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Block

Rack No.

Shelf No.

Serial No. 10

General No. 12070

To the H—

R.O. No 14199
Acts C 2
10
3rd May to 23 Nov 1781

1281

High Court Series VI
Appeals against mayors' Courts decrees
Vol 10

2
10

Rachels

To the Honble Sir Thomas Rumbold Baronet
President and Governor &c Council of Fort St George
In the Court of Appeals

Between Charles Edward Jones
Major George Maule and John Snow
all of Fort St George the European
Executors named in the last Will &
Testament of Pombavi Comaravo Co-
-roonadumn late of Madras Inhabitant
Deceased Complainants and Puonga-
-toor Shungelvarey Moodeliar also one
of the Executors in the said Will
named Defendant.

The Petition of Appeal of the said Defendant
Sheweth.

Filed in my Office 30th Aug. 1779.

That on or about the fourth day of January
which was in this present Year of our Lord one thousand
Seven hundred and seventy nine the said Complainants did
Stephen Sulivan file a Bill of Complaint against Your Petitioner setting
Clerk of Appls forth that they had duely proved the said Will of the said
Deceased before the Kings Ordinary in the Honble the Mayors
Court and obtained thereupon a Probate thereof the said Complai-
-nant further shewed that by the said Will of the said Testator
he the said Deceased in his lifetime appointed them the
said Complainants Executors therein with Sundry other
persons being Malabars and natives of this Country to act
under the Guidance and directions of them the said Complain
-ants in the following Words "my Executors amongst the
Europeans I appoint Mr Charles Edward Jones, Mr John Snow
and Captain Maule and amongst the Gentoos Tamma-
-numa Arrachellum Moodeliar, Court Dubash, Davy Naick
Moodeliar

Moodeliar, Balla Shingelvarayah Moodeliar, Poongaloor Chuny
Iveerayah Moodeliar, Sawmy Ayah, Ayah Sawmy, and
these six Persons are and all for the purposes herein
mentioned are to conduct themselves according to the
Directions of the Europeans, which the said Complainants
in their said Bill further say will more fully appear by
a True Copy of the Translation of the said Will of the
said Poombavie Comaren Coroonadumm unto their said
Bill annexed for the Inspection of the Honble the
Mayors Court The said Complainants did further
shew that some of the said Malabar persons had
obtained probate of the said Will particularly Poongaloor
Shingelvarayah Moodeliar Your Petitioner and that Your
Petitioner had taken upon himself to act and conduct
himself without the direction Concurrence or approbation
of them the said Complainants or any of them and did
further shew that the deceased Testator had in his life
time been the Head Dubash and Manager of the principal
Concerns of John Maxwell Stone Esqr late of Fort St George
but then London having under him one Annatah his
nearest Relation since deceased, he the said Poombavie
Comaren Coroonadum did Recommend to the said John
Maxwell Stone Your said Petitioner representing that
Your Petitioner was a near Relation of him the said Poombavie
Comaren Coroonadum to be taken as one of his Dubashes in
the Room and place of the said Annatah, whom the said
Complainants say the said John Maxwell Stone readily
accepted of and further that the said Poombavie Comaren
Coroonadum having so placed Your Petitioner with the said
John Maxwell Stone, he the said Poombavie Comaren Coon-
-radum did use to Correspond with Your Petitioner not
only on the said John Maxwell Stone's Account but also
on

on his the said Poombavie Comaren Coroonadumm own Account
and that Sundry tranvactions relative to Imprin Wares and
Merchandize as also Sundry Deamonds Jewells and
precious Stones were had and done by and Between the said
Poombavie Comaren Coroonadumm in his life time and the
said John Maxwell Stone and Your said Petitioner the
said Complainants representing that Your Petitioner was
then Dubash of the said John Maxwell Stone under the
Controul of the said Poombavie Comaren Coroonadumm as
aforementioned, the said Complainants further shewed that
the said John Maxwell Stone being about to depart from
this presidency of Fort St George for Europe did settle his
Accounts by the means of Your said Petitioner to and with
the said Poombavie Comaren Coroonadumm in his life time as
the said Complainants say would more particularly and
fully appear by an Account Current signed John Maxwell
Stone and by the said Poombavie Comaren Coroonadumm and
being found indebted unto the said Poombavie Comaren Coon-
-radumm he the said John Maxwell Stone did enter into
and give one Bond or obligation for the Sum of Forty three
Thousand Seven hundred and Sixty Seven Pagodas twenty
Fanams and forty Six Cash Bearing date the first day of
October One Thousand Seven hundred and Seventy Seven the
said to be in the Custody and possession of the said Complain-
-ants as Executors aforesaid and ready to be produced when
required, the said Complainants do further set forth that
they have been informed and did verily believe that just
before the departure of the said John Maxwell Stone he the
said John Maxwell Stone did Borrow of the said Poombavie
Comaren Coroonadumm the Sum of Eighteen Thousand Pagodas
or thereabouts being part of the Sum for which the said Bond was
so given and made to Secure not only the payment of the
same

same but also of the whole of the sum due on the said Bond he
the said John Maxwell Stone did deposit and lodge with
the said Pongatoor Shungelvarayah Moodeliar Your Petitioner
or they the said Complainants say they have been informed
and verily believe the Title Deeds of the said John Maxwell
Stone House, and Houses situated lying and being in
Fort St. George as also sundry other deposits to them unknown
they further shew that at the time of such deposits the said
Poombavie Coomaroo Coroonadum was at the Capital of Tanjore or
near it lying sick and unwell by which means they shew that
Your Petitioner came into possession of the said Title Deeds and
Deposits for and on Account of the said Poombavie Coomaroo
Coroonadum. The Complainants further shew that sometime
before the said John Maxwell Stone's departure for Europe the
said Poombavie Coomaroo Coroonadum purchased a House and
Garden of the said John Maxwell Stone situated lying and
being at a place called the Luz near St. Thome for the Sum
of Two Thousand and five Hundred or Three Thousand Pagodas
and the Title Deed and Deeds deposited by the said John
Maxwell Stone with Your Petitioner for account of the said
Poombavie Coomaroo Coroonadum as they the said Poombavie
Coomaroo Coroonadum as they the said Complainants say they
have been informed and verily believe The Complainants further
shew that the said Poombavie Coomaroo Coroonadum being soon
after down at Madras asking for relief from the Physicians
died as they say they have been informed take possession of the
said Garden House and Ground as his property and after his
departure his agents did let to hire and receive the Rent of the
said premises and the same was carried to Account and was
considered as the sole property of the said Poombavie Coomaroo
Coroonadum as appears from hire the said Poombavie Coomaroo
Coroonadum Accounts kept by his attorneys at Madras they
further

further shew that having been informed that the said Pongatoor
Shungelvarayah Moodeliar Your Petitioner was in possession of
the Title Deeds of the House of the said John Maxwell
Stone in Fort St. George and which were deposited with him
the said Pongatoor Shungelvarayah Moodeliar Your Petitioner on
Account of the said Poombavie Coomaroo Coroonadum they the
said Complainants as Executors aforesaid did apply to Your
Petitioner for the delivery up of the said papers Deeds and
Writings belonging to the Houses in Fort St. George as also
the House and Garden at the Luz to them and likewise to
give them a fair and just Account of his Transactions and
dealings to and with the said Poombavie Coomaroo Coroonadum
in his life time and since his decease which to have come to
the knowledge and possession of the said Pongatoor Shungelva-
rayah Moodeliar Your Petitioner and to pay into their hands
such Ballance and Ballances as might appear due to the
said Poombavie Coomaroo Coroonadum as also to deliver over
unto them as Executors such Goods wares and Merchandize as
likewise all and every such papers Cadjans and other writings
as any way were the property of and belonging to the said
Poombavie Coomaroo Coroonadum which application for an
Account of Your Petitioners proceedings to and with the
said John Maxwell Stone so far as regards the said Poomba-
vie Coomaroo Coroonadum as also his the said Pongatoor
Shungelvarayah Moodeliar Concerns to and with the said
Poombavie Coomaroo Coroonadum have frequently as by them set forth
been in an amicable manner requested and so forth.

That which said Bill of Complaint Your Petitioner
did appear and regarding the same as very insufficient to call
Your Petitioner to Account respecting the matters and things
by the Complainants charged set forth Your Petitioner did
Demurr and for Cause of Demurrer to the said Bill did shew
that

that by the Complainants owing therein it appeared that the Testator did nominate six other persons as Executors to his last Will and Testament and that some of the said Persons have proved the same in the Hoible the Mayors Court of which number your Petitioner was one, all of whom nor any one of them are not made parties either Complainant or Defendant in the said suit which is a good cause of Demurrer and whereupon your Petitioner did demur by reason that all persons interested in a suit ought to made parties especially joint Executors who in the law only make one person, notwithstanding which it appeared by the said Bill not only that the same was brought by the said Complainants without making the other Executors in the said Will named parties thereto or without having by any means obtained the Consent of the excluded Executors for the bringing the said Bill but that the same is absolutely filed contrary to their advice approbation or Consents

Wherefore and for as much as the said Complainants are mistaken in and by the said Bill to call Your Petitioner to Account for any matter or things in the said Bill set forth for the said matter and things and the discovery thereof so demanded have been just and regular / and because the Complainants not having shown a proper Title to claim the Title Deeds and papers relating to all the Houses in Question, and for that should Your Petitioner deliver the same over to the Complainants Your Petitioner might and would be liable to be questioned and called to an Account by the said John Macumbe Stone or his attorneys who by the Complainants own shewing were both resident in Fort Saint George for which and for divers other Causes Your Petitioner did Demur in Law unto the Complainants said Bill and all the matter and things therein contained

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Contained, Your Petitioner did further more shew that it was evident from the face of the said Bill that the design of bringing the same was calculated solely to vex and Harass Your Petitioner as well as the five other Executors named in the Will of the said Deceased and to compell Your Petitioner as well as the said persons to Convent to Surrender and abandon to them the Trust Compiled in them by the said Testator for the Effecting of purposes contrary to the will and Intention of the deceased under the pretence of demanding Title Deeds wherein the said Executors do not shew that the said Testator had himself in his life time any legal Right or Title and also by demanding accounts from Your Petitioner of Transactions supposed to have existed between Your Petitioner and the Testator in his life time without setting forth that Your Petitioner is or is likely to have been indebted to the said Testator in any Account Current between them in his life time But on the Contrary that Your Petitioner is not only a joint Executor in the said Will and also a Legatee therein named and a Creditor of the said Testator

Wherefore Your Petitioner did pray that as the said Bill was by so irregular grounds help and litigious and that instead of being brought with a View to benefit or promote the Interest of the Creditors Legatees or the general Good of the Estate that the same is evidently designed and doth tend to contrary purposes that the said Hoible the Mayors Court would be pleased to dismiss the said Bill and so tax the Complainants with exemplary Costs to be paid out of their own purses and not at the expence of the Testator

Unto which said Demurrer the Complainants did file a Joinder maintaining that their said Bill ought not to be quashed and so forth and the said Demurrer and Joinder

Joinder were afterwards Set down for hearing and coming on to be
heard on the Seventeenth day of this present month of August
and your Petitioner Attorney at Bar shewing as further
Cause of Demurrer that the Testator Poombahvie Coomaroo
Coorroomdum was an Indian native as well as the Defendant
and came within the discription of that part of the Charter
which excludes natives of India from commencing actions in
the said Court without Consent Yet notwithstanding the
same and the many Substantial Causes of Demurrer by your
Petitioner set forth in his said Demurrer the said Honble
Court were pleased to throw out your Petitioners Demurrer
with Costs and that your Petitioner should be put upon his
answer. By which said order of the said Honble the Mayor
Court your Petitioner doth regard himself particularly
aggrieved and doth therefore appeal therefrom unto the Judgement
of this Honble Court for the reasons in his Demurrer alledged
and because it would be
to enter into a Defence of matter in a Court of Justice of so
futile and Vague a nature so little supported or maintained
by any appearance of necessity or obligation on the part of
the Complainants to bring the same. For all which matter
and things Your Petitioner humbly prays that the said
order of the Honble the Mayor's Court may be reversed
with Costs

Hy Dupuy
Atty Appellant

Extract from the Minutes of a Court Held at the
Town Hall on Tuesday the 17th Day of August Anno Domini
1779

Present

Mr James Call Senior disinterested Alderman
Edward Garrow and William Webb
Aldermen

Charles Edward Jones George Mail and John Snow European
Executors of Poombahvie Coomaroo Coorroomdum Deceased
Vers
Poongatood Shengelvarayah Moodelliar

Bill with Translate of Will annexed Read
Demurrer Read
Joinder Read

The Demurrer and Joinder
Coming on to be Argued and Determined this Day in the
Presence of the Attornies on both Sides on Reading the Complain-
ants Bill with Translate of Will annexed the Demurrer the
Joinder The Attorney for the Defendant shews at Bar for
further Cause of Demurrer that the Testator Poombahvie Coma-
roo Coorroomdum Deceased was an Indian Native as well
as the Defendant and comes within the Discription of that part
of the Charter which excludes natives of India from commencing
actions in this Court without Consent and the Court having
had due Consideration thereon are of opinion that the Pleas
made use of by the Defendant in his Demurrer are Insufficient
to Bar the present Action This Court doth therefore think
fit to order and doth Accordingly order that the Defendants
Demurrer be thrown out with Costs and that the Defendant
be put upon his Answer Day is given the Defendant
till the 31st Instant to answer the Complainants Bill
in default

Judgment of which Judgment will be given for the Complainants

A true Extract
James Taylor
Dy Regr

To the Honble Sir Thomas Rumbold Baronet
President and Governor &c Council of
Fort St George

In the Court of Appeals

Between Charles Edward Jones,
Major George Maule and John
Snow all of Fort Saint George the
European Executors named in the
Last Will and Testament of Poombavie
Coomaree Cottoonadum late
of Madras Inhabitant Deceased
Complainants and Poongatoor Shingel
warry Modelliar also of Madras
Dubash
Defendant

The Answer of the said Charles Edward Jones Major
George Maule and John Snow to the Petition and Appeal
of the said Pungatoor Shingelvarry Modeliar

Filed in my Office
Sept 8th 1772
Stephen Sullivan
Clerk of Appts

The said Respondents say, that they do
admit of their having prefered in the Honble the Mayors
Court of Madras pursuant their Bill of Complaint as the
Executors named in the Last Will and Testa-
ment of the above named Poombavie Coomaree Cottoonadum
against the said appellant on the day and Year aforesaid by
the said Petition of Appeal is set forth which said Bill of
Complaint

Complaint was not only for a Discovery of all and every the
Transactions by and between the said appellant and the said
Poombavie Coomaree Cottoonadum in his Life time but for a Discovery
of all and every the said appellants Transactions since the
Decease of the said Poombavie Coomaree Cottoonadum which
any way belonges to the Estate of the said Deceased the said
Bill of Complaint Charging him the said appellant with
being in possession of Certain Mortgage Securities and other
Specialties together with monies Jewels and other Effects late
belonging to the said Deceased in his Life time and which
ought to have been accounted for and delivered over unto the
said Respondents as the absolute Executors and Executors
to the said Last Will and Testament of the said Poombavie
Coomaree Cottoonadum who have duly proved the same in the
Kings Ordinary of the Honble the Mayors Court and obtained
a Probate thereof the said Respondents further say that this
their said Bill of Discovery and for on Account was and is well
warranted by the rules of Law and Equity and the daily
Practise of the High Court of Chancery notwithstanding
ing what the Appellant alledges that he is one of the
Executors named in the said Last Will and Testament
of the said Deceased and that he has duly obtained a
Probate thereof and tho he pretends that of Course he is
on an Equality with the said Respondents in every Act
and Deed which any way relates to the said Estate of the
said Deceased Poombavie Coomaree Cottoonadum the
Respondents say that such Probate as aforementioned
cannot be pleaded in Bar to any Bill for a Discovery or to
Account that might be brought against them as Executors
by the Executors of the Deceased for it hath been adjudged
by the said Court of Chancery that although Executors may
not Charge or be Charged in Equity further than the Law-

doth

doth Charge them yet they may sue one Another in the said High Court of Chancery," and this goes upon the reasonableness of the Case and being also a maxim in the said Court of Chancery that one Executor alone without the rest may be sued this he being charged for no more than he hath upon these Grounds these Respondents say their Bill of Complaint was well founded and the more so from the necessity of the Case of these Respondents the said appellant having been the attorney, Agent or Gomastah of the said Pombair Coomaroo Coorconadum in his life time and transacted almost all of his Business at Madras and could therefore give a more satisfactory Account of so much of the said Deceased Estate as was Entrusted to his management during the life time of the said Deceased and also of that part of the Estate and Effects which remained in his the said appellants Hands at the time of the Decease of the said Testator the appellant having been entrusted these Respondents naturally imagined him to be the proper person that could give any Satisfactory Account as to the particulars which any way belonged to the Estate of the said Deceased, and as the said appellant refused to come to an account with these Respondents or to give them any satisfaction or assistance they were under the necessity of Reparing their Bill of Discovery as being the only Legal means in the Power of these Respondents to arrive at the Knowledge of some very important circumstances affecting the Interest of all those who have any Claim under the Will of the said Testator These Respondents by way of answer to that part of the Demurrer or of the appeal of the said appellants whereby they say that the said Pombaiv Coomaroo Coorconadum having nominated Six other persons as Executors besides the said Respondents

Respondents some of whom had obtained Probate particularly the said appellant to his the said Pombaiv Coomaroo Coorconadums Last Will and Testament, who were not made parties to the Bill of Discovery and thereupon the appellant alledged it was good Cause for Demurrer more Especially as the said Six persons were Joint Executors with the said Respondent and that these Respondents should not therefore have preferred their Bill of Complaint without the Consent of the said Six persons These Respondents say that as the Law on this Case is that Executors have a joint and Seperate Intention the Estate and Effects of the Deceased and that as these Respondents are by the Express words of the will the absolute Executors of the said Pombaiv Coomaroo Coorconadum they had the right in them of bringing actions at Law and in Equity against all Persons that had any Concern with the Estate of the Deceased and more Especially against the said appellant under the peculiar Circumstances of his situation without the Concurrence Consent or approbation of the said appellant or the other persons said to be nominated Executors in the said Will of the said Pombair Coomaroo Coorconadum for the said Six persons if Executors at all are under such confined Terms and Restrictions and the Intention of the Testator is so plainly shewn and Expressed upon the very face of the Will these Respondents say that it is Evident that the said Testator meant that the said appellt should not be joined with these Respondents in the full and Equal Exercise of Authority and power respecting the management of his affairs and it appears also from the words of the said will wherein the Testator says" and "these six Persons one and all for the purp" aforesaid mentioned

mentioned are to conduct themselves according to the
Directions of the Europeans" that the said Appellant
with the other five Malabars were intended to be more
as Deputies or Agents for the affairs of the Deceased and
to be subject to the controul of these Respondents rather
than as Positive Executors and these Respondents therefore
say that the said pretended Consent or approbation of the said
five Malabars was not necessary towards Justifying
these Respondents in a Measure which strongly speaks
its own Necessity from the former Intimacy and Confidential
Intercourse which subsisted between the said Testator
and the appellant and these Respondents say that the
said appellant is bound by the very words of the Will to
comply with the Reasonable Requisition of these Respon-
dents but that no such restriction is expressed in the
said Will respecting these Respondents nor are they
at all absolute in the performance of the Will of the
said Testator whereas the said appellant and the
said other persons by him mentioned cannot act nor
do any thing without the previous Joint of these
Respondents and to any payments made to the said
appellant and the said other persons without such
Joint are no payments in Law as they can give no
Authority to give Receipts or Acquittances but through
Fraud of the said Respondents and therefore the
Special reason assigned by the appellant as a Cause
of Demurrer is insufficient the said Respondents
further say that the appellant assigned another reason
as a further good Cause by Demurrer that the Respondents
had not shewn a proper Title to Claim some writings
that were alleged to have been in his the said appellants

Possession

Possession and which writings should he have delivered over to the
Respondents he might be liable to be questioned and called to an
Account by John Maxwell Stone Esq.r or his attorneys in
Answer thereto these Respondents say that they derive their
Title as the Executors to the last Will and Testament of the
said Pondavi Coonaree Commandeen which will being proved
and no doubt having arisen as to its validity is indubitably
good and not to be disputed and these Respondents further say
that being Executors unconditional they could of themselves
without the Sanction of these appellants or the said other
Five Persons give releasing Acquittances and other Discharges
for a Bill of Complaint being Actions and do and performall
other matters and things relative and incident to the Duty
and office of an Executor These Respondents further say
they are well warranted in asserting that from the very
words of the said Will they were considered by the said
Testator as more worthy to execute the office and to have
preferable right to the Duty of an Executor and Executors than
the appellant and the other Five Persons whom the Testator
for Reasons but known to himself has named as Executors
upon Conditions subject to the Controul of the said Respondents
under all which circumstances the said appellant has not
the least Cause to be apprehensive as he pretends to be of any
Charge being imputed to him by the said John Maxwell
Stone or his attornies for the Delivery of the said writings
or any other Papers which appertain to the said Testator
These Respondents further say that in the Demurrer of
the appellant it is inserted that the intention and design
of the Respondents are Calculated only for the purpose of
harassing the said appellant and to compell him and the
said other Malabar persons to Surrender up and abandon
the Trust which the appellant pretends was by the said Deceased
confided

Cuspidis in him and the said other persons and that these
Respondents had not shown that the Testator had himself
in his life time any legal right or Title in answer thereto
these Respondents say that the Scope and End of this Bill of
Complaint against the appellant was for Discovery of so
much of the Concerns of the said Testator as any way had
come to his these Respondents knowledge he the appellt
being charged with being the Attorney or agent and Gomastah
of the Testator in his life time and in Consequence thereof
was likely to be in possession of sundry Effects both real and
personal of the said Testator and therefore proper for him to
account with the said Respondents as Executor unconditional of the said Will and these Respondents disavow
that Exclusive of the peculiar Title they may have to call on the
said appellant and the other Malabar Executors for
a discovery under the Words of the Will they have a Right to
file a Bill of Discovery as Executors against any Persons
or Persons Executors or others to know an account of all
matters which concerns the Estate of the Testator and
which have come to their Knowledge in like manner as
he or they would have been liable to account with the
Testator had he been living the making of him an Executor
does not exclude him from paying what he owes to the
Estate as any such Exclusion would be to the injury of a
Creditor upon a Valuable Consideration as Actor Deed
of the Testator by his last Will and Testament can be in
exclusion to the legal Claims to the meaning of an
Executor who has not effects sufficient to pay and
discharge him for the demand the Testator in his life
time had on him the giving and bequeathing any Specified
Sum or Thing when there are not effects sufficient in as if
no such Legacy had been bequeathed the appellant the
Respondents

Respondents say can derive no Right from the said Will of the
said Pombwie Coomaro Coroona demurre as to exclude the
said Respondents from calling him to an Account and as to
alledging in his said Demurrer that the Respondents do
not shew that the said Testator had himself in his life time
any legal right to the writings relative to the said John
Macneill Stone these Respondents say that the Contrary is
the matter in Fact and that it rests with the said appellant
who has due opportunity in his Answer to disprove that right
and thereby refute the charge of these Respondents or Complainants
who in the Bill charges the said appellant as being Attorney or
Agent for the Testator in his life time and in Consequence thereof
with having possession of the writings for and on Account
of the said Testator and whereby these Respondents call on the
appellant to set forth the means by which he came into
possession the said appellant in his Demurrer states as and the
Cause for his Demurring that the Respondents demanded an
Account from him of Transactions supposed to have existed
between the appellant and the Testator in his life time
without setting forth that the Defendant is indebted to the
said Testator in answer to which these Respondents say
that the Bill of Discovery expressly charges that accounts
were existing and unsettled between the said appellant and
the said Testator and also the said Bill of Discovery charged
the appellant with a wasting of the Estate and Effects of the
said Testator that came into his the appellants hands as
the agent or Gomastah of the said Testator in his life
time the said Respondents further say that it is of little
or no Consequence whether the said appellant is
indebted to the Estate of the said Deceased or not the
Respondents having at all times as Executors aforenamed

a Right to Call upon the appellant for his Account as also for such monies and Effects that any way belonged to the said Estate and which have come to his Hands possession or Knowledge.

Thirdly Respondents further say that by the Act of the Testator in appointing these Respondents to be Executors these Respondents have a Right to sue the appellant being a Native in Like manner as if he had been an European, and that the argument suggested by the said appellant as made use of by his attorney at Bar rather tends to Confirm the Policy of the Testator in having made These Respondents being Europeans, his Executors than to give any Legal Ground of Demur to the said appellant.

For all which Reasons and for others which may be offered at the hearing These Respondents humbly pray that the order of the Right Hon.ble the Mayors Court of the Seventeenth day of August last may be Confirmed and that the appellants said Petition and appeal may be dismissed with Costs.

Charles Bromley
& Popham } attorneys for the Respondents

Court of Appeals
at
Madraspatnam } Thursday the 3.d May
Anno Domini 1781

Between Poongatoor Chinglevoy
Moodeliar ..... Appellant
and Charles Edward Jones, George
Maude and John Snow European
Executors of Poombavie Coomarro Coroo=
=nadan moodeliar Deceased ... Respondent

This Cause coming on this Day to be heard and Debated before this Court by the attornies on both Sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court as well with the order of the said Court given in this Cause on Tuesday the 17.th Day of August Anno Domini 1779 and upon due Consideration had of the matters therein severally contained and of the Pleadings and arguments used by the attorneys on both Sides this Court doth think fit to order and Decree and doth accordingly order and Decree that the order of the Honble the Mayors Court given in this Cause be reversed with Single Costs in this Court and the Bill of Complaint in the Mayors Court be Dismissed with Costs in that Court.

J. Cur.

[Signed] Chas. Freeman Clk.

Between Charles Edward Jones, Major George Maule and John Snow of Fort St. George Executors named in the last Will and Testament of Pombatoor Comaroo Coorronadum late of Madras Inhabitant Deceased Complainants and Poongatoor Shingelvarayah Modeliar of Madras Dubash one of the Conditional Executors named in the aforementioned last Will and Testament of the said Pombatvie Comaroo Coorronadum Defendant—

To the Kings Most Excellent Majesty in Council—

The Humble Petition and appeal of Charles Edward Jones, Major George Maule and John Snow Executors to the last Will and Testament of the said Pombatvie Comaroo Coorronadum—

Shew

That your Petitioners being nominated and appointed the absolute Executors in the last Will and Testament of the said Pombatvie Comaroo Coorronadum, which Will your Petitioners Shew, they did duly prove in the Honble the Mayors Court of Madraspatnam and obtained a Probate thereof, under which Your Petitioners proceeded to act as far as they were able, That upon an inspection into the affairs of the Testator they found the abovementioned Poongatoor Shingelvarayah Modeliar to have been the agent and attorney to and for the said Testator in his life time, and that he had been and was in Trust of Sundry Sums of money, Goods, wares and Merchandize, and that to avery Considerable Amount and further that he the said Poongatoor Shingelvarayah Modeliar was entrusted with and managed almost every Transaction that any way related to the affairs of the said Testator both in the life time of the Testator and after his Decease, by the said Poongatoor Shingelvarayah Modeliar being the Brother in Law to the said Testator in his life time, and was by him in his life time introduced and supported in the Conducting and Carrying on of several affairs, wherein the said Testator had himself originally been employed Your Petitioners further Shew, that having come to the Knowledge of the said Poongatoor Shingelvarayah Modeliar being so materially Concerned in the affairs of the Deceased, and being informed of his having property in his Possession belonging to the Testator to avery Considerable Amount the particulars of which your Petitioners were ignorant, they deemed it necessary as well as Essential for to come to an Account and Reckoning to and with the said Poongatoor Shingelvarayah Modeliar, your Petitioners did apply unto the said Poongatoor Shingelvarayah Modeliar for that particular purpose, which he the said did deny, as deeming every thing in his possession and which belonged to the Testator in his life time, as his the said Poongatoor Shingelvarayahs own property, notwithstanding there were a number of Creditors, and still are, unsatisfied, Your Petitioners finding that they could not come to any amicable Settlement with the said Poongatoor Shingelvarayah Modeliar nor get any information as to the affairs of the said Testator, Your Petitioners were under the necessity of Preferring a Bill of Compt against him the said Poongatoor Shingelvarayah Modeliar in the Honble the Mayors Court of Madraspatnam, and the same was filed on or about the Twenty sixth Day of January in the Year of our Lord one thousand Seven hundred and Seventy nine, which Your Petitioners Bill of Complaint Exciting that Your Petitioners were the European Exctors nomd

Files in my Office 16 May 1781
Chas Thomas Clk of Appts

named in the Last Will and Testament of Poombahvie Comaro Coroonadum Late of Madras Inhabitant Deceased, who had duly proved the said Will before your Majesty's Ordinary in the said Honble the Mayors Court and obtained a Probate thereof, that by the said Will of the said Poombahvie Comaro Coroonadum, he the said Testator appointed Your Petitioners Executors therein with Sundry other persons, being Malabars and Natives of this Country to act under the Guidance and directions of Your Petitioners in the following Words "my Executors among the Europeans I appoint, Mr Charles Edward Jones, Mr John Snow and Captain Maule and amongst the Tammoorhurs, Teerumaloo Arnachella Modelair, Court Dubash Davy Vaicka Modelair, Balla Shingleravoyah Modelair, Swamy Ayar, Ayah Swamy and these Six persons one and all for the purposes herein mentioned are to Conduct themselves according to the directions of the Europeans" Your Petitioners further say that the said Will of the said Malabar persons had obtained Probates of the said Will particularly Poongatoor Shengelvarayah Modelair, and that he had by virtue thereof taken upon himself to act without the direction, Concurrence or approbation of Your Petitioners or any of them, Your Petitioners further recited that the Testator Poombahvie Comaro Coroonadum had in his life time been the Head Dubash and Manager of the Principal Concerns of John Maxwell Stone Esquire late of Fort Saint George, the said Testator having under him a person by Name Annatah his nearest relation and since Deceased, after whose Decease the said Poombahvie Comaro Coroonadum did recommend to the said John Maxwell Stone the aforementioned Poongatoor Shengelvarayah Modelair to be taken into his Service in the room of the said Annatah and which the said John Maxwell Stone did do and the said

said Poongatoor Shengelvarayah Modelair acted accordingly in the Capacity of a Second Dubash, the said Bill of Complaint further recites, that the said Poombahvie Comaro Coroonadum having so placed the said Poongatoor Shengelvarayah Modelair with the said John Maxwell Stone he the said Poombahvie Comaro Coroonadum did use to correspond with the said Poongatoor Shengelvarayah Modelair, not only on the said John Maxwell Stone's Business, but also on his the said Poombahvie Comaro Coroonadum's own account, and that Sundry Transactions relative to marine Goods, Wares and Merchandize, and also Sundry Transactions in Diamonds, Jewells and precious Stones were had and done by and between the said Poombahvie Comaro Coroonadum in his life time, the said John Maxwell Stone and the said Poongatoor Shengelvarayah Modelair, the said Poongatoor Shengelvarayah Modelair being then a Dubash of the said John Maxwell Stone under the Controul of the said Poombahvie Comaro Coroonadum, the said Bill further recites that the said John Maxwell Stone being about to Depart from the Presidency of Fort St George for Europe, did settle his Accounts by the means of the said Poongatoor Shengelvarayah Modelair to and with the said Poombahvie Comaro Coroonadum, and that such Accounts bore date the first of October One thousand Seven hundred and Seventy Seven and were signed both by the said John Maxwell Stone and the said Poombahvie Comaro Coroonadum for the Ballance of which being Forty three thousand seven hundred and sixty seven Pagodas Twenty fanams and forty six Cash he the said John Maxwell Stone did give a Bond or obligation to the said Poombahvie Comaro Coroonadum, the said Bill of Complaint further recites, that the said John Maxwell Stone just before his departure did borrow of the said Poombahvie Comaro Coroonadum the sum of Eighteen thousand Pagodas or

or thereabouts, being part of the said Sum for which the aforesaid
tioned Bond was given, and that he the said John Maxwell
Stone did deposit and lodge with the said Pongatoor Shungelvaroyah
Moodeliar the Title Deeds of Sundry Houses and pieces or parcels
of Ground Situated in different parts, together with Sundry other
Deposits unknown to Your Petitioners, that at the time of these
Deposits, the said Pombahvie Comaro Coroonadeum was then
at England being Sick and unable to Transact any Business,
by which means the said Pongatoor Shungelvaroyah Moodeliar
made the pretension of these Deposits, which Your Petitioners
Charge in the said Bill was for and on account of the said
Pombahvie Comaro Coroonadeum. The said Bill further recites,
that this unreasonable that the said Pongatoor Shungelvaroyah
Moodeliar pretended for account of the said Pombahvie
Comaro Coroonadeum a House and Garden Situated near St. Thome
from the said John Maxwell Stone, and that he the said
Pongatoor Shungelvaroyah Moodeliar was in possession of the
Title Deeds of the same, and that sometime after the said
Pombahvie Comaro Coroonadeum returning to Madras took
relief in his Sickness, took possession of such House and Garden
as the Property of him the said Pombahvie Comaro Coroonadeum
and the same after his retirement did let to Hire, and rec.d the
Rent of the Premises, and the same was carried to Account and
considered as the sole property of the said Pombahvie Comaro
Coroonadeum as appeared by his Books kept by his attornies
at Madras, the Bill of Complaint further recites that the
said Pongatoor Shungelvaroyah Moodeliar being so in
possession of such Title Deeds as the property of the said
Pombahvie Comaro Coroonadeum, Your Petitioner did as his
Executors, apply unto the said Pongatoor Shungelvaroyah Moodeliar
for the delivery up of the said Papers Deeds and other writings
belonging to the aforesaid rental Houses and Gardens, and
likewise to give Your Petitioners a true and just Account of his

his Transactions and dealings to and with the said Poom-
-vie Comaro Coroonadeum in his life time and since his Decease
which had come to his the said Pongatoor Shungelvaroyah Moodeliars
knowledge and Possession, and to pay unto Your Petitioners Hands
Such Ballance and Ballances as might appear due to the said
Pombahvie Comaro Coroonadeum, as also to deliver over to Your
Petitioners as Executors, such Goods, Plate and Merchandize, as
likewise all and every such Papers, Cowjans and other writings
as any way were the property of and belonging to the said Pom-
-bahvie Comaro Coroonadeum, which application of Your Petrs
for account of the said Pongatoor Shungelvaroyah Moodeliars
proceedings to and with the said John Maxwell Stone, as
far as regards the said Pombahvie Comaro Coroonadeum, as also
his the said Pongatoor Shungelvaroyah Moodeliars Conduct
to and with the said Pombahvie Comaro Coroonadeum Your
Petrs recited in their Bill of Complaint they had frequently
and in an amicable manner represented, But which Your Petrs
Shewed in their Bill of Complaint they could not Effect by the
said Pongatoor Shungelvaroyah Moodeliar refusing to give Your
Petitioners any kind of Satisfaction as he pretended to be one of
the Executors named by the said Pombahvie Comaro Coroona-
-deum in his last Will, and of Course that he had an Equal right
with Your Petitioners to act and Do in the Estate of the said
Deceased Pombahvie Comaro Coroonadeum and therefore not
accountable to Your Petitioners for any Transactions that may have
been made by and between him the said Pongatoor Shungelvaroyah
Moodeliar and the said Pombahvie Comaro Coroonadeum in his
life time nor since his Decease, notwithstanding Your Petrs
Charge, and which the said Pongatoor Shungelvaroyah Moodeliar
in his Conscience well knew, that from the Tenor of the words in
the Will of the said Testator, that he the said Pongatoor Shungel-
-varoyah Moodeliar and the rest of the Executors named
as Executors were to Conduct and Govern themselves, according to the
directions

Directions of the Emperary, meaning your Petitioners, the intents of the Testator being, as your Pets did Charge, apparently evident, that nothing of Moment should be Transacted by the Testators Malabar Executors, without the Concurrence of Your Petitioners, in whom the said Testator had placed his greatest Confidence, meaning thereby to prevent any irregular methods or practices to be made use of in the wasting and Mismanagement of the Estate, which your Pets did Charge, was done by the said Poongatoor Shungelvoroyah modeliar, and in such Charge your Pets did charge, that the said Poongatoor Shungelvoroyah modeliar had misbehaved himself by keeping and detaining the several Title Deeds deposited with him for account of the said Poombahvie Comaroo Coromandum, your Pets in their said Bill of Complaint did Charge, that Poongatoor Shungelvoroyah modeliar would not come to any account, although he was thereunto agreed, and Covenanted to the said Poombahvie Comaroo Coromandum in his lifetime, and of Course became an Trustee for the account remains of whatever he might have came into possession of, by virtue of such his agency, as such remains were virtually and actually a Trust to be Executed upon, under the Will of the said Testator, and being so Executed upon the said Poongatoor Shungelvoroyah modeliar was responsible to the acting Executor named in Will of the said Poombahvie Comaroo Coromadum, for the purposes therein mentioned, your Petitioners in their Bill of Complaint further Charges, that the said Poongatoor Shungelvoroyah modeliar refused to come to an account and threatned to set off his pretended demands against any Charge your Petitioners might make, and that he would not be accountable to your Pets in any manner of shape whatever, your Pets further in their said Bill did pray, that the said Poongatoor Shungelvoroyah modeliar might upon his Oath discover, whether the said Poombahvie Comaroo Coromadum did not make such last Will and Testament

Testament as before premised / a Translate of which was annexed to the Bill of Complaint / and whether such Will was not proved in the Kings ordinary of the Honble the Mayor Court at Madraspatnam by your Petitioners and whether he the said Poongatoor Shungelvoroyah modeliar was not one of the persons named in the said Will to act as Executor subordinate to your Petitioners, and whether he did not believe in his Conscience that the meaning and intention of the Testator was, that the said Poongatoor Shungelvoroyah modeliar and the rest of the Malabar persons named in the said Will should act under the Guidance of your Petitioners, and that he might set forth and Discover every Transaction between him the said Poongatoor Shungelvoroyah modeliar for Account of the said Poombahvie Comaroo Coromadum and the aforementioned John Maxwell Stone, and also that he the said Poongatoor Shungelvoroyah modeliar might set forth the particular Circumstances attending the several Deposits so made by the said John Maxwell Stone, and whether he the said Poongatoor Shungelvoroyah modeliar did not actually receive the Sum of Eighteen thousand Pagodas or thereabouts from the said John Maxwell Stone, and placed the same to account of the said Poombahvie Comaroo Coromadum, and that he the said Poongatoor Shungelvoroyah modeliar might set forth and Discover every matter and thing that any way related to the affairs of the said Poombahvie Comaroo Coromadum and which had come to his knowledge or Perception all of which your Petitioners Sheu was and is the End and Scope of this Bill of Complaint

To this Bill of Complaint the said Poongatoor Shungelvoroyah modeliar did sometime in the months of January or February appear and on the Sixteenth of February one thousand Seven hundred and Seventy Nine, did file his Demurrer and therein did specially set forth as a Cause for his Demurring, that as the said Testator Poombahvie Comaroo Coromadum

Coronadium had nominated Six other persons as Executors to
his said last Will and Testament, of which number he the
said Poongatoor Shengelvroyah Moodeliar was one all of
whom not any one of them are not made parties, either
Complainant or Defendant, and therefore was a good Cause
for his Demurring, and as another Cause for Demurring, that
Your Pet.rs had not shewn a proper Title to Claim the
Title Deeds and Papers relating to the Houses of the aforemen-
tioned John Maxwell Stone, To this Demurrer, Your Pet.rs
did put in their Joinder, therein Setting forth, that by the
said Poongatoor Shengelvroyah Moodeliar repetition of
their Bill of Complaint exhibited by him in his Demurrer
was futile and needless, because the Demurrer should
have been short and pertinent to the object pointed at,
and not stuffed with repetitions, and therefore Your
Petitioners prayed, the Judgment of the Honble the Mayors
Court, for the said Demurrer to be over-ruled and that the
said Poongatoor Shengelvroyah Moodeliar might be put
upon his answer. Your Petitioners further in their Joinder say
that they did acknowledge that the said Poongatoor
Shengelvroyah Moodeliar and the other Malabars were
nominated as Executors but with this Express Condition
of their Conducting themselves according to the direction of
Your Petitioners, whereby it appears Your Petitioners then were,
and now are the absolute Executors in the last Will and
Testament of the said Coombalvin Comarro Coronadium,
notwithstanding what the said Poongatoor Shengelvroyah
Moodeliar did in his Demurrer assert "that he and the
Several Malabar are Executors Equal with Your Pet.rs
and therefore unnecessary for the Consent advice and
approbation of Your Petitioners and the other Persons." Your
Pet.rs did insist that by the words of the Will, the said
Poongatoor Shengelvroyah Moodeliar and the other Malabar persons
had

had no legal right in themselves to act independent of Your
Petitioners, and as the Testator and every other person who
makes a will, may make one Executor for part of his Goods
and another Executor for the rest and therefore Your Pet.rs
did insist, that by the said Will of the said Testator, it appeared
that the Defendant and the said other persons natives of
India have no seperate power from or any Equality with
Your Petitioners, they the said Poongatoor Shengelvroyah
Moodeliar and the said Malabar Persons, being in a subor-
dinate Capacity and not to act but by the approbation
of Your Petitioners. Your Petitioners insisting that the said
Poongatoor Shengelvroyah Moodeliar and the said other Malabars
were only meant and intended to act as Coadjutors to
Council and Assist Your Petitioners with their advise and
Intelligence, it appearing to Your Pet.rs that the meaning and
intention of the said Testator was that the said Poongatoor
Shengelvroyah Moodeliar and the said Malabar should not
be entrusted with the Affairs of the Deceased, as the said Testator
had given a preference to Your Pet.rs in the said affairs, and that
Your Pet.rs would best consult the Interest of his intended
Residuary Legatee, Your Pet.rs further in their Joinder observed,
that the said Poongatoor Shengelvroyah Moodeliar and the
other five Persons Malabars, did not derive any Equality in the
same Degree as the Petitioners because they were subject to the
Controul of Your Pet.rs Your Pet.rs having an absolute power in
themselves, without the Interference of the said Malabar
persons, for that considering the Inequality of the said Mala-
bars, they the said Malabars could not of themselves bring
actions or file any Bills of Complaint without subjecting
themselves to a Demurrer or a pause put to their Proceedings,
but that was not the Case with Your Petitioners, and
further that by the Charter these Malabars were disabled for
to Sue any of the natives not being a Christian for any matter or

or thing due or belonging to the Estate of the said Poombahvin Coma
rovCoomandum, by which means it was out of the power of the
said Malabar to act with Your Petitioners in the prosecution
of anything by Law, Your Petitioners further in their Joinder
set forth, that their Bill of Complaint was well founded,
notwithstanding what had been asserted by the said
Poongatoor Shungelvorayah Moodeliar in his Demurrer. Your
Petitioners further Shewed in their Joinder, that they as
absolute and unconditional Executors were legally entitled
to call the said Poongatoor Shungelvorayah Moodeliar to
an account, as he could not be considered in any other
light than as a Trustee or a Factor for the remains of the
said Testators Effects, for Supposing, which Your Pets
beg leave to do, that the said Poongatoor Shungelvorayah
Moodeliar to have an Equality in the Executorship with Your
Petitioners, then Your Petitioners have a right in Equity against
him for relief. Your Petitioners further
that they having in their Bill of Complaint set forth the
Special Circumstances of the case, and charged the said
Poongatoor Shungelvorayah Moodeliar with being the
agent acting under the said Testator in his lifetime, and
therefore ought to be accountable to Your Petitioners as
Executors aforementioned, Your Petitioners further set forth,
that as the said Poongatoor Shungelvorayah Moodeliar
was charged with having wasted the Estate and Effects
of the said Poombahvin Comaroo Coromandum, by giving up
Sundry Deposits without any leave or License of Your Pets
and he having so done, ought to have given some account of
the same to Your Petitioners, as well as to have come to a fair and
open account of his Transactions in the Estate and Concerns
of the said Testator. Your Petitioners further set forth, that no
person could give so good an account of the affairs and Transac-
tions of the said Testator, as the said Poongatoor Shungelvorayah
Moodeliar,

and of Course ought to have Discovered the whole of
his Agency by making an answer to Your Petitioners Bill of
Complaint, for without that account it would be impossible
for a your Pets. to settle the affairs of the said Testator, Your
Pets. further Shew, that the said Poongatoor Shungelvorayah
Moodeliar did answer, that he himself was a Creditor and of
Course his Demurrer put to the Ground, because Your Pets.
as Executors, have a right to call in all Creditors to come
to an account and prove their Debts. Your Petitioners further
in their said Joinder did very Specially enter into the rights
of their authority, and the merits of their action against
the said Poongatoor Shungelvorayah Moodeliar, and prayed
that the Demurrer of him the said Poongatoor Shungelvora-
yah Moodeliar might be over ruled with Costs to be
paid by the said Poongatoor Shungelvorayah Moodeliar
Your Petitioners further Shew, that this
Demurrer and Joinder came on and was determined by the
Hon.ble the Mayors Court at Madraspatnam the Seven-
teenth day of August one thousand Seven hundred and
Seventy Nine in manner and form following—

Present

Wm. James Call Junior Disinterested Alderman
Edward Garrow and William Webb
Charles Edward Jones, George Maule and John Lewis European
Executors of Poombahvin Comaroo Coromandum

Versus

Poongatoor Shungelvorayah Moodeliar

Bill with Translate of Will annexed Read
Demurrer Read
Joinder Read

The Demurrer and Joinder coming on to be argued
and

and Determined at their Days in the Presence of the attornies on both sides on reading the Complainants Bill with Translate of Will annexed the Demurrer the Joinder the attorney for the Defendant Shews as Bar for further Cause of Demurrer that the Testator Pombatvie Comaro Coromiadum Deceased was a Indian native as well as the Defendant and came within the Description of that part of the Charter which excludes natives of India from Commencing Actions in this Court without Consent and the Court having had due Consideration thereon are of opinion that the Plea made use of by the Defendant in his Demurrer are insufficient to Bar the present action This Court doth therefore think fit to order and doth accordingly order that the Defendants Demurrer be thrown out with Costs and that the Defendant be put upon his Answer

Day is given the Defendant till the 31st Instant to answer the Complainants Bill indefault of which Judgment will be given for the Complainant

James Taylor
Regr

From this Order of the said Honble the mayors Court the said Poongatoor Shungalvroyah Mooddeliar did appeal to the Honble the President and Council of Fort Saint George by filing his Petition and Appeal on the thirtieth day of August in the Year of our Lord one thousand Seven hundred and Seventy nine therein briefly reciting the Drive and substance of your Petrs Bill of Complaint against him, as also the purport of his Demurrer thereto and your Petrs Joinder in Demurrer and in such his Petition and Appeal did assigne as a Reason for his Cause of appealing that at his attorney at Law Shewing as further Cause of Demurrer that the Testator Pombatvie Comaro Coromadum was an Indian native as well as the Defendant and Came within the Discription of that part of the Charter which excluded natives of India from Commencing actions

in the said Court yet notwithstanding the same and many Substantial Causes of Demurrer by the said Poongatoor Shungalvarroy Mooddeliar Set forth in his said Demurrer that the said Honble the mayors Court were pleased to throw out his Demurrer with Costs and that he should be put on his answer all which he the said Poongatoor Shungelvarroyah Mooddeliar deemed Sufficient Causes for his Appealing To this Petition and Appeal your Petitioners were under the necessity of answering and accordingly their Answer was filed the Eighteenth of Septr in the Year of our Lord one thousand Seven hundred and Seventy nine, and therein your Petitioners did Set forth and apart that their Bill of Complaint by them filed in the Honble the mayors Court was for a Discovery of the several Transactions between the said Poongatoor Shungelvarroyah Mooddeliar and the Testator in his life time, and of the Concerns of the Testator which had come to the hands possession or knowledge of the said Poongatoor Shungelvarroyah Mooddeliar since the Decease of the said Testator, your Petitioners Charging him with being in possession of Certain Securities the Property of the said Testator and of Course devolved to his Executor your Petitioners, your Petrs further in their answer did by every argument that could possibly be devised endeavour to support their Bill of Complaint, and this upon the most equitable principles and as most for the benefit of the Estate, and the which your Petrs Shew ought to have been Confirmed to them, But instead thereof, your Petrs Shew that this Appeal coming on to be heard the third day of May in the Year of our Lord One thousand Seven hundred and Eighty One, the same was determined and the Decree of the Honble the mayors Court reversed with Costs, but for what particular reason, your Petrs cannot Set forth, as none are assigned in the order of Court hereunto annexed from which said order of the Honble Court of

From which said Order of the Honble Court of Appeals, Your Petitioners most humbly beg leave to appeal to your majesty in Council for the following Reasons— Because in the first Place Your Petitioners are advised, that according to the express words incerted in the last will of the Testator Coombatvie Comaroo Cooromadum, that they are the absolute and unconditional Executors, to put into Execution the Will of the said Testator, and that they can not Seperate and independent of the said Poongatoor Shungelvorayah Moodeliar, and the other malabar persons named in the said Will, and that the meaning of the said Testator is clearly in Your Petrs favor— Secondly, Because the said Poongatoor Shungelvorayah moodeliar and the said other malabar persons are only expressed in the aforementioned Will as persons to be Subordinate to and Conduct themselves under Your Petitioners the meaning and intention of the said Testator therein, being to preserve his Estate and Effects from the rapacity of these malabars, for whom he placed no Confidence, when left to themselves, and also from a thorough Conviction, that the Infant Legatee would be despoiled of his Estate, and therefore Your Petrs were nominated and appointed to act without Controul, Whereas the said Poongatoor Shungelvorayah moodeliar and the other malabar persons were Subject to the direction of Your Petitioners, and where to Conduct themselves According to the Pleasure of Your Petitioners, Your Petrs further Shew, that this is a plain indication of the intention of the Testator, and how his apprehensions are verified, appears by the Conduct of the said Poongatoor Shungelvorayah, who under various pretences and unjust Suggestions will not come to any Account or give any Satisfaction, whereby the Estate of the said Testator is greatly injured, and the parties Claimants Creditors and Legatees totally

totally deprived from the payment of their respective Demands all this Your Petrs Shew that there were assets sufficient outstanding under the direction and management of the said Poongatoor Shungelvorayah Moodeliar as the agent and attorney to the said Testator in his life time from which Your Petitioners are totally excluded the benefit of by the reversing of the order of the Honble the mayors Court and the Creditors in great danger of loosing their just Claims Your Petrs further Shew, that the said Poongatoor Shungelvorayah moodeliar taye great Steps in his Proceedings, that the whole of the malabar persons are not made parties to the Suit, in Answer thereto, Your Petrs Shew, that they are mentioned in the Bill of Complaint and the Special Circumstances of their Subordinate Situation Set forth, and reasons are assigned for their not being made parties, such as are of those malabar persons is an Infant and the residuary Legatee, and According to the Custom of the malabars the adopted Son of the said Testator, Your Petrs further Shew, that the said Poongatoor Shungelvorayah moodeliar, pretends, that Your Petrs as standing in the place and stead of the Testator, he being in his life time a Native Indian, could not bring any action against him the said Poongatoor Shungelvorayah, as being likewise an Indian native under the discription expressed in the Charter, this observation of the said Poongatoor Shungelvorayah moodeliar totally drowns the Cause he assigns for Demurring, which was, that as the Testator did nominate Six other persons as Executors to his last will and Testament, of which Number he the said Poongatoor Shungelvorayah Moodeliar said he was one, all of whom not any one of them are not made parties either Compltt or Defendant in the said Suit, for which reason he the said Poongatoor Shungelvorayah moodeliar Says he did Demur by reason that all persons interested, in a Suit ought to be made parties

especially

especially joint Executors, which Your Petitioners then not having the purpose of the said Poongatoor Shungelvoryah Moodeliar his attorney at Court appear at the Bar another Caveat for his Demurring, "that as the said Poombahvie Comaree Coroonadenum was an Indian native inwally, as he the said Poongatoor Shungelvoryah Moodeliar and came within the Description of that part of the Charter which Excludes Natives of India from Commencing Actions in the said Court without Consent" hereby the said Poongatoor Shungelvoryah Moodeliar plainly shewing, that had all the Malabar Persons been expressed as Complainants in the Bill of Complaint, he in that Case would have Demurred for the want of Competency in Your Pet.rs, and the said Malabar persons as Representatives of the Testator, so that the said Poongatoor Shungelvoryah Moodeliar would endeavour to take an advantage of this duplicity in pleading, for with great Submission, the said Poongatoor Shungelvoryah Moodeliar pleaded a matter, as that of their being more Executors as most beneficial to himself, and shews another mode of bringing the Bill of Complaint, and thus endeavours to over set what he alledges ought to be done, because it is not agreable to the Charter, Your Pet.rs are therefore of an opinion that both Caveats assigned by the said Poongatoor Shungelvoryah Moodeliar for his Demurring are totally nugatory and irregular, and that the order of the Hon.ble the Court of Appeals passed to reverse the order of the Hon.ble the Mayors Court ought to be overruled with Costs to be paid to Your Pet.rs and the order of the Hon.ble the Mayors Court of the Seventeenth of August One thousand Seven hundred and Seventy Nine stand Confirmed For all which reasons as well as what may be alledged by Your Pet.rs Solicitor before Your most Excellent Majesty in Council and for as much as your Pet.rs are greatly injured from the order Sentence or Decree of the Hon.ble the President and Council of Fort S.t George as the Court of Appeals

there, Your Petitioners do hereby appeal to Your most Excellent Majesty in Council from the said order, Sentence or Decree of the said Hon.ble the President and Council aforementioned and pray that such their order Sentence or Decree may be Reversed and that the order of the Hon.ble the Mayor's Court of Madraspatnam passed in this Cause may stand Confirmed with all Costs to be paid to Your Pet.rs and such other relief in the Premises as to Your most Excellent Majesty in Council shall seem meet.

And Your Pet.rs as in Duty bound shall
Ever Pray.

Chas.r Bromley
Att.y Appel.ts

Court of Appeals
at
Madraspatnam } ss Thursday the 3.d May
Anno Domini 1781.

Between Poongatoor Chengelvoroya Moodeliar Appellant and Chas.r Edward Jones George Maule and John Snow European Executors of Poombahvie Comaree Coroonadenum Deceased Respondent

This Cause coming on this Day to be heard and debated before this Court by the attornies on both Sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Hon.ble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 17.th day of August Anno Domini 1779 and upon due consideration had of the matters therein severally Contained and upon the Pleadings and Arguments used by the attornies on both Sides this Court doth think fit to order and Decree and doth accordingly order and Decree that the order of the Hon.ble

Honble the Mayors Court given in this Cause be reversed with Single Costs in this Court, and that the Bill of Compl.t in the Mayors Court be dismissed with Costs in that Court

J. Cur

/ Signed / Chas. Freeman
Clk.

A True Copy
Chas.l Bromley
Atty appellt

Madraspatnam
In the Court of Appeals

Charles Edward Jones George Maule and John Snow of Fort St. George Merchants and European Exrs of Pombavie Comaravo Corroria dum Deus are admitted to Bail to John Douglas of the same place merchant to answer all Costs and Interest that shall be adjudged by His Majesty in Council—

at the Suit of
Coongatoor Chinglevoy Modaliar

(Signed) John Douglas.

