

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2456.

Dated 27th Nov 1895.

INDEXED.

[Despatch Abstract.]

COMPLAINTS AGAINST MR. J.A. CUMMING, JOINT MAGISTRATE, TUTICORIN.

Passing orders in connection with the warrant issued by Mr. J.A. Cumming, Joint Magistrate, Tuticorin, for the arrest of Mr. Graham of the firm of Messrs. Adamson MacTaggart and Co.

met.

BACK PAPERS.

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

FURTHER PAPERS.

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

[$\frac{G}{9}$]
2,000-15-8-95.

Current No. 5144
DEPARTMENT.

From

R. Thompson Esq.

Intim

No.

Dated 30-10-25

Received 1-11-25

Enclosures ^{Rep} 4-11-25

SUBJECT.

Complaining against
the Jt. Magte Intimorin,
for the procedure he
took in the case of
his client on Mr. Graham

5778/95
The Honble J. G. Price C.S.I.
Chief Secretary to Government



Sir,

I have been instructed by
Mr. D. Graham of the Firm of
Adamson Macleffart & Co.
Agents of the British India Co.
having at Inticorie, & being
your notice the following for
with a view to their being
before His Excellency the Gov.
in Council.

Mr. Graham was dis-
missed in the Court of the
Magistrate, Mr. J. A. Curran
by a bandy driver for an as-
sault, namely, for
the bandy driver a cut with
whip, as he was driving
ahead along the Be

7th Oct, & Mr. Graham was served
with a summons for that day, but
as he had to appear as a witness
in the Sub Magistrate's Court on
the same day, of which fact he
apprised the Joint Magistrate, Mr.
Graham could not be present
in the Court of the latter on the
7th particularly as the Joint Mag-
istrate is very irregular in his
attendance at Court. The case
was then fixed for the 24th Oct for the
Joint Magistrate, & Mr. Graham
appeared on the 24th & waited
in the Joint Magistrate till
2 p.m. but the latter did not
come to Court at all (a not un-
usual event), & it turned out
thereafter that the Joint Mag-
istrate was not in Jaitcorin on
that day.

It is for the Joint Magistrate to
show how he came to book
the 24th when he must
be would not be in

to waste so much of his valuable
by a fruitless attendance in Court.

The case was then taken up on the
25th, & the Joint Magistrate sent a
chit to Mr. Graham asking him
to come over "at once", but Mr. Gra-
ham was ill in bed with a de-
vere cold & fever, & he wrote from his
bed to this effect across the Chit
of the Joint Magistrate, & also in-
formed him that he attended Court
the previous day, & waited for him
till $\frac{1}{2}$ past 5 p.m. Mr. Cameron
upon this issued a warrant on the
25th for the arrest of Mr. Graham
who was ordered to appear in
the 29th Oct.

This warrant was served
on Mr. Graham at about 7 p.m.
on the night of the 28th, when he
was arrested publicly at a
in the presence of all the men
then present & marched off to
the Police Station!

It is respectfully submitted
conduct of this kind on
of the Joint Magistrate.

W. C.

and the interests of justice would not
in the least have suffered, if the Joint
Magistrate had again summoned
Mr. Graham to appear on the 29th,
instead of adopting the extraor-
inary course of
issuing a warrant for his arrest for
that date.

Mr. Cumming is very irregu-
lar himself in attending Court.
He only comes on alternate days,
& even then late in the afternoon,
this irregularity has become such
a nuisance that attention has
been drawn to it in the News-
papers, notably "The Herald".

It is respectfully submitted that
Mr. Cumming has exhibited so
much discretion in adopting the course
he has commented on that it becomes
a serious question whether he should
again be entrusted with the
honorable duties of Joint Mag-
istrate, particularly in any place
of great importance to Inti.

I have the honor to be,

18/9/5
The Honble J. J. Price Esq.
Chief Secretary to Government

South Sea

In continuation of
letter of 8th inst, I have the honor
to forward herewith the Summons
which was issued by the Chief
Magistrate in which he was ar-
rested.

You will observe the slipshod
manner in which the Summons
is prepared. My check is de-
scribed as "Mr. Graham Esq
connected with A. J. J. J.
Margrochis" This I am sure
that the Joint Magistrate
has no authority to do.

in its intent.

