O/ 2,000—5-2-95.

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4559

DATED 21st November 98

[Despatch Abstract.]

Forwarding G. O. Judicial Department, Commr
ication to the Board of Revenue and to all Dt. Magis-
trates for information and guidance the opinion
of the Advocate-Genl on the question of the proper
course to be adopted as to the disposal of certain
criminal appeals, the records in which
were stolen from the office of the Deputy Collector
Jammalamadugu division, Cuddapah District
whilst the appeals were pending.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Note for the Under Secretary

As Judicial order no 1688 of 31st October 1898 (Exec. 7751 of 1898) is addressed to the Board of Revenue (Land Rev) through the Revenue Department, orders are requested as to whether the order perhaps on the docket may be substituted by the following endorsement:— "Forwarded to the Board of Revenue"

15.11.98

15/11/98

Seen. Please see

Endt suggested

by

16/xi/98

Be Non Secy

Pl. instruct

accordingly

Pl. withdraw

Revenue Secy

Revenue 1898 Department
Current No. 1751.

Government (1898) of Madras.

JUDICIAL.

Recd. 14 Nov
Regd. 15 "
} 1898.

Enclosures
Spare copies

G.O., No. 1688, 31st October 1898.

OCTOBER.

Recorded
8/2
14/11/98

Endt. [illegible] No. 4509 dtd. 12th Nov. 1898.
Forwarded
16 Xbr 98

Disposal of Cases in which Records are Lost.

Communicating to the Board of Revenue and to all District Magistrates, for information and guidance, the opinion of the Advocate-General on the question of the proper course to be adopted as to the disposal of certain criminal appeals, the records in which were stolen from the office of the Deputy Collector, Jammalamadugu division, Cuddapah district, whilst the appeals were pending.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—again the following paper:—

G.O., Mis. No. 1431, Judicial, dated 14th September 1898.

Read—the following G.O., Mis. No. 3614, Revenue, dated 3rd September 1898.

Read— again G.O., No. 1689, Revenue, dated 21st April 1898.

Read—Board's Proceedings, Mis. No. 831, dated 22nd March 1898.

Read—letter from the Collector of Cuddapah, No. 172-Magt., dated 8th March 1898.

6. . . . It is not clear from his report whether the records in appeal cases include the lower courts' records. The cases having all been posted for hearing, it seems probable that the records of the lower courts were also lost. If this be so, and if the parties in the two cases referred to by the Deputy Magistrate do not possess copies of the records, it is not apparent how the appeals can be disposed of. Under section 423, Criminal Procedure Code, the perusal of the records is an essential condition precedent to the disposal of the appeals—*vide* also I.L.R., XIII All., 171. The case reported in 8-W.R. 38 does not seem to apply to cases in which the entire records are lost. . . . .

Read— also reference from the Board of Revenue (Land Revenue), No. 776, dated 15th July 1898, submitting to Government the further report received from the Collector of Cuddapah regarding the theft and house-breaking in the Jammalamadugu Deputy Collector's office.

Read—letter from the Acting Collector of Cuddapah, to the Secretary to the Commissioners of Land Revenue, dated 7th May 1898, Dis. Cur. No. 172-Magl.

5. . . . As regards the latter, the appeal records as well as the records in the lower courts have been lost. Copies of judgments of the lower courts, having been filed with the appeal petitions which are among the records lost, are not available. The copies with calendars submitted to this office have been destroyed under rule 174, Criminal Rules of Practice except in one case. The Deputy Magistrate says that the appellants in these cases have filed copies of depositions. It thus appears that in one case copies of judgment and depositions in the lower court are available, while in the remaining three, copies of depositions alone exist. I do not think it would be legal to dispose of even the single appeal in which copies of judgment and depositions are available, for, according to section 423, Criminal Procedure Code, the record must be perused which means something more than the judgment and depositions. I am inclined to think that in all these cases, the lower courts should be ordered to re-try the cases. I request orders. . . . .

Extract from Board's Reference, No. 776, dated 15th July 1898.