Chas.l Bromley
Atty Appellt

Taken and acknowledged this 16th day of May 1781

Before me Mr. Williams
Justice

In the Court of Appeals

Between Manna Pennall Pillah
by his attorney Albano Druem Compl.t
and Gundavady Sawmy Chitty Defend.t

To the Honble Sir Thomas Rumbold Bar.t
President and Governor &.c Council of
Fort Saint George

The humble Petition of Appeal of
Gundavady Sawmy Chitty of Madras
Merchant

Sheweth

That the aforesaid Manna Pennall Pillah did by his attorney the aforesaid Albano Druem on the twenty Eighth day of January in the present Year one thousand Seven hundred and Seventy Nine file his Bill of Complaint in the Honble the mayors Court of Madraspatnam against your Pet.r for the Sum of one thousand Twelvehundred and Twenty Eight Pagodas as the Balance of an Account Current annexed to his the said Manna Pennall Pillahs Bill of Complaint your Pet.r Sheweth that the said Manna Pennall Pillah having so filed his Bill of Complaint, he did make Oath to the Justness of his demand and obtained a Warrant of Arrest against your Petitioner who was under the necessity of making his appearance and gave Bail to the Suit, your Petitioner further Sheweth that on the Twenty fourth day of May in the present Year he did file his amended answer and therein did absolutely deny to have borrowed and received of the said Manna Pennall Pillah the Principal Sum of One thousand Pagodas or any part of the same at any time whatever also denying that he paid any Sum of money whatever for and on account of Interest said to arise on the said Principal or on any other account your Pet.r further Sheweth he Specially Set forth the absurdity

Filed in my Office Nov. 13. 1779
Stephen Sulivan
Clerk of Appls.

abourdity of the Charge of the said Manna Pirmall Pillah advancing and lending unto Your Pet.r the sum of one thousand Pagodas without taking Your Pet.rs Bond or his Note or Some Testimony of Your Petitioners borrowing this Sum or any other Sum of money of the said Manna Pirmall Pillah, this observation Your Pet.r Sheweth being unanswerable that the said Manna Pirmall Pillah instead of making any Reply thereto as the usual Course of Practice in carrying on of Law Proceedings in the Honble the Mayors Court did on the Twenty first day of June following the filing of your Pet.rs amended answer move the said Honble the Mayors Court to amend his Bill of Complaint which was granted him upon Payment of Costs Your Pet.r begs leave to observe that when he filed his Answer of the Twenty fourth May to the original Bill of Complaint he did swear to the same according to the usual manner and form observed by the said Honble the Mayors Court by administering of the oath with mint and water brought by the Peon belonging officially appointed by the said Honble the Mayors Court for that Special purpose, and to which the said Manna Pirmall Pillah made no objection Your Pet.r further Sheweth that being furnished with a Copy of the amended Bill of Complaint he to his great surprise found that the said Manna Pirmall Pillah had admitted of your Petitioners observation in his original amended answer and brought his action against your Petitioner upon different Grounds foreign to the Charge in the original Bill of Complaint wherein it is said that your Petitioner stood Indebted unto the Complainant in the Sum of one thousand Pagodas by him lent unto your Petitioner and to this charge did the said Manna Pirmall Swear according to the usual manner and form of the said Honble the mayors Court whereby Your Pet.r was harrassed and perplexed by an arrest contrary to Law as is

is hereafter Shewn Your Pet.r further Sheweth that the said Manna Pirmall Pillah in his amended Bill Sets forth that your Pet.r stood Indebted to him as warden of Two certain Pag.s in the Black Town of Madras and further recites that one Bodding a Soucar in his life time did advance unto the said Manna Pirmall Pillah uncle by name Venkatakist=na Pillah then being warden or manager of the Two Pagodas, Your Pet.r Supposes that the said Manna Pirmall Pillah means money / but what that Sum is, the Bill of Compl.t does not Set forth / the said Manna Pirmall Pillah further Sets forth that the Sum was put out at Interest by his said uncle in the hands of your Pet.r until materials necessary for the Buildings intended to be Erected could be procured, the said Manna Pirmall Pillah further Sets forth that this Sum was sent to your Pet.r by the hands of one Vincajy Brauny and that your Pet.r received the same and made an Entry in his account of the one thousand Pag.s to the Credit of the said Pagodas which was as he says to be paid on demand with Interest at Twelve p Cent p Annum to the said uncle of the said Manna Pirmall Pillah and that your Pet.r was debited for the same the said Bill of Complaint further Sets forth that about a month or two after the said Sum of one thousand Pagodas was so lent and advanced to your Pet.r the said Manna Pirmall Pillah uncle departed this life and that he the said Manna Pirmall Pillah Succeeded him as warden of the said Two Pagodas and that he did take the management thereof upon himself but your Pet.r begs leave here to observe that the said Bill of Complaint is Silent as to the authority from whence the said Manna Pirmall Pillah borrowed his pretended right of Succession, which he ought to have shewn and Set forth in his Bill of Complaint nor does the Bill of Compl.t Set forth that any materials were purchased or Expences laid out on the Erecting and Building of the aforementioned Two Pagodas for until that was done the pretended money lent

lent to your Pett. was to lay in your Petitioners hands at Interest
untill the money was wanted, the said Bill of Complaint further
sets forth that upon the Manna Pirmall Pillahs demanding
Payment your Pett. did promise and undertake so to do and that
your Pett. seemed Satisfyed and sent him the Sum of Seventy
Eight Pagodas on account of Interest by the hands of Vencajy
aforementioned and for which he gave your Pett. Credit and
that he had frequently demanded payment of your Pett.
but which your Pett. refused so to do Your Pett. Sheweth
that by comparing this amended Bill and the original one
the nature of each demand is as different as it is possible, the
original Bill Setforth the Cause of Complainant being.
Cash said to be lent to the Pett. as his the said Manna Pirmal
Pillahs sole right and to this fact does he the said Manna
Pirmall Pillah Swear the amended Bill of the said Manna
Pirmall Pillah is admitted as Warden of the said Two Pags
Shews and Setsforth that he is only a Trustee for the purposes
of a Publick Charity, in this last Bill of Complaint it does
not appear that your Pett. gave any obligation for the
Principal Sum of one thousand Pagodas and your Pett.
does further Shew that the purport and End of the said
Manna Pirmall Pillah in instituting these two Bills of
Complaint under various Titles and pretends is to harrass
and distress your Pett. and more particularly as the
following Circumstances herein after contained will prove
your Pett. Sheweth that notwithstanding your Petitioner had
a right to Demur to the said amended Bill for the many
Exceptions there were to the same Yet as your Petitioner
was desirous of finally determining the Cause depending
Complainant of the said Manna Pirmall Pillah your
Petitioner did by the advice of his Solicitor make and
Draw out a full Clear and positive answer therein denying
to be Indebted unto the said Manna Pirmall Pillah as
by him in his said amended Bill of Complaint is Setforth
and stated and moreover that your Pett. was ready to prove
where this money was by whom paid and by whom received &
that your Pett. had nothing to do with the Sum in question
nor with any part of it. your Pett. did on the Eighth day of this
Instant November file this his Amended Answer in the Registers
Office of the Honble the said Mayors Court having previously
Sworn to the same according to the usage of the said Honble
the Mayors Court, and on the next day being the Ninth of
the month and also Court day Your Petitioner by his Solicitor did
attend in order to See Recorded his said amended Answer, but
to Your Petitioners great Surprise a Petition of Manna Pirmall
Pillahs with the Joint affidavit of Soobaroyaloo Chitty a Dubash
and Venaiguen Moodaly another Dubash who stile themselves
Merchants whom at the same time the first was attending
upon his master who is a Solicitor in the Honble the
Mayors Court a Copy of which Petition as also that of the
affidavit are hereunto annexed for the Inspection of this
Honble Court of Appeals and to which your Pett. humbly
refers for their Inspection and Consideration Your Pett.
further Sheweth that on an inspection into the said Petition
that the matter therein contained is improper to be Setforth
and Exhibited in this Stage of the Business because the
Contents are matters that ought to be given in Evidence
in Support of the Charge contained in the said Manna
Pirmall Pillahs Bill of Complaint for the Cause of action
arises upon money said to be lent and advanced and no
other defence is required than a positive denial of the Debt
and y^e Spirial matter in Support of the demand ought to be
given in Evidence which is a very Simple Testimony, Your Pett.
further Sheweth that the affidavit made by the Dubashes
aforementioned the Contents thereof had the General Issue
of Nil debit been pleaded, would have been Evidence sufficient
in Support of the Charge of the Promise to undertake and pay
Your Petitioner Sheweth that there was great irregularity
in Perfecting this Petition and affidavit and by this Petition
and

and affidavit it does appear as if your Petitioner had been drawn in to make some Declaration which at present your Pet.r has not the least remembrance of and is positive that he made no such promise as in the Petition and affidavit sett forth and if he had made such promise or offered to pay in a certain time still that is no Sufficient Ground to oblige your Pet.r to Swear to his answer before the Pagoda at Tripliicane Because your Pet.r as he is advised that even Swearing to an answer before the Honble the mayors Court is a matter of form only as the merits of the Cause do not depend on the answer but on the Evidence produced, and for which Reason and many others herein given that the Prayer of the said Petition of the said Manna Pennall Pillah is vexatious and litigious for he knows very well that it is not usual and Customary for the natives of this Country to make an affidavit or take any Oath before their Pagodas of matters arising out of the Courts of Judicature established by the Europeans in India and the said Manna Pennall Pillah further knows that rather than be obliged to Swear to any answer or to Depose to any Interrogatory as a Witness before their Pagodas in Causes before the Honble the mayors Court at Madrass patnam that the natives have suffered Decrees to go against them in default of answer rather than Submit to any order of the said Court whereby they are directed to Swear at their Pagoda as such orders had they been complied with would have been an innovation and an infringement of their religious rites and Ceremonies which have been decidedly preserved both by the Government of Fort St. George and the Honble the Court of Directors this great and important point having in several instances come before this Honble Court of appeals and decided in favor of the native as for instance by leave of this Honble Court of appeals your Pet.r Sheweth that in a certain Suit depending and at Issue in the said Honble the mayors Court

Court wherein Narrain Chitty was Complainant and Paul Benfield Esq.r Defendant the Complainant having an earnest desire to take the Deposition of one Pooney Cottee he — moved for a Spirial Commission and which was granted to him to Swear the said Pooney Cottee to his Depositions before Tripliicane Pagoda which the said Pooney Coottee — objected to and addressed this Court by Petition to over rule the said Order to this Petition an answer was put in and — reasons assigned for why the said Pooney Cottee should Swear to his Deposition before the Tripliicane Pagoda witnesses produced on both Sides in the question many on the part of the said Pooney Cottee being the Heads of the Several Casts were Summoned before the said Honble the mayors Court for refusing to Swear before the Examiner they appeared in Court and gave their reasons for not Swearing even before the Examiner particularly that they had never taken any Oath whatever since they were born nor was it the Custom of their Cast so to do and likewise informed the said Court that they were ready to answer any Interrogatories that might be put to them provided they might be accepted of without Oath which the Court would not comply with and they were dismissed after a few questions being asked them from any further attendance on the said Court, the want of their Evidence in great measure decided in favor of Narrain Chitty which induced the said Pooney Cottee to appeal to this Honble Court of appeals for the over ruling of the order of the mayors Court praised on the occasion to this appeal did the said Narrain Chitty Answer and the same came on to be heard the third day of August in the year one thousand seven hundred and twenty three and after Searching the Records of this Honble Court of Appeals and the Records of Government it was found that the rites and Ceremonies of the Natives of the Country were preserved to them and that their complying with the old Established and

and continued Practice of the Honble the mayors Court in the
Swearing to their Answer and Depositions by the usual manner
of taking an oath either before the Court or before such persons
authorized belonging to the said Court by administring of mint
and water was to all Intents and purposes as effectual and
binging as any oath or Deposition they could make or take
before their Pagoda of which opinion was this Honble Court
then at that time and Decreed accordingly by reversing the
order of the said Honble the mayors Court more especially
as this matter had been in agitation before in a Suit
instituted by John Lewin Smith Esq.r against Gocul Turwady
wherein the said Gocul Turwady was at the instance of the
said John Lewin Smith ordered by the mayors Court to
Swear to his Answer before the Pagoda which he neglected
doing and thereupon the said Honble the mayors Court
Decreed in favor of the said John Lewin Smith against the
said Gocul Turwady for want of an Answer against which
Decree he the said Gocul Turwady appealed to this Honble Court
of Appeals who were pleased after hearing both parties to reverse
the Decree of the said Honble the mayors Court and to order and
Direct the said Gocul Turwady to be at Liberty to put in his
Answer upon the oath being administred in the usual way
by mint and water which accordingly was done as your Pet.r
Sheweth and the Proceedings went regularly on as will
more fully appear by a reference to the Records of this Honble
Court of Appeals and the Records of the Honble the mayors
Court if necessary. Your Petitioner further sheweth that when
this Petition of Manna Pernall Pillah was admitted and read
as also the affidavit your Pet.r did move the said Honble the
mayors Court that he might be allowed to Answer the same
which was refused and your Petitioner ordered to Swear to his Answer
at Triplicane as p Copy of the said order of the said Honble the
mayors Court hereto annexed for the Inspection of this Honble
Court of Appeals will more fully appear from the original of which
order

order of the said Honble the mayors Court your Petitioner humbly
craves leave to appeal for the following Causes Viz.t
First. that according to the usual Practice of the said Honble
the mayors Court that where a Petition is thrown in during
the Proceedings and which evidently tends to some special
matter that concerns the parties a Copy is allowed to be
taken and day given to answer the same, which was the case
of the aforementioned Poony Cotta and which ought to have
been allowed to your Petitioner and more especially as because
of the importance of the question and the order passed thereon
and the submitting to the same all considered in their proper
places required the utmost deliberation and Consideration, the
Consequence resulting - thereform to the native, the disadvan-
-tages to the Government derived from an Innovation in the
hereto fore undisturbed Rites and Ceremonies of Natives living
under an English Jurisdiction whose universal Practise in
the Conducting of their Civil Jurisprudence they the said
Natives of whom your Petitioner is one comply with and as
your Petitioner is advised that he is entitled to every Privilege
that an European Enjoys and is allowed in the conducting of
their Proceedings before the Honble the mayors Court, for
Supposing which your Petitioner humbly begs leave to do, that
had there been no decision on this important point. Your
Petitioner by not being allowed to Answer the said Petition was
entirely cut off from producing and exhibiting his Evidence in
Support of the Declared and approved rites and Ceremonies of the
People whom your Petitioner belongs to and is one of your Pet.r
further Sheweth that the Equity of the Case required that some
indulgence should be shewn to your Petitioner on Account
of the Original prosecution carried on against him by a
False Title as Evident from an inspection into the Amended
Bill of Complaint of the said Manna Pernall Pillah, such
Amended Bill taking its rise from the matter contained
in

in Your Petitioners answer in the original Bill of Complaint
Your Petitioner further Sheweth that being so cut off from
his Evidence in Supp[or]t of the rites and Ceremonies he
intended to have pleaded for and Supported they being
rites and Ceremonies Saved and preserved to the natives
long before the Establishment of any body of Europeans in
India it is lucky for Your Petitioner that this point has
already been determined as herebefore is mentioned

Secondly and Lastly as another Cause for
appealing Your Petitioner Sheweth that to the order respecting
Your Petitioners Swearing to his Answer at Treplicane Pagoda
that such order is contrary first to the Establish Practice of the
Honble the mayors Court and in the Second plan the said
order if Submitted to would be an innovation of the
established Rites and Ceremonies preserved to them under
every European Government in the East Indies and
particularly that of the Honble the United English
East India Company who have Carefully guarded this
said Rites and Ceremonies from every infringement
intended to have been made Your Petitioner being also
advised that their rites and Ceremonies so long as the
natives remain under a British Jurisdiction is as
much a part of the Law of the Land as any Custom or
usage in any part of Great Britain and therefore are
intitled to every Protection that the Common Law has
provided. Your Pet[r] further Sheweth that he is advised
that the Laws of Great Britain are not made to evade
or obtrude upon the Civil Jurisprudence of the Foreign
Subject so long as they continue obedient and Subject
to those Laws that are not repugnant to their welfare
But on the contrary the Legislature meant to aid
and assist the alien in the full enjoyment of his
property

property and the full and free use of his religious Tenets, for
instance, with Submission to this Honble Court the Jews
allowed the liberty of Coming into Court with his Hat on his
head and Swearing upon the Old Testament but is not
obliged to Swear at his Synagogue the Quaker to his
affirmative the Turk to his alcoran and the Christain on the
Evangelists either in open Court or before some person authorized
to administer the same but never obliged to go to the Alter of
his Church and receive the Sacrament as to matter of
Controversy depending in a Court of Judicature Your Petitioner
further Sheweth that in matter Criminal under the British
Jurisdiction, the Evidence on the part of the Prosecutor if a
Pagan is delivered in open Court by the administering of mint
and water and the Jury of a Pagan is likewise Sworn in the
same manner, and as Your Petitioner is informed there is no
one instance can be produced where a Witness has been obliged
to go and Swear at a Pagoda before his Evidence can be admitted
in the Court of Oyer and Terminer and General Goal delivery
how much less is it necessary for Your Petitioner to Swear to
his Answer at a Pagoda in a matter of a very Simple nature
depending in the Honble the mayors Court Your Pet[r]
further Shews that he does not think himself bound to
Submit to this aforementioned said Order of the said
Honble the mayors Court because it does not appear
in any part of the Charter granted to the said Honble
united English East India Company that the said
Honble the mayors Court can oblige Your Pet[r] to Swear
contrary to his Conscience which if complied with Your
Pet[r] in himself knows must effect that Religion he professes
but on the contrary Your Petitioner is of opinion that the said
Charter has provided a remedy for a relief of those whose
Sect or religion will not allow them to Conform to the Exact
Ceremonies observed in the Customary Practice of carrying

ov of proceedings in the British Courts of Judicature in the East Indies
and therfore Provision is made that the Pagan might go before his
Pagoda or else where to make this Declaration in such manner as
most binding upon his Conscience and not that he should be
compelled to act contrary thereto, the Charter implying that this
was only in Cases when the Pagan did not comply with the Custom
of the Court the Law having made a Provision for those who
declined Swearing after the manner of the Christains but should
they Consent to accept of the oath as taken by any particular
Sect then they are at libesty so to do without any impeachment
as they must stand to the Consequences Your Petitioner Sheweth
that he having Sworn to his Amended Answer to the Amended
Bill of Complaint he has in every Respect complyed with the
accustomary Practise of the said Honble the Mayors Court and
that the same is effectually binding on him Your Pet.r further
Sheweth that he sees no necessity for his Swearing to his
answer at Triplicane Pagoda for whether Your Petitioner
Swear before the said Mayors Court or Triplicane Pagoda it is
of no Consequence to the merits of the Complaint because the
merits must be determined by Evidence Your Petitioner apprehends
that from the motion of the said Manna Pirmall Pillah to have
Your Petitioner Sworn at the Pagoda that the said Manna
Pirmall Pillah imagines the Power and Dignity of the Honble the
Mayors Court as of little consequence for it is evident that by the
said Honble Court giving away to the prayer of the said Manna
Pirmall Pillah Petition it weakens their Authority and raises the
Consequence of a Defendant People Your Pet.r further Sheweth
that should this order of the said Honble the Mayors Court of the
ninth Instant take place an immense inconvinuncy
would arise not only to Your Petitioner but to many other natives
of India because the Swearing to any act or Deed proceeding
from the said Honble the Mayors Court before their Pagoda
immediately

immediately creates a doubt and Establishes a prejudice against
the person who actually Submitts to this mode prescribe by the
said Court for Your Petitioner Says that it is a received
opinion and become an Adopted maxim that whenever any
of the Natives act and do more than the Common Establish
from and Practise of the Honble the Mayors Court prescribes
that the Native or Natives so complying is a bad man
and unworthy to be ever after Credited and this would have
been attested by the Heads and most responsible People of
the Several Casts of natives of India but whose Testimony
Your Petitioner is deprived of by the means heretofore mentioned
Your Petitioner further says and he hopes it will appear to this
Honble Court of Appeals that the very objections he now makes
for not Submitting to the order of the said Honble the Mayors
Court evidently proves Your Pet.r Probity by standing upon distinc
of his rites and Ceremonies and those of many thousands of
the Natives and that this present Petition of Appeal is
both decent and proper Your Petitioner further Sheweth that
were the order of the said Honble the Mayors Court of the
ninth Instant to be complied with every litegious person
and people who have no Character to Lose might take every
advantage that the Native who cautiously and religiously
adheres to his right and Ceremonies gives him for rather
than comply to an order of the Mayors Court by swearing
at a Pagoda they will Loose than all and fall a prey to the
Evil purposes of their answers Your Pet.r further begs leave to
Shew the light in which the said Manna Pirmall Pillah
Stands by his Petition to the Honble the Mayors Court, he Pet.r
for an act to be done that in the Commission thereof is a
Violent Infringement of those Sacred rites and Ceremonies by

is bound with the rest of the Natives to maintain this Idea when added to the Oath taken in the first Bill of Complaint Your Petr says is proof of the litigiousness of the said Manna Permall Pillah though he is sensible that there is no necessity of the Petitioner Swearing to his Answer at Triplicane Pagoda Yet through a determinate and pertinacious disposition he will persist to require of what he knows that Your Petitioner cannot consistently comply with Your Petitioner Submits it to the Consideration of this Honble Court that as Your Petitioner is ready and willing and has already done so to comply with the rule and orders of the said Honble the Mayor's Court so far as they are convisitent with the constant Practise of the said Honble Court and more especially as the Swearing before a Pagoda to the said Answer that has already been Sworn to according to usage does not in the least add or diminish the merits of the Suit as the Suit does in no sort depend on the same that Your Petitioner be allowed the like liberty with the rest of the parties Compts and Defendant who were before the said Honble the Mayor's Court for relief That the Answer of Your Petr as already Sworn to according to the forms prescribed by the said Honble the Mayor's Court be continued on the file and that the order of the said Honble the Mayor's Court of the ninth Instant from whence Your Petr now appeals be over ruled with Costs to be paid by the said Manna Permale Pillah and such other relief as to this Honble Court of Appeals shall seem meet

And your Petitioner as in duty bound
shall ever Pray &c

Chas Brownley
Geo. St. Hoisgard
Atty Appellt

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In the Honble the Mayor's Court
at Madraspatnam

Between Manna Permale Pillah by
his attorney Albano Dreem of Madras
Inhabitant complainant and Gundava-
vady Sawmy Chitty of the same place
merchant Defendant

The Petition of the said Manna Permale Pillah
by his said attorney Albano Dreem

Sheweth

That Your Petitioner by his said attorney did some time on or about the Twenty Eighth day of January in this present Year of our Lord one thousand Seven hundred and Seventy nine file a Bill of Complaint against the said Gundavady Sawmy Chitty for the Sum of one thousand Two hundred and Twenty Eight Pagodas and that a Summons issuing thereupon the said Defendant did appear but instead of paying the said Sum the said Defendant did put in an Answer therein denying to be indebted unto Your Petitioner the said Sum after which Your Petitioner sheweth that finding by the said Answer that the Defendant had taken advantage of some matter respecting the rise of the said Debt not having been fully and specially explained and set forth Your Petitioner did on the Twenty first day of June file an amended Bill of Complaint therein fully setting forth the full Cause of action between him and the said Defendant after which Your Petitioner sheweth that the said Defendant did seem inclined to satisfy Your Petitioner in respect of the said Demand and did offer in the presence of Your Petr's attorney

attorney Mr. Henry Du Pre, Soobaroyloo Chitty and Venaygum Modelly
that in case Your Petr wants to withdraw his said Amended Bill that the
the said Defendant wants pray the Amount therein sued for by
giving unto Your Petr a Bond for the same payable in one Year
and Your Petrs said attorney did in the presence of the said
persons endeavour to accommodate the said suit by advising
and persuading the Defendant to give a Bond payable in six
months But the Defendant alledging his inability to pay
the same in that time all further steps to accommodate the
said suit were discontinued, and Your Petitioner sheweth
that the Defendant hath already Sworn in one Answer filed on
his behalf in the said suit not to be Indebted unto Your Petr
in the said Sum or in any other Sum or Sums of Money whatso-
ever and Your Petitioner sheweth that when the said suit
was about to be at Issue the Defendant prayed Leave of this
Honble Court to amend his said Answer which is according
to the Rules of this Honble Court to be filed this day

Your Petitioner doth therefore humbly prays to
refer the aforesaid matter to the Consideration of this Honble Court
how far the above acknowledgement and tender of payment
by the means aforesaid do not give cause for this Honble Court
to order that the Defendants said Amended Answer should be
Sworn to in the most Solemn manner prescribed by the said
Defendants Cast. Your Petr doth therefore most humbly pray
that the said Defendant may be ordered to make oath to his
said answer at the Pagoda of Triplicane as the most
Solemn and binding affirmation instituted by the Indian
natives and usually ordered to be administered to persons of
Suspicious or equivocal Conduct and Your Petr as in Duty bound
shall Ever Pray

A true Copy James Taylor Regt — A true Copy Chas Bromley, Geo. Jos Hoispard, Attys appellt — Henry DuPre, Atty Petr

Filed 9th Novr 1779

In the Honble the Mayors
Court at Madraspatnam

Between Manna Ponnall
Pillah by his attorney Abbano
Druem of Madras Inhabitant
Complainant and Gundavady
Saumy Chitty of the same place
Merchant Defendant—

Soobaroyloo Chitty and Venaygum
Modelly both of Madras Merchants make oath and say
that on or about two months past that being in the Court
House they heard the Defendant in this Cause offer to give
his Bond unto the Complainant in this Caise for the
Amount in dispute as a Satisfaction for the same
payable in one year that upon the said Terms being
muntioned to Mr. Henry DuPre the attorney for the
Complainant in this Cause he proposed six months
as a Term of Payment to which the Defendant did not
agree alledging that he was not able to pay the Complain-
ant to Demand in so short a time upon which all
further accommodation was dropt

W W D O A C W
S M T D N R G W S M J

a true Translation from the Malabar Language by
Soobaroyan Interpreter

Sworn to in Court
9 Novr 1779

a true Copy
James Taylor
Regt

Attested to be a true Copy
Chas Bromley
Geo. Jos Hoispard
} attys appellt

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 9th day of November Anno Dominie 1779—

Present

George Proctor Esquire Mayor

Janis Call and Edward Garrow

Aldermen

Manna Pernall Pillah by his attorney Albano Druen

Vers

Gundavady Sawmy Chitty

Amended answer upon Payment of Costs to filed and Sworn to before the Mayor the 6th Instant.

Petition of the Complainant filed this day praying that the Defendant may be obliged to Swear to his amended answer at Treplicane Pagoda affidavit of Subarayloo Chitty and Vinaygum Moodely Read and filed. The attorney for the Defendant prays that he may be allowed to Answer the above Petition. The Court having taken the same into Consideration ordered that the Defendant do Swear to his answer at Treplicane Pagoda — The attorney for the complainant prays that a Commission may Issue Directed to John Sykes and Stephen Popham Esqrs to Swear the Defendant to the truth of his answer at Treplicane Pagoda ordered accordingly—

A true Extract

James Taylor

Regr.

Attested to be a true Copy by us

Chas. Brownley

Geo: Js. Roe Jard

Atty's Appellt.

To the Honble Sir Thomas Rumbold Baronet

President and Governor &c. Council of Fort St. George

The answer of Manna Pernale

pillah by his attorney albano Druen

to the Petition of Appeal of Ganda=

vedy Sawmy Chitty—

The said Respondent by his said attorney doth admit that he did on or about the Twenty Eighth day of January in this present Year of our Lord file a Bill of Complaint in the Honble the mayors Court against the said appellant for the Sum of one thousand two hundred and Twenty Eight Pagodas being the Ballance of an account Current annexed to his said Bill of Complaint. But this Respondent saith that the warrant of arrest in question was not obtained by oath being made to the said Debt by this Respondent but by his said attorney which he might have Judged necessary from the Circumstances of his apprehending the appellant was about to depart from the Jurisdiction of this Honble Court, and by that means to compell the appellant to Appear and to give Bail according to constant Custom and practice. This Respondent further admits that on or about the twenty fourth day of May insuing the appellant file his Amended Answer denying to have borrowed and received of this Respondent the principal Sum of one thousand Pagodas or any part of the same at any time whatever denying also that he the said appellant paid any Sums of Money whatever for or on account of Interest arising on the said principal or on any other account, which protestation

Filed in my Office Dec.r 6. 1779

Stephen Sullivan Clerk of Appls.

protestations together with the concluding parts of the said answer are very evasive, and tend less to discharge the said Appellant from this Respondents demand, than to the introduction of perplicity and confusion in the said suit. This Respondent therefore, as the appellant had taken the advantage of the genral manner in which this Respondent did bring his said action, by quibling and equivocating upon the formal transaction of the identical personal Ruipt and payment of the said money, did Judge it advisable to set forth and disclose in the minutest detail the whole of the several Circumstances upon which his Right of action was founded, and in order thereto did on or about the Twenty first day of June following file his amended Bill of Complaint. This Respondent also admits that the appellant did make oath to his said Answer according to the usual manner and form observed by the said Honble the Mayors Court on receiving of the mint and water administered by the Braminy for that purpose appointed by the Honble the mayors Court, to which mode of making oath, this Respondent did not at that time object — because, this same Cause did not exist in that Instance, which this did previous to his the said appellant filing his amended answer, to this Respondents Bill of Complaint, and this — Respondent saith that the appellant pretending a surprize at the grounds upon which the said amended Bill were founded is a mark of simulation, very Characteristick of the appellants general Conduct in the matter in dispute, as the appellant can but be well informed of the truths of the Contents of this Respondents said amended Bill, and from his having — amended his answer, that this Respondent must stand equally intitled to amend his Bill, and to set forth such matters in it which

which may best tend to elucidate the justness of his demand, which being so admissible in the Law and with the practice of this Honble the mayors Court, the appellant could not suffer any injury by it, and this Respondent admits that he did set forth in his said amended Bill of Complaint that the said appellant was indebted to him as warden of two certain Pagodas in the Black Town of Madras, together with the Cause how he became so indebted to him, with full and legal reasons why he the said appellant should pay and be responsible to him for the same, but as an introduction of the said matter tends to lead to the discussion of things irregular to come in question with the real nature of the differences to be decided by this Honble Court, this Respondent will defer entering into a more proper View of the refutation of the manifold error and perversions of the Law and truth exhibited in the said appellants Petition of appeal, and for as much as the same are foreign and immaterial to the point layed before this Honble Court for their determination and Judgement, this Respondent prays that the said parts of the appellants Petition which lead to an animadversion upon the merits of the Cause in general, may be expunged, previous to any further proceedings — towards the hearing of the matter from which this said appellant has appealed to this Honble Court, and this Respondent doth also make the same prayer as to the appellants Answer to the said Bill as far as the same leads to an introduction of the merits of the Cause in general, because the matter in question cannot be decided by a consideration of the suit in its present immature State, but from the merits of the matter appealed from in its separate point of View, unconnected wholly with the determination of the appellants being indebted or not indebted to this Respondent

This

This Respondent therefore having thus premised prays leave to answer such matters exhibited in the said Petition of appeal which endeavor to shew that the appellant is aggrieved by the order of the Hon^ble the Mayor's Court of the ninth day of novembr in this present Year of our Lord, whereby the said appellant is ordered to swear to his answer at Triplicane Pagoda; for the execution of which order the said Hon^ble the Mayor's Court did at the prayer of this Respondents attorney, grant a Commission directed to John Sykes and Stephen Popham Esq^r

This Respondent admits that he the said appellant did on or about the Eighth day of novembr aforesaid file his answer in the Registers Office of the said Hon^ble the Mayor's Court, having previously sworn to the same, but this Respondent denies that an Oath taken in private to an Answer before the Mayor or one of the aldermen is according to the constant usuage of the said Court, and is very rarely practised it being more common for answers to be sworn to, before the Bench, and which this Respondent is humbly of opinion the appellant might have been compelled to do, as this Respondents attorney had no notice of such a step being taken by the Appellant or in all probability he would have attended the administration of such Oath or have made the same objections to the same being taken in the common form, for the reasons shewn in his this Respondents Petition to the said Hon^ble the Mayor's Court, and this Respondent saith, that besides the said reasons assigned in his said Petition why the Appellant should make oath to his said answer at the Pagoda of Triplicane, as being the most Solemn mode of afirmation prescribed by the Laws of the natives of India, and admitted into the practice of this Hon^ble Court

Court is the Secret manner in which the said oath was made, so that it cannot be ascertained whether the same was made by the appellant or whether some person might or might not have personated him, in order by that means to evade the Charge of perjury, which uncertainly, of the real truth of the said circumstance, tends to shew, how necessary it is for the Oppsite attorney to have been present, in order fully to ascertain the identity of the person who made oath to the said Answer: which matter might in all probability have influenced the Hon^ble the Mayor's Court in their determination upon this Respondent said prayer as the circumstance of the said answer having been sworn to the day before the said Petition was filed, was particularly and strongly urged by the appellants attorney, but from the Equity of the Case and as this Respondents Petition came as early before the said Hon^ble Court as was possible, they would not suffer this Respondent to be prejudiced by such an artful equivocation to elude and evade the purposes of Justice and this Respondent saith that after the acknowledgement of the appellant to be indebted unto this Respondent and his tender of Satisfaction Respecting the same, he had no cause to be Surprized but on the contrary must have every Reason which the Conviction of Conscience could impress, to apprehend that this Respondent would take every means allowable by the Law and the practice of the said Hon^ble the Mayor's Court, to compell the appellant to give him the fullest satisfaction, respecting his said demand, to the effecting of which, this Respondent imagined no instance could demonstrate a better title thereto than supporting by the affidavits of the said Sodrys Chitty and Venaygum Moodelly, the aforesaid acknowledgement and tender of payment of the said Demand which

which persons are well known and of good Credit, and the latter was at that time or some time previous thereto Dubash to the appellants attorney and this Respondent saith, that with Submission to this Honble Court, he conceives that the matter contained in the said Petition and affidavit are very proper to be exhibited in this Stage of the Business for the purposes for which they were designed, and the Arguments made use of by the appellant against the propriety thereof, are very insufficient, as the same were never intended with a view of establishing his said demand, but in order to shew Cause to the Honble the Mayors Court why the said appellant should make Oath to his Answer in the most solemn manner, for altho this Respondent will admit that it may not be the Course of ordinary practice of the Honble the Mayors Court to compell Defendants to Swear at the Pagoda at Triplicane Yet must this be the practice of reading is so far adopted as to be inserted in their Book of Instructions as one of the Rules of practice of the said Court, which it never would have been if the same was not intended to be put into effectual execution, when proper Cause and Reason should be shewn for its being inforced.—

The appellant saith, that even if he had made the said promises or offered to pay in certain time, still that there was no sufficient Ground to oblige him to swear to his Answer before the Pagoda of Triplicane, and gives for reason, because he is advised that even swearing to an answer before the Honble the Mayors Court is a matter of form only, as the merits of the Cause do not depend upon the answer, but the Evidence produced. In answer to which, this Respondent is not informed by whom the appellant could receive this knowledge, but is well assured that one if not both of his the said appellants attorneys have been Witnesses of many Decrees passing against Defendants, who have refused or who have neglected to make oath to their answers. It being the unalterable practice of the said Honble the Mayors Court to insist upon all Answers filed in their Court to be Sworn to and it has been a long standing maxim that an answer without Oath, is no Answer, and upon the said principal they have issued Decrees where this practice has not been conformed to. For which reasons and in consideration of what has been before set forth this Respondent denies that his said prayer is any way litigious, but on the contrary that from the Conduct of the appellant he had great reason to make the said prayer, and this Respondent saith and will maintain that making Oath to Natives of a Cortical nature where persons of suspicious behaviour have given reason to apprehend that the Common Oath by mind and water is or may not be Sufficiently binding upon their Consciences, is frequently performed and administered at the Pagoda, and that the said mode of making Oath is common in such Cases, and with Submission to this Honble Court no Case can exhibit a stronger necessity for the fullest and most binding mode of making Oath being exacted, than the present one now before this Honble Court, and seems to be exactly in point with the view not only of the Indian Natives in the institution of the said Ceremony, but also with that of the practice of the Honble the Mayors Court in adopting it. In order to bind the loose minded Subject by ties stronger than those usually and commonly made use of, in the person of men of less suspicious Character—

and

And with Respect to what the appellant saith — Setforth of Persons, who rather than be obliged to swear to any answer or to depose to any Interrogatory as a Witness before their Pagoda, in Causes before the Hon^ble the Mayor's Court, that the natives have suffered Decrees to go against them indefault of Answer. This Respondent saith that the same is rather a test of their Conscience than of their honesty, and shews the unjustity of opposing the one as a trial of the other, by which means a person otherwise with every deposition to evade the payment of a just demand, is compelled to a discovery of the truth, thro' the fear of shame and the — consequent penalties of purjury. To say that the Ceremony of making Oath before the Pagoda is an innovation and an — infringement of the Religious Rites of the natives is a — mistake because it is like all other Solemn Agreements of Different nations, a Religious institution of their own, and taught with that awful Solemnity, aimed at in the purpose of all Religions, to awaken the Consciences of men to a consideration of the sacredness of truth, which the requisition of a simple assertion or denial, might not only be difficult to procure, but would leave the matter deposed to upon the Slender principles of Vulgar Veracity, of less weight and authenticity, to those whose office it is to decide upon it.

This Respondent therefore saith that to call the — making Oath to an Answer in the Hon^ble the Mayor's Court a form only is an endeavor to abolish and the Chief principles of their practice, which is no innovation or infringement of the religious Rites and Ceremonies of the Indian natives —

and

And this Respondent denies that this great and important point, as the appellant is pleased to term it, hath never been decided before this Hon^ble Court in any instance similar to the present one before them for their determination, and the Case cited by the appellant in the Cause of Narrain Chitty against Paul Benfield is very foreign to the present, and this Respondent is advised that the said matter was not determined so much in favor of the said Pooney Cooty from a sense this Hon^ble Court had of the entire inadmissibility of administering the oath at Triplicane Pagoda, as from some attendant Circumstances, which shewed the same was required by the Complainant more from a view of gratifying private pique and Resentment, than for the sake of obtaining by that means, a pure and untainted Evidence. — moreover, there was no Salve in this instance, as the Evidence of the said Pooney Cooty was the sole or any important support to his Suit, nor did he shew any reason to induce this Hon^ble Court to believe that the said Pooney Cooty was a person who had in that or any other Instance rendered himself — suspected of not declaring the truth if it should not be — required of him in that Solemn manner — and in answer to what the appellant saith of the heads of the several Costs being Summoned before the Hon^ble the Mayor's Court for refusing to swear before the Examiner, they appeared in Court and gave their reasons for not swearing even before the Examiner — particularly that they had never taken an oath since they were born, and that it was not the Custom of their Cast so to do and that they were ready to answer any Interrogatories that might be put to them provided they might be exempted of

without

without Oath this Respondent Saith that the same is a most extraordinary Case, which could not certainly happen, but in the Instance of a person whose Cause they were abetting, as these people were that of Poony Cooty. This Respondent saith he has been advised of the said farce which was played before the said Hon^ble Court, by the said Braams, to the imposition and dishonor of Justice for the Clay of the Braams who appeared, were of the same Cast with the said Poony Cooty, and this Respondent saith that while one Sittiramayah a Brameen was giving his Evidence or rather information before the Court, he observed that a Brameny must took an oath, nor would they eat Butter in the presence of an European at which time it was discovered by one of the Aldermen upon the Bench, that a Brameen attendant at Court for the same purpose was at that time eating of Butter, and the said Braams were rather despised by the Hon^ble the Mayor on account of the Difficulty of obtaining any Satisfactory answer from them, than because they were of opinion that the said persons could not be compelled to make oath previous to their examination; and this Respondent is advised that if the attorney for the said Poony Cooty had prayed an attachment against the said Braams for their contumacy in refusing to be examined upon Oath that the said Court would have granted it as was the case in a Cause Muckatoon Muzam against Sheenuvasha, wherein one Arinagadalah Panjiah a Brameny of known and established Credit and reputation was brought before the Court for refusing to be examined upon oath, when he pleaded his Conscience and Religion, that it would dishonor him among his Cast and be ginerally detrimental to his Credit, not only as a Brameny but as a man, and offered to submit to a ceremony of rubing ashes on the forhead, which it seems is a mode of making Oath in a less formal and Solemn manner than that of mint and watter, but the Hon^ble Court would not depart from their established rules of Practice. This Respondent doth admit that it is a noble and Honorable principle in the Government of Hon^ble East India Company to preserve in the purest manner from every violation or infringement the exercise of the Several religious Ceremonies to their different Indian Subjects, but this Respondent cannot admit that it was their intention to suffer their indulgence to be subservient to purposes contrary to Law or that by a flimsy pretence of the tenderness of Conscience, a dishonest man should be protected in the Subversion of the established Rules of Practice of a Court of Judicature, instituted at their Petitioners to His most Excellent whose Rules of Practice were framed by them from the Power delegated for that purpose and are comprised in His Majesty's Charter under the Title of Instructions for the Rule and practice of the Mayor's Court at Madrapatam wherein the mode of administering of Oaths to the Indian Natives is fully laid down and as per just in the Extracts hereunto annexed from the Book of Rules and practice of the Hon^ble the Mayor's Court

By which it appears that it is the intention of the Laws preserved and instituted for the enforcing of publick Right, shall be respected in this Country, as the nature and possibility of Circumstance will admit.

This

This Respondent also rejects the precedent quoted from the Cause of John Lewin Smithwon Qeual Trovaddy as not being accompanied with similar circumstance to induce an order to swear at Triplicane Pagoda, which so strongly dictate the necessity of the Appellant being compelled to.—

This Respondent next prays leave to answer the first objection made by the Appellant for not complying with the order of the Hon^ble the Mayor's Court—

This Respondent denies that it is the usual practice of the said Court, when a Petition is thrown in during the proceedings, except in Cases where the matter contained in the Petition tend to affect the merits of the points in dispute which the matter now before this Court does not do in any shape whatever. For a Copy to be allowed to be taken or any day given to answer nor did the purport and Nature of the Petition require any answer to be given the matter in question not depending upon evidence or upon Law, further than as the practice of the said Mayor's Court is their Law, It was for this consideration upon the Situation of the Circumstances shewn to them by the said Petition and affidavit, this Respondent had shewn sufficient Cause to have the benefit of the said Law, and did by no means require that important deliberation pretended by the Appellant to be necessary in Consideration of the Consequences resulting therefrom to the native, as this Respondent denies that in this Case any Consequences can proceed from the execution of the said Order than those which Justice and Equity ought to adopt. This Respondent saith that it is equally absurd in the Appellant to pretend that any disadvantage can be derived therefrom to the Government. This Respondent being humbly of Opinion—

That

that it is a matter of small importance to the Government or any of the composing members of it, whether Gandiveddy Lawney Chitty complies with the order of the Hon^ble the Mayor's Court founded upon due Consideration of the Causes shewn to them upon oath, why the same should pass, on the contrary it appears that his non compliance therewith would be rather a disparagement to the Natives who have no other hold upon the abandoned part of their Countrymen, than by imposing this Solemn oath before the Pagoda—

And this Respondent further saith that in Respect to what the Appellant hath said of his being cut off from his Evidence in Support of the Rites and Ceremonies he intended to have pleaded for and supported, they being Rites and Ceremonies saved and preserved to the Natives long before the establishment of any Body of Europeans on India— If this Hon^ble Court were misinformed that the mode of making oath before the Pagoda was part of the Rites and Ceremonies instituted and Solemnized by the natives of India, they must from the argument of the Appellant be inclined to censure this Respondent for an endeavour to introduce innovations in Religion and in the practice of this Hon^ble Court, but when it is considered to be this Appellant's advice which he objects so strongly to be tried by, it appears strange he should be so necessary in informing himself to it, and furnished weighty arguments in support of the necessity of substituting different degrees of oaths for different Consciences, and the matter insisted upon by this Respondent is so far from being an innovation that not only that mode of oath, but likewise the ordeal trial by the mixture of oil and fire subsisted long before the Establishment of any European

Power

Power, the latter of which being so much founded upon cruelty and superstition has most likely never been exercised within any European Jurisdiction, but the former being a more sacred appeal to Truth than any other mode of Asserting it by Oath, has been adopted within the European Districts, and has appeared to be so necessary for the full discovery of the Truth, that the said mode of taking Oath at the Pagoda is and has been a Standing unabolished Rule of practice of the Mayor Court of Madras.—

In answer to the second objection against Complying with the said Order this Respondent will maintain the same is not contrary to the established Rules of Practice of the Honble the Mayors Court at Madras, but on the contrary the appellant hath in his Petition shewn two Seperate Instances of the same having been adopted and ordered as constitutional with their practice at the both instances he not discover any Reasons which could induce the said Court to pass an order of this Nature, as the present on before the Honble Court, but rum rather to have passed an order in the indisputable Course of practice, and for further answer this Respondent saith that a Compliance with the order of the Honble the Mayors Court is by no means an innovation of the established Rites and Ceremonies preserved to them under every European Government, but on the Contrary the same is consistent with the Rites and Ceremonies instituted and still continued in use and practice among themselves, and is by no means a Test of truth framed and instituted by the European Governments, but the European Governments and particularly the Honble the mayors Court have adopted and admitted the same in their practice, towards promoting the purpose of Truth Right

Right and Justice from the natives themselves. This Respondent admits that the Laws of Great Britain are not made to invade or obtrude upon the Customs of foreign Subjects so long as they continue obedient and subject to those Laws the order of the Mayors Court does by no means operate as an innovation or intrusion upon their Customs Conveniences or Religion, but entirely otherwise, the said order being founded upon their Customs and Religion, if indeed the said Honble the Mayors Court had ordered them to make oath upon the old or new Testament or the alcoran, the appellants Complaint would then have had due weight, as such an order would tend to an innovation and infringement of their Religious Rites and Ceremonies, and would at the same time be ineffectual to the purposes for which an oath is administered, whether to Swear a person to speak the truth according to his Religion in such manner as to make the oath most binding upon his Conscience.—

For Which mode of oath this Respondent is now Pleading and humbly hopes that this Honble Court will be pleased to grant the same and Confirm the order of the Honble the mayors Court and further order the appellant to pay all Costs.—

Fly Depuy
att Respondent

Neatly In Case the answer be Required and ordered to be attested at the Pagoda, that the Register do proceed in the same manner in the five Instance aforementioned, with this addition that the Register do procure some person as a witness Capable of Reading the Answer and after the Brahmany or any other Person at the Pagoda hath Read the answer to the Defendant that such person so procured as

as a Witness do Sign or mark the Answer so Read and Sworn to in the mother Language.

This Court doth unanimously agree and Resolve and it is unanimously agreed and Resolved, that the method hither to used by former Courts be still Continued as well as the present practice for the administration of oaths relating to the Pagan or Gentoo Coming before this Court by the Ceremony of Flowers and water Brought from the Pagan Temple / Commonly called the Pagoda / But in Causes or matters of Great Concernment where either the Court shall be cause or the Party shall insist upon it, any such Witness or Defendant after he hath given in his Deposition or answer shall be obliged to attest his Deposition or answer in the manner Conceived by the Court to be most Solemn and binding to the particular Sect or Persuasion to which such Witness or Defendant shall be supposed to belong.

And the Instructions Directing that a Witness or Defendant shall go before the Court or a Judge of the said Court and there make oath of the truth of his Deposition or answer but when either Defendant or Witness live at some Distance from the Court, such oath should be administered by Commission Directed to persons appointed for that purpose, now for as much as the Pagan Temple alias Pagoda of Triplicane is between 2 or 3 miles out of the Town and the meeting and Gathering in this hot Country so many persons together as may be proper for the full and Regular administration of the Pagan or Gentoo Ceremony, Require more time than can be Expected of the Judges to spare from their other occupations.

Agreed and ordered that all oaths that are Directed to be administered at the Pagan Temple or other places of Worship out of the white Town be administered by Commission under the Seals of the Court and the hands and seals of Two of the Judges of the said Court whereof the mayor for the time being or the Senior Alderman then residing at Madraspatnam to be one as prescribed in the Book of Instructions.

Ordered also that in Case wherein any party shall move the Court to Direct the administration of the oath to be performed at any of the Pagan Temples such party making such motion shall first pay the Fees of the Commission and Charge attending the Ceremony before the Commission be put in Execution and that the said Fees and Charges be not Recoverable in the Bill of Costs.

true Extracts from the Book of Instructions.

Wm Dupuy
Atty Respondent

Court of Appeals at Madraspatnam } ss Thursday the 3d May Anno Domini 1781

Between Gundavaddy Sawmy Chitty – Appellant
and
Mana Pirmall Pillay by his attorney Albano Drumm
Respondent

This Cause coming on this day to be heard and Debated before this Court by the attorneys on both Sides upon hearing the Petition of appeal and Answer and the Several Exhibits of the Rowle the mayors Court together with the order of the said Court given in this Cause on Tuesday the 9th day of November Anno Domini 1779 and upon due consideration had of the matter therein Severally contained and of the Pleadings and arguments used by the attornies on both Sides this Court doth

doth think fit to order and Decree and doth accordingly order and Decree that the order of the Honble the Mayors Court be affirmed with single Costs in this Court.

J Curt

/ Signed / Chas. Freeman Clk.

To the Honble the Court of Appeals at Madraspatnam

Between William Harrison and John Leathom of Madras Inhabitant, the Executors Named in the Last Will and Testament of Michael Fennell Deceased Complainants, and John Charles Bartholomew also of Madras aforesaid Inhabitant Defendant.

The Humble Petition and Appeal of John Leathom one of the said Complainants

Sheweth

That some time after the Death of the said Michael Fennell, Sundry Bonds, Bills, notes and Accounts belonging to the Estate of the said Deceased came into the Hands and Possession of your Petitioner as one of the Executors to the Will of the said Deceased, and Amongst them a Bond for the sume of one thousand Pagodas given and Granted by the said John Charles Bartholomew the Defendant, unto the said Michael Fennell in his life Time and your Petitioner further sheweth that having Frequently and in a Friendly manner requested of the said John Charles Bartholomew the payment of the Principal and Interest due on the said Bond the said John Charles Bartholomew obstinately and wilfully Refused to pay the same nor would he give your Petitioner any proper Satisfaction Touching the Premises Wherefore your Petitioner did on or about the Twenty third day of February in this Present year of our Lord one thousand Seven hundred and Eighty, Exhibit a Bill of Complaint in the Honble the mayors Court at Madraspatnam against the said Charles Bartholomew and your Petitioner / as is Directed by the Law in such Cases / did name the said William Harrison / the other Executor / one of the Complainants in the said Bill all this in Fact your Petitioner doth say that he was and is the only Person as the acting Executor who commenced the said action against the said John Charles Bartholomew and to whom alone under all the Circumstances of this Case your Petitioner Conceives the said John Charles Bartholomew Principal and Interest due on the said Bond

And your Petitioner further sheweth that a Summons Issued on the said Bill of Complaint and that on the Twenty ninth day of the said month of February and in the said year the said John Charles Bartholomew by his attorney Henry Dupay appeared to the said Bill, on the Return of the said Summons, and on Tuesday the seventh day of march following your Petr Prayed a Day for the said John Charles Bartholomew to answer his said Bill of Complaint and upon your Petitioners making such prayer the said Henry Da Puy after having appeared for the said Defendant, did also appear for the said William Harrison the other Complainant and did produce a warrant of attorney / authority / in due form of Law to withdraw the said Suit

Suit and upon the said Mayor's Court Suggesting the impropriety of the same attorney appearing on behalf of the Two opposite parties Defendant and Complainant, the said Henry Depuy with drew his Warrant of attorney or authority, whereupon and without any previous Instructions as your Petitioner with reason presumes Mr. John Sykes one other of the attornies of the said mayor's Court appeared on behalf of the said William Harrison the other Executor and begged leave to withdraw the suit as far as it Related to his Client as the said William Harrison had Received from the said Defendant the amount of the money sued for and at the same time the said Henry Depuy as attorny for the said Defendant prayed that the Suit might be dismissed and the said mayor's Court upon the aforementioned proceedings only were pleased to order the said Suit to stand Dismissed and further ordered each party to pay their own Costs as will more fully and at Large appear by an Extract of the said order hereunto annexed for the Inspection of this Honble Court to which your Petr most humbly refers and prays that the same may be admitted as part of this his Petition and appeal

From which said order of the said Mayor's Court your Petitioner doth appeal to this Honble Court and he conceives the same is Erroneous and that he is much aggrieved thereby Because your Petitioner is humbly of opinion that the said mayor's Court ought to have ordered a day for the said Defendant to answer the said Bill of Complaint and ought not to have Dismissed it upon the bare allegations of the said William Harrison and on the prayer of the said Defendant for it evidently does appear upon the face of the said Extract that Indirect and Collusive measures were Entered into and Carried on by and Between the said William Harrison and the said Defendant after the commencement of the said Suit, in order to Evade the payment of the money Sued for to your Petitioner who has the Bond on which the Debt arose now in his Possession and further your Petitioner humbly submits to the Consideration of this Honble Court that the said mayor's Court ought only to have severed the said William Harrison as a Complainant in the said suit and ought to have ordered the said Defendant to answer the said Bill so far as Related to your Petitioner whereby the true merits of the Case would have appeared in the Course of the Proceedings and your Petitioner would have had a Fair and Just opportunity of Supporting his Claim as the Executor in Possession of the Bond and of proving to the said Court the Indirect and Collusive measure intered into and carried on by and Between the said William Harrison and the said Defendant, since the Commencement of the said Suit, but by the said mayor's Court having Dismissed the said Bill your Petitioner was thereby Barred, for the Present, from every prospect of supporting his Right as an Executor in the manner he wishes to do and — agreeable to Equity and hath not nor has any other means of Relief in the Premises save only from the Interventian of this Honble Court in his behalf —

Your Petitioner therefore submits all the said matters and things to the Judgement of this Honble Court and humbly Prays that the said order of the said Mayor's Court may be Reversed and set aside by this Honble Court (with Costs in both Courts) and that this Honble Court may be pleased to order a Day for the said Defendant to Answer your Petitioners said Bill of Compliant and your Petitioner does also pray such further and other General Relief in all and Singular the Premises as to this Honble Court shall seem meet

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 7th Day of March Anno Domini 1780

Present

Edward John Holland Esquire Mayor

Benjamen Roebuck and Edwd Saunders

Aldermen

William Harrison and John Leathem Executors of Michael Finnel Deceasd Pltfs.

vers.

John Charles Bartholomeo Defendt.

Messrs. Daniel Shaw and Stephen Popham the attorneys for the Complainant John Leathem pray that a Day may pass for the Defendant to Answer Mr. John Sykes appears on behalf of the Complainant William Harrison and begs leave to Withdraw this Suit so far as it relates to his Client as he has received from the Defendant the Amount of the Money now Sued for Mr. Henry Du Pre attorney for the Defendant prays that this Suit may be Dismissed the Court having taken the same into Consideration ordered that this Suit do stand Dismissed, and that each Party do pay their own Costs

A true Extract

To the Honble the Court of Appeals

at Madraspatnam

Between William Harrison and John Leathom of Madras Inhabits Executors named in the Last Will and Testament of Michael Finnel Deceasd Complainants and John Charles Bartholina Defendant.

The Answer of the said Defendant to the Petition and Appeal of John Leathom one of the said Complainants.

The said Respondent doth admit that after the death of the said Michael Finnel Sundry Bonds, Bills notes and Accounts belonging to the Estate of the said Deceased might come into the Hands and Possession of the said Appellant as one of the Executors to the Will of the said Deceased and that amongst them a Bond for the Sum of One Thousand Pagodas given and granted by this Respondent unto the Deceased in his life time This Respondent doth also admit that the Appellant did demand of him this Respondent payment of the said Bond but Insist that at the same time the Appellant Executor did also demand payment of him for the Ballance due upon the said Bond alledging that he was a Principal Bond Creditor of the Estate and that the said Appellant was not at all a Creditor notwithstanding which he the said Appellant had without the knowledge of him the said William Harrison Possessed himself of the Greatest part of the Estate of the Deceased and Contained so to possess the same without giving him the said William Harrison any account thereof This Respondent the [illegible] being thus prest on both sides by

by the said Executors did not know well what to do as he could not pa
the amount of his Bond to the said John Leathom without being
liable to be called upon by the said Executors the Contrain
to disagree the said John Leathom did without the Consent &
approbation of the said William Harrison file a Bill of Complain
against this Respondent for the money due upon the said Bon
which act of the said appellant was very injurious to this Respon
because the same was done without the consent of the said
William Harrison and because this Respondent did always
Express himself willing to pay and discharge the said Bond,
upon his being Secured therein in a Proper and Legal manne
and this Respondent saith that he denies he was ever solely
accountable to the appellant under any Circumstance whatever for
the payment of the said Bond, for by the same Agreement that
the appellant might have a Right to demand the said debt,
the said William Harrison had a right also to demand the
same, which he did, as well as injoin this Respondent from not
paying the same to the appellant and it is maxime in law
that however many Executors there may be they are only regarded
in the light of one person namely the Testator whom they
represent, and the act of one Executor is the act of the whole

This Respondent doth admit that the appellant did
Continue to pursue his said unjust prosecution against the
Will of the said William Harrison and did accordingly upon our
a Summons against this Respondent upon the said Bill
at the return whereof this Respondent acknowledges that he did
appear by his Attorney Mr Henry Dubuy and this Respondent
sheweth that being desirous of a reunion of action to take place in
the transactions of the said Executors respecting the Receipt of the
Sum

Sum of money in question, he waited to see the same effected, but finding
that not likely to happen but that the said Appellant and William
Harrison Continued to entertain different opinions of their
power as Executors the said appellant maintaining his Right
to act independant of the said William Harrison who in the
Contrary was for an entire union and Cooperation in all things
relating to the Estate, and therefore did protest against this
Respondent paying the said money to the said John Leathom
without his Concurrence, further alledging that he should be
paid in preference to any other Creditor of the Estate, there being
none of a superior degree to him the said William Harrison
this Respondent was therefore of opinion that should he act
Conformable to the sentiments of the said appellant by
regarding him preferably authorized to receive the said money
before the said William Harrison demand
same notwithstanding the said William Harrisons demand
and protest to the Contrary, that he would expose himself to an
action from the said William Harrison, for if one Executor had
a Right to sue for the said money independantly the other
of Course must have the same right of action, this Respondent
therefore in order to avoid all further disputes relating to the
payment of the said money, did adopt the principles of the said
appellant in demanding payment of this Respondant, To
wit that payment to one was payment to both and would ever be
a Bar to any action brought against him this Respondent
for the repayment thereof by the said William Harrison, From
which it was natural for this Respondent to suggest that in Case
of his paying the same to the said William Harrison, the action
commenced by the said appellant would in Course be satisfied
and

and the appellant could not legally continue to proceed against this Respondent. This Respondent did therefore accordingly payment the amount of the said Sum Sued for unto the said William Harrison, and did in Consequence obtain a discharge in full for the same. This Respondents attorney therefore could not do less than represent the said matter to the Court and did produce the Letter of attorney in question, as well as the said Receipt to the Court, who however they might be of opinion of the informality of the same being introduced thro' the means of this Respondents attorney did, nevertheless upon the said Letter of attorney being produced by Mr. John Sykes one of the attorneys of the said Court, not concerned on behalf of this Respondent, but as attorney to the said William Harrison, take the same into Consideration, and did order the said Bill to stand dismissed upon the acknowledgement of the said John Sykes as attorney to the said William Harrison that he the said William Harrison had received the Amount Sued for.

Which said order of the Hon^ble the Mayors Court this Respondent with Submission maintains to be just and regular and by no means erroneous as the Appellant has very improperly stated the same and by way of further answer to the said appeal this Respondent saith that the said Court could not consistent with the matter laid before them by the said William Harrisons attorney have done otherwise than order the said Bill to stand dismissed, because upon an admission there might have been a Cause of action, for which this Respondent is humbly of opinion he was not the occasion of, but was always willing to prevent so disagreeable an extremity, but by the payment of the sum in question, full and Legall Satisfaction was made, and thereby the right of action became totally extinguished as well in the person of the appellant as of the said William Harrison, because the said John Leathom was not interested further in the said suit than the said William Harrison, and Satisfaction having been recorded to have been made to him the said William Harrison, was a Record of Satisfaction towards the said John Leathom, as a payment to one Executor is a discharge to the other and the suit having been with drawn by the said William Harrison upon the principle of full satisfaction having been made therein the Ground and Cause of action as well as the right of action discontinued together, and this Respondent is advised that a party may at any time dismiss his own suit, and he humbly conceives that it would not have been dismissed by him upon a more legall consideration than the payment of the sum Sued for, and it would have been inconsistent to order this Respondent to answer the Bill after it appeared before the Court that he had paid the sum demanded by the Bill, which made it unnecessary for the appellant to enter further into the merits of the Case as nothing further could have appeared than what is now before this Hon^ble Court Viz^t that this Respondent hath paid the Sum Sued for to William Harrison, by which all claim on the part of the appellant at once ceased and this Respondent denies any indirect or collusive measures do appear to have been intered into and carried on by and between the said William Harrison and this Respondent, But on the Contrary that no matter passed between them saving and except the payment on one part and the Receipt by the other, together with giving

giving a Receipt for the same by him the said William Harrison,
which is just what the Appellant wanted this Respondent to do
by him and his disappointment in getting the said money
in his hands, seems to be the only grievance he labours under
to influence him in his present appeal to the Justice of this
Honble Court, For this Respondent saith that the same is very
ineffectual, as he humbly conceives this Honble Court cannot
order him to plead to the said action upon any matter
set forth by the Appellant, because the Appellant doth not
deny the receipt of the money to the said William Harrison
nor can he regularly or legally do so, the receipt being alledged
as a reason given upon Record for his withdrawing the suit
which he as Executor being a party to the said suit most
undoubtedly could legally do, It being laid down in Swinburn
folio 322. that Coexecutors being in Law but as one Person, therefore
the act of one is the act of them all, and the possession of one is
accounted the possession of all, and the payment of Debts by
or to one of them is the payment of or to all of them, and the
sale or Gift of the Testators Goods by one is the sale or Gift
of all, and likewise a Release before Judgement of one of them
is a Release of them all and again one Executor shall be
barred by the acquittance of his Co-executor because each is
intitled to the whole, they being but as one Executor to represent
the Testator, the Law is the same where one composes the action,
for that shall bind the other, for so much of the Testators Estate
as he hath in his hands.

For all which matters and things this Respondent
Humbly conceive, that the order of the Honble the Mayors Court
is just and conformable to Law, and that there is no proper or legal
cause

cause to appeal therfore and particularly because no injury is
done to the person or Estate of the appellant, who not having joined
in the receipt of the said money is not answerable to the Estate
for the same and no injury is done to the Estate of the Deceased,
the sum due thereto having been duely paid to one of the Executors
who is by Law fully authorized to receive the same, as well as this
Respondent discharged from any demands from the Estate on
account of the action in question by the payment thereof to
the said William Harrison.

This Respondent doth therefore humbly pray
that the said Petition and appeal may stand dismissed with
Costs.

(Signd) Henry Dupuy
Attorny Respondent

Court of Appeals
at
Madraspatnam } ss Thursday the 3d May Anno Dominii 1781

Between William Harrison and John Lethem
Executors of Michael Fennell Deceased Appellts
and John Chas Barthlmew - - Respondent

The Attorny for the appellants having moved to
with draw this Cause on paying the Costs.

Ordered accordingly

A true Extract from the minutes of the Court

To the Honble Sir Thomas Rumbold Baronet
President and Governor &c^a Council of Fort S^t George
In the Court of Appeals

Between John Maculister a Captain in the Service of his Highness The Nabob of Arcot by his attorney Alexander Brodie of Madras Merchant Complainant and Kistna dass Verjee dass of Madras aforesaid merchant (otherwise called Kistna dass and Verjee dass Defendant

The Humble Petition and Appeal of the said Kistna dass Verjee dass

Sheweth

That the above named John Macculester by his said attorney did on or about the Second day of December which was in the Year of our Lord one Thousand Seven Hundred and Seventy Six Exhibit an Amended Bill of Complaint in the Honble the Mayor's Court at Madras patnam against Your Petitioner for the Sum of Five Thousand one hundred and fourteen Pagodas and twenty four fanams Current Money of Madras and thereunto it was annexed an account Current which the said John Maculester prayed might be admitted as part of his said Bill of Complaint to which said Bill of Complaint Your Petitioner did on or about the fourth day of march which was in the Year of our Lord one thousand Seven hundred and Seventy Seven put in an amended answer and therein denied to stand Indebted unto the said John Macculester in the said Sum of Five thousand one hundred and fourteen Pagodas and twenty four fanams as was unjustly set forth and stated by him in his said Bill of Complaint and the account Current thereunto annexed, but acknowledged to stand Indebted unto him, the said John Macculester in the Sum of Three Thousand Eight hundred and Sixty nine Pagodas and Thirty One Fanams only, as would more fully and at large appear by an account Current to the said answer annexed for the Inspection of the said Mayor's Court to which Your Petitioner most humbly referred and Prayed that the same might be admitted as part of his said Answer and that he was Ready and willing to Pay unto the said John Macculester the said Sum of Three thousand and Eight hundred and Sixty nine Pagodas and Thirty One fanams and Your Petitioner in his said answer did further set forth that the Bond mentioned by the said John Macculester in the account Current annexed to his said Bill of Complaint was not given and Granted to him by Two Persons named Kistna dass and Verjee dass but that the same was Given and Granted by Your Petitioner alone for the Consideration therein mentioned that Your Petitioner thereunto Signed his name Kistna dass Verjee dass in the Gugarat Language and Characters and that being unacquainted with the English Language he therefore did not know at the time of his so Signing his name that the said Bond was wrote in the Plural number

To which said Answer the said John Macculester by his said attorney did on or about the Twenty fourth day of the said month of march in the said Year one Thousand Seven hundred and Seventy Seven put in a Replication

To which said Replication Your Petitioner did on or about the Twenty ninth day of April in the said Year one Thousand Seven hundred and Seventy Seven put in an amended Rejoinder and therein averred that all the matter and things alledged and set forth by him in his said answer were True in the manner and form as were therein alledged and Expressed and that the said Replication of the said John Macculester was Imperfect and Insufficient in the Law to be rejoined unto by Your Petitioner and

and Your Petitioner again Denied to stand Indebted unto the said John Macculister in the said Sum of Five Thousand one hundred and Fourteen Pagodas and Twenty Four fanams as was most unjustly Set forth and Stated in the said Bill of Complaint and the account Current thereunto annexed and likewise in the said Replication but admitted to be Indebted unto the said John Macculister in the said Sum of Three Thousand Eight hundred and Sixty nine Pagodas and Thirty one Fanams only as already mentioned by Your Petitioner in his said answer and the account Current thereunto annexed.

And Your Petitioner further Sheweth unto this Honble Court that after the putting in of the said Rejoinder Issue was Joined Witnesses were Examined on the part of the said John Macculister and also on the part of Your Petitioner Publication Passed and the Cause was set down for hearing and on the Twenty Seventh day of the Month of February in the Year of our Lord one Thousand Seven hundred and Seventy Eight the said Cause came on to be heard and determined before the said Mayors Court when the said Mayors Court were pleased to order and Decree and did accordingly order and Decree that Your Petitioner should Pay unto the said John Macculister the said Sum of Five Thousand one hundred and fourteen Pagodas and Twenty four fanams with all such Interest as there was or should there after become due thereon untill full Payment be made and that Your Petitioner should also pay the Costs of Suit.

