M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1784	Press ~~Mis.~~
122-123		
Dated	18.11.1863.	~~H~~ .

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Not to be folded or roughly handled

No. 122. Read the following letter from H. G. SMITH, Esq., Acting Magistrate of Cuddapah; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Cuddapah, 31st October 1863, No. 34.

I have the honor to forward* translation of Plaint in a suit filed against me in the Cuddapah District Moonsiff's Court by one Arava Subbrammhaneyam of Cuddapah for the recovery of Rupees 64, being loss said to have been sustained by the removal of pyals which were encroached on the public road, and Draft Answer which I propose to be filed in the said Court for the approval of the Government, together with translation of an order which I have issued to the Sub-Magistrate of Cuddapah town on the subject, and request that you will obtain the sanction of Government to defend the suit at the public expense.

* Vide foot-note to Board's Circular Order, 19th April 1827, at page 71 of Board's Circular Order Book, Volume 1.

2. Three months' time has been allowed to file the answer which will expire by the 7th January 1864.

Translation of Plaint No. 716 of 1863 on the file of the District Moonsiff at Cuddapah, to the District Moonsiff's Court of Cuddapah, dated 6th October 1863.

Complaint preferred by the Plaintiff Arava Subbrammhaneyam (Goomastah in the Civil Court) residing at Mochimegapett, a suburb of Cuddapah town, against the Defendant H. G. Smith, Esq., Collector of Cuddapah, residing at Nagarazpett.

1st. I am living in a house built by me long ago at Mochimegapett, with two pyals in front on either side of the outer door. These pyals were constructed with slabs of stones, chunam, &c. No obstruction or loss happened either to the public road or community by those pyals or by any other place belonging to me.

2nd. These indisputable pyals, which support the wall of my house, do not at all interfere with the public road; but the Defendant issued an order to have them removed, considering the same to be an obstruction on a suggestion of some (unknown) person.

3rd. I went to the Defendant immediately after the intelligence reached me yesterday, and represented to him, by a petition, all the above circumstances. When he ordered, first, that he would decide the case by a punchayet; but again (why it is not known) said that it is not right and will not be allowed. It was not proper to pass such an order. Should the pyals constructed by me be considered as a nuisance either to the public or Government, a notice ought to have been given to me according to the rule, and on failure to show cause, he ought to have exercised his authority. The Defendant did not act according to the law and he will be responsible for the loss, &c., which I would sustain thereby. In case the pyals be removed, my house will be deprived of its beauty and a loss will be the result, and further, the wall will be cut through during the monsoon, and the house will fall down.

I have therefore complained against the Defendant. Rupees sixty-four is the amount of loss which I sustain on removal of the two pyals existing on the north and south of the outer door of my house situated at Mochimegapett within the following limits.

East of the public road; west of the backyard of the house belonging to Gundla Garadappa, &c.; south of the wall, &c., of Simhadry Pantalu; north of the road leading to the house of one Dathiah.

I request that a decision may be passed against the Defendant not to remove the said pyal valued sixty-four Rupees, and also for the payment of my costs.

(Signed). ARAVA SUBBRAMMHANEYAM.

I hereby declare that what is stated herein is true to the best of my information and belief.

(Signed) ARAVA SUBBRAMMHANEYAM,
Plaintiff.

Filed, 6th October 1863.

Transcript of the Petition is granted as requested.

Three months' time has been allowed.

(True Translation.)

8th October 1863. (Signed) H. G. SMITH,
Acting Magistrate.

Draft of the proposed answer of the Acting Magistrate H. G. SMITH, Esq., Defendant in Suit No. 716 of 1863, on the file of District Moonsiff's Court of Cuddapah.

1. H. G. Smith, Esq., Acting Magistrate of Cuddapah and Defendant in this suit, denies that the plaintiff would sustain any loss by the act complained of.

2. A plan of the spot is submitted, to which he requests that reference may be made.

3. In regard to the 1st and 2nd points mooted in the Plaint, he (Defendant) pleads that the Plaintiff bought the spot on which his house stands only a few years back from one Kommarazuvaru; that the place occupied by the pyals, in question, does not appertain to the land purchased; and that these two points will clearly be substantiated before the Court if the document (then executed regarding this land) be ordered to be produced for reference. Further, if the place be inspected personally by the Court, it would clearly be seen, as specified in the plan, that a portion of the road-way was encroached upon by building pyals, that these pyals (one of 3 yards long $\frac{3}{4}$ yard broad, and the other of $1\frac{1}{2}$ yard long with the same breadth,) were recently constructed without any right to the danger of the public, and that the wall of the Plaintiff's house, including some land, projects into the road. The Court will also observe that the width of the road is 10 yards at the point B, 8 yards at C, and 4 yards at D (in front of the Plaintiff's house) where these pyals were newly constructed; and that the width beyond the Plaintiff's house is again 7 yards at the point E.

