Supreme Court
Appeals Appendix Vol. 12
1872

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In the Supreme Court of Washington

Term commencing about
this Record Upon
May then and there
Court at Olympia
Record of Proceedings
Appeal
Bonds
Costs

Thursday 30th January 1783

Present

Anthony Sadleir

Alexander Davidson John Tun

Robert Barclay

To the Honble the Court of Appeals at Madraspatnam

In the Court of Appeals at Madraspatnam

Between Daniel Bayne Mariner Complainant and David Boyd Merchant and Part Owner of the Ship Asia Defendant

The humble Petition and Appeal of the said Defendant

Sheweth

That the said Complainant did some time in or about the Twenty Second day of March last past and in the Present Year of our Lord One thousand seven hundred and Eighty two exhibit a certain Bill of Complaint in the Honble the Mayors Court at Madraspatnam against your Petitioner and under Pretence that there is due and owing unto him the said Complainant the Sum of Four Thousand and Twenty five Pagodas Eight fanams Canty Para Money of Madras from your Petitioner as the Ballance of wages who had Services of the Compla

Filed in my Office the 10 June 1783

Chas Truman Clk of Appls

Pursuant a Copy of which was annexed to his said Bill of Complaint
your Petitioner was compelled to put in Special Bail the said
Complainant after having stated in and by his said Bill of Complaint
that the said Sum of Three thousand and twenty five Pagodas eight
Fanams Current Money of Madras pretended to be due unto him the
said Complainant from your Petitioner as the Ballance of an
Account Current Copy of which he had annexed to his said Bill
which Account Appears unsettled by the Parties he the said
Complainant in and by his Bill proceeds to charge your Petitioner
with being indebted unto him the said Complainant in the sum
of three thousand and Twenty five Pagodas eight fanams Current
Money of Madras under pretence of your Petitioners having entered
into a certain Agreement in Writing bearing date on or about the first
day of March in the year of our Lord One thousand Seven hundred
and seventy eight by which said pretended Agreement Copy of which
was also annexed to his said Bill of Complaint it was alledged
that the said Complainant was to receive One hundred Pagodas
Per Month for Navigating conducting and taking the charge &
command of a certain Snow or Vessel therein described and upon
Condition that he performed the Duties of Master and Commander
by Navigating and conducting her the said Snow or Vessel from the
East Indies to Denmark and also of Navigating and Conducting any
other Snow or Vessels from Denmark to the East Indies and under
the express condition that he the said Complainant did Continue
in Command of the said Snow or Vessels and perform the Duties of
such station for twelve Months after the arrival of such Snow or
Vessel in India he the said Complainant further states in and by
his said Bill of Complaint that in Consequence of such Agreement
he

he entered upon the employ and Proceeded in the said Snow from the
East Indies to Copenhagen at which Place from the Rupture or War
between the English and French Nations it was considered improper
to continue the said Complainant as Commander any longer that in
consequence thereof your Petitioner did procure the said Complainant
a Passage on board of the said Vessel on her outward bound Voyage
to India free of expence according to the Nature and terms of the
Agreement the said Complainant further States in and by his said
Bill of Complainant that upon arrival of the said Vessel at
Tranquebar the Agreement on both Sides ceased and became Void
Yet he proceeds in and by his said Bill to pray a Decree or
Judgement of the said Honble the Mayors Court against your
Petitioner for the said Sum of three thousand and Twenty five Pag.
Eight Fanams Current Money of Madras and all Costs of Suit
To this said Bill of Complaint and the Charges therein contained
Your Petitioner did on or about the Ninth day of April last past
file his Demurrer for as much as the said Bill of Complaint
Contained no Just or equitable grounds for action to bring your
Petitioner in question before the said Court Your Petitioner therein
state and Shew amongst other Causes for Demurrer that the
pretended written agreement under which the Complainant set up his
Demand had long Since been rendered ineffectual and Void by an
Edict or Public Notification from the King of Denmark whereby the
said Complainant had been forbid and prevented from rendering those
Services which he had positively engaged and undertaken to
perform the Duties not being performed on one part they of Cour
ought to cease and become Void on the other nor ought any Para
such Agreement to be enforced against your Petitioner who had
received no benefit or Advantage from the labours or Services of the

Complt

Complainant from the time of the Ships arrival in Denmark some time about the middle of the Year One thousand Seven hundred and Seventy Nine since which no duty or service has been performed or rendered by the said Complainant to your Petitioner to this present time therefore the Spirit and meaning of the said Agreement was lost and made of no effect to your Petitioner who further in his said Demurrer Setforth that the Agreement was not of that equitable nature wherefrom conformable to the laws of the England an equity could be raised for a Decree in Specie the laws of England as your Petitioner is advised require that Agreements should be Reciprocal and equally beneficial and binding for performance of Duties and should be obtained with all possible fairness as for Mutual obligations for Services which upon failure on one side ought to be enforced on the other side also for they ought under no Situation or pretence to be unreasonable nor could the said Complainant establish such a claim as he had in and by his said Bill of Complaint set up and exhibited against your Petitioner under the Spirit and true meaning of the said Agreement for the Sum of One hundred Pagodas per Month was to have been paid unto the said Complainant as by his own stating only upon the express Conditions that he the said Complainant should take charge of and Navigate and Conduct such Ships Snow or other Vessel as your Petitioner might have in his employ and that he the said Complainant should expresly continue in such command and Discharge the duties thereof for twelve Kalender Months after the arrival of the said Ships Snow or Vessel at the delivering Port in India which the said Complainant so far from performing have declared in and by his said Bill of Complaint that

that immediately upon their arrival at Tranquebar all Agreements ceased and became Void between him and your Petitioner by which declaration of the said Complainant no relating or tendency could be had to the said Agreement Copy of which appears annexed to his said Bill of Complaint your Petitioner further Stated in and by his said Demurrer that being deprived of the Services of the said Complainant as a Mariner or Navigator by the express order of the King of Denmark which being considered as part of the law of Nations ought to have discharged your Petitioner from any such demands as the said Complainants had brought against him for he could in no instance prove that such discharge from the Service had been occasioned by any force or Act of your Petitioner on the contrary by the Edict of the King of Denmark to which your Petitioner and every other Person within that Kingdom were bound to pay Implicit and due Obedience the Complainant having declared and Stated in his said Bill Against your Petitioner that at Tranquebar all matters and Agreements Ceased between him and your Pet.r Why then if the Complainant had any Cause of Complaint against your Petitioner did he not prefer such Complaint before the Courts of Justice at Tranquebar before whom the parties were strictly amenable and where if any cause for Complaint existed the matter was Properly Cognizable and As the said Complainant declined to Attempt the Recovery of his pretended demand at the Port where he himself says all Duties and Obligations Ceased he ought not to have brought your Petitioner before the Mayors Court at Madraspatnam for Recovery of Wages as a mariner (if any were due to him) which arose in a foreign Service and upon the high Seas for had such Cause for Complaint existed as is Stated which

Your

Your Petitioner Avines to be the Case it ought rather to have been
decided at Tranquebar than before the Mayors Court at
Madraspatnam who had no Jurisdiction in such Case for
Agreable to the late learned Judge Blackstone in his commenta-
ries the third Volume Page 107 ... All pure Maratime
Acquisitions which are earned and become due upon the high
Seas as Seamens Wages, are one Proper object of the Admiralty
Jurisdiction even though the Contract for them be made upon land
And your Petitioner further Stated in his said Demurrer that the
said Complainant having Voluntarily and freely of his own accord
left the Service or employ of his Native Country and entered into
a Foreign Service he ought to have Submitted himself to the Laws
Customs and Regulations of that Particular Country into which
he had so Voluntarily entered and not to have brought your
Petitioner as aforesaid the Merchant in Question before the Honble the
Mayors Court at Madraspatnam for Causes of Complaint
Pretended to have arisen on the high Seas and in Different Ports
and Places in Denmark and elsewhere out of the Jurisdiction of
the said Court to which said Demurrer of your Petitioner the said
Complainant did sometime on or about the twenty Sixth day
of April last past file his Joinder and did therein pretend to
Support his said Bill of Complaint and the Charges therein
unjustly exhibited against your Petitioner and did insist upon the
said sum of three thousand and twenty five Pagodas eight Fanams
Current money of Madras being due unto him the said Complaint
for Wages as by his Account Current and that he had a right to
Claim the same by Vertue of and under the said Agreement Copy
of which was annexed to his said Bill of Complaint which being

as

as he unjustly pretended entered into and given by your Petitioner
unto the said Complainant within the Town of Madraspatnam
gave the Court local Jurisdiction to take full Cognizance
which your Petitioner declares to have been an imposition on
the Court for the Agreement so pretended to have been executed
in the Town of Madraspatnam was sent to your Petitioner
to Tranquebar to execute which although contrary to your
Petitioners liking he was prevailed upon to execute under the
Assurances that no Advantages whatever to his prejudice or
the Prejudice of those he was concerned in trade with should
ever be taken. But that the said Agreement should by the
Complainant be Considered the same as a letter commonly
made use of upon such Occasions the said Complainant
further Stated in his said Joinder that Your Petitioner had
frequently Promised to pay the Ballance of the said
Account unto the said Complainant and had Acknowledged the
same to be Just which was by no means the Case for Your Petitioner
Positively avers and declares that he could not Just to himself and
those concerned with him nor did he ever make such Acknowledge-
ment on the Contrary your Petitioner Ever Considered the demand
of the said Complainant as unjust and such as he was by no means
or upon any Account entitled unto for from the day of the date
that his Wages is Stated to Commence by the said Account
Current to the time of filing the said Bill of Complaint no Service
or Duty was performed by the said Complainant or any benefit
whatsoever derived from him to your Petitioner or those Concerned
with him Yet Nevertheless the said Complainant did proceed
on and by his said Joinder to pray Judgement against your Petr.
for the said Sum of three thousand and twenty five Pagodas

Eight

Eight Fanams Current Money Madras as if the same had been actually due and Owing from your Petitioner to the said Complainant upon some Specialty as Bond given granted and executed for good and Valuable considerations and the said Complainant did further pray Interest Costs and Damages your Petitioner further Sheweth unto this Honble Court that upon Tuesday the Twenty eighth day of May last Past the said Bill of the Complainant your Petitioner's Demurrer and the Complainants Joinder thereunto came on to be Argued before the said Honble the Mayors Court at Madras-Patnam when the said Court were pleased to Order and Decree that your Petitioner should pay unto the Complainant the said sum of three thousand and Twenty five Pagodas Eight Fanams Current Money of Madras together with Interest and Costs of Suit By which said Judgement Order and Decree of the said Mayors Court your Petitioner considers himself particularly Aggrieved and doth Appeal from the said Judgement Order & Decree of the said Mayors Court unto the Judgement of this Honble Court a Copy of which said Judgement Order and Decree of the said Mayors Court is hereunto annexed for the inspection of this Honble Court and prayed by your Petitioner to be taken and received as part of this his Petition and Appeal Your Petitioner begs leave to represent unto this Honble Court that some time on or about the Twenty fourth day of June which was in the year of our Lord One thousand Seven hundred and seventy Nine your Petitioner and the said Complainant being at that time at Copenhagen in the King of Denmark all accounts of every Kind and Nature whatsoever were Settled Closed and finally adjusted between your Petitioner and the said

Complainant

Complainant when your Petitioner Paid unto the said Complainant a Considerable Sum of Money in full of all Demands at which time the Public Edict or Notification from the King of Denmark took effect by which every Foreigner or Native of any other Nation or Country than those of his Danish Majesty were Prohibited and Strictly forbid to Sail as Master or Mariner in any Ships Snow or Vessel from Denmark in which Predicament the Complainant Standing, he was from self Preservation and in Obedience to Such Orders forced to resign the Service or employ And from that time he the said Complainant hath done or performed no Duty or Service whatsoever for your Petitioner or those interested with him in trade but the Duty and Office of Navigator and Commander hath Since that time been Done by Didarick Van Holstein the Present Commander at the time before Stated Viz. the twenty fourth day of June One thousand Seven hundred and Seventy Nine your Petitioner Sheweth unto this Honble Court that he paid the said Complainant in full of his Demands, and Procured him a passage and Table free of expence from Denmark to India in another Ship, thanking as the Complainant also appeared to do, the same, that he your Petitioner having done every thing that was encumbent upon him, and which according to the Situation and Circumstances of affairs, could possibly be expected by the said Complaint, he your Petitioner considered the Agreement now pretended to be exhibited as in force against him, to have been fully Discharged and Annulled, nor had your Petitioner no reason to consider but the Complainant was fully Satisfied he your Petitioner Suspecting no wrong or imposition to be offered

to

to him from the said Complainant did at the earnest entreaty of the sd. Complainant consent to receive him on board of the same Ship as a passenger on her outward bound Voyage it not being so convenient for the Complainant to Proceed in the Ship on board of which your Petitioner had procured him the said Complainant a passage and Proper Accommodations free of Expence but your Petitioner humbly begs leave to assure this Honble Court that such passage and Accommodation was consented to as a matter of favour and real Desire to Serve and Oblige him the Complainant, for he the said Complainant did not perform or attempt to perform or discharge the Duties of Navigator or Commander or any other Service whatsoever for or during the whole or any part of the outward bound Voyage but he the said Complainant was actually received on board of the Ship Asia and accommodated as a passenger merely to Oblige and Serve him the said Complaint and for no other Cause service or Purposed whatsoever — or did he the said Complainant render or perform any Service on board or otherwise during the whole Voyage, but was treated and Considered as a passenger only — All Duties having Ceased on the part of the Complainant your Petitioner doubts not but this Honble Court will admit that it is but reasonable they should also Cease to be longer binding on the part of your Petitioner who having done all that was incumbent upon him ought by reason &c implication and Common Justice to be released from all obligations for when the Duties cease to be reciprocal or equally binding on both parties they must Cease to be of any effect your Petitioner further begs leave to represent unto this Honble Court that at the time of Settling all Accounts as before are Stated your Petitioner

fully and truly considered all matters Settled between him and the said Complainant that what have since past has been to Oblige and Serve the said Complainant without receiving any benefit Service or duty whatsoever from him since that period Yet it is from that very time or Period he commences his demand against your Petitioner as by his said Account annexed to his said Bill of Complaint will fully appear, to which your Petr. Craves reference if need be — in which is the following Articles Viz. To two Years Six Months and twenty Days Wages as Commander, at the rate of One hundred Pagodas per Month from the twenty fourth day of June One thousand Seven hundred and Seventy Nine to the fourteenth January One thousand Seven hundred and eighty two, three thousand and Sixty Six Pagodas twenty eighty Fanams, after Stating another matter on the Debit side of the said Account he gives Credit for Some trifling Sums, which your Petitioner had advanced him without expecting any such Account after the Complainant has declaring upon or laying his Cause of Action in his Bill of Complaint against your Petitioner as arising or become due for Ballance of the said Account Current an Agreement is Created under a Penalty for the performance of Duties long Since discharged or avoided by the said Parties, or by means they could not Prevent and had Submitted unto and allowed — To this irregular mode of Proceeding your Petitioner Demurred and upon the Complaints Joinder and hearing is a Judgement given and a Decree of the Honble the Mayors Court passed against your Petitioner which Decree and proceedings your Petitioner humbly Conceives

to be Erroneous and not warranted either by the former Practices of that Court or the Laws of England Wherefore your Petitioner most humbly Prays that this Honble Court will be pleased to take the same into their Serious consideration and grant your Petitioner a general Relief in all and singular the Premises and that they will be Pleased to Reverse the said Judgement Order or Decree of the said Mayors Court and Order the Complainants Said Bill of Complaint against your Petitioner to be Dismissed with Costs and further grant unto your Petitioner such General other and particular Relief in all and Singular the Premisses as shall appear Agreeable to Law Equity and good Conscience

Edward Ellis

Extract from the Minutes of a Court Held at the Townhall on Tuesday the 28th day of May Anno Domini 1782

Present

Edward Garrow Esquire Mayor
James Call and William Webb
Aldermen

Daniel Bayne
vers
David Boyde

Bill with Copy of a Penalty Agreement and Account Current annexed Read

Demurrer Read

Joinder Read

The

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 Copy of a Penalty Agreement and Account Current annexed the Defendants Demurrer the Joinder. On Hearing the Pleadings 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 Insufficient This Court doth think fit to Order and doth accordingly Order that the Defendants Demurrer be thrown out with Costs And it is further Ordered and Decreed that the Defendant do pay unto the Complainant the full and Just Sum of three thousand and Twenty five Pagodas and Eight Fanams (Pags 3025. 8.) together with such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit

A True Extract

James Taylor
Regr

Attested to be a true Copy
Edward Ellis
Attorney for the Appellant

In the Court of Appeals

Between Daniel Bayne Complaint
And David Boyde Defendant

The Answer of Daniel Bayne of Madras Mariner to the Petition and Appeal of David Boyde of the Ship Africa Owner

Filed in my Office
the 26th June 1782
Charles Freeman
Clk of Appeals

The said Respondent not Confessing or Acknowledging all or any of the Matters and things to be true as in and by the

the said Petition and Appeal are mentioned and Setforth, for answer thereun to Says, that on or about the Twenty Second day of March last One thousand Seven hundred and Eighty Two, he did Prefer a Special Bill of Complaint in the Honble the Mayors Court against the abovesaid Petitioner for the Sum of three thousand and Twenty five Pagodas and Eight fanams, being so much due to the Respondent from the said Appellant, and to this Bill of Complaint the Respondent Says, he annexed a Copy of an Account which had been previously Settled between the said Appellant and the Respondent, to Shew at one View, the manner in which the Demand of the Respondent was made out, the Respondent further Says, that in his said Bill of Complaint he did Setforth that on the first day of March in the Year of Our Lord One thousand Seven hundred and Seventy Eight, he the Respondent did Enter into certain Articles of Agreement under certain Penalties to and with the said David Boyde, for to take the Charge and Command of the Ship Asia, then at that time called the Snow Endeavour and afterwards the Snow Frances, to, at, and from the several Ports and Places in India, and from thence to Denmark, and also in further Consideration of the Respondent taking the Charge of either the said Ship Frances or any other good Ship Snow or other Vessell that he the said Appellant or his Agents should think Necessary to fit out from any Sea Port in Denmark, bound on a Voyage to the East Indies And in further Consideration of the Respondent to continuing in the Commands of the said Vessell, or such other Ship Snow, or Vessell, Twelve Months after such the Safe arrival of the said Vessell in India, by which said Articles of Agreemint the said David

Boyde

Boyde, the Appellant, bound himself to allow and Pay the Respondent in lieu of Pay and Provisedge, the Sum of One hundred Star Pagodas to be Computed from the day of the date of the said Articles of Agreement, the Respondent further Says, that by these Articles of Agreement the said Appellant did on his Part, Promise and undertake to pay unto the said Respondt the said Sum of One hundred Star Pagodas untill the Respondts Arrival at the first Port in India, and the said Appellant did also promise and undertake to Obtain and get at his owne Expinces and Costs, then immediately, or as soon after, as it should be known that the said Vessell or any other Vessell does not sail on Account of the said Appellant for India, a Passage for the Respondent on some other good Ships Snow or other Vessell, that should or might be bound from Denmark to the East Indies, the Respondent further Says, that having thus entred Reciprocally into these Articles of Agreement and having bound each other in a Penal Sum for the performance thereof, the said Respondent Says, he took Charge of the said Vessell and Navigated her, at and from the Several Ports and Places in India, and from thence to Denmark, and from thence was Ready and willing to have brought the said Vessell back to any Port or Place in India, the said Respondent further Says, that in his Bill of Complaint he Setforth, that it being found on the Arrival of the said Vessell at Copenhagen that it was not Adviseable for the Respondent to return as Commander in the said Vessell to India, on Account of the Rupture between the French and English, and that therefore the Respondent was Permitted to come out as a Passenger on board of the said

Vessell

Vessell on her Return to India that Some time in January in the Present
Year the said Vessell arrived at Tranquebar, upon whose arrival the
Agreement between the said Appellant and the Respondent Ceased
and soon after the Accounts between the Appellant and the Respondt
were made up and Settled to the Satisfaction of the Parties Appellant
and Respondent To this Bill of Complaint of the Respondent did
the Appellant appear and on the Ninth day of April in the
Present Year, file a Paper Writing, which the Appellant erroneously
called his Demurrer and thereon did pretend to Say that the
Respondent had preferred his Bill of Complaint touching and
Concerning Sundry matters and Transactions which he Says the
Respondent well Knew were Extinct and avoid that the Scope and
End of the Bill of Complaint was to Recover a Sum of Money from
the Appellant under a certain Written Agreement long since
Tendered and annulled, by an Edict or Publick Notification
from the King of Denmark that the Respondent was thereby
debarred from a Performance and that the same ought to
Operate as in favour of the Appellant the Demurrer states
Sundry Arguments to Shew that the said Articles of Agreement
were void on Account of the aforementioned Edict the Demurrer
further Sets forth that in Case the Respondent had any
Cause of Complaint against the Appellant he ought to have
Complained against the Appellant to the Courts of Judicature
at Tranquebar before whom the Parties were Strictly amenable
and where the matter was Properly Cognizable the Demurrer
further States that as the Respondent declined the Attempt
to the Recovery of his pretended demand at the Port where he the
said Respondent Said all Duties and Obligations Ceased he
ought not to have brought the Complaint before the Mayors Court
at

at Madraspatnam for Recovery of Wages as a matter which Arose
on a foreign Service and upon the High Seas, for had such Cause
for Complaint existed as if stated it ought to have been decided
at Tranquebar in Preference to that of the Mayors Court at
Madraspatnam. the Demurrer stating a partial quotation
from out of Blackstones Commentaries as in Support
of the Appellants Assertions. the Demurrer further states
that as the Debt arose in a foreign Jurisdiction that the
same should be tryed in that Jurisdiction where it
Originated to this very irregular Demurrer as the matters
Contained therein where Proper for a Plea in abatement than
a Demurrer the Respondent did, on or about the Twenty Sixth
April last file a Joinder, and thereon did Specially enter
into the merits of the said Demurrer and thereon the
Respondent did Say, that the Appellant ought to have
Answered the Respondents Bill of Complaint or filed his
Plea or Answer on Oath as the Law directs and according
to the Usage and Practice of the Mayors Court because as
the Respondents Bill of Complaint arose on a Penally Contract
entred into within this Jurisdiction the Mayors Court was
thereby enabled to take full Cognizance and Decide upon the
action and that therefore the Appellants Demurring to the
Jurisdiction of the Court was a bad mode of Pleading "Because
all Pleas to the Jurisdiction must be on Oath and so must
all Pleas that go to the Disabelity of the Person," that the
Demurrer as it then Stood was entirely out of all Order and Rule
as the Pleas therein were Issuable Pleas and Proper either
for an Answer or a Special Plea in bar or Abatement and as

the

The Articles of Agreement under which the Respondent Sues were not denyed but Acknowledged the Respondent Prayed the Judgment of the Court thereon, the Respondent in his said Joinder to the Demurrer did Says that as the Appellant had it Necessary, to enter Specially into particulars for the Avoidance of the Penalty Agreement, by declaring a Supposed Edict of the King of Denmark, that occasioned the Respondent not rendering those Services to the Appellant as he was engaged for, the Respondent in his Joinder Sayed, that let the impediment be what it would, ample Provision was made by the Covenants inserted in the said Articles of Agreement, as the Words thereon express for the said Appellant to continue paying of One hundred Star Pagodas and until the Respondents arrival at the first Port on the Coast of Coromandell, as also for the Procuring of a Passage for the Respondent to India on the first Vessell bound from Denmark the Respondent denyed of his knowing any Edict being Publish or declared in Denmark and if such an Edict had been declared the same ought by the Appellant to have been pleaded in due form Law, the Respondent in his said Joinder, did not Admit of such Edict Prventing the Respondent from continuing the said Ships as Commander, the Respondent Says, it was the Alteration of Property and the Sense of her Owners, that it would be more for their Benefit and Interest and to Prevent altercations that might arise in the Capture of the Vessell by the French, that the Respondent was brought out from Denmark a Passenger instead of Commander the Respondent further in his Joinder Observed, that the meaning of the Parties were that the

Respondent

Respondent should go continue and Return to Bengall at a certain Rate of Month whether it was Passenger or Commander, the Parties themselves being apprehensive that the Owners would be under the Necessity of Changing her Commander upon her Arrival at Copenhagen and of this Opinion was the Appellt for that at no One time did the Appellant Offer or Pretended to give in Excuse this Pretended Edict of the King of Denmark for his the Appellants Nonpayment of the Respondents demand untill the Demurrer was filed the Demurrer States that the Vessell which the Respondent had Navigated to Denmark and came Passenger into Madras was not in the Road of Madras at the time of filing the Respondent's Bill of Complaint, which the Respondent in his Joinder denied Because both the Ship and the Appellant were at Madras at the time the Bill of Complaint was filed and some time after, and this Vessell was the Identical Vessell he the Respondent belonged to for many Years, all of which the Respondent Says, Plainly Shews, that the Appellt is ignorant of the Pleas and Excuses he has Offered in his Erroneous Demurrer the Respondent further in his Joinder to the Demurrer Sets forth, that the Appellant was amenable to the Honble the Mayors Court, for the demand and the Respondent had on the Appellant as entirely Agreeing with the Sense and Meaning of the Articles of Agreement the Respondent further in his Joinder to the Observation made by the Appellant in his Demurrer, wherein he the Appellant Says, that the Respondent ought to have Resorted

to

to Tranquebar for Justice, the Respondent in his Sounder Observed, that the Accounts were never made up: owing to the Variety of Business the Appellant was concerned in, and his earnest desire to be made at Madras, that the Parties came Passengers together from Tranquebar to Madras, and on board of the said Vessell was their Accounts Settled and Adjusted, and the amount of the Respondents Wages allowed and the Accounts were made out by the appellant and delivered to the Respondent at the Port of Madras and that such Accounts do remain in possession of the Respondent without being controverted or disputed but on the contrary, that the Appellt had Repeatedly Promised Payment and did send to the Respondent to come and take his Money which all Parties where at Madras and before the Sailing of the Ship Lately for Bengall The Respondent in his Sounder further Observed, that it was very apparent by the Appellant not Answering to the Bill of Complaint According to the Rules and Practice of the Mayors Court but Pleading a Sham Plea by way of Demurrer, that he the Appellant did not mean to make any Defence to the Bill of Complaint The Respondent proceeded in his Sounder to Answer that Part of Demurrer wherein the Appellant Says, that the Complainants Bill is for the Recovery of acertain Sum of Money for Wages said to be Earned at Sea, and that the Complainants ought not to have brought his Action Against the Appellant, because the Respondent had declined to recover it at Tranquebar, and in the Demurrer the Appellant Recites a partial Quotation from Blackstones Commentaries tending to the Mislead the Judgment of the Mayors Court, and to Oust them of the Jurisdiction as to the Cause of Action, the Respondent Observed in his Sounder to