From which said Decree Your Petitioner did appeal unto this Honble Court as he did Conceive himself injured thereby, and the said John Macculister having put in his answer to the said Petition and appeal the same came on to

be heard and was accordingly heard before this Honble Court on the twenty Sixth day of August last past when this Honble Court were pleased to order and Decree and did accordingly order and Decree in the words and to the Tenor following—

"That the Decree of the Honble the Mayors Court given in this "Cause be reversed and that the appellant do pay unto the Respondt "the amount of the Ballance acknowledged by him to be due to the "Respondent together with such Interest thereon as is or may hereafter "become due and further that the Respondent to pay the Costs in "both Courts" as by reference to the said Decree and to the Several other Proceedings being of Record and now before this Honble Court may more fully and at large appear.—

Your Petitioner further Sheweth that the attorney for the said John Macculister did on the Twenty Third day of November last past pray of the Honble the Mayors Court that a Warrant might issue under the seal of the said Court and directed to the Sheriff of Madraspatnam and the Districts thereof to put in Execution the said Decree of this Honble Court which said Prayer being Granted the said attorney did notwithstanding the said Decree of this Honble Court given in the words and to the Tenor herein before Set forth cause the said Warrant of Execution to be filled up for the sum of Two Thousand four hundred and Seventy Pagodas Thirty five fanams and Seventy Cash exclusive of the Sum of two Thousand Eight hundred Pagodas received by the said John Macculister since the said Decree of this Honble Court and which together make the said Principal Sum of Three Thousand Eight hundred and Sixty nine Pags and Thirty one fanams being the Ballance acknowledged by the Defendant in his answer to be due to the Respondent together with Interest thereon at the rate of Twelve P Cent from the date of the Bond given by Your Petitioner to the said John Macculister nor was any allowance expressed in the said warrant for the Costs

of

of suit of your Petitioner as by the Copy of the said Warrant of Execution hereunto annexed doth appear—

Your Petitioner further Sheweth that your Petitioner did thereupon on the thirtieth day of the said month of November by his attorney pray of the Honble the mayor's Court that the said warrant of Execution might be amended as the Interest upon the amount of the said Decree inserted therein is calculated at Twelve ℔ Cent from the Date of the Defendants Bond instead of Eight ℔ Cent the Interest which the Defendant Conceived to be Decreed by this Honble Court and your Petitioner did by his attorney tender into Court the sum of one thousand Seven hundred and Six Pag.ᵃˢ and thirty fanams as the full Ballance due on the said Decree to the 26th day of Novr exclusive of the Sum of Two hundred and Fifty Six Pagodas and thirty fanams being the amount of the Costs paid by the Defendant to his attorney, and which Costs this Honble Court had decreed to be paid by the Complainant your Petitioner did also by his said attorney deliver into Court the Reciept of the said John Macculister for Two Thousand Eight Hundred Pagodas received of your Petitioner since the Decree of the Court of Appeals also two Reciepts of Daniel Shaw his attorney for two hundred and fifty Six Pagodas and Thirty fanams to which Receipts the attorney for the said John Macculister having objected the same was taken into consideration by the Honble the mayor's Court who were pleased to order that the said Warrant of Execution might be amended by inserting the Interest on the Sum admitted by your Petitioner in his Answer to be due to the said John Macculister at Twelve ℔ Cent from the Twenty Sixth day of November one thousand Seven hundred and Twenty Six the Date of your Petitioners account Current annexed to his answer as

as by the Copy of the minute of the said Court made in this Cause on the said Thirtieth day of November and hereunto annexed may appear—

From which said order your Petitioner doth appeal to this Honble Court as he Considers himself much aggrieved thereby and—

Because the same appears to be Contrary to the Sense and Spirit of the said Decree of this Honble Court made in the above Cause the said Twenty Sixth day of August last and—

Because the said order of the Honble the mayor's Court gives an Interes of Eight ℔ Cent from the date of the Bond to the time of the answer being put in and an Interest of Twelve ℔ Cent from the time the said Answer was filed to the date of the warrant of Execution which Seems Contrary to Law by giving to John Macculister Two Different Rates of Interest on one and the same Bond, one whereof is Twelve per Cent at the time said John Macculister in his account Current annexed to his said Bill of Complaint and on which his Right of action is founded Claims only Eight ℔ Cent—

For all which Reasons and others which may be offered at the Hearing your Petitioner humbly prays that this— Honble Court will be pleased to review the said order of the Honble the mayor's Court and to order and Decree that the Warrant of Execution be amended by inserting therein the Sum admitted by your Petitioner to be due to the said John macculister together with Interest thereon at the rate of Eight ℔ Cent from the date of the said answer and that the said John Macculister do pay all Costs of Appeal—

S. Popham
Attᵧ for Appellant

By the Mayors Court at Madraspatnam

Whereas it appears to this Court by Inspection of a Decree in this Court and the Proceedings thereon, That Kistnadoss Virjedoss of Madras Merchant was adjudged and decreed to pay to John Macalister a Captain in the Nabobs Service the sum of 2470 Pags 35 Fans and 70 Cash as a Debt due to the said John Macalister together with the sum of 2 Pags and 27 Fans for Costs of Suit which the said Kistnadoss Virjedoss hath not hitherto done these are therefore to require You without delay to levy or Cause to be Levied the said debt of 2470 Pags 35 Fans and 70 Cash and the sum of 2 Pags and 27 Fans for Costs of Suit of the Goods and Chattles of the said Kistnadoss Virjedoss and to that end if necessary You are to cause Sale to be made of such Goods and Chattles, and to have the money before the Mayors Court at Eight of the Clock of the Forenoon on the Thirty third Day of December next to render the said debt and Costs to the said John Macalister and to render the overplus if any be to the said Kistnadoss Virjedoss Given under the Hands and Seals of George Proctor Esqr Mayor of Madraspatnam and of Mr one of the aldermen of Madraspatnam and under the seal of the said Court this 29th day of November Anno Domini 1779-

Mayor of
Madraspatnam (L.S.)
one of the aldermen
of Madraspatnam (L.S.)

To the Sheriff of Fort St George Madraspatnam and the Districts thereof-

a true Copy
S. Popham

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 30th Day of November Anno Domini 1779-

Present

George Proctor Esquire Mayor
John Turing and Edw. John Holland
and Edw. Saunders- Aldermen-

John Macalister

Vers

Kistnadoss Virjeedoss-

The attorney for the Defendant prays that the Warrant of Execution Issued in this Cause may be amended as the Interest upon the amount of the Decree invested therein is Calculated at 12 ₹ Cent from the date of the Defendants Bond Granted by the Defendant to the Complainant instead of 8 ₹ Cent the Interest which the Defendant Conceives to be decreed by the Honble the Court of Appeals be further Tendered in Court the Sum of Pagodas 1706.30. as the full Ballance due on the said Decree exclusive of the sum of Pagodas 256.30 being the amount of the Costs paid by the Defendant to his attorney and which Costs the said Court of Appeals have decreed to be paid by the Complainant- He also delivers into Court the Complainant receipt for Pagodas 2000 Received of the Defendant since the Decree of the Court of Appeals also two receipts of Mr Daniel Shaw his attorney for Pagodas 256.30 to which the attorney for the Complainant objects, the Interest of 12 ₹ Cent being the established legal Interest of the Country and always granted by this Honble Court without Specifying the same in their Decree that the Complainant having Charged only 8 ₹ Cent in his account Current is no Prejudice to his Claim of 12 ₹ Cent

more

now there being no agreement to limit the Complainant to any rate of Interest—

The Court having taken the same into consideration ordered that the warrant of Execution be amended by inserting the Interest upon the Sum admitted by the Defendant in his answer to be due to the Complainant at 12 ℔ Cent from the 26th November 1776 the Date of the Defendants account Current annexed to his answer— The Court of Appeals having decreed that the Ballance of the account acknowledged by the Defendant be paid with the Interest that is or may become due which not specifying any Particular Rate of Interest on the Ballance acknowledged The Court are of Opinion that the Decree must be enforced at the Interest Established by act of Parliament— The Mayor Deponto being of opinion that only 8 ℔ Cent should be allowed—

A true Extract

James Taylor
Regr

A true Copy

S. Popham

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 30th Day of November Anno Domini 1779

Present

George Proctor Esquire Mayor
John Turing and Edwd John Holland
and Edwd Saunders — Aldermen

John Macalister

Vers.

Kistnadoss Veergeedoss

The attorney for the Defendant prays that the Warrant of Execution Issued in this Cause may be amended as the Interest upon the amount of the Decree inserted therein is Calculated at 12 ℔ Cent from the date of the Defendants Bond Granted by the Defendant to the Complainant, instead of 8 ℔ Cent, the Interest which the Defendant conceives to be Decreed by the Honble the Court of Appeals— he further Tenders in Court the Sum of Pagodas 170 : 30 as the full Ballance due on the said Decree exclusive of the Sum of Pagodas 256 : 30 being the Amount of the Costs paid by the Defendant to his attorney and which Costs the said Court of Appeals have Decreed to be paid by the Complainant— He also Delivers into Court the Complainants Receipt for Pagodas 2800 Received of the Defendant since the Decree of the Court of Appeals also Two Receipts of Mr Daniel Shaw his attorney for Pagodas 256 : 30 to which the attorney for the Complainant objects, the Interest of 12 ℔ Cent being the established legal Interest of the Country and always granted by this Honble Court without Specifying the same in their Decree that the Complainant having Charged only 8 ℔ Cent in his account Current is no Prejudice to his Claim of 12 ℔

12 ℔ Cent now, their being no Agreement to limit the Complainant to any Rate of Interest.

The Court having taken the same into Consideration ordered that the Warrant of Execution be Amended by inserting the Interest upon the Sum admitted by the Defendant in his Answer to be due to the Complainant at 12 ℔ Cent from the 26th November 1776 the date of the Defendants account Current annexed to his answer. The Court of Appeals having Decreed that the Ballance of the account acknowledged by the Defendant be paid with the Interest that is or may become due which not specifying any Particular Rate of Interest on the Ballance acknowledged. The Court are of opinion that the Decree must be inforced at the Interest Established by Act of Parliament. The Mayor Depute being of opinion that only 8 ℔ Cent should be allowed.

A true Extract
James Taylor
Regr

To the Honble Sir Thomas Rumbold Baronet
President and Governor &c Council of Fort S. George

The Answer of John Macalister to the Petition of Appeal of Kistnadoss Verjedoss.

This Respondent admits that he did by his attorney Alexander Brodie on or about the second day of December which was in the Year of our Lord one thousand Seven hundred and Seventy Six Exhibit an amended Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the said appellant for the Sum of Five thousand one hundred fourteen Pagodas and Twenty four Fanams Current money of Madras, and that there was annexed unto the said Bill an account Current which this Respondent did pray might be admitted as a part thereof and that the appellant did on or about the fourth day of March which was in the Year of our Lord one thousand Seven hundred and Seventy Seven put in an amended answer, therein denying to stand indebted unto this Respondent in the said Sum of Five thousand one hundred and fourteen Pagodas and Twenty four fanams, But acknowledging to stand Indebted unto him this Respondent in the Sum of three thousand eight hundred and sixty nine Pagodas and thirty one fanams only which the said appellant alledged would more fully and at large appear by an account Current to the said answer annexed for the Inspection of the said

said Honble Mayors Court to which the appellant referred and prayed that the same might be admitted as part of his said answer, and that he was ready and willing to pay unto this Respondent the said Sum of three thousand Eight hundred and Sixty nine Pagodas and thirty one fanams and so forth, as by the said amended answer may appear, to which said Answer this Respondent did Reply some time on or about the Twenty fourth day of the said month of March in the said Year of our Lord one thousand Seven hundred and Seventy Seven, Whereto this Respondent admits that the said appellant did rejoin averring therein that all the matters and things alledged and set forth by him the said appellant in his said answer were true in the manner and Form as the same were therein and thereby alledged and Expressed.

This Respondent doth admit that after the said Rejoinder was filed that Issue did Join and that Witnesses were examined on the part of this Respondent and also on the part of the appellt and that Publication passed in the said Cause which was set down for hearing and that the said Cause did come on to be heard on or about the Twenty Seventh day of the month of February in the Year of our Lord One thousand Seven hundred and Seventy Eight before the Honble the Mayors Court when the said Mayors Court were Pleased to Order and Decree and did Accordingly order and Decree that the said Appellant should Pay unto this Respondent the said Sum of Five thousand one Hundred and Fourteen Pags and Twenty four fanams, together

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with such Interest as there was or should thereafter become due thereon untill full payment should be made and that the said Appellant should pay all Costs of Suits.

This Respondent also Admits that the said Appellant did Appeal from the said Decree unto this Honble Court to which said Petition of Appeal this Respondent did put in an Answer which said Petition of Appeal and Answer came on to be heard before this Honble Court on the Twenty Sixth day of August Last past when this Honble Court were pleased to Order and Decree and did Accordingly Order and Decree that the Decree of the said Honble the Mayors Court given in the said Cause should be Reversed and that the Appellant should Pay unto this Respondent the Amount of the Ballance Acknowledged by him to be due to this Respondent together with such Interest as there was or might thereafter be came due and so forth.

This Respondent Admits that his Attorney did on the Twenty third Day of November last past move the Honble the Mayors Court that a Warrant of Execution might Issue by reason of the Appellant not having full filled and Performed the Decree of this Honble Court therein bring at that time a very Considerable Ballance thereon Still unpaid and which the Appellant Absolutely refused to Pay in Consequence whereof this Respondent admits that his said Attorney did by this Respondents Instructions Cause the said Warrant of Execution to be filled up for the sum of Two thousand four hundred and Seventy Pagodas Thirty five fanams and Seventy Cash the Appellant having only paid this Respondent in part of the sum decreed by this Honble Court the sum of Two thousand and Eight Hundred Pagodas this Respondent Admits that the Petitioner did by his Attorney sometime on or about the thirtieth day of November aforesaid move the said Honble the Mayors Court that the said Warrant of Execution might be Amended as the Interest upon the Amount of the decree inserted therein was Calculated at Twelve P Cent from the date of the Appellants Bond instead of Eight per Cent the Interest which the said Appellant Conceived to be decreed by this

this Hon^ble Court this Respondent doth also admit that the said Appellant did by his said Attorney Sender into Court the sum of one thousand Seven hundred and Six Pagodas and thirty fanams as the full Ballance due upon the said decree to the Thirtieth day of November Exclusive of the sum of Two hundred and fifty Six Pagodas and thirty fanams being the Amount of Costs Paid by the Appellant to his Attorney the Appellants said Attorney did also deliver into Court the Receipt of this Respondent for the sum of Two thousand and Eight Hundred Pagodas receipt from the said Appellant since the decree of this Hon^ble Court, also two Receipts of Daniel Shaw the Appellants Attorney, for the aforesaid sum of Two hundred and Fifty Six Pagodas and thirty fanams to which Prayer of the said Attorney this Respondent's Attorney did in course Object when the said Hon^ble the Mayors Court taking the same into Consideration did order that the said Warrant of Execution should be Amended but that Interest should be Allowed this Respondent on the sum admitted to be due at the rate of Twelve ℔ Cent ℔ Annum from the Twenty sixth day of November One thousand Seven hundreds and Seventy Six the date of the Appellants Account Current Annexed to his said Answer as the same may Appear by a Copy of the said Order or Minute of Court Annexed unto the said Appellants Petition of Appeal which said Order with the Submission this Respondent doth Conceive to be very Just and Equitable and Consonant with the Sentiments of this Hon^ble Court in the Ordering of the Appellant to Pay Interest and therefore the Appellant cannot be aggrieved by the said Order and his Appealing therefrom is Nothing else than an unrelenting Design of Adding Fresh difficulties to this Respondent, after having According to his own confession and Acknowledgement deprived this Respondent of a very Large sum of Money for upwards of three Years

And in Answer to the Several reasons Alledged in Support of the said Appeal this Respondent saith that here humbly of Opinion that the Sence and Spirit of the said decree of this Hon^ble Court cannot be Construed by any Interpretation Foreign to the Law and the Custom of the Hon^ble the Mayors Court as well as of this Hon^ble Court that to restrict this Respondent in his Demand of Interest to Less than what is Allowable and Established by Law, would be a Mark of Injustice as well as a deviation from the Established Rule and Custom of this Hon^ble Court in Allowing of Interest upon their decrees which has been unchangeable Twelve ℔ Cent since the Act Made in the thirteenth of his Present Majestys reign relating to Indian affairs

In Answer to the Second Argument this Respondent saith that the Appellant has Misrepresented the Order of Hon^ble the Mayors Court by Alledging that they gave an Interest of Eight ℔ Cent from the date of the said Bond to the time of the Answer being put in and Interest from the time of the Answer being put in to the date of the Warrant of Execution Because the said Hon^ble the Mayors Court have not any way Interfered with any matters Antecedent to the date of the Account Current which the Appellant Acknowledges to be Indebted in the Sum of Money decreed him this Respondent by this Hon^ble Court together with Interest which rate of Interest not being defined by this Hon^ble Court it must in Consequence be Ascertained by the Legal Rate of Interest Limitted and Established by the Act of Parliament and which this Respondent has a right to demand and he having Charged only Eight ℔ Cent in his Account whether this the same was done thro' Mistake or indulgence is by no means a Bar to Exclude him from the Benefit of the Law, by Charging the Interest Established by Law upon the sum the Appellant Acknowledges to be due to him this Respondent and which the Appellant has Kept so Long in his Possession and very wrongfully for the Appellant alledging on his Answer that he is ready and always has been to pay the said sum is no Plea Admissible on the Law so as to exempt him from the Payment of Legal Interest the said Plea not Amounting to a Tender which the Appellant ought to have made in Court when this Respondent would

have

Have had it at their Option to Receive the same as part of his debt demanded by which means he might have employed the money in any Manner most Suitable to his Interest and would not have been Subject to the Continual Apprehensions he has been in an Amount of the Risk his property was of being Lost by any misfortune or Accident which the Appellant might Sustain

To all which Reasons this Respondent is Humbly of Opinion there can be no just Grounds for the Appellant to Appealing from the Order of the Hon^ble the Mayors Court and therefore pray that the same may be dismissed with Cost

Court of Appeals
at
Madraspatnam

Thursday the 3^d May Anno Domini 1781

Between Kistnadoss Vergeedoss Appellant and John Macalester by his Attorney Alexander Brodie Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Hon^ble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 30 day of November Anno Domini 1779 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments Used by the Attornies on both Sides this Court doth think fit to Order and decree and doth Accordingly Order and Decree that the Order of the Hon^ble the Mayors Court be Reversed with Single Costs in this Court and further that the Appellant do pay unto the Respondent Interest at the Rate of 8 P Cent P Annum on the Ballance of the Account Acknowledged by

By the Appellant to untill full Payment is Made

P Cur

Signed Chas. Freeman Cl^k

To the Hon^ble the Court of Appeals at Madraspatnam

Between David Phillips of the Snow Betsy Complainant And Patnah Gruah otherwise Gruzal Naick of Madras Inhabitant Defendant

The Humble Petition and Appeal of the said Patnah Gruah otherwise Gruzal Naick

Sheweth

That the above named David Phillips did on the twenty fifth day of January which was in the Years of our Lord One thousand Seven Hundred and Seventy Nine Exhibit a Bill of Complaint in the Hon^ble the Mayors Court at Madraspatnam against Your Petitioner for the sum of two hundred and Seventy Nine Pagodas and thirty three Fanams Current Money of Madras which he pretended Your Petitioner was Indebted unto him on the Ballance of Account for Money said to be Advanced Your Petitioner on Account of Salt, in which said Bill of Complaint the said David Phillips Set forth the same Untruly that on or about the Middle of June in the Year of our Lord One thousand Seven Hundred and Seventy Eight he the said David Phillips did enter into and make an Agreement to and with Your Petitioner for fifty five Garces of Salt to be delivered to him on Board of his said Vessell within Six days after the Arrival of the said Snow at Cottapatam, for which he the said David Phillips Promised to Pay after the Rate of

of Five Pagodas P Garce, the said David Phillips doth further Set forth that Your Petitioner did frequently Apply to and treat with him on this Buoness, before he Compleated his part of the Engagement and the said David Phillips Saith he did Advance and Pay unto Your Petitioner the Sum of two Hundred and Seventy five Pagodas on the twenty first day of June One thousand Seven Hundred and Seventy Eight and wrote a receipt for Your Petitioner to Sign, Whereof he Incerts a Copy, which he says he sent to Your Petitioner to Sign, which he Received back Subscribed to in Gentoo and which he says he Supposes was the Name of Your Petitioner. the said David Phillips further Sets forth that he Sailed on the same day with the said Snow Betsy from Madras for Coltapatam when he arrived the next day and Continued there longer than the time Agreed upon and Received only One Garce of Salt. that being thus disappointed of Salt he was Under the Necessity of Proceeding to Masulipatam to get his Loading of Salt with which he says he Proceeded to Bengal and Arrived at Calcutta in Safety and from thence Returned to Madras and requested Your Petitioner would Return the difference being two Hundred and Seventy Pagodas and Interest which Your Petitioner refused as he Your Petitioner never made any Agreement for the said Salt in his own Name or upon his own Account but that such Agreement was made for and on Account of his Brother and the Money Received on Account of his Brother, who the said David Phillips pretends he knowith not nor ever heard of Nor was his Name mentioned in any part of the Conversation or in the Agreement but that Your Petitioner did of himself and in his own Name Undertake and Promise to deliver the said Salt to the said David Phillips upon whose Promise and Undertaking he says he expressly Relied and upon which he Pretends he did Advance and pay unto Your Petitioner the said Sum of two Hundred and Seventy five Pagodas as Supposing him to be the Person in whom the property of the Salt was, that Your Petitioner Pretends the Signature or hand writing Subscribed in Gentoo to the Receipt drawn out by

By the said Phillips is not of Your Petitioners hand Writing Nor is the Name there to Subscribed the Name of Your Petitioner, but the Name of Petitioners Brother who Set and Subscribed his Name thereto, Whereas he the said David Phillips Charges he Supposed and always Understood that this said Receipt was the Act and Deed of Your Petitioner and no One else and which he pretends is Evident from his having immediately on the Receipt of the said Writing indorsed on the back thereof the following Words "Batna Grubbers Receipt for Salt two hundred and Seventy five Pagodas" the said David Phillips further Charges that Your Petitioner Pretends he was only Agent and Transacted Buoness for his said Brother during his Illness at Madras and that he Acted only for and on his said Brothers Account to and with him the said David Phillips with Respect to the said Salt, and therefore that he Your Petitioner has nothing to do with the said David Phillips which he the said David Phillips Charges is Contrary to Equity and Good Conscience because he Charges that he Negociated the Buoness and Engaged to and with Your Petitioner as if the Property was his own and the sole Right thereof was within himself there being no Other Person Mentioned to have an Interest in the said Buoness of the Salt than Your Petitioner the said David Phillips also further Charges that Your Petitioner Pretends he cannot refund or Pay back to him the said Sum of two Hundred and Seventy Pagodas because as he only Undertook and promised for and on account of his said Brother who is since dead, whose Name the said David Phillips pretends he does not Know or ever heard mentioned, he the said David Phillips Must wait untill Your Petitioner can Procure and Get in Effects belonging to his said Brother to whose Effects Your Petitioner Administered as a Creditor, which the said David Phillips Pretends is a very Unjust Plea and Set up with no Other Purpose than to defeat him of what he calls his just demand upon Your Petitioner and he the said David Phillips Says the pretended Subscription to the said Receipt was for

No

No other purpose than to defeat him by such Undue Practice, as he calls it.
for the said David Phillips Charges that having Examined into what he
calls this extraordinary Illegal pretence he was informed that Your
Petitioner did of himself and of his own Accord Order and direct his own
Brarmin and Servants to Set the Name of his Brother or the Person
he thought proper to make Use of at the Bottom of the said Receipt
as Your Petitioner could neither read or write, to which said Bill of
Complaint Your Petitioner did put in an Answer wherein he Your
Petitioner absolutely denies to Stand Indebted unto the said Complat.
either in the Sum of two Hundred and Seventy Nine Pagodas and
thirty three fanams Current Money of Madras as the same is unjustly
Set forth and Stated in the said Bill of Complaint and in the Account
Current thereunto Annexed or in any other Sum or Sums of Money
whatsoever, and for further Answer to the said Bill of Complaint Your
Petitioner Saith that he denys to stand Indebted unto the said David
Phillips upon any Contract for Salt or any other Matter the Sum
Charged in the said Bill of Complaint or any part thereof Neither
did Your Petitioner engage or Contract with the said Complainant or ever
Apply to or treat with the said Complainant or enter into any Engagement
with him the said Complainant for or on Account of Salt. Same and Except
that Your Petitioner did twice Apply or go to the said Complainant by
the Order or desire of his Brother Condaloo Naick when he was Sick and
who is Since dead, and Your Petitioner did only carry the Message to
the Complainant Regarding the Salt in question exactly as he Your
Petitioner was ordered by or received the same from his said Brother and
Returned back the Message to his Brother which he received from the the
said Complainant his Your Petitioners Application to the said Complai-
nant being on Account and in the Name of his Brother and not on
his Your Petitioners own Account. Your Petitioner further in his said

Answer

Answer absolutely denies that the said Complainant did Advance or pay
unto him Your Petitioner the Sum of two Hundred and Seventy five Pago-
for or on Account of the Salt in Question either at the time he mentions or at
any other time as is unjustly Set forth in the said Bill of Complaint on the
contrary Your Petitioner in his said Answer saith that the Money advanced or
paid for on Account of the said Salt was so Advanced or paid to Your Petitioners
said deceased Brother to whom the said Salt belonged Your Petitioner doth
further in his said Answer say that the Receipt mentioned by the said
Complainant was and meant to be Signed by Your Petitioner but by his Your
Petitioners said Brother neither was the said Receipt brought to Your Petitio-
ner but the same was sent to Your Petitioners Brother and Signed by Vencata
Veelnaya Gomastah to the said Condaloo Naick Your Petitioners said
Brother nor was the Salt in Question the property of Your Petitioner but
that of his said Brother So that he Your Petitioner cannot be answerable
for the same Your Petitioner doth However in his said Answer pray that
the said Receipt may be produced for the Inspection of the said Honble
Court and of him Your Petitioner Your Petitioner further in his said Answer
Saith that he entirely denies every Charge Assertion and Allegation of the
said Complainant in his said bill which doth in any wise tend to Charge
Your Petitioner with or make him Answerable for the Salt in Question
or the Sum said for or any part thereof, and Your Petitioner in his said Answer
Lastly said he humbly hoped it would clearly Appear to the said Honble the
Mayors Court that the said Complainants Charges Assertions Allegations and
Action are unjust and without Foundation to which said Answer the said
David Phillips put in a Replication still pretending that Your Petitioner
does Justly and truly stand Indebted unto him in the Sum of two Hundred
and Seventy Nine Pagodas and thirty three fanams current Money of
Madras as Stated and Set forth in the said Bill of Complaint and the
Account thereunto Annexed and Set forth many things with Regard
thereto

Thereto as well as other Matters which Your Petitioner then did and still doth Consider as highly Improper and Unjust and Some of them foreign to the Nature of the Case and the Matter in Question as he Your Petitioner humbly hopes he hath clearly Shewn in the Rejoinder which he Your Petitioner put in thereto wherein Your Petitioner humbly hopes he has clearly shewn the Impropriety and Illegality of the said David Phillips demand on and Action against Your Petitioner and to which he Your Petitioner humbly Craves Reference

Upon these Proceedings Issue was Joined Rules passed for the Examination of Witnesses Witnesses were Examined both on the part of Your Petitioner and the said David Phillips, Publication passed and the said Cause was Set down for hearing and the same came on to be heard by and before the said Mayors Court on Tuesday the Second day May in the present Year of our Lord One thousand Seven Hundred and Eighty when the said Court were pleased to order and decree that Your Petitioner should pay unto the said David Phillips the full and Just Sum of two Hundred and Seventy Nine Pagodas and thirty three fanams together with all such Interest as then was or should thereafter become due thereon untill full payment is made also all Costs of this Suit As will more fully and at large Appear by the said decree which comes herewith for the Inspection of this Hon.ble Court

From which said decree of the said Mayors Court Your Petitioner doth Appeal to this Hon.ble Court as he conceives the same Erroneous and that he Your Petitioner is Aggrieved thereby

First Because Your Petitioner was and is Unjustly prosecuted for and on account of a Matter which did not or doth any way concern him Your Petitioner And for a Sum which he did not Nor doth Owe the said David Phillips

Secondly Because Your Petitioner is decreed to pay the Sum Said for which Interest and Costs when Your Petitioner Conceives it clearly Appears by the Proceedings and depositions on the part of Your Petitioner that he Your Petitioner did not Receive the Money Advanced or paid on Account of the Salt in Question nor had he Your Petitioner any right so to do the Salt Contracted for being the Property of Your Petitioners deceased Brothers and not of Your Petitioner by whom or on whose Account the Agreement was made with the said David Phillips Your Petitioner could not therefore be Answerable or Accountable for the said Salt or fulfilling of the said Contract not in Course for any Money on Account thereof and Consequently the said decree Erroneous Your Petitioner being as he conceives unjustly decreed to pay the Sum Sued for which Interest and Costs as aforesaid Instead of the said Bill being dismissed with Costs

To Prove which and Support this his Appeal to this Hon.ble Court Your Petitioner craves leave, First, to Refer to his said Answer, which being on Oath is Evidence wherein Your Petitioner not only denies to be Indebted unto the said David Phillips but also that he Made or had any thing to do with the Agreement in Question Save and Except as far as he mentions, and that Entirely and only on Account of his said Brothers as he was Indisposed the Salt Contracted for being his said Brothers property and not the property of Petitioner Your Petitioner doth next crave leave to Refer to the depositions of the Witnesses Examined on the part of him Your Petitioner which do entirely Contradict every thing Asserted by the said David Phillips or by him Attempted to be proved tending to Shew that Your Petitioner was the Principle in the said Business or any way Answerable for the Money in Question or any part thereof Chinganam in his deposition Saith the Salt in Question was the property of Cundaloo Naick Your Petitioners Brothers and that every transaction relative to the said Salt was on Account of the said Cundaloo Naick the said Witness doth further depose and Say that

That Singanah the Complainants Dubash did sometime in or about the Month of June One thousand Seven Hundred and Seventy Eight carry two Hundred and Seventy five Pagodas to the said Cundaloo Naick as payment of the Amount of the Salt in Question, which he the said Cundaloo Naick had Agreed to deliver to the said David Phillips, that the said Cundaloo Naick was at that time Sick and that the said Cundaloo Naick did desire his Brother Your Petitioner to Count and Receive the said Money and deliver it to his then said Cundaloo Naicks Wife, which Your Petitioner did Accordingly in the Presence of the said David Phillips Dubash that a receipt was brought from the said David Phillips by his Dubash Singanah to be Signed by the said Cundaloo Naick for the Amount of the said Salt, that the said Cundaloo Naick did not Sign the said Receipt but delivered Vencatah Ristnaya his the said Condaloo Naicks Gomastah or agent to Sign the said Receipt, and that he did so - Cundapah in his Deposition Confirms the Matter of the Salt being the Property of the said Cundaloo and of every Transaction Relative thereto being on his the said Cundaloo Naicks Account and saith that the said David Phillipss Dubash Singanah was Informed by the said Cundaloo Naick at the time the Agreement was made about the Sale and delivery of the said Salt that it was his the said Cundaloo Naicks Property, which Your Petitioner begs leave to Observe doth entirely Contradict the said David Phillips Pretended Ignorance of the said Cundaloo Naick or of the Salt being his Property the said Cundapah doth further in his said Deposition Confirm the Matter of the Money for the said Salt being carryed by the said David Phillipss Dubash to Condaloo Naick, and of his being Sick and desiring Your Petitioner to Count and Receive the said Money and deliver it to the said Cundaloo Naicks Wife in the presence of the said David Phillips Dubash, and mentions the Matter of the Receipt (which Indeed he calls an Agreement but which Must be the same as it doth not Appear in any part of the Proceedings that there was any other Agreement or Receipt) which he says was Signed by the said Vencatah Ristnaha the said Cundaloo Naicks Gomastah or agent by his the said Cundaloo Naicks Order, and both the said Depositions are in Effect Confirmed by the Deposition of Syah, all which Your Petitioner begs leave to Observe do Clearly Shew that the Salt in Question was not the Property of Your Petitioner but of his said deceased Brother on whose Account the Agreement and every Transaction Regarding it was that the Money was paid to and Received by or on Account of the said Cundaloo Naick that the said David Phillipss own Dubash paid it and Know every Circumstance both about the Salt, the Contract being by or on behalf of the said Cundaloo Naick, and the Signature of the said Receipt which doth entirely free and clear Your Petitioner from any demand what ever on Account of the said Money, the said Salt or the said Contract as Your Petitioner humbly hopes will Clearly Appear to this Honble Court, Your Petitioner further saith that besides the Strong and clear Evidence on the part of Your Petitioner as before mentioned, its Observable Singanah the Complainants Dubash Examined on behalf of the Complainant doth not say the Agreement was made on Your Petitioners own Account, Nor of the Conclusion of the Bargain at all by Your Petitioner, but by the said Vencata Ristanyah the said Cundaloo Naicks Agent and he Mentions it very Vaguely he also proves that the Signature to the said Receipt was Known and Says that he and Sheshachellom Remonstrated against it it also Appears by the said Singanahs Deposition that the Money was not paid to Your Petitioner which Matters do Verry much tend to Support Your Petitioners Defence than the Action and Assertions of the said Complainant - It is also Observable that the said Singanah Says the said Vencata Ristnayah was a Servant or Gomastah both to Your Petitioner and his said Brother and so says Sambayya Another of the said David Phillipss Witnesses, but the said Sheshachellom the

said

said David Phillipses or Witness mentions the said Vencata Reitanaya as the Servant of Your Petitioner only which is a Contradiction of the other two of the said David Phillipses Witnesses Whereas all the Witnesses on the part of Your Petitioner say the said Vencata Reitanaya was the Gomastah or Agent of Your Petitioners said Deceased Brother

All which Matters and things Your Petitioner Submits to the Judgement of this Honble Court and humbly prays that the said Decree of the said Mayors Court May be Reversed and set aside and that the said Bill of Complaint and Suit may be dismissed with Costs and Your Petitioner doth lastly pray such further and other General Relief in all and Singular the Premises as to this Honble Court shall seem Meet and be Agreeable to Equity and good Conscience

Mayors Court at Madraspatnam

Tuesday the 2d Day of May Anno Domini 1780

Present

Edward John Holland Esqr Mayor
Benjn Roebuck and Edwd Garrow
Aldermen

Between David Phillips of the Snow Betsy now at an Anchor in the Road of Madras Complainant and Catnah Gnah otherwise Gruzal Naick of Madras Merchant defendant

This

This Cause Coming on to be Heard and debated this day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with an Account Current annexed the defends Amended Answer the Replication the Amended Rejoinder the Interrogaties and depositions on the part of the Complainant with a Receipt annexed the Interrogatories and Depositions on the part of the defendant On Hearing the Pleadings made Use of by the Attornies and on Due Consideration had thereon this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the defendant shall pay unto the Complainant the full and Just Sum of two Hundred and Seventy Nine Pagodas and thirty three fanams Pags 279.33 together with all such Interest as Now is or shall hereafter become due thereon until full Payment is made also all Costs of this Suit

P Cur

James Taylor
Regr

In the Court of Appeals

Between Catnah Gnah otherwise Gruzal Naick of Madras Merchant is Appellant and David Phillips of the Snow Betsy Commander is Respondent is

The Answer of David Phillips to the Petition and Appeal of the above said Catnah Gnah otherwise Gruzah Naick

The

The said Respondent not Confessing or Acknowledging all or any of the matters or things to be true, save and by the said Petition and Appeal are mentioned and Setforth for Answer thereunto Saith that true it is that he the said Respondent did on the day and Year as Setforth by the Appellant in his Petition of Appeal Exhibited in the Hon^ble the Mayors Court his Bill of Complaint against the Appellant for the Sum of Two Hundred and Seventy Nine Pagodas and thirty three fanams as the Ballance of an Account Current Annexed to the Respondents said Bill of Complaint, which Account the Respondent sheews originated upon a Contract of Salt made and entred into by and between the Appellant and the Respondent for the delivery of Fifty five Garce of Salt to be made at Cottapatam a place to the Northward of Madras by means of the said Appellant which was to be charged at by the Appellant at the rate of Five Pagodas P Garce, the said Respondent further says, that upon this Contract being made and entred by the said Appellant, he the Respondent did advance unto the Appellant at Madras before the departure of the said Respondents Vessell for Cottapatam, the Principal Sum of two Hundred and Seventy five Pagodas and took a Receipt as he the said Respondent then Understood for the same, as from the said Appellant in the following Words "Received of Captain David Phillips the Sum of two Hundred Seventy "five Current Pagodas on Account of fifty five Garce of Salt which I have "Sold him and to be delivered to him at Cottapatam. Madras 21st June 1778 Pag^s 275 and Signed in Gentoo, which the Respondent understood to be the Signature of the Appellant, and in Consequence thereof did endorse the Receipt as the Act and Deed of the said Appellant, as will Appear by Reference had to the Original exhibited at the time of the Examination of Witnesses and now before this Hon^ble Court of Appeals the said Respondent further Says that before the Conclusion of the terms and Conditions on which the Salt was to be delivered he the Respondent Understood the Appellant to be the Principal in the Business as no other Persons Name was ever mentioned during the whole Transaction the Respondent Says he made the Contract as with the Appellant himself he paid and Advanced his Money to the Appellant as the only person who had a Right to it and that he deemed and took it for Certain that the Salt to be delivered to the Respondent was the sole property of the said Appellant and no one Else. the said Respondent further Says that when he Advanced his Money to the Appellant and took as he the Respondent Supposed a Receipt for the same, as Signed and Subscribed by the said Appellant he the said Respondent had not the least Apprehension of any deceit or any unfair dealing on the part of the Appellant, but on the Contrary the said Respondent further Says that being led to Suppose all was fair and Right and that his Salt so Contracted for as aforementioned should be delivered to him at the place Appointed and within the time Agreed on, the Respondent did proceed from Madras on the Twenty first day of June One thousand Seven hundred and Seventy Eight in the Snow Betsey, and Arrived at Cottampatam the next day at which place the said Vessell remained longer than the time Agreed upon and received only one Garce of Salt, for which Credit is given to the Appellant in the Account Current annexed to the Bill of Complaint. The said Respondent further Says, that he has Setforth and Shewn in his Bill of Complaint, that the Appellant nor any one belonging to him, had any more Salt at this place of Cottapatam, the Respondent further Says that being so disappointed he was under the Necessity of Proceeding with his said Vessell to Masulipatam in order to purchase the quantity of Salt he wanted for Bengal which he did by purchasing the same at a higher price than that he Contracted for at Madras and of an inferior Quality to that which he the Appellant Agreed to deliver to the Respondent, besides the said Respondent Says, he lost much time by the delay and put to an Extra Expence by Reason thereof.

Thereof and was a Considerable Loser upon his arrival at Calcutta in the differences of Sales between the Salt that was to be delivered to him at Cottapatam and that which he was under the Necessity of purchasing at Masulipatam the Said Respondent further Says that upon his return to Madras he Applied to the Appellant for a Return of so much of Money as he the said Respondent had Advanced and for which no Salt had been delivered to the Respondent with an Interest thereon and this the Respondent did Suppose the Appellant would have thankfully have done in Order to have Prevented any future demands that the Respondent had in Justice aught to make, for the loss of time detention of the Vessell, the difference of the purchase of Salt and the difference of the Sales all of which the Respondent had not the least Idea of Charging as Supposing the Non delivery was owing to some differences between the Appellant and his People at Cottapatam for in fact when the Respondent did enquire into the Reason, why the Salt was not delivered, he understood the Appellant nor any one for him, had any of their Salt at Cottapatam the one Garce that was Afterwards delivered to the Respondent or board of his Vessell at the said place, The Respondent further Says, that upon his Applying to the Appellant for the return of the Cash as aforementioned, he was Surprized by an Answer from the said Appellant, That he the Appellant was not indebted to the Respondent in the Differences, And that he the Respondent had no Right to call him the Appellant to Account for the same, because he the Appellant only Acted for his Brother one Condaloo Naick, who was then at the time of Making the Contracts Sick and is since Dead, and had nothing further to do in the Affair, and Referred the Respondent to come in as a Creditor of the said Condaloo to whose Effects the said Appellant has Administred and whom the said Appellant Executes has Full Indemnent the said Respondent being Advertised of this Answer and Referring to the Receipt in Question he found there the Name of a Conceopply Subjoined in Gentoo as for and on Account of the said Condaloo Naick, and this the

Respondent

Respondent Saith was the first time he knew of such a Subscription, he the said Respondent Supposing, and was omined undeceived, but that the Signature in Gentoo so Subjoined was the hand Writing and Name of the said Appellant, the said Respondent further Says that finding himself so artfully taken in by the said Appellant he made any Enquiry and found that the Appellant could neither Read nor Write that the Appellant and the said Condaloo Naick his Brother were one and the same person in all Concerns and that the Conceoply who Subscribed to the Receipt in question, was a Constant Attendant on the Person of the Appellant and the Conceoply to them both, and further that in all Contracts which were for Salt the said Appellant was and had been for a great Number of Years past, the Executive person in the making and performing of the Contracts, and this is so well Known not only to the Publick in General but to every Seafaring person who comes to Madras and the parts Adjoining for loading of Salt, as an instances thereof the many Suits upon Record in the Hon^ble the Mayors Court against the Appellant on Account of Salt will plainly Appear, some of Suits are for a Non performance of the Appellants Contract at this very place of Cottapatam the said Respondent further Says that the Appellant is too Notoriously Known to be Principal in the Several Contracts for Salt and all Applications are made to him as the Principal and Scarcely Known that he has Acted as an Agent in the same the said Respondent further Says that finding himself thus Circumstanced he was under the Necessity of preferring the Bill of Complaint as Aforementioned against the Appellant to the purport as herein is inserted to which the Appellant did Appear, and after much delay and putting in General papers, he the Appellant died on the Twenty fourth Day of May One thousand Seven Hundred and Seventy Nine, file an Amended Answer to the Respondents Bill of Complaint, being four Months after the Date of the Bill of Complaint against him the Appellant, which Amended Answer was Replete with the most Artfull evasions as could be invented, in the said Answer

wherein

Wherein the Appellant Says that he denied to be indebted to the Respondent
in the Sum of Two Hundred and Twenty Nine Pagodas and thirty three
fanams as Stated by the Respondent in his Account Current annexed to
his Bill of Complaint, he denying to be indebted unto the Respondent
upon any Contract of Sall, and further positively denying that he ever
engaged or treated with the Respondent for and on Account of Sall, save
and except, that he did twice Apply by the Order of his Brother to the
Respondent by carrying a Message to the Respondent and returning with
another from the Respondent but what that Message or Messages was
or were, and whom the Answer is totally Silent upon, the Answer further
Sets forth, that the Appellants Application to the Respondent was
for and on Account of his the Appellants Brother and in his Name and
not on his the Appellants own Account, how the Respondent Says is
another vague Assertion, the Respondent in his Bill of Complaint
charges with his having Applied to the Appellant for a Quantity of
Sall and that he the Appellant did Contract in his own Name to
and with the Respondent, the Respondent further Says, how was it
possible for the Appellant to know what the Respondent wanted
untill he had Applied to the Appellant, for the Snow Betsy was
a Bombay Vessell belonging to that Port, and her destination upon
her Arrival at Madras depended upon the Sales of her Bombay Cargoe,
so that the Plea of the Appellant applying on Account of his Brother
to the Respondent is very vague and futile, the said Respondent further
Says, the Appellant in his said Answer further denys, that he the
Respondent Advanced or paid the money to him the Appellant for and
on Account of the Sall in question, but that the Money was paid and
Advanced on Account of the Sall to the Appellant Brother to whom
the Sall belonged here the Respondent Says is another Evasion the

Appellant

Appellant Says that the Money was not paid or Advanced him on Account of
the Sall in question but that the Money was paid to his the Appellants Brother
to whom the Sall belonged, the Question immediately arises what Sall does the
Defendant mean because the Sall that was promised by the Appellant to
be delivered at Coltapatam never existed, seen or heard of, save and except one
Garce which was said to belong to the Appellant, as is pointedly shewn in the
Course of the Proceedings before the Honble the Mayors Court, therefore if the
Brother had no property where was the property of the Appellant, and if
he had no property, why then did he Contract for a quantity of what neither
the one or the other had, and receive the full Amount of the Contract here
the Respondent Says was certainly a deception and a combination to defraud
the Respondent of his Money which was obtained from the Appellant under
false pretences the Respondent further observes, that the Appellant in his
Answer Says, that the Money was Advanced and paid to his Brother but does
not Say by whom, when, and in whose presences, and whether his said Brother
his said Brother was Sick at this time, nor does the same Agree in any respect
with what follows in the said Answer for the Appellant Says, that the Receipt
was not meant to be Signed by him the Appellant but by his Brother, the Respon-
dent Says that he the Respondent certainly meant that when he paid the
Money that the Appellant should Sign it himself and trusted that upon
being in possession of the said Receipt, that the said Appellant had Signed it
himself, for in the whole of of the Transaction no such a person as the Appellants
Brother or any other Person was mentioned as Interested in the Contract but the
Appellant himself, the Respondent further begs leave to observe, that the Appel-
lant in his Answer Says, that the Receipt was not brought to him to Sign but
sent to his Brother and Signed by Venkata Kistnayah the Gomastah to the said
Condaloo Naick, the Appellant does not Say by whom the said Receipt was sent
to be Signed, nor when, nor does he Say, by whose Orders the said Venkata Kistnayah

took

took upon him to Sign the said Receipt, for it is to be observed, that the said Appellant in his Answer positively Affords that the Sum Advanced for Salt was paid to his Brother, if the Brother could be at the Pains of receiving the Money, why not Sign the Receipt himself, why is it to be done by a person who is said to be the Gomastah of the Brother and why did not this said Gomastah Receive the Money and make the Contract with the Respondent, and where there was a Gomastah, why Should the Appellant have been employed the Appellant further in his Answer Says, that he had no property in the Salt in question, this the Respondent Says is very ingenious, for how could the Appellant have property in a thing or Article, that had no Existence, he pretended to have property at Cottapatam to the Amount of his Contract and that it would be delivered in a certain time all these promises and Undertakings were made by the Appellant, and it was his Business whether the property was his or not to have seen the Articles he engaged for forthcoming, pursuant to the Terms and Condition of his engagement, the Appellant made the Contract, the proposed the Terms, and received a consideration to the full Amount, then of it was his Business to see it compleated in every Sense of the word and notwithstanding the Receipt is Signed by another person, still as the Appellant gave it as his Act and deed, it is no Matter whose Name is Subjoined thereto for if a person will Undertake to do a thing in the Name of another, he is still is Answerable let his Name be ever so fictitious, the Appellant Receiving the Consideration under this fictitious Receipt is quite Sufficient to bind them for so much Money had and received to the Respondents Use

To this Answer of the said Appellant, the Respondent did Special Reply and as the Appellant has thought it Necessary to pass it over in as concise a manner as possible without entering thereinto the Merits of the same the Respondent begs leave briefly to Recite

Recite the same, the Respondent in his Replication Says, and Affords, that the Appellant Stood indebted to him as Set forth by him the Respondent in his Bill of Complaint, that the Appellant did of himself treat with the Respondent and engage to deliver the Salt within the time, and at the place agreed on, and that during this Transaction no such person as the Brother of the Appellant or any other person was thought of or mentioned, that the Respondent made the Contract with the Appellant, as if he the Appellant was the Sole proprietor of the Salt and did Advance him the Money upon the faith and Confidence of dealing with a man of Probity, and had not the least Idea of any persons Name being Subjoined to the Receipt than that of the Appellant, untill his the said Respondent Return to Madras, who applying to the Appellant for a return of the Money, was by him told, he had nothing to do with it, as the same was the Act and Deed of his the Appellants Brother, the said Respondent further in his Replication Set forth, that this Kind of behaviour had been the practice of the Appellant for many Years, as he was informed, to the injury of a Number of persons that were Owners and Freighters of Vessells who had preferred a Number of Suits in the Honble the Mayors Court against him the Appellant, the Respondent further in his Reply Set forth, that upon the Advice of his Friends he enquired into the Merits of the Signature and found that his the Appellants Brothers Name had been Set to the Receipt by one of the Comprador belonging to the Appellant, and that this was done by the Directions of the Appellant himself, and that this mode of doing Business, was the Constant practice of the Appellant, he the Respondent being informed, that the Appellant could Neither Read nor Write, the Respondent further in his Reply Set forth, that he Knew of no Message that the Appellant Carried as from his Brother Condaloo Naick to the Respondent, and that he the Respondent was an Utter Stranger to the Brother both as to his person and Name, and that the Contract made and the Cash Received, was had and done, as if the Sole property

and

And Concern of the Appellant, as no other Person was mentioned during the Conference upon the Contract of the Salt. the said Respondent further in his Reply Says, that he was taken in by the Duplicity of the Appellant who artfully Managed this Transaction with all the Apparent openness as if every thing was fair and right. the said Respondent further Says, in his Replication, that he drew out the Receipt agreeable to the Terms and Conditions as dictated by the Appellant himself and which was meant and intended to have been Signed by the Appellant as his own Act and Deed, and upon this Assurance the said Respondent Says in his Reply, he advanced the whole of the Contract Money, the Respondent further in his Reply denies, that the said Receipt was meant or mentioned to be Signed by any person than the Defendent, that no such person as Venkata Ristnamah was ever heard untill the arrival of the Respondent from Bengall at Madras, the said Respondent further Sets forth, that upon his calling on the Appellant to Refound he was then and only then at that time, informed of this Venkata Ristnamahs Name Subjoined on Account of one Condaloo Naick the Brother of the Appellant who is called Gomastah to the said Condaloo Naick. The said Respondent further Saith, that in some parts of the said Replication he has indeavoured by some observations to Shew the fallacy of the Appellant in turning the whole of the Transaction upon his Brother and his pretended Gomastah, and as those observations have hereto fore been made it will be Needless with Submission to this Hon^ble Court, to make any other Comment thereon. To this Special Replication the Appellant did on the Second day of August One thousand Seven hundred and Seventy Nine, file a Special Rejoinder thereby endeavouring to Support his Answer and to refute the Respondents Arguments in his Replication, the said Appellant Alledging that he did not engage or treat with the Respondent for the Salt in question other than as is Set down in his the Appellants Answer to the Respondents Bill of Complaint, nor was the

Salt

Salt to be delivered by the Appellant but that his Brother Condaloo Naick was to deliver the same at the place Agreed on, and insisting, that the Contract for the said Salt was made in the Name and on Account of the said Condaloo and not on Account of him the Appellant further denying to have any thing to Say to the Contract as Principal or proprietor. the Appellant further in his Rejoinder, after Argumentating upon his own Answer, Says, that he does not Know of any Conceeply having Subjoined the Signature of his the said Appellants Brother by order of the Appellant but Acknowledges that he did tell the Respondent, that the same was Signed by a Gomastah belonging to the said Condaloo Naick. the Respondent begs leave of this Hon^ble Court of Appeals to Observe here that the Appellant Says, he does not Know of any Conceeply having Subjoined the Signature of his Brother by his the Appellants order and that he the Appellant told the Respondent that the said Receipt was Signed by a Gomastah belonging to the said Condaloo Naick, the Respondent observes that the Appellant has omitted in his Rejoinder to express the time when he Acquainted the Respondent of the time but the Respondent begs leave to refer this Hon^ble Court of Appeals to his Replication, where the time is Ascertained when the Appellant mentioned the Receipt to be Signed by the pretended Gomastah the Respondent Says that upon or soon after his arrival at Madras from Bengall when the Application was made for a Return of the Cash, he was informed by the Appellant a Gomastah of the said Condaloo Naick had Signed which upon an enquiry was found to be a Conceeply belonging to the Appellant and by his the Appellants Order did he so Signe it, and this Assertion has been verified by witnesses produced in the Course of this Cause, the said Respondent further Says, that the Appellant in his Rejoinder does Acknowledge in as express Words as possible his being an Agent or Gomastah for his said Brother wherein he Says, "that he has in some Suits now before this Hon^ble Court mentioned his having managed his said Brothers Business or some part thereof as was really the Case," the Appellant further in his

Rejoinder

Rejoinder endeavours as far as in him lays to support his Answer, and being
of apprehensions that the Respondent might lay hold of him, should be fail in the
present Suit, by obliging the Appellant to pay his said Brothers Debts pursu-
ant to the Custom of his Cast, but unfortunately he has failed in such his
Plea, by his Brother living and dying in his the Appellants House the
Appellant asserts in his said Rejoinder that his said Brother was in his
life time adopted into a different family and therefore the Appellant not
lyable to his the said Brothers Debts pursuant to the Custom of the Cast
but as this Assertion is no part of the Answer, the same is out of place and
does not regard the merits of the Matters in Question. Issue being joined in these
Proceedings, the Respondent did proceed to an Examination of Witnesses,
whose depositions the Appellant in his Appeal has omitted to take any
Notice of, whereby the Respondent is reduced to the Necessity of briefly reciting
the purport of their Evidence, and first, Singanah a Dubash of the Compt.
and who was well Acquainted with the the Appellant and Sundry Trans-
for a Quantity of Salt being made and entred into by and between the Respon-
dent and the Appellant, and that the same was made in the Month of
June One thousand Seven Hundred and Seventy Eight, that one Sheshachel-
lum did go to enquire of the Appellant for the provision of a quantity of
Salt that he went to the Appellant and brought him to the Respondent
with three Masters of Salt, which were produced by the Appellant to
the said Respondent in the presence of some persons then present and
that the Appellant did enter into an Agreement for the delivery of fifty five
Garce of Salt at Cottapatam at the rate of five Pagodas p Garce, and that
the Salt was to be delivered in five or six days after the arrival of the Respond
into Vessell at Cottapatam and further that the Respondent told the Appellant
that in case of any failure in the delivery of the said Salt he the Appellant
Must Refound the Principal with the Bengall Premium, to which the

Appellant

Appellant replied, that as soon as he received the Money he would enter into such
an Agreement. The said Singanah in the third Deposition Says, that the Appel-
lant did Attend and wait upon the Respondent some time after the first meeting
that he did not see the Respondent as he was not at home that the Respondent
did some time after send the aforementioned Sheshachellum to bring the Appel-
lant but as he did not come, he the Appellant sent his Conicoply Venceta
Rastnayah, whom the said Singanah Says, he Understood from Sheshachellum
that the Appellant told him he would abide by every thing the said Vencata
Rastnayah did. Singanah further in his fourth Deposition says, that no Letter
was given by the said Vencata Rastnayah to the Respondent, but by whose order it
was written he the said Singanah could not tell, that he the said Singanah and
the Sheshachellum did both Remonstrate against the mode of Subscription at
the foot of the Receipt as the Appellant was the person who had Contracted
with the Respondents for the delivery of the Salt to which the said Vencata
Rastnay Replied that as Carratty Condaloo was the Eldest Brother it was
always Customary to put his Name but that it made no manner of difference
as to the Brothers were the same. Singanah further Deposes, that then
Appellant desired Sheshachellum to Attend upon him and receive his
Custom out of the Consideration by him paid him and that the said Shesha-
chellum did Receive Twelve Pagodas in part from the Appellant, and the
Appellant promised that the remainder should be paid as soon as the Salt was
delivered, that Vencata Rastnayah paid Sheshachellum the said Twelve Pags.
by the Order of the Appellant. Singanah further in his Seventh Deposition
Says, that having received intimation from a Servant of the Respondent a few
days after the departure of the Respondents Vessell, of the non delivery of the
Salt as Contracted for that he the said Singanah and the aforementioned Shesha-
chellum did both go and apply to the Appellant for the Cause of such Non-
performance, who told them that he the Appellant had Received a letter
of the Salt having gone off and that they Need not give themselves any

T. trouble

Trouble about it, and that he the said Appellant did promise to be responsible to the Respondent for all and every the differencies that there might be in the Salt Contracted for the said Singanah further in his Eighth Deposition Says that he did know that the Respondent did imagine and Suppose that the Appellant was the Original person concerned in the said Contract with him for the Salt and that no other persons Name besides that of the Appellant was mentioned to the Respondent at the making of the Agreement and paying of the Cash as parties concerned in the said Salt and that the Appellant did present himself only as the Principal and Owner of the said Salt the said Singanah in his Ninth Deposition Says that the person whose Name is Vencatakistnayah and Subscribed to the Receipt was the Servant or Conicoply of the Appellant and his Brother Carratty Condaloo at the time of Subscribing and delivering of the Receipt and he was at that time and long before and some time after deemed and taken to be the reputed and Accepted Servant of the said Appellant and the said Carratty Condaloo the how very pointed in every part of these Depositions the said Singanah is and how much his Evidence corroborates with the Replication of the Respondent and totally overacts the Appellant in his Answer and Rejoinder the Respondent further begs leave to recite briefly the purport of Sheshachellum the person mentioned in the aforementioned Singanahs Depositions the said Sheshachellum in his Second Deposition entirely agrees with Singanah and Steadily Asserts that the Appellant dealt as for himself and as if he was the Owner of the Salt with the Respondent the said Sheshachellum in his third Deposition further agrees with the said Singanah but positively Asserts that the Appellant desired him to take with him his the Appellants Conicoply or Gomastah whom the Appellant said always wrote for him as he the Appellant could not write and that he would receive the Money and give a receipt for it and that he the Appellant would abide by

By every thing that his Gomastah or Conicoply did and that he the said Sheshachellum took his Gomastah named Vencatakistnayah to Mr John de Friese House, where the said Sheshachellum informed the Respondent of what had passed between him and the said Appellant, who desired him to pay the Money for the said Salt which he in Consequence did to the said Vencatakistnayah the said Sheshachellum in his fourth Deposition Says that he Knows of a letter that was written by the Order of the Appellant concerning the Salt and that he the Appellant told him that he had Ordered his Conicoply or Gomastah to write such Letter that he Remonstrated against the mode of the Subscription at the foot of the Receipt as the Appellant was the person who had entered into the Agreement with the Respondent for the delivery of the said Salt and that Singanah and Samtaveyer were present at the same time that Vencatakistnayah Typlyed it was always Customary to put Carratty Condaloos Name, he being the Eldest Brother but that it made no manner of difference whatsoever, the said Sheshachellum in his several Depositions entirely Agrees with Singanah, both as to the Promise of the Appellant making good any Deficiency of the Salt and also as to Vencatakistnayah being the Conicoply or Servant of the Appellant at the time of the Subscribing and delivering of the Receipt and that he was taken as to be a long time before and some time after the Reputed Servant of the said Appellant, the said Respondent further Says, that Sambayya another of the Respondents Witnesses, and who was present and Active in the several Transactions between the Appellant and Respondent, agrees positively in every fact with Singanah and Sheshachellum and in every instance supports the Charge against the Appellant, and Strengthens the veracity of the Respondents Replication and Refutes the Appellant both in his Answer and Rejoinder, the Respondent further Says that these said three persons aforenamed were the persons employed as under the Respondent during his residence at Madras and are the only persons to the best of his

remembrance

Remembrance that knows any thing of the Matter and with whose Deposition the said Respondent Says he rested Satisfyed.