4. In regard to the 3rd point, the Defendant pleads that on his personal inspection of this road, under reference, he considered it expedient to exercise his authority as a Magistrate in expediting the immediate removal of the dangerous obstruction caused by these pyals which occupied a portion of the road-way through which the heavily loaded* traffic bandies pass, day and night, to join the Trunk road.

* Grain, Cotton, &c.

5. The Court will further see that there is scarcely any way even for one bandy (loaded with large cotton bales) to pass easily at that spot where it is most necessary to have ample room for the free passage of two carts when they meet, and that therefore it became imperative to pass an order to cause these pyals (which were unlawfully built at such a place) to be removed for the convenience of the community.

That although Section 283 of the Indian Penal Code authorizes the Magistrate to fine any one guilty of obstructing a public thoroughfare to the extent of 200 Rupees, yet the Defendant after inspecting the said place at the request of some of the inhabitants ordered the pyal to be removed by the prisoners, instead of subjecting the Complainant to a fine.

And further, that instead of ordering the Police to exercise the power vested in them by Section 48 of Act XXIV of 1859, Defendant gave due warning to the Complainant, who, notwithstanding the warning given him by the Town Sub-Magistrate, refused to take away the pyals.

That the Complainant suffered no damage whatever, as the material of the pyals has been placed against his wall.

That the suit filed by the Plaintiff is contrary to the provisions contained in Chapter† XX of the Code of Criminal Procedure.

† Section 314.

Under these circumstances the Defendant prays the Court to dismiss the Plaintiff's suits with costs.

(Signed) H. G. SMITH,
Acting Magistrate.

No. 123. ORDER THEREON, 18th November 1863, No. 1784.

The Governor in Council authorizes the defence of the suit referred to in the foregoing letter being undertaken in the first instance at the public expense. On a copy of the decree being furnished, it will be determined whether the costs, if any, shall be borne by the Government, or not.

2. The Draft answer submitted is approved.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

Translation of an order No 19 issued by H. C. Swaris Esquire Mahatma Magistrate of Cudalapah to K. Sinkalinga-naren Pantulu Town Sub Magistrate of Cudalapah.

Inspected the Town this day. An old well is situated on this side of Mochimiyapatti, and it was said to belong to one Annapa Subbaramanchanjam. It seems to be a dangerous and useless well likely to cause injury to the people, and a tree which has fallen over the well is left untouched. Therefore you should cause it to be filled up entirely on a previous notice of 10 days, or have it strongly fenced with a stone wall within the same period. If the owner thereof fail to do so, a heavy fine will be imposed on him and the expenses attending the filling up of the same will be collected from him. You should further cause, at once, to be removed, according to rule No. the two pyals raised by the individual named + Arva Subbanna in the margin in the roadway encroached upon by him at the place where the road is now being repaired by convicts at Mochimiyapatti. You should inform him that it was not right to occupy the roadway.

You are hereby requested to carry these orders into execution and report the result.

Camp Cudapah. Dated 2 October 1863.