Said

Said Demurrer, that so far from the Mayors Court being excluded from taking Cognizance of the Present Cause of Action that it was the Admiralty that was excluded, for Judge Blackstone Says in his Third Volume Page 106. If Part of Any Contract or Cause of Action doth arise upon the Sea and part upon the Land, the Common Law excludes the Admiralty Court from its Jurisdiction for Part belonging Properly to One Cognizance and part to another the Common or General Law takes place of the Particular and further Page 107. Therefore though Pure maritime acquisions which are Earned and become due on the high Seas, as Sea Mens Wages are one Proper Object of the Admiralty Jurisdiction even though the Contract for them be made upon Land yet in General, if there be a Contract made in a England, and to be executed upon the Seas as a Charter Party &c. these Kinds of mixed Contracts belong not to the Admiralty Jurisdiction but to the Courts of Common Law and indeed it has been further holden, that the Admiralty cannot hold Plea of any Contract under Seal." The Respondent in his said Sounder further Observed that his Agreement with the Appellant, was a Contract Submitted to Writting under the hand and Seal of the Appellant and under a certain Penally and of Course comes not under Cognizance of an Admiralty Jurisdiction as the Present Cause of Action is for a Debt due on a Penally Bond made and Entred into in the Town of Masraspatnam and upon a Special Promise and undertaking to Pay in the said Place and of Course Cognizable in this Mayors Court as a Contract made on Land. The Respondent further in his said Sounder quoted 1 Bacons Abridgment Volume 1. Page 626." that the Court of Admiralty hath no

Jurisdiction

Jurisdiction as to Contracts made on Land whither such
contract be made here or in Foreign Parts," and if a contract
be made upon the Sea which is afterwards Sealed upon
Lands the Court of Admiralty cannot hold Plea thereof,"
but if there be any Special Agreement by which the
Mariners are to receive their Wages in any other manner
then is usual or if the Agreement is under Seal the mariners
cannot Sue in the Admiralty Court," nor can the master Sue in
the Admiralty Court for his Contract on the Credit of the Owners
and not like that of the "mariners which is on the Credit of the
Ship." Holt Chief Justice said, that it is an Indulgence that
the Courts of Westminster Permit Mariners to Sue for their
Wages in the Admiralty Court because they may all Join in a
Suit but they will not extend it to a master of a Ship especially
if he was Master at the beginning of the Voyage therein England
and the Contract was made with him here. Holt Chief Justice
further said there were many Precedents in the Court of
Admiralty of Suits by the Mariners for their Wages but none for
the Master of the Ship for the Mariners contract upon the Credit
of the Ship and the Master upon the Credit of the Owners of
the Ship the Respondent further in his Joinder to the said
Demurrer Observed that the Appellant had Asserted that being
in a foreign Service the Complainant ought to have Submitted
himself to the Laws, Customs and Regulations of that particular
Service into which he the Complainant had so Voluntarily
Entred and not to have brought the Appellant in question
before the Mayors Court as the Respondent was taken and
received on board of the Ship as a Passenger only in Answer
thereto

thereto the Respondent did Setforth, that as the Contract or Agreement having been made at Fort Saint George with the Appellant, gives a Local Jurisdiction to the Court, as a Contract had, begun and Concluded at Fort Saint George aforementioned the Parties therein concerned being at the time of the Action brought within the Jurisdiction of the Mayors Court, and as the demand being upon a Contract made within the Jurisdiction the Same ought to be Paid without any Plea or Demurr more especially as the Appellant had so frequently Promised so to do, and this after the Ships Arrival in Madras Road, and the Appellant in the Town of Fort Saint George. Wherefore the Respondent said, that as the Appellant had thought Proper to Demurr and therein introduced certain Pleas more Proper for an answer and which appeared to him merely for Delay the Respondent prayed the Judgment of the Honble the Mayors Court for his Principal and Interest with Costs and Damages as the law directed in the like Cases the Respondent further Says, that as the Appellant has pretended to Advance in his Petition of Appeal that the Penalty Agreement was Sent to the Appellant at Tranquebar to execute and that he was prevailed upon in so doing under the Assurances, that no Advantages whatever to his Prejudice or the Prejudice of those he was concerned in Trade with Should ever be taken but that the Same Agreement Should be considered as a Letter commonly made Use of upon the like Occasions that this Assertion does not in any Shape appear among the Proceedings below. Nither does the Respondent believe any such Assertion was made Use of by the Appellant but as the Appellant has thought Proper to bring this matter out in the Appeal, the

Same

Same Course of Proceedings holds good as to the Respondent who begs leave to introduce the following wherein an Acknowledgment of the Debt and a Promise to pay at a future day is Shewn as on the Part of the Appellant, "Mr. Boyds Compliments to Captain Bayne and begs his Account but for the payment of which he must Request his waiting for untill at Madras where B.r Purposes proceeding as soon as the Ships Business here is done D. B.rs Private Debt to Captain Bayne by Bill he will either Pay here or at Madras as most Convenient for Capt Bayne dated 25th Janry 1783. to Captain Bayne," here the Respondent Says an Application was made to the Appellant at Tranquebar and he promised payment at Madras, thereby over Setting all his Pleas &c. that have gone to the Jurisdiction of the Mayors Court the Respondent further Says, that this Demurrer and Joinder came on and was Argued before the Honble the Mayors Court on the twenty Eighth day of May in the Present Year where the said Court were pleased to over Rule the Demurrer with Costs to be Paid by the Appellant and to pass a Decree Pursuant to the prayer of the Respondents Bill of Complaint from which said Order and Decree of the said Honble the Mayors Court, the said Appellant has thought Proper to Appeal to this Honble Court of Appeals, and States among many other Causes that the Appellant and the Respondent when at Copenhagen Settled all accounts of every Kinds and whatsoever, and the Same were closed and finally Adjusted between the Appellant and the Respondent at which time the

Appellt

Appellant Says, the Publick Edict or Notification from the King of Denmark took Effect whereby every Forigner was forbid to Sail as Master or Marines in any Vessell from Denmark in which Predicament the Respondent was as the Appellant Says and therefore was forced to Resign the Service, and has done no duty since, in Answer thereto the Respondent Says, that it was well known by the both parties of the difficulties the Ship labored under upon her arrival at Copenhagen, as can be proved by the Appellants own Letters to the Respondent on the Subject when at Calcutta, and the mode he lays down for the Respondent to Avoid them but what is extraordinary, that the Appellant should assert that he Settled all Accounts when at Copenhagen with the Respondent, had this been true where was the Necessity of the Appellant upon his Arrival at Tranquebar, in January One thousand Seven hundred and Eighty two, desiring the Respondents Accounts and Requesting the Respondents patience for the payment untill the Arrival of the Ship at Madras, this particular Part alludes to the demand that the Respondent had on the Vessell and Owners, for the Appellant goes on and Says in the Same Address, "D B.rs Private Debt to Captain Bayne by Bill he will either Pay here or at Madras as most Convenient for Capt Bayne," the Respondent further begs leave to Refute another false Assertion wherein the Appellant Says, he Procured the Respondent a Passage and Table free of Expence from Denmark to India in another Ship, that the Vessell on board of which the Respondent returned to India was the same Ship or Vessell that the Respondent Navigated for

Many

Many Years Past as Chief Officer under the late Captain Charles Cathcart afterwards as Commander to at and from the Several Ports and Places in India to Denmark and the Respondent does say, with great Propriety, he Navigated the Vessell from Denmark to India, the said Respondent further Says, he never considered the Articles of Agreement as made and Entred into by and between the said Appellant and the Respondent void and null, nor does it Appear the Appellant deemed the Same so untill the filing the Bill of Complaint against him for if that had been really the Case why did the Appellant upon his Arrival at Tranquebar desire the Respondents Account and why desire him untill his Arrival at Madras to pay the Amount the Respondent does not Admit that his Passage and Accomodations on board of the Vessell was as a matter of favour it was a matter of right which the Respondent insists he had from his Articles of Agreement, for he the Respondent had no favor to Ask of the Appellant but what of right appertained to him the Respondent the Respondent further Says, that true it is, that he has annexed to his Bill of Complaint an account being for Wages due to him as off Articles of Agreement this Account is a Copy of the Account as Settled and Adjusted by the Appellant himself after the departure of the Ship from Tranquebar for Madras and the total thereof is the Sum the Appellt requested of the Respondent to wait untill the Ships arrival at Madras for Payment, the Respondent further Says that his Action against the Appellant was well brought and well founded, the One Cause of Action Arising on the Express Words of the Covenant, wherein the said Appellant Covenants and agrees,

that

that in Case the said Snow Endeavour should be Sold otherwise disposed of at Denmark and that the said David Boyde, the Appellant, or his Agents should not think it Expedient to fit out any other Ship, Snow or Vessell from Denmark to India that the said David Boyde, the Appellant does thereby Agree to continue Paying of One hundred Star Pagodas p Month unto the said Daniel Bayne the Respondent untill his Arrival at the first Port on the Coast of Coromandell and also the said David Boyde does promise and Agree to Obtain and get at his own Expence and Costs immediately or as soon after as it shall be known that the said Snow endeavour or any other Ship or other Vessell do not sail on Account of the said David Boyde for India a Passage on board some good Ship Snow or other Vessell that shall or may be bound from Denmark to the East Indies, and the Respondent further Says, as another Cause of Action, that the Bill of Complaint is well found on the Special Promise and Undertaking made at Tranquebar in January for to pay upon the Arrival at Madras, the Respondent further Says, that there has been no irregularity on his part as to the demand or the proceedings but the irregularity Arises on the part of the Appellant who ought to have answered or Pleaded instead of Demurring but as he has thought Proper to misplead and thereby introducing matters Necessary for an Answer the Honble the Mayors Court were Pleased on the face of the Merits to Decree as the Law in that Case has provided — And the said Respondent humbly conceives and is advised that the said Order and Decree are Agreable to Equity and Justice and therefore humbly hopes that the same shall be Affirmed and that the said Petition and Appeal shall be dismissed

with

this Hon^ble Court with Costs to be paid by the Appellant

Charles Bromley
attorney for the Respondent

Court of Appeals
at
Madraspatnam } Fr Thursday the 30th January
Anno Domini 1783

Between David Boyde Merchant
and part Owner of the Ship Asia
Appellant and Daniel Boyne Mariner
Respondent

The Attorney for the Appellant having Moved to
with draw this Cause each Party Paying his own Costs and the
Attorney for the Respondent having Agreed thereto-

Ordered Accordingly

Per Curr
Alex Freemantle

Court of Appeals
at
Madraspatnam } Fr

Between Saccoo abdul Rosack
Vrs William Hamilton by his
Attorney Robert Ewings

Mr. Stephen Popham as Attorney for Shake abdul
Rasack informs the Hon^ble the Court of Appeals that in Compli-
ance with the Positive Requisition of his Client he has on the
thirteenth Instant Lodged an Appeal to His Majesty in Council
from the Decree of this Hon^ble Court of the thirtieth day of
November last-

Mr. Popham further informs this Hon^ble Court
that the Original Debt with Interest to the said thirtieth day
of November doth not Amount to One thousand Pagodas, but
with the Costs it doth exceed that Sum, that the Charter after
mentioning the Right of Appeal to this Hon^ble Court from the
Judgement of the Mayors Court has the following Words-

"Which determination shall be final if the Debt
"damages or things directed to be paid done or delivered or matter
"in dispute shall not exceed the Value of One thousand Pag^s
"but in case the same do exceed the Value of One thousand Pag^s
"any Person or Persons who shall think him her or themselves
"aggrieved by such Judgment Sentence or Decree made on such
"Appeal shall and may within fourteen days after the
"Judgement Sentence or Decree given or made upon such
"Appeal shall be entred of Record or if there shall not be a

Sufficient

Sufficient Number of the said Governor or President and Council disinterested in the event of such Appeal to hear and determine the Same so that no Judgment Sentence or Decree can be given or made by them then although the Debt damages or things to be delivered or matter in Dispute shall not exceed the Value of One thousand Pagodas it shall and may be lawfull for the Party or Parties Aggrieved by the Judgement Sentence or Decree of the said Mayors Court within twenty One Days after such Judgment Sentence or Decree shall be entred of Record to Appeal to us our heirs and Successors in Council, as is usual in cases of Appeal from any of our Colonies in the West Indies upon giving Security to pay Interest not exceeding the Current Rate of Interest which shall Prevail at the time of Pronouncing Such Judgment Sentence Decree, for the thing adjudged or Decreed to be paid done or Delivered and the costs of such Appeal in case the said Judgment Sentence or Decree shall be affirmed".

Mr. Popham humbly Submits to the Consideration of this Honble Court whether the Debt and Interest must exceed One thousand Pagodas or whether the Costs also may not be included towards making up that Sum as being Part of the Debt Damages or things directed to be paid done or Delivered If this Honble Court are pleased to decide upon this Point Mr. Popham will act in Conformity thereto as Conceiving himself Relieved by such Decision from any after Responsibility to his Client If this Honble Court should be of Opinion that they ought not to pass any Decision

Mr.

Mr. Popham Prays that this Minute may be Recorded and go home with the Appeal to His Majesty in Council in the above Cause.

In the Court of Appeals

Between William Hamilton by his Attorney Robert Ewing Complaint. and Sacco Abdul Rosack Defendant

To the Right Honble George Lord Macartney Knight of the Bath President and Governor &c. Council of Fort Saint George

The Humble Petition of William Hamilton by his Attorney Robert Ewing of Fort Saint George Merchant

Sheweth,

That Whereas your Petitioner did some time in the Month of April in the year of our Lord One thousand Seven hundred and Seventy Nine Prefer a Bill of Complaint in the Honble the Mayors Court against the abovesaid Sacco Abdul Rosack for the Sum of four hundred and Ninety Pagd and Twenty two fanams or four hundred and fifty Madras Pagodas being a Debt due on the said Saccoo Abdul Rosack Bond or Obligation bearing date the Eighth of December One thousand Seven hundred and Seventy Seven the said Saccoo Abdul Rosack Appeared and put in his Answer and the

Usual

Usual Proceedings were had and this Cause came on and was determined in the said Hon^ble the Mayors Court on the Twenty fourth day of October One thousand Seven hundred and Eighty in favor of your Petitioner from which Decree of the said Hon^ble the Mayors Court the said Saccoo Abdul Rosack appealed to this Hon^ble Court of Appeals who were pleased to Confirm the Decree of the Hon^ble the Mayors Court from which Confirmation the said Saccoo Abdul Rosack has thought Proper to Appeal to the Kings Most Excellent Majesty in Council, as if legally intitled to such Benefit under the Charter granted to the English East India Company although the Original Cause of Action did not Exceed the Sum of four hundred and Ninety Pagodas and twenty two Fanams — Whereas the Charter as your Petitioner humbly Conceives Restricts the Party Appellant to the amount of the Decree Provided the Debt, Damage or thing directed to be paid done or delivered or matter in dispute shall not exceed the Value of One thousand Pagodas, your Petitioner further apprehends that the Sentence of this Hon^ble Court of Appeals in so Confirming the Decree of the Hon^ble the Mayors Court, is both final and Conclusive on the part of the abovesaid Saccoo Abdul Rosack and in your Petitioners Opinion, no Appeal does lay to the Kings Most Excellent Majesty in Council as the Debt Dcmd to be paid by the Hon^ble the Mayors Court does not in any Shape exceed the Sum of One thousand Pagodas your Petitioner further Sheweth, that he is Advised that no Appeal to the King and Council will lay where the Original Cause of Action did not exceed Nine hundred

Hundred and Ninety Nine Pagodas and that this has, for many Years, been the Received Opinion both of this Hon^ble Court of Appeals and of the Mayors Court and the Publick in general and no Deviation has at any time been made from that Idea, untill the Present instance of the said Saccoo Abdul Rosack which Appeal your Petitioner conceives is totally irregular and unprecidented — For all Which Causes and Things your Pet^r most humbly Prays this Hon^ble Court of Appeals to Order and Direct the said Petition of Appeal to the Kings Most Excellent Majesty in Council to be Stopt and taken off the File and that your Petitioner be at liberty to Enforce the Decree of the Hon^ble the Mayors Court, to its full Extent, and that the said Saccoo Abdul Rosack do pay all Costs of this Your Petitioners Application

And your Petitioner as in duty bound shall Ever Pray &c^a

Charles Bromley
Attorney Petitioner

Resolved that the Consideration of and decession upon the Subject of the above Motion of the Attorney of Saccoo Abdub Rozack and of the above Petition of the Attorney of William Hamilton be deferred until Next Court Day

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

In the Court of Appeals
at
Madraspatnam

Between George Smith by his Attorneys Andrew Ross and Alexander Cuthbert of Fort Saint George Merchants Complainant and George Taswell of the same place Merchant Defendant

The Petition of Appeal of the said Defendant

Filed in my Office the 7th May 1784
Thos. Freeman
Clk of Appeals

Sheweth

That on or about the fourteenth Day of December which was in the Year of Our Lord One thousand Seven hundred and Eighty the said Complainant by his Attornies Andrew Ross and Alexander Cuthbert of Fort Saint George Merchants did file a Bill of Complaint against your Petitioner in the Honble the Mayors Court for the Sum of Eight thousand One hundred Pagodas (Pags. 8100 - -) Current Money of Madras arising & growing due as by the Complainant alledged upon a Cetain Bond or written Obligation under the hand and Seal of the said Defendant bearing date the first day of September One thousand Seven hundred and Seventy Nine Payable in one Year from the day of the date thereof with Interest at the rate of Eight per Cent per Annum on which said Bill of Complaint neither a Copy of the said Bond or any Assignment thereof to the said Attornies or any other Person was set forth or Shewn Wherefore your Petitioner did on the Ninth day of January One thousand Seven hundred and Eighty one in Open Court by his Attorney pray Oyer of the said Bond or written Obligation to see whether the said Attornies had any Assignment Power or Authority to call your Petitioner in Question for the same your Petitioner further Sheweth unto this Honble Court that on the Sixteenth day of the same moth a Copy of a Bond was by the Complainants Attorney delivered unto his the Defendants Attorney in Open Court and a Paper Shewn him Pretending to be the Original Bond or written Obligation under the hand and Seal of your Petitioner to neither of which was or appeared to be any Assignment from which he was induced to conclude that no Assignment was made thereof and Accordingly on or about the Nineteenth day of February last past he your Petitioner filed his Plea and Answer to the said Bill of Complaint annexing thereunto a Copy of the Paper he had Received from the Complainants Attorney for the inspection and Guidance of the said Court wherefrom it would Appear that no Assignment or Power was made unto or vested in the said Attornies of the said George Smith to call the said Defendant in Question who in his said Plea and Answer fully Set forth, that there was and Still Continue open Many Money transactions and Account of Dealings between the Complainant and him the Defendant some of which on both Sides remains unadjusted to this day your Petitioner Admitting in his said Plea and Answer that he had on or

about

about the first day of September One thousand Seven hundred
and Seventy Nine entered into and executed a Certain Bond
or Written Obligation Payable in One Year from the Date
thereof to the said George Smith his heirs Executors administrators
or Assigns, for which said Bond or written Obligation he
Received other written Obligations from the said George
Smith which Obligations so Received in Lieu Place and
stead of his said Bond or Obligation were not then nor are
they yet Discharged or Paid. The said Defendant declaring
in his said Plea and Answer that he then and at all times
since the said transaction was and had been ready and
willing to finally close the same upon proper Safe and
Equitable terms with the said George Smith or any Person
by him legally and fully Authorized for that Purpose
whereby the said Defendant could enter into the matters and
things unadjusted between him and the said George Smith
with Satisfaction and Safety to both Parties your Pet.r
further Sheweth unto this Honble Court that the said
Complainant by his Attornies as aforesaid did on or about
the Nineteenth day of March last past file his Replication
in which were many Matters and things charged alledged
and Setforth which were not in the Complainants Bills
of Complaint alledged Suggested or charged against this
Defendant together with the Copy of a long Paper pretending
to be a Copy of a Power and Assignment from the
Complainant to his Attornies Andrew Ross and Alexander
Cuthbert aforesaid to which Replication your Petitioner did

on

On the Twenty Sixth day of the same month of March file his
Demurrer and for Cause of Demurrer shew that a Replication
ought to be short and Pertinently pursue and Support the Bill
of Complaint without introducing new matter or Exhibiting
fresh Charges against the Defendant and must on no account
or under any pretence depart from the Substance of the Bill
and that the Repliants annexing a Copy of a long Assignment
and Deed of Special matters and things between the Complainant
and his said Attornies as a Power or Assignment enabling his said
Attornies to call this Defendant in Question &c., ought not be
admitted as an excuse for such irregular and long procedings calculated
more to enhance the expences of the Suit than Answer any Proper
or Eligible Purpose Because the said Defendant did in Open
Court by his Attorney upon the Ninth day of January last past
Pray Oyer of the Bond or Obligation under and by Vertue whereof
this Suit was instituted by which the said Bond and
Assignment if any there was by the intendment of Law was
become a part of the Records before the Court and the said
Assignment could not be Seperated from the said Bond or
Obligation without vitiating or annulling the same as for any
Power or force it could have in the Operation of Law in the
hands of Attornies or third Persons for after Oyer was so prayed
the Bond or Deed delivered it ought to be considered received
and taken as Compleat at Last as fully so, as the Parties could
produce it for where a choose in action is created by a Deed the
Destruction or Suppression of that Deed or any part thereof is the
Destruction of the Duty or Obligation and ought to Operate against

the

the Parties withholding or Suppressing the same so it has been Solemnly adjudged in the Case of a Bond or Bill the said Defendant in his said Demurrer averring that by his praying Oyer of the Bond or Obligation as before Setforth the Assignment or Power of the Attornies was implied the Bond being in itself imperfect and insufficient in the hands of Attornies or Assignees to have the Defendant called in Question for the same and it was incumbent on the Complainant his Attornies to Shew their Assignment or the fullest Authority they had and not to Endeavour by a Suppression and Seperation of the Bond and Assignment to mislead and Deceive the Defendant or to put him to excessive and unnecessary expences by stating such matters in his Replication as were foreign to the point in Question to which said Demurrer the said Complainant by his Attornies as aforesaid did on the Seventh of April last past file along Joinder and on the twenty fourth day of the same Month of April the said Demurrer and Joinder came on to be heard in the Hon^ble the Mayors Court when your Petitioners Attorney at Bar did Support and fully prove all the Matters and things in the said Demurrer setforth and as further cause of Demurrer to the said Replication Shew that the same was irregular and Contrary to the intent and Purpose of a Replication Incurred and Admitted as such in the Courts of Law or Equity in Great Britain Yet Notwithstanding the same the said Hon^ble the Mayors Court were Pleased to throw out your Petitioners Demurrer with Costs by which said Order of the Hon^ble the Mayors Court your Petitioner doth Consider himself and is much Aggrieved and doth therefore Appeal therefrom unto the Judgement of this Hon^ble Court and humbly Prays that the said Order of the Mayors Court may be Reversed a Copy of which said Order is hereunto annexed for the inspection of this Hon^ble Court and Prayed by your Petitioner to be taken and Received as part of this his Petition of Appeal - Your Petitioner further Prays that this Hon^ble Court will be pleased to Consider this Cause as a Prosecution intended against your Petitioner to injure and Oppress him Subjecting him to heavy expences rather than Answer any Just or Equitable Purpose -

Wherefore your Petitioner humbly Prays that this Hon^ble Court will not only be Pleased to Reverse the said Order of the Mayors Court with Costs but to Order all Proceedings in this Cause against your Petitioner to abate and Stand dismissed with Costs to be Paid by the Complainant

Edward Ellis

Attorney for the Appellant -

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 24th Day of April Anno Domini 1781.

Present

Benjamin Roebuck Esq^r Mayor
James Call and Edw^d Saunders
Aldermen

George

George Smith by his Attorneys Andrew Ross and Alexr Cuthbert

Vrs

George Taswell

Bill Read

Plea and Answer with Copy of a Bond annexed Read

Replication with two Exhibits Marked A and B annexed Read

Demurrer to the Replication Read

Joinder to the Demurrer Read

The Demurrer to the Replication and the Joinder thereto Coming on to be Argued and determined this day in the Presence of the Attornies on both Sides on Reading the Complainants Bill the Plea and Answer with Copy of a Bond annexed the Demurrer the Joinder On Hearing the Pleadings and Arguments Made Use of by the Attornies and On due Consideration had thereon The Court are of Opinion that the Pleas Made Use of by the Defendant in his Demurrer are insufficient This Court doth think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendant do put in a Rejoinder

Day is given the Defendant till the 8th May Next to Rejoin in default of which this Cause will be heard on the Proceedings already had

A true Extract

James Taylor

Regr

To the Honble the Court of Appeals at Madraspatnam

Between George Smith by his Attornies Andrew Ross and Alexr Cuthbert of Fort St George Merchants Complainant and George Taswell of the same place Merchant Defendant

The Answer of the said Complainant by his said Attornies to the Petition and Appeal of the said Defendant

The Said Complainant by his said Attornies do Admit that they did as Attornies and Assignees of a certain Bond exhibited a Bill in the Honble the Mayors Court at Madraspatnam Some time on or about the fourteenth day of December which was in the Year of Our Lord One thousand Seven hundred and Eighty against the said Defendant for the Sum of Eight thousand and One hundred Pagodas. Particularly and Specially charging and Stating in the said Bill that the said Debt and Sum of Money became due and owing upon the Principal and Interest of a certain Bond granted unto the said George Smith by the said Defendant on the first day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy Nine. Payable in one Year from the date thereof with Interest at the rate of Eight per Cent per Annum and also upon an Assignment thereof and Power of Attorney to Sue thereon from the said George Smith unto the said Andrew Ross and Alexander Cuthbert given and granted under the date of the Seventeenth day of October in the said Year of our Lord One thousand Seven hundred and Seventy Nine, the said

Respondts

Filed in my Office the 28th May 1781

Charles Freeman Clk

Respondents said Attornies do Admit that they did not annex unto the said Bill of Complaint a Copy of the said Bonds or of the said Asignment, but the said Attornies Say that they did make a profert of the said Bond and the said Asignment and Power of Attorney in their said Bill of Complaint and that they were ready to produce the same when required, the said Respondent by his said Attornies do further more Admit that the Appellant did on the Ninth day of January in this Present Year of our Lord in Open Court by his Attorney Pray Oyer of the said Bond, but the said Attornies do deny that any Reason or Cause was given or Shewn for the Same, but Particularly the Reasons alledged by the Appellant to Wit to See whether the said Attornies had any Power or Authority to call him the said Appellant in Question this Respondent Admits that his Attorney did in Open Court Produce a Copy of the said Original Bond together with the said Original Bond according to the Particular and express Prayer of the Appellant, which was by the Appellants Attorney taken and Recieved in full Satisfaction of his Prayer, and he did not pretend that he wanted any further either in Respect of the Asignment in question or any other Matter whatever, wherefore the said Respondents Attornies Say that the Appellant could not with any degree of the Reason conclude that no Asignment was made of the said Bonds as the Appellant as well as his Attorney Knew from the tender or profert thereof together with the Bond that he might as readily have had the one as the other.