7. . . . In regard to the four appeals, the Collector states that the appellate records, as well as the original records of the lower courts including the judgments of the said courts, have been lost. He raises certain legal questions in regard to the disposal of these appeals, which will require consideration in the Judicial Department.

Order—Mis. No. 3614, Revenue, dated 3rd September 1898.

The Government agrees with the Board of Revenue in considering that the Deputy Collector and Magistrate is personally responsible for the loss of the permanent advance and that the amount stolen (Rs. 25-10-0) should be recovered from that officer. The Collector should take suitable notice of the conduct of the magisterial clerk through whose carelessness the theft occurred.

2. The proposal in paragraph 6 of the proceedings read above is approved.

3. Paragraphs 5 and 7 of the proceedings will be dealt with in the Judicial Department.

(True Extract.)

(Signed) G. S. FORBES,
Secretary to Government.

To the Board of Revenue (Land Revenue).
" Accountant-General.
" Judicial Department.

Order—Mis. No. 1431, Judicial, dated 14th September 1898.

The Government agrees with the Board's remarks in paragraph 5 of its proceedings, and paragraph 7 will be referred to the Advocate-General for favour of opinion.

(True Extract.)

(Signed) G. STOKES,
Chief Secretary.

To the Board of Revenue (Land Revenue),
through the Revenue Department.
" Government Solicitor.

Read—also the following paper:—

From the Government Solicitor, Madras, dated 14th October 1898, No. 460.

Abstract.—Forwarding the following opinion of the Advocate-General, dated 14th October 1898:—

OPINION.

The question in this case is as to the proper course to be adopted with reference to the disposal of four criminal appeals, the records in which were stolen from the office of the Deputy Collector of Cuddapah whilst the appeals were pending. I observe it is stated in paragraph 7 of the Proceedings of the Board of Revenue, dated 15th July 1898: "In regard to the four appeals, the Collector states that the appellate records, as well as the original records of the lower courts including the judgments of the said courts, have been lost." But it would appear from the Collector's letter, dated 7th May 1898, that, although the appeal records as well as the records in the lower courts have been lost, in one case copies of the judgment and depositions in the lower courts are available, whilst in the remaining three cases copies of depositions exist.

2. Under section 423 of the Code of Criminal Procedure the "perusing of the record" by the appellate court is no doubt a condition precedent to the exercise of its appellate jurisdiction. But I do not think it is possible to lay down any hard and fast rule as to what constitutes the "record" for the purposes of this section. It is suggested that it means something more than the judgment of the court below and the depositions. In many cases, no doubt, this should be so. But in my view the question of what constitutes the "record" for the purposes of this section depends upon the nature of the case. If the Appellate Judge, after perusing copies of the judgment and the depositions, is of opinion that he is in possession of sufficient information to enable him to dispose of the appeal, it seems to me that the requirements of the section are satisfied. I am unable to find any authority which throws any light upon the point, but this appears to be a reasonable construction of the section.

3. This being my view, I think it is for the Appellate Judge to decide, with reference to each case, whether he is in a position to dispose of the appeal. As regards the case in which copies of the judgment and of the depositions are available, if the Appellate Judge, after perusing the judgment and the depositions, is satisfied that he is in possession of sufficient information to enable him to dispose of the appeal, I think that he should hear and dispose of it. If he is *not* so satisfied, the only course open seems to be to order a new trial of the case. As regards the three cases in which no copies of the judgments are available, a new trial appears to be necessary.

(Signed) C. ARNOLD WHITE,
Advocate-General.

ORDER—No. 1688, Judicial, dated 31st October 1898.

The Advocate-General's opinion will be communicated to the Board of Revenue and to all District Magistrates for information and guidance.

(True Extract.)

for *Chief Secretary.*

To the Board of Revenue (Land Revenue),
through the Revenue Department.
„ all District Magistrates.

Exd. P. Seetharam.

*When given for copying*_____
*When copied*_____
*When examined*_____ 189
*When signed*_____

READ AGAIN G.O., No. DATED
189 ,

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT.								
STATEMENT WITH DITTO.								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

N.B.—
A = Copy in full.
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