My client's firm is well
known every one in India
Q. Adamson Macleffart
Comp British India Agents
Their office is next door
to that of the Joint Magis-
trate. The Summons shows
the extreme ignorance &
carelessness that prevail
among the clerks of the Joint-
Magistrate's Office. The doc-
ument thus prepared amounts
to nothing more than a shielded
insult to my client, as he
has my name & address. If
this is taken as an index
etc, to the incompetency of the Joint-
Magistrate's staff, the sooner
they are dispensed

Department

In conclusion I beg to
draw attention to the fact ap-
pearing in the Summons naming
upon Mr. Graham "appeared
in person or by pleader". This
shows how unreasonable it
was for the Joint Magistrate
to issue a warrant for the
Graham when the presence
of the Defendant was not
even necessary.

I am the honor &c,
Wm H. Sir,
Your most Obedient Servant
Reginald Thomson
Counsel for W. C. H. C.

When he was accused.

ounce.
It will be observed that this
is the only case in which

in its interests.

Mr. Q. Thompson Esq.

To Counsel for Mr. Graham

Intervention

5177 + 5178/95

Order
min

Para. IV C. P. Rules.

Dated 31-10-95

4.11.95

Recd 2-11-95

Repd 4-11-95

Encl-1

Subject

Complaining against
the Jt Magt, Intervention

Order Rules please

Things are very

189

5321

5177 + 5178/95

Department.

TINNEVELLY District Magistrate's OFFICE.

From

The District Magistrate

of Tinnevely

To

The Chief Secretary to

Government
Judicial Dept.
Fort St. George.

Dated 7 November 1895

Received 903
No. 2906
magt

ENCLOSURES. 3 files + one paper

SUBJECT. 28

Submitting the Joint Magistrate
Mr. Cunningham's report on a notice
of writ given him for issuing a
warrant against Mr. Graham, the
local representative of Adamson, Mac-
gregor & Co. of Tuticorin in order to
procure his attendance in S. C. 5/95
on his file, in which he was the accused.

AM
for orders.

Please see also the two
petitions

W. S. Kings

Mr. Cunningham seems to have done
things in rather a slipshod
way. If the statement of
the Sub-Magistrate the Inspector
to Clerks of the Jt Magt. Office
are true Mr. Graham has
been misrepresented and
mistaken matters. Whether
what he has done is protected
by Act 18 of 185 is a question
which can only be decided
when it is known what evidence
on either side is held to have
been proved. If Mr. C's act
of the matter is accepted he
would appear to be protected.
The notice is not one in accordance
with Section 424 Act 7C
It is very possibly a
boomer.
It will be observed that this
is not the only case in which

1895.

Tinnevely Joint Magistrate's
Collector's Office.

FROM J. A. Cumming Esq.
The Joint Magistrate
Tinnevely

To
The District Magistrate,
Tinnevely

Dated

Despatched

November 1895.



547
95
37/16

Former Reference.

Sir,

80

I have the honor to forward
a notice given me on 30th ultimo
by Mr. Thomson Counsel for Mr.
Graham of his intention to sue
me for Rs 5000 damages for
issuing a warrant against
him "without due care"

The facts are as follows:-

On the 15th ultimo, Mohideen Kadi Sahib charged Mr. Graham under S. 323 I.P.C. The Case was posted to 19th idem. Mr. Graham was duly served with Summons for that date, but endorsed it "am already Summoned to attend another Court for to-day and Cannot attend". This referred to the Sub Magistrate's Court.

This was not a reasonable excuse for failing to attend my Court. The Sub Magistrate's Court is some 200 yards only from mine and Mr. Graham's house is next door but one to my Court. Further he could not have been engaged in that Court all day as the Sub Magistrate was a witness in C.C. ⁶⁸/₉₅ in my Court that same day, and in any case if he had mentioned to the Sub Magistrate that he was Summoned to my Court, the Sub Magistrate would certainly have arranged to allow him to do so.

5. Had Mr. Graham been a native accused, a warrant would almost certainly have issued then. I did not

ever issue a warrant, but issued a second Summons

6. On the 24th, I missed the train at Tinnevely and sent a telegram (enclosed) to my head Clerk at Tuticorin - "adjourn cases to-morrow."

7. On the 25th, this case was called. Mr. Graham did not appear. I sent a chit "Come round please. I'm waiting for you". Mr. Graham wrote on it "Regret Cannot. I am sick in bed - waited all yesterday at your Court."

8. This chit was merely a reminder and of no sense a legal process. I had some doubt whether Mr. Graham was in bed, as it took over $\frac{1}{4}$ hour to get an answer and the peon who brought the chit said it was brought from another bungalow, but I did not send a regular Summons to appear that day.

9. The Case had to be reported. Both the head clerk and the Magistrate

informed me that Mr. Graham had not appeared in person, or by pleader on the 24th the day for which he was summoned, but had sent a servant. I noted this on the back of the Chit. That was the second time. As Mr. Graham had failed to appear on summons, and therefore under S. 90 C.P.C. I directed my clerk to issue a bailable warrant for the 29th, as summons had been ineffectual.