The said Respondent further Says that the Appellant proceeded to Examine his Witnesses and first the Appellant produces a person by Name Chinganam aged only twenty four Years who Says that he does know to whom the Salt in question belonged and that it did belong to Cundaloo Naick and that the said Cundaloo Naick in his life time did treat engage or Agree with the Respondent about the Sale and delivery of the Salt in question and that every Transaction Relative to the Salt was on account of the said Cundaloo Naick the Respondent here begs leave of this Honble Court to make the following Observations, first that this Evidence does positively Assert, that he knew the Salt in question to be the property of the said Cundaloo Naick, but does not depose how he came to the knowledge thereof and that he knew whom the property belonged how he should so know it is a Mystery to the Respondent, because the quantity of Salt to be delivered was no where to be found and did not at the place appointed or at any time and this is not denyed by the Appellant himself so that this Evidence by endeavouring to say some thing has deposed more than he knew or the appellant allowed of and further Stretches the point by Saying that Cundaloo Naick in his life time, did treat, engage or Agree with the Respondent about the Sale and Delivery of the Salt in Question whereas the Appellant himself declares that the said Cundaloo Naick was Sick and that he Transacted the Business upon his the said Cundaloo Naicks Account here the Respondent Says that there appeared to the Honble the Mayors Court, a palpable Contradiction to all what had been before Asserted both by the Appellant and the Respondent and with Regard to the fourth depositions of this said Chinganam there appearing some Contradictions in regard was had to the same

the said Respondent further Says that Condapah Aged twenty five Years and that

Another of the Appellants Witnesses declares in his Second Deposition, that he knew to whom the Salt in Question belonged although fifty four Garce of the Quantity being fifty five Garce Agreed on to be delivered was not to be found and in his fourth deposition he Says that the Respondent to Dubash desired the said Cundaloo Naick to give him an Agreement for the said Salt the said Cundaloo Naick replied he was Sick and could not write but Ordered his Gomastah or Agent one Vencatakistanayah to give the Respondent to Dubash an Agreement and to Sign the same which he deposes he did Accordingly did the said Respondent further Says that by comparing these two depositions of the Appellants Witnesses there appears an unconnected Story one Says that a Receipt was brought from the Respondent to be signed by the said Cundaloo Naick for the Amount of the Salt and that the same was brought by the Respondent to Dubash Singanah the other Evidence Deposes that the Respondent to Dubash desired the said Cundaloo to give an Agreement for the said Salt which was refused on Account of the said Cundaloo not being able to write but that he Ordered his Gomastah Vencatakistnayah to give the Respondent to Dubash an Agreement and Signit which was done as the Evidence Deposes the said Respondent further Says that Iyah another person who deposes on behalf of the Appellant Says the very same in his Second deposition as the former but in his fourth deposition differs widely by Saying he does not know of any Receipt being brought from the Respondent to be Signed by the said Cundaloo Naick for the Amount of the said Salt but heard that the said Cundaloo Naick desired the said Vencatakista nayah to go with the Respondent to Dubash and Sign a receipt and that he did so go and Sign the Receipt as Ordered Whereas the former Says he he directed an Agreement to be made out and Signed by his the said Cundaloo Naicks Gomastah and thus ends the whole of the Depositions

on

on the part of the Appellant but the Respondent begs leave to make and the observation that if the Appellants Answer and his Testimony were founded in truth why did not the Appellant produce and Examine so material an Evidence as this said Venatakistnayah the pretended Gomastah of the said Condaloo Naick whose Evidence might have in a great Measure decided the question in Agetation how the Appellant can Account for this Omission he himself best can tell the said Respondent further begs leave to say that this Cause being Set down for hearing the same came on to be heard and was determined on the Second day of May in the present Year of Our Lord One thousand Seven Hundred and Eighty in manner and from as Set forth in the Copy of the Decree annexed by the Appellant to his Petition and Appeal from which Decree of the said Hon.ble the Mayors Court the said Appellant has thought proper to appeal and Assigned or pretended to have Assigned certain Causes as grounds for his Appeal when in fact there is not the smallest reason assigned for such a Motion first Because the Hon.ble the Mayors Court and publickly gave it as their Opinion that the behaviour of the Appellant carried with it every appearance of fraud and Collusion which he could not nor had not Supported or Justified either by any matter of Fact of his Own or by any Evidence produced in the Course of the Proceedings but that his Evidence seemed so contradictory and imperfect in their Story that no Regard could possibly be had thereto Whereupon the said Hon.ble the Mayors Court were Unanimously of Opinion in favour of the Respondent and decreed Accordingly by which decree the said Respondent humbly Conceives and is Advised is Agreeable to Equity and Justice and therefore hopes that the same shall be Affirmed and that the said Petition and Appeal be dismissed this Hon.ble Court of Appeals with such Costs as this Hon.ble Court of Appeals shall think proper to Adjudge

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Court of Appeals at Madraspatnam

Thursday the 17th May Anno Domini 1781

Between Patnah Gruah otherwise Gruzal Naick of Madras Appellant and David Phillips of the Snow Betsy Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both Sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Hon.ble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 2d day of May Anno Domini 1780 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments Used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Decree of the Hon.ble the Mayors Court do stand affirmed with Costs

p Cur

(Signed) Chas. Freeman Clk

To the Hon.ble John Whitehill Esq.r President and Governor & Council of Fort St. George

In the Court of Appeals

Between John Johnson Captain of the Ship Granby in the Service of the East India Company at Fort St George Complainant and George Mackenzie Captain in the Seventy third Regiment

of

of Highlanders in the Service of his Britanick Majesty at Fort Saint George Defendant

The Humble Petition and Appeal of the said Defendant

Sheweth

That the said Complainant did some time on or about the twenty Second day of February in this present Year of our Lord One thousand Seven hundred and Eighty file a Bill of Complaint in the Honble the Mayors Court of Madraspatnam setting forth that Your Petitioner stood indebted unto him in the Sum of five hundred and thirty nine Pagodas eighteen Fanams being as he pretends his Claim on Your Petitioner for the Passage Money of Your Petitioners Wife and Son from England to Fort Saint George with Interest thereon at the Rate of thirty Seven ℔ Cent under the Title of Respondentia Interest the said Complainant did also by his said Bill pray that Your Petitioner might be decreed to pay the said Sum of five hundred and thirty Nine Pagodas eighteen fanams together with such Interest as then was or thereafter should become due thereon with all Costs of Suit - the said Complainant did further pray that Your Petitioner might be Summoned and so forth to which said Bill of Complaint Your Petitioner did Appear by his Attorney and did file Bail - And did also on or about the fourteenth day of April last past file his Answer upon Oath and therein Among other things did deny to Stand indebted unto the said Complainant in the said Sum of five hundred and thirty Nine Pagodas eighteen Fanams but did allow that he was indebted unto the Complainant in the Sum of one hundred and fifty two Pounds two Shillings and Eleven Pence and that notwithstanding he was so indebted unto him only in the said Sum of one hundred and fifty two Pounds two Shillings and Eleven

Eleven Pence he had offered to pay four hundred and nine Pagodas which at eight Shillings the Pagoda makes one hundred and Sixty three pounds twelve Shillings or Eleven Pounds nine Shillings more than Your Petitioner thought he owed unto the said Complainant Your Petitioner did also in his said Answer Set forth that the Complainants Charge of thirty Seven ℔ Cent was contrary to the Express Words of an Act of Parliament passed in the twelfth Year of the Reign of her late Majesty Queen Anne Entitled an Act to reduce the Rate of Interest without prejudice to Parliamentary Securities whereby the Interest in England is regulated at five Per Cent and that it was also Contrary to an Act of Parliament passed in the thirteenth Year of the Reign of his present Majesty Entitled an Act for establishing certain Regulations for the better Management of the affairs of the East India Company as well in India as in Europe whereby the Interest in India is limited at 12. ℔ Cent - and Your Petitioner also in his said Answer say that he was ready to pay the said Sum of four hundred and Nine Pagodas and therefore did pray to be thence dismissed with his Reasonable Costs of Suit and Charges in that behalf most wrongfully sustained As by his said Answer Reference thereto being had may Appear and Your Petitioner further Sheweth that the said Complainant did on or about the 25th day of April last past file a Replication in Setting among other things on his Receipt to the said Sum of five hundred and thirty Nine Pagodas eighteen fanams under the pretence that the said Respondentia Interest was the proper Interest on such Occasions and that as there was a Risk in the Business and as the Rate of Interest was such as was Customary on Loans of Money on the Risk of a Voyage, he, the Cas had a right thereto and he therefore prayed as in and by his said Bill of Complaint he has already prayed and Your Petitioner therefore Sheweth

that on or about the first day of May last he filed a rejoinder to the said Replication whereto Your Petitioner insisted on the Several Matters and things Set forth in his said Answer and prayed as by his said Answer he had already prayed and Your Petitioner further Sheweth that Issue was Joined thereon and the several Witnesses having Examined as well on the part and behalf of the Complainants as on that of Your Petitioner Publication passed and the said Cause was Set down for hearing and was accordingly heard on the twenty third day of May last past when the said Honble the Court were pleased to Order and Decree that Your Petitioner should pay unto the said Complainant the Sum of £ 157. 10. at eight Shillings the Pagoda together with Interest thereon at the Rate of twelve ℔ Cent from the 2. 8. day of February which was in the Year of our Lord One thousand Seven hundred and Seventy Nine By which said Order and Decree of the Honble the Mayors Court Your Petitioner finds himself Much aggrieved and therefore Your Petitioner doth Now Appeal therefrom for Your Petitioner Sheweth that as the said Contract for the Passage Money was made in England the said Complainant had no Right to have more than Interest at five ℔ Cent on the Sum which Your Petitioner Agreed to pay especially as it Appears by the Complainants own Letter to which Your Petitioner prays leave to Refer this Honble Court as the same is among the Proceedings in this Cause that the Complainant is Willingly agreed that Your Petitioner should pay as convenient and Your Petitioner further Sheweth that as the said Order and Decree of the Honble the Mayors Court hath not thought fit to Substantiate the Complainants Claim they ought to have Decreed that the Complainant should pay Costs because as the Sum Decreed differs so little from the Sum offered by Your Petitioner and as Your Petitioner Made a Tender to pay more than he Conceived due

Merely

Merely to avoid any Litigation it is fair to Conclude that had the Complainant made an Offer to receive the said Sum of £ 157. 10 and Interest as has been Decreed Your Petitioner would have paid the same rather than incur the Trouble and Expence of a Process at law and therefore as the Claim of the Complainant so far exceeded the Amount which he Appeared to Merit by the said Decree Your Petitioner humbly Submits that the said Complainant should pay all Costs of Suit.

For all which Matters and things Your Petitioner doth humbly conceive that the said Decree of the Honble the Mayors Court / Copy of which is hereunto annexed and which Your Petitioner prays may be Admitted as part of this his Petition and Appeal is defective and injurious to Your Petitioner and therefore Your Petitioner humbly hopes that this Honble Court will be pleased to reverse the same and to Order Your Petitioner to pay unto the Complainant the said Sum of four hundred and Nine Pagodas and that the Complainant should pay all Costs of Suit incurred in the said Mayors Court as well as in this Honble Court.

J Renworthers /
Atty for Appellant.

Mayors Court at
Madraspatnam

Tuesday the 23d Day of May
Anno Domini 1780

Present

Edwd John Hollond Esqr Mayor
James Call and Benjn Robuck
Aldermen

Between John Johnson Captn of the Ship Granby in the Service of the East India Company at Fort Saint George Complainant and George Mackenzie Captain of the Seventy third Regiment of Highlanders in the Service of his Brittanick Majesty at Fort St George Defendant

This Cause Coming on to be heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Complaints Bill with Copy of an Account Annexed the Defendants Answer with Copy of an Account Annexed the Replication the Rejoinder the Interrogatories and Depositions on the part of the Complainant with Papers Marked A and B annexed the Interrogatories and Depositions on the part of the Defendant with a Paper Marked A annexed On Hearing the Pleadings Made Use of by the Attorneys and on due Consideration had thereon this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of one Hundred and Fifty Seven Pounds and Ten Shillings ℔ 157. 10/ at Eight 8/ Shillings ℔ Pagoda together with Interest at Twelve 12 ℘ Cent from the 28th February 1779 and it is further Ordered and Decreed that each Party do pay their own Costs of Suit

℔ Ewr
James Taylor
Regr

To the Honble John Whitehill Esqr
President and Governor &c. Council of
Fort Saint George
In the Court of Appeals

Between John Johnson Captain of the Ship Granby in the Service of the East India Company at Fort St. George Complainant and George Mackenzie Captain in the Seventy third Regiment of Highlanders in the Service of his Britanick Majesty at Fort St. George Defendant

The Answer of the said Complainant to the Petition and Appeal of the said Defendant

This Respondent by way of Answer to the said Petition and Appeal or unto so much thereof as this Respondent

and

is Advised materially concerns him to make answer unto Saith it is true that he this Respondent did at the time in the said Petition of Appeal for that purpose mentioned file a Bill in the Honble the Mayors Court at Madraspatnam against the said Petitioner and did State and Set forth therein such matters and things as are mentioned in the said Petition and Appeal save and except such part thereof wherein the Petitioner has Stated that this Respondent charged the Petitioner as being indebted unto this Respondent in the Sum of five hundred and thirty Nine Pagodas eighteen fanams with Interest thereon at the Rate of thirty Seven per Cent & for this Respondent Saith that the full Amount of this Respondents Claim together with the said Interest of thirty Seven per Cent under the Title of Respondentia Interest did not exceed the said Sum of five hundred and thirty Nine Pagodas and eighteen fanams this Respondent doth allow that in and by his said Bill of Complaint he did pray that the Petitioner might be Decreed to Pay this Respondent the said Sum of Five hundred and thirty Nine Pagodas and eighteen fanams together with such Interest as was at the time of filing his said Bill or should thereafter become due thereon together with all Costs of Suit and this Respondent further Admits it to be true that the said Petitioner did put in an Answer to this Respondents said Bill and did thereon deny that he stood indebted unto this Respondent in such sum as is Set forth in his said Bill and that Respondents Charge of thirty seven per Cent was contrary to an act of Parliament passed in the Twelfth Year of the Reign of her late Majesty Queen Anne and also to an act Made in the thirteenth Year of his present Majestys Reign and this Respondent further Admits that the said Petitioner did in his said Answer say he was ready to Pay the Sum of four hundred and Nine Pagodas and did Conclude his said Answer in manner

Set forth

Set forth in the said Petition and Appeal and this Respondent Saith it is true that to such Answer he this Respondent did Reply and Repeat his Claim and in Support thereof and by way of Replication did insist on his Right to the said Sum of five hundred and thirty Pagodas eighteen fanams and that on such Occasion the said Respondentia Interest was Improper Interest as there was a Risk in the business and that he this Respondent had a Right thereto according to the rate of Interest Customary on Loans on the Risk of a Voyage and that to such Replication the said Petitioner did Rejoinder in Support of his Answer and other Proceedings were thereupon had as are Set forth in the said Petition and Appeal whereupon and at the time Set forth in the said Petition and Appeal the said cause came on to be heard in the Honble the Mayors Court and the said Court were pleased to Order and Decree that the said Petitioner should pay this Respondent the Sum of one hundred and fifty Seven Pagodas ten Shillings together with Interest thereon at the rate of twelve per Cent from the Twenty eight day of February One thousand Seven hundred and Seventy Nine whereof the said Petitioner and did Appeal to this Honble Court but for greater Certainty as to the Dates Contents and Substances of the said Several Proceedings as also the Order and Decree of the Honble the Mayors Court and the said Petition and Appeal therefrom this Respondent Craves leave to refer thereunto respectively when the same shall be produced and to have such full and Ample benefit thereof and of every part thereof as if the same were herein before fully stated and Set forth this Respondent further Saith that the said Petitioner has no reason to consider himself Aggrieved by the said Decree of the Honble the Mayors Court for the following among other Reasons

Because that as the Petitioner had no Right to Credit himself for the Twelve Pounds and Twelve Shillings pretended to be paid by the Honble Company to this Respondent the same being paid to their

Orders

Owners of the Granby the Petitioners offer to this Respondent of One hundred and Sixty three Pounds and Twelve Shillings is not equal to the Sum the Petitioner acknowledges by his own Account Current Sworn to on his Answer to be actually due to this Respondent

Because that the Petitioner doth by his own Petition from the said Decree appear to condemn his own offer of One hundred and Sixty three Pounds and Twelve Shillings by acknowledging that he would have paid even the Sum Decreed rather than incur the Trouble and Expense of a process at Law

Because that the said Offer of this Respondent to accommodate himself to the Situation of the said Petitioner and of which the Petitioner pretends to advantage himself was only to prevent the Petitioner from any destress in case of None Compliance with the said Request and this Respondent humbly Submits to the Consideration of this Hon^ble Court that the foregoing the Profit of an Investment which would have sold from Sixty to One hundred per Cent Advantage for the Respondent in Interest of only thirty Seven per Cent and also Risk of the Loss of two Life of the Petitioner as well as other hazards is and ought to be considered as a Sufficient Compliment to the Petitioner to whom this Respondent was an Utter Stranger and who had no other Claim on this Respondent than what the Natural feelings of Politeness to the Respondent or of humane attention to his Wife and Child might have dictated and

Because the Petitioner doth by his Letter to this Respondent and which is among the Proceedings in this Cause Acknowledge his being informed of a difference in the rate of Interest and the Petitioner Appeals by the Style of the said Letter to acquiesce thereto

Because that by the Evidence of Jarvis Hall and in the proceedings of this Cause and to which this Respondent prays leave for this Hon^ble Court and to have as full benefit thereof as if the same was herein fully set forth it appears as follows that the said John Holland soon after the Arrival of the said Ship Granby at Madras did wait on the Petitioner on the part of this Respondent and Applied to him for the said Passage money with Respondents Interest thereon amounting to Two hundred and Fifteen Pounds fifteen Shillings and Six Pence whereupon the Petitioner promised to pay the Same within a few Days provided this Respondent would deduct the allowance of Fifteen Pounds and Fifteen Shillings which the Petitioner pretended the said Company allowed for his Sons Passage as this Sum belonged to the Petitioners Company nor did he make any Objection to the rate of Interest Charged and by the said Evidence it appears further that the said James Holland waited on the Petitioner at the time so fixed by the Petitioner for payment of this Respondents Claim when the Petitioner delivered unto the said James Holland a Letter specifying that the difference of Mode of paying the Troops here had occasioned a delay for a few Days when he would pay the Whole Bill and by the said Evidence it further Appears that at the Second time appointed for payment of this Respondents Demand on the Petitioner to the said James Holland received another Note from the Petitioner fixing a particular hour for payment and upon the said John Holland going at the appointed hour he found that the said Petitioner had acquitted his Rooms and had gone into the Country

From all which Several Matters and things this Respondent humbly conceives that the said Petitioner is in the first instance bound to pay to this Respondent the full Sum of Five hundred and Thirty Nine Pagodas and Eighteen fanams as charged in the Bill of Complaint and Account Current thereunto Annexed together with such Interest as shall become due thereon from the said Twenty fifth day

day of January last past being the day on which the said Account was Signed and being subsequent to the said several Conferences of the said James Holland with the said Petitioner as the said Demand is Consonant to every Principle of Sense Reason and Equity and by the Evidence appears to be founded on the Custom in the like Cause and this Respondent further insisteth that if there had been in such first instance any Objection as to the Propriety of this Respondents Claiming the full Amount of the said Account Current such Objection is now as completely Removed in Law as this Respondent conceives it ought to be under all the Circumstances of this case by the Assumsit or Undertaking of the Petitioner to pay the said Amount with the Respondents Interest and which Assumpsit is proved at Repeated times by the Evidence of the said James Holland and which said Assumpsit being such as Reason and Justice dictated this Respondent humbly conceives the said Petitioner is bound Most fully to perform

For all which reasons and such others as may be offered at the hearing this Respondent humbly hopes this Honble Court will not reverse the said Decree of the Honble the Mayors Court under the Idea that the same is too beneficial to this Respondent but this Respondent humbly hopes and prays that instead thereof this Honble Court will be pleased to extend the same in favor of this Respondent by Decreeing to him the payment of the said Sum of Five hundred and thirty Nine Pagodas and Eighteen fanams and Interest thereon from the said Twenty fifth day of January last and also all Costs of Suit in the said Mayors Court as well as in this Honble Court

Court of Appeals
at
Madraspatnam

Thursday the 17 May
Anno Domini 1781

Between George Mackenzie Captain in the 73d Regiment of Highlanders in the Service of his Britannick Majesty Appellant and John Johnson Captn of the Ship Granby in the Service of the East India Company at Fort St. George Respondent

This Cause coming on this day to be heard and Debated before this Court by the Attorneys on both Sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 13 day of May Anno Domini 1780 and upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attorneys on both Sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honble the Mayors Court do stand Affirmed and that each party pay their own Costs in this Court

P Curr.

/ Signed / Chas. Freeman
Clk

To the Honble the Court of Appeals
at Madraspatnam

Between Miguel Joannes
Complainant and Boongatoo
Chingulroy Defendant

The Humble Petition and Appeal of the said Defendant

Sheweth

That the said Complainant sometime on or about the Twenty sixth day of January which was in the Year of Our Lord One thousand Seven Hundred and Seventy Nine exhibited a Bill of Complaint in the Honble the Mayors Court at Madras against Your Petitioner thereon setting forth that sometime in the Month of August which was in the Year of Our Lord One thousand Seven hundred and Seventy Seven that he and lent unto John Maxwell Stone then of Fort Saint George but at present of London Esquire the Sum of three thousand Star Pagodas for which said Sum he the said John Maxwell Stone did enter into and give unto him the said Complainant one Bond or Obligation in the penal Sum of six Thousand Pagodas payable on demand with Interest of Nine per Cent per Annum as would more fully appear by Copy of the said Bond or Obligation under the hands of the said John Maxwell Stone bearing date the fourteenth day of August in the said Year of Our Lord One thousand Seven Hundred and Seventy Seven and the said Complainant did further set forth that the said John Maxwell Stone being soon about to depart from Madras for Europe he did apply unto him for payment and that the said John Maxwell Stone informed him that it was not then at that time convenient for him to pay but that he assured him that he would give unto order to his dubash Boongatoo Chingulroy Your Petitioner that he the said Complainant should be perfectly satisfied and the said Bond be discharged with which he the Complainant saith he remained satisfied the Complainant further setteth forth that Your Petitioner was sent for by the said John Maxwell Stone when the Complainant pretends that the said John Maxwell Stone informed him of his having offered him as a Security for the payment of the said Bond and pointed out to Your Petitioner the Means of indemnifying himself by the Receipt of Money arising from the Sale of Wheat and other Articles belonging to the said John Maxwell Stone upon which the Complainant falsely asserts that Your Petitioner did promise and take upon himself to pay off and discharge the said Bond of the said John Maxwell Stone to him with the which promise and undertaking the Complainant pretends he agreed to and permitted the said John Maxwell Stone to take his departure for Europe without any further Molestation or trouble the said Complainant pretending he was perfectly Satisfied as to the Security of the person of the said Chingulroy Your Petitioner the said Complainant next setteth forth that the said John Maxwell Stone sometime in the Month of October in the aforementioned Year One thousand Seven hundred and Seventy Seven took his departure for Europe without discharging the whole or any part of the said Bond or Obligation so given to the said Complainant who further saith that your Petitioner pursuant to his promise and undertaking did pay unto him several Sums of Money on the respective days as set forth in the account Current annexed unto his said Bill of Complaint - the Complainant further setteth forth that there was due upon the said Bond a Ballance of One thousand two Hundred and Seventy Pagodas and thirty Nine fanams which he the said Complainant said he had frequently demanded and that Your Petitioner had refused to pay the same the Complainant also setting forth the Reasons given by him for not paying the said Ballance to Wit because

Your

Your Petitioner had not Sufficient Effects of the said John Maxwell Stone to pay off the whole of the principal and Interest due on the said Bond &c. the said Complainant did Notwithstanding for any that Your Petitioner might be decreed to pay the same together with Costs and also that Your Petitioner might be Summoned to Answer the said Bill of Complaint Your Petitioner sheweth that he was accordingly summoned to appear and Answer and Your Petitioner did Accordingly to appear and Answer and among other things in his said Answer did set forth he did particularly deny to stand Indebted unto the Complainant in the Sum owed for but Your Petitioner did Admit that the said John Maxwell Stone was indebted to him in the said Sum and further Your Petitioner did Admit that he did Send for Your Petitioner but denies he did inform him that he had Offered him as a Security for the payment and discharge of the Bond in question as well as that the said John Maxwell Stone did point out to him Your Petitioner the means of indemnifying himself by the Receipts of Money arising from the Sale of Wheat and other articles belonging to him the said John Maxwell Stone Your Petitioner did also deny that the said John Maxwell Stone did give any particulars or partial Orders in respecting of the discharge of the Complainants Debt but Your Petitioner did admit that among other Monys owing by him included the Complainants Debt but did not give any preference to the Complainants Debt above the Rest and his Orders to Your Petitioner were not expressly confined to the Complainant but in general terms extended to several other persons to whom the said John Maxwell Stone owed Money to be paid from the Sale of the said Wheat and other Articles and from Monys to be collected and Received for that purpose Your Petitioner did further set forth that he might not only inform the Complainant but sundry other persons that he had orders to pay and discharge his and their said demands out of the produce of the said Wheat and other Articles should come to his hands the property of the said John Maxwell Stone but denied that he did enter into any promise or undertaking absolutely to pay and discharge the said Bond and the Complainant could not therefore in consequence and demand upon any promise or undertaking from Your Petitioner to pay the said Bond permit the said John Maxwell Stone to take his departure for Europe without further Molestation or trouble as was by him in his said Bill alledged and that his pretended indulgence must have proceeded from some other private View or Motive best known to himself Your Petitioner did Admit that the said John Maxwell Stone did some time in the Month of October in the said Year of our Lord mentioned take his departure for Europe without paying any part of the said Bond and Your Petitioner did insist that he did comply with the orders of the said John Maxwell Stone by paying of not only the Debt due by him to the Complainant but also to sundry other persons as far as he was enabled to do so from the Receipt of Money the property of the said John Maxwell Stone and would if he had been enabled thereto have fully paid off and discharged not only the Complainant but every other Debt and that he did in Consequence pay the Complainant the Sum of two thousand Pounds out of the Receipt of Money the property of the said John Maxwell Stone which was as much as he was enabled to pay him the said Complainant and was therefore humbly of Opinion that he had fulfilled his Obligation thereby not only to the Complainant but his also and was not bound or Obliged to pay the Ballance due upon the said Bond by the said John Maxwell Stone Your Petitioner having Several other persons to pay and Satisfy as well as the Complainant out of the produce of the Sale of the said Wheat and other Articles according to the Orders of the said John Maxwell Stone and that Your Petitioner would undoubtedly have paid the

the Complainant if the Sums received therefrom had been sufficient for that purpose or if what the Complainant pretended in his Bill was true to Wit that the said John Maxwell Stone did make and Create some special fund for indemnifying him Your Petitioner in the full discharge of the said Bond.

Your Petitioner did further in his Answer Set forth that the Complainant could not undertaking otherwise than that Your Petitioner should not nor was not further bound for the discharge of the said Bond than from property which should come to his hands belonging to the said John Maxwell Stone as appeared by his own shewing and further that if the Complainant had Regarded Your Petitioner as the said John Maxwell Stones Security for the discharge of the said Debt he would certainly in Order to make the premisses and Undertakings by him pretended to have been made by Your Petitioner good and Valid in the Law have insisted upon some written Agreement or Obligation to that Effect or have got an Assignment of property to be Received by Your Petitioner for his the said Complainants use and for the purpose of paying off and discharging the full Amount of the said Bond. Your Petitioner in Order more fully to shew unto the Honble the Mayors Court that it really never was the design or intention of the Complainant to look upon Your Petitioner for payment of the said Bond did further Set forth in his said Answer that the Complainant did several times declare that he would have Nothing to do with Your Petitioner nor with one Pagoda in his life time due unto the said John Maxwell Stone and Deceased since his the said John Maxwell Stone departure for Europe Respecting the said Bond saying he was sure of his money so long as he was in Possession of the said John Maxwell Stones Bond. and further by saying that Master George Smith was Ready and willing to take up the said Bond by paying him the said Complainants Ready Money for the same and that the said Mr. George Smith would receive payment

Payment for the said Bond from him the said John Maxwell Stone in Europe and the Complainant did also refuse to accept of a Garden House Situated at the Luz which was offered him the Complainant by the Attorneys of the said John Maxwell Stone for Pagodas One thousand and Seven hundred for the Ballance of the said Bond now demanded from Your Petitioner upon Condition of his paying them the said Attorneys the difference and Your Petitioner did afterwards shew that the Complainant finding the Creditors of the said John Maxwell Stone had put their several demands in Suit in the Honble the Mayors Court he did there make Application and was willing to take the said Garden House for Pagodas two thousand instead of Pagodas One thousand and Seven hundred but the Attorneys of the said John Maxwell Stone at that time thinking the same would be an instance of partiality in them to the prejudice of Real of the said John Maxwell Stones Creditors would not them consent to let him have the said House &c.

Unto which said Answer the Petitioner did Reply and Your Petitioner did Rejoin whereupon Issue did Join and Rules did pass for the examination of Witnesses and Witnesses were examined by the Complainant and also by Your Petitioner and the Cause was with by down for hearing and did Come on to be heard on or about the sixth days of May in the present Year of our Lord One thousand Seven hundred and Eighty when the Honble the Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that Your Petitioner should pay the Sum Sued for with such Interest as there was or should thereafter become due thereon together with all Costs of Suit by which said Decree Your Petitioner doth find himself much aggrieved And doth therefore Appeal therefrom unto this Judgment of this Honble Court and for Cause of Appeal sheweth that the present Action brought by the Complainant

Complainant against Your Petitioner is not founded upon any Contract or Consideration originally entered into by him with the Complainant And that the utmost Obligation upon Your Petitioner is that of a Trustee for the payment of the present demand out of Effects and Property belonging to the said John Maxwell Stone that the Complainant being satisfyed with what Your Petitioner might do without any absolute Condition or undertaking of certain payment of the full Amount of the said Bond and without ascertaining the means by which he should be Rendered able to pay the same or insisting upon any information of the Fund Effects from whence this money was to be paid he took upon himself the Risk of the said John Maxwell Stone furnishing Your Petitioner with such Means of payment as well as every other eventual accident dependant upon the forthcoming of this Money And cannot in Law or Equity be regarded as a legal valid or good Consideration to bind a person to the payment of the Debt of another by simply Undertaking to pay a Debt as fast as funds should be furnished for that purpose the Complainant most assuredly is pursuaded that the said John Maxwell Stone would enable Your Petitioner by investing him with valuable Effects to pay off the said Debt so that the dependance upon Your Petitioner was simply relative and not absolute as depending upon the means to be furnished by the said John Maxwell Stone to answer that end and not a certain responsibility on the part of Your Petitioner at all events whether he should be so enabled or not the means with which Your Petitioner is to be furnished was the only Consideration which can legally bind him to a full discharge of the said Debt upon the Supposition they were equivalent to it if they were not it was the duty of

of the Complainant to have ascertained their full Value and extent as well as the real Interest he was to have in them and his having taken the Assurance of the said John Maxwell Stone that they were leave the deficiency entirely at his Risk and having Relied upon the said John Maxwell Stone he would resort to him for whatever Remains due upon the Principal and Interest of his Bond and not to insist upon payment from Your Petitioner who was no further indebted to him than he should be reimbursed by the said John Maxwell Stone towards the payment of the said Bond Your Petitioner further Sheweth that the said Complainant owns more to Rely upon the promise he Charges him to have made of payment of the said Bond rather than upon the fund or means he was to be furnished with by the said John Maxwell Stone to enabled him thereto whereas Your Petitioner humbly conceives that the latter Circumstance only can bind Your Petitioner to a payment of the said Bond or any part thereof and then but in such proportions as he should be enabled from the Receipt of Money the property of the said John Maxwell Stone because the simple Verbal promise which however Your Petitioner hath every where in the pleadings denied) to pay the debt of another is no Obligation the legislature having wisely prevented the mischief so much weak and uncertain Considerations would be productive of an encouraging fraud oppression and Unjust litigation as well as tend to lessen the Solemnity of Written Deeds and Contracts which being the Result of deliberation and free will are easily ascertained and Authenticated by the attestations of Witnesses the Matter in question in Case the Complainant was actually of intention to take Your Petitioner as his Debtor

in

In lieu of the said John Maxwell Stone was of importance sufficient to Require more Attention and it seems Surprizing and almost unheard of to Receive a Verbal promise for the discharge of a debt of so high a Nature as a penalty Bond the Complainant by not insisting upon an Agreement in writing from Your Petitioner and of some Assignment or Mortgage of Effects sufficient to pay off and discharge the whole of the said John Maxwell Stone's Bond to him declined that right which they would otherwise have given him to make his present demand on Your Petitioner and Your Petitioner positively has denied that the whole Course of the proceedings to have converted to his own Use any part of the Effects deposited with him for the payment of the Several Debts owing by the said John Maxwell Stone but hath on the said that he hath Honestly applied them towards the Purposes and trusts they were allotted by the said John Maxwell Stone Your Petitioner will Maintain that his Declaration thereof is Sufficient to discharge him from any demand by the Complainant who was so ignorant of the fund from whence he was to be paid that he neither Knew the Quantity Nor the quality thereof and was therefore entirely dependant upon the said John Maxwell Stone as well Respecting the disposal thereof as well as the said John Maxwell Stone was accountable to him for whatever might be the deficiency in the produce thereof to enable Your Petitioner to pay off the said Debt in full Your Petitioner further Sheweth that it is Notorious that Since the Commencement of this Suit that the said John Maxwell Stone is become a bankrupt and that therefore he must have been by no means in solvent Circumstances at the time of his departure for Europe that he left Your Petitioner as a trustee for the payment of sundry Debts and for that purpose

furnished

furnished him with Sundry Effects the produce whereof was insufficient towards their full discharge Your Petitioner saith that if the Complainant have Chosen he Might have annexed Interrogatories to his said Bill Requiring Your Petitioner to set forth the particulars of his Administration of the said Trust but Your Petitioner with Submission conceives that he was not compellable to disclose the Secrets of the Trust Reposed in him by his said Master nor the different Natures and Considerations of the other Debts also to be paid out of Effects deposited in his hands and the Complainant not having required Your Petitioner to Render and Make such discovery and Account he must Remain the declaration thereof as true According to what is in Your Petitioner's Answer Set forth which the Complainant hath not been able to Controvert by any Evidence of Your Petitioner having any of the produce of the said Effects still Remaining in his hands but on the Contrary it is disproved by one of the Complainant's own Witness Frances Stanley who was their Clerk or Book Keeper to the said John Maxwell Stone and of Course well informed of his affairs all Confirms the Order of the said John Maxwell Stone to pay off several demands out of the produce of Effects left with Your Petitioner for that purpose which Effects consisted in Wheat and Timber that wheat it Appears hath been Sold some of the Timber still remained unsold so that Your Petitioner hath not Yet had an opportunity of Completing his Trust however willing he has shown himself thereto and it Appears by another witness on behalf of the Complainant who deposes to his having Offered some timber as a security for the further Sum due upon the said Bond and the said Frances Stanley further deposes that he verily believes the Effects left by the said John Maxwell Stone were insufficient to answer all the aforesaid demands which

readily

Readily accounts for the deficiency and the Ballance of the Bond remaining unpaid and Your Petitioner moreover setteth forth that the Sundry promises by Your Petitioner said to have been Made by the Evidence on behalf of Your Complainant are rather in favor than against Your Petitioner as tending to shew his Readiness to pay the Complainant upon the foundation of his hopes that the Effects left in his hands would be sufficient to pay off and discharge the full Amount of the debt Your Petitioner further sheweth that his Evidence plainly demonstrates that he did do the utmost in his power to fulfill the Trust Reposed in him According to his undertaking it further more Appears that Demands were actually made upon the Attorneys of the said John Maxwell Stone and that the Complainants actually entered into Negotiations with the said Attorneys all which Matters and things do plainly shew that he Your Petitioner is not and ought not to be made liable to the payment of the Complainants Demand and therefore humbly prays that this Honble Court will take the same into their most Serious Consideration and thereupon Order and Decree that the Decree of the Honble the Mayors Court may be reversed with Costs in the Mayors Court and also in this Honble Court and further that to give Your Petitioner such further and other Relief in the premises as to this Honble Court Shall Seem Meet

Mayors Court Tuesday the 6th day of June

at

Madraspatnam Anno Domini 1780

Present

Edward John Holland Esqr Mayor

Edward Saunders and Willm. Webb

Aldermen

Between Miguel Johannes of Madras Merchant Complainant and Coongaloor Chingleroy of the same place Dubash Defendant

This Cause Coming on to be Heard and Debated this Day in the presence of the Attorneys on both sides on Reading the Complainants Bill the Defendants Answer the Replication the Amended Rejoinder the Interrogatories and Depositions on the part of the Complainant with a Bond annexed the Interrogatories and Depositions on the part of the Defendant On Hearing the Pleadings made Use of by the Attorneys and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of One thousand Two hundred and Seventy Pagodas and thirty Nine fanams Pags 1270. 39. together with all such Interest as now or shall hereafter become due thereon untill full payment is made also all Costs of this Suit

J Cur

In the Court of Appeals

Between Boongatoor Chinguloy
Appellant and Miguel Joannes
Respondent

The Answer of Miguel Joannes of
Madras Merchant to the Petition and
Appeal of the above said Boongatoor Chinguloy

The said Respondent not Confessing
or Acknowledging all or any of the Matters and things to be true as
in and by the said Petition and Appeal are mentioned and Set forth
for Answer thereunto Saith that he Admits of his having filed his
Bill of Complaint in the Hon^ble the Mayors Court of Madras
patnam on or about the time mentioned by the Appellant in his
Petition and Appeal against the above said Appellant upon a
Special Action of the Case on a promise and Undertaking to pay
the Respondent a certain Sum of Money due and Owing upon a
Certain Bond or Obligation given by John Maxwell Stone late of
Fort Saint George Esquire to the Respondent and which the
Appellant undertook and promised to pay to the said Respondent
and did actually pay apart to the said Respondent with repeated
promises to pay the remainder the said Respondent further saith
that the said Bill of Compl^t Specially Setforth the real state
of the Case reating the particulars relating to his the said Respondent
being in possession of the said John Maxwell Stones Bond and
the

The Manner in which the said Appellant became bound to the Respond^t
for the payment of both principal and Interest due and to grow due on
the said Bond the said Bill of Complaint also Setting forth and
Charging the said Appellant with having received as he believed from
the said John Maxwell Stone certain Articles of Merchandize Set
apart for this particular purpose of paying the said Bond of the said
John Maxwell Stone the produce of which the Respondent Charged
was to be Applied in the discharge of the said Bond as he the said Respon-
dent was informed the said Respondent further says that the said
Bill of Complaint did also recite that the said John Maxwell Stone
being about to take his departure for Europe the Respondent did apply
to him for payment but as it was inconvenient for him to pay he the
said John Maxwell Stone Assured the said Respondent of his giving
his Orders to the said Appellant his Aubaub or Servant to pay the
Respondent and as an Inducement for him the said Appellant
to comply with those Orders he the said John Maxwell Stone did
point out and make over Sundry Articles of Merchandize particularly
that of which the produce of which was to reimburse the said Appellant
in his discharging the Amount principal and Interest due on his
the said John Maxwell Stones Bond to the Respondent and also
to Secure him the Appellant in the Consequences Attending his the
said Appellants Acceptance to pay the said Bill of Compl^t further
Sets forth that the said Appellant having undertaking and promised
to pay the said principal and Interest to the Respondent with out-

any

Any Conditions the said Respondent Says he rested Satisfyed there-
with and permitted the said John Maxwell Stone to take his
departure for Europe which was in the Month of October in the
Year of Our Lord One thousand Seven hundred and Seventy Seven
without his having discharged the said Bond either in whole or in
part the said Bill of Complaint further recites that the said
Appellant did pay or cause to be paid unto the said Respondent
two Sums of Money on Account of the said Bond of the said John
Maxwell Stone on the days and Year as in specified in the Account
Current Annexed to the said Bill of Complaint the Respondent
in his Bill of Complaint Charges that as the said Appellant
did Promise and Undertake to pay and having in pursuance of
such Promise and Undertaking to pay paid the Respondent the
Sum of two thousand Pagodas it bound him the said Appellant
as to the remainder the said Bill of Complaint Charges the Appellant
with Making use of Sundry Pretexts in Order to Evade payment
such as not having Effects sufficient in hand of the said John
Maxwell Stone to enable him to pay the Respondent which the
Respondent denyed the verasity of and Charges the Appellant with having
Appropriated the produce or the Amount Sales of the Effects left in his
hands to other purposes than those of paying the Respondent the said
Bill of Complaint further Charges that the said John Maxwell Stone
did as the said Respondent was informed make some Special provisions
as an Indemnification for his the said Appellant so discharging his promise
and undertaking pursuant to his Acceptance the said Bill of Complaint
expressly Charging that as the Appellant had paid in part pursu-
ant to his Acceptance of the whole that whether he the said Appel-
lant had Effects or not of the said John Maxwell Stone Yet he the
said

Said Appellant was bound by his Acceptance because it was optional in the
Appellant at the time of the promise and Undertaking to Agree or not to the
payment and as it became his the Appellants duty to Know or to make
himself Acquainted with the particulars of what he was about which if
he did not do in all Matters which no ways Concerned the Respondent But
the Bill of Complaint the Respondent Says Charges the Appellant
with a thorough Knowledge of what he was about and more particularly
so as he the said Appellant was Charged with the Special Affairs of the
said John Maxwell Stone during his Residence at Fort Saint George and
the Chief Management of his Concerns after his departure to Europe indepen-
ent of his Attorneys

To this Bill of Complaint the Appellant
did Appear and on the Sixteenth day of March One thousand Seven
Hundred and Seventy Nine filed his Answer and thereon did Acknow-
ledge that the said John Maxwell Stone did enter into and give his Bond
unto the said Complainant for the Sum of three thousand Pagodas the
Appellant in his said Answer further Saith that he did not Know
that the Respondent Applied to the said John Maxwell Stone for
payment of the said Bond or that the said John Maxwell Stone told
the Respondent that it was inconvenient for him to pay the Sum but
Admits of the Respondent having writed on the said John Maxwell Stone
to Know to whom he was to Apply for payment in his the said John Max-
well Stone might assure the Respondent that he would give such Order
to the Appellant that he the Respondent should be perfectly Satisfyed
but denies that the said John Maxwell Stone informed him of his having
Offered him as a Security for the payment or that the said John
Maxwell Stone did propound to him the means of Securing himself
or that the said John Maxwell Stone gave any particular or particular

Orders

Orders in respect of the discharge of the Respondent to All but Admits of
his the said John Maxwell Stone giving General Directions respecting all
his Creditors which were paid from the Sale of the said Wheat and other articles
and from Monies to be Collected and received Orders from the said John
Maxwell Stone to pay not only the Respondent but several other persons
their demands out of the Sale of Wheat and other Articles the property
of the said John Maxwell Stone but the Appellant denies that he did
enter into any promise or Undertaking Absolutely to pay and discharge
the said Bond and therefore that the Respondent could not in Consequence
and dependance of such promises and Undertakings permit the said John
Maxwell Stone to take his departure for Europe that indulgence as the
said Appellant Asserts was owing to some other private View or motive
the said Answer further Admits of the said John Maxwell Stones depar-
ture for Europe and that he the said Appellant did Comply with the
said John Maxwell Stones Orders of paying not only the Respondent but
also Sundry other persons as far as he was enabled from the Receipt of Money
the property of the said John Maxwell Stone the Appellant further in his
Answer Asserts that he did pay unto the Respondent the Sum of Two
thousand Pagodas out of the Receipt of Money the property of the said
John Maxwell Stone he having no more Money in his hands belonging to
the said John Maxwell Stone though the Appellant Acknowledges
One thousand and five hundred Pagodas to have been Received from Mr.
Douglas and that thereby he the said Appellant Says he has discharged
his Obligation and therefore not bound to pay Any upon the said Bond
as he the Appellant had Several other persons whose Names and
Respective Claims are not Mentioned in the proceedings to pay and
Satisfye as well as the Respondent out of the produce of the said

Wheat

Wheat and other Articles according to the Order of the said John Maxwell
Stone but what that produce is not amounted to the Appellant has no where
Set forth the said Appellant further in his Answer Says that he Most
Undoubtedly would have paid the Respondent if the Sums Received by
him had been Sufficient or that the said John Maxwell Stone had created
and made Some Special Fund for endemnifying him the Appellant in
the full discharge of the said Bond the said Appellant further in his
Answer makes an Observation respecting the Respondents Omitting to
demand of the said Appellant awriting to the purport of his being bound
to pay immagining thereby to Evade Making Good his promise and Undertake
-ing the said Appellant further in his Answer Set forth that the Respond
ent did frequently declare that he would, having nothing to do with him
the Appellant not with one Coomar or a debash of the said John Maxwell
Stone Respecting the said Bond and that the said Respondent further
did Say that Mr. George Smith was willing to take up the said Bond
and recover the payment from the aforesaid John Maxwell Stone in
Europe the said Appellant further Asserting in his said Answer that
the Respondent refused to Accept of a Garden House Situated at the
Luze offered him by the Attornies of the said John Maxwell Stone
for One thousand and Seven Hundred Pagodas for the Ballance of
the said Bond then demanded from the Appellant upon Condition
of his the Respondents paying them the said Attornies the difference
but that the Respondent did Afterwards upon finding that the
Creditors of the said John Maxwell Stone had preferred Bills of
Complaint against him in the Hontle the Mayors Court Apply and
was willing to Receive and take the Garden House at Seven thousand
Pagodas but as the Attornies were of Opinion that this Transaction

might

Might be deemed a partiality in them to the prejudice of others of the said Creditors they the said Attornies would not Consent to the said Respondent having the said Gardin House

To this Answer the Respondent was under the Necessity of Replying Specially and which the Respondent by leave of this Honble Court briefly recites as the Appellant has thought proper to omit the same in his Petition in Order to shew the little foundation there was for the Appellant to make any Answer the Respondt. in his reply persists in his Demand on the Appellant for the ballance of the Account Current as annexed to the said Respondents Bill of Complaint against the Appellant and further does insist that the Endorsements on the back of the Bond for two thousand Pagodas as paid by the said Appellant or his means do incontestably prove that the Appellant is the person to pay the Respondent the Ballance arising upon the said Obligation because of his the said Appellants promise and Undertaking to pay the whole simply and unconditionally the said Respondent further in his Reply provides to refute so much of the Answer which denys having any Knowledge of the Respondents Application to the aforementioned John Maxwell Stone for payment and his telling the Respondent of the inconvenience it would be to his Affairs if he was then Obliged to pay for the Respondent in his said Replication Says that the Appellant well Knew and was well Acquainted with the whole Circumstance Attending the Bond as the Appellant Transacted this particular Business for the said John Maxwell Stone & parties Concerned that he the Appellant Knew the debt to be just he also Knew of the Application to the said John Maxwell Stone as made by the Respondent for payment he was also Conscious of his promise

promise and Undertaking for and on Account of the said John Maxwell Stone and could not have forgot the frequent Applications made to him the Appellant for payment as also the Additional time allowed him by the Respondent at the repeated request and desire of him. the said Appellant the said Respondent further in his reply observed that by the Appellant Accepting to pay is in Nature of a Security and was as Valid as any Written Agreement and that he the said Appellant having paid apart that he is bound pursuant to his promise to pay the Remainder of the principal and Interest the said Respondent further Offering to produce Evidence to prove the positive and direct Orders that the said John Maxwell Stone gave to the Appellant to discharge both the principal and Interest due on the Bond in Question and of the promise and Undertaking of the Appellant to do and of his requiring a certain time of the Respondent to do it in which the Respondent Complied with the said Respondent further in his reply did Observe that in Case the said Appellant had not Assured the Respondent of the payment that he would have prevented the said John Maxwell Stone from taking his departure the said Respondent further in his said Replication denyed that the Appellant did tell him by way of information in Common with other Creditors that he the said Respondent should be paid out of the Effects of the said John Maxwell Stone but insisted that the Appellant promised and Undertook to pay without any Conditions or Exceptions or Reservation what soever and which made in the presence of the said John Maxwell Stone and some other persons and which promise and Undertaking the said Respondent Asserted in his Replication he looked upon as Conclusive and binding on him the said Appellant the said Respondt.

further

further Says that he being under the Necessity of Specially Replying to the Answer of the Appellant he was induced to Set forth that the Appellant was in possession of a great Quantity of Goods Wares and Merchandize the property of the said John Maxwell Stone for the purposes of Sales and the said Respondent did insist that he remembered to have heard the said John Maxwell Stone direct the said Appellant to pay the Amount of the Bond in Question out of the Sales of a parcell of Wheat which the Appellant promised to do without any Exception the said Respondent further in his said Reply said that as the Appellant in his Answer denyed to have made an Absolute promise and Undertaking to pay it was incumbent on the Appellant to Set forth in his Answer whether the promise and Undertaking was Conditional or not what those Conditions were because it might turn Out in the End that the said Appellant intended to deceive the Respondent and if so it might be Evidence against the Appellant the said Respondent further in his Reply did declare that he had no further Interest in the said John Maxwell Stone than what the Bond in Question gave him the Respondent and the said John Maxwell Stone being of different Nations and Religions the one bound to Europe and the other residing here at Madras and no Otherways connected than as aforementioned the said Respondent further in his Reply did insist upon his being Unacquainted with the Instructions of the aforementioned John Maxwell Stone as insisted upon by the Appellant in his Answer And the Respondent further proceeded to Shew how the Sums of One thousand and five hundred Pagodas and five Hundred Pagodas which were endorsed on the back of the said Bond came to be paid both by the Appellant and through his means and what became of the Remainder One thousand Pagodas Principal that the said Appellant as Dubash of the said John Maxwell Stone Sold a Quantity of Wheat the property of his said Master at two Months Credit to the Value of Five thousand Pagodas which Article was by the said John Maxwell Stone Set apart as the fund from whence the Respondence was to be paid when the Amount Sales were received by the Appellant the said Respondent proceeded to shew that he received five Hundred Pagodas from the Appellant himself the Second of February with a promise of the Remainder a Short time after which the Appellant not performing the Respondent repeated his Applica tions and through the means of Mr. John Douglas of Fort St. George Who owed three thousand Pagodas to the Appellant upon his the Appellant's own Account he the Respondent received One thousand and five hundred Pagodas the Appellant promising to pay the Remainder of the said John Maxwell Stone's Bond in one or two Months the said Respon dent further in his Reply denyed that the Appellant fulfilled his Obligation by paying as far as Cash came into his Hands belonging to the said John Maxwell Stone but insisted that every thing was Absolute on both Sides and that the Appellant well understood what he was doing of and that the said John Maxwell Stone had left Sufficient in his the Appellant's hands to put in Execution his Instructions relative to the Respondent's Demand the Respondent further in his Replication insisted that from the Words of the Appellant he Understood the Appellant was Responsible for the full Amount of both principal and Interest whether he the Appel lant was in possession of the property or not the said Respondent further in sisting that although he did not demand a writing from under the Hand of the said Appellant Yet as he could prove the promise and Undertaking and the same repeated and the receipt of a part of the said Bond he should be

Beable to establish his demand on the Appellant to the full Satisfac-
tion of the Honble the Mayors Court, the Respondent in his replyed denyed
having said that he would have nothing to do with the Appellant or with
Comaroo but Admits that the Appellant did tender a Bond of Cornaire
as a security for the Appellants paying the Ballance due on the said Bond
which is a positive proof against the Appellant and that he the Respondt
refused the same as being Satisfyed with the Appellant alone with the said
Respondent further Says that he did Admit of Mr George Smith
offering to take the Bond and Advancing Money thereon if he could
Obtain Bills of Exchange on the said John Maxwell Stone which
the Appellant would not do therefore the Respondent refused the offer
of the said George Smith and more especially as the Appellant repeated
his Assurances of Payment the said Respondent further in his replyed
reasons for such refusal particularly by his not choosing to be encumbered with
a Garden House the said Respondent Says that he considered on his
Money being paid by the Appellant the said Respondent further
Says that he Concluded his Reply to the Appellants Answer by
Observing that the want of a writing in the Nature of an Acceptance did
not excuse the Appellant from his promise and Undertaking because
it frequently happened Bankers Merchants & Tradesmen used
their people with Bills of Exchange to get Accepted and that it often
happened that the person on whom the said Bill was Drawn by
Word Mouth tells the person who brings the Bill come on shore
& he does and I will pay it this According to the Laws of Merchants
is a good Acceptance and the person who Carryed the Bill for Acceptance
Good Evidence in Support of such Acceptance and by the same parity of
reason the same whole good respecting the Bond in Question

To this Replication of the said Respondent the
Appellant did on the twenty first day of June One thousand Seven
Hundred and Seventy Nine file his demanded Rejoinder and therein did
Endeavour to Support his Answer by a Repetition of Arguments that were
Set forth in the said Answer with this difference that the said Appellt
and does Acknowledge the repeated Applications that were made to
him by the Respondent for payment which he says were owing to the
expectation of his the Appellants receiving Effects of Mr Stone and
Consequently the Appellants Acceptance to pay the Respondents
Debts was only as far as Mr Stones property extended the Rejoinder
further Setteth forth that promises and Undertakings are no pay-
ment and therefore the Respondent might in such Case have detained
the said John Maxwell Stone until his the Respondents Debt was
paid the Appellant in his Rejoinder denys that any particular directi-
ons were given to pay the Respondent out of the produce of the Wheat
but that his the Appellants Orders were General including other
Creditors and not the Respondent in particular the Appellant Admits
to have Sold a Quantity of Wheat belonging to the said John Maxwell
Stone for the Sum of Five thousand Pagodas and that he paid five
Hundred Pagodas thereof to the Respondent on the Second of February
and that he the Appellant did promise to pay the Remainder of the
Bond in a Short time and of his the Appellant being pressed for pay-
ment and that Mr Douglas owed him three thousand Pagodas
but Says that he denyes to have Offered to pay the principal and
Interest due there from he Admits of his having Transferred the three
thousand Pagodas to the Respondent but denies to have requested and
to Rem One thousand and five hundred Pagodas out of the three thousand

Pags

Pagodas but Acknowledges that it was Agreed that the Respondent should receive the One thousand and five Hundred Pagodas and all that passed were Conditional and not absolute the Appellant further in his Rejoinder Says Respecting Mr George Smith's becoming Security for payment on Account of Mr Stone was a contrivance for that the Respondent about a Month before he filed his Bill of Complaint against the Appellant threatned him that if he the Appellant would not pay off the Ballance of the said Bond that he the Respondent would put it into the Hands of Mr George Smith who was going to Europe and empower him to receive it there of the said John Maxwell Stone the said Appellant further in his Rejoinder Says that he did not think it his Business to inspect into Mr Stones Affairs before he promised and Undertook to pay off the said Bonds as he was to pay the same out of Cash belonging to Mr Stone which he Accordingly did and if Sufficient had come into his hands he would certainly have paid the Amounts of the said Bond of the said John Maxwell Stone the said Rejoinder further Sets forth that if the Respondents had required of the said Appellant any Written Acknowledgment to bind the promises of payment he the Appellant would have refused it him as he Says he did to several others though the Respondent Says and remarks that the Appellant has produced no proof that he did make such refusal it being an Assertion unsupported the said Appellant further in his Rejoinder persisted to say that the said Respondent did more than once tell the Appellant that he would have nothing to do with him the said Appellant which induced the Appellant to offer the Respondent a Bond from Comanee Medlicot for the Ballance of his the said Respondents Debt which he Says the

the Respondent declined Accepting the Appellants further in his said Rejoinder denys that he ever heard Mr George Smith offer to advance money on Bills of Exchange drawn on Mr Stone and that he refused to draw the same but Says as he before had said that the Respondent threatned him with putting the said John Maxwell Stones Bond in the hands of the said George Smith the said Appellant further insisting that the Attorneys of the said John Maxwell Stone did offer the Respondent the house at the Luze for One thousand and Seaven hundred Pagodas to pay off the Ballance upon Condition of the Respondent paying the Differnce which the Respondent rejected as he Says but that afterwards he was willing to take it for Two thousand Pagodas but was refused by the said Attorneys the said Appellant further in his Rejoinder does deny that the Respondent has any right either by Law or Equity to call upon him for payment of the said John Maxwell Stones Bond, because he Says that the Want of a Writing in the Nature of an Acceptance does totally intents and purposes excuse the Appellant from his promises and Undertakings being merely Conditional although a Verbal Acceptance be binding on the Merchants in Cases of Bills of Exchange as shewn by the Respondent in his Replication Yet that the same does not hold Good with the Matters now in Question the Rejoinder having thus Ended the Issue was Joind and Witnesses Examined on the part both of the Respondent and Appellant and first for the Respondent in the first the Deposition of Francis Slaney the head Book Keeper and Writer of the said John Maxwell Stone who there said that he knows the Defendant (meaning the Appellant) till the Complainants Servants who came to demand payment of the Bond in Question togo away and that he would be paid in his the said Francis Slaneys

first

By the 4th Deposition he Deposes that the said John Maxwell Stone did Leave some Wheat and Timber in the hands of the Appellant to pay off some demands on the said John Maxwell Stone that all the Wheat had been Sold but some of the Timbers remained on hand and that he did not know in what Manner the Amount Sales had been disposed of but believed that the Sum of Five hundred Pagodas endorsed on the back of the Bond was a part of the Amount Sales of the Wheat and that he was head Clerk Writer and Book Keeper to the said John Maxwell Stone, and that no Account had been rendered to him by the defendant of the Sales Tombo another Evidence on the behalf of the said Appellant deposes that the payment as endorsed on the back of the Bond in Question was made out of the produce of some Wheat for whom ever he the said Tombo Applied to the Appellt by the desire of the Respondent for payment of the said Bond he Used to Say that he had Sold some Wheat and that as soon as he had Collected the Money for it he would discharge the said Bond Tombo in his Seventh Deposition Says that he had made several Applications by the directions of the Appellant to the Respondent for payment of the principal and Interest due on the said Bond and the Answers the said Appellant generally returned to the Respondent were that he was going to get Money from Mr. Proctor. Mr. Douglas or Comatee and that he the Appellant did always promise payment and once offered the Respondent a Mortgage upon some Teak Timbers as a Security and that the said Appellant did request a further time of the said Appellant for payment and that the said Appellant did not at any such time and times of Application for payment make any remonstrance or Assign any insufficiency to pay arose from the affairs of the said John Maxwell Stone nor he never did Acquaint the said Tombo of any matter or thing that concerned the said John Maxwell Stone relative to the demand that at the times of the Application made to the Appellant for payment that the Answer returned by the Appellant was Simply and unconditionally as to the said John Maxwell Stone and that the said Appellant did at his own desire request a further time of payment and particularly that it was upon his the said defendants Own Account Tombo in his Eighth and last Deposition Says that whenever the said Respondent Applied to the said Appellant for payment of the said Bond the Appellant always said he would get Money from Mr. Douglas and discharge it Veeraswamy Another Evidence on the part of the Respondent deposes that he by the order of the Respondent did demand of the Appellant the payment of the Bond in Question who for the Space of four Months always put the Deponent off by saying that he had Sold Some Wheat and that as soon as he had Collected the Amount he would discharge the said Bond and that he has heard that the Appellant did send five Hundred Pagodas to the said Respon. dent Veeraswamy in his Seventh Deposition says that he knew of Several Applications of the Respondent to the Appellant for payment of the Principal and Interest due on the aforementioned Bond and that the Answers returned by the Appellant were that he the Appellant had Some Timbers and Planks which he the Appellant would Assign over to the Respondent and at other times that he the Appellant was going to get some Money from Comatee or that he the Appellant had a Bill upon Mr. Douglas which he the Appellant offered to Transfer over to the Respondt.

that

That the Appellant did come to the House of the Respondent and after some Altercation the Respondent directed the said Unawarra my and the rest of the Respondents Servants not to make any demand on the said Appellant for payment for Twenty Days and that the Appellant did not to the best of his remembrance at any of the times of Application for payment make any remonstrances or Assign any insufficiency to pay as from the Affairs of the said John Maxwell Stone and that he the Appellant never Acquainted him of any Matter or thing that Concerned the said John Maxwell Stone relative to the demand of the Respondent on the said John Maxwell Stone Appros and that Evidence on the part of the Respondent Saproes that he has heard that one Tombee by the order of the Respondent did Apply to John Maxwell Stone aforementioned and that the said John Maxwell Stone did promise he would Send Comadore to discharge the said Bond which the Respondent would not agree to and sent the said Tombee back again to the said John Maxwell Stone who then promised that his Dubash the Appellant should pay the Amount and that the Respondent appeared Satisfyed the said Appros in his fourth Deposition Says that the Appellant did in his presence and in the presence of the Respondent promise to pay off the whole of the Principal and Interest to the said Respondent and that the Appellant did at the same times Say that he had got in his Hands some Wheat and Timber and that as soon as he had disposed of those Articles which might probably be in fifteen Days or a Month he the Appellant would discharge the said Bond with Principal and Interest the said Appros in his Seventh Deposition Says that he knows of many Applications of the said Respondent to the Appellant for payment of the Principal and Interest due on the said Bond and that he the Deponent by Order of the Respondent did apply himself three several times to the Appellant who always put him off by saying that he would pay it in Ten fifteen or twenty Days and that the said Appellant did request a further time of the Respondent for payment and that at no time of these repeated Applications did the said Appellant remonstrate or Assign any insufficiency to pay as from the Affairs of the said John Maxwell Stone the said Dependent further Says that at the times of such Applications for payment the Answers were Simply and unconditionally as to the said John Maxwell Stone and that the Appellant did at his own desire request a further time of payment and upon his the said Appellants own Account which the said Respondent complied therewith Thus far Ends the Evidence of the Respondent in support of his Charge against the Appellant and as the Appellant has deemed it Necessary to omit the particulars of his Evidence the Respondent by leaves of this Honble Court of Appeals begs leave to relate Depositions as briefly as possible. First. Nanah Chitty a Scroff of the said John Maxwell Stone deposes on the part of the Appellant that he Knew one Ibrahim gee stood indebted unto the Respondent in the sum of three thousand Pagodas and that the said John Maxwell Stone did one Month before his departure for Europe give his Interest Bond to the Respondent for the same and that he did Know of a demand being made by the Respondents Conaceply Named Chinna Tombee for payment of the said Bond from the said John Maxwell Stone four days before his said departure for Europe and that the said John Maxwell Stone did give orders unto the Appellant that as soon as he had disposed of some Wheat Timbers &c. to pay

and

And discharge the Respondents to Bond in proportion with the rest of their Creditors but did not know the Names of such Creditors or how much Amount the Appellant was to pay that he knows of Some Wheat Timbers Planks and House hold Furniture being left with the then Appellant to be sold but whether Sufficient to discharge the demands of the said John Maxwell Stones Creditors he could not tell but that the Orders and directions did not amply any preference to be given to the Respondents but how he became Acquainted with the Circumstances he does not Say this Evidence further in the same deposition Says that the said Appellant did not at the time of such Orders being given Accept and Agree to pay and discharge the said Bond on demand that the Appellant received the said Orders without making any reply that he has heard that the said Goods Wares and Merchandize have been disposed of and the Amount Sales appropriated to the purposes ordered and directed by the said John Maxwell Stone the said Nanah Chitty Says he does know that the Respondent did Apply to the Attornies of the said John Maxwell Stone for the House at the Luze the property of the said John Maxwell Stone which was tendered for Two thousand Pagodas the Respondent he Says Offered One thousand and Seven Hundred Pagodas which was rejected by one of the Attornies of the said John Maxwell Stone Seranah the Second Dubash of the said John Maxwell Stone another Evidence on the behalf of the Appellant Says much to the same purport as the Evidence before with this difference Seranah Says he was present when the Respondent to Conceply Chinna Toombo made a demand that the Appellant told the Conceply that Mr Stone had directed him

to

To pay the Bond and that the same was a Conditional promise and Undertaking so to do of the Appellant whereas the first Evidence Says that when the said John Maxwell Stone gave directions to the said Appellant to pay that he the Appellant made no Reply or Accepted or Agreed to pay and discharge the said Bond these two Evidence Swears to the same time Singanah another Servant of the said John Maxwell Stone deposes on behalf of the Appellant in the Same manner as Seranah only more positive as to the Conversation which passed between the Respondent to Conceply and the Appellant Callatayah Chitty at Brodies of Madras deposes as to the Conversation which passed between the Respondent and Mr George Proctor one of the Attornies of the said John Maxwell Stone respecting the Ballance of One thousand Pagodas and the House situated at the Luze with Mr Proctors refusal of the Ballance Pagodas Ninnapah Conceply deposes the same as Callatayah Chitty Bandoo Nabboo Dubash deposes as of two Application Made by the Respondent on the Appellant for payment of the Ballance of One thousand Pagodas with the Appellant referring the Respondent to Mr George Proctor and also deposes his being present at the Conversation which passed between the said Respondent and the said Mr Proctor Soobyah Dubash deposes much to the same purport as the aforegoing Evidence but how he became Acquainted with the particulars he does not relate Pallabramah Dubash deposes that he was one day at Mr Proctors House when the Respondent demanded payment from him of the Ballance due on the Bond in question who told the said Respondent he had no money but he got some he would discharge the Ballance and likewise told

the

the Respondent that there was a Garden House at the Luze belonging to Mr. Stone which he proposed disposing of that the Respondent this Evidence Says offered One thousand and Seven Hundred Pags for the same and that the said Mr. Proctor rejected the same but told him he would dispose of the House himself and discharge him the Respondents demand and this the Respondent Says Ends all the Evidence on the part of the Appellant this Cause being Set down for hearing the same came on and was determined on the day and Year in the manner as Set forth and Expressed in the Decree annexed by the Appellant to his Petition and Appeal for the reasons by him very Unjustly Assigned in his said Petition he has Appealed from All though he Knows in his Conscience that the Respondents Demand on him for the full Amount Principal and Interest of the said John Maxwell Stone is a just and fair Demand founded upon the Promise and Undertaking of the said Appellant and by him repeatedly made and the payment Simply and Unconditionally to be performed by the said Appellant without any retrospect had to person or things

The Respondent by way of answer to the Appellants pretended Cause for his Petition and Appeal to this Honble Court Says that the same doth not hold good, Because that although the present Action brought against the Appellant is not founded upon any Contract or Consideration originally entered into by him the Appellant with the Respondent Yet as the present Action is founded upon the Special Circumstances of the Case arising from the Appellants promise and Undertaking to pay the said Action is well warranted both by Law and in Equity and Supported by good and Sufficient Evidence but the Respondent Says he denies that the Answer of the Appellant to the Respondents Bill of Complaint is any ways Supported either by the Appellant himself in his Rejoinder or by his Evidence and so far from being Supported that the Appellant in his Answer positively Avers that he did not absolutely promise and Undertake to pay the Respondent in preference nor did the said John Maxwell Stone give the preference to the Respondent all that the Appellant did as he says was to pay the Respondent a proportion of the produce of the said John Maxwell Stones Effects as far as they would go or extend whereas in his the Appellants Rejoinder he Says that he Admits to have Sold a Quantity of Wheat belonging to Mr. Stone for five thousand Pagodas and the Respondent to have been paid therefrom the Second of February five Hundred Pagodas and that he did promise to pay the Respondent the Remainder of the said Bond in a Short time, and that he does Admit that the Respondent did press him for payment and that he the Appellant did Acquaint the Respondent of Mr. Douglas owing him the Appellant three thousand Pagodas but again denys to have Offered to pay the principal and Interest due thereon

The Respondent begs leave of this Honble Court to ask the Question if the said Appellant did not think himself Respondent for the whole Amount of the Bond in Question why did he at the time he prayed five hundred Pagodas promise to pay the Remainder of the said Bond in a Short time as is herein before recited and Set forth in the Rejoinder no Condition is there either employed or expressed but an Absolute unconditional promise and Undertaking and a Continuation of that promise and Undertaking by him Made whereas the said John Maxwell Stone was present at Madras as to the

Fund

Fund or Effects from whence the Money was to be paid the Respondent does not rest any part of his Charge upon that foundation all that the Respondent Says upon that head that he well knew that the said John Maxwell Stone had Created and made some Special Fund for the purpose and to enable the said Appellant to fulfill his Engagements with the said Respondent Simply and Unconditionally as such Fund was not the Business of the Respondent but the Business of the Appellant whose business it was to make himself acquainted with the every particular before he Undertook and promised to pay the said Respondent further Says that this Cause of Action does not in any Shape regard such Funds as the said Appellant might be in possession of for and on Account of the said John Maxwell Stone the present Action is for a Breach of promise and Undertaking simply unconditionally made and Entered by the Appellant with the said Respondent so that the Respondent has nothing to do how enabled the Appellant was or might be for a performance of his promise so repeatedly made and proved and Supposing a Fund had been made with the Consent and that the Respondent had Agreed to receive his Proportion with other Creditors out of the produce It certainly was a duty incumbent on the Appellant to know what that Fund was the Amount of its produce and how disposed of and if any to any person or persons their Names and the respective Sums paid for the least Saying that the Fund created and intended for the purposes of payment was paid away pursuant to instructions and Orders of the said John Maxwell Stone is saying nothing at all nor can it be any ways satisfactory unless the particulars are Specially Set forth to the Court The Respondent further Says

that

That he did not depend upon any Fund that the said John Maxwell Stone might create for the purpose of the said Appellant but depended entirely upon the Appellants promise and Undertaking which is proved both by the Appellant himself and the Evidence of the Respondent the said Respondent further Says that the means which the Appellant pretends to be the Consideration that can legally bind him to a full discharge of the Debt he the Respondent has nothing to do with nor ever pretended that he had not had he any thing to Say or do with the motives that induced the Appellant to a Promise and Undertaking the demand that the Respondent makes on the Appellant is fair and Just and even the promise and Undertaking is supported from his the said Appellants own showing or why did he Offer a Bond of Cormanow for the Remainder of the Principal and Interest due on the said John Maxwell Stones Bond and why did he the said Appellant promise at the time he paid the five Hundred Pagodas to pay the Remainder of the said Bond in a Short time the Respondent further in Answer to the Appellants Observation that it was the duty of the Respondent to have Ascertained the true value of the Fund created as well as the Interest the Respondent had in it the Respondent Says he Never looked towards the means that the said Appellant had of paying the Respondent the full Amount of the Bond in question not does it Appear to have been the Consideration of either the Appellant or the Respondent until the dispute came before the Hon^ble the Mayors Court for it Appears that the Appellant considered himself absolutely bound or why did he pay the Respondent One thousand and five Hundred Pagodas by the means of M^r John Douglas who

was

was no ways indebted to the said John Maxwell Stone and if the said Appellant had ever deemed or thought the Respondent was to be paid in proportion with other Creditors out of the produce of Mr. Stones Effects why are there no Accounts delivered in to the Court during the Course of the Proceedings as well as the Written instructions of the said John Maxwell Stone to the Appellant relative to the same for written Instructions there must be as the Appellant Says, he does not Admit of verbal ones or of promises to be binding as they are productive of Mischief and lessen the Solemnity of "Written Deeds and Contracts." the said Respondent further Says that he certainly relyes upon the promise and Understanding of the Appellant as having no Claim on the Effects of the said John Maxwell Stone committed to the Management of the said Appellant and of Course nothing to Say as to the Fund created for the purposes of the Appellant and as to the Fund being the only Circumstance that binds him to the payment of the Respondents Bond and that only in proportion as far as the Receipt of Money from out of that Fund will go because the Simple Verbal promise / which the Appellant denies he hath any where in his pleadings Admitted although he Acknowledges in his Rejoinder to have paid five hundred Pagodas and promises payment of the Remainder of the Bond in question in a Short time after / to pay the Debt of another is no Obligation.