This Respondent by his said Attornies Admits that the Appellant did some time on or about the Nineteenth

Nineteenth day of February last past file his Plea and Answer to the said Bill of Complaint and did annex thereunto a Copy of the said Bond and this Respondent by his said Attornies Saith that the Reasons given by the Appellant for annexing the said Bond to Wit to Shew that no Asignment or Power was granted unto or vested in the said Attornies to call the Defendant in Question is very evasive and Seemed more designed to mislead the said Honble Mayors Court than with any Just View of Shewing any Disqualification in the said Attornies to commence the said Action as the said Attornies did particularly Shewing in the Proceedings had before the Mayors Court in the said Cause, and the said Attornies do Admit that the said Attornies did Sillforth many other Matters foreign to the Nature of the action in Question and particularly that there were and Still did continue upon many transaction and Accounts of dealings between the said George Smith and him the said Appellant, Unto which said frivolous Answer of the said Appellant the said Respondent by his said Attornies, did on or about the Nineteenth day of March last past file a Replication wherein the said Attornies do deny that any Matter or thing was by them charged alledged or Sillforth unwarranted or improper to be made Use of by way of Replication either in form or Substance, but the said Attornies do maintain that the Sundry Matter and things therein Sillforth were in every Respect Proper and Regular to be made Use of and introduced as and by way of Replication the said Attornies Maintaining that it was not Necessary to Maintain the said Action to Recite Verbatim the said Bond nor the Asignment thereof and

that

that the Appellant by the said Respondents Answer thereof in his said Bill of Producing the Same when Required was at all times at Liberty to call for the same and demand Oyer thereof before he put in his Answer which he the said Appellant well knew. having taken the Advantage of praying the delivery of the Original Bond into Court the day after this Appearance without praying Sight of the Original Assignment which he the Appellant was equally at Liberty to do at that time or at any time after and before filing his Answer. and this Respondents said Attornies did further Observe that it would have been more consistent for him to have prayed Oyer of the Assignment which was the deed of another than of the Bond. which was his own Act and Deed. and that his not having done so Shewed that he was Satisfied that the Assignment was and is to all Intents and Purposes existing and Sufficient to authorize the said Andrew Ross and Alexander Cuthbert to call him the Appellant to an Account for the same in the name of the said George Smith, and amounted to a full admission of the Sufficiency of the said Assignment as well as of the Action thereupon founded and the said Attornies did further in their said Replication Setforth that in Order to give every Satisfaction that the Appellant could desire and to Remove all further doubt or difficulty they did annex Copy of the said Assignment and prayed that the same might be Admitted as part of the said Replication and did again offer to Produce the Original when Required &c. the said Attornies did further Charge that the Appellant well knew previous to the filing of the said Bill that the Bond in Question was Assigned over to them

the Attornies payment whereof (after Repeated Applications of the said Andrew Ross and Alexander Cuthbert) was demanded on their behalf by their Attorney at Law And in Order to shew the same did annex to their said Replication Copy of a Letter Marked **B**. and lastly they the said Attornies did Setforth that the Appellant was so convinced of the Justness of the demands of the said Andrew Ross and Alexander Cuthbert, that he doth not in his Answer deny the same to be Just, but instead thereof had introduced Matter totally foreign to the demand by the said Bill made. and therefore could not be Setup or Offered against such demand nor even Proper for the said Attorneys to Reply unto Unto which said Replication the Appellant instead of Joyning issue in Order that the merits of the Cause might come fully before the Honble Mayors Court for their determination. the Appellant did Demurr thereunto and for Cause of Demurrer Shewed that the said Respondents Attorneys had annexed a writing Marked A of an extraordinary length which the Appellant said Contained many Matters foreign to the Charge exhibited in the Bill of Complaint against the said Appellant to which he referred the Honble Mayors Court as being the Copy of an Assignment from this Respondent to certain attornies Named which the Appellant Alledged seemed rather introduced to enhance the expences which the Appellant very wrongly charged the said Attornies of being more desirous of involving him than Answering any Eligible or Necessary Purpose, alledging that the same was introduced contrary to all Rules of Practice Admitted in Courts of Law or Equity a Replication as the Appellant on his said Demurrer said ought only to affirm or aver the Bill to be

true

true and ought to be short directly and Pertinently Pursuing the Bill without introducing New matter or exhibiting fresh charges against the Defendant, and must on no Account or under any Pretence be a Departure from the Bill, without taking Notice that the Replication did only affirm and aver the Bill to be true, and was as short as the intricacy and artfull pleading made use of in the Appellants answer would Suffer it to be and that no fresh charge was therein exhibited but that the Replication did immediatelly and directly Pursue the Bill and that no new matter was therein introduced unwarranted by the Bill, the Assignment not being New Matter but a Deed upon which the Bill was in part founded, and which the Nature of the Appellants Answer, made it necessary for him to annex thereto and the Exhibit Marked B was also for the same Reason necessary in Order to shew that the Demand of the Debt in Question had been made upon the said Appellant by Virtue of the said Assignment, unto which said Demurrer the said Respondents Attornies did file a Joinder on the Twenty ninth day of April and was on the same day Set down to be argued on the twenty fourth day of the said Month, when the Respondents said Attorney did deny that the Attorney for the Appellant did in any Manner Support and prove all or any of the Matters and things in the said Demurrer setforth and for which reason the Hon^ble Mayors Court did dismiss the said Demurrer with Costs Which Order of the Hon^ble Mayors Court the said Attornies do with Submission conceive to be Just and equitable the Demurrer filed by the Appellant being in no Part applicable to the Cases in Law and Practice by him Setforth, and by no means

Means Proper to be made use of as a Demurrer to their Replication which is a fair Regular and Candid Statement of their demand upon the foundation the same is laid in their said Bill and this Respondents said Attornies beg leave to Notice that the Prayer of the Appellant for this Hon^ble Court to consider in the Present Action as intended against him to injure and oppress him and Subjecting him to heavy Expences rather than Answer any Just or Equitable End is an evident mark of the Appellants design to Keep and detain their property in his hand, as long as it may be in his Power, the said Action not being upon any uncertain Grounds like an action of Trespass or Covenant but for the payment of Money long since due upon the Appellants own Bond to them the said Attornies legally and duely assigned, the said Attorneys therefore humbly hope that the said Appeal of the Appellant will be dismissed this Hon^ble Court as evident that this Hon^ble Court will be pleased to take the same into their Peculiar Consideration and to dismiss the Appellants Appeal with exemplary Costs and to grant them such further Relief as to them shall in their good Judgement shall seem Meet

Henry Du Pury
Attorney for the Respondent

Court of Appeals
at
Madraspatnam
} ff. Thursday the 30th January
Anno Domini 1783

Between George Taswell of Fort S^t George
Merchant Appellant and George Smith
by

by his Attornies Andrew Ross and
Alexander Cuthbert of the same place
Merchant Respondents

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 Tuesday the 24th day of April 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 24th day of April Anno Domini 1781 do stand Affirmed and that the Appellants Petition be hence Dismissed with double Costs in this Court

By Ord
Chas Freeman Clk

Between George Smith formerly of Fort St. George in the East Indies but at Present of the County of Middlesex in the Kingdom of Great Britain Esquire by his Attornies Andrew Ross and Alexander Cuthbert of Fort Saint George Complainant and George Taswell late of Fort Saint George but now of the County of Middlesex in the Kingdom of Great Britain Defendant

To the Kings Most Excellent Majesty in Council

The Humble Petition and Appeal of the said George Taswell

Sheweth.

That the abovenamed George Smith by his Pretended Attornies Andrew Ross and Alexander Cuthbert of Fort Saint George aforesaid did on or about the fourteenth Day of December which was in the year of Our Lord One thousand Seven hundred and Eighty Exhibit and file a Bill of Complaint in the Honble the Mayors Court at Madrasspatnam against your Petitioner for the Sum of Eight thousand and One hundred Pagodas Current Money of Madras in the said Bill of Complaint Charged to be of the value and to the Amount of three thousand two hundred and forty Pounds Sterling Money of Great Britain Estimated after the Rate of Eight Shillings for every Pagoda Arising and becoming due as by the said Bill of Complaint is alledged upon a Certain Bond or Obligation

Filed in my office the 12th February 1783
Charles Freeman Clk

Obligation under the hand and Seal of your Petitioner bearing date upon the first Day of September which was in the Year of Our Lord One Thousand Seven Hundred and Seventy Nine Payable to the said George Smith his heirs Executors Administrators or Asigns for the Principal Sum of Seven thousand and five hundred Pagodas Current Money of Madras in One Year from the Date thereof with Interest at the rate of Eight Per Cent Per annum which Bond or written Obligation is in the said Bill of Complaint set forth and declared to have been Asigned by the said George Smith unto the said Alexander Cuthbert and Andrew Ross upon the Seaventh Day of October which was in the Year of Our Lord One Thousand Seven Hundred and Seventy Nine and then they the said Alexander Cuthbert and Andrew Ross in and by the said Bill of Complaint further attempted to Set up and Establish a Right to Sue for and Recover the Sum Charged to be due upon the said Bond from your Petr by Vertue of a certain Power of Attorney from the said George Smith Empowering them the said Alexander Cuthbert and Andrew Ross to call Your Petitioner to an Account and Demand Payment of the said Bond and the Monies due thereupon from your Petitioner in the double Capacities of Absolute Asignees and attornies without Shewing Stating or Setting forth any Power of Attorney whereby they derive the Authority Set up of calling your Petitioner in question or demanding the Sum Sued for as and on behalf of the said George Smith or for his use benefit and Advantage and by the Prayer of the said Bill it is shewn that under the pretence of the said Alexander Cuthbert and Andrew Ross being attornies acting for the said George Smith they Pray a General Relief and that your Petitioner may be Decreed to pay unto the said George Smith the Sum of Eight thousand and One hundred Pagodas Current Money of Madras together with all Interest that then was or should afterwards become due thereupon with all Costs of Suit your Petitioner further Sheweth unto your Most Excellent Majesty in Council that Neither a Copy of the said Bond Power of Attorney or Asignment was in or to the said Bill of Complaint introduced or annexed whereby the Right or Authority Pretended to have been Deputed unto or Vested in the said Alexander Cuthbert and Andrew Ross Either as Attornies to or Representatives of the said George Smith or as Asignees of the said Bond or Written Obligation appeared upon the Records before the said Court whereby or wherefrom it might be shewn that they were Authorized or Legally Empowered Either as Asignees Attornies or Representatives of the said George Smith to call your Petitioner before the said Court touching or regarding the Premises in Question Your Petitioner further Sheweth unto Your Most Excellent Majesty in Council that from the Imperfect State and Erroneous or deficient mode in which the said Bill of Complaint was so Exhibited and filed against your Petitioner as afore is Stated your Petitioner was unable to make a full or Sufficient Answer thereunto Proper Certainty or Power of the Parties to Call your Petitioner in Question not being in the said Bill Shewn or Stated as the Laws of England and the Practice of all Courts of Judicature in the British Dominions in such Cases Enact and Require to be observed and followed Wherefore your Petitioner did on or about the Ninth Day of January which

was

was in the Year of our Lord One Thousand Seven hundred and Eighty by his Attorney at Law in Open Court Pray Oyer of the said Bond or written Obligation and Power under and by Vertue of whereof the said Suit was so instituted against your Petitioner your Petitioner further Sheweth unto your Most Excellent in Council that on or about the Seaventh Day of the same Month of January a Copy of a Bond or written Obligation was by the Complainants Attorney at Law delivered in Open Court unto Your Petitioners said Attorney at Law and Paper Shewen unto him under pretence of its being the Original bond or written Obligation of Your Petitioner to neither the Copy or Pretended Original of which was any Afsignment or Power of Attorney annexed or Shewn as accompanying or dependant thereupon or even any Endorsement whereby or wherefrom was any the least Ground or Pretence for or to the pretended Power and Authority which they the said Alexander Cuthbert and Andrew Ross had Set up and Afsumed in and by the said Bill of Complaint so exhibited against your Petitioner as aforesaid Your Petitioner further Sheweth unto your Most Excellent Majesty in Council that after the foregoing Premises were by him considered he your Petitioner did on or about the Nineteenth day of February which was in the Year of Our Lord One thousand Seven hundred and Eighty file his Plea and Answer to the said Bill of Complaint and thereunto Caused to be annexed a true Copy of the Paper he had so Received from the Complainants said Attorney at Law for the Guidance of the said Mayors Court wherefrom it Appeared that no Afsignment or Power of Attorney was or had

had been Executed unto or vested in the said Alexander Cuthbert and Andrew Ross or either of them by the said George Smith to Empower them or either of them legally to call your Petitioner in Question touching or Regarding the Premises before the said Court – Either as Absolute Afsignees of the said Bond or written Obligation of Your Petitioner or as attornies or Representatives of the said George Smith which your Petitioner had much cause to Regret because he Your Petitioner then had and now have many legal and Just demands upon the said George Smith which he is and long have been desirous of settling and Adjusting with the said George Smith Personally or any Person or Persons legally and fully Authorized by him the said George Smith to Settle Adjust and finally Close the same upon Just fair and Equitable Grounds to the Satisfaction of all Parties Interested or concerned therein all which matters your Petitioner Candidly and Openly Stated in and by his said Plea and Answer further Admitting that he had some time on or about the first day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy Nine entered into and Executed a Certain Bond or written Obligation Payable in One Year to the said George Smith his heirs Executors Administrators and Afsigns in Consideration whereof and Satisfaction for the said Bond he your Petitioner Received other written Obligations to wit Bills of Exchange and Bonds or written Obligations given and granted under the Proper hand and Seal of the said George Smith unto your Petitioner his Heirs Executors Administrators and Afsigns Payable and due at Days or times long Since

East

Past and Elapsed, but which then were and Still are wholly
unpaid or Discharged Either to your Petitioner or any Person or
Persons for him or for his Use benefit and Advantage Your
Petitioner further Sheweth unto Your Most Excellent Majesty
in Council that he your Petitioner did in and by his said Plea
and Answer Offer and declare himself Ready and willing and
which he is Still desirous of doing now and at all Times
finally to Close settle and Adjust upon Proper safe and
Equitable terms all Money Matters or Negociations whether
by Bills of Exchange Bonds Specialties or accounts of any
and every Kind and Nature whatsoever with the said
George Smith or any Person or Persons legally Empowered &
Authorized so to do and with whom your Petitioner could enter upon
the Matters Concerns transactions and things unadjusted but
Him your Petitioner and the said George Smith with safety and
Satisfaction to both Parties or others Interested therein the which
your Petitioner desired upon the Principles of Natural Equity
Only which establish the Right of Pofs Demands or Mutual
Debts Compensating or being Set off against each other by
deducting the less Sum from the greater whereby the difference
would have been the only Sum which could Justly be
Demanded or Considered due — the Question between your Pet.r
and the said George Smith to be determined by a Court of Law
or Equity being whether the Complainant in this Suit should
Obliged to do Justice to the Defendant by Paying or Setting
off what is Justly due from him the said Complainant to the
Defendant before he is entitled to any Judgement in Law for
Recovery of any Pretended Sum against your Petitioner

According

According to the intent and Meaning of the Several Statutes or
Acts of Parliament in such Cases made and provided instead
of Arranging all matters between the Parties upon such Just
and Honest terms Your Petitioner Humbly Sheweth unto your
Most Excellent Majesty in Council that on or about the
Nineteenth Day of March which was in the Year of Our
Lord One Thousand Seven Hundred and Eighty One a Replication
was filed to Your Petitioners said Plea and Answer wherein
and whereby the said Alexander Cuthbert and Andrew
Pofs insisted upon the Justness of their Demands against
your Petitioner as absolute Assignees of the said Bond or
written Obligation in Contradiction to their own declaration
on and by their said Bill of Complaint Contained wherein
they came before the said Honble the Mayors Court as
Attorneys of the said George Smith Acting for his benefit and
in his Name Prayed a Decree of the said Court in manner and
form as before is Stated for your Petitioner to pay the Sum of
Money Principal and Interest Sued for unto the said George
Smith and in their said Replication they the said Alexander
Cuthbert and Andrew Pofs rely upon a pretended Assignment
of Sundry Bonds and other Property from the said George
Smith to them the said Alexander Cuthbert and Andrew Pofs
for Valuable Considerations, and declared themselves as Assignees
as aforesaid Asserting and declaring that they have full Power
and Authority to Demand Recover and Receive such
Principal Sum of Money and all Interest due thereupon
from your Petitioner to and for the said Alexander Cuthbert
and Andrew Pofs their own Proper use and Behoof and in

Order

Order to Support such their Extended Claim against Your
Petitioner along Paper was annexed unto the said Replication
Extending and Purporting to be an Assignment of Sundry
Bonds Debts dues and Demands from Sundry Persons to the
said George Smith also Gardens houses and other Property with
which your Petitioner had Nothing to do or did the same
concern him or Relate to the matters in Question but were Evidently
an Abuse and Departure in Pleading whereby it was intended
that your Petitioner should be deprived of every Opportunity or
Ground to make a Proper fair and Equitable Set off or being an
Account the Debts dues and Owing from the said George
Smith unto him your Petitioner upon the Sundry Bonds and
Bills of Exchange as before is Stated and humbly Shewn to
which said Extraordinary and Irregular Paper so filed as a
Replication Your Petitioner Sheweth unto Your
Most
Excellent Majesty in Council that he did on or about the twenty
Sixth Day of the same Month of March file a Demurrer
and for Cause of Demurrer Shew the Evident Departure in
Pleading of the said Alexander Cuthbert and Andrew Ross
who in their Bill of Complaint declare Against your Pet.r
as Attornies Acting for the said George Smith and Accordingly
Pray the Decree of the said Court for and on behalf of the said
George Smith but in Order to evade the fair and honest
Declaration and Requisition of your Petitioner Set forth in
and by his said Plea and Answer upon Oath to the said
Bill of Complaint they the said Alexander Cuthbert and
Andrew Ross unwarrantably and Irregularly depart from
the Ground of their Action or Suit and rely upon their
pretended

Extended Authority as absolute Assignees in their own Right
and Seeking to Recover for their own use and benefit which can
have no other tendency or bear any other Construction than an
Attempt to deprive Your Petitioner of that Equitable mode of
Relief allowed of and provided for upon Mutual Debts
between the Parties by the Act of Parliament made in the
Eighth Year of the Reign of our late Sovereign Lord George the
Second Chapter the twenty fourth which in its fifth Section
hath the following Clause Viz.t "and be it further Enacted and
"declared by the Authority aforesaid, that by Virtue of the said
"Clause in the said Recited Act contained and hereby made
"Perpetual, Mutual Debts may be set against each other either
"by being Pleaded in bar or given in evidence on the general
"Issue in the manner therein mentioned Notwithstanding that
"such Debts are deemed in Law to be of a different Nature unless
"in cases where either of the said Debts shall Accrue by Reason of
"a Penalty contained in any Bond or Speciality and in all cases
"where Either the Debt for which the Action hath been or shall
"be brought or the Debt intended to be set Against the same
"hath Accrued or shall Accrue by Reason of any such Penalty
"the Debt intended to be Set off shall be Pleaded in Bar in
"which Plea shall be shewn how much is truely and Justly
"due on Either Side and In Case the Plaintiff shall recover in
"any such Action or Suit Judgement shall be entered for no
"more than shall Appear to be truely and Justly due to the
"Plaintiff after One Debt being set against another as aforesaid"
Agreeable to which said Act of Parliament and also in
Conformity to One other Act of Parliament made in the Second
Year

Year of his Majesty George the Seconds Reign Chapter 24.
twenty Second and to the Rules of Practice in such Cases
Observed in all his Majestys Courts of Record your Petitioner
filed his said Plea and Answer as before is Stated and
Clearly Set forth and Shew that the said George Smith or any
One for him had not any Just Cause or Ground of Complaint
against your Petitioner for or upon Account of the said Bond
in Question Your Petitioner further humbly Represents unto
your Most Excellent Majesty in Council, that he did in his
said Demurrer further Shew the Irregularity of such Proceedings
as were so Entered against him as and for a Replication and
Shew unto the said Honble the Mayors Court that a Replica-
tion should briefly and Pertinently Persue and Support
the Original Complaint or Ground of Action, without new
matter or fresh Charges Against the Defendant and must not
in any Case be a Departure in Pleading or in Substance
from such Bill of Complaint or Original Ground of Action
to which said Demurrer of Your Petitioner the said Alexander
Cuthbert and Andrew Ross in their Britended double
Capacities of Attornies to the said George Smith Acting for
his Interest and benefit and as absolute Assignees of the said
Bond in their Own Right and in Contradiction to their
Original Ground of Action filed a Joinder to Your Petitioners
said Demurrer which Demurrer came on to be heard and
Argued before the said Mayors Court on or about the Twenty
fourth Day of April, which was in the Year of Our Lord
One Thousand Seven hundred and Eighty One, when your Petr
by his Attorney at Law Supported his said Demurrer and

Shew

Shew the Irregularity of the said Replication and that there was a
Manifest Departure and Irregular mode in Pleading also an
Attempt to allledge bring forth and Support fresh Charges other
than was contained or Set forth in the Original Bill of Complaint
and in Contradiction to the very Express declaration and Prayer
on and by the said Bill made. Notwithstanding which your
Petitioner Sheweth unto Your Most Excellent Majesty in Counal
that the said Honble the Mayors Court Ordered your Petitioners
said Demurrer to be thrown out with Costs, and a Rule passed
for your Petitioner to Rejoin which your Petitioner Sheweth was
improper and Irregular in such Circumstances for him to do
and Considering himself Aggrieved by the Order of the said
Mayors Court, He, your Petitioner, Appealed therefrom unto
the President and Council of Fort Saint George as the Court
of Appeals for Madraspatnam and the Limits thereof
In which said Petition and Appeal Your Petitioner humbly
Sheweth unto Your Most Excellent Majesty in Council that
he Briefly Set forth and Stated all the matters and things
as herein before is Shewn and Relying upon the Equity and
Justice of the said Court humbly Prayed the Judgement of
that Honble Court thereupon which said Petition and Appeal
of Your Petitioner came on to be heard and Determined before
the said Honble the Court of Appeals upon Thursday the
thirteenth Day of January last past and in this Present
Year of Our Lord One Thousand Seven hundred and Eighty
three when the said Court of Appeals at Madraspatnam
aforesaid Notwithstanding the matters and things before
Stated were humbly represented and Shewn to them on the

Part

Part and behalf of Your Petitioner they were Pleased to Order and did Accordingly Order and Direct that your Petitioners said Petition and Appeal should be Dismissed with double Costs as will more fully Appear by an Attested Copy of the said Order of the said Court of Appeals of the said Thirteenth day of January last past hereunto annexed for the Inspection of your Most Excellent Majesty in Council by which said Order of the said Court of Appeals at Madraspatnam your Petitioner is and doth Consider himself much Aggrieved wherefore he doth Appeal therefrom unto Your Most Excellent Majesty in Council for the following Among other Reasons

First BECAUSE the Bill of Complaint so filed against your Petitioner on the said fourteenth Day of December which was in the Year of Our Lord One thousand Seven hundred and Eighty by or at the Instance of the said Alexander Cuthbert and Andrew Ross, as Attornies Acting for the Interest and benefit of the said George Smith was in the Nature of a Declaration at Common Law, and ought therefore to be good and Sufficient Clearing stating Describing and distinguishing the said Parties Complainant and Defendant, and Set forth to the Court in a clear, and unevasive manner all the Essential Charges Against the Defendant by which said Bill the said George Smith and no other Person whatsoever, was the Complainant or Person Pretending to be injured and Seeking Relief by Praying a Decree in his own favor against your Petitioner for the Specific Sum of Eight thousand and One hundred Pagodas Current Money of Madras with Interest thereupon and Costs of Suit whereunto Your Petitioner did with the Express meaning benefit and intent of the Several Acts of Parliament in that Case made and Provided, Plead and Answer agreeable to law and the truth of the Case upon Oath to which said Plea and Answer the Irregular Paper before Stated was so filed as and for a Replication which being Impertinent to the matter in Question and altering the very nature and Ground of Action by Changing the Party Complainant from George Smith by his Attornies Alexander Cuthbert and Andrew Ross Seeking Relief for him the said George Smith and for him Praying a Decree of the said Court unto Alexander Cuthbert and Andrew Ross Absolute Assignees of a Bond Seeking and Demanding payment thereof for their Own Use and benefit by which Departure and Evident Irregularity in the said Complainants Pleading the said Bill of Complaint ought to have been Dismissed and the Extended Replication taken off the file and Considered as no Part of the Pleadings in the said Suit

Second BECAUSE, after your Petitioner had so Appeared to the Bill of Complaint of the said George Smith by his Attornies Alexander Cuthbert and Andrew Ross and Pleaded thereunto the Sundry Debts due and Owing unto him Your Petitioner from the said George Smith a Mutual Set off ought to have taken Place and the Plaintiff or Complainant in the said Action or Suit by his said Attornies should have been Compelled to do Justice to the Defendant by Paying what was Actually due and Owing unto him your Petitioner from the said George Smith before they as Attornies could be entitled to any Decree or Judgement Against your Petitioner it being as your Petitioner is Advised Agreeable to the Laws of England as well as Natural Equity

Equity that Coss Demands should Compensate Each other by
deducting the less sum from the greater and that if any Difference
or Sum of Money Remained due after such adjustment such
Difference would be the only Sum Justly and Owing upon which
an Action of Complaint could legally be grounded or Supported

Third *Because* your Petitioner humbly Conceives that he is
Clearly and indisputably within the benefit Relief Intent and
Express meaning of the Several Acts of Parliament made in the
Second Year of Our Sovereign Lord George the Second Chapter
Twenty Second and in the Eighth Year of Our Sovereign Lord
George the Second Chapter the Twenty fourth for Setting off
Mutual Debts Against Each Other which being made for the
Promotion and Convenience of Commerce She your Petitioner
humbly Prays the benefit and Advantage thereof as fully
absolutely and Effectually as if the said Statutes or Act of
Parliament were herein Severally Pleaded and Recited at
full length

For all which Reasons and for others
which may be Offered at the hearing before Your Most Excellent
Majesty in Council by your Petitioner his Council or Solicitor
Your Petitioner Most humbly Prays that the said Order
Sentence or Decree of the said Honble the Court of Appeals at
Madraspatnam so made on the said Thirtieth Day of January
last past and in this Present Year of Our Lord One thousand
Seven hundred and Eighty three be Reversed Annulled and
Set aside also the Order of the said Mayors Court so made
in this Cause upon the Twenty fourth Day of April which
was in the Year of Our Lord One thousand Seven hundred and
Eighty

Eighty One with Exemplary Costs to be Paid unto your Petitioner
and that Your Most Excellent Majesty in Council will be
Graciously Pleased to afford and Order your Petitioner such
other General or Particular Relief in all and Singulas the Premisses
as shall Appear Agreable to Equity and Good Conscience
And Your Petitioner as in Duty Bound will Ever Pray &c

Edward Ellis
Attorney for the Appellant

Court of Appeals
at
Madraspatnam
} Fr. Thursday the 30th. January
Anno Domini 1783

Between George Taswell of Fort St. George
Merchant Appellant and George Smith by his
Attorney Andrew Ross and Alexander Cuthbert
of the same Place Merchant Defendant

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 Order of the said Court given in this
Cause on Tuesday the 24th. Day of April 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 Order of the Honble
the Mayors Court Dated the 24th. Day of April Anno Domini 1781
do stand Affirmed and that the Appellants Petition be hence
Dismissed with double Costs on this Court

Hew Charles Freeman
Clk

Attested to be a true Copy. Edwd. Ellis
for the Appellt

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

Between Chunglepet Narrain Chitty
as Petitioner and Gungadarah Chitty
as Respondent.