10. These were the facts as I then knew them.

11. I forwarded report N^o 963 dated 30th Oct. 95 from the Sub Magistrate of Tuticorin. He says he had not summoned Mr. Graham for the 19th, but held as a matter of fact previously informed his counsel that Mr. Graham need not appear on the 19th, unless he called for him as his presence was required only in connexion with certain documents not then received. These documents were

not received on the 19th, and Mr. Graham did not appear on the 19th. The extract from his diary shows there was no necessity for Mr. Graham appearing.

12. In his report N^o 964 dated 30th Oct. 95, the Sub Magistrate forwards the summonses issued to Mr. Graham in that case. None of them is for 19th October. It also appears the Sub Magistrate had to call on Mr. Graham to show cause why he should not be prosecuted for failing to appear on summons on 17th August. That proceeding is pending.

13. I also forwarded statements given by all the clerks &c (except Masaleki, and an acting peon whose appointment has expired) who signed the office attendance register on # # #

did not appear in Court on that date.
14. I should mention that the window
of the head clerk's room is within 10 yards
of the only entrance to my office, that the
Court room is upstairs, reached only by
a wooden staircase (on which a European's
boots make considerable noise) and that
the magisterial clerk's room opens off the
Court room. It is impossible that Mr. Graham
could have attended Court without their
being aware of it. The Magisterial Clerk
says he sent a peon to enquire, but no
one else, though his house is next door
but one. The peon was told the case was
adjourned to next day, when Mr. Graham
should come. I am not aware of any
reason whatsoever for these clerks making
false statements in this matter. Moreover

539
4.
Considering how attentive native clerks
are to any European that comes to Court,
I cannot believe that Mr. Graham could
have remained in Court till 5.30 without
being informed that a telegram had been
received adjourning his case to the next day.
15. It will be apparent therefore that
I had good reason for issuing a
warrant under S. 90 C.P.C.
16. I am not responsible for Mr. Graham's
public arrest in the club, and I forward
the Police Inspectors report dated 31st Oct. 95
which shows that no one was responsible
for it except Mr. Graham.
17. It is doubtful whether the notice discloses
any cause of action at all. There is no
suggestion of malice. As a matter of fact

Mr. Graham and I have been on friendly terms since ever I came to Tuticorin, and till the warrant was executed there had not been the slightest reason for any ill-feeling between us. I may however mention that I convicted him under S. 323 D.P.C. and fined him Rs 5 the day before this notice was served on me.

18. I maintain I acted with entire good faith and am protected under S. 1 of Act 18 of 1850 My Summons had been twice disregarded, and I had to vindicate the authority of the magistracy. If my process was disregarded with impunity, I could not expect those of my Subordinates to be obeyed. The amount of bail fixed in the warrant is a mere trifle to a person in Mr. Graham's position and implied no harm to him unless he so chose.

5.

19. If this case comes into Court, it is certain Mr. Graham will be represented by a strong Counsel. The matter in dispute is in no sense personal to Mr. Graham and me, but it is of great importance to the magistracy generally. It is therefore essential that Government should defend the Suit and that too strongly.

20. I may remind you that I have applied for furlough, and that my reasons for taking leave are so strong that I am prepared to take special leave should there be any difficulty in granting furlough. I trust therefore that this notice will not be allowed to stand in the way. Even if the Suit were filed, it could not come to trial.

and would postpone my leave indefinitely.

On the other hand, no inconvenience need
be caused to Mr. Graham, should it lie
over till my return.

I enclose the records in S.C. 5 of 1895.

I have the honor to be,
Sir,

Your most obedient servant,

A. Cunningham
Magistrate

Submitted to Government with all enclosures.

2. Mr. Graham is the local representative of Messrs.
Son MacTaggart & Co., agents of the British India Steam
Navigation Company at Tuticorin. The complaint against
him was that he struck the driver of a passing cart
with his whip. For this he was convicted in Summary case
no. 5 of 1895 on the Joint Magistrate's file on the 29th October
1895, the same ^{date} day as that borne by Mr. Thomson's notice
of suit. The warrant in regard to which the notice
of suit has been given was issued in the course of the
proceedings connected with that case.

3. I have seen Mr. Cunningham and discussed the
whole matter with him. My belief is that, though it
might have saved misunderstanding and trouble to
have issued another summons, yet that Mr. Cunningham
acted legally and in good faith in issuing a warrant
for Mr. Graham's arrest and subsequent release
on bail. The only legal defect which is apparent in
his procedure is the omission to record a detailed
statement of his ^{own} reasons as required by section 90,
Criminal Procedure Code, before issuing the warrant.

