropriate its contents, under Section 48, and with carelessness, endangering the said letter, under Section 47 of the Post Office Act XIV of 1866.

2. The first prisoner, Danasoo Chetty, was the Registrar of registered letters. It was his duty to register letters, and enter their registry in his book. The second, Kamoo Chetty, and the third, his Assistant Bauboo Row, then, the one or the other, received such letters from the first prisoner for despatch, giving him a receipt for the same. This was the course of duty.

3. The first prisoner, on the 17th September 1868, received a letter for registry from the Madras Bank, addressed to the Commanding Officer of the 36th N. I., Nagpore, and containing orders for 5,000 Rupees. Having duly registered it, his account was that he took it to the second prisoner, who, being busy, directed him to give it to the third. This he did, but neglected to get his book initialed in token of having parted with the letter.

4. On the following morning, when the Inland letter box was opened, the third prisoner, who was present, in the ordinary course of his duty, brought the letter to the head clerk, saying he had found it among the letters in the Inland letter box. It had then been tampered with. It had evidently been opened and closed again. Its contents were safe. Had they been Bank Notes, instead of unavailable orders, it is not too much to surmise that a different fate would have awaited the envelope.

5. On these facts the Post Office authorities instituted a prosecution before the Magistrate, without any previous communication with the Government Solicitor or myself; and it was not until the 5th of October, when the whole case had been gone into, that Mr. Brockman received a letter from the Head of the Post Office, advising him of the steps taken, and requesting him to attend at the Police, as the prisoners had engaged the assistance of Attorneys.

6. I submit, for the consideration of His Excellency, whether Government officials ought to take upon themselves the institution of criminal prosecutions without, in the first instance, communicating with, and consulting the Law Officers of Government. Several inconveniences may arise. In the first place the law may not have been infringed, though the Head of a department may think otherwise; then it is nearly certain that the investigation before the Magistrate will not be so searching and complete as if it had been conducted by the Government Solicitor; and, lastly, the Law Officers may have, as in the present instance, to appear in support of a case, which, in their opinion, must necessarily fail at the trial. It would produce a very bad effect if Government did not appear to support a prosecution brought by a Head of a department against his subordinates; while, on the other hand, I have a very strong opinion against the expediency of the Government appearing in Court in any case in which there is not a *prima facie* probability of success.

7. All these inconveniences would be avoided by the very simple measure I have suggested, of a reference to the Government Solicitor before criminal prosecutions are commenced.

8. The presiding Judge, Sir Adam Bittleston, expressed, while I was opening the case for the prosecution, and subsequently ruled, that Section 4 of the Act applied only to the conveyance and delivery of letters *after* they had left the Post Office. I think his view is quite sound; so does the Public Prosecutor, Mr. Mayne.

9. He also held that there was no evidence against the second prisoner—nothing to show that the letter had ever reached his hands, and directed a verdict of not guilty to be returned as against him.

10. He left the case of the other two prisoners, on the 48th Section, as to the breaking, to the Jury, who at once returned a verdict of not guilty.

11. If, as I believe, the first prisoner after registering the letter, and so charging himself with it, delivered it to the third, it is pretty clear *he* could not have broken it open. His error consisted in not taking a receipt for his own security. There is more suspicion against the third prisoner. The letter was last in his possession; he brought it to notice next morning, at which time it had been tampered with; but there was nothing beyond mere suspicion even in his case.

12. All the prisoners had served for many years in the Post Office, and had up to the present charge borne good characters.

No. 270. ORDER THEREON, 30th November 1868, No. 1817.

Communicated to the Postmaster General.

2. With reference to the Advocate General's remarks in paragraphs 6 and 7 of his letter, as to the inconveniences arising from the practice of Government officials instituting criminal prosecutions without, in the first instance, communicating with, and consulting the Law Officers of Government, the Governor in Council observes that an order on this subject was issued from this Department in 1856. In that order it was directed that "Heads of Departments at the Presidency, before bringing before a Police Magistrate any case connected with malversation in their offices, will lay the whole matter before the Honorable Company's (now the Government) Solicitor, and, should he concur in the propriety of the prosecution, will leave the direction of the business in his hands."

Extract Minutes of Consultation, dated 14th May 1856, No. 509.

3. The Governor in Council resolves, therefore, to call the attention of all Heads of Offices at the Presidency to the above order, with the view of enforcing a more general observance of its requirements for the future.

(True Extract).

R. S. ELLIS,
Chief Secretary.

To the Postmaster General.
" Advocate General.
" Heads of Offices at the Presidency.

Forwarded for information and for communication to Officers subordinate to that Department.

Ed. J. Tulloch.

Revenue Dept.

Govt. of Madras. 1868

No. 3836.

JUDICIAL.

To

THE POSTMASTER GENERAL.

&c., &c., &c.

Dated November, 30th.

Recd. 8th Dec. *Encl.*

G. O., 30th November 1868, No. 1817.

NOVEMBER.
Nos. 269-270.

Communicating letter from the Advocate General, reporting the result of a case prosecuted by him at the last High Court Sessions, connected with the Post Office, and calling the attention of all Heads of Offices at the Presidency to the order in 1856, laying down the course to be observed by Government officials in instituting criminal prosecutions.

No 3091 12 Dec

With Order

No. 3091.

Communicated to the Board of Revenue, &c. Rector of Revenue Settlement, Superintendent of Revenue Survey, Officiating Conservator of Forests & Inam Commissioner, and Superintendent Cinchona Plantations

12th Dec 1868

8 Copies to the Pres. Bd of Rev
8 " " Collr of Bellary
8 " " Collr of Rajahmundry
8 " " Offg Conservator of Forests
8 " " Inam Commr
1 " " Superintendent Cinchona Plants

with Proc. J. Dec 12 1868 Dept 12