In the Cause of
Gungadarah Chitty of Madras Merchant
by his Attorney Pascal Drum of the
same place Inhabitant Complainant
And Cooly Chitty and Moolu Comrapah
Chitty of the same place Merchants
Defendants.

In the Court of Appeals

Filed in my Office
the 18th June 1781
Charles Freeman
Clk

The Humble Petition and Appeal of the said Gungadarah Chitty

Sheweth,

That your Petitioner did on or about the Fifteenth day of October which was in the Year of Our Lord One thousand Seven hundred and Seventy Eight Exhibit his Bill of Complaint in the Honble the Mayors Court against Cooly Chitty and Moolu Comrapah Chitty the Defendants abovenamed for the Sum of One thousand two hundred and thirty Eight Pagodas twenty One fanams and Twenty five Cash and your Petitioner further Sheweth that his Attorney Abovenamed did make an affidavit of the Justness of the Demand and that thereupon a Summons Returnable Immediately and a Warrant of Arrest Issued directed to the then Sheriff who by vertue thereof did arrest and take the Bodies of the said Cooly Chitty and Moolu Comrapah Chitty

and

And your Petitioner doth further Shew that Moolu Comrapah Chitty one of the said Defendants did on or about the Twentieth Day of the said Month of October Acknowledge the Justness of your Petitioners demand whereupon the said Mayors Court did grant a Decree as against him the said Defendant Moolu Comrapah Chitty for Six hundred and Nineteen Pagodas Ten Fanams and Fifty two Cash and half being One half of the Sum so Sued for by your Petitioner and he the said Moolu Comrapah Chitty not Satisfying the same in due time the said Mayors Court were pleased to Issue a Warrant of Execution against the Goods and Chattles of him the said Defendant Moolu Comrapah Chitty which said Execution being directed to the Shriff he by vertue thereof did Seize and take in Execution a certain House and Ground in the Black Town the Property of the said Defendant as by the said Bill of Complaint Summons and Warrant together with the said Decree of the said Mayors Court as Against the said Defendant Moolu Comrapah Chitty hereunto sent for the inspection of this Honble Court and the said Warrant of execution Issuing out of and under the Seal of the said Mayors Court as also by all such other Proceedings as were then already had in the said Mayors Court as well on the part of your Petitioner as on the part and parts of the said Defendants reference being thereunto respectively had may more fully and at large Appear your Petitioner craveing as full and ample benefit thereof as if they and each of them had been herein at full length Set forth and Your Petitioner further Sheweth unto this Honble Court of Appeals that after the Seizure and Sale of the said house and Ground to wit on the Twenty

Twenty Sixth day of April which was in the Year of Our
Lord One thousand Seven hundred and Seventy Nine the said
Chinglepet Narrain Chitty did file his Petition in the said
Mayors Court Against your Petitioner therein Reciting the Cause
therein before by your Petitioner already Recited and Pretending
that the house and Ground so then sold under the execution
aforesaid had been Originally the Property of One Vella Moolie
Chitty Since deceased and that the same became the Property
of Moolie Comrapah Chitty / One of the said Defendants / as
Brother and next of Kin to the Deceased Vella Moolie
Chitty and also further in his said Petition Pretending that
the said Defendant Moolie Comrapah Chitty died afterwards
Mortgage the same to the other Defendant Cooly Chitty for a
certain Sum of Money and your Petitioner further Shewette
that the said Chinglepet Narrain Chitty in his said Petition
to the said Mayors Court did further pretend that the said
House and Ground and the Title Deeds thereof had been
Mortgaged to him by the said Cooly Chitty for the Sum of
two hundred and thirty Seven Pagodas and half and that
the same with Interest thereon amounted to three hundred
Pagodas the said Chinglepet Narrain Chitty in his said
Petition to the said Mayors Court Shewing that Since the
aforesaid Seizure of the said House and Ground And to
Prevent the Sale thereof he had delivered the Title Deeds
thereof to Mr. Henry Du Bey whom he retained on
Order to file his said Petition and to Shew his the said
Chinglepet Narrain Chittys Right of Demand on the Premises
to the Sheriff and your Petitioner further Sheweth unto this
Hon'ble

Hon'ble Court of Appeals that the said Chinglepet Narrain Chitty
having reason to apprehend that the aforesaid Pretences of his
Petition to the said Mayors Court could not of themselves
therein Succeed did further and in Order to Strengthen his
Claim of Right Pretend thro' his said Petition to the said
Mayors Court that your Petitioner and others therein named
did Agree with One Soobrayah that your Petitioner was to
Pay the said Chinglepet Narrain Chitty two hundred and
Twelve Pagodas Rs which pretended Proposals the said
Chinglepet Narrain Chitty said he Agreed and on Condition
thereof delivered the Bill of Sale to the Sheriff who at the
same time Acquainted him that he was to receive two
hundred and Twelve Pagodas out of the Sale of the Said
House and Ground and that the said Sheriff put up the
same to Sale and that the same was sold to your Petitioner
the said Chinglepet Narrain Chitty Praying that the said
Sheriff might be directed to pay him the aforesaid Sum
of Two hundred and Twelve Pagodas out of the produce of the
Sale of the said Premises and that the same should be
Staid in the hands of the Sheriff until the said Mayors
Court should Please to give a final Order thereon and that
your Petitioner should pay all Costs of the said Petition to
which said Petition of the said Chinglepet Narrain Chitty
your Petitioner did file his Answer therein Admitting such
Parts of the said Petition as he had no right to Contradict
Respecting the Recital of the Original Cause but absolutely
and with the greatest truth denying that the House and
Ground in Question came in such pretended Course to the

Defendant

Defendant Moolu Comrapah Chitty only but that the same
was the Joint Property of them the said Cooly Chitty and Moolu
Comrapah Chitty the said Defendants being Brothers and heirs
to the said Vella Moolu Chitty Deceased in whose name as the
Eldest Brother the Bill of Sale of the Premises was made
According to the Custom of their Cast in such Cases your Petr.
further and with the like truth in his said Answer shewing
that the said House was built with the Monies which your
Petitioner had lent and Advanced to them the said Defendants
and for amount whereof he so as aforesaid brought his action
against them and for half whereof the said House and
Garden then stood in execution your Petitioner Adding and
Contending that the said Defendants Jointly Paying the
Company's Quit Rent and Scavangers Duty for the said
House and Ground the said Moolu Comrapah Chitty had
no right to Mortgage the same to the said Cooly Chitty and
that the said Cooly Chitty had no right to Mortgage the
same or the Title Deeds thereof either to the Petitioner or to any
other, or to borrow or Receive thereon any Sum whatsoever more
especially as no Petition had been made between them and your Petr.
in his said Answer did and still doth deny his having gone to
Shasha Bella in manner untruely alledged in the said Petition but
that the said Chingleput Narrain Chitty together with the said
Shasha Pillay and Soobaroy ah met your Petitioner at the Court
House on a Court Day when the said Chingleput Narrain
Chitty said that the Title Deeds were Pledged to him and that
your Petitioner had no right to Sell the said House and Ground
without Paying his Debt in full whereupon your Petitioner

told

told them that such Mortgage for want of Consent of the
other Brothers could not stand good your Petitioner Sheweth
that immediately upon his saying so the said Chingleput
Narrain Chitty threatened to Petition the said Mayors Court
your Petitioner further Sheweth that he thereupon informed
the said Chingleput Narrain that he had no apprehensions
on account of his threatening to file any Petition in the
Mayors Court but that as he was in possession of the Bill
of Sale, of the Premises he would on that Account allow him
half of what the same should Produce by Sale which
distinction on the part of your Petitioner is strongly marked
as your Petitioner conceives in the Evidence of the said
Shasha Billy when given on the Direct and Cross Interrogatories
and which said Evidence of the said Shasha Bella is in direct
Answer to the Several Interrogatories put to him on behalf
of the said Chingleput Narrain Chitty and of your Petitioner
respectively and your Petitioner in his said Answer did
Shew that about two or three Months afterwards the said
House and Ground was by the said Sheriff Advertized and
sold for no more than three hundred and Sixty five Pagodas
and your Petitioner in his said Answer did and doth still
Contend that Supposing the Mortgage to the said
Chingleput Narrain Chitty to be legal but which your
Petitioner doth by no means Admit the said Chingleput
Narrain Chitty even in such Supposed Case could not be
entitled to any more than One half part of the Produce of
the said House and Ground on behalf and as the Property of
the said Cooly Chitty and therefore your Petitioner conceived

he

he Shad sufficiently manifested his Aversion to litigation when he
Offered to Chinglepet Narrain Chitty the half part of the Produce
of the said Sale and your Petitioner Sheweth that therefore in his
said Answer to the Petition of the said Chinglepet Narrain
Chitty after stating the Material Circumstances above in part
Set forth your Petitioner (as then Respondent) Prayed that the
said Mayors Court would Order the said Chinglepet Narrain
Chitty to Pay your Petitioner full Costs and Damages which
by reason of the Premises he had most wrongfully Sustained
but your Petitioner Sheweth after Issued was Joined and
Witnesses on both sides examined and Publication Passed
the same was Set down for hearing and on the fifth day of June
in the present Year of our Lord One thousand Seven hundred and
Eighty One came on to be heard and before the said Hon'ble
the Mayors Court when the said Court were pleased to Order
that the Sheriff should pay unto the Petitioner (meaning the
said Chinglepet Narrain Chitty) the Sum of two hundred
and Twelve Pagodas and that your Petitioner should pay
unto the said Chinglepet Narrain Chitty all such Interest
as was or should be due thereon with double Costs of the said
Suit as by the said Petition and Answer and other the
Proceedings thereon had in the said Court together with the
said Order thereof herewith sent for the inspection of this
Hon'ble Court of Appeals Reference being thereunto respectively
had may more fully Appear your Petitioner Craving as full
and Ample benefit from them and each of them as if they
and each of them had been hereinbefore at full length
Set forth your Petitioner Sheweth that having Reason to consider

himself

himself Aggrieved by such the said Order of the said Mayors
Court as also to Consider the same Erroneous he doth Appeal
therefrom to this Hon'ble Court of Appeals for the following among
other Reasons

First Because it Appeared to the said Mayors Court thro' the
Petition of the said Chinglepet Narrain Chitty that he attempted
to borrow such Title from Moolu Comrapah Chitty as might
create in Cooly Chitty a right to Mortgage the Premises to him
the said Chinglepet Narrain Chitty therefore as the Question at
Issue and which alone should determine his right of Claim
was whether or no Cooly Chitty had in himself by his own
Seperate act good Right to Incumber the Premises and as the
said Chinglepet Narrain Chitty held forth no greater title to
Mortgage under Moolu Comrapah Chitty it of Course remained
with the said Chinglepet Narrain Chitty to have produced and
Proved such Mortgage for as in such Case and by the Shewing
of him the said Chinglepet Narrain Chitty his pretended
Mortgage from Cooly Chitty being in the Nature of a
Mean Mortgage his right of Claiming thereunder should
be determined and Valued by the Right that Cooly Chitty had
in himself to grant the same and under such Circumstances
it ought to have been the Sequestion of the said Mayors Court
as a Court of Equity to calls forth Cooly Chitty's Title as
Mortgage under his said Brother Moolu Comrapah
Chitty as nothing less than a production and proof thereof
could give Chinglepet Narrain Chitty a right either to claim
or to have Relief thereunder Whereas no such Title was produced

to

in Support of the said Cooly Chittys Pretended Right to Mortgage
unto the said Chinglepet Narraen.

Secondly Because Notwithstanding that the foregoing Questions should have been Properly the matter at Issue before the Court and between the Parties the whole evidence instead of entering thereon tends only to establish before the Court the Substance of Conversations about a Compromise of the Matter in Dispute. which conversations your Petitioner Submits are not in themselves Sufficient to do away the Clear Right in law of your Petitioner under the Decree of the said Mayors Court of the twentieth day of October which was in the Year of Our Lord One thousand Seven hundred and Seventy Eight and his Consequent Title derived therefrom whereby he was entitled to the Produce by Sale of Brimeaux Sold under and by Virtue of the Execution of the said Decree the more so as the said Conversations wear More the face of Overtures to an Amicable Settlement than of a formal and Substantial undertaking or "Assumpsit" in law.

Thirdly Because, that altho your Petitioner may have promised to give to Chinglepet Narrain Chitty half the Proceeds of such Sale Such promise ought not to affect the Proceedings in the said Petition, as no Injury was done till the promise was broke and therefore no Right of Action or Remedy could come before the Mayors Court till the Money had been Received by your Petr and that Notwithstanding such Receipt he had made Default in Payment to the said Chinglepet Narrain of the half Part Whereas as the matter Stands your Petitioner has never had the said Money in his hands and therefore could never be said to have broken any Promise by Default of Payment of the half Part thereof

Fourthly

Fourthly Because, that whether the said Mootw Comrapah Chitty & Cooly Chitty had or had made any Division as to their own Estates such Division could not Prevent their Joint Inheritance and equal right to the Estate of their Brother Vella Moodw Chitty wherefore the said Chinglepet Narraen in his endeavours to establish a title thro the Medium of Mootw Comrapah Chitty as Mortgagee to Cooly Chitty Attempts to Prove a Right in Mootw Comrapah Chitty to Make Such Mortgage which Right is Contrary to the Custom of the Cast as Appears by the Evidence of Agarum Soobramony Chitty.

Fifthly Because, that when due Consideration is had of the litigious Conduct of the said Cooly Chitty in Denying a Debt the Justness of which his said Brother and Partner Mootw Comrapah Chitty Confessed in their Court and when the Substance of Chinglepet Narrain Chitty's Petition and the Contradictory Tenor of the evidence given in Support of it are duly Weighed. So far from there being any Ground for an Order against your Petitioner with Double Costs of Suit there Appears as your Petitioner Conceives a very Strong Ground to Suspect an Interested Conspiracy between the said Cooly Chitty and the said Chinglepet Narrain Chitty Not only to Avoid Payment of the half part of the Sum for which your Petitioner by his Attorney had filed his Bill of Complaint Against the said two Brothers but also to Harrass your Petitioner Still further by Preventing him from Receiving the said half part of his Original Claim on the two Brothers altho the said Mootw Comrapah Chitty never Presumed to deny he owed the Money.

For all which Reasons and such others as may be offered

Offered at the Hearing your Petitioner humbly Conceives that the said Order of the Mayors Court ought to be fully Reversed and that the said Chinglepet Narrain Chitty should be decreed to pay to your Petitioner the Interest of the said Sum for which the said Premises were sold from the Day the said Chinglepet Narrain Chitty lodged his Petition in the Mayors Court untill the Same be Paid, and that the said Chinglepet Narrain Chitty be also decreed to pay Double Costs of Suit.

Stephen Popham
Attorney for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 5th day of June Anno Domini 1781

Present
Benj.n Roebuck Esqure Mayor
Edw.d Saunders and Robert Duncan Munro
Aldermen

Gangadrah Chitty by his Attorney Pascal Druen
vers
Cootty Chitty and Mootoo Comapah Chitty

Petition of Chinglepet Narrain Chitty Read
Answer Read
Interrogatories on the part of the Petition Read
Seven Depositions taken thereunto Read
Additional Interrogatories on the part of the Pett.r with a Cadjan and a Translate Thereof Annexed Read

Two

Two Depositions taken thereunto Read
Interrogatories on the part of the Respondent Read
Seven Depositions taken thereunto Read
Two Bills of Sale Read

The Matter in Dispute between the Petitioner Chinglepett Narrain Chitty and the Respondent Gangadrah Chitty by his Attorney Pascal Druen Coming on to be Argued and determined this day in the Presence of the Attornies on both Sides on reading the Petition of Chinglepet Narrain Chitty the Respondents Answer the Interrogatories and Depositions on the part of the Petitioner with a Cadjan and a Translate thereof Annexed the Interrogatories and Depositions on the part of the Respondent two Exhibits on the part of the Petitioner On Reading the Arguments made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and doth Accordingly Order that the Sheriff do Pay unto the Petitioner the Sum of two hundred and twelve Pag.s Pag.s 212 ..... / and it is further Ordered that the Respondent do pay unto the Petitioner all such Interest as now is or shall hereafter become due thereon untill full payment is made together with double Costs of Suit

A true Extract
James Taylor
Regr

To the Right Honble George Lord Macartney &c
President and Governor &c Council at Fort St George

In the Court of Appeals

The Answer of Chungalpuel Narrain to the Petition and Appeal of Gungadrah Chitty by his Attorney Bascall Draver

The Said Respondent admits that the Appellant did Some time on or about the fifteenth day of October which was in the Year of Our Lord One thousand Seven hundred and Seventy Eight exhibit his Bill of Complaint in the Honble the Mayors Court Filed in my Office at Madras against Cooly Chitty and Mootu Comrapah Chitty the 17th July 1781 for the Sum of One thousand two hundred and thirty Eight Pagodas twenty One fanams and twenty five Cash, as is said by the Appellant and this Respondt Charles Freeman Clk admits that the said Attorney did make Oath to the Justness of his said Demand and that thereupon a Summons Vulnuable immediately and a Warrant of Arrest did issue directed to the Sheriff of Madrasspatnam, by Vertue whereof Mootu Comrapah Chitty one of the said Defendants being Arrested was brought before the said Honble Mayors Court Sometime on or about the Twentieth day of October which was in the Year of Our lord One thousand Seven hundred and Seventy Eight when this Respondent doth Admit that the said Mootu Comrapah Chitty did Acknowledge the Justness of the said Debt, whereupon the said Honble Mayors Court did Order and Decree that he the said Mootu Comrapah Chitty should pay unto the said Appellant the Sum of Six hundred and Nineteen Pagodas ten fanams and fifty Cash and One half a Cash, being the half of the aforesaid sum Sued for against the said two Defendants and no other process was taken out or Proceedings had against the said Defendant Cooly Chitty for Reasons best known to the Appellant, but the Appellant after the usual time had expired for the said Mootu Comrapah Chitty to Satisfy the said Decree, which the said Mootu Comrapah Chitty did not do he the said Appellant did procure a Warrant of Execution to issue against the Goods and Chattles of him the said Mootu Comrapah Chitty, which said Execution being directed to the Sheriff, he the said Sheriff did by the direction of the Appellant Seize as the property of the said Mootu Comrapah Chitty a certain House and Ground in the Black Town, and this Respondent further Sheweth that he being informed thereof, did make many Application to the Appellt to Cause the said Seals in the aforesaid manner Affixed by the Sheriff to be taken off and Removed which he the said Appellt did frequently promise and engage to do, but the said Appellant not abiding by and performing his said promese this Respondent did on or about the twenty Sixth day of April in the Year of Our Lord One thousand Seven hundred and Seventy Nine exhibit a Petition in the Honble the Mayors Court Setting forth the injustice of the aforesaid Seizure by Reason that the said house and Ground did formerly belong to and was the Property of One Vellamootu Chitty some time before deceased and that the said House and Ground did thereupon become the Property of Mootu Comrapah Chitty one of the said Defendants, as Brother and next of Kin to the said Vellamootu Chitty and this Respondent did further more shew

that

that the said House and Ground was mortgaged by the said
Mootoo Comrapah Chitty to the said Cooty Chitty and this Respondt
did further Set forth in his said Petition that the said Cooty Chitty
did some time on or about the Month of May which was in the
Year of our Lord One thousand Seven hundred and Seventy four
Mortgage the said House and Ground and the title Deeds thereof
unto this Respondent for the Sum of One hundred and fifty Pags
and also for a further Sum of Eighty Seven Pagodas and one half
of a Pagodas which said Several Sums with the Interest thereon
Amounted to the Sum of three hundred Pagodas this Respondent
did also Shew in his said Petition, that upon the said Seizure he retained
Mr. Henry Du Bey as his Attorney in Order to file his said
Petition, and to prevent the Sale of the said House and Ground
so Seized as aforesaid, unless that this Respondents Debt should
be paid out of the proceeds thereof and in Order thereto delivered
unto his said Attorney the said title Deeds of the said premises or
Order to Shew his title thereun to the said Sheriff this Respondent
Shewed, also that in Consequence thereof the Appellant did go to
a person Named Shashapilla Requesting him to Speak to one
Soobroyah in Order to use their endeavours to Settle the said
Matters, and Some time afterwards that the Appellant
attended with the said Shashapilla came to the said Soobroyah
and in consequence of their Conversation upon the said matters
it was Agreed that the Appellant should pay unto this
Respondent the Sum of two hundred and twelve Pagodas being
the Sum of One hundred and fifty Pagodas and Interest
thereon and that for the further Sum of Eighty Seven Pagodas
and One half of a Pagodas afterwards sent unto the said

Cooty

Cooty Chitty this Respondent was to receive the same from him
the said Cooty Chitty, and this Respondent Agreed thereto and
upon those Conditions this Respondent consented to deliver the
Bills of Sale up to the Sheriff for the purpose of selling the
said and Ground and the Deputy Sheriff was made acquainted
that this Respondent was to receive the Sum of Two hundred
and twelve Pagodas out of the proceeds thereof and the said
House and Ground was accordingly put up to Sale and was
Purchased by the Appellant himself, who after such Sale
Refused to comply with his said Agreement by reason
whereof the money was detained in the hands of the Sheriff to
the great detriment of this Respondent, because the premises in
Question were Mortgaged to him as aforesaid and he had a right
to Demand the Amount thereof out of the produce of the Sale
of the said Premises or otherwise he could have Objected to the
same being Sold this Respondent did therefore implore the aid
and Assistance of the said Honble Court in the aforegoing
Matters and did further Pray that the Sheriff might be
directed to pay unto him this Respondent the aforesaid Sum
of two hundred and twelve Pagodas agreed to be paid out of the
produce of the Sale of the said premises and that the same might
Stand in the hands of the Sheriff untill the said Honble Court
should be pleased finally to give Order thereon, and that
the said Appellant may pay all Costs of the said Petition
unto which said the said Appellant did put in his answer
denying that the said Premises were ever the Only Property of
Pillamoolu Chitty since Deceased and denied that the said

House

House and Ground could have devolved to Moolw Comrapah Chitty only altho' Brother and Nearest of Him to the said Vella Moolw Chitty, that the same was the Joint Property of Moolw Comrapah Chitty and Cooly Chitty, Brother and heirs of the said Villamoodw Chitty in whose name however the Appellant did Admit that the said Bill of Sale of the said premises was but the Appellant said that the house in Question was built with the Moneys lent and Advanced him unto Moolw Comrapah Chitty and Cooly Chitty and for the Amount of which he commenced his said Action against them the said Moolw Comrapah Chitty and Cooly Chitty and for which he Obtained the Decree in Question against the said Moolw Comrapah Chitty the Appellant in his said Answer said that the said Moolw Comrapah Chitty and Cooly Chitty did Jointly pay the Combinys Quit and Scavengers Duty for the said house and Ground and for which Reason he pretended that the said Moolw Comrapah Chitty had no Right to Mortgage the same to Cooly Chitty for any money whatsoever and that therefore the said Cooly had no right in the said Month of May One thousand Seven hundred and Seventy four to Mortgage the said House and Ground and the Title Deeds thereof, either to this Respondt or to any other and to borrow and receive thereon the Sum of One hundred and fifty Pagodas and a further Sum of Eighty Seven Pagodas one half of a Pagoda, and that he the said Cooly Chitty had no Right to borrow any Sum of money whatever because he pretended there was no division of Estates Yet made between them, as the Appellant Pretended was the Custom of the Malabars and the said Appellant

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Appellant in his said Answer denied to have gone to Shashapilla and to have desired him in the manner alledged by this Respondent, but Admitted that Shashapilla, Soobroyah and this Respondent meeting him the said Appellant in the Court House on a Court day said that as the Title Deeds of the premises were pledged to this Respondent he the said Appellant had no Right to Sell the said House and Ground without paying his Debt in full first Unto which the Appellant Pretends he said that the Mortgage for want of the Consent of the other Brother if disputed, could not stand good, when this Respondt said he would file his Petition in the Honble the Mayors Court the Appellant in his Answer further said that about five or Six days after, Soobroyah and Shashapilla consulted together when the Appellant Pretends that Shashapilla asked him the Appellant if he would Agree to Pay this Respondent the Sum of Two hundred and twelve Pagodas which he Saith the Appellant Refused but that altho' he was convinced of the illegality of the said Mortgage still he said to avoid disputes in law Agreed to give him this Respondt the half of what the premises should be sold for by the Sheriff but that this Respondent did not Agree thereto and the Appellant Saith that about two or three Months afterwards the Sheriff Advertised the House and Ground for Sale when the Appellant Pretends that Soobroyah in the presence of the Shashapillah and Cottingam asked the said Appellant if he would pay this Respondt the Sum of Two hundred and twelve Pagodas which he Saith he Refused to do but that he would allow this Respondent half of what the said House and Ground Sold for upon this Respondent granting a proper Receipt for the Amount when this Respondent said he would Petition the Honble the Mayors Court for the Recovery of

his

his said Demand but the Appellant Pretends that before this
Respondent filed his said Petition the Sheriff Sold the House and
Ground in Question for no more than three hundred and Sixty five
Pagodas and therefore denied to have Agreed with the Respondent
in the Manner and form by him Setforth