2 did however make a note of the fact of Mr. Graham's neglect to attend in person on the 24th before he ordered the issue of the warrant on the 25th October, and he wrote on the paper of notes in the record "accused absent available warrant for 29th (2 P.m.)". This is probably a sufficient compliance with the requirements of section 90, Criminal Procedure Code. It may be a matter of doubt whether Mr. Cumming in ordering the issue of a warrant was influenced by the absence of Mr. Graham on the 25th, or by his actual failure to attend in person on the 24th, though in his chit of the 25th Mr. Graham alleged that he "waited all yesterday at your Court". Mr. Cumming says that he was principally influenced by the latter consideration, and also by the unnecessary absence of Mr. Graham on the 19th October when he should have appeared in the same case; and these were in fact sufficient reasons. The allegation, which Mr. Cumming believes to be untrue, that Mr. Graham attended Court all day on the 24th October, is repeated in the notice of suit. It is I believe certain that up to this time Mr. Graham and Mr. Cumming had been socially on very good terms. Even the notice makes no allegation

of malice.

4. Under section 424, ^{civil} Criminal Procedure Code no suit can be filed for two months from the 29th October. I doubt whether in reference to section 1 of ^{XVIII} Act I of 1850 Mr. Graham has a real cause of action against Mr. Cumming, for it would be difficult to prove that Mr. Cumming's act in issuing the warrant was not ^{done} in good faith. It will be for consideration, when a suit is filed, whether it should not be defended on behalf of Government, in order as Mr. Cumming says, to 'vindicate the authority of the Magistracy.'

5. In the meanwhile Mr. Cumming is very anxious for private reasons to get away on a year's leave from the middle of December, and his application for leave is on its way to Government. In the circumstances, I submit that the fact that the notice has been issued need not be any bar to the grant of the leave.

6. Mr. Cumming has now gone to the Trichinopoly district as Head Assistant Collector and Magistrate.

Trinervelly, }
7-Nov. 1895

Cumms / L. J. G. G. G.

District Magistrate

I should let the matter
stand over until the threat-
ened action is brought.
Hark! then, I should say
without doubt, be found
that Mr. ^{Cumming} Campbell is
protected by Act XVIII of
1850.

As the C. S. says, Mr.
Cumming seems to do things
in rather a slipshod way.
These young officers of the do.
It is a great extent the
fault of the ^{district} officers under
whom they serve who do
not insist on neatness & system
in procedure. But I don't
find anything to blame him
for except the way in which
his original summons was
prepared, which does, as
Mr. Thomson suggests, seem
to show that he signs papers
without looking at them.

Let H. L. see this.

RS

14/11/95

to
16 Nov

* Note

This is the older

Cumming. He joined the service
in 1857.

Complaints against Mr. Cummings

E

H E

[G.]
24.
200-5-10-95.

THE

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

Current No. 5177

of 189 , dated

, from

" " 5178

" 189 , "

" "

passport.

" " 5321

" 189 , "

" "

abstract only.

ORDER. 27 Nov 1895 No 2456

in proceedings as he did

The Govt. has received a report upon the matter referred to in the two letters from Mr. Thomson, but sees no ground for supposing that the Joint Magistrate acted otherwise than in good faith.

2. The errors of description in the summons issued for the 24th of October are, however, such as appear clearly to indicate that Mr. Cumming affixed his signature to the document without having first read it. He should be careful. Such irregularities do not recur.

3. The question of the defence of the threatened suit for damages will await disposal until the suit is actually filed. The existence of the suit will not of itself operate as a bar to Mr. Cummings taking leave.

W. S. Rogers

20/11/95

To R. Thomson Esq. } para. only.
Public Secy.
To Mr. D. L. Linnery }
with recd. }
20/11/95

C14/11 C15/11
R15/11 R16/11

Complaints against
Jamil Mehta, Munnabell

CC Hm

(filing order)

It seems necessary in order
to stop from further letters
from Mr. Thomson to pass
some sort of an order on
his complaint: if this
is not done he will continue
to adhere to it.
Mr. Manning asks as
to the defence of a suit
if filed and the question
of his being permitted
to take furlough
A draft order is submitted
for approval

25/11/95

here draft -

W. B. N. G.

C. W. H.

R. 29/11

1911/11/29

is given for copying _____
is copied _____
is examined _____
is signed _____

189

MAIN G.O., No.
189

DATED

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