The Respondent further in Answer to the Observations of the Appellant in his Petition and Appeal wherein he Says in Case the Respondent was actually of an intention to take the Appellant as his Debtor in lieu of the said John Maxwell Stone it was of importance sufficient to receive some Written Acknowledgement than a Verbal promise for the discharge of a Deed of so high a Nature as a penalty Bond the declining of which he the Respondent has droped the Right he otherwise would have had on the Appellant the Respondent Says, that if the Appellant means to Avail himself of any Omission or informality in the Respondent than why did the Appellant raise the Sum of Two Thousand Pagodas and pay him the Respondent on Account of the Bond and why did he repeat the promise of the Remainder and Acknowledging the same in his Rejoinder and tendering the Bond of Comator as a Security for such Remainder why pay any part of the Bond in Question under these Circumstances why Require time for payment the said Respondent further Says that it follows of course that the Appellant must have converted to his own use the Amount Sales of the Effects of the said John Maxwell Stone as he does no where in his proceedings give or Offer to give any particular Account of the produce of the same nor does it Appear that the said Appellant has paid any one but the Respondent five Hundred Pagodas out of the Sales of the Effects which may for any thing the Respondent Knows to the Contrary be the reason why the Creditors of the said John Maxwell Stone did prefer their Bills of Complaint against him as the Appellant Says in his proceedings they did the said Respondent as before Says that it was not his Business to Enquire after any particular Fund for the Use of the said Appellant the Respondent being Satisfyed with the promise and Undertaking of the said Appellant Simply and Unconditionally to pay

the

The said Respondent further in Answer to the Remarks which the Appellant makes in his Petition and Appeal on the Insolvent Role of the said John Maxwell Stone at the time of his departure for Europe that the said John Maxwell Stone did Specially entrust the said Appellant with his Affairs and with particular Instructions and Specially confided in him which Confidence the said Appellant has in the most unjust manner abused by various pretences and reduced the said John Maxwell Stone's Estate to Worse Situation than the said John Maxwell Stone was apprized of who has since his arrival in England made an Assignment of all his Estate and Effects to trustees for the Use of his Creditors and in his Statement does not in the least mention the Respondent as one of his Creditors but Specially recites that his Dubash (meaning the Appellant) had Account with the said John John Maxwell Stone unadjusted the said Respondent further Says that he denies that there were any Secrets between the said Appellant and the said John Maxwell Stone but what might have been Set forth and declared and ought to have been Set forth had they any way Concerned the Respondents Interest in the estate and Effects of the said John Maxwell Stone the said Respondent further Says that he had no Occasion to have required the Appellant to Set forth the Instructions he might have received from the said John Maxwell Stone had they any way regarded the Respondent the Appellant ought to have Set them forth in Justification of his the Appellants Measures his not having done so is a plain evidence of his having the means of paying himself with the which he the said Appellant is discharged by the Respondent and will be sure to refute the

the same it is to be Supported that he had particular Assets Sufficient to pay the Respondent from had the Respondent depended on any Fund that the said John Maxwell Stone might have created but the Fund or the Assets of the said John Maxwell is entirely out of the Case the said Appellant having unconditionally undertook and promised to pay the said Respondent further Says that very true it is that Frances Slaney the head Clerk and Book Keeper to the said John Maxwell Stone does depose that the Order of the said John Maxwell Stone was to pay off several demands out of the produce of Effects left with the Appellant which the Appellant Says Consisted in Wheat and Timber but with Submission to this Honble Court of Appeals the said Frances Slaney further deposes that the said Appellant had never brought them to Account or given him any Memorandum thereof to be entred although it was the Business of the said Appellant so to do the said Respondent further says that this Wheat and Timber were not the only Effects left in his the Appellants hands to be disposed of that there was a quantity of house hold Furniture also as deposed by the Appellants own Evidence and that there was money which the Appellant received from the Attorneys of the said John Maxwell Stone all which Amounted to a very large Sum how that has been disposed of or Accounted for the Appellant remains Silent on the said Respondent further Says that as the Appellant seems to rest as much of what his the Appellants Evidence Say and that the Appellant did to the utmost of his power fulfill the Trust reposed in him with Submission to this Honble Court of Appeals that little or no dependance can be placed on the Testimony of the Appellants Evidence because they

are

are very contradictory first some of them Say that were the Appellant Applied to the said John Maxwell Stone for payment that he gave Orders to the said Appellant to pay and that he the said Appellant Made no reply thereto of the Evidence Say they were present at the time when the Orders were given and that they Knew that the Appellant did not promise and undertake to pay the Respondent a preference to the rest of Mr. Stones Creditors and relates a Conversation which passed at the times between the Appellant and the person who demanded payment of the said John Maxwell Stone they all declare they were present who Speaks to this particular matter and they further declare that the Bond given by the said John Maxwell Stone to the Respond was a month before the said John Maxwell Stones departure for Europe although the Bond is dated the fourteenth day of August and the said John Maxwell Stone took his departure some time the latter End of October following and some of the Evidence on the part of the Appellant declare though differently the Conversation which passed between the Attorney of the said John Maxwell Stone and the Respondent about the Garden House at the Luze although they the said Witnesses were Malabars and the Conversation in English and which Witnesses it is Supposed were not Admitted to be in the room at the times of this Conversation the said Respondent further Says that these Witnesses of the Appellant have Ventured to Say and depose more than the Appellant in his Answer Asserts or in his Rejoinder alledged the said Respondent further Says that this Cause coming on to be heard the Hon^ble the Mayors Court were pleased after mature Consideration on

this

The Merits of the same to decree in favor of the Respondent from which Decree the Appellant has thought proper to Appeal for Causes by him Assigned in his Petition and Appeal which are entirely foreign to the Case as Stated by the Respondent in his Bill of Complaint the Appellant being Sued on his promise and Undertaking simply and unconditionally made and Repeated by Assured and which has been Supported by positive Evidence of those who Repeatedly demanded payment.

For all which Matters and things the said Respondent humbly Conceives and is advised that the said Decree of the Hon^ble the Mayors Court is agreeable to Equity and Justice and therefore humbly hopes that the same shall be Affirmed and that the said Petition and Appeal of the Appellant be dismissed with and that the Appellant be Obliged to pay all and every such Costs and Charges as to this Hon^ble Court of Appeals shall seem Meet

Court of Appeals
at
Madraspatnam

Thursday the 15 November 1781

Between Coongalcot Chinglevoy
Appellant and Miguel Joannes
Respondent

This Cause coming on this day to be heard and
Debated before this Court by the Attorneys on both Sides upon hearing the
Petition of Appeal and Answer and the Several Exhibits of the Hon^ble
the Mayors Court together with the the Decree of the said Court given in this
Cause on Tuesday the 6^th day of June Anno Domini 1780 and upon due
Consideration had of the Matters therein Severally Contained and of the
Pleadings and Arguments used by the Attorneys on both Sides this
Court doth think fit to Order and Decree and doth Accordingly Order
and Decree that the Decree of the Hon^ble the Mayors Court given
in this Cause be Reversed and each Party pay their own Costs in both
Court

per Curr

Signed Chas Freeman Clk

To the Kings Most Excellent Majesty in Council

Between Miguel Joannes of
Madras Merchant Complainant
and Poongalcot Chinglevoy of the same
place Inhabitant Defendant

The Humble Petition and Appeal of the
said Miguel Joannes

Sheweth

That the above said Complainant did on the
Twenty Sixth day of January which was in the Year of Our Lord one
Thousand Seven Hundred and Seventy Nine Exhibit a Bill of Complaint
in the Hon^ble the Mayors Court at Madraspatnam against the above
said Poongalcot Chinglevoy for the Sum of One thousand two hundred
and Seventy Pagodas and Thirty Nine fanams as the Amount Ballance
of an Account Current arising on a Bond or Obligation of John Maxwell
Stone Esquire to Your Appellant given and which Your Appellant
Sheweth the said Poongalcot Chinglevoy undertook and promised to
pay for and on Account of his Master the said John Maxwell Stone
who was then about to take his departure for England and who had
Substituted the said Poongalcot Chinglevoy his Special Agent for his
the said John Maxwell Stones Affairs in India the Bill of Complai-
nt of Your Appellant Specially recited the particulars relative to
this promise and Undertaking of the said Poongalcot Chinglevoy and
also recited other Special Circumstances of the Case as will more fully

Appear

Appears by reference being had to the said Bill of Complaint the said Poongatoor Chungleroy did put in an Answer and therein did Acknowledge that the said John Maxwell Stone Did among Other Monies Owing from him include the Appellants Debt but gave no preference to the Appellant in priority of payment or expressed any partial payment towards the Appellant the said Poongatoor Chungleroy further in his said Answer Says that his Orders to the defendant were not expressly Conformed to the Appellant but in General Terms extended to several other persons whom the said John Maxwell Stone owed money to be paid out of the Sale of the corn Wheat and other Articles and from Monies to be Collected the said Poongatoor Chungleroy further in his Answer denyed that he did absolutely Promise and Undertake to pay the Amount of the Bond in Question to the Appellant the said Poongatoor Chungleroy Acknowledges that he Complyed with the directions of the said John Maxwell Stone as far as he was able by paying the Appellant and Sundry other Creditors and Acknowledges his paying two thousand Pagodas out of the produce of the said John Maxwell Stones Effects that he thereby had fulfilled his Obligation to the Appellant and his Master the said John Maxwell Stone as will more fully Appear by his the said Poongatoor Chungleroys Answer to this Answer Your Appellant did reply and did therein Specially Set forth Sundry Circumstances and particularly of his the Appellant permitting the said John Maxwell Stones departure to Europe upon the promise and Undertaking of the said Poongatoor Chungleroy simply and unconditionally made and

And given to Your Appellant To this Special Replication the said Poongatoor Chungleroy Rejoinder Specially Setting that he the said Poongatoor Chungleroy denyed that any Orders or directions of the said John Maxwell Stone could make the property of the said Poongatoor Chungleroy Subject to the payment of the Appellants Demand unless the Appellant could prove the said Poongatoor Chungleroy possessed of Assets belonging to the said John Maxwell Stone and as promises and undertakings are no payment the Appellant might in such Case have detained the said John Maxwell Stone until his debt was paid and discharged the said Poongatoor Chungleroy in his Rejoinder Admits of having Sold Wheat to the Amount of five thousand Pagodas or Two thousand Pounds and that he paid five Hundred Pagodas and of his promise to pay the remainder of the said Bond in a short time the said Poongatoor Chungleroy Admits of Your Appellant first suing him for the Money and that he did Acquaint the Appellant of Mr. Douglas of Fort Saint George being indebted to him the Sum of three thousand Pagodas he also Acknowledges to have permitted the Appellant to Receive therefrom One thousand and five Hundred Pagodas the said Poongatoor Chungleroy in his Rejoinder further Says that his promises and Undertakings were only meant Conditionally and Evades Saying that he gave by word of Mouth his promise and Undertaking Conditionally nor does he in any of his Pleadings attempt to Say that his said promise and Undertaking was Conditional but only they were implyed to be so

the

the said Poongatoor Chungleroy does not in his said Rejoinder give any particular Account of what he has done with the said five thousand Pagodas to whom by Name paid nor the amount of their several Claims. Issue being Joined and Witnesses Examined on the part of the Appellant who depose that they did from time to time on Account of the Appellant demand payment of the said Poongatoor Chungleroy and that he always promised payment and that such promise was simple and unconditional that their depositions the Appellant Says were positive and certain and those of the said Poongatoor Chungleroy uncertain Undetermined and Contradictory upon these Proceedings the said Cause was Set down for hearing before the Hon.ble the Mayors Court and the same came on to be heard Tuesday the 6th of June One thousand Seven Hundred and Eighty when the said Hon.ble the Mayors Court were pleased Unanimously to determine and decree in manner and form following

Mayors Court at Madrasapatnam } Tuesday the 6th day of June Anno Domini 1780

Present

Edward John Holland Esq.r Mayor
Edw.d Saunders and Will.m Webb
Aldermen

Between Miguel Joannes of Madras Merchant Complainant

And Poongatoor Chungleroy of Madras Inhabitant Defendant

This Cause Coming on to be heard and debated this day in the presence of the Attorneys on both Sides on reading the Complainants Bill the defendants Answer the Replication the Rejoinder the Interrogatories and depositions on the part of the Complainant with a Bond annexed the Interrogatories and depositions on the part of the defendant On Hearing the Pleadings made Use of by the Attorneys and on due Consideration had thereon This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the defendant shall pay unto the Complainant the full and just Sum of one Thousand Two hundred and Seventy Pagodas and thirty Fanams Pag.s 1270. 39. / together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit.

Ex.r
Signed
James Taylor
Reg.r

From which decree the said Poongatoor Chungleroy did Appeal to the Hon.ble the President and Council of Fort Saint George and to the Petition of Appeal was your Appellant under the Necessity of answering and these Proceedings were heard and determined when the said Hon.ble the President and Council

as a Court of Appeals were pleased to Reverse the decree of the said Honble the Mayors Court with the Costs in both Courts to be paid by both parties as will more fully Appear by Reference had to the said Order or decretal Sentence of the said Honble Court of Appeals hereto Annexed for the inspection of Your Most Excellent Majesty in Council from which said last mentioned Order or decretal Sentence Your Appellant doth Appeal to Your most Excellent Majesty in Council as he Conceives the same is erroneous and that Your Appellant is Aggrieved thereby Because of the Equity of Your Appellants Case and more Especially as the Consideration of the said Pongatoor Chungleroy paying Your Appellant the permitting of the said John Maxwell Stone to take his departure for Europe owing entirely to the promise and Undertaking of the said Pongatoor Chungleroy who was the head Dubash or Servant of the said John Maxwell Stone and of Course Knew the Affairs of the said John Maxwell Stone in their full Extent of which Opinion the Right Honble President was and of Course the Reversing of the decree of the Honble the Mayors Court was not Unanimous Your Appellant therefore humbly prays that Your Most Excellent Majesty in Council will be pleased to Reverse the said Order and Decree of the said Honble Court of Appeals and also be pleased to Confirm the decree of the said Honble the Mayors Court and such further Relief may be granted unto Your Appellant as to Your Most Excellent Majesty in Council may seem Meet

And Your Petr as in duty bound shall ever pray &c

Court of Appeals
& Madraspatnam

Thursday the 15th Novr

Anno Domini 1781

Between Poongatoor Chungleroy

Appellant and Miguel Joanno

Respondent

This Cause Coming on this day to be heard and debated before this Court by the Attornies on both Sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the decree of the said Court given in this Cause on Tuesday the 6th day of June Anno Domini 1780 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both Sides this Court doth think fit to Order and Decree and doth Accordingly Order and decree that the Decree of the Honble the Mayors Court given in this Cause be Reversed and that each party pay their own Costs in both Courts

Errr

(Signed) Chas Freeman Clk

To the Honble the Court of Appeals at Madraspatnam

Between Manoel Pignon Administrator of all Singular the Goods and Chattels Rights and Credits of Maria Victoriana Pignon deceased Complainants And the Reverend John Philip Fabricius Danish Missionary and Lieutenant Colonel Abraham Bonjour Executors of the last Will and Testament of John Des Plans deceased late Lieutenant Colonel in the Service of the United Company of Merchants of England Trading to the East Indies on the Coast of Coromandel Defendants

The Humble Petition of Appeal of the above Named John Philip Fabricius and Abraham Bonjour

Sheweth That the above Named Maria Victoriana Pignon did in her lifetime by the Name of Maria Victoriana Des Plans on or about the Fourth day of January which was in the Year of Our Lord One thousand Seven hundred and Seventy five Exhibits a Bill of Complaint in the Honble the Mayors Court at Madraspatnam against Your Petitioners as Executors as aforesaid Setting forth that the abovenamed John Des plans did on or about the twenty Second day of October in the Year of Our Lord One thousand Seven hundred and Seventy two depart this life having first made his last will in manner and from that is to say I John Des Plans Lieutenant Colonel in the Service of the Company of Merchants of England &c &c &c Trading to the East Indies do make and Ordain my last will and Testament as follows I give to my Natural Daughter Elizabeth who is under the Care of the Reverend Mr. Fabricius the Sum of Four hundred Pagodas which Sum is in the hands of the said Mr. Fabricius and two hundred Pagodas I give her besides the rest of my Estate I give to my Wife Maria Victoriana Des Plans and to my Daughters Ursula and Henrietta Des Plans to be devided equally amongst them In Case of the death of my Wife and two Daughters Viz.t Ursula Henrietta my Estate to be sent to my Sister Maria Elizabeth now residing at Neufchatel in Switzerland Excepted five hundred Pagodas that are to be kept and given to my Wifes Sisters Viz.t Mechalia and Charlotte Rappoun the Reverend Mr. Fabricius and Lieutenant Colonel Bonjour to be my Executors To Mr. Fabricius I give to my Silver Soup Dish Silver Bowl and Silver Spoons To Lieutenant Colonel Bonjour I give my Horse Given under my hand at Tellour the 24th day of August 1772 (Signed) John Des Plans Lieutenant Colonel as She said would more fully and at large Appear by a Probate of the same which Your Petitioners Obtained upon their duly proving the said will in the Said Mayors court by Virtue whereof She Says Your Petitioners did professe them selves of the Estate and Effects of the said deceased John Des Plans but to what amount She could not Set forth

That

That after the decease of the said John Des Plans She did Apply to Your Petitioners as Executors for an Account of the said deceased's Estate and to be paid the residue thereof for and on Account of herself and her two Children Ursula and Henriette who were both living at the time of the decease of the said John Des Plans but that both of them are since dead without any Issue and within Age they dying Infants and having no other Representative than the said Maria Victoriana Des Plans whose right to their share of the residue of the said Estate she said devolves to her the said Maria Victoriana des Plans But She Says Your Petitioners refused to give her any Manner of Satisfaction touching the premises pretending that She has no right to the principal Sum of her proportion of the said residue of the said John des Plans Estate but only to the Interest for her maintenance during her life and that the Principal was Vested in maria Elezabeth the Sister of the said Testator who is mentioned in his said Will which She the said Maria Victoriana des plans pretends is Contrary to the intention and Meaning of the Testator Because She Charges that the intention and Meaning of the said Testator was that in Case she the said Maria Victoriana des plans and her said two Daughters should survive him they should possess themselves of his Effects Saving a few Legacies as She pretends is very evident from the express Words of the Bequest of which She quotes apart only and pretends that as she and her said two Children have

Survived

Survived the said Testator that their right to the said Bequest to become their absolute property Notwithstanding what the said Testator has inserted in a Paragraph in the said Will following the Bequest of her and her said two Children in the following Words "In Case of the death of my Wife and two Daughters Viz.t Ursula and Henriette my Estate is to be sent to my Sister Maria Elezabeth now residing at Newfchatel in Switzerland" which She the said Maria Victoriana Desplans Interprets in the Most Extraordinary manner as follows that is to say that in Case the said Testator who was a Soldier and Subject to very peril and Danger that Attends a Military Life had Survived or the said Maria Victoriana desplans and her said two Childrens then the Provision took place Respecting the Sister Maria Victoriana desplans Charges and Says She has been Advised that the Devise of the residue of the Testators Estate which is Cash Arising from the Sales of his Effects as also Outstanding Debts upon Bonds and Notes the Law will not permit a devise of with the remainder over to another it having been Adjudged that a devise of Cash to One with a remainder over to another was Void the said Maria Victoriana Desplans Says Several things more in her said Bill having the same tendency And in Order to Shew the said Testators intentions in her favour as she pretends She Introduces a writing purporting a Will Dated upwards of two Years before the will in Question and praying that Your Petitioners as Executors aforesaid might be directed to pay unto her the said Maria Victoriana Desplans so much of the Residuum of said Testators estate as Should Appear to the said

Humble

Honble the Mayors Court to be Consonant to the said last will of the said John desplans To which said Bill of Complaint Your Petitioners did put in an Answer wherein they Say that they have Refused to pay the said Maria Victoriana desplans the Residue of the said Testator John desplans Estate Because they Conceive that She the said Maria Victoriana desplans who was of the Romish Religion was not legally Married to the said Testator the Ceremony of the said Marriage having as they Your Petitioners have been Informed been performed in a Clandestine manner in a Romish Church by a Priest or Person of that Religion not Agreeable to the Laws or the Order of the Church of England and has never been Acknowledged to the Publick or any of the Deceased John Desplans Friends to the best of Your Petitioners Knowledge untill his death that it was found he called her his Wife in his last will and two Letters which he wrote to Your Petitioners John Philip Fabricius whom he was under the Apprehensions of death and only on Account of his not having Acknowledged the said Maria Victoriana desplans as his Wife during his life but by many other Circumstances it Appears to Your Petitioners that he the said Testator did not Consider that She was or could be his full Legall Wife Therefore Your Petitioners having Considered the Matters an Affairs of Equity and not of Law made to the said Maria Victoriana desplans that they thought the most Equitable propositions in Order to Adjust it in that Equitable Manner as therein and hereinafter Mentioned but those propositions having been Rejected they Your Petitioners did refer to the said Mayors Court as they now do this Honble Court to determine whether the said Maria Victoriana desplans had any Just Right to

To Claim the Previledge of a full Legall Widow when Your Petitioners Conceive She has not been married According to Law or Custom and that she has never been Acknowledged as a full Legal Wife or if the said Testator could mean by his Will that she should be considered as his Legal Widow After his death when he refused to Acknowledge her as his legal Wife during his life and in Case where the said Maria Victoriana desplans had Refused an Equitable Agreement if it should be considered that such Marriage by law is not Absolutely Null and Void Your Petitioners were and are Advised and Verily believe it is not such as Intitled the said Maria Victoriana desplans to the legal Rights and Previledges of a Woman Married Agreeable to the English laws Therefore Exclusive of the Tenor of the said last will of the said Testator and what Appears to Your Petitioners to have been his intent and Meaning by the said Will they by no Means Considered the said Maria Victoriana desplans Intitled to the Residuum of the said Testators Estate as he Claimed for which Reason Your Petitioners think themselves Obliged to preserve the Residuum Wherefore they conceive it would not be in their Power to fulfil the Intention of the said Testator by sending his Estate to his Sister According to the words and meaning of the said Testator in his last Will which Appears to be much in favor of his Sister and also that tho he has Called the said Maria Victoriana desplans his Wife in his said will he could not Mean his full legal Wife but only Gave her by it an Honble Attestation with a Maintenance without Neglecting his Duty towards his Daughters and Sister to the latter whom that to his Sisters he the said Testator did after his Estate was Considerably increased make the Most Liberality Offers of Service and always

carried

Carried on with her the most Affectionate Correspondence Your Pett.rs
do further Conceive that if the said Testator had intended to give any
thing or any part of his Estate otherwise than for life he would have
Added the Words Heirs and Assigns for ever or some words Expressing
his Intention that his Fortune or Estate should become the property
of the said Maria Victoriana Desplans and her Heirs as Your Pett.rs
are Advised the words Heirs make the Inheritance and to Say that
by the Second Article of the said Testators will where he Says Incase
of the death of my Wife and two Daughters Viz.t Ursula and Henriette
my Estate is to be sent to my Sister Maria Elizabeth now residing at
Neufchatel in Switzerland he the said Testator intended only
that in case his Wife and two Daughters should die before him to
Establishing a condition not only very Contrary to the very words
of the said will but also to Nature and Reason for how can it be Supposed
that the said Testator could have Imagined that his said Wife and
his two Daughters who were all Young and in Health would die before
him the said Testator who was a Soldier by Profession and as the
said Maria Victoriana Desplans Observed Subject to every Peril and
danger that Attends a Military life and Sickly and of a Weak
Constitution which by Reports and Appearances Seems to have been
the Case when the said Testator made his said last Will under such
Circumstances / Is as Your Petitioners Conceive absurd and Incon-
sistant with the Nature of things and of the Case to imagine that he
could have thought so or mean any such thing the said Assertion is also
too contrary to the Affectionate regard he always Expressed in favour
of his Sister with whom he did propose to go live in Switzerland as

Appears

Appears by a Letter to her the said Sister in the Month of March One
Thousand Seven hundred and Seventy two Years after his Engagement with
the said Maria Victoriana Desplans took place which said Letter the
said Testators said Sister Acknowledges in a letter which She has wrote
to Your Petitioners Abraham Bonjour the said Testator did also
propose to put his two Daughters under the good Care of his Sister in
Order to be brought up in the Protestant Religion as he the said Testator
Declared to the said Petitioner John Philip Fabricius if therefore there
was any doubt in this Case as to the intent and Meaning of the said
Testator Your Petitioners Conceive they are Sufficiently Cleared up
by the Circumstances before mentioned which give life to the said Testators
said Will because this does not only Answer to the Affectionate
Regard the said Testator had for his said Sister but also to the Spirit
of the Law and to Say that the Law will not permit a Devise of Cash
with a remainder over to Another is also as Your Petitioners Conceive
Expressing a very great Ignorant of the Spirit and intention of the Law
which always permits Equity where it can Judiciously take place and
Particularly as to Matters in and before a Court of Equity Your
Petitioners therefore Conceive they as Executors of the said Will of the
said Testator John Desplans could not give all his Estate to the
said Maria Victoriana Desplans as She Claimed and refuse to fulfill
or Avoid fulfilling the Intention of the said Testator who tho he has
wrote his said Will in a Language not Natural to him and who as a
Soldier not well Acquainted with the forms of Wills or of Law might
fail in the form of his said last will Yet it clearly Appears to Your
Petitioners and they hope it will do so to this Honble Court that his

the

the said Testators Intention was by no means such as the said Maria Victoriana Desplans has represented it nor do Your Petitioners admit that the Law refuses such a thing has the devise of a remainder or they way the said Testator has made it in his said Will the Law only will not or formerly would not permit a remainder over to another of such personal Chattles and Goods as are Subject to Corruption and can no more Exist after a certain time but money Your Petitioners are Advised is not Considered as Chattles or Goods Perishable because Money by the Care of Executors may be preserved for others and even a devise of Chattles with a remainder over to another has in some Cases been Adjudged good in Equity such as plate Jewells &c. Because the Nature of those Chattles are less Subject to Corruption than the others and at this day Your Petitioners are Advised it is a Maxim in Law that the Request of a Chattles personal for life is Construed to mean the same thing as a request of the use of it that no doubt being the Intent and mean of a Testator in a devise or Request in that way and shews the Intention of the Law that every persons Estate may as much as possible be disposed of Agreable to his mind and desire what when Your Petitioners conceive can Judiciously be said on the Occasion is that the said Testators has made his said will without Knowing how to Express his Intentions in the Clearest manner for it is even doubtfull by his having mentioned to one of Your Petitioners John Philip Fabricius that he intended to have his Children brought up in the protestant Religion and in Leaving his Estate in the manner he did and by the Strong and Affectionate Regard he always Expressed towards his Sister if in making

making this devision of his Estate he the said Testator did not intend to Establish matters so as to enable his Executors to send his two Daughters to his said Sister without any altercation on that head of their Mother and that in case of their death in this Country their parts should be Immediately sent to his Sister who otherwise would have had a very distant prospect of benefiting by or enjoying any part of this Estate therefore Your Petitioners who have in trust to fulfill what they know or understand might have been the real meaning and Intention of the said Testator thought themselves Obliged to Represent all these Matters to the said Mayors Court as they do to this Honble Court Your Petitioners at the same time Conceive it is very clear from the Tenor of the said will that the said Testators intent and meaning was by no means such as the said Maria Victoriana Desplans pretending and that She had no Right to Claim the residue of the said Testators Estate Your Petitioners further Sheweth that the said Maria Victoriana Desplans has not in her Bill of Complaint Set forth the whole of the said Testators said Will for the said Complainant Says "my Estate to be sent to my Sister Maria Elizabeth now residing at Neufchatel in Switzerand" Except five hundred Pagodas that are to be Kept and given to my Wifes Sisters Viz.t Michaila and Charlotte" Whereas the said Testators Says his Estate is to be sent to his Sister Except one thousand Pagodas five hundred Pagodas of which are to be added to the little fortune of his Natural Daughters Elizabeth and the other five hundred Pagodas are to be given to his Wifes said Sisters as will Appear on Reference to the said Will of which an Attested Copy is hereunto Annexed for the inspection of this Honble Court Marked A which Your Petitioners pray may be

be Admitted as part of this their Petition and Appeal Your Petitioners did also further in their said Answer deny that the said Maria Victoria na Desplans did Apply to them to be paid the whole residue of the said Estate for and on Account of herself and her two Children Rosa and Henriette as She Asserts on the contrary the said Maria Victoriana Desplans Offered to receive two thirds of the said Residue of the said Estate and that the remaining One third there of should become the Immediately property of the said Testators Sisters which Your Petrs did not think Just but proposed to Adjust matters by an Arbitration or to devide the Estate into two Equal parts one for the said Maria Victoriana Desplants and the other for the Sister of the Testator and also in Order to Avoid if possible the trouble and Expence of a Law Suit Your Petitioners were willing to refer the said Affair to the determination of the said Testators Sister if until such Resolution could have been received the said Maria Victoriana Desplans would have been contented with receiving two thirds of the Interest of the Residue of the said Estate by way of Maintenance but this she has Refused in demanding an Immediate Resolution from Your Petrs who not Acting for themselves are Obliged in Order to preserve the property of others to refer the matters to Superior Judges Your Petitioners did in their said Answer further Say that they did not Jointly Agree to give the Interest of the whole Estate of the said Maria Victoriana Desplans for life but on such Condition as might Justify them before the Sister of the said Testators which Conditions she also Refused Your Petitioners for their Answering said they were at a loss to conceive how a will made in the month of March One thousand Seven

Seven hundred and Seventy can show the Intent and meaning of the said Testators in his Will made in October one thousand Seven hundred and Seventy Two which is above two Years afterwards when both the Circumstances of the said Testator and the very Words and Tenor of the said Will differ widely for when the said Testators made his first will he had no Children he the said Testator gave them to the said Maria Victoriana Desplans the Inconsiderable Sum he was possessed of but his the said Testators Estate having been much Increased and having had no two Children who were to be sent to his said Sister he gave to the said Maria Victoriana Desplans only for life in Order to Secure his Estate for his Lineal Representatives Your Petitioners further said considering all Circumstances they could not put any other Construction on the words of the said Testator in his said last Will from which his intent and meaning must be gathered than as before mentioned for they conceive it Impossible to make it Appear that the said Testator gave his Estate in an absolute Manner to the said Maria Victoriana Desplans or to make it in the least Agree with the true Affection that he had for his said Sister to whom he the said Testator had made such very liberal Promises Your Petitioners also Conceived it impossible to Imagine the said Testator could have meant to put to Chance the leaving his Estate for the Benefit of the Mother of the said Maria Victoriana Desplans of whom he had the most Execrable Opinion for if he had given his Estate to the said Maria Victoriana Desplans and her Heirs in Case of the said Maria Victoriana Desplans decease her mother being the next of Kin became the next in Succession which is a matter too distant from the Intention of a

Man

Man who had a Most Affectionate regard for his Sister and that the said Testator could never mean the said Maria Victoriana Desplans mother should have any part of his Estate Your Petitioners Conceive manifestly John Philip Fabricius when he the said Testator was under the Apprehensions of death dated Trichinopoly the 13th October 1772" of which the following is a copy

Dear Sir

My Wifes mother being an Execrable Woman it will be of the greatest Consequence to Keep her away from my family She is now With Us and if I die She will not go to her Husband but Stick close to her Daughter in Order to place her she will do it by all sorts of ill Usage such a Young Woman will be Utterly unable to resist a woman so furious and Capable of every Crime therefore the help of Superiors will be required in Order to force her to quit my family and to go to her Husband desiring her Husband to send for her will be of no Use she is his Mistress and treats him with the Utmost Indignity I am very ill Farewell Dear Sir

(Signed) John Des Clans"

Your Petitioners further in their said Answer said that if any doubts Exist with regard to the Words or from of the said Testators will they could not Imagine otherwise then that the said Testator being Sickly when he made his last will and Testament and Trusting to his Executors as well as to the Course of Nature he Expressed himself in that Short Manner without considering that his two Daughters might die before the said Maria Victoriana Desplans or Imagening that she the said Maria Victoriana Desplans could never

ever Claim any thing but an Honest Maintenance Your Petitioners Humbly hoped it will clearly Appear to the said Mayors Court As they hope it will to this Honble Court that the said Sister of the said Testator has a particular Right and Interest in the Estate of the said Testator Notwithstanding the said Maria Victoriana Desplans Unjust Claim Assertions and Action which Right and Interest Your Petitioners humbly hoped would by the Decree of the said Mayors Court have been preserved but now they hope the same will by the Decree of this Honble Court be preserved for the said Testators said Sister Agreable to the said Will and what Appears to have been said Testators Intent and meaning therein and Your Petitioners in their said Answer Lastly said they had no other concern in this Suit brought Against them by the said Maria Victoriana Des Clans but their Duty as Executors of the said last Will of the said Testators Which Obliges them to See Justice done to all the parties Interested therein To which said Answer the said Maria Victoriana Des Clans put in Replication Still Claiming the said Residue of the Estate of the said John Desplans and Setting forth Sundry Matters regarding the same by way of Reply to Your Petitioners said Answer all which Your Petitioners have fully Refuted by the Rejoinder which they put in to the said Replication as they Your Petitioners humbly hope will appear to this Honble Court or Reference thereto

On these proceedings Issue was Joined Rules for the Examination of Witnesses passed but the said Maria Victoriana Desplans departing this life the said Suit became Abated and the said Manuel Pignon Alledging he had

Intermarried

Intermarried with her the said Maria Victoriana Des Blans in her life time did after her decease pretend the said Residue of the said John Des Blans Estate had become his property in Right of the said Maria Victoriana Des Blans to whose Estate he having Administred did in that Capacity File a Bill of Revivor in the said Mayors Court and the said Suit became Revived Accordingly After Which the said Complainant Manuel Pignon did Examine Witnesses regarding the said Marriages the Nature of which will Appear on Reference to the Depositions of the said Witnesses Publication passed the said Cause was Set down for hearing and the same Coming on to be heard by and before the said Mayors Court on Tuesday the Twenty first day of March in the Present Year of our Lord One thousand Seven hundred and Eighty the said Court did Order and Decree that Your Petrs should pay unto the said Complainant Manuel Pignon the full Amount of the Estate and Effects of Lieutenant Colonel John Des Blans Deceased which the said Court in and by their Decree Say he became entitled unto in Right of his Wife Maria Victoriana Des Blans Deceased deducting therefrom the following Legacies Bequeathed by the last will and Testament of the said Lieutenant Colonel Des Blans Viz.t the Sums of Four hundred Pagodas (Pags. 400) and two hundred Pagodas (Pags. 200) to his Natural Daughter Elizabeth to Mr. Fabricius a Silver Soop Dish Silver Bowl and Silver Spoons And to Colonel Bonjour his Horses and that the Costs of Suit be paid out of the Estate As will more fully and at large Appear by the said Decree which comes herewith for the inspection of this Honble Court From which said Decree of the said Mayors Court Your

Your Petitioners do Appeal to this Honble Court as they Conceive the same is Erroneous that the said Maria Elizabeth the Sister of the said Testator John Des Blans is Aggrieved thereby and that she the said Testators Sister would be much Injured if Your Petitioners as Executors as Aforesaid should Comply with the said Decree but Conceiving it their Business and Duty to use their utmost endeavours to preserve the said Residue of the said Estate for the said Testators Sister Agreable and Conformity to the tenor of the said Will and what was Apparently the intent and Meaning of the said Testator they Your Petitioners could not in Justice to the said Testators Sister Comply with the said Decree as they conceive she the said Sister is Notwithstanding the said Decree both by Law and the true Intent and meaning of the said Testator clearly Intitled to the said Residue of the said Estate

First Because the said Maria Victoriana Des Blans being married in the manner Set forth in the Proceedings in this Cause on behalf of Your Petitioners as Executors was by law devested of any Right power and Authority to Claim or have any part of the Estate of the said Testator Therefore her Claim to the said Residue of the said Estate as Wife of the said Testator and as Heir to the said two Deceased Children was and is ill founded and in Course the Claim of the said Manuel Pignon must be and is ill founded also Consequently the said Testators said Sister is clearly Intitled to the said Residue of the said Estate Notwithstanding any thing Alledged to the Contrary by or on the part of the said Maria Victoriana des Blans or the said Manuel Pignon

Secondly Supposing the said Maria Victoriana Des Blans was not by Law

Excluded

Excluded from and disabled to take any part of the said Estate of the said Testator Yet Your Petitioners Conceive and with all due Submission to this Honble Court humbly Sound that She the said Maria Victoriana Dos Elans was not Intitled to receive or possess the said Residue of the said Testators Estate it being clearly the Intention of the said Testator that In case of the death of the said Maria Victoriana Dos Elans and the said two Daughters Ursula and Henrietta the said Residue of the said Estate should go to and be the property of his the said Testators Sister he the said Testator having clearly Expressed such his Intentions in his said Will which could not be done if the said Residue of the said Estate was not preserved by Your Petitioners as Executors as aforesaid for that purpose.

Thirdly Your Petitioners by no means Waiving the benefit of all the said Matters of Law as to the disability of the said Maria Victoriana Dos Elans to Claim or have any part of the said Testator further Say that the said Maria Victoriana Dos Elans and the said two Children Ursula and Henrietta being dead the Question is who Agreable to the Tenor of the said Will and the Intention of the said Testator is intitled to the said Residue of the said Estate the answer thereto Your Petrs Conceive to be very plain and to have by the said Testator been clearly decided on and by his said Will and Corroborated by other Circumstances Set forth by Your Petitioners in their said Answer the said Testator doth not Say a Stranger shall have it or that any Person who was or might be related to or connected with the said Maria Victoriana Dos Elans either by Marriage or otherwise should have the said Residue or any part of his Estate other than the Legacies Mentioned

2

Mentioned in the said Will On the Contrary the said Testator having provided for the said Maria Victoriana Dos Elans and the said two Children for and during their lives was desirous of Providing for his his said Sister in Case of their decease and Willed that in case of their deaths his Estate Expecting the said Legacies should be sent to his said Sister therefore to dispose of the said Residue of the Estate otherwise is acting quite Contrary to the will of the said Testator and depriving a Person so nearly related to the said Testator as his Sister of the benefit of the said Residue of the said Estate in favor of a Stranger who it is clear the said Testator could never mean should have the same or any part thereof And Your Petitioners beg leave to observe that the Law and particularly a Court of Equity is never Attentive to the will and Mind of a Testator with regard to the dispositions of his Estate or property and the Intention of the said Testator with regard to the said Residue of his said Estate being clearly in favor of his said Sister Your Petitioners humbly hope this Honble Court will by their decree preserve the same for the said Sister Accordingly.

Your Petitioners do therefore Submit all the said matters and things to the Judgment of this Honble Court and humbly pray that the said decree of the said Mayors Court may be Reversed and Set aside and that the right of the said Testators said Sister Maria Elizabeth in and to the said Residue of the said Estate may be Established and Your Petitioners do Lastly Pray such further and other General Relief in all and Singular the premises as to this Honble Court shall Seem Meet and

May

May be Agreeable to Equity and Good Conscience.

And Your Petitioners as in Duty bound

Shall ever Pray &c.

A

I John Des Clans Lieutenant Colonel in the Service of the Company of Merchants of England Trading to the East Indies do make and Ordain my last will and Testament as follows.

I give my Natural Daughter Elizabeth who is under the Care of the Reverend Mr. Fabricius the Sum of Four hundred Pagr. which Sum is in the hands of the said Mr. Fabricius and I give her two Hundred Pagodas besides.

The Rest of my Estate I give to my Wife Maria Victoriana Des Clans and to my Daughters Ursula and Henriette Des Clans to be divided Equally Amongst them.

In case of the death of my wife and two Daughters Vizt. Ursula and Henriette Des Clans my Estate is to be sent to my Sister Maria Elizabeth Des Clans now Residing at Neufchatel

in Switzerland excepted one Thousand Pagodas five hundred of which are to be Added to the little fortune of my Natural Daughter Elizabeth and the other five hundred to be given to my Wifes two Sisters Vizt. Macalia and Charlotte.

I Appoint the Reverend Mr. Fabricius and Lieutinant Colonel Abram Bonjour to be my Executors to Mr. Fabricius I give My Silver Soop dish Silver Bowl and Silver Spoons to Colonel Bonjour I give my Horses Given under my hand at Vellore the 26th. Day of Augt. 1772.

John Des Clans

Lt. Colo.

A true Copy of the Orginal will Exced in the Honble the Mayors Court at Madraspatnam

James Taylor

Regr.

Mayors Court at Madraspatnam } Tuesday the 25th day of march Anno Domini 1780

Present

Edw.d John Hollond Esq.r Mayor
James Call. George Proctor
Benj.n Roebuck. Cotton B Dent
Edw.d Garrow. Edw.d Saunders
Will.m Webb and Thomas Cooper
Aldermen

Between Manuel Pignon heretofore Husband of Maria Victoriana Desplans deceased late Widow and Relict of John Desplans who was heretofore a Lieutenant Colonel in the Service of the Honble the United English East India and Administrator of all and Singular the Goods and Chattels Rights and Credits of the said Maria Victoriana Complainants and the Reverend John Chrisp Fabricius of Vepery Clerm.n the Missionary and Abraham Bonjour Lieutenant Colonel in the Service of the United Company of Merchants of England Trading to the East-India Executors of the last Will and Testament of the said John Desplans Deceased Defendants

This Cause Coming on to be heard and debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with Copy of a will annexed the Defendants answer the Replication the Rejoinder the Bill of Revivor the Interrogatories And Depositions on the part of the Complainant with a paper marked A annexed on hearing the Pleadings made Use of by the Attornies and on due Consideration had thereon this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendants Shall Pay unto the Complainant Manuel Pignon the full Amount of The Estate and Effects of Lieutenant Colonel John Desplans Deceased which he became intitled unto in Right of his Wife Maria Victoriana Desplans Deceased deducting therefrom the following Legacies bequeathed by the Last will and Testament of the said Lieutenant Colonel John Desplans Viz.t the Sums of Four hundred Pagodas / Pag.s 400 / and Two hundred Pagodas / Pag.s 200 / to his Natural daughter Elizabeth to M.r Fabricius a Silver Soup dish Silver Bowl and 6 Silver Spoons and to Colonel Bonjour his Horses and it is further Ordered and Decreed that the Costs of Suit be paid out of the Estate

Pl Cur

No

To the Honble John Whitehill Esqr.
President and Governor &c. Council of Fort St. George

In the Court of Appeals

Between Manuel Pignon Administrator of all and Singular the Goods and Chattels Rights and Credits of Maria Victoriana Pignon deceased Complainant and the Reverend John Philip Fabricius Danish Missionary and Lieutenant Colonel Abraham Bonjour executors of the last will and Testament of John Des Plans deceased late Lieutenant Colonel in the Service of the United Company of Merchants of England Trading to the East Indies on the Coast of Coromandel Defendants

The Answer of the said Complainant to the Petition of Appeal of the said Defendants

This Respondent by way of answer to the said Petition and Appeal or unto so much thereof as this Respondent is Advised Materially concerns him to make Answer unto Saith that it is true that the above Named Maria Victoriana Pignon did by the Name and at the time in the said Petition of Appeal

Appeal (for that purpose mentioned) file a Bill in the Honble the Mayors Court at Madraspatnam and that she did Estate and Set forth therein the several matters and things which are mentioned in the said Petition and Appeal and in particular did Set forth that the above Named John Desplans had departed this life on or about the twenty Second day of October One thousand Seven hundred and Seventy two having first made his last Will in manner and form and of the date therein and in the said Petition of Appeal for that purpose mentioned and that the said Petitioners were appointed Executors and did prove the said will and possessed themselves of the Estate and Effects of the said John Desplans and this Respondent further Admits it to be true that she did Apply to the present Petitioners as Executors for an Account of the said Deceased's Estate as well on her own Account as that of her two Children who were both living at the time of the decease of the said John Desplans and that the said Petitioners refused to give her any manner of Satisfaction touching the Premises contrary to the intention of the Testator which was that if she and her said two daughters should survive him they should possess themselves of his Effects Saving a few Legacies and it is also true that she the said Victoriana did by her then Attorney Charles Bromley set forth such reasons as are Stated by the said Petitioners why the said Petitioners ought as Executors of the will to Account with the said Victoriana for the Estate and Effects of the said John Des Plans and to shew that the pretended Claim of the Sister of the said John Desplans could not be Supported either in Law or Equity by any Construction arising from the said will and this Respondent further Answering Saith

the

he Admitts it to be true that the said Petitioners did put in an
Answer to the said Bill thereto amongst other things Setting forth
and Saying that she the said Victoriana being of the Popish
Religion was not legally married to the said Testator and that
the Ceremony of such Marriage was performed in a Clandestine
manner by a Priest of that Religion in a romish Church Contrary
to the Laws or order of the Church of England and that the said
Petitioners in and by such their said Answer did refer themselves to
the said Mayors Court as they now do to this Honble Court to
determined whether the said Victoriana could or might Claim as
full Legal Widow according to Law or Custom and further Admits
it true that the said Petitioners in their said Answer and according
to their own Conception did offer and Urge Several Circumstances in
Opposition to the Claim of the said Victoriana and did pretend they
thereby acted up to the intention of the said Testator According to
their Contemption and Conception of the meaning of his said last
Will Urging in such their said Answer that the Testators expressions
in favor of his Sister and his affectionate regard for her confirmed and
in such their Conception gave life to the said Will and this Respon-
dent doth also allow that Several other matters were Setforth by
the said Petitioners in their said Answer as reasons why the said
Victoriana had no Claim on the said Petitioners as Executors of the
Will of the said John Desplans but this Respondent doth by
no means allow that any of the said Reasons has any foundation
in Law Equity or Common Sense and this Respondent further Admits
that the Petitioners Concluded their said Answer by Observing that

their

Their Duty as Executors of the said last Will of the said Testator Obliged
them in Justice and Discharge thereof to preserve for the said Testators
said Sister such Right of Remainder as appeared to have been meant
in the said Will and this Respondent Saith it is true that to such
Answer she the said Victoriana did by her said Attorney Charles
Bromley Reply in form and repeat her Claim and Support thereof
did by way of Replication Setforth Sundry matters and that to
such Replication the said Petitioners did Rejoin and such other
Proceedings were thereupon had as in their said Petition of Appeal
Are Setforth and further saith it is also true that the said Victoriana
Departed this Life having first Intermarried with this Respondt
and that thereupon the said Suit became Abated and this Respondt
in right of the said Victoriana his then late Wife and as Administra-
in said Petition of Appeal) the same came on to be heard in the
Honble the Mayors Court on the twenty first day of March last
when the said Court did Order and Decree that the Petitioners
should Pay unto this Respondent the full Amount of the Estate
and Effects of Lieutenant Colonel John Des Clans deceased
deducting therefrom such Legacies as in the said Petition of Appeal
Are mentioned whereof from the said Petitioners did Appeal to this
Honble Court but for greater certainty as to the Dates Contents and
Substances of the said several Proceedings and such the Order and
Decree of the Honble the Mayors Court and the said Petition of
Appeal this Respondent Craves leave to refer thereunto when
the same shall be produced and to have such full and ample benefit

thereof

thereof and of every part thereof as if the same were herein before fully Stated and Setforth this Respondent further saith that the said Petitioners neither had or have they reason to consider themselves Aggrieved by the said Decree of the Honble the Mayors court this Respondent humbly insists that such Decree should be Affirmed and the Petition and Appeal of the said Petitioners should be dismissed with Costs for the following among other reasons

1st Because every absolutely whereof the said Maria Victoria no had been impeached or accused respecting her Marriage or of her not being the Lawfull wife of the said Testator is removed and Confuted by the legal proof of the Marriage in Due form of law which is among the proceedings in this Cause and to which this Respondent prays to have Reference and the full benefit thereof as if herein fully stated nor is the said imputed disability by any proof on the part of the Petitioners and the Competency of the said Marriage is further established by the said Testator in his said Will wherein he calls the said Maria Victoriana his Wife and the said distinction is more expressively marked in the following Words of the Will "my Natural Daughter Elizabeth and in the next bequest "my Daughters Ursula and Henrietta" and afterwards when he makes a deposition after his death he says his Wifes Sister &c. by all which as well as by the said Marriage it is evident the Conduct of the said Maria Victoriana as well as the Ceremony of Marriage gave her a Claim to and Secured to her the Attention of her Husband and the Regard of which he has by the said will shewn that he thought her

2d Because the Eventual manner whereby the Testator takes Notice of his Sister in the said Will plainly proves that his meaning was in case of his Wife and Children dying before him and in consequence before such took Effects that his said Sister as being next to his own Family in esteem should have a Right to his Estate and Effects but not otherwise and

3d Because in the Event which has happened of the said Maria Victoriana and the said Ursula and Henrietta Surviving the said John Dos Blanos His Estate vested in them according to the Disposition thereof made in the said Will and by the Death of one of the said daughters the share of such daughter by the first of James the Second Chapter Seventeenth did go equally between the mother and the Surviving Child and by the death of such only Surviving Child her Aggreate Share devolved to her mother as being her Legal Representative so that under the very words of the said Will the said Estate and Effects Vested in Law in the said Wife and Children and by the death of the said Children Intestate unmarried and without Issue the whole became the Property of the Mother the said Maria Victoriana and by her Intermarriage with this Respondent he became fully entitled thereto

For all which reasons and others which may be offered at the hearing this Respondent Prays that the said decree may Affirmed and the said Petition and Appeal may be dismissed from this Honble Court with Costs

Court of Appeals
at
Madraspatnam
} Thursday the 15th November 1781

Between John Philip Fabricius and
Abraham Bonjour Executors of John
Des Clans Deceased — Appellant

and

Manoel Cignon Administrators of
Maria Victoriana Des Clans
Deceased — Respondent

The Attorney for the Appellant having moved to
Withdraw this Cause and that each party pay his own Costs and
the Attorney for the Respondent having Agreed thereto.

Ordered Accordingly.

Signed Chas. Freeman
Cth

To the Honble John Whitehill Esqr
President & Governor of Fort St. George & Co. Council

In the Court of Appeals

The Humble Petition of Robert Williamson of Madras Free
Trader and Inhabitant Executor of James Sellers late of Madras
Deceased who was the only surviving Executor of Edward Rylance late
of Madras Deceased.

Sheweth Thas whereas the Appellant having
been nominated an Executor in Conjunction with Major John Eley
and Samuel Troutback in the last will and Testament of James
Sellers late of Madras Deceased and the said Samuel Troutback
having Renounced the said Executorship on Account of his Advanced
Age and the said John Eley being in England at the Time of James
Sellers Decease (this Appellant Remained the only Acting Executor
in Madras) which happened in the Month of April which was in
the Year One thousand seven hundred and Seventy five Thes
Appellant for this sheweth this Honble Court that three or
four Days before the said James Sellers Deceased One Cottrell
Barrett of Madras Inhabitant did summons here the said
James Sellers to Answer a Bill of Complaint filed by him
the said Cottrell Barrett in the Honble the Mayors Court
for the sum of One thousand Eight hundred and fifty Pagodas

D
said

Said to be the amount of One half part or share of a house and Ground
Sold to the said James Sellers and Asserted to be his the said
Cottrell Barretts property
This Appellant further Sheweth this Honble Court that soon
After the decease of the said James Sellers the said Cottrell Barrett
did by Bill of Revivor filed in the Honble this Mayors Court
Summon this Appellant to Answer the said Bill of Complaint
As Executors of the said James Sellers deceased To which said
Bill of Complaint this Appellant put in an Answer
Setting forth that the Conditions of sale Annexed to the said Bill
of Complaint was false in Correct and erroneous that a Summon of
Money was prepared ready to pay him the said Cottrell Barrett on
Producing a Clear and just Title to the pretended Moity of the said
House and Ground to which said Answer the said Cottrell Barrett
put in a Replication whereupon this Appellant filed a Rejoinder
Issue then was Joined and Rules passed and days Appointed to
Examine witnesses by all parties to this several Allegations This
Appellant further sheweth this Honble Court that on publication
passing Rested by his Attorney Deliver into the Honble the
Mayors Court three Exhibits to Which the said Cottrell Barrett
Excepted that on or about the 4th day of November which was in the
Year 1777 this Appellant With his Attorney Appeared in the
Honble Mayors Court With an humble petition praying that
Publication Might be enlarged fourteen days in Order to examine
Material Witnesses Without Whose Evidence this Replicant
Could not Safely proceed to a hearing And that neither this

Appellant

Appellant or his Attorney had Seen or inspected the Depositions taken
in this Cause or otherwise published or Caused to be Published the
same to which this Appellant and his Attorney Annexed their
Respective Affidavit Severally Making Oath that they had not
Seen heard read or been informed of the purport or contents of any of the
Depositions taken in this cause nor would they Deponents see hear
Read or be informed of the purport or contents of the said Depositions
Untill the further Orders of that Honble Court
This Appellant further sheweth this Honble Court that soon
After James Taylor Esqr the Register had Minuted and wrote
on the Affidavit the words (Sworn in Court the 4th November 1777
James Taylor Register) it was Ordered and Agreed that the three
Exhibits filed and delivered into that Court as before recited and
Which the Complainant had filed Exceptions should be allowed
to be proved Viva Voce at the hearing of the Cause in Open Court
Upon these proceedings and the Matters Coming on
to be heard May 27th now last past Notwithstanding Raugapah the
Complainant to Debash legally Summoned and then Attending in
Open Court to prove the hand Writing of the Exhibits Numbered three
(3) it was Over Ruled and he was not permitted to prove the same
Neither were this Appellant or his Attorney Allowed to prove
Viva Voce the Other Matters relative to the Exhibits the Transactions
prior to the Commencement of the Original suit and in which they
Nor either of them were any way interested the Material to the
Merits of the Cause as they were mentioned in the proceedings
by this Appellant who did further by his Attorney and himself

further

father Setforth by way of Brief that the Allegations of the Complaint Extending that he had paid for one half share or moiety of the house and Ground was not proved nor any Receipts for the money that the Only Witness who pretended perfectly to remember hearing the Late Edward Rylance Since Deceased That the Complainant had paid his Moiety or half share of the purchase Money to Wit One thousand Pagodas which said matter if really fact ought to have been particularly mentioned in the Agreement or paper writing marked A and then referred to as the same was wrote by the Deponent Daniel Shaw upwards of two Years after the pretended payment of the Purchase Money as will more fully Appear on Reference to the said paper writing which was wrote on a Rumour being Spread that the longest liver should be the Surviving Heir and in Order to Make the Complainant Amenable to the payment of a Moiety of all Expences Attending the first Cost and Rebuilding the Premises which Amounted to double the sum and no part had been paid by the Complainant in Order to entitle him to a Moiety And that it was proved by the Deposition on that the Money was ready to be paid incase a clear Title was produced as will more fully appear by the Depositions read Notwithstanding several of the Aldermen were of Opinion that the Bill and proceedings were Irregular the same were Over Ruled.