The Appellant did then proceed to
Answer the said Petition by alledging that even Supposing the
said Mortgage in the hands of this Respondent to be legal which
however he did not Admit Still this Respondent could not be
entitled to more than the Half of the produce of the said House and
Ground on behalf and as the Property of the said Cooly Chitty the
Person who mortgaged the Same to him without the Consent
Knowledge or Approbation of Mootoo Comrapah Chetty the proprietor
of the other half and Against whom the Appellant said he had a
Decree and in Consequence of his not having Satisfied which the
said House and Ground was put up to Sale by Vertue of the
Warrant of Execution as aforesaid the Appellant therefore said that
he thought himself entitled to the half of the Produce of the said
House and Ground and did Offer this Respondent the other half
Pa. upon which proceedings this Respondent Sheweth that Issue
did Joyn and Rule were issued for the examination of Witnesses &
Witnesses were examined on both Sides and the said Petition &
Answer was Set down for Hearing and on the fifth day of June
in this present Year of our Lord came on to be heard when the
Honble Mayors Court were pleased to Order and Decree and
did Accordingly Order and Decree that the Sheriff should pay
unto this Respondent the Sum of Two hundred and twelve Pag.
and One half of a Pagoda and that the Appellant should Pay

unto

unto this Respondent all such Interest as was or should become due
thereon together with double Costs of Suit which said Order of the
Honble Mayors Court is very Just and Equitable and the Appellant
had no Reason to consider himself aggrieved thereby and that the
Causes of Objection shewn by the Appellant are very frivolously
and waive and by way of Answer to the first Objection of the
Appellant this Respondent saith that the same tends to involve the
Simple and Plain Matter before the Court in intricacies and questions
by no means Necessary to elucidate the Same and this Respondent
Saith that the Honble Mayors Court could not Judgement upon
the said Matter but from what they had before them for that
Purpose this Respondents Title was fully and clearly proved
to the Court and whether the said Mootoo Comrapah Chitty lay
under any incapacity to Mortgage the Premises in question to
Cooly Chitty is not a matter material upon which the
manner as to Shew any thing irregular or unfair in the mode of
the said Bill of Sale coming to this Respondents possession the
Appellant himself upon that Consideration thought himself bound
to allow him this Respondent to receive half the produce of the
said Premises from a notion as he pretends that the said
Mootoo Comrapah Chitty was entitled to half thereof this is
an Admission of the Mortgage as well as of the Right of Mortgage
the Seperate Rights & Claims of each individually was a matter
Dependant upon the Appellant to Shew the Honble Mayors Court
and that Such Rights and Claims were consistent with and
Consonant to the Laws and Customs of their Cast which the
Appellant has by no means Done in that ample and
Satisfactory manner as Evidence to facts Disputed ought to

be

be and respecting this Respondents Title the same was undispu=
=table, and therefore not only fully Admitted by the Honble
Mayors Court but the Appellant was very justly taxed with
double Costs for maintaining and supporting a Contest of his said
Right upon such Weak and litigious Grounds

In Answer to the Second Objection which Speaks
of the Nature of this Respondents Evidence which the Appellant
Saith tends only to establish the Substance of Conversations
about a Compromise of the matter in Dispute this Respondent
Saith that the Nature of the Appellants defence is the same and
Chiefly shewing that he was Sensible of this Respondents Right
and as to what the Appellant saith that such Conversations
are not in themselves Sufficient to do away the clear Right right
in law which the Appellant pretends he has under the
aforementioned Decree this Respondent Saith never interfered or
made any part of his Claim, the Property or otherwise of the said
Decree but has only insisted that as the Title Deeds were
Mortgaged to him by the said Cooly Chitty who Appears by a
very Numerous evidence not only to have a Right to mortgage
from his possessing the same, but also by Vertue of the same
having been Mortgaged to him by the said Mootu Comrapah
Chitty

In Answer to the third Objection this
Respondent Saith that the Promise made by the Appellant of
one half of the proceeds of the Sale thereof shews that the Appellt
was Sensible of this Respondents Right of by Vertue of the Mortgage
in question And as to what the Appellant Saith of this
Respondent not having received any injury by the breach of the
said

said Promise, this Respondent saith that he never complained thereof
but of the breach of the Appellants Promise to allow him two
hundred and twelve Pagodas and one half of a Pagoda out of the
Sale of the said house, and as to what the Appellant saith of his
never having received any part of the said Money meaning the
Produce of the said Premises this Respondent Saith that he has
particularly charged in his Petition, that the Appellant
Purchased the House and Ground, and by that means holds
Possession thereof and is by that illegal means enabled to oppose
this Respondents Just Right by carrying on his Present
Appeal

In Answere to the fourth this Respondt
Saith that whether the Right of Inheritance was equally existing
in the Persons of the said Mootu Comrapah Chitty and Cooty
Chitty or not this Respondent was in possession of every Right
that each of them could have and be possessed of To Wit the
Title Deeds, and that not by fraud or any under hand dealings
but by the Knowledge and Consent of them both as this
Respondent has charged and which the Appellant has so far
Admitted that he has not examined any Witnesses to the Contrary
and Mootu Comrapahs Evidence would have cleared up the whole
but the Appellant having gained his Views by the possession of the
House and Ground in Dispute and despairing of gaining any
Advantage from the producing of Evidence in Support of his
Claim therein, has abandoned that part of the Evidence intirely
to this Respondent which he makes no doubt is very full and
Satisfactory to Answer the Purpose of establishing his demand
made by his Petition

In Answer to the fifth Objection this

Respondt

Respondent saith that the same is of a piece with the whole Tenor of the Appellant proceedings as of by Reflecting a Conduct upon this Respondent which is only Applicable to himself he could thereby escape the Reproach so Justly and deservedly due to his Litigiousness and Dishonest proceedings which were the Cause of the Honble Mayors Court Laying him the Appellant with double Costs and this Respondent saith that the whole of the Substance of his Petition is Regularly fully and uniformly Proved without the least evasion or contradiction in any part his Evidence, but this Respondent saith that upon Reference to the Appellants Evidence there are many palpable Contradictions which Shew that there is rather a Conspiracy between the Appellant and the Evidence produced on his behalf than that there is or has been a Conspiracy between him this Respondent and the said Cooly Chitty, but saith that the said Mootoo Comrapah Chitty and the instance introduced to Represent the same and the Injury complained of by the Appellt to Wit that the Petition filed in the Honble the Mayors Court is done with a View to harass him and prevent him the Appellant from Securing the half part of his Original Claim this Respondent saith that the evidence produced upon this Occasion will determine the Right of the Matter in question and Shew who is the Injured Party and this Respondent humbly conceives it is clear, that he has be much injured by the Appellant. he the Appellant having been Suffered by the Sheriff to be declared the purchaser of the Premises in Dispute and in dust that title now continues in Possession thereof

And

And by way of further elucidating this Merits of this Question this Respondent humbly prays leave to make Some Observations upon the Several Depositions taken on behalf of contending Parties this Respondent conceiving the Same to be Necessary by reason of the Charge of Conspiracy to defraud introduced by the Appellant in his Petition altho no part of the Original Proceedings and to which the Appellant is bound by the Rule of Practice in Cases of Appeals to confine himself to and also to clear up the Charge of Contradictory Depositions in the Course of this Respondents Evidence

Soobroyah Chitty deposes to the terms of Accommodation Offered by the Appellant in Consideration of his not filing the Petition in Question and the said Offers accommodation so deposed to, are exactly correspondent with those charged and Setforth by this Respondent in his said Petition To Wit that the Sum of One hundred and fifty Pagodas and the Interest thereon Amounting in all to Two hundred and twelve Pagodas and One half of a Pagodas was to be paid out of the Sale of the Premises in Dispute to be Sold by the Sheriff and that the Remaining Eighty Seven Pagodas was to be paid by Cooly Chitty in the Manner Setforth by this Respondent and that in Consideration of such terms of Accommodation being Agreed and Settled this Respondent delivered up the Bill of Sale of the premises in Question to the Sheriff in Order that the said terms might be effected

Ramdyen another Witness exactly confirms the truth of the aforegoing Evidence both as to the payment of the Sum of Two hundred and twelve Pagodas and One half of a Pagoda out of the Sale of the Premises in dispute

and

and the delivery of the Bill of Sale in Order that the Sheriff
might sell the same.-

Pallapah Chitty deposes to the Mortgage
of the Premises indispute by Mootw Comrapah Chitty to Cooly
Chitty and Cooly Chitty Mortgageng the Same to this
Respondent

Ninah Chitty deposes to the Mortgage
of the Premises by Cooly Chitty in the manner and for the
Sums mentioned by this Respondent in his Petition also of a
Devision of Estates taking Place between the said Mootw
Comrapah Chitty and Cooly Chitty upwards of Sixteen Years
last past, According to the Custom of their Cast, he deposes
likewise to a demand being made by Cooly Chitty upon
Mootw Comrapah Chitty for the payment of the Mortgage
of the Premises in dispute being for One hundred and Ninety
Pagodas and that Mootw Comrapah Chitty put off the
payment from time to time, but promised to discharge the
same as soon as he had money-

Vellaydah Chitty deposes to the
Premises in dispute being Mortgaged by Mootw Comrapah
Chitty to Cooly Chitty for the Sum of One hundred and
Ninety Pagodas and of the Same being Mortgaged by Cooly
Chitty to this Respondent he likewise deposes to the divisions
of Estates between the said Mootw Comrapah Chitty and
Cooly Chitty and further to demands being made by Cooly
Chitty upon Mootw Comrapah Chitty for the payment of the
Sum due thereon

Nagapah Chitty deposes likewise to

the

the Mortgage of the Premises by Mootw Comrapah Chitty to Cooly
Chitty and by Cooly Chitty to this Respondent as also of his having
been informed of by the Cooly Chitty and Mootw Comrapah Chitty
having Seperated and made adevision of their Estates and Moreover
of Demands having been made of payment of the Mortgage by
Mootw Comrapah Chitty to Cooly Chitty-

Tenanoor Egapah Chitty deposes to the
Request of the Appellant made to this Respondent to deposit the
Bill of Sale of the disputed Premises in the hands of the Sheriff in
Order that the Same might be Sold, and that he agreed that this
Respondent should Receive from the Sheriff an Account of his said
Mortgage the Sum of two hundred and twelve Pagodas and One
half of a Pagoda and that the said Offers were made to this
Respondent thro' him the said Deponent in the presence of
Shastapilla Soobroyah and Royamah for the said Appellant
further begging that this Respondent would excuse the Court
Charges.

The said Deponent further deposes to the
devision of Estates between the said Mootw Comrapah Chitty
and Cooly Chitty which this Respondent prays to observe is
made a parcell of the Appellant's Answer but no ways
undertaken by him to be disproved.

The last Evidence on the part of this Respondt
is Veerashy Vencatashellah Chitty who proves the Mortgage
from the said Cooly Chitty to this Respondent

The Evidence on the part of the
Appellant are not only Contradictory but very futile and
unperfect to maintain the Right claimed by him The Depositions
of Vencata Ramayah and Perayah Cundapah Chitty only

Relate

Relates to the Value and Purchase of the Ground which is not a matter now in dispute.

The Depositions of Comrapah Chitty and Agarum Loobernonew Chitty only tend to Shew whether the act of the Younger Brother without the Consent of the Elder Brother is binding or otherwise, which is a matter entirely foreign to the Question in hand and particular as the Seniority of either of the Brothers has not been contested nor does the evidence at all ascertain which is the eldest or otherwise nor has the Appellant entered upon any proof whether or no there has been any devision of Estate but has left the proof of that Matter to this Respondent.

Sheshapilla proves the demands of this Respondent for two hundred and twelve Pagodas and one half of a Pagoda to be paid him out of the Sale of the premises in dispute and the Offer of the Appellant to allow half the Produce of the

Madrum Pillah and Condapah Chitty depose to the demand of this Respondent and the unjust Refusal of the Appellant to comply therewith.

All which Matters this Respondent humbly Prays to refer to this Hon^ble Court how far he has Succeeded in proving the Justness of his demand and his Moderation in confining himself therein to the Sum Originally Offered by the Appellant when he might have demanded the whole of the Amount of his Mortgage this Respondent also prays to refer this Hon^ble Court to the defence of the Appellant and the very insufficient Evidence he has produced to Support it the Appellant hath gone upon facts unproved and Pleaded

Customs

unestablished and under pretence of being injured by this Respondent is doing him the Injury not only of Keeping him out of his Just Right but has more over Obtained the means of possessing himself of the Security upon which the Same was lent. This Respondent therefore humbly hopes that this Hon^ble Court will so far take the unjust and litigious Conduct of the Appellant into Consideration as not only to Confirm the Orders of the Mayors Court but als to dismiss the Appellant's Petition in this Hon^ble Court with double Costs also and to give this Respondent such further Redress in the Premises as to this Hon^ble Court shall Seem Meet.

Henry Du Bury
Attorney for the Respondent

Court of Appeals
at
Madraspatnam

The 30th January
Thursday the 30th January
Anno Domini 1783

Between Gungadra Chitty by his Attorney Pascal Druem Appellt
and Chengleput Narrain Chitty
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 Exhibites of the Hon^ble the Mayors Court together with the Order of the said Court given in this Cause on

Tuesday

Tuesday the 5th Day of June 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 Decree of the Honble the Mayors Court dated the 5th day of June Anno Domini 1781 Do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs

Chs. Freeman

To the Right Honble George Lord Macartney
President and Governor &c. Council of Fort Saint George
In the Court of Appeals

Between Channa Kistnamah Chitty
Complainant and Samuel Read Defendant

The Humble Petition and Appeal of the said Complainant

Shuweth

That Your Petitioner did Some time on or about the Twenty third day of November which was in the Year of Our One thousand Seven hundred and Seventy Nine exhibit a Bill of Complaint against the said Defendant for that on the Twenty fifth day of September in the said Year of our Lord was possessed of a Gold Watch of the Value of One hundred and fifty Pagodas of his own Proper Goods and Chattles and that Being so possessed thereof he did deliver the same into the hands of a Person named John Peterson who then followed the trade and Craft of a Watch maker in Order for him the said John Peterson to make and do some necessary Repairs to the said Watch that some time afterwards upon making Application to the said John Peterson for his said Property he Received for Answer that he the said John Peterson had lost the said Watch whereby your Petitioner lost and was deprived of his said property but your Petitioner in his said Bill Shewed that afterwards to Wit on or about the fifth day of Novr in the said Year of Our Lord he did find his said Property and that he did so find it in the hands of One Samuel Read of Madras Painter Yet altho' the said Samuel Read altho' your Petitioner had frequently Demanded his said Property which the said Samuel Read the defendant well knew the same to be and to Appertain to your Petitioner only nevertheless the said Samuel Read the defendant contriving and intending to Deceive and defraud him your Petitioner had Refused to deliver the said Watch to your Petitioner tho often Requested so to do but that the said Defendant had converted & did then continue to convert and dispose of the same to his own use to the damage and Injury of your Petitioner to the Value of one hundred and fifty Pagodas

Unto which said Bill of Complaint the said Defendant did Appear and did on or about the Sixth day of March in the Year of Our Lord One thousand Seven hundred and Eighty file and put in his Answer Setting forth that some time about the Month of April or may last to the best of his the Defendants recollection John Peterson in your Petitioners Bill named came to him and Offered and proposed Selling him a Gold Watch which he the said John Peterson said came to his hands as a Prize in the Lottery

Filed in my office 25th June 1781
Charles Freeman
Clk

Lottery and as such that it cost him but two Pagodas to which the Defendant Pretends he made Answer that he did not want it at that time that about a Month after the said John Peterson came a Second time to the said Defendt. Saying that the said Watch so offered by him for Sale was in the hands of & Possession of one David Rodes as or by way of Security for a Debt which the said Defendant Pretends the said John Peterson owed the said David Rodes the said Defendant further Pretends that the said John Peterson at the said time said he would Sell the said Watch for forty Pags. at which Price he the Defendant saith he bought the said Watch paying the said David Rodes thereunto the Sum of Twenty four Pagodas and Twenty Eight fanams being as the Defendant Pretended the Debt due to him by the said John Peterson in different payments Sixteen Pagodas and Twenty four fanams in money and Cloaths, under which Circumstances the said Defendant Saith he begs leave to insist that he the said Defendt bought Purchased and paid for the said Watch in an honest and fair Manner more especially as the said Defendant Saith he considered the said David Roads as then owner of the said Watch from his property therein and Possession thereof as a Security as aforesaid & Right of Redemption as the Defendant saith being the only property the said John Peterson had therein.

The Defendants Admits in his Answer that about the time in the Complainants Bill mentioned a Native of this place whose name the Defendant pretends he could not Set forth being an entire Stranger to him but who for ought he the Defendant Knows to the Contrary might be the Complainant your Petitioner came to him the Defendant and asked him if he had a Gold Watch upon which the Defendant saith without the least hesitation he Shewed and Produced and that Your Petitioner thereupon said the said Watch was his that he informed the said Person who so came & claimed the said Watch what was the Sum he pretended he gave for the said Gold Watch and the Defendant pretending that having no Reason to dread such claim or accuse in the least his own Conduct told the said Person that if he would Reimburse or pay him what the said Watch cost him, he should have the said Watch as a Purchaser but the Defendant pretends that your Petitioner wishing to have the said Watch at no greater or other Price than such his pretended claim which the Defendant in his Answer calls striving to injure him in the premises had filed the Present Bill of Complaint against him in this Honble Court the Defendant without making a due distinction between the Nature and Appearance of a fair and Open purchase and one Under hand as the present one was effected saith that in Case his Your Petitioner's claim should be Countenanced that it would be an inlet to deprive every Person of his property and that of Course no fair Purchaser would be safe in or could with any certainty enjoy the Property he might at any time Purchase if thus Subject to after claims &c. and did therefore Pray to be Dismissed with his Reasonable Costs and Charges Unto which said Answer Your Petitioner did Reply insisting that the Defendant Stood indebted to him in the Sum of One hundred and fifty Pagodas for the Value of the Watch in Question or to Return the Same in as good Condition as he the Defendant Received the same your Petitioner did further Set forth in his said Replication that Notwithstanding the many evasive Reasons and arguments made use of by the Defendant he was nevertheless Answerable to him for his

said

Said Property and the manner of Application made by the said John Peterson and his well known circumstances he your Petitioner +
Setting forth that the said John Peterson had but a very short time before been enlarged from Prison for Debt and which your Pet.r did charge that the Defendant well Knew, he the Defendant at + the time of his imprisonment one of the Sheriffs Officers of this Honble Court which should have put him the Defendant upon his Guard against entering into any bargain with him for so Valuable an Article as a Gold Watch which it was very + unlikely the said John Peterson could have a right to Sell + and Dispose of and your Petitioner Observed that the said John + Petersons Second Application should have added to the Suspicions of the Defendant from the improbability of so Valuable an Article remaining so long a time in hands of a man in the indigent + Circumstances of John Peterson and particularly when the said Watch was Offered to Sale at so low a price so much inferior & in adequate to its real and true Value Your Petitioner Said + that having once found his property he had a right to demand the same having been unduly deprived thereof by the said + John Peterson who not having any right to dispose of the said Watch the sale by him was consequently void and your Pet.rs Right and Property unalterably the same and your Petitioner was not under the Necessity in Order to acquire the possession + thereof to pay the Price which he pretends he Paid for the said Watch. but on the Contrary the Defendant should return back unto Your Petitioner his said Property and Demands + Restitution from the said John Peterson of the money he pretends he has paid him for the Same &c.a Mutis which said Replication +

the

the Defendant did some time on or about the twenty Seventh day of June in the aforesaid Year of Our Lord One Thousand Seven hundred and Eighty file a Rejoinder, therein Admitting that he had been a Sheriffs Officer and doth not deny his Knowledge of the said John Peterson having been but a Short time before the said pretended Sale enlarged from Prison for Debt the Defendant in his said + Rejoinder saith that he bought the Watch in Question from the said John Peterson whose Property therein or his sufficiency to dispose thereof the Defendant pretends he could be under no + Apprehension about nor had he the Reason even to Suspect either more especially as he the said John Peterson, was not only + a Watch Maker but often in the Course of business acted under Commission to Sell Watchs and other Valuable things and that the said Watch being in possession of David Rhodes who + delivered up the same Defendants Pretends Justified him in Considering he acted both fair and Safe in the Purchase + thereof and that the said John Petersons Second Application + could raise no Suspicion in him respecting his Right to the said Watch the Defendant pretending that in the Course of dealing the Seller whether acting for himself or under Commission must + often by frequent Applications urge a Sale so as to Oblige him to Dispose of an Article under Value in Order to Answer a + Present Emergency the Defendant therefore pretends that as he Purchased such Watch in a fair open manner he + conceived his Property therein as a purchaser unimpeachable and that he could not accuse himself upon the whole + transaction to have departed from the usual Course of + Dealings or business not to have acted in any under hand +

manner

Manner more especially as he well knew besides the said John Peterson being a Watch maker by trade usually and under Commission as aforesaid acted for Several Persons in that way and the said David Rhodes being occasionally and as Setforth in his Answer concerned in the said Watch &c. after which your Petitioner Sheweth that Issue Joined in the said Cause and Rules passed for the Examination of Witnesses during which Your Petitioner Sheweth the said Defendant not examining any Witnesses as to the Custom and business extending to Sell Watches under Commission and otherwise nor any Witnesses to shew that he the Defendant really did Purchase the said Watch in Question nor any other Way how he came by the possession of the said Watch which he your Petr. did think was the duty of the Defendant to do in Order at least to Shew to the Honble Mayors Court how and in what manner he came by the same which proof lay entirely with the Defendant Your Petitioner did conceive that all the Evidence necessary on his part was to prove the Value of the said Watch altho' the Value as Stated and Charged by him Your Petitioner in the proceedings is no where denied or in the least doubted And your Petitioner Sheweth upon these proceeding the said Cause was Setdown for hearing and coming on to be heard on the twelfth Day of this Present Month of June the Honble the Mayors Court were Pleased to Order and Decree and did Accordingly Order and Decree that Your Petitioners Bill should be dismissed with Costs by which said Order and Decree your Petitioner doth conceive himself much Aggrieved and doth therefore Appeal therefrom unto this Honble Court and for Cause Sheweth First because Your Petitioner Sheweth that having discovered and found his property in the possession of the Defendant he had a Right to demand the Same and it was not the business of Your Petitioner to come upon the said John Peterson nor upon the said David Rhodes but it was rather the business of the Defendant when the fraud of the transaction in the Sale of the said Watch to come upon them or either of them as he might see best Secondly because the Defendants answer having been denied to be true the Defendant ought to have proved the Same and his not having done so leaves the Court in doubt how and what manner the Defendant came by the possession of Your Petitioners Property and on a change of the Nature of the one now before this Honble Court it was particularly incumbent on the Defendant to have proved the Same & his not having done so must imply the inability of the Defendant to prove that he came by the possession thereof by any of the means Justifiable in the law to warrant the detainer of your Petitioners Property

Thirdly that it Appears by the Defendants own Shewing that the transaction from the beginning was fraudulent the Watch in question was pawned at the time of Purchase by the said John Peterson to David Rhodes that the Defendant paid the Sum of Money owing upon the said Watch so Pawned to the said David Rhodes and Received immediate possession from him the said David Rhodes and of Course Purchased in a Clandestine and Secret manner and not in that open and fair manner which is Pretended by the Defendant there were no Witnesses to the purchase of the said Watch as must be presumed from the Defendant not

not producing any the Defendant moreover has not Shewed
where the said Watch was so Purchased whether in a Shop or
where so that from the Silence of the Defendant on these matters
it cannot be implied that the Sale was made in that fair and
open manner he pretends he did but that the Purchase of the said
Watch if any really did take place was effected in a Secret under
hand way and not according to the usual Way that Articles
of the Value in Question are disposed, the Defendant has not
proved to the Contrary that the same was purchased in a open
and fair Manner which can be deemed a fair Purchase in
Market nor is there any evidence of his having purchased the
Same but his own Assertion and your Petitioners Property
being in his possession And Your Petitioner humbly conceive
that a sale and Purchase effected even in the manner pretended
by the Defendant would not
held sufficient to alter the Property and your Petitioner prays
to take Notice that if such Pleas of Possession of Goods were
to be held good no Persons Property would be safe or certain
under such encouragement by any means to appropriate to
themselves the Goods of another Your Petitioner doth therefore
Prays that this Honble Court will be pleased to take the
said matters into their most Serious Consideration and by
Adverting the mischievous consequences which may follow
the determination of a Court of Justice in favor of Property
thus uncertainly procured that the Plea made use of by the
Defendant may become a Standard of Justification for persons
Possessing themselves of the Property of others in an undue
manner and particularly where such Justification is not
Proved the proof most certainly lay upon the Defendant and

Hie

his not having Proved the same your Petitioner is at least entitled to have the Prayer
in his Bill granted your Petitioner doth therefore pray that the Decree of the
Honble Mayors Court may be Reversed and that the Defendant may pay all
Costs in both Courts and further to give your Petitioner such further relief as to
them may seem Meet.