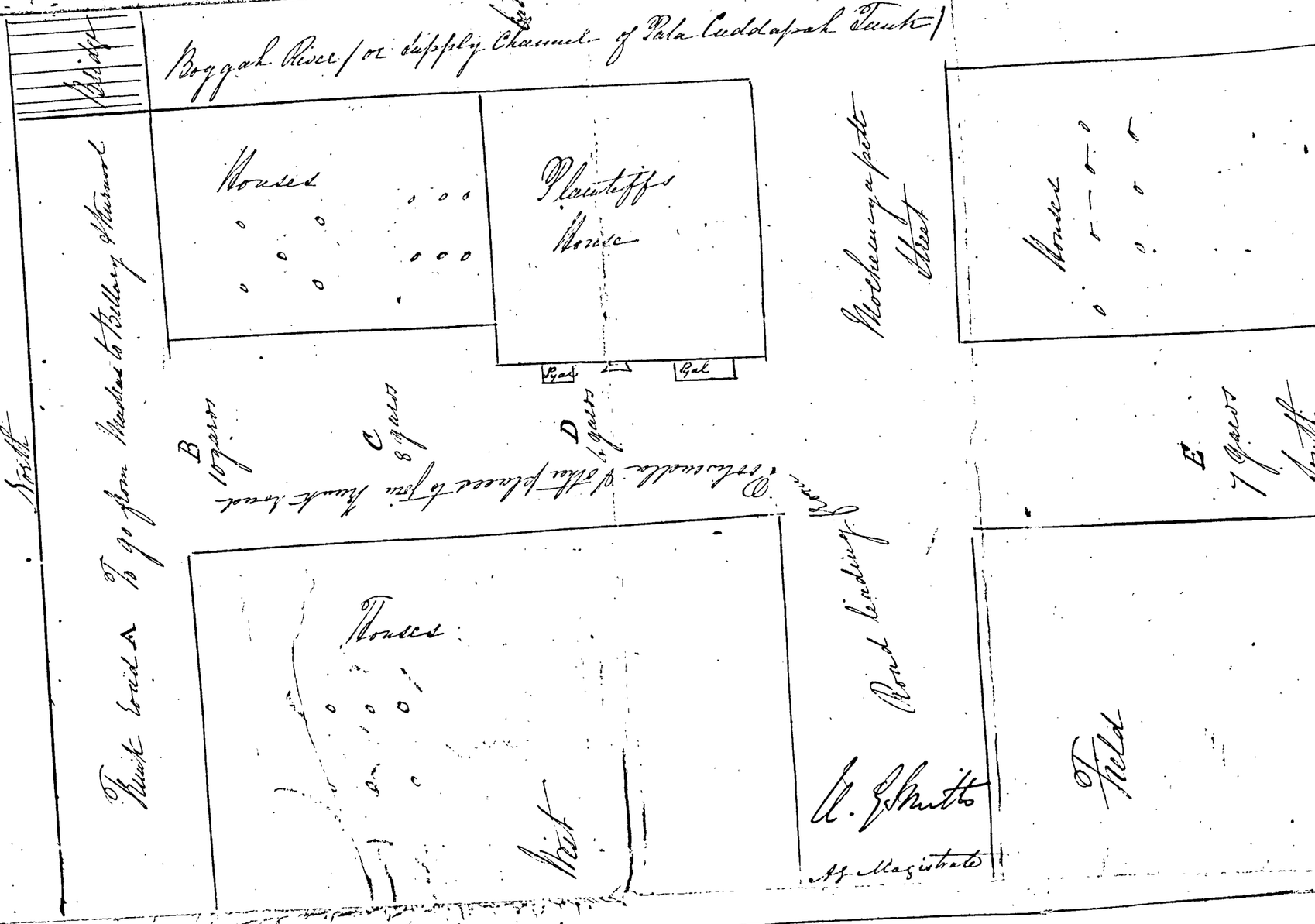
P. S. You should understand

that is your duty to prevent any encroachment of public places having payable taxes

(signed) H. A. Smith
Acting Magistrate

(Seal of Foundation)