This Appellant therefore Appeals from the said Order and prays that the part relative to declaring a Moiety of the premisses to be the property of the Complainants may be reversed and Set aside and that the said three Exhibits may allowed to be proved.

Viva Voce

Viva Voce in this Honble Court and that the Complainant may be Ordered to pay all Costs of Suit in both Courts and such further and Other Relief in the premisses As to this Honble Court shall Seem Meet.

Mayors Court
&
Madrashatnam

Saturday the 27th day of May
Anno Domini 1780

Present

Edwd John Hollond Esqr Mayor
James Call ... George Proctor
Boyz Roebuck Colton B. Dent
Edw Garrow ... and William Webb

Aldermen

Between Colwell Barrett of
Madras Inhabitant Complainant and
Robert Williamson one of the Executors
Named in the last will and Testament of
James Sellers Deceased Defendant

Summons issued against Ranga pah a Witness on the part of the Defendant Returned Served Do Appears Order of Court of 4 Nov. 1779

Read

Read the Exceptions of the Complainant to 3 Exhibits N.1.2. laint
& 3 Delivered in by the Defendant and the Answer thereto Coming
on to be Argued and determined and the Court having had due Considera-
tion thereon are of Opinion that the Exceptions are good & therefore
Ordered that the 3 Exhibits be thrown out with the Costs.

This Cause Coming on to be heard and
debated this Day in the presence of the Attornies on both sides on
Reading the Complainants Bill with Copy of an Agreement marked
A and a Copy of Conditions of Sale Marked B Annexed the Bill
& Answer of the Defendants Answer with Copy of Conditions of Sale
&c. marked B annexed the Replication the Rejoinder the Interroga-
tories and Depositions on the part of the Complainant with an
Agreement marked A annexed the Interrogatories and Depositions on
the part of the Defendants with papers marked B annexed On
Hearing the Pleadings made Use of by the Attornies and on
due Consideration had thereon this Court doth think fit to Order
and Decree and doth Accordingly Order and Decree that the Defen-
dant Robert Williamson do pay unto the Complainant out of the
Estate and Effects of James Sellers deceased the Sum of One
thousand Eight Hundred and fifty Pagodas /Pags 1850/
being half of the Amount Sale of the House in Question with Interest
from the 10th day of March 1775 upon the Complainants giving
unto the Defendant a good and Sufficient Title to the premises
in dispute and that each party do pay their own Costs.

Per Cur

In the Honble the Court of Appeals
at Madraspatnam

The Plea and Answer
of Colbrell Barnett of Madras
Respondent to the Petition of
Appeal of Robert Williamson
Appellant

This Respondent by Protestation not confes-
sing or Acknowledging all or any of the matters and things in the
said Petition and Appeal contained to be true in such manner and
form as the same are therein declared and set forth for Plea and
Answer thereunto with that on all Appeals to this Honble Court
the Appellant must particularly set forth and Express the Judgement
Sentence Order or Decree he Appeals from and the Appellant must
further declare that he is Injured or Aggrieved by such Judgement
Sentence Order or Decree or Otherwise no Appeal can be regular nor can
this Honble Court give the Appellant any relief unless such
Judgement Sentence Order or Decree and Grievance are Set forth as
aforementioned that the said Appellant has not in his said
Petition set forth or Expressed any Judgement Sentence order or Decree
of the Mayors Court nor does the said Appellant refer to any such
Judgement Sentence Order or Decree nor does he say that he is Aggrieved
thereby and consequently the said Appellants Petition contains
not any matter wherein this Honble Court can Ground any Decree
or Give the said Appellant any relief or Assistance as against him this Res-
pondent &c. wherefore

Wherefore and for divers others Errors and Imperfections in the said Petition Appearing this Respondent doth Plead the same in Bar of the said Appeal and humbly prays that the said Petition may be dismissed with exemplary Costs and this Respondent prays such further and General relief in all and Singular the said Premises as to this Honble Court shall seem Meet.

Court of Appeals
at
Madraspatnam

Vs. Thursday the 15 November Anno Domini 1781

Between Robert Williamson of Madras Free Trader and Inhabitant Executor of James Sellers late of Madras deceased Ex. Appellant and Cottrell Barrett of Madras Inhabitants Respondts

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Saturday the 27th Day of May Anno Domini 1780 and upon due consideration had of the Matters thereon Severally Contained and of the Pleadings and Arguments used by the Attornies on both sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Decree of the Honble the Mayors Court do Stand Affirmed and that the Appellants Petition be dismissed with Costs.

J. Clerk
(Signed) Chas. Freeman Clk.

To the Honble the Court of Appeals at Madraspatnam

Between Abdul Razack of Banderamalanca Merchant by his Attorney Aga Rezy Shaddeus Calender of Madras Merchant Complainant and Bauboo Rauz otherwise Boopathy Rauz Baupu Rauz of Banderamalanca aforesaid Defendant.

The Humble Petition of Appeal of the above Named Bauboo Rauz otherwise Boopathy Rauz Baupu Rauz by his Attornies Moses De Castro Thomas Pelling and John De Sires of Fort St. George Merchants

Sheweth That Your Petitioners did by his said Attornies on or about

about the Sixteenth Day of April which was in the Year of our Lord
One Thousand Seven hundred and Seventy Nine Prefer a Petition to
the Honble the Mayors Court at Madraspatnam Setting forth and
Shewing to the said Court that on or about the Tenth Day of February
which was in the Year of Lord One Thousand Seven hundred and
Seventy Six the Complainant in the above Cause did by the name
of Abdul Rajah enter into an Agreement with Your Petitioner
and did give a written Agreement unto Your Petitioner in the Jentoo
Language to the following Effects that is to say that Your Petr
and Authoorthy Vengaya having Jointly built a Vessell called
Madena Mueth on which they Your Petitioner and the said
Authoorthy Vengaya were equally Concerned they the said Complat
Abdul Razack otherwise Abdul Rajah and Your Petitioner did
Jointly Freight the said Vessell for the Pegu Trade for One Thousand
Eight Hundred and Fifty Madras Pagodas That the said Compl.
and Your Petitioner did also take up at Freight the Vessell called
Sree Ramaloo belonging to Arundoo Lovee Thevoopathy Rawz at
One Thousand Madras Pagodas from Bandermalanca to Pegu and
from thence to Madras both which said sums Amounting to two
thousand Eight Hundred and Fifty Pagodas they the said Complat
and Your Petitioner Agreed to pay on the said Complainant to return
from Pegu the said Complainant and Your Petitioner were also to
Pay the Wages Batta &c. to the Shipes Mates Syrang Lascars
and Writers &c. that Your Petitioner was to be Accountable to
the Owners of the said two Vessells to pay the Freight and the said
Complainant to Agreed to Deliver to Your Petitioner the said two

Vessells

Vessells in or at Bandermalanca Ready to go a Voyage to Bengal in or
about the Month of April on the said Year One Thousand Seven hun-
dred and Seventy Six the Particulars of the Cargo Shipped at Band-
malanca on the said two Vessells on the Joint Account of the said
Complainant and Your Petitioner were Coconuts Beetle nuts Iron
Ghee Copper some Cloths &c. the Rice for the said Goods and all the
Disbursments &c. of the said two Vessells the said Complainant and
Your Petitioner were to pay and the said Complainant was to land the
said Cargo at Pegu and Sell it on the Joint Account of himself
and Your Petitioner and Purchase a Cargo fit for the Madras Market
such as Teak Timber Planks &c. and Ship them and take Freight
also if Offered and Sail Directly to Madras and Land the said
Cargo and Freight Goods and Deliver by the means of Your Petitioner
Gomasta and Sell the said Cargo by the Consent of the said Gomasta
According to the Market Price and Sail from Madras to Bander-
malanca and Deliver to Your Petitioner the said two Vessells according
to the time Limited and Your Petitioner Agreed to pay the Sum of two
thousand three Hundred and Fifty Madras Pagodas on Account
of the Freight which was the sum due after Deducting what had
been paid which Sum with all the Expences of the said two Vessells
they the said Complainant and Your Petitioner were to pay out of the
Produce of the said Cargo and devide the Remainder of the Cargo
between them According to the Agreement the Profit or Loss to be
on their Joint Account and if the said Complainant did not deliver
the said two Vessells according to the Limited time he the said
Complainant Agreed to pay two half of the Freight of what the

Owners

Owners Charge as by the said Agreement Signed by the said Complainant in Your Petitioners Custody and ready to be produced if Required will more fully and at large Appear

Your Petitioner did further in his said Petition shew unto the said Court that the said Complainant did mismanage the said Business and did in many respects deviate from the Tenor true Intent and meaning of the said Agreement to the Great Loss to detriment of Your Petitioner and that he Your Petitioner had paid laid out and Expended at a different times a Considerable Sum of Money which together with Interest thereon Amounts to the Sum of Ten Thousand Eight hundred and Fifty Nine Pagodas twenty Six fanams and Sixty Cash as will Appear by the Account thereof which was ready to be produced for the inspection of the said Court if Required Notwithstanding which he Your Petitioner Shewed that the said Complainant did make out or Produce Sundry Accounts making Various and Unjust Charges and Pretending that Your Petitioner was Indebted unto him in the Sum of Four thousand Nine Hundred and Fifty two Pagodas and Nineteen Fanams did as is alledged in Order to Recover from Your Petitioner the said pretended Ballance or Sum of Money Transfer the same unto Aga Beery Shaddeen Calander of Madras Merchant who did on the Fifth day of June which was in the Year of our Lord One Thousand Seven hundred and Seventy Eight Exhibit a Bill of Complaint in the said Honble the Mayors Court against Your Petitioner for the said Sum of Four thousand Nine Hundred and Fifty two Pagodas and Nineteen fanams and the

the

He the said Aga Beery Shaddeen Calander well Known and has said Bill of Complaint Sel forth that Your Petitioner was at Bandermalanca aforesaid Yet he the said Aga Beery Shaddeen Calander did on the said fifth Day of June One thousand Seven Hundred and Seventy Eight Swear that Your Petitioner was Indebted unto him in the said Sum of Four thousand Nine Hundred and Fifty two Pagodas and Nineteen fanams and that he had Reason to be that he Your Petitioner would with Draw himself from the Jurisdiction of this Honble Court on hearing that a Bill is filed against him and did thereupon Obtain a Summons Returnable immediately and Warrant of Arrest Against Your Petitioner as will more fully and at large Appear by the said Bill of Complaint and the Records of the said Honble Court to which Your Petitioner craved Reference Your Petitioner further Shewed unto the said Honble the Mayors Court that on the Nineth Day of the said Month of June One thousand Seven Hundred and Seventy Eight the said Summons and Warrant of Arrest were returned not to be found whereupon the Attorney for the Complainant prayed for a Warrant of Sequestration to Seize the Effects of Your Petitioner all tho Your Petitioner had not had the least Notice of the said Bill being filed and upon the said Aga Beery Shaddeen Calender taking the Usual Oath the said Court were pleased to Grant the said Sequestration whereby the Sheriff did at the Instance of the said Aga Beery Shaddeen Calender Seize or Sequester a Considerable Quantity of Caddy belonging to Your

Pet.

Petitioners aswell Appeable by the Sheriffs Return of or Upon the said Sequestration to which Your Petitioners craved Reference which said Caddy has since been Sold for a Considerable Sum of Money which has been paid to or Appropriated to the Use of the said Aga Peary Shaddues Calendar he the said Aga Peary Shaddues Calendar having on the Unjust Principal before mentioned Obtained a Decree for the sum for which the said Suit was so unjustly Commenced without Your Petitioner having the least Notice thereof or being Summoned or having an Opportunity to Appear and Defend the said Suit Your Petr. further Shewed that not Content with the before Mentioned Unjustification and Conduct and proceedings of the said Aga Peary Shaddues Calendar he the said Aga Peary Shaddues Calender did on or about the Tenth Day of April in the said Year of our Lord One thousand Seven Hundred and Seventy Nine Obtain a Warrant of Execution on the said Suit against the Effects of Your Petitioner by Virtue whereof the Sheriffs did at the Instance of the said Aga Peary Shaddues Calender Seize two Vessells belonging to Your Petitioner named Ramasawmy and Jaganayacooloo in Mdras Road which he the Sheriff had either sold or Advertized for Sale by all which Unjustifiable Conduct and Proceedings of the said Complainant and his Attorney the said Aga Peary Shaddues Calender Your Petitioner hath Sustained Considerably Damages And Your Petitioner did in his said Petition lastly humbly Pray that the said Honble the Mayors Court would be pleased to Order that the Seizure of the said two Vessells Named Ramasawmy and Jaganayacooloo might be Superseded and the Sheriff

Sheriffs Seals taken therefrom Or in case the said Vessells or either of them were Sold that the produce thereof might either be paid to Your Petitioner or be Staid in the hands of the Sheriff untill Such time as the said Honble the Mayors Court should seem Meet and might be Agreeable to Equity and Good Conscience and that the Costs and Damages Occasioned to Your Petitioner by the said Illegal Conduct beforementioned and the said Illegal Seizure of the said two lastmentioned Vessells might be Awarded to Your Petitioner and Your Petitioner did also pray such further and other General Relief in all and Singular the Premises as to the said Honble Court should seem Meet Your Petitioner further sheweth unto this Honble Court that the said Court did on twenty Seventh day of the said Month of April one thousand Seven Hundred and Seventy Nine Order that the Sheriff should Stop the sale of the said two Vessells named Ramasawmy and Jaganayacooloo in case the said Vessells should be Sold that the Amount might Remain in the hands of the Sheriff untill the right of property be Ascertained as will more fully and at large appear by an Extract from the Minutes of the said Court containing the said Order Marked A which comes herewith for the inspection of this Honble Court and which Your Petitioner humbly prays may be deemed and taken as part of this his Petition and Appeal to Your Petitioner further Sheweth unto this Honble Court that the said Abdul Razack Did by his said Attorney the said Aga Peary Shaddues Calender on or about the Eighteenth day of October in the said Year One thousand Seven Hundred and Seventy Nine put in an Answer

to

To the said Petition thereby Acknowledging that Your Petitioner and the said Abdul Razack did enter into an Agreement about the said Egw Voyage pretending he Acted Accordingly pretending also that Your Petitioner had not paid laid out or Expended the Sum of ten thousand Eight Hundred and Fifty Nine Pagodas Twenty Six fanams and Sixty Cash (whereas Your Petitioner only mentioned that the Sum he had paid laid out and Expended on Account of the said Concern Amounted to that Sum including Interest) Saying he made the said Transfer to the said Aga Beary Shaddues Calender who filed the said Bill Obtained the said Summons and warrant against Your Petitioner that they were Returned as by Your Petitioner mentioned and a warrant of Sequestration Obtained by Virtue whereof the Sheriff at the instance of the said Aga Beary Shaddues Calendar to Seize or Sequester a Quantity of Caddy belonging to Your Petitioner which was Sold and the Nett Proceeds thereof Amounting to the Sum of One thousand and Ninety three Pagodas and Fifteen Fanums the said Aga Beary Shaddues Calendar did receive from the said Sheriff to his Use that he Obtained a warrant of Execution by Virtue Whereof the Sheriff did at the instance of the said Aga Beary Shaddues Calender Seize the said two Vessells called Ramasawmy and Jagannaycoolo which he Acknowledges to be Your Petitioners property &c. but Your Petitioner Sheweth that although the said Aga Beary Shaddues Calendar doth Alledge that Your Petitioner was within the Jurisdiction of this Honble Court when the said Bill was filed and the said process Issued thereon

thereon or in Consequence thereof or of the Applications and Proceedings of the said Aga Beary Shaddues Calendar Yet he doth not any where Alledge on pretence that Your Petitioner was Served with a Summons or any Process whatever of or from the said Mayors Court Commanding his Appearance to the said Suit whereby he Your Petitioner would have had Legal Notice thereof but Pretends he told Your Petitioners Gomastah or Agent of his Intentions of Filing the said Bill. Which if true Your Petr can by no means Deem Legal Notice of the said Suit can the same or by any means Avail the said Complainant or his said Attorney Upon these Proceedings Issue was Joined Rules passed for the Examination of Witnesses two Witnesses were Examined on the part of the said Abdul Razack by his Attorney the said Aga Beary Shaddues Calender not prove the Justness of the Demand for which he Commenced the said Suit or that Your Petitioner was Summoned to Appear thereto but to prove that One Codaly Buddoo who he calls Your Petitioners Gomastah or Agent was told of the said Suit who they pretend told Your Petitioner Which Your Petitioner Saith whether true or not is no Justification of the said Proceedings against Your Petitioner Your Petitioner further Sheweth that Publication passed in the said Affairs and the same was set down for hearing and it Coming on to be heard by and before the said Mayors Court on Saturday the Twenty Seventh Day of May in this present Year of our Lord One thousand Seven Hundred and Eighty the said Court were pleased to Order that Your Petitioners said Petition should Stand Dismissed with Costs also that the Order Made by the said Mayors Court on the said Twenty Seventh Day of April for Stopping the said Sales of the said Vessells or Staying the

the Amount of the said two Vessells in the hands of the said Sheriff as aforesaid should be Overruled As will more fully and at Large Appear by the said Order which comes herewith for the inspection of this Honble Court Marked B.

From which said Order of the said Mayors Court of the twenty Seventh Day of May last Your Petitioner doth Appeal to this Honble Court as he conceives the same Erroneous and that he Your Petitioner is Aggrieved thereby.

First... Because the said Sequestration decree and Execution were unfairly and Illegally Obtained and Your Petitioners property Illegally and Unwarrantably Seized Disposed of and Converted to the Use of the said Complainant or his said Attorney.

Secondly Because Instead of the said Court Ordering that he Your Petitioner should be put in possession of the property or proceeds thereof claimed by him Your Petitioner and by the said Abdul Razack by his said Attorney Acknowledged to be Your Pett.rs Property and Awarding or Ordering that the Costs &c.a Occasioned by the said Unjust and Illegal Seizure be paid to Your Petitioner the said Court have Ordered that Your Petitioners said Petition be Dismissed with Costs - Whereby Your Petitioner is not only deprived of his Property but put to a very Considerably Expence besides.

Thirdly Because the said Court have Overruled their said Order of the twenty Seventh Day of April One thousand Seven hundred and Seventy Nine whereby instead of the Amount or proceeds of the said two Vessells Ramasawmy and Jaganayacoo being preserved for and on Account of Your Petitioner or to wait the Event of the Contest between the said Complainant or his said Attorney and Your Petitioner Regarding the Matters in Question the said Complainant or his said Attorney may become Possessed thereof to the further injury Loss and damage of Your Petitioner who has Already been so Considerable a Sufferer by the Illegal and Unjustifiable Conduct and Proceedings of the said Complainant and his said Attorney.

With Regard to which said Matters and the reasons for Your Petitioner Appealing to this Honble Court from the said Order of the said Mayors Court Your Petitioner saith he Conceives it clearly Appears by the very Proceedings of the said Complainant by his said Attorney that the said Sequestration decree and Execution were unfairly and Illegally Obtained for it Appears that the said Complainant Filed his said Bill on the fifth June One thousand Seven hundred and Seventy Eight and Obtained a Summons and Warrant of Arrest on Making Oath to the Sum Sued for and that he the said Agapery Thuddeus Calendar had Reason to believe Your Petitioner would Withdraw himself from the Jurisdiction of the said Court on hearing that a Bill was filed against him - tho. how he could know any thing about the said pretended demand Your Petitioner cannot Conceive But instead of the said Summons and Warrant of Arrest or either of them being Served on Your Petitioner who was then at Bandaramalanca aforesaid about two hundred and Sixty Six Miles from Madras. the said Summons and Warrant were the fourth Day after Granting the same returned to the said Court not to be found as if Your Petitioner had Really been Sought and could not be found and upon the Return thereof the said Warrant of Sequestration

was

Was Obtained without Your Petitioners having been served with any Process Whatever to give him Legal Notice and Information thereof which with all Due Submission to this Honble Court Your Petitioner humbly Contends was Contrary to Law therefore not bonding on Your Petitioner more then the said Decree and Execution Obtained Upon or in Consequence thereof for Your Petitioner is Advised that it was and is by no means the Intent of the Legislature that a Person should be divested of his property without having Legal Notice of a Suit and being served with the Usual Process to Appear and Answer the same for where a person can be found the Law is clear that he must be served with process giving him Notice of a Suit and Commanding his Appearance thereto and if a Defendant even Absconds to Avoid being Served with such process an Affidavit should be made thereof and every Publick Method possible is to be taken that the Defendant may have Notice thereof which clearly Shews that a Sequestration to Seize the property of a person Prosecuted is not to be Obtained Clandestinely but that before a Process of so high a Nature is Granted every Publick and Possible means is to be Used to have the Process of the Court served in Order that the Defendant may have Legal Notice of a Suit being Commenced against him that he may Appear thereto and Answered the same if he has cause so to do and Your Petitioner Avers that he had Cause to answer the said Bill the same being very Unjust and Legall. This being the case that the said Warrant of Sequestration was so as aforesaid Illegally Obtained and the said Decree and Execution being in Course in the same Predicament the Seizures of Your Petitioners property was Illegal and every Injurious to Your Petitioner therefore neither the said Complainant Nor his said Attorney had any Right Whatever to Receive and Possess themselves of any property or the proceeds of any Property belonging to Your Petitioner Nor Consequently can they or either of them be Intitled to the Proceeds of the Sales of the said two Vessells called Ramasawmy and Saganayacoolee or any part thereof and in Course the said Order of the said Mayors Court of the said Twenty Seventh Day of May last Dismissing Your Petitioners said Petition with Costs and Overruling the said Order of the twenty Seventh Day of April One thousand and Seven hundred and Seventy Nine Erroneous and Your Petitioner Aggrieved thereby

All Which Matters and things Your Petitioner Submits to the Judgement of this Honble Court and Humbly Prays that the said Order of the said Mayors Court of the said twenty Seventh Day of May last may be Reversed and set aside and that Your Petitioner May either be put in Possession of the said two last Mentioned Vessells or that the Amount Sales or Proceeds thereof May be paid to Your Petitioner with Interest and Costs or that this Honble Court will be Pleased to make such Order therein or with Regard to the said two Vessells or their proceeds as to this Honble Court shall Appear Legal Just Equitable and Your Petitioner doth lastly Pray such further and other General Relief in all and Singular the said Premises as to this Honble Court shall seem Meet

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 27th Day of April Anno Domini 1779

Present

George Proctor Esquire Mayor
Edwd John Holland and Benj.a Roebuck
Aldermen

Abdul Razack by his Attorney Aga Ewry Thaddeus Calendar

Vers

Bauboo Rauz

Petition of Bauboo Rauz alias Boopathy Rauz Bauspe Rauz by his Attorney Moses de Castro Thomas Telling and John de Fries filed the 16 Instant the Attorney for the Petitioner Prays that an Order may Issue to the Sheriff to Stop the Sale of two Vessells named Ramasawmy and Jagamayacooloo Seized by the Virtue of a Warrant of Execution or in Case the said Vessells should be Sold that the Amount may remain in the hands of the Sheriff until the Right of Property be ascertained Ordered Accordingly

A true Extract

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 27th Day of May Anno Domini 1780

Present

Edwd John Holland Esqr Mayor
James Call Georg Proctor
Benj.a Roebuck C B Dent
Edwd Garrow and Wm Webb
Aldermen

Abdul Rozack by his Attorney Thaddeus Aga Ewry Calendar

Vers

Bauboo Rauze

Petition of Bauboo Rauze Alias Boopathy Rauz Bauspe Rauze by his Attorneys Moses de Castro Thomas Telling and John de Fries Read Answer Read Interrogatories On the part of Respondent Read Two Depositions taken thereunto Read

The Matter in Dispute between the Petitioner and the Respondent Coming on to be heard and determined this Day in the Presence of the Attorneys on the both Sides on Reading the Petitioners Petition the Respondents Answer the Interrogatories and Depositions on the part of the Respondent On Hearing the Pleadings made Use of the Attorneys and on due Consideration had thereon This Court doth think fit to Order and doth Accordingly Order that the Petitioners Petition

do

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Do Stand Dismissed with Costs the Attorney for the Respondent in Consequence of the Petition being Dismissed Prays that the Motion in this Cause on the 27th Day of April last for Stopping the Sale of two Vessells named Ramasawmy and Jagannaycoolo or incase the Vessells should be sold that the Amount may Remain in the Hands of the Sheriff untill the Right of Property be ascertained may be Overruled to which the Opposite Attorney Assents the Court having taken the same into Consideration Ordered that the said Ords of the 27th April be Overruled Further time of one Month for the Return of the Warrant of Execution Prayed for and Granted

Morne Eatrad

To the Honble John Whitehill Esqr
President and Governor &c. Council of Fort St. George

In the Court of Appeals at Madraspatnam

Between Abdul Rozack of Bandurmalanca Merchant by his Attorney Aga Peery Shaddues Calendar and Banbo Rauze of Surname Bopathy Rauz Bauso Rauz of Brandurmalanca aforesaid Defendant

The Answer of the said Complainant to the Petition of Appeal of the said Defendant

the

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This Respondent by way of Answer to the said Petition of Appeal or unto so much thereof as this Respondent is Advised Materially Concerns him to Make Answer unto Saith it is true that the Petitioner did at such time as he in his Petition of Appeal for that Purpose mentions Prefer a Petition to the Honble the Mayors Court at Madraspatnam and did therein Setforth such Matters and things as are repeated or in recital in his said Petition of Appeal and Particularly that Aga Peery Shaddues Calendar did under by Vertue of an Assignment to him thereof Made by this Respondent and for Such Sum and at the time in the said Petition of Appeal for that Purpose respectively Setforth Exhibits a Bill of Complaint in the Honble the Mayors Court against the Petitioner and that the said Aga Peery Shaddues Calendar did Obtain such Summons and Warrant of Arrest Returnable and Returned as in the said Petition of Appeal Setforth and this Respondent further Admits it to be true that upon the said Aga Peery Shaddues Calendar taking the usual Oath Sequestration was Granted and that under such Authority the Sheriff made a Seizure and did Levy some Money and further this Respondent Admits it true that the Sheriff so did Likewise afterwards and at the time in the said Petition of Appeal for that purpose Mentioned by Vertue of and under an Execution Obtained against the Petitioners Effects made such Seizures on such Vessells in such Manner as Setforth in the said Petition of Appeal and that the said Petitioner did and by his said Petition so as aforesaid by him Preferred to the Honble the Mayors Court Pray for such particular and General Relief and Obtain such Order as in said Petition of Appeal is mentioned and Referred to

F

To which Petition this Respondent did put in his Answer therein among other things and by way of Answer Acknowledging his entering into and Acting According to an Agreement between him the said Petitioner and this Respondent respecting a Pegu Trade but therein and then and still Denying that the Petitioner either Paid Laid out or expended on Account of such their Concern under that Agreement the Sum of Ten Thousand Eight hundred and Fifty Nine Pags Twenty Six Fanams and Sixty Cash and this Respondent further says it is true that Publication had been passed in the said Affair and that the same did at the time in the said Petition of Appeal for that Purpose mentioned Come on to be heard before the Honble the Mayors Court who thereupon was pleased to Order that Your Hons. said Petition should Stand Dismissed with Costs and that the said former Order of the said Court made in this matter and which is Refered to in the Petitioners Petition of Appeal should be Confirmed and that the Warrant of Execution should Continue in force and that it should be Executed in manner and for the Purposes by the said Mayors Court and by the said Warrant of Execution intended and Setforth from which said Order of the Honble the Mayors Court the said Petitioner did Appeal to this Honble Court but for greater Certainty as to the Dates Contents and Substances as will of the said Several Proceedings and Orders of the Honble the Mayors Court had or Refered to in this Matters as also to the said Petition of Appeal this Respondent Craves leave to Refer thereunto and unto each of them Respectively when the same shall be Produced and therefrom and from every part thereof to have such full and Ample benefit as if the same were herein

before fully and Particularly Stated and Setforth and this Respondt. for further Answer to the said Petition of Appeal Setsforth and humbly Contends that the said Petitioner neither had nor has he any reason to Consider himself Aggrieved by the said Order of the Honble the Mayors Court wherefrom he has so Appealed this Respondent humbly insisting that such Order should be Affirmed and the Petition and Appeal of the said Petitioner should for the following among other Reasons be Dismissed with Costs.

Because this Respondent in the first place humbly Conceives that he is Justified by the Records of the Honble the Mayors Court in Contending that the Decree thereof and the Sequestrations and Execution Issuing at out of and under the Seal thereof were legal and that all other the Proceedings in that Affair were well warranted by the Established Practice of that Court founded on the Express Words of the Charter of his late Majesty George the Second and the Book of Instructions sent out with an Attendant on the said Charter as a Guide towards carrying into Effect the Purposes intended by the said Charter and therefore that such Sequestration and Execution were regularly and in form Respectively Obtained and were Sufficient Authorities for Making such Seizures as were thereunder Respectively made.

Because the Honble the Mayors Court by granting unto the Petitioner a hearing of such his Petition did thereby give unto the said a Rehearing of the Merits of his Cause and an Opportunity to establish by Evidence such Objections as he could adduce against the Equity of the said Decree Notwithstanding which the said Petitioner was not able to give proof as to any point of Irregularity in the Proceedings of the

Cause

Cause or of any Equitable Reasons which could induce the Honble the Mayors Court to grant the Prayer of the said Petition Whereas this Respondent was able to prove on the most reasonable and Equitable Grounds as well as by the Rules of Practice that the Honble the Mayors Court ought to dismiss the same it Appearing by Evidence that the Petitioner had very early Notice of the Commencement of the said Suit and it Appearing by the Records of the Court that all this this Respondent was entitled to a Decree at the Expiration of Six Months from the Return of the Sequestration Nevertheless near Nine Months had expired before the said Decree was Obtained during all which time the Petitioner or his Gomastah who was at Madras and knew of the said Suit having been so instituted might have instructed an Attorney to enter an Appearance and to have pleaded answered or Demurred to the said Bill of Complaint all which Matters he hath neglected to do and instead of Presenting a Petition of Appeal to this Honble Court from the said Decree did lodge a Petition in the said Mayors Court to Obtain a reversal of a Decree and other Orders of Court made against himself which Petition the said Mayors Court were pleased to receive more from principles of Equity and Liberal Indulgence in favour of the Petitioner than on any Ground of Law or Practice and the Petitioner has therefore no Ground of Complaint of Surprise or Grievance as to the said Suit or as to the Seizures made of his Property then lying in Madras Roads

BECAUSE that such Seizures were so made under and by Virtue of the Orders of the said Mayors Court given as before stated According

According to the Usual Rules of Practice and that although there were but four days as the Petitioner Observes between the Issuing of the Summons and Warrant and the Return thereon made Whereby it Appeared that the Defendant (and now Petitioner) could not be found Nevertheless such Return so made was regular and According to the said Charter where Provisions made by the Process of Sequestration Goods and Effects to Compel those Debtors who may wish to evade the payment and Satisfaction of their Debts from eluding the Justice they owe to their Creditors and had not such Return so aforesaid been made and such Sequestration issued thereon the Defendants Vessels then lying in Madras Roads and Ready to Sail might have departed from the Jurisdiction of this Honble Court and this Respondent deprived of every Remedy as well against the Goods as against the person of the said Petitioner

BECAUSE that the Petitioner in case he has any claims against this Respondent Might Established the same in Regular course of Proceeding as is usual in such Cases and might have such redress thereon as he may Appear to deserve and in a short Summary way less Dilatory than the one he hath now formed and which being incapable of a founding any Redress without an evident Subversion of the Principles of the Charter and the Rules laid down in the Book of Instructions appears to savour more of a Spirit of Litigation than of a Confidence of Success in Support of a Legal or Equitable Right

For all which reasons and others which may be Offered at the hearing this Respondent Prays that the said Order of the Honble the Mayors Court may be Affirmed and that the said Petition and

Appeal

Appeal may be dismissed from this Honble Court with Costs

Court of Appeals
at
Madraspatnam

} ff. Thursday the 22d. November
Anno Domini 1781

Between Bauboo Rauz otherwise
Boapathy Rauz Bauspa Rauz of Bandermalanca by his Attornies Moses D Castro Thomas Pelling and John De Fries Appellant
and Abdul Razack of the same place
Merchant by his Attorney Aga Perry Shaddues
Calendar Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Saturday the 27th May Anno Domini 1780 and upon due consideration had of the Matters thereby Severally contained and of the Pleadings and Arguments used by the Attornies on both sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court dated the 27th May Anno Domini 1780 given in this Cause be Reversed that the Property in Litigation do remain in the Custody of the Sheriff and that each party pay his own Costs in both Courts Exd / Signed / Chas. Freeman Actg

To the Kings most Excellent Majesty in Council

Matter of Petition of Bauboo Rauz otherwise Boapathy Rauz Bauspa Rauz of Bandermalanca by his Attornies Moses D Castro Thomas Pelling and John D Fries

In the Cause

Between Abdul Rosack of Bandermalanca aforesaid Merchant by his Attorney Aga Perry Shaddues Calandar of Madras Merchant Complainant and the said Bauboo Rauz of Bandermalanca Aforesaid Defendant

The Humble Petition and Appeal of the said Abdul Rasac Complainant in the said Cause and Respondent in the said matter of Petition by his Attorney Aga Perry Shaddues Calendar

Sheweth

That the above Named Bauboo Rauze by his said Attornies did on or About the twenty Sixth day of April which was in the Year of our Lord One thousand Seven hundred and Seventy Nine file his Petition in the Honble the Mayors Court at Madras Patnam praying that a Certain Seizure of two Certain Vessells might be Superceeded or if in the Mean time Sold that the produce sale should be Laid in the Sheriffs hands untill the said Court should seem Meet the said Petitioner urging in favour of what he so Prayed for that he and Your Petitioner had before that time to wit on or

About

About the Tenth Day of February which was in the Year of our Lord One Thousand Seven hundred and Seventy Six entered into a Certain written Agreement in the Gentoo Language and in the Nature of articles of Copartnership Whereby he said it was Agreed that he and Your Petitioner should become Jointly Concerned in the Pegue Trade and that he and Your Petitioner had for that purpose Freighted two Certain Vessells at two Thousand Eight hundred and Fifty Pagodas to Run from Bandermalanca Aforesaid to Pegue and from thence to Madras And that he the said Petitioner was to be Accountable for the said Freight and Your Petitioner Answerable for the Return of the said Vessells at Bandermalanca Aforesaid in the Month of April then Next otherwise to pay half what should be Charged for the detention of the said Vessels beyond that time and the said Petitioner did Charge as Mismanagement on the part of Your Petitioner to the prejudice of his the said Petitioners Concern therein and that he Paid Laid out and expended Several Sums at Different times which with the Interest thereof Amounted to the Sum of ten Thousand Eight hundred and Fifty Nine Pagodas twenty Six Fanams and Fifty Cash and the said Petitioner did further pretend that he had Sustained Considerable Damages and that Your Petitioner on his part had so made Out his Accounts Respecting the said Joint Trade as to make him the said Petitioner appear indebted in the Sum of Four Thousand Nine hundred and fifty two Pagodas and Nintien fanams and that Your Petitioner had transferred that Sum to the said Aga Beery Shaddies Calendar of Madras Merchant who on the fifth Day of June which was in the Year one Thousand Seven hundred and Seventy Eight did file a Bill of Complaint in the said Mayors Court Against him the said Petitioner for Recovery thereof and who also did on the said last Mentioned Day Swear to that debt and Obtain a Summons Returnable immediately and a Warrant of Arrest Against him the said Petitioner and that on the Ninth Day of the said Month of June the said Summons and Warrant were Returned "Not to be found" And that thereupon the Attorney of the said Aga Beery Shaddies Calendar Prayed for a Warrant of Sequestration to Seize his the said Petitioners Effects which warrant of Sequestration was Granted Accordingly and the said Petitioner did further Charge that thereunder was Seized and Sold a great Quantity of Paddy and that the produce Sale thereof Amounted to a Considerable Sum and the said Petitioner Pretended that such Proceedings were so had thereon with his having Notice thereof and the said Petitioner did further Set forth that the said Aga Beery Shaddies Calender did Afterwards Obtain a Decree in the said Mayors Court Against him the said Petitioner for the said Sum so Sued for and did Likewise Obtain a Warrant of Execution issuing out of and under the Seal of the said Mayors Court and directed to the Sheriff who thereunder Seized two Vessells the property of him the said Petitioner which had been ordered Sold or Advertized for Sale and that he therefore as he Pretended by three means of the said Aga Beery Shaddies Calender and of Your Petitioners Conduct had Sustained Damages and Your Petitioner further humbly Sheweth unto Your Most Excellent Majesty in Council that Your Petitioner as Respondent did put in his Answer to the Petition therein Admitting the said Agreement

or such parts thereof as he could Admit of and that the Profit and Loss on the said Joint Concern should be share and Share alike and that the Accounts should be Settled Agreeable to those Kept or made out by Your Petitioner who acted in the Management of the said trade but Your Petitioner at Same time did with the greatest truth Absolutely deny having either Mismanaged the said business or deviated from the Meaning of the said Agreement either to the prejudice of him the said Petitioner al of any other Person but that on the Contrary Your Petitioner did insist that he Transacted the said business to the utmost of his power and Ability and to the benefit of all Concerned and that as Your Petitioner did not Depart from the intent of the said Agreement he the said Petitioner could not have had any Loss thereon thro means of Your Petitioner And Your Petitioner did in his said Answer to the said Petition further deny that the Petitioner either laid out or expended the Sum of Ten thousand Eight hundred and Fifty Nine Pagodas Twenty Fanams and Sixty Cash as in his said Petition did pretended or that any such Accounts could exist as those which the said Petitioner in his said Petition engaged to Produce but on the Contrary that the Account which Your Petitioner by his said Attorney had Annexed to his said Original Bill of Complaint was a just Account and that the said Petitioner on the said last mentioned Account Stood Debtor in the Ballance of Four thousand Nine hundred and Fifty two Pagodas and Nineteen fanams and Your Petitioner further Sheweth that he in his said Answer to the said Petition did admit of there Making a Transfer of the said Sum of Four thousand Nine hundred and Fifty two Pago-

and

And Nineteen fanams to the said Agapery Thaddeus Calender for a Valuable Consideration and that the said Agapery Thaddeus Calendar did on or about the Fifth day of June which was in the Year One thousand Seven hundred and Seventy Seven Exhibit a Bill of Complaint against the said Petitioner for recovery of the said Sum so Transferred and did Obtain a Summons Returnable Immediately and a Warrant of Arrest Against the said Petitioner and that on the Ninth of the said last Mentioned Month both were Returned into the Honble the Mayors Court endorsed "Not to be found" and that a Warrant of Sequestration was Afterwards granted to Seize the Effects of the said Petitioner and Your Petitioner did Contained that if the said Petitioner (as he pretended) had not Notice of the filing of the said Original Bill of Complaint) but which was by no means the Case the same was not the fault of Your Petitioner but the fault of his the said Petitioners Against or Attorney than at Madras and who was by Your Petitioner Made Acquented with his Intention of filing the said Bill and Your Petitioner in his said Answer did further Admit that the said Agapery Thaddeus Calender did take the Usual Oath and Swear that the said Petitioner had bin within the Jurisdiction of the said Mayors Court Since the Cause of Action arose and which was really the Case as the said Agapery Thaddeus Calendar did then and doth still understand that Bandermalanca was an English Settlement and Subordinate to Madras and Your Petitioner did further Admit the Issuing of the Writ of Sequestration and the Seizure and Sale of the said Paddy to the Value or Amount of One thousand and Ninty three Pagodas and fifteen

Fanams

Fanams and that the said Agajeery thaddeus Calendar did as Your
Petitioner humbly Conceives he ought Receive the same from the Sheriff
having Obtained a Decree for the Amount Sued for and Your Petitioner
did further Admit that the said Sum so Received being far Short of
Satisfying the said Decree the said Agajeery thaddeus Calendar
did on the tenth day of April which was in Year One thousand
Seven hundred and Seventy Nine Obtain a Warrant of Execution
Against the Effects of the said Petitioner and that thereunder the
Sheriff to whom the same was directed did Seize and Advertize for
Sale two Vessells the Property of the said Petitioner which were at Anchor
in Madras Roads but Your Petitioner in his said Answer did Contend
that it was Irregular and unprecedent for a Defendant in a Suit to Your
Petition the said Mayor Court Against a Decree Obtained therein against
him as Defendant to the said Suit and that the usual mode in Case
a Defendant was Aggrieved by any such Decree was to Appeal therefrom
And that Petitions Against Warrants of Execution being executed are
never preferred in the said Mayors Court by the Parties Complainant
or Defendant or by either of them and are only preferred by a third
Person whose property by Mistake or Design may happen to be Seized
as or for the property of the person against whose Effects the same issued
and therefore Your Petitioner in his said answer to the said Petition of
the said Defendant Prays that the Produce Sale of the said Vessells
should be Appropriated towards the discharge of the said Decree
and Costs Awarded to Your Petitioner and Your Petitioner doth further

Humbly

Humbly Shews unto Your Most Excent Majesty in Council that the said
Matter of Petitioner in the said Mayors Court by Your Petitioner answer
there being at Issue Rules for the Examination of Witnesses having Issued
and Publication having passed the said Matter of Petition was Set down
for hearing and Accordingly Came on to be heard in and before the said
Mayors Court on the Twenty Seventh day of May which was in the Year
of our Lord One Thousand Seven hundred and Eighty when the said Court were
Pleased to Order that the said Petition should Stand Dismissed with Costs
and that the Order of the Twenty Seventh day of April then last past for
Staying the Sale or Produce Sale of the said two Vessells should be over Ruled
and that the further time of one Month for the Return of the Warrant of
Execution which was prayed for by Your Petitioner be Granted.

From which said Order of the said Mayors Court the
said Petitioner did on or about the Ninth day of June which was in the
Year of our Lord one Thousand Seven hundred and Eighty Appeal to
the President and Governor and Council of Fort Saint George as the
Court of Appeals there Setting forth that he was Aggrieved by the such
the Order of the said Mayors Court of the said Twenty Seventh of May
in the said Year of our Lord one Thousand Seven hundred and Eighty
and in Support of the Grievance by him Alledged and as Reason for his
so Appealing to the said Court of Appeals at Fort Saint George he the said
Petitioner on his said Petition and Appeal after Reciting the Subject and
Matter of Petition in effect as is herein before Recited did Urge and pretend
as he before pretended that the Sequestration Decree and Execution were
Illegally Obtained and his the said Petitioners Property unwarrantably

Seized

Royal and Ancient Borough to a Constable Warrant to
Charles Whitaker Esquire the Second and the Bench of Justices
the said Petitioner setting forth the Reasons and Causes for the said Complaint
and Information and praying that a Certain Order made by the said Justices
upon the Hearing of the said Complaint might be Quashed and Vacated
upon the Grounds and for the Reasons in the said Petition Mentioned
and that the said Petitioner might be Restored to his Rights and Privileges
as a Burgess of the said Borough and that the said Petitioner might be
Relieved in the Premises as to Your Lordships should seem Meet
Whereupon Your Lordships were Pleased to Order that the said Petition
should be Referred to Us to Hear the Parties thereto and to Report
to Your Lordships Our Opinion thereupon and Pursuant to Your Lordships
Order We have Heard Counsel for and on behalf of the said Petitioner
and Mr Attorney General on behalf of the said Mayor Bailiffs and Burgesses
of the said Borough and Have Considered the Matter of the said Petition
and Do Humbly Certify to Your Lordships that it Appears to Us that
the said Petitioner was Duly Elected a Burgess of the said Borough
and that the said Mayor Bailiffs and Burgesses had no Power or Authority
to Disfranchise the said Petitioner for the Cause Assigned in the said
Order and We Do Therefore Humbly Certify to Your Lordships that
in Our Opinion the said Petitioner ought to be Restored to his Rights
and Privileges as a Burgess of the said Borough and that the said
Order ought to be Quashed and Vacated

All which We Humbly Certify to Your Lordships

Dated at Whitehall the 19th Day of May 1736

Hardwicke C
Talbot
Dudley Ryder

At the Court at Kensington the 19th Day of May 1736

His Majesty in Council having this Day Taken into Consideration
the Report made by the Right Honourable Lord Chief Justice Lee
Sir Thomas Abney Knight and Mr Justice Denison upon the Petition
of Charles Whitaker Esquire Setting forth that the Petitioner was
Duly Elected a Burgess of the Royal and Ancient Borough of Portsmouth
and that the Mayor Bailiffs and Burgesses of the said Borough
Contrary to Law and Usage and without any Cause Assigned
Expelled the Petitioner from his said Right and Privilege
Praying that His Majesty would be Graciously Pleased to Order
Reasons which could induce the said Mayor Bailiffs and Burgesses
to Disfranchise the Petitioner and Praying that the Petitioner
might be Restored to his Rights and Privileges as a Burgess of the
said Borough as in and by the said Petition and Report Relation
being had thereunto may more fully Appear His Majesty in Council
is Pleased to Order that the said Petition and Report be and the
same are hereby Referred to the Right Honourable the Lords
Commissioners for Trade and Plantations to Examine the Matters
therein Contained and to Report their Opinion thereupon to His
Majesty in Council

Wm Sharpe

Charles Whitaker Esquire Petitioner

Against

The Mayor Bailiffs and Burgesses of the Royal and Ancient Borough of Portsmouth Respondents

To the Right Honourable the Lords Commissioners for Trade and Plantations

The Humble Petition of Charles Whitaker Esquire

Sheweth

That Your Petitioner was Duly Elected a Burgess of the Royal and Ancient Borough of Portsmouth and Took the Oaths and Subscribed the Test and Declaration Appointed by Law to be Taken and Subscribed by Persons Elected Burgesses of the said Borough

That Your Petitioner Humbly Conceives that he has a Right to Continue a Burgess of the said Borough and to Enjoy all the Rights and Privileges Belonging to a Burgess of the said Borough

That Your Petitioner has been Lately Expelled from his said Right and Privilege of a Burgess of the said Borough by the Mayor Bailiffs and Burgesses of the said Borough

That Your Petitioner Humbly Conceives that the Reasons Assigned by the said Mayor Bailiffs and Burgesses for Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough are Insufficient in Law and Ought not to Deprive Your Petitioner of his said Right and Privilege of a Burgess of the said Borough

That Your Petitioner Humbly Conceives that the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough are Irregular and Illegal

That Your Petitioner Humbly Conceives that the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough are Contrary to Law and Usage and that an Action or Actions would Lie against the said Mayor Bailiffs and Burgesses for the Same

That Your Petitioner Humbly Conceives that he is Entitled to Relief in Equity against the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough

That Your Petitioner Humbly Conceives that the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough are Contrary to Equity and Good Conscience

That Your Petitioner Humbly Conceives that he is Entitled to Relief in Equity against the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough

That Your Petitioner Humbly Conceives that the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough are Irregular and Illegal

That Your Petitioner Humbly Conceives that the Proceedings of the said Mayor Bailiffs and Burgesses in Expelling Your Petitioner from his said Right and Privilege of a Burgess of the said Borough are Contrary to Law and Usage and that an Action or Actions would Lie against the said Mayor Bailiffs and Burgesses for the Same

their Creditors and had not such Return as aforesaid been made and such Sequestration Issued thereon the Petitioners Vessells then laying in Madras Roads and Ready to Sail might have departed from the Jurisdiction of the said Mayors Court and Your Petitioner deprived of every Remedy as well Against the Goods as Against the person of the said Petitioner and further Your Petitioner did contend that even in Case the said Petitioner had any Claims Against Your Petitioner he might Establish the same in Regular Course of proceedings as is usual in such Cases and might have such redress thereon as he might Appear to deserve and in a Short and Summary way less expensive and less dilatory than the one he persued and which being incapable of affording any redress without an evident Subversion of the Charter and the Rules laid down in the Book of Instructions Appears to Savour more of a Spirit of Litigation than of Confidence of Success in Support of Legal or Equitable Right for which and for other Reasons Your Petitioner Prayed that the said Order of the said Mayors Court should be affirmed by the said Court of Appeals and the said Petition and Appeal dismissed with Costs and Your Petitioner doth further Shew unto Your Most Excellent Majesty in Council that the said Petition and Appeal came on to be heard in and before the said Court of Appeals on the twenty Second day of November last past when the said Court were pleased to Order and Decree and did Order and Decree that the said Order of the Hon^ble the Mayors Court of the twenty Seventh day of May which was in the Year of our Lord one thousand Seven hundred and Eighty

be Reversed and that the Property in Litigation do remain in the Custody of the Sheriff and that each party Pay his own Costs in both Courts all which matters will more fully and at large Appear by a Reference to the several Proceedings had in the above Cause in the said Mayors Court and the said Court of Appeals to which Several Proceedings and to each of which Your Petitioner doth and doth Pray such full and Ample benefit from them and each of them as if they and each of them were hereinbefore fully Stated and Set forth.

From which said Order and decree of the said Court of Appeals Your Petitioner doth Appeal to Your most Excellent Majesty in Council as he conceives that the same is Erroneous and that he is greatly Aggrieved thereby as well for the Reasons given by Your Petitioner in his said Answer to the said Petition and Appeal

BECAUSE that no Court whatever can be Paramount to the Charter under which it is established nor can in Points of Practice expressly and Pointedly laid down for the direction of such Court in particular Cases Act Contrary to the Rules laid down for such Cases and therefore as Your Petitioner hath in all Points Conformed to the Rules in cases of Sequestration laid down by the Charter under which the said Mayors Court is established the Decree and the Warrant of Execution were regularly and cannot be Reversed the more as it is of the Nature of all Sequestrations that whereas Defendant is Prosecuted to Sequestration the cause may go on without him and therefore the

Decree

Decree was Regular the time for the defendants Appearance according to the Charter having expired long before the said Decree was granted.

For all which reason and such others as will be Offered at the hearing Your Petitioner doth Appeal to Your Most Excellent Majesty in Council and doth humbly Pray that the said Order and Decree of the said Court of Appeals May be Reversed with Costs and that the said Order of the said Mayors Court of the Twenty Seventh day of May which was in the Year of our Lord One thousand Seven hundred and Eighty May be Affirmed with Costs to be paid by the said defendant.

Court of Appeals
at
Madraspatnam
} Thursday the 22d November Anno Domini 1781.

Between Baubo Ranze Atherwa Boopzy thy Ranze Baupo Ranze of Bandorma Lanca by Attorney Moses de Castro Thomas Telling and John de Jnes Appellant and Abdul Rozack of the same place Merchant by his Attorney Aga Gury Shaddow Calendar Respondent.

This Cause coming on this day to be heared and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Saturday the 27th May Anno Domini 1780 and upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court dated the 27th May Anno Domini 1780 given in this Cause be Reversed that the Property in Litigation do remain in the Custody of the Sheriff and that each Party pay his own Costs in both Courts.

Per Cur

Signed Chas Freeman Clk

To the Honble the Court of Appeals at Madraspatnam

Between Bauboo Rawze otherwise Boospathy Rawze Bauspe Rawze of Bandermalanca Merchant by his Attorneys Moses Debastro Thomas Telling and John De Fries of Fort Saint George Merchants Complainant and Agapury Thaddeus Calander of Madras Merchant Defendant

The Humble Petition and Appeal of

the said Bauboo Rawze otherwise Boospathy Rawze Bauspe Rawze by his Attorneys the said Moses Debastro Thomas Telling and John De Fries

Sheweth

That the said Bauboo Rawze otherwise Boospathy Bauspe Rawze and by his said Attorneys on or about the Fourteenth Day of March in the Present Year of our Lord One Thousand Seven Hundred and Eighty Exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the said Agapury Thaddeus Calandar Setting forth that in or about the Month of February which was in the Year of our Lord One thousand Seven Hundred and Seventy Six Abdul Razack then of Bandermalanca aforesaid Merchant but at Present at Madras did Apply to Your Petitioner and desire Your Petitioner to let them have a Vessell at Freight to go to Pegu whereupon Your Petitioner shewed him a Vessell called Madena Mucoh which he Your Petitioner and Authority Vengaya did Jointly and in Partnership build which would hold One Hundred and twenty Garces of Sault or thereabouts which Vessell he the said Abdul Razack Approved of and Agreed to Pay the Expences of a Mate Lascars and other Charges that might Attend the said Vessell and Voyage and After he the said Abdul Razack Sailed with the said Vessell he was to return her again to the said Place in three Months and to Pay One thousand Eight hundred and Fifty Pagodas Freight for the said Vessell Your Petitioner did further on his said Bill Set forth that about Fifteen days after the Freighting the said Vessell a Moorman who was a Pegu Merchant did Apply to One Dundoolooree theroospathy Rawz to Freight a Vessell for the Pegu Trade called Siree Ramaloo which would hold about Ninety Garces of Sault and which he the said Dundoolooree theroospathy Rawz had then Lately built and put upon the Water which the said Abdul Razack hearing came and Acquainted Your Petitioner therewith and told Your Petitioner that if the said Merchant should Freight the said Vessell it would hurt him the said abdulzacks Trade and therefore Requested Your Petitioner would go and Freight the said Vessell for him the said Abdul Razack and that he would take both the said Vessells on the said Voyage to Pegu whereupon Your Petitioner went to the said Owner of the said Vessell and Settled the said business according

According to the said Abdul Razacks desire by Freighting the said Three Ramoloo for him for One Thousand Pagodas for the like Voyage and on the like Terms in all the Respects as the said former Vessell to which the said Abdul Razack Agreed Your Petitioner further Shewed that the said Abdul Razack having so as Aforesaid Freighted the said two Vessells for two Thousand Eight Hundred and Fifty Pagodas did Appoint Mates Lascars and Others Necessary for the said Vessells and Voyage And the said Abdul Razack desired Your Petitioner to Appoint a Gomasta or Agent which he left with Your Petitioner for that purpose in the Purchasing of Goods Wares or Merchandize for the said Vessells Such as Coconuts Butter Nuts Jean Ghee And Gingely Oil On Account of which he the said Abdul Razack Advanced Four Hundred Pagodas he the said Abdul Razack Proposing in the mean time to go and Purchase Cloth or Cloth Goods the said Voyage as Masulipatam and Narasapooram to which Places he went Accordingly and hes the said Abdul Razacks Gomasta with the Advice of Your Petitioner set about purchasing the Goods on Articles which he the said Abdul Razack desired as Aforesaid but the Money which the said Abdul Razack had Advanced for that Purpose not being Sufficient Your Petitioner wrote to him for the further Sum that was Wanted for the same to which the said Abdul Razack an Answer wrote Your Petitioner that if he Your Petitioner would

would Purchase of the said Goods Sufficient for the said Vessells by Borrowing Money from any Body he would send Money as soon as possible Upon and in Consequence of which they Your Petitioner and the said Abdul Razacks Gomasta bought Goods to the Amount of two Thousand Eight hundred and Eighty three Pagodas One Sixteenth and three Quarters which Your Petr. Paid Save and Except the said Sum of Four hundred Pagodas So that the whole of the said Goods were provided in Order that the said Vessells might be dispatched soon Your Petitioner not doubting but the said Abdul Razack would Repay him the Money which he Your Petitioner Advanced or paid on his Account as before mentioned but instead of the said Abdul Razack sending or paying the Remainder of the Amount of the said Goods about a Month afterwards he the said Abdul Razack told Your Petitioner that he had not Money to send or pay Your Petitioner because he had purchased Goods for all the Money that he had but that if Your Petitioner would be a Partner with him in that Trade he Your Petitioner should have a great Profit by it and that he the said Abdul Razack would go with the said Vessells to Pegu and Sell the said Goods and at his Return he would bring Teak Timber Plank &c. from thence for Madras where he would have double Profit upon the same and therefore desired Your Petitioner to Agree to his Proposal

Proposal to which Your Petitioner did Agree Accordingly and
thereby became and Jointly and Equally Concerned with the
said Abdul Razack in the Freighting the said Vessell and the
Cargoe for the Voyage and Purposes aforesaid And in Consequence
Your Petitioner and the said Abdul Razack did enter into written
Agreements in the Gentoo Language bearing date the tenth day
of the said Month of February One thousand Seven hundred and
Seventy Six One Signed by Your Petitioner and given to the said
Abdul Razack and the other Signed by the said Abdul Razack
and given to Your Petitioner to the following Purport, that is to
Say that Your Petitioner and the said Abdul Razack did Jointly
Freight the said Vessell called Madena Meuah for the said Voyage
for One thousand Eight Hundred and Fifty Madras Pagodas
also the said Vessell called Stree Ramaloo at One thousand Pags
for the same Voyage both which said Sums for freight Amounting
to the Sum of Two thousand Eight Hundred and Fifty Pags
they Your Petitioner and the said Abdul Razack were to pay
as well as the Wages Batta and other Charges of the Commander
Mates Syrang Lascars and Waters that Your Petitioner
as to be Accountable to the Owners of the said two Vessells to pay
the Freight and that the said Abdul Razack was to deliver
the said two Vessells to Your Petitioner on Account of the Owners
of them at Bandermalanca Ready to go a Voyage to Bengal in or
about

About the Month of June in the said Year One thousand Seven
Hundred and Seventy Six and the said Abdul Razack was to
be Answerable for half of the Freight Money and the Goods that
were to be Shipped on the said Vessell such as Cocoanuts Beetle
Nuts Iron Ghee Copper Cloth or Piece Goods &c. the Purchase
whereof and all other Expences attending the same and of the said
two Vessells to be Accounted for and paid by and between Your Petr.
and the said Abdul Razack Share and Share alike and the said
Abdul Razack was to Sell the said Goods or Cargoes at Pegu on
the Joint Account of himself and Your Petitioner and to Purchase
a Cargo for the said two Vessells fit for the Madras Market such
as Teak Timber Plank &c. and Ship them and take Goods on
Freight if Offered which and other Profits were to be divided
Equally between Your Petitioner and the said Abdul Razack
and the said Abdul Razack was to sail with the said two
Vessells directly to Madras with their Cargoes and Land and
deliver their Cargoes and Freight Goods by the means of Your
Petitioners Gomastah or Agent and sell the said Cargoes which
the said two Vessells might bring from Pegu by the Consent of
Your Petitioners said Gomasta According to the Market
Price and the said Vessells were immediately afterwards to
be dispatched from Madras to Bandermalanca and delivered
to Your Petitioner on Account of the Owners According to the
time Limited and Your Petitioner was to Pay the Sum of two
thousand

thousand three hundred and Fifty Madras Pagodas being the ballance of the Freight of the said Vessells which remained unpaid but to be on the Joint Account of Your Petitioner and the said Abdul Razack as the same was to be paid to Your Petitioner out of the Produce of the said two Cargos from Pegu and the remainder of the Produce thereof after deducting the Money Advanced or paid by Your Petitioner and the said Abdul Razack for or towards the Purchase of Goods &c.a for the said two Vessells was to be devided between Your Petitioner and the said Abdul Razack Share and Share alike and the Profit and Loss of the said Concern were to be on the Joint Account of Your Petitioner and the said Abdul Razack and if the said Abdul Razack did not deliver the said two Vessells According to the Limited time to the said Abdul Razack was to pay his half of the Freight of what the Owners might Charge for or on Account of the said Vessells on the detention of them or on Account of the Owners Loss of the intended Bengal Voyage as by the said Agreement Signed by the said Abdul Razack on Your Pet.rs Custody and Ready to be produced if Required will fully and at Large Appear Your Petitioner further Shewed unto the said Honble the Mayors Court that the Freight of the said Vessells and the Goods Shipped thereon on the said Occasion did Amount to the Sum of Ten thousand and Seventy Seven Pagodas and four Sixteenths of a Pagoda four thousand Eight hundred