Henry Du Pury
Attorney for the Appellant

Mayors Court
at
Madraspatnam

Tuesday the 12th day of June
Anno Domini 1781

Present
Benjamin Roebuck Esq. Mayor
Thomas Cooper and Robert Hughes
Aldermen

Between Chinna Kistnamah
Chitty of Madras Merchant Complainant
and Samuel Read of the same Place
Inhabitant Defendant

This Cause coming on to be heard and Debated this
day on the Presence of the Attorneys on both Sides on Reading the Compl-
ainants Bill the Defendants Answer the Amended Replication the
Rejoinder the Interrogatories and Depositions on the part of the Complainant
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

Deane and doth Accordingly Order and Decree that the Complainants Bill do
Stand Dismissed with Costs

Pr Cur

James Taylor
Regr

To the Right Honble George Lord Macartney
President and Governor &c. Council of Fort Saint George

In the Court of Appeals

Between Chinna Kistnama Chitty
Complainant and Samuel Read Defendant

The Answer of the said Samuel Read to the Petition and
Appeal of the said Chinna Kistnama Chitty

This Respondent by way of Answer to the said Petition
and Appeal or unto so much thereof as concerns him to make Answer
unto saith the Admits it to be true that the said Appellant did on or
About such time and for the Recovery of such Damages as he in his said
Petition and Appeal hath for that Purpose Setforth file his Bill of
Complaint in the Honble the Mayors Court against this Respondent and
that the said Appellant did therein Setforth his having before that time
Delivered a Gold Watch of the Value of One hundred and fifty Pagodas to
One John Peterson a Watch Maker to have the same Repeared by him
and that the said John Peterson (as he said) had lost the same and this
Respondent doth also Admit the said Appellant to being Pleased to charge
that he had afterwards found the said Watch in the hands of this
Respondent and this Respondent further Saith that the said Appellant

laid

Filed in my Office
the 24th July 1784
Charles Freeman
Clk

laid his Damage at One hundred and fifty Pagodas Seeking the Recovery
thereof from this Respondent as if the same had been a Debt Really due
from him to the said Appellant To which said Bill of Complaint this Res=
=pondent Admits he Appeared and did file his Answer thereto therein and
as the truth was Shewing that the Watch so Claimed by the said Appellant
had come to the hands and possession of this Respondent under a fair Purchase
thereof and that therefore Neither his possession or Property therein under
such Circumstances as Attended the same could or Ought to be impeached
more especially as before and at such the time of this Respondents Purchase
of the said Watch from One John Peterson the then more immediate
Property and possession of the said Watch so Claimed by the said Appellant
had been in One David Rhodes as a Security to him for twenty four Pagodas
said to have been due to him from the said John Peterson and as this
Respondent Upon payment thereof had the said Watch Delivered over
to him by the said David Rhodes on Redemption thereof as aforesaid he
Considered such an Extraordinary assurance of title as Sufficient to Convince
him that the Property was in the said John Peterson the more so as the
Watch in Question had been twice by him offered to Sale to this Respondent
and a Considerable time had Elapsed between the first and the Second
Offer and this Respondent doth Admit that to this said Answer the said
Appellant did Reply and in such his Replication did Setforth such
Matters and things as are for that Purpose Recited in the said Appellants
Petition and Appeal to which said Replication this Respondent did Rejoin
and in such his Rejoinder did among other things insist on his Right
and property in the said Watch for the Reasons Urged by this Respondent
in his said Rejoinder and this Respondent doth Admit that Issue being
Joined Rules for the Examination of Witnesses having Issued and Publi=

cation

Publication passed the said Cause was Set down for hearing and Accordingly came on to be heard on the twelfth day of June last past in the Honble the Mayors Court when that Court were Pleased to Order and Decree that the said Appellants Bill of Complaint should be Dismissed with Costs as by the said several Proceedings now of Record Reference being thereunto Respectively had may more fully and at large appear and this Respondent humbly Conceives and is Advised that the said Decree of the said Twelfth day of June last is Agreeable to Equity and Justice for the following Among other Reasons—

First.. Because this Respondents title as a Purchaser and the manner in which he Claimed the same to himself in his said Answer upon Oath Remaining Uncontradicted by any evidence and the Appellant failing in that direct and positive Proof of his Property in the said Watch by Gift or Purchase in such manner as Appeared Necessary to Satisfy the Honble the Mayors Court that he merited Redress they were right in the Judgment they gave in favor of this Respondent—

Secondly.. Because, that even on the Supposition of the Appellants title to the Property in the said Watch being Clearly proved but which this Respondent doth by no Means Admit Nevertheless the length of time which elapsed between the first Offer of Sale of the said John Peterson when the Watch was in his own possession and his Second Offer when he avowed it to be in the possession of a third Person (to wit David Rhodes) in Pledge with the Circumstances of this Respondents Redemption thereof as Stated in his Answer to the Appellants Bill Appeared Sufficient to Justify this Respondent in Presuming the Property to be in the Seller and to Convince the Honble the Mayors Court that from the whole face of the transaction there was more Appearance of doing Justice by Relieving this Respondent from the Effort of the Complainant to do him a certain injury than if they had

had Subjected this Respondent to such Certain Injury by Adjudging to the Appellant the Damages in Question where the Appellants Title to the Watch in the first Instance was not clearly Proved his Subsequent Neglect of his property if he had any Unnaturally great and his Attempt to harrass this Respondent by a Civil Suit highly Reprehensible, while he had omitted, as appears by the proceedings to take any Measures towards bringing the Criminal Offender to Consign Punishment

For all which Reasons and such others as may be Offered at the hearing this Respondent humbly Prays that the said Decree of the said Mayors Court of the Twelfth day of June last be Affirmed in this Honble Court of Appeals and that the Petition and Appeal of the said Appellant may be dismissed with such Costs to be paid by the said Appellant as under all the Circumstances of the Case he may Appear to deserve—

Stephen Popham
Attorney for the Respondent

Court of Appeals at Madraspatnam } ss. Thursday the 30th January Anno Domini 1783

Between Chinna Kistnama Chitty Appellant and Samuel Read 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

Court together with the Decree of the said Court given in this Cause on
Tuesday the 12th day of June 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 Decree of the Honble the Mayors Court
dated the 12th day of June Anno Domini 1781 do stand affirmed
and that the Appellants Petition be hence dismissed with Costs
P Cur
Mr Treemailler

Thursday 13th February 1783

Court of Appeals &c

Present
Anthony Sadlier
Alexander Davidson John Turing
Robert Barclay

William Hamilton by his Attorney
Robert Ewing ~~1781~~ Saccoo Abdul
Razack

The Court having deferred passing a Decision on the
application of Stephen Popham on the part of the Saccoo Abdul Razack
in the above Cause Read at the last meeting of this Court on the 30th Ultimo
with the Petition of William Hamilton by his Attorney Robert Ewing
likewise Read at the above said Meeting of this Court upon due
Consideration had thereon doth think Proper to Order and Decree and
doth Accordingly Order and Decree that the Decree passed in this
Court in this Cause on Saturday the 30th November 1782 was final
and therefore that the Petetion to the King in Council filed in
Consequence of the said Decree by Saccoo Abdul Razack be stoped and
taken off the file for the following Reasons

The Court conceives that Neither the Interest due at the
Termination of a Suit nor the Costs in which a party is Cast ought to be
considered as Making part of that Sum in which the Decision of the Court
of Appeals is final for Interest is incidentab to a pecuniary Demand and
encreases in Proportion as the Debt is with held and Costs are incedentab to
the Suit discretionary in a Court of Equity and a Punishment allowed for
the

the unjust Litigation of a fair demand these therefore in the Opinion of the Court cannot Operate in favor of the Party Cast so as to abridge the Jurisdiction of the Court and give him the Advantage of his own Wrong the Words of the Charter are not it is true as clear and Precise as may be wished It say the Decision the Court of Appeals shall only be final were the Debts damages or things directed to be paid done or delivered do not exceed One thousand Pagodas which may lead One to Imagine that of the Interest and Costs through both Accruing after the Commencement of the Suit are added to the Sum Sued for that they are included in what is by the Decree directed to be paid and that if in all they exceed One thousand Pagodas an Appeal lies to the King in Council but the Charter also says or matter in dispute which the Court conceives can mean Nothing else than what was Originally in dispute or in other Words what immediately Previous to the Suit one party Demanded and the other Refused In the Sense the whole Sentence has hither to been considered in both Courts and in the Opinion of this Court with much Propriety for whom in the grant of a Jurisdiction an Expression is found to be Ambiguous it ought to be construed in favor and Extension of the Jurisdiction not in the Restraint or limitation of it were Appeals to the King in Council Allowed whom the dishonesty or litigiousness of the party Cast encreases the Sum in Dispute to that which if Originally due would undoubtedly give him a Right to Appeal Suits for the most trifling sums may be Appealed to Europe the Jurisdiction of the Court Reduced to Nothing and such delay of Justice introduced that Perhaps it would be better to have no Court at all conceiving however that the Words of all Charters are to be Construed most favorably in Extension of the Jurisdiction they Erect the Court is Consequently of Opinion that its decision is final except when the Matter Originally in

in dispute exceeds One thousand Pagodas and has Accordingly passed the above Judgement

Agreeably to the above Reasons Ordered that the Decree passed in this Cause on Saturday the 7th December 1782 be final and therefore that the Petition to the King in Council filed in Consequence of the said Decree by — Pombeapah Administrator of Allagapah Deceased by his Attorney Renelm Digby VDL Mootu Cheingleroy be stopped and taken off the file —

Per Curr
Wm Brownlow

To the Right Honble Lord George Macartney Baron Macartney President and Governor of Fort St George &c Council

In the Court of Appeals

The Humble Petition of Robert Williamson of Madras Free Trader and Inhabitant —

Sheweth

That Whereas your Appellant having been Appointed by Virtue of a Letter of Attorney duly Executed by the late James Sellers of Madras

Filed in my Office
the 18th Sept 1783
Charles Freeman
Clk

Madras deceased during his Life time His the said James Sellers's Sole Attorney to settle and Ballance all Accompts and also to Manage and transact all Business with Cottrell Barrett of Madras and other Persons with whom the said James Sellers had Dealings either in his own Capacity or as Sole and Surviving Executor of the late Edward Rylance also of Madras then deceased.

Your Appellant also further Sheweth this Honble Court that the said James Sellers did also by his last Will and Testament Nominate Your Appellant an Executor in Conjunction with Major John Eley and Samuel Troutback and the said Samuel Troutback having Renounced the said Executorship on Account of his Advanced Age and the said Major John Eley being in England at the time of James Sellers's Decease which was on the twenty eighth Day of April which was in the Year One thousand seven hundred and twenty five your Appellant remained the only Acting Executor in Madras.

This Appellant further Sheweth this Honble Court that on the Evening before the said James Sellers's decease James Sellers being then and at that time and had also been for Upwards of ten Days before dispaired of and given wholly up by the Honble Company's Principal Surgeon Gilbert Paisley Esq. and others Attending him the said James Sellers One Cottrell Barrett of Madras Inhabitant did Summons Your Appellant to Answer a Bill of Complaint filed by him in the Honble the Mayor's Court during the Days of their Adjournment for the Sum of One hundred and fifty Pagodas and five fanams said to be the Amount of Sundries bought by your Appellant in his own and Seperate Capacity at public Outcry of him the said Cottrell Barrett on the twenty eighth Day of February then last past To which Bill of Complaint this Appellant put in an Answer setting forth that he was not in his Seperate Capacity Indebted to the said Cottrell Barrett in any Sum or Sums of Money whatsoever But on the Contrary that the said Cottrell Barrett was Indebted to this Appellant as more at large will Appear by this Appellant's said Answer and Accompt Currents thereunto Annexed And agreeable to the practice of the said Mayor's Court Your Appellant filed a Cross Bill of Complaint for the Ballance due from the said Cottrell Barrett to this Appellant Amounting to the Sum of forty seven Pagodas and eighteen Fanams in his Seperate Capacity being in part the Amount of Monies Actually Received by the said Cottrell Barrett on this Appellant's own proper Account by Order and Decree of the said Mayor's Court and which he the said Cottrell Barrett so received in the Month of June which was in the Year One thousand Seven hundred and Seventy One to wit, near four Years before he the said Cottrell Barrett filed a Bill of Complaint Against this Appellant and in part for Sundry Goods Actually bought and Received from this Appellant at public Outcry By the said Cottrell Barrett and your Appellant further Sheweth this Honble Court that he did in and by his said Answer fully and at large Setforth that your Appellant did not at any time whatsoever Buy at public Outcry two Billiard Tables of the said Cottrell Barrett his Agents or Servants charged in his the said Cottrell Barrett's Account One hundred and twenty Pagodas either in his own private Capacity or for or on any other Persons Account. But that as Agent and Attorney to and for James Sellers at private Sale and in a private not public Manner, No other Person or Persons being present, This Appellant had Agreed to buy to and for the Sole Use and proper Account of the said James Sellers and

with

with the previous Knowledge Approbation and Consent of the said Cottrell Barrett who then Admitted the said James Sellers to be for and as Sole paymaster at the time this Appellant so agreed to purchase the same for the said James Sellers there being then and at that time and still remaining due to the said James Sellers (since deceased) a large Ballance in Money after Deducting the Amount of the said Billiard Tables from the said Cottrell Barrett as will more fully and at large Appear on reference to this Appellants said Answer To which said Answer the said Cottrell Barrett put in a General Replication in Order to protract time and two Months afterwards filed an Amended Replication and in like Manner filed first a general and then an Amended Answer to this Appellants Cross Bill to which said Replication and Cross Answer this Appellant put in a Rejoinder and Cross Replication pointing out the Contradictory and Evasive Expressions which were introduced and inserted direct Contrary to the Original Pleas and Charges made by and in the said Original Bill of Complaint of him the said Cottrell Barrett and upon a Cross Rejoinder being filed Issue was joined and Rules passed and Days Appointed to Examine Witnesses By all Parties to their several Allegations, Upon these proceedings Publication having passed These Causes came on to be heard on Wednesday the fifth Instant One thousand Seven hundred and Eighty One and in the Usual Days of Adjournment before the Mayors Court who were pleased to Order and Decree and did Accordingly Order and Decree "that the Original Defendant (to wit your "Appellant) do pay unto the Original Complainant the full and "Just Sum of One hundred and fifty Pagodas and five fanams together "with such Interest as now is or shall hereafter become due thereon untill "full payment is made deducting therefrom the Sum of ten Pagodas "Acknowledged by the Original Complainant in his Replication to be due "due to the Original Defendant with such Interest as now is or shall "hereafter become due thereon untill full payment is made together with "Double Costs of Suit and it is further Ordered and Decreed that the "Cross Bill do stand Dismissed with double Costs to be paid by the "Cross Complainant (to wit Your Appellant) 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 Petitioner doth Appeal to this Honble Court as your Petitioner humbly Conceives the same to be Erroneous and Illegal and that he is much Aggrieved thereby Because your Petitioner is of Opinion and he humbly hopes that this Honble Court will be of the same that in and by his said Answer and the Several Depositions he hath fully proved that the Complainants Bill is Erroneous And that your Petitioner was not in his Seperate Capacity and is not indebted to the Original Complainant is any Sum or Sums of Money whatsoever But on the Contrary as there Appeareth several Contradictions on Examining and Comparing the said Complainants Bill of Complaint Cross Answer and the Depositions of the Witnesses and that the Complainant had in his Power Evidence to produce mentioned in the proceedings in Case his Allegations had been true, and it further Appears that Ranganah alias Rangapah the Complainants Servant was not Examined to the fourth Interrogatory of the said Complainants Interrogatories tho he the said Ranganah alias Rangapah had been Examined to the third or next preceding and the next following being the fifth Interrogatory and that your Petitioner by his Cross Bill and Depositions taken and the Evasive Cross Answer of Cottrell Barrett hath proved his Several Allegations and they fully Confirm Your Petitioners Answer intire and Unbroken and further that your Petitioners Answer is and was

was full Evidence as it related to Matters of Fact and no way Interesting to Your Petitioner and that by the Evidence produced on Cross Examination of the Complainant's Witnesses his Minial Servants the want of Integrity Probability and therein of Credibility plainly Appeared and Contradicted the Pleas and Allegations of the said Original Complainant Notwithstanding the Artfull Deposition of Rangapah (Now and at that time Removed from the Complainant's Service to the Complainant's Attorney's Service in the Character of a Law Dubash) to your Petitioner's last Interrogatory, the Deposition being no way pertenent to the last Interrogatory But Appears to be designed, Ex-post Facto, an Officiousness to help out Lawrny's Deposition taken five Days before and by some means or other before Rangapah had made his Deposition had come to the Knowledge of the said Rangapah and further that your Petitioner's Cross Bill was fully Supported by the Corroborating Evidence of Christians as well as other Witnesses no way interested in these Matters and proving that a Person purchasing Goods at Outcry was by the Usage and Custom of Madras Accountable only to the Agent or Seller and not the different Owner or Owners of such said Goods for the Amount and that the Goods sold to and Acknowledged to be Actually Received by Cottrell Barrett the said Cross Defendant belonged to Several Persons as will more fully and at large Appear on Reference to the Proceedings in these Causes then Read And further that it doth not Appear why and for what Reason or Reasons the said Mayor's Court were pleased to Order such said Decree Only in General Terms which are Erroneous or why and for what Reason or Reasons Your Petitioner as Original Defendant should be taxed with Extravagant Double Costs of Suit as a Cross Complainant for the Ballance of an Accompt Current duly Attested and Sworn to Amounting to the Sum of Forty seven Pagodas and eighteen Fanams his said Cross Bill to stand dismissed Also with Extravagant double Costs of Suit

Your Petitioner therefore humbly Submits all the said Matters and Things to the Judgement of this Honble Court and humbly prays that the said Decree of the said Mayor's Court may be Reversed and Set aside and that the said Cottrell Barrett may be Decreed to pay Your Petitioner the full Ballance of the Accompt Current Annexed to Your Petitioner's Answer and Cross Bill of Compaint Viz.t the Sum of Forty seven Pagodas and eighteen Fanams with such Interest as now is or shall hereafter become due thereon and also to pay all Costs of Suits in these Cause and Cross Causes in both Courts And Your Petitioner doth also pray a General Relief in all and Singular the foregoing Premises as to this Honble Court shall seem meet

John Sykes
Attorney for the Appellant

Mayor's Court at Madraspatnam } Wednesday the 5th Day of September Anno Domini 1731

Present
Benjamin Roebuck Esq.r Mayor
James Calb— and William Webb
Aldermen

Bill Between

Between Cottrell Barrett of
Madras Inhabitant Original
Complainant and Cross Defendant
and Robert Williamson also of the
same place Inhabitant Original
Defendant and Cross Complainant
Et Contra

These Causes Coming on to be Heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Original Complainants Bill with an Account of Particulars Annexed The Original Defendants Answer with an Account of Particulars Marked **A** and an Accompt Current Marked **B** Annexed The Cross Bill The Amended Replication the Amended Answer the Rejoinder the Cross Replication the General Rejoinder the Interrogatories and Depositions on the part of the Original Complainant and Defendant with Papers Marked **A** and **B** Annexed the Interrogatories and Depositions on the part of the Original Defendant and Cross Complainant with Papers Marked **A.B.C.D** and **E** and Two Papers Marked N.1&2 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 Original Defendant do pay into the Original Complainant the full and Just Sum of One hundred and fifty Pagodas and five fanams Pag.ᵗ 150.5.1 together with such Interest as now is or shall hereafter become due thereon untill full Payment is made, deducting therefrom the Sum of Ten Pagodas Pag.ᵗ 10.1 Acknowledged by the Original Complainant in his Replication to be due to the Original Defendant with such Interest as now is or shall hereafter become due thereon untill full Payment is made together with double Costs of Suit, and it is further Ordered and Decreed that the Cross Bill do Stand Dismissed with double Costs to be paid by the Cross Complainant

Ebur
James Taylor
Regr

Filed in my Office
the 14th October 1781
Charles Freeman
Clk

In the Honble the Court of Appeals

The Answer of Cottrell
Barrett of Madras Inhabitant
Respondent to the Petition of Appeal
of Robert Williamson also of Aforesaid
Inhabitant Appellant

This Respondent in Answer to the said Appellants Petition of Appeal, say that the several matters and things Setforth and Alledged by him the said Appellant, in his said Petition, Relative to his being Appointed an Attorney to one James Sellers of Madras, Deceased, to settle Accompts with this Respondent and other Persons and that the said James Sellers had made his last Will and Testament and Appointed the said Appellant one of his Executors &c. are quite Foreign to the matters in Question in this Respondents Action against the said Appellant and ought not to be introduced by the said Appellant in his said Petition and which seems merely Calculated

Calculated to mislead this Honble Court from the real merits of this
Respondents Demand Against him, the said Appellant but in Order
to Represent, in the Clearest manner to this Honble Court the Origin and
cause of this Respondents Action Against the said Appellant this
Respondent begs leave to Premise—That the said Appellant having, in,
or about, the Month of February which was in the Year of Our Lord
One thousand Seven hundred and Seventy Five, bought of this Respondent
at a Public Outcry Sundry Articles and also Two Billiard Tables
Amounting in the whole to the Sum of One hundred and Fifty Pagodas
and Five Fanams, Current Money of Madras, and the said Appellant
having afterwards Refused to Pay the said Sum to this Respondent
he, this Respondent, did on, or about, the Twenty Fifth day of April
in the said Year One thousand Seven hundred and Seventy Five,
File a Bill of Complaint in the Honble the Mayors Court at
Madraspatnam for the Recovery of the said Sum of One Hundred
Fifty Pagodas and Five Fanams being the Amount of the Goods
bought by the said Appellant as Aforementioned and Particularised
in an Account annexed to the said Bill of Complaint.—

To which said Bill of Complaint the said Appellant
did, on or about, the Twelfth day of June in the said Year One thousand
Seven Hundred and Seventy Five, put in an Answer and therein,
Amongst other things, denied being Indebted unto this Respondent
in the said Sum of One Hundred and Fifty Pagodas and Five Fanams,
or in any other Sum or Sums of Money whatsoever, and that Instead
thereof, this Respondent was Indebted unto him, the said Appellant,
in the Sum of Forty Seven Pagodas and Eighteen Fanams and
which the said Appellant pretended would Appear by an Account
Current

Current Annexed to his said Answer—and the said Appellant did further
in his said Answer Setforth and Alledge several matters and things quite
Foreign to the nature of this Respondents said Demand in so much
that the said Answer became Replete with Prolixity, Scurrility and
Impertinence—and the said Appellant did also on, or about, the said
Twelfth day of June in the said Year File a Cross Bill of Complaint
in the said Mayors Court against this Respondent for the said Sum
of Forty Seven Pagodas and Eighteen Fanams pretended to be due to
him the said Appellant as Aforementioned.—

To which said Answer and Cross Bill this Respondent
did, on, or about, the Fifteenth day of August in the said Year One thousand
Seven hundred and Seventy Five, put in an Amended Replication
and an Amended Answer and in the said Replication and Answer
this Respondent, amongst other things, Insisted that the said Appellant
was Justly and Truly Indebted unto him in the Sum of One hundred
and Fifty Pagodas and Five Fanams, as Setforth and Stated by
this Respondent in his said Original Bill of Complaint and the
Account thereunto Annexed, and denied to be Indebted unto the
said Appellant in the Sum of Forty Seven Pagodas and Eighteen
Fanams, as was Unjustly setforth and Alledged by the said Appellant
in his said Answer and also in his said Cross Bill of Complaint—
and this Respondent in his said Replication and Answer did
Admit that he, as one of the Executors of Nicholas Gray Deceased,
had Promised to Pay the said Appellant the Sum of Ten Pagodas
for some Business which the said Appellant had done for the
said Nicholas Gray that he was Ready and willing to Pay the same
to the said Appellant at any time he might have thought proper to

Apply

Apply to this Respondent and that as the said Appellant had Debited this Respondent with the said Sum of Ten Pagodas in the Account Current Annexed to his said Answer, this Respondent Admitted of the same to be a Just Charge and was willing to deduct it out of the said Sum of One Hundred and Fifty Pagodas and Five Fanams due to this Respondent and this Respondent further observed that what the said Appellant had Mentioned in his said Answer Relative to the Accounts depending and the Transaction that Occurred between one Edward Rylance and this Respondent Relative to a House and Ground Lately belonging to this Respondent and the said Edward Rylance were Pleas quite Superfluous and had no manner of Connexion with the Matters in Question in the said Cause commenced by this Respondent Against the said Appellant; not only on Account of its being Foreign to the Purpose but likewise on Account of the Great Affinity they bore to Salsehrod and could by no means out this Respondent of his Right of commencing an Action Against the said Appellant for the Recovery of his Just Demand.

To which said Replication and Answer of this Respondent the said Appellant did on, or about the Second day of October in the said Year One thousand Seven hundred and Seventy Five, put in a Rejoinder and Replication and thereby, Amongst other things, again denied to stand Indebted unto this Respondent in the said Sum of One hundred and Fifty Pagodas and Five Fanams and Insisted that this Respondent was on the Contrary, Indebted unto him, the said Appellant, in the said Sum of Forty Seven Pagodas and Eighteen Fanams and the said Appellant in his said Rejoinder and Replication far exceeded his said Answer to this Respondents said Original Bill of Complaint in Prolicity, Scurrility and Impertinence by Introducing pretended conversations and Transactions with other Persons as their Attorney, Agent or Broker and which said Matters were quite Foreign to the Nature of this Respondents Demand and seemed calculated purposely to Harras and Perplex this Respondent and to put him to a considerable expence in taking out of the Registry of the said Mayor's Court, Copies of the said Papers.

This Respondents further saith that sensible of the Justness of his Demand against the said Appellant and that he had fully and Clearly setforth and Stated to the said Mayor's Court the Nature and cause of his Action Against the said Appellant in his said Original Bill, Replication and Cross Answer. He therefore did on, or about the Seventh day of November in the said Year One thousand Seven Hundred and Seventy Five, put in a General Rejoinder to the said Appellant's Cross Replication and Afterwards, to wit, on, or about the Twelfth day of December following Issue was Joined and Several Rules passed for the Examination of Witnesses and Several Witnesses were Examined on the part of this Respondent and also on the part of the said Appellant and on, or about the Twenty Fourth day of February which was in the Year of Our Lord One Thousand Seven hundred and Seventy Eight, Publication Passed on the said Cause and Cross Cause.