A. J. Smith
Acting Magistrate

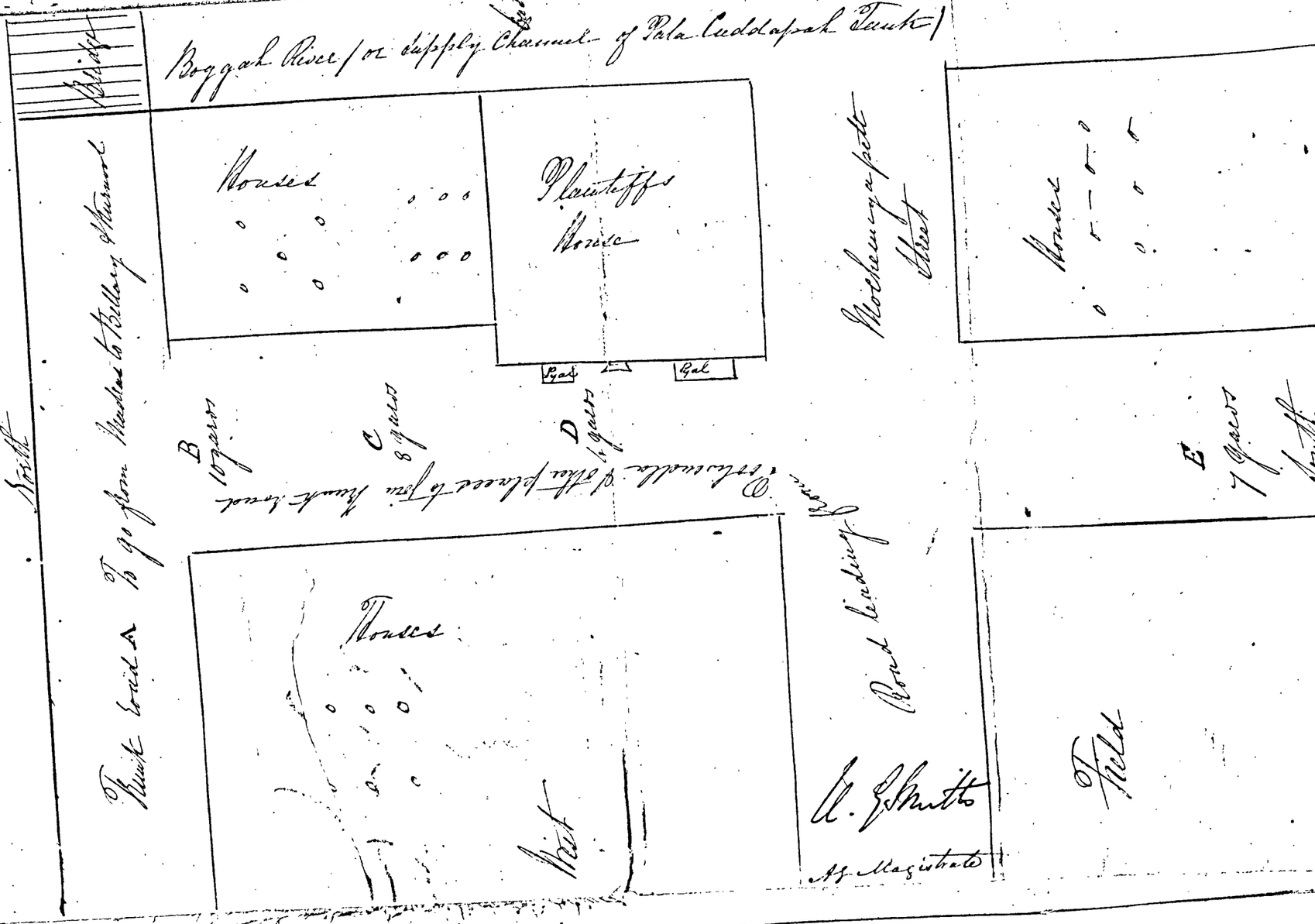


Proceedings Nos. 2 to 4 Inclosure No. 4
In a Letter from the Acting Magte of Cuddapah dated 31st October 1863 No. 34

Translation of an order No. 19 issued by H. J. Smith Esquire Acting Magistrate of Cuddapah to the Sukkeiminasaru Pantulu Town Sub Magistrate of Cuddapah

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Proceedings Nos. 2 to 4 Inclosure No. 4
In a Letter from the Acting Magte of Cuddapah dated 31st October 1863 No. 34

Translation of an order No. 19 issued by H. J. Smith Esquire Acting Magistrate of Cuddapah to the Sukkeiminasaru Pantulu Town Sub Magistrate of Cuddapah

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Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Magistrate of Cuddapah
(Revenue Inter 31st Oct. 1863. No 34)

Order thereon 18th November 1863 No 1781.

The Governor in Council
authorizes the defence of the
suit referred to in the fore-
going letter being undertaken
in the first instance at the
public expence. On a copy
of the decree being furnished,
it will be determined whether
the Costs, if any, shall be
borne by the Government or
not.

2. The Draft Answer sub-
mitted is approved.

To The Magistrate of Cuddapah dated 25th

(Revenue Department No 3
Inam Letter from the
Acting Collector of
Cuddapah dated the
31st October 1863 No 34)

Inam.

Read Order
25 Nov 1863

Rec. of Mss

Archival 1863. Copiarb

No 1784

Proceedings of Govt

Ft. 202 of 63.
Ft. No 455 of 67.
dated 18th October 1863.

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