Hundred and Forty three Pagodas and Nine Sixteenths of a Pagoda whereof was Paid by the said Abdul Razack and two thousand Eight Hundred and twenty Six Pagodas and Seven Sixteenths of a Pagoda whereof was paid by Your Petitioner as Appears by Accounts Signed and part of them under the Seal of the said Abdul Razack in Your Petitioners Custody and Ready to be Produced for Inspection when Required Besides which Your Pet.r Paid on Account or in part of the Amount of the said Sum of Ten thousand and Seventy Seven Pagodas and Four Sixteenths of a Pagoda the Sum of Fifty Seven Pagodas and a Quarter for Sundries and the for the Sum of two thousand three hundred and Fifty Pagodas which was the ballance due from both the said Abdul Razack and Your Petitioner for the Freight of the said Vessells which he Your Petitioner voded by desire of the said Abdul Razack he Your Petitioner thereby Payong of the Amount of the said Freight and Goods including the said Fifty Seven Pagodas and a Quarter the Sum of Five thousand Two hundred and thirty three Pagodas and Eleven Sixteenths of a Pagoda Your Petitioner further shewed unto the said Honble the Mayors Court that Matters Regarding the said Voyage having been put on the Footing beforementioned and Your Petitioner and the said Abdul Razack having given the said Owners of the said Vessells an Agreement to Return the said Vessells in the time beforementioned for that purpose

the

the said Abdul Razack Sailed with the said Vessells for Pegu
aforesaid where the said Abdul Razack did not endeavour to
dispose of the said Goods or Cargo in Order to Return with a
Cargo soon to this Place as he should have done in Conformity
to his Engagements but intended to go a Voyage from Pegu to
another Place which the Owners of the said Vessells hearing
of and finding the said Vessells did not Return According to
the time Limited they the said Owners came to Your Ext.
and insisted upon him Your Petitioner Paying Money or
Freight on Account of the said Vessells not being Returned
to Proceed on the Bengall Voyage as Agreed on Your Ext.
was therefore under the Necessity to pay on Account thereof
the Different Sums of three Hundred and Ten Pagodas
Nine hundred Pagodas and One hundred and twenty Six
Pagodas making together the Sum of One Thousand three
Hundred and thirty six Pagodas for on Account of the said
Freight and the said Vessell not being Returned so that Your
Petitioner Advanced or paid the Sum of Six thousand five
Hundred and Sixty Nine Pagodas and Upwards on
Account of the said Concern to the time of payment of the
said Freight as will Appear by the said Accounts thereof
in Your Petitioners Custody and Ready to be produced if
Required in which is included a Sum of Fifty Pagodas paid
Sawra Mahomed on Account of the said Abdul Razacks

Vessell

Vessells hereon after mentioned making together the Sum of Six thous
and Six hundred and Nineteen Pagodas twenty Six Fanams and
Sixty Cash the Amount of the said Account Exclusive of Interest
Your Petitioner further Shewed that at the Expiration of One Year
or thereabouts the said two Vessells Loaded with Teak Timber and
Two Horses Arrived at Madras to the said Abdul Razack having
given an Order for two thousand Pagodas being paid to Mr. Sourdan
Out of the Proceeds of the said Cargoes brought from Pegu, there was
also a ballance of Seventy Pagodas due to the Mates and Lascars
on Account of which the said Abdul Razack had given Orders to
his Gomasta Abdul hadjee to come upon the said Vessells and
Pay the said ballance and Receive the said Goods Keeping Your
Petitioners Gomasta with him the said Abdul Razack also
Ordered his said Gomasta to give two of the said Horses to
Mahomed Hussain and two of the said Horses were sent to
Your Petitioner the Remaining One Horse the said Gomasta was
to keep in Madras for his own Use which said Matters being
by Your Petitioners Gomasta or Agent Shollapragada Sremalaroy
Communicated in writing to Your Petitioner from Madras the
Your Petitioner was much surprized thereat thinking it very
Extraordinary that the said Money was by the said Abdul
Razack Ordered to be paid out of the Amount of the said Cargoes
when the said Abdul Razack had taken such a Quantity of
Goods with him and Wondering that could have become thereof
no Account having been sent to Your Petitioner of or Regarding
the same or Reasons given for such the said Abdul Razacks

Conduct

Conduct in or with Regard to the Business of the said Concern
between him and Your Petitioner &c Your Petitioner was also at
a Loss to know what Method he must take Regarding the said Goods
as Your Petitioner found it was impossible for him to receive the
said Goods without paying or advancing the said Money which
the said Abdul Razack had Ordered to be paid as aforesaid
and it not being in Your Petitioners Power to Advance the said
Money Your Petitioner wrote to his said Gomasta that he had
Money to send them but in Order that the said Goods might
not be improperly disposed of on Account of the said Money
which the said Abdul Razack had Ordered to be paid as aforesaid
&c Your Petitioner wrote his Gomasta to Pledge the said Goods
to any Body and borrow Money for that Purpose on gomas
Your Petitioners and the said Abdul Razacks Joint Bond
which he and the said Abdul Razacks Gomasta might do
and after discharging the said Money by the said Abdul
Razack Ordered to be paid as aforesaid then they the said Gomasta
Might discharge the Money which they might take up by
Degrees by selling the said Goods as to be Pledged as aforesaid
whereupon Your Petitioner Shewed that the said Gomasta did
Accordingly borrow some Money from some Body thro' the means
of Narrain Pillah and paid the said Mr. Sourdan and the said
Mates and Lascars what was due to them respectively and
Afterwards they the said Gomastas Sold the said Goods by
Degrees thro' the means or with the Privity and Consent of the
Persons

who received the said Goods in Pledge and Paid the Produce
thereof as was Requisite in discharge of the Debt incurred by taking up
the said Money as aforesaid Your Petitioner further Shewed that
about three Months afterwards the said Abdul Razack arrived at
Masulipatam with a Vessell which he had got built at Pegu and
wrote Your Petitioner from thence that he was Indebted to an armine-
an Merchant named Coja which he called Kewas Emorat about three
thousand Pagodas and for which he had Pledged the said last
Mentioned Vessell and her Cargo or the Goods he had brought on
her and Unless the said Abdul Razack paid that Money he the said
Armenian would not let him & and the said Goods nor let him the
said Abdul Razack stir from thence if therefore Your Petitioner
would help him with Something (meaning Money) for the said
Abdul Razack would come to Your Petitioner and shew how
Petitioner whatever Goods he had and he would also put the Goods into
Your Petitioners Possession at which Your Petitioner was very much
Surprized and in Answer he Your Petitioner desired to know what
Goods he was going to bring or had brought upon the said Vessell and
what Goods he had brought in return for the Money that Your Petitioner
had Advanced as aforesaid that nothing was to be done from Your
Petitioner but that if he the said Abdul Razack would come and
Shew Your Petitioner the said Goods with the Profit for the Money
that he Your Petitioner had Advanced then Your Petitioner would
Consider of what he desired Otherwise he had no Reason to Except any
thing to be done from or by Your Petitioner but Your Petitioner shewed

that

That Instead of the said Abdul Razacks complying with such
Your Petitioners Request a Gomasta belonging to Your Petitioner
being at Masulipatam he the said Gomasta and the said Abdul
Razack together Drew a Bill of Exchange for Sixty Pagodas upon
the Gomastas at Madras before mentioned and the said Abdul
Razack Recived that Money and Spent it or employed it to his
own Use the said Abdul Razack did also Land some Goods
from his said Vessells at Masulipatam and Afterwards the said
Abdul Razack came to Your Petitioner and said that the People
who then had Tanakas Orders or demands on the said Goods
brought on his said Vessell would not Suffer him to Land the
Rest of the said Goods he the said Abdul Razack also that
there came Goods on the said other Vessells to Madras to the
Value of Ten thousand Pagodas or thereabouts and that Six
thousand Pagodas Worth of Goods came on his the said
Abdul Razacks own Vessell and when there was such a large
Quantity of Goods he the said Abdul Razack asked Your Pet.
in a very particular Manner why he Your Petitioner did not
Protest Against him to which Your Petitioner Answered that
he never saw such a strange thing any where that Your Petitioner
had Recived no Satisfaction for the Goods which the said Abdul
Razack carried on the said Voyage or the Money which Your
Petitioner had Advanced as aforesaid besides he had already
borrowed three thousand Pagodas upon the Goods that were on
Partnership between him the said Abdul Razack and
Your

Your Petitioner and still he came again to ask Your Petitioner
to lend him Money Your Petitioner did then also demand of the
said Abdul Razack to devide the Goods which came from Pegu
on Account of him Your Petitioner and the said Abdul Razack
and give Your Petitioner his Share thereof with an Account of the
same and then let him make good his Business with his own
Goods or Property To which the said Abdul Razack Replyed that
he had no Clerk then nor was the Nakada there to give the
Accounts besides the Creditors trouble him very much He the said
Abdul Razack then took his Departure for Masulipatam Your
Petitioner further set forth that he was informed two Persons named
Boochoo Comala Nabaw and Sevengalum had lent some Money
to the said Abdul Razack being part or on Account of the Money
that was Advanced by the said Abdul Razack on Account of
the said Concern or Voyage and that the said two Persons sent
for the said Abdul Razack to Jagnaudapurum about the said
Money Whereupon the said Abdul Razack went to them and
Stayed above a Month and told the said two Persons that he
had same Goods at Madras Meaning those which came on his and
Your Petitioners Joint Account as before mentioned out of which that
Debt would be discharged and that there was another Vessell
which he had got built and Goods upon her but that she was
Pledged and he had make a Tanaka or Order upon the said
Goods to an Armenian Named Emeral on Account of which
the said Armenian had Stopped the said Goods being Landed from

the

the said Vessell for three Months, So that the said Vessell Remaind with the said Goods upon the Sea, but that he the said Abdul Razack would put the said Vessell and Goods either into the Possession of the said Boochoo Camala Naban and Trevengalum or into Your Petitioners Possession upon their or Your Petitioner Agreeing to discharge the Debt of the said Armenian upon which the said Boochoo Comala Naban and Trevengalum came to Your Petitioner and asked him about the said Affairs and if the Your Petitioner would Advanced Money on Account of the said Concern to which Your Petitioner Answered that he had no Money and that he had not Received the Money which he Your Petitioner had Advanced for the said Pegu Voyage nor had the said Abdul Razack given Your Petitioner an Account of it therefore Your Petitioner could not do any thing in the said Busines which they Applyed to him about but Your Petitioner told them that there were the said Goods at Madras out of the produce of which the said Narrain Pillys Debt was to be paid and the Remainder thereof he Your Petitioner must Receive on Account of his said Demand and After the said Abdul Razack has given Your Petitioner a true Account of the said Concern between him and Your Petitioner if any Ballance should Appear to be due to him he Your Petitioner would pay it - Whereupon the said Boochoo Camala Naban and Trevengalum said if Your Petitioner would leave all the said Goods to them they would Discharge the

said

Said Narrain Pillys Debt out of the produce of the said Goods and then the Remaining Goods and also the said Abdul Razack's own Vessell with the Goods belonging to her they would take into their own Possession and also discharge the other Debts or Orders on the said Goods with the produce of the Remaining Goods and if after that there was any Money Remaining they would Receive Two thousand Pagodas out of it for their Debt and at last if any Still Remained they would pay the same to Your Petitioner for or on Account of his said Demand and the said Boochoo Camala Naban and Terevengalum repeatedly said they would discharge all the said Debts and take all the said Goods into their Possession and that they would also take an Agreement from the said Abdul Razack for or on Account of the same and that if Your Petitioner did not Consent to this he Your Petitioner would be Obliged to be Answerable for their Money which Matters Your Petitioner took particularly into Consideration and thought it would be the best to Consent to their Request hoping that he Your Petitioner might in the End Receive some Satisfaction for or Account of his said Debt or demand on Account of the said Concern with the said Abdul Razack the said Goods were accordingly with the Consent of the said Abdul Razack delivered to the said Boochoo Camala Naban and Trevengalum for which they gave a Receipt they did by desire of the said Abdul Razack give Your Petitioner an Agreement about the said Goods and the Payment of the said Debts and about the said two thousand Pagodas and payment of

the

the Remainder to Your Petitioner but if there should be any
Deficiency they should Demand the same from the said Abdul
Razack that Your Petitioner had no Business to be Answerable
for it as will more fully and at large Appear by the said
Agreement in Your Petitioners Custody and Ready to be
Produced for the Inspection of the said Honble Court if Required.
Your Petitioner further Shewed that after the said Matters had
been put on the footing beforementioned by and with the Know-
ledge Approbation and Consent of the said Abdul Razack He
the said Abdul Razack Promised to give Your Petitioner an account
of the said Concern between him and Your Petitioner as also the accounts
of the said Goods and Debts whereupon Your Petitioner wrote to
Comanda at Madras to deliver the said Goods to the said Boocha-
Camala Naban and Trevengalum in Conformity to the said Agree-
ment and then come to Your Petitioner which the said Gomasta
did Deliver Accordingly thro the said Narrain Pillah and
Returned to Your Petitioner Your Petitioner further Shewed that
Instead of the said Business being Transacted as was Agreed on
as before mentioned they the said Boochoo Camala Naban
and Trevengalum Sold or Caused the said Goods to be Sold
And Discharged the said Debt of the said Narrain Pillah
and the Remainder they the said Boochoo Camala Naban
Trevengalam And Razack or some of them Received and Kept
without either paying Your Petitioner any thing thereout of
on Account of his said Concern or demand or giving unto Your
Petitioner any Accounts whatever thereof or Regarding the

same

Same but Instead thereof and Notwithstanding all the said
Matters and Circumstances the said Abdul Razack did make
out or produce (but not Your Petitioner) Sundry Accounts making
Various and Unjust Charges both with Regard to the Matters of
the said Concern between him and Your Petitioner in the said two
first mentioned Vessells and Cargo and the said Voyage and also
on Account of the Vessell which he the said Abdul Razack caused
to be built at Pegu as aforesaid and Omitting to give Your
Petitioner Credit for the Sums which he Your Petitioner had
Advanced or paid on Account of the said concern and the said
Abdul Razack making out his Accounts in that way pretend-
ing that Your Petitioner was Indebted to him in that Sum
of Four thousand Nine hundred and Fifty two Pagodas and
Ninteen Fanams as the Ballance of the said Accounts he the
said Abdul Razack did as is Alledged in Order to Recover from
Your Petitioner the said pretended ballance or Sum of Money Instead
of giving Your Petitioner a just and Fair account of the said
Concern and paying what might Appear due to Your Petitioner
thereon Transfer the same unto Agapiery Thaddeus Calendar
of Madras Merchant who did on the fifth day of June which was in
the Year of Our Lord One thousand Seven Hundred and Seventy
Eight Exhibit a Bill of Compliant in the said Mayors Court
Against Your Petitioner for the said Sum of Four thousand Nine
Hundred and Fifty two Pagodas and Ninteen Fanams and
He the said Agapiery Thaddeus Calendar did on the same day
that the said Bill was filed Swear that Your Petitioner was
Indebted unto him in the said Sum of Four thousand Nine

Hundred

Hundred and Fifty two Pagodas and Nineteen Fanams and that he had Reason to believe Your Petitioner would Withdraw himself from the Jurisdiction of this Honble Court on hearing that a Bill was filed against him all tho Your Petitioner humbly hopes and doubts not but it will appear to this Honble Court very Extraordinary how the said Agapeery Shaddues Calendar could have arrived at that certain Knowledge Regarding the affairs Accounts and Matters depending between Your Petitioner and the said Abdul Razack which would Authorize his swearing the same as he the said Agapeery Shaddues Calandar who was at Madras and Your Petitioner at Bandermalanca two Hundred and Sixty six Miles or thereabouts distant there-from could not have an Opportunity of Knowing Personally from Your Petitioner whether he Your Petitioner had any Objections to the said demands or whether Your Petitioner was or was not Indebted to the said Abdul Razack in the said Sum or in any other Sum whatever nor did the said Agapeery Shaddues Calendar ever write to or Inform Your Petitioner of the said demand or of the said Transfer being made to him or of his Intentions to Prosecute Your Petitioner however the said Agapeery Shaddues Calendar having taken the said Oath did thereupon Obtain a Summons Returnable immediately and a Warrant of Arrest against Your Petitioner as will more fully and at large Appear by the said Bill of Complaint and the Records of the said Honble the Mayors Court to which Your Petitioner craved

Craved Reference Your Petitioner further Shewed unto the said Honble the Mayors Court that Notwithstanding he Your Petr. was at such a distance from Madras from which a Considerable time was Necessary for the Process of the said Court to be Served on him Yet on the Ninth Day of the said Month of June One thousand Seven hundred and Seventy Eight the said Summons and Warrant of Arrest Instead of being Dispatched to be Served on Your Petitioner were returned to the said Honble the Mayors Court not to be found as if Your Petitioner had really been sought and could not be found, so that there was only four Days between the time of the said Summons and Warrant of Arrest being Granted and their being returned, and upon such return the Attorney for the Complainant prayed for a Warrant of Sequestration to Seize the Effects of Your Petitioner All tho Your Petitioner had not had the least Notice of the said Bill being filed, And upon the said Agapeery Shaddues Calandar taking the Usual Oath of Your Petitioner having been without the Jurisdiction of the said Mayors Court since the cause of Action arose the said Court were pleased to Grant the said Sequestration whereby the Sheriff did at the instance of the said Agapeery Shaddues Calendar Seize or Sequester a Considerable Quantity of Paddy belonging to Your Petitioner which was in three heaps Granaries or Stacks at Madras to the Value of about three thousand Pagodas as will appear by the Sheriffs Return of or upon the said Sequestration which was made on the Sixteenth day of the said Month of June One thousand Seven Hundred and

Seventy

Seventy Eight and which Your Petitioner craved Reference, which said Caddy hath been since Sold by the Sheriff for a Considerable Sum of Money the Amount whereof has been paid to or Appropriated to the Use of the said Agapury Thaddeus Calendar by the said Agapury Thaddeus Calendar having on the Unjust principles beforementioned Obtained a Decree against Your Petitioner on the twelfth Day of January One thousand Seven hundred and Seventy Nine for the said Sum for which said Suit was so as aforesaid Unjustly Commenced without Your Petitioner having the least Notice thereof or being Summoned or having an Opportunity to Appear Supersede the said Sequestration and Defend the said Suit Your Petitioner further Shewed that the said Agapury Thaddeus Calendar not Consent with the before-mentioned Unjustifiable Conduct and Proceedings) the Sheriff did at the instance of the said Agapury Thaddeus Calendar also Seize a Vessell in the Road of Madras belonging to Your Petitioner called Sreevencatashaloo Burthen three hundred Tons or thereabouts which was sold by him the said Sheriff for the Sum of One thousand Four hundred and twenty Pagodas which was paid to or Appropriated to the Use of the said Agapury Thaddeus Calendar Your Petitioner further Shewed that the said Agapury Thaddeus Calendar did also Obtain a warrant of Execution on the said cause against the Effects of Your Petr on or about the tenth Day of April One thousand Seven Hundred and Seventy Nine Directed to the Sheriff by Virtue whereof the the said Sheriff did at the instance of the said Agapury Thaddeus Calendar Seize two other Vessells belonging to Your Petitioner named Ramasawmy and Jaganayacooloo in Madras Road which he the said Sheriff hath since Sold the said Vessell called Ramasawmy he the said Sheriff Sold for Four hundred and Fifty or Four hundred and Fifty five Pagodas or thereabouts and the said Vessell called Jaganayacooloo for Seven hundred and thirty Pagodas or thereabouts the Monies Sales of which said two last Mentioned Vessells doth Still Remain in the hands of the Sheriff he Your Petitioner having by his said Attorney on the Sixteenth Day of April which was in the Year of our Lord one thousand Seven hundred and Seventy Nine presented a Petition to the said Honble the Mayors Court in which stiled Your Petitioners said Attorneys on behalf of Your Petitioner Represented to the said Honble Court as much of Your Petitioners Case Relative to the matters in Question as had then come to their Knowledge and Your Petitioner did by his said Attorneys in and by the said Petition humbly pray that the said Honble Court would be pleased to order that the Seizure of the said two Vessells Named Ramasawmy and Jaganayacooloo might be Superseded and the Sheriffs Seals taken therefrom or in case the said Vessells or either of them were Sold that the produce thereof might either be paid to Your Petitioner or be stand in the hands of the Sheriff until such time as the said Honble the Mayors Court Should seem Meet and might be Agreeable to Equity and good Conscience

Conscience and that the Costs and Damages Occasioned to Your Petitioner by the said Illegal Conduct therein mentioned and the said Illegal Seizure of the said two last mentioned Vessells might be Awarded to Your Petitioner He Your Petitioner did also pray such further and other General Relief in all and Singular the Premises as to the said Honble Court should seem Meet Your Petitioner further Shewed that the said Honble Court were Pleased on the twenty Seventh day of the said Month of April One thousand Seven hundred and Seventy Nine to Order the Sales of the said two last mentioned Vessells by the Sheriff might be Stopped or in case the said two Vessells should be sold that the Amount might Remain in the hands of the Sheriff Untill the Right of Property be ascertained as will more fully and at Large Appear by the Records of the said Honble the Mayors Court to which said Petition the said Abdul Razack by his Attorney the said Agapiery Thaddeus Calendar put in an Answer thereby Acknowledging that Your Petitioner and the said Abdul Razack did inter into an Agreement about the said Pegu Voyage pretended he Acted Accordingly pretending also that Your Petitioner had not laid out and Expended the Sum of Ten Thousand Eight Hundred and Fifty Nine Pagodas twenty Six fanams and Sixty Cash as mentioned in Your Petitioners said Petition (whereas Your Petitioner only mentioned that the Sum he had paid laid out and Expended on account of the said Concern Amounted to that Sum Including Interest) saying that no such Accounts Exist as Mentioned by Your

Your Petitioner that the Sundry Accounts Annexed to the said Bill of Complaint are just and true the Ballance thereof Sued for as aforesaid justly due by Your Petitioner that he made the said Transfer to the said Agapiery Thaddeus Calendar who filed the said Bill, obtained the said Summons and Warrant of Arrest and that they were Returned and Warrand of Sequestration Obtained as before Set forth by Virtue whereof the Sheriff at the Instance of the said Agapiery Thaddeus Calendar did Seize or Sequester a Quantity of Paddy belonging to Your Petitioner which was Sold and the Nett Proceeds thereof Amounting to the Sum of One thousand and Ninety three Pagodas and Fifteen fanams the said Agapiery Thaddeus Calendar did Recieve from the Sheriff to his Use that he Obtained a Warrant of Execution by Vertue whereof the Sheriff did at the Instance of the said Agapiery Thaddeus Calendar Seize the said Vessells called Ramasawmy and Jaganaygacooloo Pretending Your Petitioner Should not have Petitioned but have made such Application for Redress as the Laws Prescribe and praying that the said Seizure may not be Superceded but that the said Vessells might be Sold and the produce thereof Appropriated towards the discharge of the said Decree but Your Petitioner in his said Bill Shewed that all the the said Agapiery Thaddeus Calendar doth allege that Your Petitioner was out of the Jurisdiction of the said Honble Court when the said Bill was filed and the said Process Issued thereon or in Consequence thereof or of the Applications and Proceedings of the said Agapiery Thaddeus Calendar

Calendar Yet he doth not any wise Alledge or pretended that Your
Petitioner was Served with a Summons or any process whatever of or
from the said Mayors Court Commanding his Appearance to the
said Suit whereby he Your Petitioner would have had legal Notice
thereof, but pretends he told Your Petitioners Gomasta Agent or
Attorny who he says was then at Madras of his Intentions of filing
the said Bill, whether he did so or not Your Petitioner doth not
Know But Your Petitioner shewed that the said Person was and
is a Native of the Contry to the Northward of and along Way from
Madras and Ignorant of Matters of this Nature. Besides what
the said Agapiery Thaddeus Calendar so alledges can by no means be
Considered as Legal Notice to Your Petitioner of the said Suit and
such the said Agapiery Thaddeus Calendar Proceedings in Consequence
as therein and hereon before Set forth, and as the said first process
were Returned not to be found when Your Petitioner was to be found
and might have been Summoned to Appear to the said Suit the
same as well as the said Sequestration decree and Executions Obtained
thereon or in Consequence thereof were Illegally Obtained therefore
Void as well as every thing that was done thereon or in Virtue thereof
and Consequently the said Agapiery Thaddeus Calendar became
Illegally possessed of the Money Acknowledged by him to have
been received from the Sheriff as well as the other Money which he
did so Receive as aforesaid, the Seizure of the said Caddy and first
Vessell which produced the same being Illegal and the Seizure

of

of the said two last Mentioned Vessells was also Illegal and Void
and Your Petitioner in course Intitled to the Amount Sales thereof
as well as the Damages which he Your Petitioner hath Sustained
thereby or in Consequence thereof on Account of the said Caddy being
so Illegally Seized and Sold as aforesaid and the said three
Vessells being so as aforesaid Seized and Sold Instead of their
being by Your Petitioner employed in Trade and Merchendize
Agreeable to his Your Petitioners Intentions so that Your Petitioner
hath been Illegally divested of his Right and property as he
Your Petitioner humbly hoped and doubted not would clearly
Appear to the said Mayors Court by the aforegoing Just and true
State of the Case Your Petitioner further Shewed unto the said
Honble Court that he Your Petitioner hath on the Account
and for the Reasons therein and hereon before Set forth frequently
and in an Amicable Manner Requested Payment from the
said Agapiery Thaddeus Calendar of the said Several and Respec-
tive Sums of One thousand Ninety three Pagodas and Fifteen
Fanams the Nett proceeds of the Sales of the said Caddy and
the said Sum of One thousand Four hundred and twenty Pagodas
the Amounts Sales of the said Snow Streevencatachariar making
together the Sum of Two thousand Five hundred and thirteen
Pagodas and Fifteen Fanams with Interest also that he Your
Petitioner might be permitted to Receive from the Sheriff the
said two Several Sums of Seven Hundred and thirty Pagodas
and four hundred and fifty or Four hundred and fifty five Pags

the

the Amount Sales of the said two Vessells called Jaganayacoloo and Ramasawmy the said two Sums Added to the said other Sums of Two thousand Five hundred and thirteen Pagodas and Fifteen Fanams making together the Sum of three thousand Seven hundred and thirteen Pagodas and Fifteen Fanams or upwards According to the said Amount Sales of the Ramasawmy and that the said Agapeury Shadduss Calendar might pay Interest for the Same on Account of the detention thereof by or on Account of him the said Agapeury Shadduss Calendar together with such Damages as Your Petitioner hath Suffered or Sustained by or in Consequence of the Illegal Seizure and detention of Your Petitioners said Property as aforesaid but that the said Agapeury Shadduss Calendar Obstinately and wilfully Refused to Comply with such Your Petitioners Just and Reasonably Request or to Give Your Petitioner any Manner of Satisfaction touching the Premises under Colour of several Unjust frivolous and Evasive Pretences he the said Agapeury Shadduss Calendar pretending that the said Warrant of Sequestration decree and Execution by Virtue whereof the beforementioned Seizures were made were Fairly and Legally Obtained and therefore that the same ought to be binding on Your Petitioner, whereas Your Petitioner Expressly Charged that the same were not fairly and Legally Obtained but Illegally Obtained and therefore ought not to be binding on Your Petitioner or be any of Validity whatever for

For Your Petitioner with all due Submission in his said Bill Charges that it was and is by no means the intent of the Legislature that a Person should be divested of his Property without having Legall Notice of a Suit and being Served with the Usual Process to Appear and Answer the same for by the Act of the Fifth of George the Second Chapter the twenty Fifth where a Defendant cannot be found to be served with Process and it is believed he absconds to Avoid being Served with Process of Subpana upon an Affidavit thereof the Court makes an Order Appointing him a day to Appear to the Plaintiffs Bill which Order to be Inserted in the Gazette and Read in the Parish Church of the last Place of the defendants abode and up at the Royal Exchange, and this is the Practice of his Majestys High Court of Chancery and which Your Petitioner in his said Bill Charges Clearly Shew that a Sequestration to Seize the Property of a Person Prosecuted is not to be Obtained Clandestinely but that before a Process of so high a Nature is granted every Publick and possible means is to be Used to have the Proofs of the Court served in Order that the Defendant may have Legal Notice of a Suit being Commenced against him and that he may Appear thereto and Answer the same if he has cause so to do and Your Petitioner in his said Bill Chargeth that he had Great Cause to answer the said Bill of Complaint the same being very Unjust and Illegal.

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a Particular Affidavit is also Necessary to Shew unto a Court that a Defendant did withdraw himself from the Jurisdiction of the Court to Avoid being served with the Process of the Court or that Strict Search and Deligent enquiry hath been made for a Defendant at his Usual Place of Residence or abode and that he cannot be found to be Served with the Process of the Court Your Petitioner doth also in his said Bill Charge and Aver that he Your Petitioner did not Abscond or withdraw himself from the Jurisdiction of the said Honble Court to Avoid being Served with the Process thereof nor had Your Petitioner the least Cause or Reason so to do for Your Petitioner was either Indebted to the said Abdul Razack nor to the said Agapiery Shadduce Calendar and he Your Petitioner was also Ignorant both of any Intention to Commence any such Suit or any Suit whatever against Your Petitioner and of the Nature and Consequence of the Process and when he Your Petitioner heard long after the Commencement of the said Suit of his Caddy and First Vessell being Seized and Sold and the Amount thereof being paid, to whom and for what he could not tell, and Afterwards of the Seizure of his said two other Vessells he Your Petitioner was much Surprized thereat and could not Conceive the Cause or reason of it or how it came to pass he Your Petitioner with all due Submission never Imagining that he Your Petitioners property was

Way not safe at Madras under the British Flag and the Protection of the East India Company or their Agents or Representatives at this Place all actings doings and pretences of the said Agapiery Shaddues Calendar Your Petitioner Set forth are Contrary to Equity and good Conscience and tend to the Manifest Wrong Injury and Oppression of Your Petitioner and Your Petitioner doth Lastly In his said Bill of Complaint humbly Pray that the said Sequestration and Executions and the said Seizures made thereby or by Virtue thereof be declared Null and Void and the said Decree Reversed and Set aside on the Account and for the Reasons beforementioned and that the said Agapiery Shaddues Calendar may be Decreed to Pay unto Your Petitioner the said Several and Respective Sums of Money for which the said Caddy and the said Vessell Shroff several Lacharloo were Sold and that the Sheriff may be Ordered or Decreed to pay unto Your Petitioner the several and Respectives Sums of Money for which the said Vessells Ramasawmy and Jaganayacoolo were Sold as aforesaid and in the mean time and untill the said Honble Court might think proper last mentioned Vessells unto Your Petitioner that the said Court would be pleased to Order that those two Sums may Remain in the said Sheriffs Hands and that the said Agapiery Shaddues Calendar may be further Decreed to pay unto Your Petitioner all such Interest as now is or shall hereafter become

due

Due on the said Several and Respectives Sums of Money Received by and Detained by or on Account of him the said Agapeery Thaddeus Calenders Proceedings as aforesaid also all Costs of the said Suit.

To which said Bill of Compilaint the said Aga Peery Thaddeus Calender did on the Eleventh Day of April in the present Year of our Lord One thousand Seven Hundred and Eighty put in a Demurrer instead of Answering the said Bill and the Several Matters therein Contained Setting forth many Evasive and Unjust Matters by Way of Demurrer thereby Evading Answering the said Bill and Submitting to the Judgment of the said Mayors Court whether he is Under a Necessity of Making any other Answer thereunto To which said Demurrer Your Petitioner put in a Joinder thereby clearly Refuting every Matter and thing in the said Demurrer Alledged and Set forth as cause of Demurrer and praying that the said Demurrer might be Overruled with Costs and the said Agapeery Thaddeus Calendar put upon his Answer as will more fully and at Large Appear on Reference thereto Your Petitioner further Sheweth unto this Honble Court that the said Demurrer and Joinder were Set down for arguing and coming on to be Argued and determined by and before the said Mayors Court on Tuesday the thirteenth Day of June in this present Year of our Lord One thousand Seven hundred and Eighty the said Court were of Opinion that the Plea or made Use of by the said Agapeery Thaddeus Calendar in his Demurrer were good and Sufficient the said Court did therefore think fit to Order and did Accordingly Order that Your Petitioners said Bill do stand Dismissed with Costs as will more fully and at large Appear by the said Order of the said Mayors Court which comes herewith for the Inspection of this Honble Court.

From which said Order of the said Mayors Court Your Petitioner doth Appeal to this Honble Court as he conceives the same is Erroneous and that he Your Petitioner is Aggrieved thereby.

First Because the said Sequestration Decree and Execution were unfairly and Illegally Obtained and Your Petitioners Property Illegally and Unwarrantably Seized Disposed of and Converted to the Use of the said Agapeery Thaddeus Calendar and being so Your Petitioner had a Right of Action against the said Agapeery Thaddeus Calendar on the Account in Order to Recover the Property so Illegally Possessed by him the said Agapeery Thaddeus Calendar and which he the said Agapeery Thaddeus Calendar hath Acknowledged to have been possessed by him as in Your Petitioners said Bill is Set forth abated on Account of the Seizure of Your Petitioners two last mentioned Vessells which the said Agapeery Thaddeus Calendar hath Acknowledged to be Your Petitioners Property

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Secondly Because Instead of the said Court Overruling the said Demurrer with Costs and Ordering the said Agapeery Thaddues Calendar to put in an Answer to Your Petitioners said Bill the said Court have Ordered that Your Petitioners said Bill do Stand and dismissed with Costs whereby Your Petitioner is not only deprived of his Property and Prosecuted from Recovering the same from the said Agapeery Thaddues Calender whoit clearly Appears has Illegally Possessed himself of it and caused it to be Seized to a considerable Amount and occasioned great Loss and damage to Your Petitioner thereby but Your Petitioner is also put to a Considerable Expence on Account and in Consequence thereof

Thirdly Because the Reason Assigned for the said Mayors Court Making such Order is that the Pleas made Use of by the said Agapeery Thaddues Calendar are good and Sufficient Whereas Your Petitioner humbly conceives it clearly Appears that he Your Petitioner had never any Legal Notice of the said Original Suit being Commenced against him therefore that the said Agapeery Thaddues Calendars Proceedings in the said Cause were Illegally as well as the Seizures made by him or at his Instance that he had not therefore any Right Power or Authority to Receive or Possess Your Petitioners Property or the Amount or Proceeds thereof that He has not in his said Demurrer shewn any such Right or

that

That his Proceedings were Legall but that on the Contrary Your Petitioner hath in and by his said Joinder Refuted what the said Agapeery Thaddues Calendar hath Alledged by way of Demurrer and Shewn the Insufficiency thereof to bar Your Petitioners said Action and Consequently that the said Demurrer should have been Overruled with Costs and the said Agapeery Thaddues Calendar put upon his answer agreeable to the Prayer of Your Petitioner

All which Matters and things Your Petitioner Submits to the Judgement of this Honble Court and humbly Prays that the said Order of the said Mayors Court dismissing Your Petitioners said Bill may be Reversed and Set aside with such Costs to be paid by the said Agapeery Thaddues Calendar as this Honble Court may be think proper and that the said Agapeery Thaddues Calendar may be Ordered to put in an Answer to Your Petitioners said Bill and Your Petitioner doth Lastly Pray such further and other General Relief in all and Singular the said Premises as to this Honble Court shall seem Meet

Extract from the Minutes of a Court
Held at the Town Hall on Tuesday
the 13th Day of June Anno Domini 1780

Present

Edward John Holland Esq. Mayor
James Call and Thomas Cooper
Aldermen

Bauboo Rauz otherwise Boopathy Rauz
Baupu Rauze by his Attorney Moses de Castro Thomas
Telling and John de Freis

Vers

Agapeery Thaddeus Calindar

Bill Read

Demurrer Read

Sainder Read

The Demurrer and
Sainder coming on to be Argued and determined this
day in the Presence of the Attorneys on both Sides on reading
the Complainants Bill the Demurrer the Sainder and the
Court having had due Consideration thereon are of Opinion
That the Pleas made Use of by the Defendant in his Demurrer
Are Good and Sufficient The Court doth therefore think
fit to Order and doth Accordingly Order that the Compla-
inants Bill do Stand dismissed with Costs

A true Extract

To the Honble John Whitehill Esq.
President and Governor &c. Council of Fort St.
George

In the Court of Appeals at Madras
Salnam

Between Bauboo Rauz
otherwise Boopathy Rauz Baupu Rauz
of Bandermalanca Merchant by his
Attorney Moses de Castro Thomas Tel-
ling and John de Freis of Fort Saint
George Merchants Complainant and
Agapeery Thaddeus Calendar of Madras
Merchant Defendant

The Answer of the said Defendant to the
Petition and Appeal of the said Complainant

His

This Respondent by way of Answer to the said Petition and Appeal or unto so much thereof as he this Respondent is Advised Materialy concerns him to make answer unto Saith it is true that the Petitioner did by his Attorney and at the time in his said Petition of Appeal for that Purpose Mentioned Exhibit a Bill of Compl aint against him this Respondent and did therein Set forth Such Matters and things as he Repeats by way of Recital in his said Petition and Appeal and particularly that in Conse quence of a Certain Concern between him the said Petitioner and One Abdul Ravac as also of a Transfer made by him the said Abdul Ravac he this Respondent did at the time mentioned for that Purpose and for the Sum Set forth in the said Petition and Appeal and so to him Transfered File a Bill of Complaint Against Your Petitioner and that thereupon such Summons and Warrant were Obtained Returnable and Returned as Set forth in the said Petition and Appeal and that this Respondent did by his Attorney Pray for and Obtain a Sequestration whereunder such Seizure was made as the Return thereof had Set forth as also that this Respondent did Afte rwards and at such times as in said Petition and Appeal are for that Purpose Respectively Mentioned Obtain such decree and Warrant of Execution and that under such Execution such Seizure of such Property and in such Place had been made

Made as the said Petition and Appeal for such purposes Respec tively Set forth and this Respondent for further Answer to the said Petition and Appeal says it is true that the Petitioner did by his Attorney and at the time in his said Petition and Appeal for that Purpose mentioned present such Petition for such Purposes and with such Prayer unto the Honble the Mayors Court as is now for that Purposes Set forth in his said Petition and Appeal and that thereupon the said Petitioner did at such time Obtain such Restrictive Order Subject to the Limitation thereon as in the said Petition and Appeal are Set forth and this Respondent further says it is true that to such Petition the said Abdul Ravac did by his Attorney put in such Answer as is for that Purpose in recital in the said Petition and Appeal and this Respondent also Admits it to be true that to such Bill of Complaint so exhibi ted by the said Petitioner and by him Refered to in his said Petition and Appeal the this Respondent did demur for the Reasons Set forth in such demurrer whereto the Petitioner put in a Joinder whereupon and upon such demurrer and Joinder being Argued and determined in and before the Honble the Mayors Court the Petitioners said Bill was Ordered to Stand dismissed and the Pleas made use of in such

demurred

Demurrer Deemed good and Sufficient from which said Order of the Honble the Mayors Court the said Petitioner did Appeal to this Honble Court but for greater Certainty as to the dates Contents and Substances as well of the said Bill Demurrer and Joinder as all other the Proceedings and Orders of the Honble the Mayors Court as also to the said Petition and Appeal and every matter and things therein this Respondt Craves leave to Refer thereunto and to each of them respectively and to have such Benefit and Advantages thereof as if the same were respectively hereinbefore Stated and Set forth and this Respondent for further Answer to the said Petition and Appeal humbly Contends that the said Petitioner Neither had nor has any Reason to Consider himself Aggrieved by such the said Order of the Honble the Mayors Court whereupon he has so Appealed this Respondent humbly insisting that such Order should be affirmed and the Petition and Appeal of the said Petitioner for the following among other Reasons be dismissed with Costs

Because the Petitioner having no Right of Action and his Bill wanting that Merit which might insure it the countenance of the Honble the Mayors Court it became exposed to Demurrer and as such could not escape being dismissed it

very improperly requiring the Honble the Mayors Court to Reverse its own decree at a time when even Regular Application for that purpose was too late and likewise at a time when the said Subject was by Petition before and waiting for the Redress of that Court

Because it Appearing that the Petitioner had such timely information wherefrom he might Regularly and within the Limited time shew any Cause of grievance he might have experienced and it further Appearing that he failed in any Application for that purpose until the usual time in such Cases had elapsed and it Appearing also that his Application for Redress was then by Petition waiting the Hearing of the Court such Bill so in the Meantime introduced upon the same Subject must even from its Irregularity be Rejected

Because the Charter on which the Mayors Court is established and the Book of Instructions which was sent out with and attendant on the said Charter have prescribed certain modes of Redress for all Suitors who should conceive themselves aggrieved which modes ought to be followed to none of which do the Cases of Notice from the Chancery Practice and quoted by the Petitioner in any respect Apply

Because such proceedings as the Petitioner in such Bill seems to exclaim Against were warranted by the Practice of the Honble

the

the Mayors Court and dont Seem any ways Chargeable
with a Surprize upon the Petitioner as this Respondent did
not Obtain his Decree till near Nine Months had elapsed
After the Serving the Sequestration which with Notice that
the Petitioner already had discharged the Pradice from the
least imputation of Surprize or Severity and left not the least
Reasonable Ground to the Petitioner to have exhibited such
Bill as he hath done in the Mayors Court the sole whereof
being due to its own Insufficiency the Judgment of the Mayors
Court was well given

For all which reasons and others which
may be Offered at the hearing this Respondent Prays that
the said Order of the Hönble the Mayors Court may be Affer-
med and that the said Petition and Appeal may be dismissed
from this Hönble Court with Costs

Court of Appeals
at
Madraspatnam

} Se Thursday the 22 November
Anno Domini 1781

Between Baubos Rauz otherwise
Boopathy Rauz Caupe Rauz of
Bandermalanca by his Attorneys
Moses D'Castro Thomas Celling
and John D. Frees Appellant and
Agapery Thaddeus Calendar
Respondent

This Cause coming on this day to be heard and
debated before this Court by the Attorneys on both sides upon hearing
the Petition of Appeal and Answer and the Several Exhibits of the
Hönble the Mayors Court together with the Order of the said Court
Given in this Cause on Tuesday the 13th June Anno Domini 1780
and upon due Consideration had of the Matters therein severally
Contained and of the Pleadings and Arguments used by the Attor-
neys on both sides this Court doth think fit to Order and Decree
and doth Accordingly Order and Decree that the said Order of
the Hönble the Mayors Court dated the 13th June Anno Domi-
ni 1780 given in this Cause be Revers'd that the Demurrer be
Over ruled and that each Party pay his Costs in both Courts

A true

/ Signed / Chas Freeman
Attn

No 5

To the Kings most Excellent Majesty
in Council

Between Bauboo Rawz otherwise
Boopathy Rawz Bauboo Rawz of Bander-
malanca Merchant by his Attorney Moses
De Castro Thomas Pelling and John de Frias
of Fort Saint George Merchants Complainant
and Agapurry Shaddurs Calendar of Madras
Merchant Defendant.

The Humble Petition and Appeal of the
said Agapeery Shadduru Calendar the above
named Defendant.

Sheweth That the abovenamed Complainant
did on or about the fifteenth day of March which was in the
Year of Our Lord One thousand Seven Hundred and Eighty
file his Bill of Complaint in the Honble the Mayors Court
at Madras praying for Recovery back from Your Petitioner of
such Monies as had been before that time awarded to Your
Petitioner under the Decree of the said Court or as had been
in part Levied under certain Warrants of Sequestration and
Execution which had issued out of and under the seal thereof

The said Complainant Urging such his application by setting
forth that before that time to wit on the Month of February
which was in the Year of our Lord One thousand Seven hundred
and Seventy Six One Abdul Razack had applied to him for a
Vessell on Freight to Pegu and that thereupon the said Compl
ainant did let him have on Freight a Vessel whereof he the
said Complainant was part Owner for One thousand Eighty
Hundreds and Fifty Pagodas exclusive of all Expences
that should attend the Vessell and Voyage and that he the
said Complainant at the instance of the said Abdul Razac
did take freight for him certain other Vessel at One thousand
Pagodas to Pegu which said several Vessells were to be
Returned within three Months from that time and the
said Complainant did further shew that he Converted to
Apost the Agent of the said Abdul Razac in procuring and
Purchasing Certain Goods Wares and Merchandize as lading
for the said Vessells for the Market of Pegu and the Com
plainant Acknowledged to have Recved of the said Abdul
Razac four hundred Pagodas towards the purchase money
of such Goods as were to have been so purchased but the said
Complainant Charged that he paid and laid out for such
Goods on the said Abdul Razak Account (including the
said four Hundred Pagodas) the sum of two thousand
Eight hundred and Eighty three Pagodas One eighth the

and

And three Quarter Pagodas and the said Complainant in his said Bill of Complaint did further Set forth that the said Abdul Razac instead of paying the said Complainant the Ballance due to him on his aforesaid Advance did purpose a partnership to the said Complainant in the Pegu Trade whereto the Complainant said he Consented and that thereupon and Under a certain written Agreement of two Parts One Part whereof the said Complainant said he could and would produce when Required) the said Complainant and the said Abdul Razack became equally Concerned in the said trade and were equally to share the Profits and bear the Expences Attending the said trade the Management whereof to be in the said Abdul Razac who was to be Accountable for half the Goods to be Shipped and half the freight Money and Expences and the said Complainant Accountable to those Concerned in the said Vessels and the said Complainant did in his said Bill of Complaint aver that the freight of the said Two Vessels and the said Goods Shipped thereon did Amount to Ten thousand Seven hundred and Seven Pagodas and four Sixteenths whereof the said Abdul Razac only paid four thousand Eight hundred and forty three Pagodas and Nine Sixteenths and the said Complainant as he said paid the Remainder being Five thousand two hundred and thirty three Pagodas and Eleven Sixteenths and did further Say the owners of the said Vessels One thousand three hundred and thirty Six Pagodas for the detention of the said Vessels beyond the Limited time they were to be returned and that therefore he the said Compainant had as he said Advanced on Account of the said Joint Concern six thousand five hundred and Sixty Nine Pagodas exclusive of fifty Pagodas Paid on behalf of the said Abdul Razac which Concerned not their said Joint dealings which said Amount of Six thousand five hundred and Sixty Nine Pagodas together with the said Fifty Pagodas Making Six thousand Six hundred and Nineteen Pagodas the said Complainant did Charge to be by them advanced as aforesaid and did further Charge that the said Abdul Razac failed to Account for or pay the said Complainant his Share of the Profits arising or to give him his Share of the Stock or Goods in trade and the said Complainant did further Introduce thro his said Bill of Complaint several other matters and things as well those Respecting his said pretended Claim as such as in the mean time had thro the said Abdul Razac Interfered and affected the said Joint Concern to the Prejudice of the Complainants share therein and the said Complainant did in his said Bill of Complaint further and Lastly Charge that the said Abdul Razacs Accounts of the said Joint Concern were

Were vonmade out by the said Abdul Rasac as that he the said
Complainant appeared indebted on the Ballance thereof to the
said Abdul Rasac in the Sum of four thousand Nine hundred
and Fifty two Pagodas and Nineteen fanams and that he
Transferred the same to the said Agapsery Thaddaeus Calendar
for the Recovery of which ballance so transferred Your Petitioner
did by his said Attornies According to the usual forms in such
Cases on the fifth day of June which was in the Year One
thousand Seven hundred and Eighty file his Bill of Compt
in the Mayors Court and that the said Agapsery Thaddaeus
Calendar did Swear that the said Complainant was indebted
unto him in that Sum and thereupon Obtained a Summons
Returnable immediately and a Warrant of Arrest which
were on the Ninth of the said last mentioned Month
Returned indorsed "Not to be found" and that thereupon
Your Petitioners Attorney had prayed for a Warrant of
Sequestration which was granted Accordingly And that
by Vertue thereof a Considerable Quantity of Paddy to the
Value of three thousand Pagodas was Seized and sold and
that Your Petitioner Afterwards Obtained a decree for the
Sum so Transferred and Sued for without the Complainant
having (as he presumed) to Charge in his said Bill of Compt

The least Notice thereof and the said Complainant further
Charged that a Vessel of his the Complainants was Seized
in the Madras Roads by the Sheriff and was sold for the
Sum of One thousand four hundred and twenty Pagodas
and afterwards that two other Vessels also the Property of the said
Complainant were in the like manner Seized and sold for
One thousand One hundred and Eighty One Pagodas or there-
abouts and the said Complainant did further Shew that on
the Sixteenth day of April which was in the Year of our Lord
One thousand Seven hundred and Seventy Nine and while
the said Sum of One thousand One hundred and Eighty One
Pagodas was in the hands of the Sheriff that he the said
Complainant did prefer his Petition to the said Mayors Court
Saying that the Seizure of the said two last mentioned Vessels
Should be Superseeded or if sold that the produce should be
Paid to the Complainant or laid in the Sheriffs hands until
such time as to the said Court should Seem Meet the said
Complainant in such his said Petition moving the said
Court to grant such the Prayer of his said Petition by bringing
a Surprize in the proceedings and pretending that he the
said Complainant had not due Notice of the said having been
or of any proceedings had against them in the said Mayors
Court at the Suit of Your Petitioner by his said Attorney and

that

That for want of such Notice the said Decree so Obtained and the Writs which had so Issued out of and under the Seal of the said Court and the Seizures and Seals thereunder made were Illegal and the said Complainant did conclude his said Bill of Complaint by praying that the said Mayors Court would Reverse its own former decree thereon and that the said writs of Sequestration and Execution might be decreed Null and Void.

And Your Petitioner doth further humbly shew unto Your Most Excellent Majesty in Council that the said Bill of Complaint herein before in part recited contain-ing no matter or thing Sufficient to Call Your Petitioner in Question he did therefore Demurrer thereto and among other Causes of Demurrer did Shew that the Subject of the said Bill of Complaint being before that time fully determined and concluded by the Judgment of the said Mayors Court the then pretended Claim of right was directly Opposite and in Contradiction to the Opinion and Judge-ment thereof and for further Cause of Demurrer Your Petitioner did Shew that in Case the Complainant thought himself Aggrieved his more Regular Remedy and Redress was by Petition and Appeal According to the modes Prescribed by the Charter and further that the said Complainant subscribed a Petition to the said Mayors Court Praying for Redress in Inspecting the very matters and things Urged in the said Bill of Complaint as Grounds for the Interposition of the said Court in the favor of the said Complainant and that the said Complainant had prayed for the same Relief in and by his said Petition as he had in his said Bill of Complaint and Your Petitioner further Set forth in his said Demurrer such other Matters and things as not only fully Supported his Claim against the said Complainant in Your Petitioners said former Suit but Justified the Proceedings had thereon as Regular and According to the modes prescribed by the Charter and the Book of Instructions Sent therewith for the Guidance of the said Mayors Court, to which Demurrer the said Complainant filed his Joinder thereto using every such Argument as he thought Suitable or most likely to Substantiate his said Bill of Complaint and Chiefly the Evidence of his want of Notice and Your Petitioner Sheweth that the said Demurrer and Joinder Coming on to be Argued and being Accordingly Argued and determined in and before the said Mayors Court on the thirteenth day of June which was in the Year of our Lord One thousand Seven Hundred and Eighty the said Court Ordered that the said Bill of Complaint should stand Dismissed with Costs to which said Order of the said Mayors Court at Madraspatam and other the Proceedings now of Record thereon Your Petitioner doth humbly refer and pray that the same may be admitted as part of this his Petition and Appeal to Your most Excellent Majesty

com thereby rendered incapable of

Majesty in Council.

From which said Order of the said Mayors Court the said Complainant did on or about the Twenty Sixth Day of the said Month of June Appeal to the President and Governor and Council of Fort Saint George as the Court of Appeals Setting forth that he was Aggrieved thereby and Making as Cause of Grievance and his Reason for his so Appealing that the said Sequestration Decree and Execution so Obtained by Your Petitioner in his said former Suit had been unfairly Obtained and his property unwarrantably Seized and therefore that he had his Right of Action against Your Petitioner on that Account in Order to Recover his said Property and the said Complainant as further Reason for his Appealing did say that by the said Bill of Complaint being dismissed with Costs he was deprived of his property and prevented from Recovering the same And as his further and last Reason for Appealing the said Complainant did say that he never had any Legal Notice of the said Original Suit Commenced against him by Your Petitioner and therefore Your Petitioners proceedings against him in the said Cause were Illegal as well as the said Seizures and therefore prayed that the said order of the said Mayors Court Respecting the dismissing the said Bill of Complaint with Costs should be Reversed with Costs

And Your Petitioner further humbly Sheweth unto Your most Excellent Majesty in Council that did put in his Answer to the said Petition and Appeal and therein did insist that the said Order of the said Mayors Court Respecting the Dismissing of the said Bill of Complaint should be affirmed

And the said Petition and Appeal dismissed with Costs Because it Appeared that the Petitioner had such timely information whereupon he might within the time limited have Shewn any Grievance he might have experienced and he failing in any Application for that Purpose untill the usual time in such cases had elapsed and his Application for Redress then by Petition waiting the Relief of the said Mayors Court such Bill of Complaint was in the meantime introduced on the very subject and in the same Court must even from its Irregularity be rejected and Your Petitioner as further Reason in his said Answer why the said Bill should stand dismissed did shew unto the said Court of Appeals that the Proceedings so exclaimed against were warranted by the practice of the said Mayors Court and could not be Charged with any Surprize upon the then Petitioner as the Decree was not obtained for near Nine Months from the Issuing the Sequestration which With the Notice that the Petitioner had discharged the Praactice from the least imputation of Surprize or Severity and Your Petitioner did for further Reason shew that the Charter on which the Mayors Court is Established and the Book of Instructions which was Sent Out with and Attendant upon the said Charter hath prescribed Certain modes of Redress for all Suitors who should Conceive themselves Aggrieved which Modes ought to be followed to none of which the Cases of Notice from the Chancery Practice and to which the said Complainant alluded in his said Petition of Appeal did any Respect apply and therefore as there was not the least reasonable Grounds for exhibiting such Bill of Complaint in the said Mayors Court the Judgment of that Court was well given in dismissing the same with Costs and Your Petitioner doth further Shew unto Your Most Excellent Majesty in Council that the said Petition and Appeal and Your Petitioners Answer thereto coming on to be heard and Determined on the twenty

Second

Second day of November last before the said Court of Appeals the said Court were pleased to Order and did Order that the said Order of the Mayors Court should be Reversed that the Demurrer be Overruled and that Each party pay his Costs in both Courts all which will more fully and at large Appear by Reference to the Several proceedings had in the above cause in the said Mayors Court and in the said Court of Appeals to which said Several proceedings and to each of them respectively Your Petitioner prays leave to Refer and have such full and ample benefit of them and of each of them as if they and each of them were hereinfore fully stated and Set forth as part of this Your Petitioners Appeal

From which said Order of the said Court of Appeals Your Petitioner doth Appeal to Your Most Excellent Majesty in Council Conceiving the same to be Erroneous and that he is greatly Aggrieved thereby as well for the Reasons given by Your Petitioner in his said Answer to the said Petition and Appeal of the said Complainant as

Because that the prayer of the said Bill of Complaint and which runs in the Words following to wit

That the said Sequestration and Execution and the said Seizures made thereby or by Virtue whereof may be Decreed Null and Void and the said Decree Reversed and set aside on the Account and for the Reasons before mentioned and that the said Aga Peery Shaaduss Calendas may be Decreed to pay unto Your Orator the said Several and Respective Sums of Money for which the said Paddy and the said Vsoolla Reevencula shulor were Sold and that the Sheriff may be Ordered or Decreed to pay unto Your Orator the several and Respective Sums of Money for which the said Vsoolla Ramasawmy and Jaganay also were sold as aforesaid and in the meantime and untill this Honble Court may think proper to Decree or Order the said Sheriff to pay the Amount Sales of the said two last mentioned Vsoollas unto Your Orator that this Honble Court will be pleased to Order that those two Sums may Remain in the Sheriffs hands and that the said Agapeery Shaadduss Calendar may be further Decreed to pay unto Your Orator all such Interest as now is or shall hereafter become due on the said Several and Respective Sums of Money Received and Obtained by or on Account of him the said Agapeery Shaadduss Calendar as aforesaid also Costs of Suit

The said Prayer is Irregular and incompatible with the Powers or Practice of any Court to grant for the said Prayer is two fold and for different purposes the one part thereof being to Decree to the Complainant the balance for which he sues by his said Bill of Complaint and the other part thereof being by way of Injunction to stay in the Hands of the Sheriff certain Effects or produce thereof Seized and in part Sold under and by Virtue of Certain Writs of Sequestration and Execution prayed for and granted in another Cause where to different Persons were parties and which said Different Persons are not made Parties or Privies to the Complainants said Bill of Complaint and their Interests therefore cannot be diminished or extended or in any way varied or affected thereby Whereas if the prayer of the Complainant was to be granted and a Decree given in his favour According to the full extent of the said prayer the Court would grant a Decree not only against the Defendant Your Petitioner who is made Party to the said Bill of Complaint but would also reverse a Decree and Execution granted in another Cause wherein Shake Abdul Rasac by his Attorney the said Agapeery Shaadduss Calendar was Complainant and the said Baubee Rauze alias Wise Boopathy Rauze Baupe Rauze was Defendant whereby the Interests of Shake Abdul Rasac not a Party to this Cause would be so far Affected as to make Shake Abdul Rasac liable to an Action for the Amount Decreed against the said

aga

Agapery Shaddues Calendar and the said Moses De Castro Thomas Belling and John De Fries would be adjudged to receive the Property of the said Shake Abdul Rasac all the it does not appear by any part of the proceedings either in this Cause or in the said other Cause in part recited and Referred to that any Dealings Concerns or Transactions whatsoever had ever Subsisted between the said Shake Abdul Rasac and the said Moses De Castro Thomas Belling and John De Fries

Because that the Practice of the Court of Chancery and to which the Practice of the Honble the Mayors Court conforms in its Proceedings in general and to the Rules whereof the said Mayors Court is particularly bound in all Cases of Equity and particularly where Relief as in the Case is prayed for expressly States that "Regularly all that are interested are to be made Parties otherwise the Defendant may Demur or if he doth not the Court will not proceed to a Decree or if a Decree be made it may be Reversed Yet none but such as were Parties and those Claiming under them can be bound by it

For all which Reasons and such others as will be Offered at the hearing Your Petitioner doth Appeal to Your most Excellent Majesty in Council and doth humbly Pray that the said Order and Decree of the said Court of Appeals may be Reversed with Costs and that the Order of the Mayors Court Respecting the Dismissing of the Complainants said Bill of Complaint may be Affirmed with Costs to be paid by the said Complainant

To the Honble the Court of Appeals at Madraspatnam

Between John Charles Bartholmé of Fort St George Merchant and Complainant and Charles Drake of Madras Merchant Defendant

The Humble Petition and Appeal of the said Charles Drake

Sheweth

That that the said John Charles Bartholmé did on or about the fourth Day of September last past Exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam against Your Petitioner for the sum of Seven hundred fifty five Star Pagodas thirty four fanams Current Money of Madras arising as by him alledged from a certain Promissary Note of hand of Your Petrs Dated the first Day of July last past to which said Bill of Complaint Your Petitioner by his Attorney did appear in the Honble the Mayors Court on the next Court Day after the Bill of Complaint was filed and Summons returned served that is to say on Tuesday the second day of October last past

Your Petitioner further shews unto this Honble Court that soon after the Appearance entered as aforesaid by Your Petitioners Attorney to the said Bill of Complaint he Your Petitioner was taken extremely ill and Confined to his Room thereby rendered incapable of

To his Business as fully and clearly as he ought and otherwise would have done that some time about the Eleventh or twelfth day of this present Month he was reminded by his Attorney as he had often been before of the Necessity of settling the said Debt or putting in his Answer in the Honble the Mayors Court to the Bill of Complaint aforesaid

When Your Petitioner looking into his Books and Recollecting the Circumstances attending the Business between him and the said John Charles Bartholome the Complainant in the Cause against him he did Instruct and request his Attorney to Represent unto the Honble the Mayors Court that he the Defendant had many Matters and things to plead in abatement to the Demand of the said John Charles Bartholome particularly that he the Defendant had been prevailed upon to enter into the said Engagement and undertaking by his promissary note bearing date from the first day of July last past as aforesaid under the strongest assurances from the Complainant that the Money should not be demanded of or from him in less than Eight Months from the Day of the Date thereof and that consideration should be made Deducted and allowed out of the said promissary Note to the Defendant by the Complainant for sundry good offices and Services rendered to the said Complainant by the Defendant all which matters and things were humbly stated and Represented Unto the Honble the Mayors Court on Tuesday the fourteenth Day of this present Month by the Defendants Attorney and further time of One Week prayed for Your Petitioner to put in his plea and Answer to the said Bill of Complaint which agreeable to the Rules of Equity ought to have been under such Circumstances allowed unto the Defendant Especially as the Attorney for the Complainant was not personally in Court as

Which save peremptory Rules are seldom Enforced by the practice of the Honble the Mayors Court Yet Nevertheless and Notwithstanding all these Matters and Circumstances the Honble the Mayors Court were Pleased to Order and Decree that the Defendant should pay unto the Complainant the full Sum of Seven hundred and fifty five Star Pagodas thirty four fanams without requiring or demanding any other proof of the Justness thereof than the Bare Assertion of the said Complainant the Orginal Promissary Note said to be of the Defendants hand writing not being Exhibited produced or proved in Court against the Defendant or any proof on Oath of the Justness of the Demand made by the Complaint against the Defendant all which proceedings Actings and doings being contrary to the Rules of Law or Equity and Repugnant to the usual Practice in all Courts of Law or Equity in such Cases under such Circumstances as before Set forth Yet allowed and Ordered by the Honble the said Order and Decree hereunto annexed for the Inspection of this Honble Court to which Your Petitioner most humbly Refers and prays that the same may be admitted and Received as part of this his Petition and Appeal

From which said Order and Decree of the said Mayors Court Your Petitioner doth Appeal to this Honble Court as he conceives that the same is erroneous and irregular and that he is thereby much aggrieved Because Your Petitioner is humbly of Opinion that from the several Matters and things before Alledged set forth and particularly Stated the said Mayors Court ought to have allowed further time for Your Petr to plead in abatement and answer the said Bill of Complaint and by no means or under no pretence to have stated and Ordered a decree against Your Petitioner without the Justness of the Demand set up by the Compl.t being verified on Oath or otherwise than the bare Assertion of the Compl.t

Whose Bill by the strict Rules of Equity and good Conscience ought to be abated and Dismissed with Costs of Suit

Your Petitioner therefore most humbly Submits all the said Matters and things to the Judgement of this Honble Court and most humbly Prays that the said Order and Decree may be Reversed Annulled and set aside and that this Honble Court may be pleased to Order the Bill of Complaint of the said John Charles Bartholme to be Dismissed with Costs

And Your Petitioner further prays that the said John Charles Bartholme may be appointed a short day to Answer all and Singular the Matters and things herein Contained before this Honble Court and Your Petitioner does also pray a general and such further and other Relief in all and Singular the premises as to this Honble Court shall seem Meet

Mayors Court at Madraspatnam } Tuesday the 4th Day of Novr. Anno Domini 1780

Present

Edwd. John Hollond Esqr. Mayor
Edwd. Garrow and William Webb
Aldermen

Between John Charles Bartholme of Fort Saint George Merchant Compt. and Charles Drake of Madras Merchant Defendant

It Appearing by the Records of this Court that the Usual Rules issued for the Defendant to Answer the Complainants Bill which he has Neglected doing this Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall Pay unto the Complainant the full and Just Sum of Seven hundred and fifty five Pagodas and thirty four fanams Pagodas 755.34 together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit

Plea

In the Honble Court of Appeals

Between John Charles Barthol me of Fort Saint George Merchant Complainant and Charles Drake of Madras Merchant Defendant

The Answer of John Charles Bartholme to the Petition and Appeal of Charles Drake

The said Respondent not Confessing or Acknowledging all or any of the Matters or things to be true as in and by the said Petition and Appeal are mentioned and Set forth for answer thereunto Saith that very true it is that he did prefer his Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the above mentioned Appellant on the day and Year and for the Amount as is by him the said Appellant in his Petition and Appeal Set forth which amount arose

drove upon a promissary Note of hand a Copy of which was as follows Viz.t

Madras 1st July 1780 on demand I promise to pay to Mr. I. C. Bartholmeo or his Order Seven hundred and fifty five Star Pagodas and thirty four fanams with the Interest of twelve P Cent P Annum for value received."