This Respondent further saith that afterwards the said Cause and Cross Cause were set down for hearing and on Wednesday the Fifth day of September in this Present Year of Our Lord One thousand Seven Hundred and Eighty One, the said Causes came on to be heard and Determined before

before the said Mayors Court— and it Appearing to them that this Respon=
=dent had an Undoubted Right to commence his said Original Action
Against the said Appellant and that the said Appellants Cross Suit
was without any foundation and it further Appearing to the said Mayors
Court that the whole of the said Appellants conduct was Unjustifiable
and Arising from a Spirit prone to Litigation and that his Papers—
were Replete with Prolixity Scurrility and Impertinence, purposely—
calculated to Harras and Perplex this Respondent, they the said —
Mayors Court, were pleased to Order and Decree and did Accordingly—
Order and Decree that the said Appellant do Pay unto this Respondent
the full and Just Sum of One Hundred and Fifty Pagodas and Two fanams
together with such Interest as then was or should become due thereon
untill full Payment be made deducting therefrom the Sum of Ten
Pagodas Acknowledged by this Respondent to bee due to the said
Appellant with such Interest as then was or should become due thereon
until full Payment be made together with Double Costs of Suit and
the said Mayors Court were further pleased to Order and Decree that
the said Appellants Cross Bill do stand Dismissed with double
Costs to be paid by the said Appellant, as will fully and at large
Appear on a Reference to the said Decree Annexed to the said Appellants
Petition of Appeal— and this Respondent further saith that he humbly
conceives that the said Decree of the Mayors Court is a Just and —
Equitable Decree and that the said Appellant had not any cause
whatever to Appeal therefrom, but that on the Contrary, the said
Appellant ought to have been Satisfied therewith and not to have
Continued his Litigious and Unjustifeable conduct by Appealing
to this Honble Court when it evidently Appears that he is in no —

manner

Manner of wise Aggrieved by the Decree of the said Mayors Court.—

For all which Causes and things this Respondent most humbly
Prays that the Decree of the said Honble the Mayors Court may stand Good
and be Confirmed and that the Petition of the said Appellant may be Dismissed
with Exemplary Costs in this Honble and this Respondent Prays such
further and General Relief in all and Singular the Aforegoing Premises
as to this Honble Court Shall Seem Meet.—

Daniel Shaw

Attorney for the Respondent

Court of Appeals
at
Madraspatnam

} ss Thursday the 13th February
anno Domini 1783

Between Robert Williamson of
Madras Inhabitant Appellant and Cotsall
Barrett of the same place Inhabitant
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 Exhebits of the Honble the Mayors
Court together with the Decree of the said Court given in this Cause
on Wednesday the 5th day of September 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

Order and Decree that the Decree of the Honble the Mayors Court dated the 5th Day of September Anno Domini 1781 do stand Affirmed and that the Appellants Petition behereo dismissed with double Costs in this Court.

Thur
Mlt Fruemall Ex

To the Right Honble George Lord Macartney
President and Governor &c. Council of
Fort St. George

In the Court of Appeals

Between Shake Abdul Rosac by his Attorney John Tawney Original Complainant and Cross Defendant and Chocapah Chitty Original Defendant and Cross Complainant

The Humble Petition and Appeal of the said Shake Abdul Rosac.

Sheweth

That your Petitioner by his said Attorney did on or about the Seventeenth Day of May which was in the year of our Lord One thousand Seven hundred and Seventy Nine file his Bill of Complaint in the Honble the Mayors Court at Madraspatnam Against the said Chocapah Chitty for the Recovery of the Sum of One thousand Seven hundred and Seventy two Pagodas twenty four fanams and forty four Cash due from the said Chocapah Chitty to your Petitioner on the Ballance of an Account Current Copy whereof your Petitioner annexed to his said Bill of Complaint and your Petitioner by way of explaining his Cause of Action did thro' his said Bill of Complaint to the said Mayors Court shew that before that time that is to Say Some time in the Year One thousand Seven hundred and Seventy Six your Petitioner had a Vessel at Coringa called Cawder Muraw Buksh fitted out and Ready to Proceed to Bengal and your Petitioner being desirous of having the said Snow or Vessel Insured did by letter to the said Chocapah Chitty desire and direct him to Insure on the said Vessel for Account of your Petitioner two thousand Pagodas and that the said Chocapah Chitty in Pursuance and part performance of your Petitioners said direction did cause to be Insured among the Guzrat Merchants residing at Madras One thousand Six hundred Pagodas on the said Vessel in the Name of your Petitioner and the said Chocapah Chitty Received from the said Merchants the Policy of insurance made out in your Petitioners Name and your Petitioner did also shew that he executed and Sent to the said Chocapah Chitty a Respondentia Bond for two hundred Pagodas made Payable to him and that the Value or Consideration thereof was in part made up of the Premium which the said Chocapah Chitty had Advanced on the said Insurance being One hundred and four Pagodas and of other Sums which the said Chocapah Chitty had Advanced and promised to Advance for the use of your Petitioner making together in the whole the said Sum of two hundred Pagodas and your Petitioner did further shew that Part of the Correspondence on both sides occasioned by the aforesaid transactions had been thro' One Cooly Chitty Comrapah whom your Petitioner understood to be a Relation to the said Chocapah Chitty from his so intermeddling on his behalf in the Course of that said Correspondence and your Petitioner did thro' his said Bill of Complaint further shew that

Filed in my Office the 19th Sept. 1781
Charles Freeman Clk

that the said Vessels so as aforesaid Insured was afterwards lost—
whereof he advised the said Chocapah Chitty to whom or to whose
Order the several underwritters Paid the respective Sums for which
they had underwritten Notwithstanding which the said Chocapah
Chitty refused Paying over the same to your Petitioner and your
Petitioner Sheweth That tho' from the early stage the Cause then
stood in he could Regularly only refer to such Correspondence and
Circumstances as Attended the transactions in Recital Yet since
that time thro' Deposition of Sagashee Dayys the Insurance—
Broker and of Agavelly Satur and Sargues Satur Two Armenians
Merchants of Madras of Reputations one of whom to wit Sarkies
Satur had written the said Policy your Petitioner hath established
in Proof that the said Chocapah Chitty made or caused to have—
been made the said Insurance in manner aforesaid that the same
was made in the Name and for account of your Petitioner and—
that afterwards the Insurers or underwritters Paid the Sum or
Sums so Insured to or to the Order of the said Chocapah Chitty
and your Petitioner further Sheweth that the said Chocapah—
Chitty died on or about the twenty Ninth of June in the said—
Year One thousand Seven hundred and Seventy Nine But in
his Answer to your Petitioners said Bill of Complaint therein
not only denying being indebted to your Petitioner but pretending
that to the Contrary your Petitioner stood indebted to him in the
Sum of three hundred and twenty Nine Pagodas twenty Seven
fanams and forty eight Cash and referring as well to the Copy
of an Account Current which he had annexed to his said—
Answer as to a Cross Bill of Complaint which he preferred—
against your Petitioner for the Recovery of the same and your

Pett.r

Petitioner Sheweth that the said Chocapah Chitty in and by his
said Answer not only denied being indebted to your Petitioner
as Charged by your Petitioners said Bill of Complaint but also
thought Proper to deny all such Knowledge or Correspondence—
respecting the said Insurance as he thought would make him
Responsible to your Petitioner for the Sum Received of the Insurers
in manner and for the account aforesaid Chocapah Chitty in
his said Answer did offer many Specious Suggestions to the—
Consideration of the Honble the Mayors Court with a view of—
Proving that the said Cooly Chitty Comarapah (and not the said
Chocapah Chitty) was the Person who had the Management of
the said Insurance for your Petitioner and also endeavouring
to Shew that the said Cooly Chitty Comarapah was an Agent
or Attorney for your Petitioner and your Petitioner Sheweth that
the said Suggestions of the said Chocapah Chitty had no other evidence
in their Support than a letter said to be written from your Petitioners
Son at Narsapoor to the said Cooly Chitty Comarapah and which
Son as appeared in Course of the evidence on the part of the said—
Chocapah Chitty and in particular by the Deposition of Gullam
Mahomed Saib was at the time when the said letter was pretended
to be written an Infant of the Age of four Years whereas had he
been of such full Age as would give him a Right of Appointment
under Proper Instructions on that Occasion and had such—
letter at such full Age been by him written the same by no means
Concerned the affairs between the said Chocapah Chitty and—
your Petitioner more especially as it has not been Shewn that
Cooly Chitty Comarapah Acted under such letter or under any—
other Appointment whatsoever from your Petitioner but to the

Contrary

Contrary your Petitioner begs leave to Observe that the said —
Chocapah Chitty by his own Shewing that his said Answer must
have Considered himself in an accountable Situation respecting
the said Insurance because in his said Answer he Acknow-
ledges the Receipt of a letter from your Petitioner to him which
thus takes Notice of the said Policy "my Policy of Insurance on
the Bengall Ships for two thousand Pagodas you must make
haste." and your Petitioner further Sheweth that the said —
Chocapah Chitty did file his Cross Bill of Complaint against
your Petitioner for the said Sum of three hundred and twenty
Nine Pagodas twenty Seven fanams and forty Eight Cash —
which he had so as aforesaid in his said Answer Extended
to be due to him and which appears to be the very Sum and —
accruing from the same Respondentia Bond as is Set
forth in the
Bill of Complaint to which said Cross Bill of Complaint your
Petitioner Put in his Answer and thereon denied being indebted
to Chocapah Chitty either in that or in any other Sum or Sums —
whatsoever and your Petitioner Sheweth that he Replied to the —
Answer put in by Chocapah Chitty to your Petitioner Said —
Original Bill of Complaint and in general manner speaking to
the wasve Argument made use of in that answer and herein —
before in part taken notice of did Contend that all Controversy
Respecting the Insurance ought to cease and became determined
in the event of Chocapah Chittys Receiving or Ordering to be Received
the Amount upon the said Policy from the Insurers and your
Petitioner did further Shew that by the said Chocapah Chittys
said Answer and Cross Bill of Complaint he Shewed himself

liable

liable to Pay unto your Petitioner the Amount of the Insurance —
Money Received by him of the said Insurance as the said Respondentia
Bond of your Petitioner for two hundred Pagodas was in part made
up of the Premium advanced for the said Insurance so made by
the said Chocapah Chitty for Account of your Petitioner and —
your Petitioner further Sheweth that the said Chocapah Chitty
Replied to the Answer put in by your Petitioner to his said Cross
Bill of Complaint and that your Petitioner on his part Rejoined
and that the said Chocapah Chitty did put in his Rejoinder to
your Petitioners Replication in the said Original Cause and the
said Causes having so as aforesaid Passed thro the said Several
Stages in the said Mayors Court and Issue being Joined thereon
Rules for the examination of Witnesses Issued and Publication
having Passed the Cause and Cross Cause were Set down for hearing
and accordingly came on to be heard in and before the said —
Mayors Court on Thursday the Sixth day of September in the present
Year of Our Lord One thousand Seven hundred and eighty One —
when the said Court were pleased to Order and Decree and did —
Order and Decree that the Original Complainants Bill (meaning
your Petitioners Bill) should stand Dismissed with Costs and
that the Cross Defendant (also meaning your Petitioner) should pay
unto the Cross Complainant meaning the said Chocapah Chitty
the Sum of three hundred and twenty Nine Pagodas twenty Seven
fanams and forty Eight Cash with Interest and Costs of Suit as
by the said said Several Proceedings thereon had in the said —
Mayors Court together with the Decree thereof herewith sent for
the Inspection of this Honble Court of Appeals reference being
thereunto respectively had may more fully appear wherefrom and —

from

from each of which your Petitioner Craves as full and ample benefit as if they and each of them had been herein before at full length Setforth and your Petitioner Sheweth that having reason to Consider himself Aggrieved by the said Decree of the said Mayors Court as also to Consider the same Erroneous he doth Appeal therefrom to this Honble Court of Appeals for the following among other Reasons

First BECAUSE the Evidence of Jagasher Daveys proves that he was employed by Chocapah Chitty to insure a Vessel called Caudee Muna Baksh the Property of Shake Abdool Rosack for One thousand Six hundred Pagodas and delivered the Policy to Chocapah Chitty that he heard the Vessel was lost in the Course of the Voyage for which the Inswance was made that the amount was demanded by Ibram Cawn for account of Chocapah Chitty that Jagasher Daveys asked Chocapah Chitty if he should pay the amount to Ibram Cawn & that Chocapah Chitty told him to do so and that he did pay the Amount by the express Order of the said Chocapah Chitty and that he Supposes the sum so paid was the Property of the said Shake Abdul Rosack as the Policy of Inswance was made out in his Name and the Evidence of Agavelly Satur proves that Ibram Cawn came to his Brother Sarques Satur when he was Present with the said Policy of Inswance and demanded his Share whereupon Sarkies Satur directed the Insurance Broker Jagasher Daveys to inform himself of Chocapah Chitty if payment thereof should be made to Ibram Cawn and that Jagasher Daveys informed Sarques Satur that Chocapah Chitty had given the said Policy to Ibram Cawn that he might receive the said Insurance and that the Reason of his Brothers so sending to Chocapah Chitty for said Information was because he knew that Chocapah Chitty had acted for Shake Abdool Rozack in the said buisness &c.

And the Evidence of the said Sarques Satur Proves his having underwritten two hundred Pagodas in part of an Insurance of One thousand Six hundred Pagodas on a Vessel belonging to a Moor Man that at that time he did not know for what moor Man that he heard the Vessel was lost and an Ibram Cawn Demanding the Amount of the Insurance Sarques Satur enquired of the Insurance Broker how the Policy came into Ibram Cawns Power who said that Chocapah Chitty had given the Policy to Ibram Cawn in Order that he might Receive the Money and in the evidence of Machalah Verdapah he Speakes first from Information to most of the Circumstances Stated in the evidence of Jagasher Daveys Sarkies Satur and Agavelly Satur and he then Speaks Expressly to carry two Receipts to Ibram Cawn the Purport whereof was to acknowledge his having Received the Money from the Insurance Broker which the said Ibram Cawn Did Acknowledge to have Received and said he would Sign the Receipts but he put it off from day to day and went to Arcot without Signing the same

All which Evidence taken Collectively together with the Acknowledgement of Chocapah Chitty in his Answer upon Oath of the said Shake Abdul Rosack having written to him to make haste with the Insurance on his Bengal Ship do as your Petitioner humbly apprehends fully established the said Shake Abdul Rosacks Claim on the said Chocapah Chitty for the Amount Received under the said Policy Nor does it Appear that the Nature of the Transaction could Admit of fuller proof for Shake Abdul Rasack except from the

the Evidence of the said Ibram Cawn of whose evidence your Petitioner was deprived by his having departed from the Jurisdiction of this Honble Court as appears from the Testimoney of Machela Vadapah—

Secondly Because the Tenor of the Evidence on the part of Chocapah Chitty tends only to draw all Responsibility on Coty Chitty Comarapah as the Pretended Agent of Shake Abdul Rosack in his affairs in general but no Part of the said evidence proves that Coty Chitty Comarapah Received any Instructions from Shake Abdul Rosack but the Insurance in Question nor do they venture to assert that he had any part in making the said Insurance or in receiving the Amount Insured or any part thereof nor is mention made of his Name by Jagasher Davery or by Agavelly Sater Sarquis Sater or Machala Vadapah all tho Each of those Witnesses Speake fully of the said Insurance and of all Matters Relative thereto from the Making the Insurance up to the Receipts of the Amount insured by the Express Order of Chocapah Chitty And as to the Testimony of Several of the said Witnesses on the Part of the Defendant it appears to have been Calculated more with a View to impeach the General Character of Shake Abdul Rosack or the pretended Aversion of the said Chocapah Chitty to have any dealings with him than to disprove the Original Claim of the said Shake Abdul Rosack on the said Chocapah Chitty for the Amount of the said Insurance and as to the Testimony of other Witnesses adduced on the part of the said Chocapah Chitty the same is either founded on hearsay or take its Rise from Conversations or from Incidents which happened Since the Suit in Question hath been instituted and therefore in Admissible Whereas the Merits of Your Petitioner's Claim on the said Chocapah Chitty are

Supported

Supported by the Testimony of Two Armenian Merchants and an Insurance Broker of Credit and Reputation whose evidence as well as that of Machelah Vadapah on the Points of which he was himself informed is clear Distinct and unequivak—

For all which Reasons and for such others which may be offered at the hearing Your Petitioner Prays that the said Decree of the Honble Mayors Court of the 26th of this Present Instant September may be Reversed and that your Petitioners Claim as Stated in the Original Bill of Complaint may be established by the Sentence of this Honble Court and the Cross Bill be Dismissed and that the said Chocapah Chitty be Sentenced to Pay Costs in the said Mayors Court and on this Honble Court in both Causes.

Stephen Popham
Attorney for the Appellant

Mayors Court at Madraspatnam } { Thursday the 6th day of Sept. Anno Domini 1781

Present

Benjamin Roebuck Esq. Mayor
James Call — Edwd Garrow
William Webb — Thomas Cooper and
Robert Duncan Munro — Aldermen.

Between Shake Abdoob Rosac of Madras Merchant by his Attorney John Fairney

Fairney also of the same place Inhabitant Original Complainant and Cross Defendant and Chocapah Chitty also of Madras Merchant Original Defendant and Cross Complainant

Et. E. Contra

These Causes Coming on to be heard and Debated this day in the Presence of the Attornies on both Sides on Reading the Orginal Complainants Bill with Copy of an Account Current and an Assignment Annexed the Original Defendants Answer with Five Exhibits Marked A N.1. B N.2 C N.3 D N.4 E N.5. Annexed the Cross Bill with an Account Current Annexed the Amended Replication the Cross Answer with an Account Current Annexed the Rejoinder with five Exhibits Annexed the Cross Replication the Cross Amended Rejoinder the Interrogatories and Depositions on the part of the Anginal Complainant and Cross Defendant the Interrogatories and Depositions on the part of the Original Defendant and Cross Complainant with Nine Exhibits Annexed An 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 Original Complainants Bill do stand Dismissed with Costs and it is further Ordered and Decreed that the Cross defendant to pay unto the Cross Complainant the full and Just Sum of three hundred and twenty Nine Pagodas twenty Seven fanams and forty Eight Cash / Pags. 329. 27. 48. / together with such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit.

Pr Cur James Taylor Regr

In the Court of Appeals

Between Shake Abdul Rasac by his Attorney John Fairney Original Complainant and Cross Defendant Appellant and Chocapah Chitty Orginal Defendant and Cross Complant. Respondent

The Answer of Chocapah Chitty of Madras Merchant to the Petition and Appeal of Shake abdul Rasac by his Attorney John Fairney in the above Orginal and Cross Cause

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 and for further Answer to the above said Petition and Appeal he the Respondent Filed in my offic the 8th Oct. 1781 Says, that he Admits, the above Appellant by means of his said Attorney Charles Treman did on the day and Year as Set forth in the Petition and Appeal, file his Bill of Complaint against the Respondent for the Sum of One thousand Seven hundred and Seventy two Pagodas twenty four fanams and forty four Cash, said to be the Ballance of an Account Current, annexed by the Appellant to his said Bill of Complaint wherein the said Bill of Complaint did State, that about the Month of July 1776, the Appellant did prepare at a place called Coringa a Vessell Named Cader Meuan Bua to Sail to Bengall, and that he Sent two letters one to the Respondent, wherein he Says, he directed him to insure on the said Vessell the Sum of two thousand Pagodas from Coringa to Bengall, an Extract of which letter a Translate Marked A, is annexed to the Bill of Complaint and bears date the

the 2d. February 1776 wherein the Appellant who was then at Narsepore Says he would Dispatch his own Snow Cader Murana Bua with Salt from Coringa to Bengall and therefore desires the Respondent to insure two thousand Pagodas for him: and that he would follow the directions of the Respondent concerning the Premium and the ballance of some former Accounts, Reference to such Extract so annexed will more fully Appear, the Original of this letter, the said Bill of Complaint States was in posfession of the Respondent. the Bill further States, that the other letter, he the Appellant Sent to one Cooly Chitty Comrapah said to be a Brother to the Respondent, directing him to Persuade and press the Respondent to a performance of the Appellants directions Respecting his insurance and that in Consequence thereof, the Respondent is charged with having Caused Insurance to the Amount of One thousand and Six hundred Pagodas to be Effected with the Guzerats Merchants who were Underwriters, but as to the Premium given the Respondent Says. the Bill of Complaint is Silent on, but Prays a Reference to the Policy as a proof of the terms, and Conditions on which the Insurance was effected, as if he the Appellant or some one for him was in posfession of the Policy and intended to have produced the same in support of his Charge. the Bill of Complaint further States, that the Respondent posfessed himself of the said Policy and immediately to the said Cooly Chitty Comrapah sent Advice of the Execution thereof, in which Letter of Advice the Appellant Says, the said Cooly Chitty Comrapah sent a Respondentia Bond for the Amount Premium of insurance to execute and that the same Amounted to One hundred and four Pagodas and for a further Sum of Sixty two Pagodas and a half

half as the ballance of an Account then due and owing by the Appellant to the Respondent. all of which the Bill of Complaint Refers to a Translate of an Extract of a letter/ Marked B/ annexed to the said Bill. the Original of which the Appellant Charged in his said Bill of Complaint. was in posfession of the Respondent/ though in no part of the Proceedings is the same proved either to have been written sent or Received/ and Notwithstanding this was Said to be a letter Sent by Cooly Chitty Comrapah to the Appellant, yet the Original is charged with being in the Custody of the Respondent. the Bill further Sets forth, that the Appellant upon his receiving this Advice did execute a Respondentia Bond for two hundred Pagodas, and there being an Over Plus of thirty three Pagodas and a half he alledges to have directed the Respondent to pay unto the said Cooly Chitty Comrapah, the which was not done, as the Bill Charges, and in proof of which a translate Marked C/ an Extract of a letter, is annexed to the said Bill, and to which the Honble the Mayors Court was referred upon, an inspection into the date, it appears to have been done 28th. Febry 1776. which is date previous to the Advices which enclosed the Pretended Respondentia Bond sent to Narsipore to get executed whereas by the Exhibit Marked B. dated the 8th. March 1776. not only the Respondentia Bond, is enclosed, but advices are said to be sent of the Policy being executed for One thousand and Six hundred Pagodas. This Apparent Absurdity totally destroyed whatever Credibility might otherwise have been given to these Exhibits, though Produced in the wrong Stage of the business, and went to the Overthrow of every endeavour that was made Use of to Establish the Appellants Demand the said Bill of Complaint further

further States that the Respondent was in posseſsion of the Oreginal letter and to which the Bill prayed a Reference the Bill further Sets forth, that about a Month and ahalf after the departure of the Snow Cadee Meuram Bux from Corringa for Bengall, the Vessell was lost and that on the Arrival of this Intelligence, the Appellant Says, he was at Rangoon in the Kingdom of Pegue, and that he did some time in the Month of December 1776, write a letter to the Respondent, the translate of an Extract thereof Marked D is annexed to the Bill of Complaint, the Oreginal of which is said to be in posseſsion of the Respondent, wherein the Respondent is desired, in Case the Amount of the Sum insured is not Recovered, to Recover the same, and to Keep it in his the Respondents Custody, the Bill further States, that the Appellant arrived at Masulipatam and that on or about the Month of March 1777 he wrote a Second letter, a translate of an Extract from, Marked E: is annexed to the Bill of Complaint, which upon a Reference appears to have been wrote the 15th May 1777 and wherein he the Appellant Says he was glad to be informed of the Respondents that the Amount of the Insurance was recovered and that he the Appellant would draw a Bill of Exchange for the same in favour of a Soucar which he the Respondent should pay and take his Receipt and remit the same to the Appellant, here the Respondent Says, immediately arises another Error from uncertainty, the date expressed in the Bill of Complaint and the date expressed in the Extract, Marked E: not in the least agreeing, there being a difference of three Months and upwards, to this pretended letter, the Bill of Complaint States, that Cooty Chitty Comrapah did write and Send an Answer, a translate of which Marked E: is annexed to the

Bill

Bill of Complaint and bears date the 28th June 1777 wherein the said Cooty Chitty Comrapah informs the Appellant that the Respondent had not Received the Amount of the Sum insured, but that he the Appellant might draw a Bill of Exchange on the Respondent who would get the Sum insured and pay the said Bill, the Appellant further in his Bill of Complaint Sets forth, that on Receipt of this letter, he sent an Order from Masulipatam to the Respondent, for to pay the Sum he received to one Medina Saib the which the Respondent did not Comply with, but for what Reason, the Bill of Complaint does not Set forth, but the Bill Sets forth, that the Appellant was induced thereby to leave his business and come to Madras in Order to obtain Satisfaction of the said Respondent, the Merits of the Appellants Case as by him Stated being thus briefly Narrated, the Respondent begs leave of this Hon^ble Court to Proceed in Narrating the Special Interrogatories and prayer of the said Bill of Complaint and First that the Respondent might true and Perfect answer make, whether the Respondent did not in the Month of July 1776 Receive a letter from the Appellant directing him to insure the Cadee Meuram Bux for the Sum of Two Thousand Pagodas from Corringa to Bengall, Whereas by the Exhibits to the Bill of Complaint, it there Appears, as if the Orders was given in February 1776 Advices of the same being done dated in March 1776, and whether the Respondent was not pressed by the aforementioned Cooty Chitty Comrapah Receipt of this letter to get the same insured here again Appeared another glaring Error and inconsistency and shews the uncertainty of the Appellants Bill of Complaint, the Bill further Interrogates the Respondent,

whether

Whether the Respondent did not insure the Sum of One thousand and Six hundred Pagodas on the said Vessell, and whether he was not in possession of the Policy and if he did not direct Coaly Chitty Comrapah to inform the Appellant of the same, and of his the Respondents being in possession of the Policy and if the Respondent did not know of the said Coaly Chitty Comrapah directing the Appellant to Execute a Respondentia Bond for the amount of the Premium, being One hundred and four Pagodas, and for a further Sum of Sixty two Pagodas and a half, as the ballance of some former Account, and whether the Respondent did not receive a Respondentia Bond Executed from the Appellant, and whether he the Appellant did not Order the Over plus to be paid into the hands of the said Coaly Chitty Comrapah, with further Interrogatories of no one Use whatever, to this Bill of Complaint the Respondent Says, was annexed as pretended Account Current as between the Appellant and the said Respondent, wherein the Respondent is Debited for the Amount of the Sum of One thous and five hundred and Sixty Eight Pagodas, as if Actually Recived from the underwriters on a particular day, with a Debit for Interest, to this Bill of Complaint the Appellant swore to his Debet and held the Respondent to Bail, as if he actually owed the Appellant the Money, to which the Respondent was Obliged to Appear and Answer, the said Bill of Complaint, which Answer the Respondent begs leave of this Honble Court briefly to Narrate the particulars, which are as follows—