Signed Charles Drake Pagodas 755. 34. the Respondent Saith that previous to the filing of his Bill of Complaint he frequently Applied to the Appellant for payment who has often promised and Undertooke to Pay the Respondent and which promise and Undertaking induced the Respondent to delay filing his Bill of Complaint against the Appellt untill the day that the same was filed the Respondent Says that to the Bill of Complaint the Appellant did Appear by his Attorney but not untill a Month had almost expired the Summons not being Served and that Matter Postponed at the request and desire of the Appellant the said Respondent Says that finding no hopes of being paid or Secured in the payment but that the Appellant was trifling with him he the Respondent thought it Necessary to pursume the Step he Originally meant and intended by allowing the Summons to be served on the Appellant

The said Respondent further in his Answer to the several pretended Causes that the Appellant alledges in his Petition and Appeal as Reasons for his Appealing from the Decree of the Honble the Mayors Court and first as to the Appellants Pretext of Sickness and thereby rendered as he says incapable of attending to his Business that at the very time the said Appellant was seen publickly by almost Every person Walking to and fro from his Appartments in a very apparent Good State of Health and Attending to his own concerns the Respondent further in his Answer to the Appellant alledging that looking into his Books and recollecting the circumstances attending the Business between him and the Respondent and that he desired his Attorney to represent to the Mayors Court that he had many Matters and things to plead in abatement and particularly that he had been prevailed upon to Enter into the said Engagement under the Promise and Assurance that the Money should be demanded of him the Appellant in less than Eight Months and that some Consideration should be made deducted and allowed out of the said promissory Note to the Appellant for Sundry Good Offices and Services by him tendered to the Respondent" in answer thereto the Respondent Says that the aforementioned promissary Note of hand was given by the Appellant for Goods sold and delivered and for Money lent by the Respondent to the Appellant the Amount of which the Appellant should have Paid but as it did not Suit his Convenience the Respondent was induced at the Request and desire of the Appellant to Accept of his said promissory Note with full Assurances of payment whenever demanded but denies that any promise was made by the Respondent to the Appellant of not demanding the Amount within Eight Months from the day of the date of such promissary Note for if such a promise had been made or had the least Existence this Condetionary promise might have been inserted and made a part of the Note of hand as well as the Words "on Demand I promised to pay. the Respondent further Says that it does not Appear in the least Clear that the aforementioned promise could have been made from the Words of the Note and which is payable to the Respondent or his Order makes the Business entirely against the Respondent so that his plea of the Respondent having promised not to demand payment untill the Expiration of Eight Months is quite insufficient and Erroneous and as to any promise said to be made by the Respondent to the Appellant to make a deduction whenever the Amount of the Note was paid for good Offices and

Services

Services done the Respondent that was a plea totally without any foundation and that such Assertions so made by the Appellant in his Petition and Appeal are introduced thereinonly to serve as pretense of his Appealing from the Decree of the Honble the Mayors court these pretensions the Respondent Says he does not remember to have been Offered to the Honble the Mayors court as Causes why a further time should be allowed the Appellant to put in his plea and Answer the Respondent further Says that Supposing these Pretensions to have been Offered there does not Appear the least Reason in them why the said Honble the Mayors court should give a further time for on recollection these Causes are not Sufficient for an Answer and much less for a plea in Abatment the Respondt further Says that he is Advised that whether his Attorney be in Court or not at the making of a Motion therein is of no Consequence because any one of the Attorneys of the Court may upon desire Make a motion but if the Appellant means to avail himself of any irregularity why did not the Appellants Attorney Oppose it on the contrary the Respondent Says the Appellants Attorney Appointed to every Rule for to answer except the last Rule which was a Second peremptory Rule to Answer and the terms of that Rule were that unless an Answer is made to the Complainants Bill in Default thereof Judgement would be given for the Complainant: and this Rule the Respondent Says is granted by the Consent of the Attorneys of the Complainant and Defendant the Respondent further Says that the first Peremptory Rule was Obtained the twenty fourth day of October One thousand Seven hundred and Eighty and a further time of fourteen Days allowed and in default of Answer by the expiration of that time Judgement was to pass when this time was expired a further time of One Week was allowed the Appellant at the request of the Appellants Attorney which expired the fourteenth of November and no Answer put in or any good Cause Shewn to the Honble the Mayors court why a decree should not pass against the Appellant the Respondent further Says the said Honble the Mayors court upon Motion made by Mr Sykes who Acted for Mr Charles Bromley he being indisposed and the Attorney for the Respondent were pleased to pronounce their Judgement against the Appellant in manner and form as by him is Stated in the Copy of the Decree annexed to his Petition and Appeal Such Motion for a decree the Respondent Says and is Advised is very regular and proper and if it has not been so it is to be presumed the Attorney for the Appellant would have opposed it for that particular reason which he did not do the Respondent further in Answer to the Appellants Observation in his Petition and Appeal that the Honble the Mayors court were to Order and Decree that the Appellant should pay unto the Complainants the full Sum of [illegible] and thirty four pagodas without requiring or demanding any further proof of the Justness of the Demand than the bare assertion of the Complainant Says that there was no Necessity to make any further proof of the Validity of the Debt than the Appellants Neglecting to put in his Answer or Demurring to the Respondents Bill of Complaint upon which the Appellant first Appearance by such his default according to the Rule of all Courts of Judicature the Respondent Says the debt Stands such Indisputable by confession the Respondent Says and is Advised that there needed no other proof because there was no denial of the Debt nor any undue and unfair means to push on the Defendant to his Answer for this Honble Court of Appeals will please to Observe that four Rules were granted for the Appellant to put in his Answer being Answer more given than is the General practice of this Honble the Mayors Court the

The Respondent further in his Answer to that part of the Petition of Appeal when the Appellant Says, that the Mayors Court ought to have allowed a further time for the Appellant to have pleaded in Abatement and Answer the Bill of Complaint and under no pretence to have made a Decree against the Appellant without the Justness of the Respondents Demand being verifyed on Oath, the Respondt Says that no Special Matter has in any part of the Appellants Petition and Appeal been shewn on which a Plea in Abatement to the Bill of Complaint could be founded, for it is apparent that the Note of Hand on which the present Demand arose has never been denyed to be the Act and Deed of him the Appellant but the only Reason Assigned by the Appellant in his Petition and Appeal for his pleading in Abatement is, that the Respondent promised not to Demand the Amount of the said Note of Hand before the Expiration of Eight Months which promise the Respondent Says does not in any part of the said Note of Hand Appear so that this Vague Assertion of the Appellant could never have been made use of as a Plea in Abatement to the Action Because if such promise had been made as which the Respondent positively Asserts never was made or ever so much as thought of such Verbal promise could not be Set up in Opposition to the aforementioned promissary Note of hand as being an Act and Deed of the Appellant Simply and unconditionally made and given for a Valuable Consideration as therein is expressed and Written the Respondent further Answers and Says to another Observation of the Appellant in his Petition and Appeal wherein he Says, that the Respondents Bill of Complaint against him by the Strict Rules of Equity and Good Conscience ought to be abated and Dismissed with Costs of Suit, That the Appellant has in no part of his Petition and Appeal Set forth what those Strict Rules of Equity

Are by which the Respondents Bill of Complaint ought to have been Abated and Dismissed by if any Rule the Respondent Says had been Shewn to Honble the Mayors Court or any Authority quoted that could Warrant a Plea in Abatement the said Honble the Mayors Court might have Admitted of the Plea but therein the Appellant failed

The Respondent further in Answer to the prayer of the Appellants Petition and Appeal wherein he prays, that this Honble Court of Appeals to Reverse the Decree of the Honble the Mayors Court and further that this said Honble Court of Appeals would Order the Bill of Complaint of the Respondent to be dismissed with Costs, the Respondent Submits this prayer to the Consideration of this Honble Court of Appeals as to the impropriety and irregularity appearing therein by two distinct matters joined together the one of which is regular before this Honble Court and the other being to have the Bill of Complaint dismissed by this Honble Court is irregular as to this Honble Court Because the merits of the Complaint is not before this Honble Court but only the Order arising from of a Motion which has Nothing to do with the Debt for if this Honble Court of Appeals should be of an Opinion that the Decree of the Mayors Court ought to be Reversed and the Appellant to be at Liberty to Put in his Plea or answer the merits of the Original Cause of Compt. remains to be decided on by the Honble the Mayors Court before the same can be brought up into this Honble Court of Appeals for which the Respondent is humbly of Opinion that this Honble Court of Appeals cannot make any Order as the Cause now Stands to Dismiss the Respondents Bill of Complaint as the Order of the fourteenth of November made by the Honble the Mayors Court is the only matter now before this Honble Court of Appeals which Order the Respondent Says was founded in Equity and Justice for the

Debt

Debt was never denyed by the Appellant nor any Affidavit made or produced to Support the Appellant in his Motion before the Hon^ble the Mayors court for a further time to Answer to the Respondents Bill of Complaint.

For all which Causes and things herein before Sett forth the Respondent humbly prays this Hon^ble Court of Appeals that the Appellants Petition and Appeal may be dismissed with Costs to be paid the Respondent and that the Decree of the Hon^ble the Mayors Court may Stand Confirmed.

Court of Appeals
@ Madraspatnam

Thursday the 22 Nov^r
Anno Dominj 1781

Between Charles Drake Appell^t
& John Carles Barthelme Respondent

Sir Attorney for the Appellant having moved to Withdraw this Cause and each party do pay his own Costs and the Attorney for the Respondent having Agreed thereto

Ordered Accordingly

Pleur

/Signed/ Chas. Fourman
Clk

In the Court of Appeals

Between Joseph Marotte
Complainant and Joseph Kingsmill
Defendant.

To the Hon^ble Charles Smith Esq^r
President and Governor &^c Council of Fort St. George

The Humble Petition and Appeal of the Defendant Joseph Kingsmill of Madras Inhabitant and late the part Owner and Commander of the Ship Fanny.

Sheweth That the above said Joseph Marotte did on the Twenty Seventh day of June in the Year of our Lord One thousand Seven Hundred and Eighty prefer his Bill of Complaint in the Hon^ble the Mayors Court at Madraspatnam against Your Petitioner for the Sum of Five thousand Six hundred and Seventy three Pagodas forty Fanams and Sixty Seven Cash being the Ballance of a pretended Acco^t Current annexed to his said Bill of Complaint by which said Account it did not thereon Appear how Your Petitioner came so indebted to the above said Joseph Marotte but Your Petitioner Sheweth that the said Joseph Marotte did annex Copys of Bills of Lading and in his Bill of Complaint did Set forth that Your Petitioner had failed in the Terms of the said Bills of Lading but never Charged Your Petitioner with the same or Shewed or Set forth how and in what particular Point of the said Bill of Lading your Petitioner had failed in Your Petitioner further Sheweth that to this Sum

the

the said Joseph Marcde was permitted to make Affidavit of as if Your Petitioner stood indebted unto him, and also as if your Pet.r was about to depart out of the Jurisdiction of this Honble Court Notwithstanding as Your Petitioner Sheweth that the only Action that could lye was an Action for a Breach of Covenant and could not be a Debt before it had been Established by a Decree of the Honble the Mayors Court Your Petitioner further Sheweth that a Summons and Warrant of Arrest issued against Your Petitioner who was absenting a place far distant to the Northward of Madras to which Summons and Warrant of Arrest Your Petitioner by his Attorney Mr. Charles Bromley on the Seventeenth day of October last Appeared and no Bail was required which Your Petitioner supposeth was an Account that the Cause of Action was uncertain but your Petitioner Sheweth that on his Appearance he did file his Demurrer to the Bill of Complaint for the want of certainty therein Your Petitioner further Sheweth that the said Joseph Marcde by his Attorney in Court did admit of the said Demurrer and moved the Honble the Mayors Court for leave to Amend his Bill of Complaint upon payment of Costs which the said Honble the Mayors Court was pleased to Grant and thereupon Costs were paid to Your Petitioners Attorney and on the sixth of November following an Ammended Specially Bill of Complaint was filed against Your Petitioner and the usual Rules for Your Petitioner to answer were prayed for by the said Joseph Marcdes Attorney and to which Your Petitioner did on or About the Nineteenth Day of December file his Answer being a full and Complete Answer to his Aforementioned Amended Special Bill of Complaint the said Answer Absolutely Denying the Debt though Admitting of his having been in possession of the Property laid to his Charge pursuant to the Bills of Lading

and

are

And Specially Setting forth the Loss of the same in every Minute and Particular manner also Exhibiting Copys of the Translates of Sundry Declarations as made by Crew belonging to the Ship Fanny and which had been made taken before the then President of the Place where the Misfortune happened Your Petitioner in his said Answer Setting forth that he took his departure in the said Ship Fanny, having the said Joseph Marcdes property on board from Madras, on or about the beginning of the Month of May in the Year of our Lord One thousand Seven hundred and Eighty, She having Parted her Cables in very Violent bad Weather and being on much distress, Your Petitioner in his Answer Says, he endeavoured to make the Port of Masoulpatam, to which he was bound, for to procure another Anchor as the Ship had then but one, and not much to be trusted to, but as the Weather was bad and not caring to Trust his Vessell to a Single Anchor, he made the best of his way to Coringa for the preservation of both Vessell and Cargoe, where he Arrived in every bad Condition which place his said Ship The Fanny took fire and in the hurry and Bustle of the same, a part of the Property on board was Saved, and a part being the Treasure as before mentioned lost overboard, against which Accident of the Ship and the loss Arising to the Freighters aboard, the Answer Sets forth, that Your Petitioner did Protest and that the usual Affidavits of the Crew were taken on the Spot and Committed to Writing by the President then There, whose Declarations being impartially taken, proved Satisfactory to every person present. Your Petitioner further Sheweth, that the Special Circumstances of the Case were Set forth in Your Petitioners Answer, as the Interrogatories contained on the said Joseph Marcdes Bill of Complaint required, and the Scope and end of the said Bill sought After But Your Petitioner begs leave to shew and sets forth, that previous to his Answer so by Your Petitioner put in as aforementioned Your Petitioner did move the Honble the Mayors Court for liberty to Examine Certain Witnesses then about to depart out of the Jurisdiction of this Honble Court, and those Witnesses being his Chief Mate and a part of his Crew who were Aiding and Assisting to Save their Property were Actually Examined and their Depositions

Attested

Attested. Your Petitioner further Sheweth, that the same Liberty was also prayed for by the said Joseph Marcelo and allowed of, who also Examined Witnesses, Your Petitioner further Sheweth, that on the Ninth day of January in the present Year of our Lord One Thousand Seven Hundred and Eighty one, Your Petitioner did Move the said Honble the Mayors Court for a Rule for the said Joseph Marcelo to Reply, and Several Motions of the like kind were prayed for and Allowed. Your Petitioner finding that there was not the least Appearance of a Replication put into Your Petitioner's Answer, Your Petitioner did on the Thirteenth day of this present Month of February Move the said Honble the Mayors Court, that the Cause in Question, might be ordered to be heard on Amended Bill and Answer, or the Rule for the Complainant to put in his Replication, having expired and no Replication filed, which Your Petitioner Sheweth, was in Conformity to the Rule of Court. Your Petitioner further Sheweth, that the Attorney for the Complainant the above said Joseph Marcelo, did Answer in opposition to such Motion, and informed the Court, that they did not mean to file a Replication and Moved that the suit might be discontinued upon payment of Costs to this last Motion of the Complainants Attorney, Your Petitioner Attorney did Object, and prayed that the Cause might be ordered in Amended Bill and Answer pursuant to the Several Rules of the said Honble the Mayors Court, those Motions being taken into Consideration by the said Honble the Mayors Court, Your Petitioner Sheweth, that the said Honble the Mayors Court were pleased to Dismiss the said Joseph Marcelo and dismissed the Suit for the want of Prosecution with Costs to be paid by the said Joseph Marcelo as per Copy of the Order of the said Honble the Mayors Court hereunto Annexed and the Original ready to be produced Appearance being thereunto had will Immediately Appear From this Order of the Honble the Mayors Court, Your Petitioner humbly begs leave to Appeal from, Because Your Petitioner Apprehends and is Advised that as the said Joseph Marcelo had made his Election at the time he Amended his Bill of Complaint the former Order, which is in the Nature of a Non pross cannot be made more Especially as the said Honble the Mayors Court were pleased by their several Rules to Reply to dated, that the Proceedings already had being an Amended Bill of Complaint and Answer in Case of No Replication, should be ordered down

to be heard, which Order ought to have been Complied with to the intent, that Your Petitioner might not be harassed and Teased with a Litigious Suit founded upon Suppression and no more Your Petitioner further Sheweth, that previous to the Last Order of the Thirteenth instant, the said Joseph Marcelo did Move by his Attorney on Court, that Your Petitioner might give Special Bail to the Action, which being taken into Consideration, and on reading the Bill and Answer the said Honble the Mayors Court were pleased to Conclude the Motion and denied Your Petitioners Appearance to be recorded by filing common Bail and the same was done Accordingly - Your Petitioner as another Cause for Appealing from the Order of the Honble the Mayors Court under date the Thirteenth instant, that by allowing the said Joseph Marcelo to discontinue Your Petitioner is deprived of his Evidence who are now out of the Jurisdiction of this Honble Court whereby Your Petitioner is totally remediless unless this Honble Court are pleased to grant Your Petitioner Relief by Reversing the Order of the Honble the Mayors Court of the Thirteenth instant and Enforcing the Order for having the Merits of the Differences determined on Bill and Answer, Moreover as the Reason assigned by the said Joseph Marcelo for his discontinuing his Proceedings against Your Petitioner, which is contrary to Equity and Good Conscience and contrary to the Establish and Settled Rules and Practice of the Honble the Mayors Court, nor is there any Precedent of a Non Pross or Non Suit had, made, or done, from the Establishment of the Honble the Mayors Court to the day on which the Order of the Thirteenth instant was Obtained Your Petitioner Sheweth, that the Practice of the High Court of Chancery (whose proceedings in Point of Rules and Orders the said Honble the Mayors Court have governed themselves by) is, that where a Replication is not put in, that the Defendant does by his Council move to have the Complainants Bill dismissed with Costs, But Your Petitioner Sheweth that he did not Move to have the Complainants Bill dismissed, but only moved for the last Exemplary Rule for the said Joseph Marcelo to Reply might be enforced, which was for the Cause to be heard on Bill and Answer, and the same ought to have been done According to the Usual Practice of the said Honble the Mayors Court Whereas as the Order now stands, that most of the Parties

Moves

wives Servants to the Rule of Court another of the Parties moves for Dismissance
and the Humble the Mayors Court Enter a Rule Sufficient of a Replication thereby
making an Order usual in the Common Law Courts, and to the Prejudice of their
Standing Rules and Orders regulated by those of the high Court of Chancery, all of which
was done at the instance of those who were desirous of harrassing and perplexing
Your Petitioner by bringing such Suits against Your Petitioner for the same Matter

Your Petitioner therefore most humbly Appeals to
this Hon.ble Court of Appeals that the Order of
the Thirteenth instant may be Reversed and Set
aside and the Rule for the said Joseph Marcott
to Reply or in default thereof the Proceedings on
Bill and Answers to be heard, may stand
Conformable to Costs to be Paid by the said Joseph
Marcott

And Your Petitioner as in duty bound
Shall Ever Pray

Chas Bromley
Att.r Appellant

Joseph Marcot
vers
Joseph Kengsmill

Further Days given the Complainant till the 23 Instant to Reply in default of
which the Cause will be heard on Bill and Answer
Further Days given the Parties till the 23 Instant to Examine Witnesses
who are about to depart from the Jurisdiction of the Court

Town Hall.
16 January 1781

Test (Signed) James Taylor
Reg.r

Joseph Marcot
vers
Joseph Kengsmill

Further Days given the Complainant till the 13.th instant to Reply in default of which the
Cause will be heard on Bill and Answer

Town Hall
6.th Febry 1781

Test (Signed) James Taylor
Reg.r

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 13.th Day of February Anno Domini 1781

Present

Benj.n Roebuck Esquire Mayor
Geo. Proctor and Robert Hughes
Aldermen

Joseph Marcot
vers
Joseph Kengsmill

The Attorney for the Defendant prays that this Cause may be set down to be
heard on Amended Bill and Answer, the Rule for the Complainant to put in his Replication
having expired, and no Replication filed, the Attorneys for the Complainant Acquaint the
Court, that they do not mean to file a Replication, and move that their Suit may be dismis-
sed, upon Payment of Costs, to which the Attorney for the Defendant Objects, and prays
that this Cause may be set down to be heard on Amended Bill and Answer the Court having
taken the same into Consideration are of Opinion that the Complainant by not pursuing
his Suit is non Suited & therefore Ordered that this Cause be Dismissed with Costs

A true Extract (Signed) James Taylor Reg.r

In the Court of Appeals

Between Joseph Marcel Complainant
and Joseph Hingeamell Defendant

The Answer of Joseph Marcel the said Complainant to the Petition and Appeal of the said Joseph Hingeamell late the Part Owner and Commander of the Ship Fanny

The said Joseph Marcel as Respondent by way of Answer to the said Petition and Appeal so much thereof as Concerns him to make Answer unto Says he Admits he did exhibit a such Bill and for such Sum as the Appellant for that purpose sets forth & filed his Bill of Complaint against the Appellant in the Honble the Mayors Court at Madras patnam and that the Respondent did to such his said Bill of Complaint Annex the Copy of an Account Current and Copies of two Several Bills of Lading and the Respondent doth further Admit & believe that he made an Affidavit of the Justness of his Debt and had Obtained a Summons and Warrant and that the Appellant did by his Attorney Appear thereto and Did Demurr to such said Bill of Complaint, and this Respondent further Admits he did by Leave of the said Honble Court and upon Payment of Costs amend his Bill of Complaint so Demurred to and did file his Special Amended Bill of Complaint against the said Appellant and that Rules to Answer had been prayed for and that the Appellant did Answer and thereon Admit the Respondent so Said to his Charge pursuant to the Bills of Lading and setforth the loss thereof and did in Answer as setforth in such Answer endeavour to Account for such Misfortune as he pretended to have happened and that the said Appellant did in such his Answer so far and in his own defence speak to the Respondents Claim and Refer to such Circumstances as therein Appear and that he did previous to the filing thereof move the said Honble Court for Leave to Examine certain Witnesses who he said were then About the Depart from the Jurisdiction of the said Court and that the like Leave had been also prayed for and granted to this Respondent who also Examined Witnesses and the Respondent further Admits that the Appellant Argued for a value to Reply and did Afterwards move the said Honble that the Cause should be set down to be heard on Bill and Answer, and this Respondent Admits he Opposed such last

Last motion and did Accompany his Opposition with informing the said Court that he did not intend to file a Replication and that this Respondent at the same time moved that the said might be discontinued on Payment of Costs and that to such said last Mentioned Motion of this Respondent by his Attorney, the Appellants Attorney did Object and Pray that the Cause might be Set down on Amended Bill and Answer and that the Honble the Mayors Court on Consideration of such the Motions so had on both sides been so made were pleased to non Suit this Respondent and to Dismiss the Suit (with Costs to be paid by the Respondent) for want of Prosecution to which said Several proceedings so thereon had in the Honble the Mayors Court and to the Rules Minutes or Order thereof this Respondent for greater certainty begs Leave to Refer and to have such Ample benefit therefrom as if the same had been herein Particularly and at Large setforth and this Respondent doth Admit that from such the Order of the Honble the Mayors Court the Appellant did Appeal to this Honble Court of Appeals, but this Respondent doth Contend that the Appellant Notwithstanding any thing by him Alleged or any Reason or Cause pretended by him to be Assigned to the Contrary, is not Aggrieved by the said Order of the Honble the Mayors Court nor was there the least Ground for the Appellant to Lodge an Appeal therefrom

First. Because this Respondent doth Insist that the utmost Remedy a Court can give to a Defendant in any Cause is to Grant an Order in favour of such Defendant with Costs to be paid by the Complainant whether such Order be in the Nature of a Non Suit against the Complainant in any Stage of the Business previous to the hearing of the Cause on the Merits, or whether it be in the Nature of a Decree for the Defendant on hearing the Merits of the Cause

Secondly Because the Appellant as Defendant by the said order of the Mayors Court from which he has Appealed have Received all the Remedy which the Court could give them in the then Stage of the Business

Thirdly Because no Court of Record can review a Cause otherwise than from the Proceedings before the Court, and therefore the Assertion of the Appellant when he says that the Motion of this Respondent for a discontinuance of a former Suit was so have prejudiced the Appellant by bringing fresh Suits so irregular and informal being exhibited

Indeed

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Ordered this Respondent to first to be dismissed with Costs, and as the Mayors Court were in possession of all the proceedings in this Respondents Original Bill and this Amended Bill as well as of all those set forth in the Appellants Petition and Appeal at the time they determined on the Motion of the Appellant and of this Respondent and as this order was so far as it could be in full Remedy in favour of the then Defendant and now Appellant this Respondent hath it not in his power to urge an Argument in support of what Carrieth Intention with it and Sequeleth only to be viewed that the Friend may be convinced there of this Respondent therefore saith the said Appellant having Appealed under the Circumstances aforesaid seemeth to have lost sight of the better Reason and to have forfeited the Advantage of those who conceive it their Duty Because it is their Interest to promote Litigation rather than to follow the plain Road of Common sence and to be satisfied with the Order of the Mayors Court which gave to the Appellant the utmost Remedy

Firstly and further with Respect to what the Appellant says that there is not any instance of a Non suit or non Suit from the Establishment of the Mayors Court to the day on which the Order of the Thirteenth instant was made this Respondent saith that he has not within his Knowledge or Recollection seen any Order of the Mayors Court from the day of the Establishment to the Thirteenth ultimo but this Respondent doth say that the said Order of the Thirteenth ultimo being as Consonant to every Rule of Law and Justice he presumes that such Rule never was before made no Occasion hath happened in the Course of Practice similar to that which so happened on the said Thirteenth ultimo and this Respondent doth further venture to Assert that no Occasion ever happened in any Court of Appeal on the face of the Globe where an Appeal under the Pretence of a Right of Redress was Lodged in the Superior Court from an Order below when such Order Comprehended every Remedy within itself which the Court below could Grant in favor of the Appellant or which the Occasion required

Secondly and Lastly with Respect to what the Appellant says of the said Mayors Court making an Order usual in Common Law Courts and to the Prejudice of their standing Rules and Orders Regulated by those of the High Court of Chancery this Respondent saith that as the general Tone of the Proceedings in the Hon^ble the Mayors Court is on the Respect Consonant to the Practice of the High Court of Chancery so as much as

as that the Defendant in a Cause doth Answer upon Oath Nevertheless the General Scope of the said Court and of its Powers being to give Redress in all Matters which are Cognizable in England by the Court of Chancery the Courts of Common Law or the Courts Ecclesiastical this Respondent saith that the said Mayors Court as the Right in following as to guide such Precedents for its Procedure and decisions as are usually Applicable to the Practice and decisions which would follow in similar Cases in those Courts at home wherein such and the like Causes would be Dismissed

For all which Reasons and others which may be offered at the hearing this Respondent humbly hopes this Hon^ble Court will be pleased to Confirm the said Order of the Mayors Court of the thirteenth of February last and to Dismiss the said Appellants Appeal with Exemplary Costs

Court of Appeals at Madraspatnam } Sat Thursday the 22 November Anno Domini 1781

Between Joseph Hingeston Appellant and Joseph Marsole Respondent

This Cause coming on this day to be heard and debated before this Court by the Attorneys on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Hon^ble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 13 February Anno Domini 1781 and upon Due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attorneys on both sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Hon^ble the Mayors Court dated the 13 day of February Anno Domini 1781 do stand Affirmed and that the Appell^t Pay to the said Respondent his Costs in this Court

Wm Hue

/Signed/ Chas Freeman Clk

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In the Court of Appeals | Between Joseph Marcole Complainant and Joseph Kingsmill Defendant

To the Honble Charles Smith Esqr.
President and Governor &c. Council of Fort St George

The Humble Petition and Appeal of the Above Defendant Joseph Kingsmill of Madras Inhabitant and late part Owner and Commander of the Ship Fanny

Sheweth That the above said Joseph Marcole, did on the thirteenth day of Febry last in the present Year of our Lord One thousand Seven hundred and Eighty four prefer his Bill of Complaint in the Honble the Mayors Court at Madraspatam against Your Petitioner, for the Sum of Six thousand One hundred and fifty five Pagodas, Nine fanams, and Nineteen Cash, which the said Joseph Marcol charged Your Petitioner with, as being indebted unto him agreable to an Account made out and stated upon two Bills of Lading, Copies of which were Annexed to the said Joseph Marcoles Bill of Complaint and by him prayed to be taken as part and Parcell of his said Bill of Complaint the said Bill of Complaint stating, that he the said Joseph Marcol did some time in the Month of May last, in the Year of our Lord One thousand Seven Hundred and Eighty freight on board of Your Petitioners Ship called the Fanny then lying at an Anchor in the Road of Madras bound to Masulipatam, the sum of Two thousand and three Gaumy Pagodas in Specie, and for which he the said Joseph Marcole did pay accordam Sumas, Freight, and Received from Your Petitioner a Bills of lading, the Bills of Complaint further Recites, that he the said Joseph Marcole did Freight a further sum of three thousand and three Gaumy Pagodas and One thousand Rupees and for which Your Petitioner did Sign Bills of Lading to the said Joseph Marcole to deliver the same to him the said Joseph Marcoles Agent at Masulipatam, freight having been paid to Your Petitioner for the same, the Bill of Complaint further Recites, that Your Petitioner had not

delivered

delivered the said Specie pursuant to his promise and undertaking and that Your Petitr did not go to Masulipatam, but instead thereof, without being obliged or Compelled to vary or Deviate from his destined Entity any Dangers of the Sea or Winds it Weather that Your Petitioner did go to Curinga, and where Your Petitioner Says, the Specie was Lost without his having shewn how other than the said Money fell Over board at the time Your Petitioner was endeavouring to put the said Money into a boat at the side of Your Petitioners Ship the Fanny then lying at an Anchor in Harbour of Curinga the said Bill of Complaint further States that Your Petitioner did not State any Cause which could Justifye Your Petitioner in his Attempt to remove the said Money from the said Ship to the Boat and that Your Petitr did not pretend to shew that any measures were by him taken to recover the same and even were the said Allegations of Your Petitioner true which the said Joseph Marcole Says he conceives cannot be so, but the Contrary, and therefore that Your Petitioner was Responsible to him for the not delivering of his property According to the Bill of Lading, but the defaults Whereof was entirely owing to Your Petitioner as Appeared by two Affidavits, Copies of the Translation being Annexed to the Bill of Complaint as well as from other Circumstances which he the said Joseph Marcole said he hoped to prove in due time which Copies the said Joseph Marcole prayed might be taken as part and Parcell of his Bill of Complaint, and therefore Your Petitioner is charged by the said Bill of Complaint with having kept and Converted the same to his Your Petitioners own use, Your Petitioner further sheweth that the said Bill of Complaint in other Respects contained no more than a General Bill of Complaint save and except two fictitious Writings said to be Copies of the Translation but whether they are Translations from Original Writings or not is not to appear or will forth, the first of these Writings Your Petr Sheweth is said to be the Deposition of Concattala Narsoo, the Serang or Helsman, Woopala Syapah, and Boopathy Narsoo Lascars of the Ship Fanny Captain Kingsmill Commander, dated at Madraspatnam July 14. 1788 Signed Concattala Narsoo, Woopaloo Syaph, in Gentoo and the Mark, said to be the Mark of Badapally Narsoo, with a further Subscription thereto

Thereto or to the like effect," said to be a true Translation from the Original Gentoo by John Dugly "to this Deposition are to be called the following or Subjoined," the above Deposition sworn to and Signed before me by the Deponent the Eighth day of September in the Year of our Lord One thousand Seven hundred and Eighty at Madraspatnam; "Edward Celesford Chief" the other Writing said to be a true Translation as near as can be from the Original in the Gentoo Language by reading in Court Interpreter, which is an Affidavit of one Boopal Nyapah a Lascar on board of Your Petitioners Ship the Prince and said to be sworn to at Madras this 13 day of February 1781.

That Benjamin Roebuck Mayor Your Petitioner sheweth, that on this very day being the 13th of February 1781 the said Joseph Marcolo made Oath to his pretended Debt and that Your Petitioner was about to depart from the Jurisdiction of the Mayors Court which Affidavit of the Debt, Your Petitioner sheweth, was set and subscribed to the said Joseph Marcolos Bill of Complaint, and upon which Your Petitioner was immediately Arrested without any previous Notice given to him for the same and Notwithstanding a Suit for the same Cause of Action was then depending between Your Petitioner and the said Joseph Marcolo and which by an Appeal of Your Petitioner to this Hon^ble Court is now before this Hon^ble Court of Appeals, being a Petition from an interlocutory Order of the Mayors Court made on what the said Joseph Marcolos Attorney had denominated discontinuance and the Hon^ble Court a Non Suit, Your Petitioner further sheweth, that at this the time of the Arrest Your Petitioner was not about to Depart the Jurisdiction of the Hon^ble the Mayors Court as having Sundry Accounts to settle with a Port Owner in Madras, and having lost the Ship by the means of the Enemy, Your Petitioner was hurried away and Continues to this the Day of filing Your Petitioner and Appeal under an Arrest for the want of Bail Your Petitioner further sheweth that on the Next Court day being the Twentieth he he Entered his Appearance as also his Demurrer to the Bill of Complaint according to the Usage of the Hon^ble the Mayors Court Observed in these Cases and in pursuance of their Rules and Orders, which Demurrer Your Petitioner sheweth was a very special one wherein it is set forth as one of the Causes of

Demurrer

Demurring that it Appeared from the said Joseph Marcolos own shewing in his Bill of Complaint, that his the said Joseph Marcolos Charge by him brought against Your Petitioner was founded on two Affidavits or Depositions made in the Gentoo Language, the Copies of which were Annexed to the Bill of Complaint the which Your Petitioner Alledged was out of place and irregular, Because as the said Demurrer sets forth those Depositions or Declarations of true, which Your Petitioner does in no sort Admit to be true, that the Matters therein Contained as they went to the Merits of the Cause were proper and fitting to be given in Evidence in the proper Stage of the Business that is to say after Joining Issue and before Publication praying for the Declarations or Depositions as they then stood, removed for their uncertainty, Because in the first place they were not in point as to time, place or Circumstance and that in the next place the Deposition of Cancattala Narsoo and others was not an Original, but only a Deposition of what they remembred to have Signed or Declared in Writing before a Mr. Hamilton Resident at Nagapatilla and of Course their Deposition made at Madraspatnam the fourteenth of July One thousand Seven Hundred and Eighty, was very uncertain the Demurrer further States, that so far could their Deposition or Declaration with the thousand Seven Hundred and Eighty be produced as a Charge in the said Joseph Marcolos Bill of Complaint, that such Depositions could not be given in Evidence nor Confidence could be put in the same for the want of Proof as to the Authenticity and more Especially as the Writing Exhibited before, was made at Madraspatnam the fourteenth of July One thousand Seven Hundred and Eighty, and said to be sworn to "before Edward Celesford as Chief at Madraspatnam the Eighth of Sept^r One thousand Seven Hundred and Eighty," an impossibility where Companies are made as to persons, times and places the said Demurrer further States that the Writing so said to be "done Translate from the Original Gentoo by John Dugley who was not a Sworn Officer of the Hon^ble the Mayors Court, and therefore that no Credit could be given to the veracity of this Translate, the Demurrer further States that as to the Deposition of Boopal Nyapah, that the whole of the same was very Erroneous throughout and not in any Shape be admitted as Evidence or given in support of the Charge alledged in the Bill of Complaint neither were

it

Regulas for the Bill of Complaint ought to be true in substance and the Matter
plainly and sufficiently Alledged and that the Bill of Complaint ought not
to be stuffed with Repetition of Dates, and that the Matter charged by the Bill
of Complaint ought to be proved and supported by Evidence the said Demurrer
further States as the Matter then stood, that the Declaration and Deposition
was soe falsely made out and invented, as was Evident from the Date of the
Last Affidavit being the Thirteenth of February to serve as a Specious Evidence
of Changing an Action Against Your Petitioner, which Demurrer stated if
allowed, broke through every Order and Rule made for the better Regulating and
carrying on of Proceedings in the Several Courts of Record, the Demurrer further
States, that there were no Precedents either in Law or in Equity that warranted
the Exhibiting of such Vagatory Writings, as they were no Rule or Argument
fixed or Certain that the Declations or Depositions were not Equal to what
they, Evidence, that the Parties thereto, no way amenable to the Mayors
Court for their want of Veracity and as they could not be Cross Examined
a Practice Preserved to the Subject in every Court of Record, the said Demurrer
further States, that by the said Joseph Marcoles mode of Proceeding by his
Bill of Complaint, that it Appeared very Evident that he wanted to make
a certain Cause as a foundation for his Action against Your Petitioner
which if Admitted of, would be contrary to the Rules Laid down in the making
of Affidavits which is Generally "that upon any motion or Petition is made
that is not of Course" an Affidavit of the Fact Alledged is Necessary and
not any of the Circumstances of the Cause" the Demurrer Stated an Authority
from the Orders made in the High Court of Chancery, and Observed as
a Standing Rule there that no Affidavit shall be Read in Evidence at the
Hearing of a Cause though it shall be used upon Motion, for an Affidavit
is not to be taken or Admitted tending to the Proof or Disproof of the Fact
or Matter in Question or touching the Merits of the Cause nor shall any such
Matter be scandalously or Colourably inserted in any Affidavit of the Species
of Evidence" for these Causes set down and for many other Causes, Your

Petitioner

Petitioner could have Assigned, Your Petitioner prayed leave of the Worshipful the Mayors
Court to Demur and the same was granted Accordingly, to this Special Demurrer
Your Petitioner Sheweth that the said Joseph Marcole did on the Thirteenth Day
of March in the present Year, Join in the Demurrer by filing a Joinder to the same,
wherein he the said Joseph Marcole, did Assert and Alledge, that Your Petitioner
ought to have Answered his Bill of Complaint, because such Bill was in itself
sufficiently certain as to need no immediate support from the Affidavits or
Depositions, which Your Petitioner so pointedly Speakes to, as the Real Cause
for his Demurring, otherwise than as the said Affidavits may have been
thought proper to support his the said Joseph Marcole Right to hold the
Defendant to Bail, the said Joseph Marcole further in his Joinder Says
that his Cause of Complaint was not founded on the said two Affidavits or
Depositions or on any other Matter or thing, further than as the same was
Necessary for the Reason aforesaid, for that the Bill of Complaint States
the Delivery of the Spruce, and the Bills of Lading given for the same for the
calling at the Port of Masulepatam, and that the Spruce was not delivered
to the said Joseph Marcoles Agent by Coja Inaul Baloom, that he had
charged Your Petitioner in his Bill of Complaint with having made Default
by passing the Port of Masulepatam without having been Obliged or Compelled
to stay or Deviate from the Port of Masulepatam by any Danger of the Sea
Wind, or Weather and further that he the said Joseph Marcole had in his Bill
of Complaint fully stated his Charges why Your Petitioner should be Responsible
for the Loss of the Spruce as Your Petitioner had not nor could not Safely
the Removal of the Property from the Ship to the Shore, and therefore he the said
Joseph Marcole submitted those Charges to the Consideration of the Worshipful
the Mayors Court, whether if they were not of themselves Independent of the
Affidavits by Your Petitioner Objected to as the Real Cause of Demurrer Sufficiently
entitled to Call Your Petitioner to an Account and Reckoning which Your Pet.

Sheweth

Sheweth to Your Petitioner never deigned, the Joinder of the said Joseph Marcol further Saith that such said Affidavit were not in themselves so void of certainty or defective in manner and form as Your Petitioner charges in his Demurrer nor were they meant or intended as specious for bringing an Action against Your Petitioner, neither did he the said Joseph Marcole, as he says therein mean to impose Your Petitioner or hurt his Defence by Answering these Exhibits to his Bill of Complaint for that he did not mean to rest his Charges against Your Petitioner on those Affidavits but only meant to support the same for the Satisfaction of the Worlle the Mayors Court, by the Testimony of Witnesses taken in due form, Your Petitioner Sheweth, that upon these Demurrer and Joinder being Ordered to be Argued the same came on and Argued by Your Petitioners Attorney in Court, when many especial Authorities were quoted in Support of the Allegations set forth in the Demurrer, and few if any on the part of the said Joseph Marcole for in fact, Your Petitioner Sheweth, that upon an inspection in to the Joinder to the Demurrer, no one Authority or Precedent is quoted or shewn why those Matters so Annexed to the Bill of Complaint were produced, and sworn to be taken as part and parcell of the said Joseph Marcoles Bill of Complaint should be made a part of the said Bill of Complaint or that such an Attempt to Establish an Evidence in so irregular a manner, could be Justified, or that Your Petitioners Attorney Attorney could Answer to the said Worlle the Mayors Court, for tacitly Admitting of such irregularity so Contrary to the known Rules laid down in the Conducting and carrying on of any Civil and Criminal Proceedings through out the Mahomedan Empire, Your Petitioner further Sheweth, that after the Arguments the Attorneys had made use of were done the Worlle the Mayors Court did proceed to take the same into Consideration and did to Your Petitioners great Surprize Dismiss Your Petitioners Demurrer by Overruling the same with Costs as Appears by a Copy of such Order of Dismission Ready Annexed for the Inspection of this Worlle Court of Appeals from which said Original Order Your Petitioner begs Leave to Appeal to this Worlle Court of Appeals not only for the Reasons Assigned in his Demurrer but for many others Assigned at the hearing of the Demurrer and Joinder, but also for these Special Reasons

First Because Bills of Complaint in the Mayors Court at Madraspatnam are in Effect, the same as Bills of Complaint in the High Court of Chancery, which Contain the Fact Complained of, the Damage thereby Sustained and Petition of Process against the Defendant for Redress, but Affidavits and Depositions that any way tend to the Merits of the Cause, are never encouraged or Added to the Bill of Complaint, for the fear of inclining the Court more on one side than on the other, for the Bill of Compt ought to be true in Substance and the Matter plainly, and sufficiently Alledged and there ought to be no Repetitions of Deeds, but only the Effect and Substance of so much of them as is pertinent and material to be set forth, Whereas the Bill of Complaint of the said Joseph Marcole, as it now stands with the ill Commented Depositions or Affidavits, is entirely irregular and Drawn out Contrary to the Rules and Regulations that the Law has prescribed

Secondly, That all Affidavits or Depositions that are made, must be Sworn to before some Person, who hath an Authority to Administer such Oath, Whereas the Deposition said to be of Kancattala Narasoo the Shalunny and Woolala Syapah and Vedapally Narsoo Lascars of the Ship Fanny and which were dated at Madraspatnam July 14th 1780 are said to be Sworn to, the 8th day of September 1780 at Madraspatnam before Edward Colesford, who Signs himself Chief, but who that Edward Colesford is, and by what Authority he administered an Oath, or in what Manner the same was tendered to the Parties, or who Explained the Contents, is not set forth or Expressed, and Supposing the said Deposition had been Sworn to before a Magistrate or other Person legally Commissioned to Administer an Oath, Yet that such Deposition could not have been made use of or Exhibited until Publication had Passed and not then, unless Affidavit is made of the party Deponent being Dead, Affidavits of Sureties of Writs and Orders are usually made and Allowed during the Carrying on of the Several Proceedings, but where they tend to the Merits of the Cause never are Allowed to be made use of when the Testimony of the Parties can be had, either Ore tenus or at an Examination of Witnesses, Whereas the Deposition or Declaration of Kancattala Narsoo and the others, Speak entirely to the Merits of the Cause, and Makes a part of the

the Bill of Complaint wherby had Your Petitioner not Looked thro' Negalony Writings Your Petitioner had two several Answers to make, of several Distinct Matters, thereby Creating a Confusion and also Splitting of Causes which the Law abhors, Your Petitioner further begs leave to Recite, an Authority from the Law of Evidence, "that on an Appeal from the Commissioners of Appeals the Depositions of Witnesses taken before the Commissioners of Excise ought not to be Read but they ought to Examine the Witnesses de Novo viva voce" Vide Prospers Vol. 2. Page 477 and "further in the same Authority, it is said, "Regularly the Depositions in Chancery of a Witness shall not be given in Evidence if he be alive, although he be beyond Sea as in Ireland &c." Your Petitioner further Sheweth, that many other Authorities may be shewn that these Depositions or Declarations cannot be used in any Shape whatsoever and moreover these Declarations are totally Repugnant to what the Law Requires, which is time, place and person, together with Certainty as to Circumstances all of which are admitted to be set forth in these Declarations or Depositions

Thirdly Because many Exhibits such as Letters not proved Declarations made before persons not of Authority Annexed to Proceedings have in many Suits depending in the Honble the Mayors Court, by a full Court unanimously thrown out, as irregular, and Contrary to the Law of Evidence, as will appear upon their Records and Ready to be produced when Required and as further Proof, that the said Honble the Mayors Court did not Appear well Satisfyed with the Order they made of the Twentieth instant upon Your Petitioners Demurrer, they the said Honble the Mayors Court on the Arguing of the Demurrer mention'd to be shown on by the Defendant to Bill of Complaint, for the want of some Proof so as to ascertain the Fact in the Matter of Right to be Answered to the Bill of Complaint, they the said Honble the Mayors Court Over Ruled the said Demurrer, and Admitted the Bill of Complaint simply as it then stood, Notwithstanding they had but a few months before, Over Ruled Your Petitioners Demurrer, for the very Cause that the Defendant on the Sheriffs Cause complained for the want of the Name of which

Said

Said Andah Vera Jamall one James Taylor as that Your Petitioner Apprehends and does truly believe, the Order made for Overruling Your Petitioners Demurrer, was Rather an Error in Judgment from some wrong Erroneous Doctrine Advanced at the Arguing of the Demurrer than from any Law Authority what soever

Fourthly Because nothing as the said Declarations or Depositions are Allowed to be Contained, so long as Your Petitioner be injured in his Defence, and in Proof of this Assertion, Your Petitioner Sheweth, that from these pretended Depositions and Affidavits these Causes with them, great Partiality to the Prejudice of Your Petitioner being in Goal for want of Bail, whereas of the Bill of Compt. and Standwith the two Bills of Lading and the Account Current thereto Annexed, the Honble the Mayors Court might on taking the Minds of the Case into Consideration, have Ordered Your Petitioner to file Common Bail as they had done in the Original Causes, brought by the said Joseph Marcoole against Your Petitioner, for the very same matter, and to the Amended Bill of the said Joseph Marcoole and Your Petitioner just in every full clear and Explicit Answer taking his proofs with Copies of Translate of an Information as made by the Court in Inspects from the Originals taken on the spot by Mr. Hamilton, where the Misfortune happened, and which Original in the Genloo Language bears date the 25th June 1780, and Signed by the Serang Jindall Lecomnys, Cassab, and Lascars of the Ship Fanny to which the said William Hamilton has subscribed his Name as done in his presence and also the Translate in English Subscribed to by John Leonhard as Genloo Interpreter but what is Extraordinary that the very people who have made the Depositions or Affidavits Translate of which are Annexed by the said Joseph Marcoole to his Bill of Complaint) are a Party of the Crew who made the Information in Genloo before Mr. Hamilton which is the Declaration they have in the deposition and Affidavits Exhibited as read to, and when Compared together will shew how carefull the said Joseph Marcoole ought to have been in procuring of these Depositions and Affidavits, as the Onus in Possession of Your Petitioner is may full and Circumstanced, Your Petitioner now proceeds to Shew the Mischief, that Negalony Writings has done her, that the said Joseph Marcoole not

deeming

[illegible]
denying his own Oath to the Bill of Sufficient, which was all that was Required
by Law from him to hold Your Petitioner to Bail, but he Annexed Copies of
Translates, as Translates from some Original Depositions and Affidavits
wherein a Narration is pretended to be given of some Circumstances, tending to the
injury of Your Petitioner, and which if true, would Appear to be the Grounds on
which the said Joseph Marcelt grounds his Complaint for the Loss of his
property, by such mode of Business Your Petitioner Sheweth, he lyes under great
Embarrassment by a pretended Declaration of matters of Fact being contradicted
at the first Stage of the Business against Your Petitioner, where According to
all Rules and Orders, both at Law and in Equity what these people of the said
Joseph Marcelt knew, ought to have been given in Evidence after issue had Joined
for the said Depositions and Affidavits as Exhibited by the said Bill of
Complaint, is done for no other purpose, than to Harrass and perplex Your Pet
and put him to as any unnecessary Expence and trouble and [illegible]
Reference being had to the former Proceedings for the very Cause of Action, brought
before this Honble Court of Appeals by Your Petitioner, and is now depending,
wherein a Special Bill of Complaint is preferred without any Deposition or
Affidavit as to the Grounds against Your Petitioner and every Special Answer
is also put in, and some of Your Petitioners Witnesses Examined that were
about to depart out of the Jurisdiction of the Honble the Mayors Court, all of
which was Submitted to the Consideration of the said Court, when Special Bail
was Required though such Proceedings by the subtle invention of the said Joseph
Marcelt is endeavoured to be disclosed under the Pretence of a Discontinuance or non
Suit as called Your Petitioner further Sheweth, that on this pretended non Suit being
made the present Suit was immediately enstituted and brought with the
Deposition and Affidavits in Question as a part of the said Bill of Compt
and a new Endorsement for the Mayors Court to be Granted to the said Bill
of Complaint, which is Endorsed by the said Joseph Marcelt directing that
such Deposition and Affidavit might be taken as part of his Bill of
Complaint

Complainant, Your Petitioner Sheweth that by this Contrivance Your Petitioner has lost
his liberty his Cause enjoined, and the Parties Disposing not Subject to any Punishment
because in the first Place, the Deposition was not sworn to before any Person Legally
Authorized to Administer an Oath nor the Affidavit as to the Facts taken According
to Law.

Your Petitioner therefore most humbly Appeals to this Honble Court of
Appeals that the Order of the Honble the Mayors Court of the Thirteenth of this
instant March may be Reversed and Set aside with Costs to be Taxed by the said
Complainant.

Extract from the Minutes of a Court Held at the
Town Hall on Tuesday the 20th day of March Anno
Domini 1781

Present

Benj.n Roebuck Esquire Mayor

James Call and Thomas Coëfon

Aldermen

Joseph Marcet

versus

Joseph Kengsmill

Bill with Copies of two Bills of Lading as Account and Also Copies of the
Translation of Two Affidavits Annexed Read.

Demurrer Read

Joinder Read

The Demurrer and Joinder coming on to be Argued and Determined this Day in the presence of the Attorneys on both sides on Reading the Complainants Bill with Copies of two Bills of Lading an Account and Also Copies of the Translation of two Affidavits Annexed the Demurrer the Joinder On Hearing the Pleadings and Arguments made use of by the Attorneys and on due Consideration had thereon the Court are of Opinion that the pleas made use of by the Defendt in his Demurrer are not Sufficient The Court doth therefore think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and the Defendant be put upon his Answer

Day is Given the Defendant till the 3d April Next to Answer the Complainants Bill and default of which Judgment will be given for the Complainant

A true Extract

(Signed) James Taylor
Regr

To the Honble Charles Smith Esqr
President and Governor & the Council of
Fort St George

Between Joseph Marcel Complainant and
Joseph Bingamell Defendant

In the Court of Appeals

The Answer of Joseph Marcel the above named Complainant to the Petition and Appeal of the above named Joseph Bingamell late first owner and Commander of the Ship Fanny

The

The Respondent by way of Answer to the said Petition and Appeal answers so much thereof as concerns him to make Answer unto Saith he Admits it to be true that he did at such time and for such sum as the Appellant hath in his said Petn and Appeal for that purpose set forth prefer his Bill of Complaint in the Honble the Mayors Court at Madrass patnam against the said Appellant and and that thereunto and as part thereof was Annexed a Copy of an Account and Copies of two Bills of Lading as also Copies of the Translates of two Affidavits, and the Respondent doth further admit that he in his said Bill of Complaint did state his Cause of Action in manner and did Charge the Appellant with such a default and such Responsibility as Appears in the Recital thereof in the said Petition and Appeal and also Admits that he referred to the said Affidavits and to much other Circumstances as he hoped to prove Respecting such the Default of the said Appt but Denies that such Affidavits or the Copies of the Translates thereof were fictitious writing or that the said Bill of Complaint independant of them contained no more than a General Bill of Complaint as the Appellant even by his own shewing in his said Petition of Appeal hath recited and shewn such Certain Cause of Action, and such Special Charges to have been stated and Charged in the said Bill of Complaint as of themselves were sufficient independent of the said Affidavits to Call the Appellant to an Account in the said Mayors Court and this Respondent further Admits he made Oath to his Debt and that the Appellant was Arrested and that such Matters were depending between this Respondent and the said Appellant in the said Mayors Court as by the Records or Enquiries thereof do appear and this Respondent also Admits that the Present Appellant did Appeal to this Honble Court of Appeals from an Interlocutory Order of the said Mayors Court whereby a Suit then depending had been discontinued this Respondent further Admits that the said Appellant did Appear and Demurred to the said Bill of Complaint and as Cause of Demurrer did endeavour to shew an irregularity in the Respondents Answering to his said Bill of Complaint the aforesaid Copies of the Translates of the said Affidavits the Appellant in such his Demurrer pretending that

that the Respondents Charge had been wholly founded and Among such other fortunes and Arguments thereon as he thought most suitable to prevail on the said Magors Court to Dismiss the said Bill of Complaint so as that the Appellant might avoid Answering the same the said Appellant on such his Demurrer dwelt on the insufficiency and Irregularity of the said Affidavits and the Respondent further Answering Alledges that to such Demurrer he filed his Joinder and did therein Contend that he the said Respondent his said Bill of Complaint in Demurred to was so insufficiently contained in itself as to Ground any immediate Injunct from the said Affidavits than respectively the Subject and pretended Cause of Demurrer otherwise than as far they might have been thought proper to support the Respondents Right in holding the Appellant to Bail the Respondent in his said Joinder and as the truth was shewing that his Complaint or Claim was not founded on the said Affidavits but that his Cause of Action was Express and contained in his said Bill of Complaint by Stating and Charging the Delivery of the Spruce Mentioned in the said Bills of Lading to the Appellants and his Responsibility by the Means thereof and of his Default in a manner specially Conducted the Respondent further in the said Joinder shewing that he did not mean to Rest his Charges in the said Affidavits nor that they should operate in prejudice to the Appellants defence but that the so Annexing them to his Respective said Bill of Complaint was Merely Meant to Satisfy the said Magors Court by the Testimony of the said Affidavits that the Appellant ought to be held to Special Bail and the Respondent did further set forth that he did not mean to Rest his Evidence in the said Affidavits but to prove such facts as were material for the support of his Right of Action before the Examiner According to the usual form in which Case the Appellant would have full Right to Cross Examine and the Respondent saith that it Appears on the Record of the Hon^ble the Magors Court in this Cause that Rules have passed for the Examination of Particular Persons who were about to depart from the Jurisdiction of the Court and that the said Persons were Severally

Named whereby and by the Power of the Rules by the Examiner on the Appellant or his Wife the Appellant had every Opportunity to cross Examine the said Persons had he thought it Right so to do and the Respondent further Answering saith that the Orders of the said Demurrer and Joinder coming on to be Argued and being Accordingly Argued and heard in and before the said Magors Court on the Twentieth day of March last past said Court was pleased to Order and did Accordingly Order that the Appellants said Demurrer should be thrown out with Costs and the Defendant Answering the Appellant do put in his Answer only the said Bill of Complaint Demurrer, Joinder and other the Proceedings in the Cause before the Magors Court together with the Orders Annexed thereof Reference being to them respectively had will more fully Appear the Respondent Answering as full and Ample Benefit thereof and of each of them as if they were herein before at full Length set forth and the Respondent for further Answer saith that the the said Appellant hath Appealed to the Hon^ble Court of Appeals from the said Order of the said Magors Court he had no Reason to Consider himself Aggrieved thereby, nor could he Notwithstanding any thing by him Alledged as any Cause or Reason by him Assigned justified he so Appealing from the said Order of the said Magors Court for the following Among other Reasons

First Because it Appeared to the said Magors Court that the Respondents said Bill of Complaint Independent of the said Affidavits was in itself so sufficient Certain as well Respecting the Cause of Action as the Relief Prayed for as to need no immediate support from the said Affidavits otherwise than as they might have been thought proper to support the Respondents Right of holding the Appellant to Bail, beyond which they were not intended to Operate and therefore the Appellants defence could not be prejudiced thereby

Secondly Because the Default of the Appellant from the Nature thereof could not otherwise be more Regularly Proved so as to show the said Magors Court that there was sufficient Cause for holding the Appellant to Bail in which Cause and for which purpose the Occasion not only Justified the Annexing of such Affidavits but has saved them from coming within the Meaning of any or either of the Restrictive

Restrictive Rules and Orders held forth by the said Appellant in his said Demurrer and on his said Petition and Appeal

Thirdly Because the Respondent Offered nothing in such Affidavits as Annexed to his said Bill but that he was able and Ready at due time to prove under a Regular Examination of Witnesses and that the Appellant could by no means in the least deprived of any right he had to Cross Examine such Witnesses or otherwise to support his defence by such Testimony as he for that purpose could offer

Fourthly Because that the Loss of the Liberty of which the Appellant complains as a Grievance is the Result of his own Misconduct in having Acted in such a manner as to Oblige this Respondent to Redress by the due Course of Law an injury done to this Respondent in violation of all Law and every Rule of Justice and therefore such Loss of Liberty is not to be imputed to this Respondent as an unjust and unprovoked grievance inflicted by him to the Prejudice of the Appellant

Fifthly Because that the Law Cases cited by the Appellant are not consistent and as to the Reference to the Records of the Mayors Court made by the Appellant in manner as Appears in the said Petition and Appeal the same is highly insufficient and in particular as the Reference to the Cause of Andrews formal Wife James Taylor proves against the Appellant for the Demurrer was thrown out in that Cause as well as in the present and as to the idea Suggested by the Appellant that the Throwing out the Demurrer in Question could rather arise in Judgement from some very Erroneous Doctrine Advanced at the Arguing of the Demurrer than from any Law Authority whatsoever this Respondent can by no means Admit the same to be well founded because that if this Respondent had Attempted to introduce such Erroneous Doctrine at the Hearing of the Demurrer it is Evident from the Style of Argument Adopted by the Appellant in support of his Right of Appeal that his Abilities were amply equal to the Detection of any such fallacy and to have Supplied to the Bench the fullest Legal Support of the Appellants Pleas

For all which Reasons and such others as may be offered at the hearing this Respondent humbly Prays that the said Order of the Honble the Mayors Court of the said Twentieth day of March may in all and every part be Affirmed by this Honble Court of Appeals with such Costs and Damages Costs to be paid by the said Appellt as

as under all the Circumstances of the Case ought to be Adjudged against the said Appellant

Court of Appeals at Madraspatnam } Thursday the 22d November Anno Domini 1781

Between Joseph Ringrosell Appellant
and Joseph Marsel Respondent

This Cause coming on this day to be heard and Debated before this Court by the Attorneys on both sides upon hearing the Petition of Appeal and Answer and the Second Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 20th March Anno Domini 1781 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court dated the 20th day of March Anno Domini 1781 do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs in this Court

Wm Charles Freeman
Clk of Appeals