That in the Answer the Respondent denies to Stand indebted unto the Appellant or any one for him or on his Account, in the Sum of One thous and Seven hundred and Seventy two Pagodas Twenty four fanams and forty Cash, or in any other Sum of Money whatever but that on the Contrary, the Appellant Stood indebted unto him the Respondent in the Sum of three hundred and Twenty Nine Pagodas twenty Seven fanams and forty Eight Cash, as the Ballance of an Account annexed to the Answer of the Respondent and for which the Respondent had filed in the Honble the Mayors Court his Cross Bill of Complaint, the Respondent further in his Answer, denies his having any knowledge of the Policy of Insurance in Question, and that he was an Entire Stranger to the Originals of the Exhibits Marked A and B annexed to the Appellants Bill of Complaint, as the Exhibit Marked A the Original whereof he the Respondent Said, he never Recieved nor did he know any thing of the Original Exhibit Marked B, but on the Contrary the Respondent alledged, he verily believed the whole was a mere fiction and invented for no other purpose but to harrass and Perplex the Respondent, and in Support of this Opinion did the Respondent in his answer point out and Shew the Absurdities and Contradictions comprized in the Bill of Complaint, and further in the said Answer positively denyed his ever having seen the Original letter Marked A or that he was in possession of the same, and did make an Observation as to the date of the Orders being 2d Febry 1776, for to insure two thousand Pagodas, on the Cauder Muram Buc and the fitting out of the said Vessell which was in the Month of July following and his the Appellant Sending of two letters immediately after, the Exhibits thereof Marked A and B are annexed to the Bill of Complaint, the Respondent further in his Answer took Notice of the letter said to be wrote to Caily Chitty Comrapah and of his having called the said

said Coaly Chitty Comrapahs Brother of the Respondent, and also of the inconsistency of the Charge of having Insured for Account of the Appellant and the Advices recived by him, all of which the Respondent charged, was entirely false and could not be Supported by any Colateral evidence or argument in any manner of from whatever, for if the Appellant had been wrong in the first instance, being the Bill of Complaint, the whole of the Appellants Action, would fall to the Ground for its want of Certainty, the Respondent did in this particular part of his Answer Submit it to the Consideration of the Honble the Mayors Court, whether the Appellants Bill of Complaint should not be Dismissed for its want of Certainty with Costs, the Respondent in his said Answer proceeded to Make Answer to the said Bill of Complaint, in as regular a manner as the confused State in which the Bill of Complaint was drawn up in, would allow and first the Respondent denyed, that Coaly Chitty Comrapah the Person Mentioned in the Appellants Bill of Complaint was the brother of or of any affinity to the Respondent, but that the said Coaly Chitty Comrapah was a Broker and Therepuited Agent and Gomastah of the Appellant, and as such was Acknowledged and known to be by all most all the Mercantile Inhabitants of Madras, the Respondent denyed his receiving any Instructions from the Appellant to insure, and insisted That the Appellant could not produce any Voucher in writing from under the hand of the Respondent or any one for him, that could in the least shew he had complied with such Instructions or ever received them, or that he in any Shape effected any Policy of the Appellant, the

Respondent

Respondent insisting in his said Answer, that he was neither an Agent or Gomastah of the Appellant or that he the Respondent ever interfered in his the Appellants affairs at any time whatever, the Respondent further Observed in his Answer, that had he Effected the Insurance, or had been an Agent or Gomastah for the Appellt that he in that Case would have been entitled to some Commission for his Agency. Whereas the Appellant had not in his Account Admitted of any Commission the Respondent in his Answer Positively denying to have made the Insurance as directed or that he was in Possession of the Policy or of the Letter Marked B. but the Respondent Admitted of his having recived two Letters from the Appellant one dated 20th. September 1775 and the other in the same Month, wherein the Appellant advises the Respondent of his having Freighted two Vessells for Pegue and of his preparing Cargoes for the same, and requesting of the Respondent One Thousand Pagodas to run at Respondentia from Coringa to Pegue and back to Madras at a Premium of Thirty Per Cent for the Voyage, besides a present of Sundry Articles of Marchandize with a Promise to pay off the Principal and Premium at the end of the Voyage in Comah Blank and Sheathing boards at a certain fixed Rate, as mentioned in the Respondents Answer and referred to an Exhibit Marked A annexed to the said Answer, being a translate of a letter written in Gentoo as from the Appellant to the Respondent, upon the Perusal of which, the Contents thereof Struck the Respondent with an Idea of the Appellant being in desperate Circumstances from his having offered such Extravagant Terms, which no fair Trader could Possibly Admit of, which induced the Respondent not to

lend

Lend the Appellant any Money and of which he the Respondent
Said, he Apprized the said Coaly Chitty Comrapah of, and
desired him to tell his Employer, the Appellant, that he would
have nothing further to Say, but desired that his the Respondents
ballance being fifty Pagodas of a former Account might be Paid,
all of which the said Coaly Chitty Comrapah Promised to
Acquaint the Appellant. of the Respondent further Says, in his Answer
that upon his several Applications to the said Coaly Chitty
Comrapah for payment he the said Coaly Chitty Comrapah as
often Promised the Payment, the Respondent further in his answer
Sets forth, that in the Month of February 1776. the said Coaly
Chitty Comrapah as the Agent and Gomasta of the Appellant,
brought a Respondentia Bond, being the Respondentia Bond,
aforementioned, under the hand and Signature of the Appellant for
Two hundred Pagodas, Requesting, that the Respondent, would deduct
the Ballance of the former Account and pay the Difference to
Coaly Chitty Comrapah for and on Account of the Appellant, which
the Respondent Says he at that time refused for Sundry Reasons
assigned in his Answer, but upon the frequent intercessions of the said
Coaly Chitty Comrapah, and on his telling the Respondent, that
he the Appellant had Ordered him the said Coaly Chitty Comrapah
to insure two thousand Pagodas, and to Assist him in so doing by
raising a Sum of Money to pay the Premium, the Respondent
Assented to receive the Respondentia Bond, and after deducting
what had been due on a former Account, he the Respondent
Paid the difference the said Coaly Chitty Comrapah and received
a Receipt from the said Coaly Chitty Comrapah as the Agent or
Gomastah of the said Appellant for the whole Sum of two hundred

Pagodas

Pagodas which Receipt the Respondent did offer to Render and produce
when required the Respondent further in his Answer, denied his
being any ways Privy to the Contents of the Letter marked B
Exhibited in the Bill of Complaint, and further the Respondent
denyed, that the Policy thereon mentioned was either by Deed
of Gift or Assignment in the Nature of a Security or for any other
matter or thing delivered over to him, the Respondent further
denies, having any Knowledge of the Premium of Insurance
being Paid to the underwriters nor who those underwriters by Name,
were the Respondent further in his Answer proceeded to Point out
to the Honble the Mayors Court, by Comparing the dates of the
Exhibits and the Contents thereof as annexed by the Appellant
to his Bill of Complaint, the Several Absurdities and Contradictions
contained in such Exhibits the Respondent further in his denyed
his receiving the Original of an Exhibit Marked C. annexed to
the Bill of Complaint who was said to enclose the Respondentia
Bond, for two hundred Pagodas but Admitted of his being made
Acquainted therewith by the said Coaly Chitty Comarapah the
Respondent further denyed having any Knowledge of the particular
time of the Departure of the Cadir Meram Buce from Coringa to
Bengall nor how soon after she was lost, nor that he was Acquainted
with the Value of the said Vessell and her Cargoe, as not having seen
any Bills of lading or Invoices of her Cargoe and that he was not
Acquainted with the least Circumstance Relative to this said
Vessell and her Cargoe, the Respondent further Observed, that the
Appellant had not alledged that any Protest was made of the loss
of the said Vessell and her Cargoe, and that the Appellant had not
in his Bill of Complaint charged the Respondent with being in

possession

Possession of any Documents or Vouchers to prove the loss, or that the Respondent had any Authority to Demand payment of the said loss without which, the Respondent observed in his Answer, it could not be Supposed the underwriters would pay to the Respondent their several Subscriptions to the Policy of Insurance in question supposing the Respondent was in possession of the Policy, as charged by the Appellant in his Bill of Complaint, yet that such Possession could not give him the Respondent any legal right to Settle and demand payment of the loss without some Deed or Instrument in Writing giving or Conveying a power for that Purpose which never was done, this the Respondent observed in his Answer, was a proof that the Appellant must be wrong in his Charge against the Respondent. the Respondent further in his Answer denyed his being in Possession of or that he did receive the Original letter a translate of which Marked D is annexed to the Bill of Complaint, but the Respondent made a remark in his answer on this Charge, that as he was charged by the Appellants Account Current with having received the Amount loss in the Month of September 1776. and by the Exhibit Marked D dated in december following, wherein it appears, that the Appellant was then at that time doubtfull, whether the Respondent had received the amount Sum insured or not, and wherein he directs the Respondent to receive the same and keep it in his Custody till further Orders, but sends no Power of Attorney or any other Authority to call upon the Underwriters or any Vouchers or Accounts to prove the Appellants Interest in the Vessell and Cargoe or any Vouchers as to the loss the Respondent further Observed, that the Appellant had in his

His Bill of Complaint charged his having written a letter from Masulipatam under date the 15th May 1777. to the Respondent a translate of which Marked E is annexed by the Appellant to his Bill of Complaint, wherein the Appellant Says, he was informed of the Respondent Receiving the amount of the Insurance and directs the Respondent to Keep the same in his Custody till an Opportunity offered of drawing upon the Respondent for the same, the Respondent Submitted it to the Consideration of the Honble the Mayors Court, whether the Appellant was intitled to any Interest, supposing the Respondent had Received the amount of the Insurance, as he the Respondent could only be considered as a trustee for the Sum he might recover the Respondent in his Answer denyed, his receiving the Original of this Exhibit or having been made Acquainted with the Contents. the Respondent further Observed, that by the Appellants Exhibit Marked E. being a Translate of a letter said to be wrote by Coaly Chetty Comrapah to the Appellant under date the 28th June 1777. that he the Respondent had not then received or recovered the amount of the loss under the Policy of Insurance, the Respondent further observed that by the Appellants own Shewing, the Cash was not received by that date, and yet the Appellant has charged the Respondt in his Account Current, with receiving it the 17th September 1776, and charges an Interest of 12 ℔ Cent from that date, this charge and the Extract the Respondent observed, when compared together, Proved a flat Contradiction, thought Exhibited by the Appellant in Support of his Charge, the Respondent in his Answer States, that the Appellant did Assert, that he had Sent from Masulipatam an Order to the Respondent, for to pay the amount

of

of the Sum Recovered to one Madena Saib. and that the Respondt did not Comply with such Order, and therefore he the Appellt was Obliged to leave his business there and come to Madras, to Obtain Redress the Respondent observed in his Answer, that in no Part of the Bill of Complaint did the Appellant charge the Respondent with having undertaken to Recover the Amount of the Insurance, that no writing in answer to the several letters said to be wrote by the Appellant had been Produced by the Appellant to Shew or Prove that the Respondt Assented to transact this business, either in the Effecting of the Policy of Insurance or in the Recovery of the amount loss nor that the Respondent was charged with having Received from any of the Underwriters their Proportion of the loss, nor any one Instance produced or Asserted in the Bill of Complaint, so as to Charge the Respondent with the Receipt of the Loss from the the Underwriters, and the Respondent did further Observe, that had there been the least room, or the least Shadow of a Probability, that the Respondent had directly or indirectly Received this loss, that the Appellant would with Equal Industry have Setforth the same, as he had done, to Setforth in his Bill of Complaint, what are there called Extracts of Letters, which the Respondent in his Answer Said, he believed never Originated, but only introduced in the said Bill to Aggravate Circumstances, though the Respondent observed, that such Extracts in fact, did no other Service than to Serve as a means to Quash the Bill of Complaint for want of Certainty, and which Bill of Complaint, the Respondent Asserted in his Answer, was Replete with Errors as to Persons, Dates and Circumstances

Circumstances, for that he the Respondent Understood, that the Appellant denied the said Coaty Chitty Comrapah to be his Agent or Gomastah, and this the Respondent proved by annexing a Translate of a letter Marked B N°2 to his Answer, and that by such letter it did there Appear, the Respondent had nothing to Say with the Recovery of the Amount loss, but that the same appeared to be done, as by the said Coaty Chitty Comrapah who had Effected the Policy, and with whom the same, continued the Respondent in his said Answer Admitted of his Receiving two letters from the Appellant, one dated 2d November 1776. and of no Consequence, and the other under date the 2d March 1777. which regarded the Appellants affairs wherein he Acquaints the Respondent of his having borrowed certain Sums of Money of different People at Respondentia and that the same was to be Paid after the safe arrival of the Vessells at Madras and that he the Appellant, had desired a certain Person to Speak about the same to the Respondent, and to Request a loan of two thousand Pagodas and upwards upon the Security of the Vessells and their Cargoes, being made to the Respondent, and in this letter the Appellant did mention or touching upon his Insurance by Saying, "My Policy of Insurance on the Bengall Ships for two thousand Pagodas, you must make haste." a translate of which letter Marked C. N°3, is annext to the Respondents Answer the Respondent further in his Answer, Said that upon Receipt of this letter, which was delivered by Coaty Chitty Comrapah and the Noquedah of the Ship which brought the said letter over from Rangoon, he the Respondent told the said Coaty Chitty Comrapah in the Presence of the said Noquedah, That he the Respondent

would

would never bind the Appellant a Single Pagoda upon any
Condition or Interfere Meddle with any of the Affairs or Concerns
of the Complainant upon any Account as he the Respondent
was well Apprized of the Appellant Principals, the Respondts
in his Answer remarked as to the words of the last mentioned
Letter respecting the Insurance, of two thousand Pagodas so
much desired by the Appellant, that as he the Respondt
had so absolutely refused to interfere in the Affairs of the Appellt
that the directions inserted in the said letter were no ways
Obligatory on the Respondent, who observed that a person may
take upon him to Appoint another to act for him but that
it is Optional in the other to Act or Refuse as he shall think
Proper, for that without an Acceptance to act, the Appointment
is invalid and of no Effect the Respondent further in his
Answer Asserts, that from the Contents of the said Letter,
it did not Appear, that there was any Plausable Clause for a
Charge against the Respondent the Respondent Asserted
in his Answer, that he had heard this loss of the Vessell
and her Cargo had been Settled between the underwriters and
the Agent or Gomastahs of the Appellant, by discounting the
same at two p Cent, of which Circumstance he the
Appellant must best Know, and what became of the Policy
and what Receipt and Receipts were and was given for the
respective Sums Received, and who the Parties were that paid
and Received the same, and by whose Orders and directions,
he or they received the same, and for whose Account, as
Nothing of this Sort appeared in any part of the Bill of
Complaint, save and Except in the account Current annexed

to

to the Bill of Complaint, where it is there Charged, as Received
the 17th September 1776, and by the Appellants own shewing
in his Exhibits, it was not Received on the 28th June 1777
all of which the Respondent Said in his Answer, evidently
tended to Shew the Absurdity and Inconsistency of the
Charge brought Against the Respondent, for that the Appellt
has not charged in his Bill of Complaint that the
Respondent gave any Receipts for the Money he is said to
have Received or that the Underwriters Paid the Respondent
their several Proportions of the loss, neither has the Appellant
charged, that he gave any Authority to the Respondent for
to Receive the same, but on the Contrary, it appears from the
Exhibits, that this Money was to be Collected by Coaty
Chitty Connapah and paid into the hands of a Soucar for
Account of the Appellant, all of which the Respondent in
his Answer Submitted to the Consideration of the Honble
the Mayors Court, whether he the Respondent was
Sufficiently Authorized to Receive the Several Proportions
of the loss from the Underwriters, and whether he was
furnished with any Vouchers so as to Make up the account
to Settle with the Underwriters, the Respondent declaring
Positively, that he was not, nor ever was, in possession of
any Voucher or Vouchers to Support his the Appellants
Demand on the underwriters the Respondent further in his
Answer Asserted, that the said Coaty Chitty Connapah
Received another letter from the Appellant to the Purport &
Effect of the one last mentioned and recited, the Respondent
further in his Answer Remarked the improbability of the

Letter

Letter Marked D dated 20th December 1776. having ever been
wrote as to the Respondent by for observing the letter of the 2d
March 1777. being about two Months and a half after the
Appellant neither Acknowledged to have been informed of the
loss of the Vessell in her passage to Bengall nor he inconsequence
thereof, wrote to the Respondent to recover the loss neither did it
Appear, that the Appellant was ever Acquainted with the
Insurance being Completed, the Respondent further in his
Answer observed, that were there had been so many letters
written by the Appellant, that no answer should have been
returned by the Respondent to the appellant and if there had,
that no One thereof should be Shewn and Exhibited against
the Respondent the want of which, and the Neglecting to
Charge them in the Bill of Complaint, and the Neglecting to
Set forth the promise and undertaking if any of the Respondent
made, carried with it a positive proof. that the Bill of
Complaint as it then Stood, was brought for no other Purpose
than to harrass and Perplex the Respondent. the Respondent
further in his Answer Asserted, that when the aforementioned
Coaty Chitty Comrapah Received the Intelligence of the loss of
the said Vessell he as Broker, Agent and Gomastah of the
Appellant Applied to the underwriters for Payment of their
Several Subscriptions who making some Objections occasioned
the said Coaty Chitty Comrapah to write a letter to the Son
of the Appellant who had the Management of his Fathers
Concerns during the Appellants Residence at Pegue Acquainting
him of the underwriters Objections in answer to which the said
Coaty Chitty Comrapah Received an Answer therein informing
him

him of the Intelligence he had received of the loss of the said
Vessell, and directing the said Coaty Chitty Comrapah to recover
the loss and deposite the Amount in the hands of the Soucar,
a Translate of which letter Marked B N2. is annexed to the
Respondents Answer, the Respondent further Observed in his
Answer, that as the Appellant has Charged the Respondent
with the Amount of the insured Money the 17th September
1776. It was Necessary for the Appellant to Shew the time
of the Vessells departure from Coronga to Bengall, the time
when she was lost, and the date of the Notification, and
the real Abatement made to the underwriters Pursuant to
the Terms, on which the Policy was underwrote as the
Guzrats Pay only Eighty Eight Pagodas for every hundred Pagodas, the
Respondent further in his Answer made a few Observations on the hasty
vague manner the Account Current as annexed to the Bill of Compl.t
was drawn out and the want of Certainty therein, and as to the
Special Interrys contained in the Appellants Bill of Complaint,
the Respondent Particularly and Specially Answered them, and
therein did absolutely Deny his having any Knowledge of the
Transactions as alledged in his Charge, and Specially Pointed
out the Incoherences and Omissions of the Appellant in his Bill of
Complaint, and the trouble and Vexation that it gave to the
Respondent in bringing into some Orders this irregularity of the
Appellant. the Respondent further observed in his answer, that
he was drove to the Necessity of Exhibiting Sundry letters annexed
to his Answer, that passed between the said Appellant and
his said Agent or Gomastah in Order to Refute the Charge brought
against the Respondent by the Bill of Complaint and to

Support

Support the Respondent in his Defence.

The Respondent further Says, that at the time of filing his aforementioned Answer he was under the Necessity of Preferring a Cross Bill of Complaint against the Appellant, for the ballance of the Respondents Account being three hundred and twenty Nine Pagodas, Twenty Seven fanams and forty Eight Cash referring to the Original Answer of the Respondent for the Particulars on which such Account arose.

The Respondent further Says, that on the 24th April 1780 the Appellant filed his amended Replication to the Original Answer of the Respondent wherein the appellt insisted on the Ballance of his Account Current as Justly due to him from the Respondent, and denyed being indebted to the Respondent as by him was alledged in his Original Answer and Prayed on the Respondents Cross Bill of Complaint, the Appellant in this his Replication Asserted that the Respondents Account was incomplete and proceeded to shew how the same was erroneous by flatly denying the Particulars relative to the Two hundred Pagodas Respondentia, although the Appellant himself in this his Replication Sets forth the rebatin, the same as Set forth in the Respondents Answer, the manner in which the Account was made up on this Respondentia of two hundred Pagodas the ballance of which being thirty three Pagodas and a half, remains due to him, the Appellant, Notwithstanding the Respondent did Set forth in his Answer, a Receipt of the aforementioned Coaty Chitty Comapah for the two hundred Pagodas, the Respondent further in his Replication Observed, that Notwithstanding the

the Pretended ignorance of the Respondent as to his the Appellts Affairs, yet the Appellant would make it Appear clearly that the Respondent was Acquainted with every Particular concerning the Charge alledged in the Bill of Complaint, the Appellant Proceeded to Support his Charge, by saying that the Respondent did Cause to be executed the Policy of Insurance for the Sum of One thousand and Six hundred Pagodas, and Paid the Premium unto One Jaggaser, an Insurance Broker, and that after the loss of the Vessell on which the said Sum was insured, the Respondent did Order the said Jaggaser to Pay the Amount unto one Ibrahim Cawn, the Appellant further Asserted, that he Consigned the Cargoe of two Vessells from Rangoon to the Respondent, and that the same arrived in Safety, and that the Respondent himself took the Management thereof, for One Month, and Paid twenty Pagodas on Account of the Charges thereon, the Appellant further Said, that he wrote a letter to the Respondent, to inform him of the loss of the Candee Muram Dua on which the Insurance was made, to keep in his the Respondents Custody the Sum Recieved on that Account, which letter, the Appellant Says, the Noquedah of the Vessell delivered unto the Respondent. The Appellant further in his Reply alledged, that after the Recovery of the said Insurance by the said Ibrahim Cawn, the Respondent repeatedly Ordered Jaggaser the Broker to pay the said Amount which the Appellt Asserted he would Prove, and also that he hoped to prove, that the Respondent did cause to be insured the said Sum of One thousand and Six hundred Pagodas for Account of the Appellant, and that he the Respondent Paid the Premium, and that the Policy was in possession according to his the Appellants instructions in a letter

Letter Addressed to the Respondent for that Purpose, which he the Appellant Said he would Prove. The Appellant further Says he Admits, that the Respondent might not have seen the Letter Marked B annexed to his Bill of Complaint and written to Coaty Chitty Comrapah, but insists that the Respondent was well Apprized of the Contents as to the Execution of the Policy and also of the Respondentia Bond inclosed, and that it was impossible the same should be, without the Privety or Consent of the Respondent. The Appellant further proceeds to Say, that as to the fitting out the Vessell Cadet Meuam Bux, and Calculating of the Date of the Letter Marked A that the Objection thereto Raised by the Respondent, is of no validity, because he the Appellant had clearly stated the whole Transaction in his Bill of Complaint, and that it was of no Consequence to him, Whether the said Coaty Chitty Comrapah was the Brother of or any Affinity to the Respondent, but insisted that he was a Common Broker to Several Merchants Trading from Madras to Narsapoor and Rangoon here the Respondent begs leave to Remark, the impropriety of thus first Charging an Absolute falsity and when discovered, Admits of the inconsistency of such Charge, certainly the Respondent Says, that such a declaration ought to Quash the Bill of Complaint for its uncertainty the Appellant further in his Replication alledges, that he would prove the Receipt of his Instructions by the Respondent the Appellant further Setforth, what he calls the Usage and Custom of Merchants as to Commission on Consignments and of his intentions thereon towards the Respondent, that he the Appellant would Prove that the Respondent

Respondent did Acknowledge his Effecting the Insurance with the Guzurats, that as to the Letter Marked A N1 annexed to the Respondents Answer, it was unnecessary to Reply thereto as the Respondent was too Illeberal in his Comments thereon, the Appellt. further proceeded in his Said Reply, to enter into the Merits of aformer Account / although he had before given a discription of the same, being apart of the Respondentia Bond for two hundred Pagodas, and did likewese insist on the Extract of the Letter of the said Coaty Chitty Comrapah Marked B annexed to the Appellants Bill of Complaint, respecting the Execution and Delivery of the Policy of Insurance to the Defendant, and the Assignment over to pay the Premium of Insurance and as a Security untill the Respondentia Bond should be executed by the Appellant, the Appellant positively in this his Replication denyed, that the said Coaty Chitty Comrapah was his Broker Agent or Gomastah That he the Appellant never gave him any directions to insure him the Sum of two Thousand Pagodas on the said Vessell or any other Vessell to Bengall but that his, the Appellants Last Request was, that the Money might be insured through the means of the Respondent, That he the Appellant always Corresponded with the said Coty Chitty Comrapah as Supposing him the Agent or Gomastah of the Respondent, rather than as Employing him, on his the Appellants own Account, and that he would Prove the same to be true and certain / which the Respondent Says, he has never done / the Appellant further Says in his said Replication, that he hoped to prove that the Respondent did Recover and Receive from the Gujerat Merchants a part if not

the

the whole of the said Money Insured further denying that the said Coaty Chitty Comrapah was either his Broker Agent or Gomastah, and that if he had been so, he would have had the immediate Charge of the Appellants Concerns, and had the trouble of the Insurance entirely and Received the Consignments of the Cargoes of the aforementioned two Vessells from Rangoon instead of the Respondent. The Appellant in his Reply further Asserts, that Mahomed Merad the Son of the Appellant was at Narsapore, when the letter B annexed to the Respondents Answer, was wrote, and was then an Infant of three Years of Age, and therefore impossible for any Correspondence to be Carried on for Account of the Appellant. The Appellant further asserting that all Matters of this Kind were at an End by Reason of the Respondent Recieving the Amount due on the Policy from the Underwriters, and that he was entitled to Interest thereon. The Appellant further Says, he allows that if his Suit had been instituted against the Insurers he should have been under the Necessity of Setting forth the time of the Vessells departure from Narsapore from Bengall, the time she was lost and the Notification of such loss, and such other formal Acts as the law Requires, but that as his Present Suit is to Recover a Sum of Money from the Respondent by him Received from the Insurers on account of the Appellant, he has only to Prove the Receipt of the Cash by the Respondent, and the time when the same was Recieved in Order to Substantiate the Interest Charged. More Especially as the Respondent did not Comply with his Directions as to the payment of the Money the Appellant

concludes

concludes this his Replication, by observing, that both the Respondents Answer and Cross Bill of Complaint Plainly indicated, that the Respondent was liable to Pay the Appellant the Account of the Insurance with Interest, because of the Respondentia Bond by him entred into, and of this that the Respondent was conscious for or Else he would have Paid himself out of the Proceeds of the Cargoes of the two Vessells Consigned to the Respondent from Rangoon, the Appellant Admits of his unwillingness to Settle his Accounts with the Respondent under the Circumstances he Pretended to have labored.

The Appellant on the 20th September 1779 his Answer with an Account Current annexed, being the same in Sum and Substance as the one annexed to his Bill of Compt. to the Respondents Cross Bill of Complaint to the Original Reply of the Appellant, was the Respondent under the indispensible Necessity of Specially Rejoining and thereon did Persist, in denying to be indebted to the Appellant, but on the Contrary, insisted that the Appellant was indebted unto him in the Sum of three hundred and Twenty Nine Pagodas twenty Seven fanams and forty Eight Cash, as asserted in the Respondents Answer, the Respondent entring Specially into the Merits of the Appellants Replication by Refuting him in every particular, and first Respecting the particular Sums that are Comprized in the Respondentia Bond of two hundred Pagodas, he the Respondent Asserted he paid to the said Coaty Chitty Comrapah as the Agent Broker and Gomastah of the Appellant the full Sum of two hundred Pagodas, including the Amount of the Bengall Respondentia due,

as

as Appeared by the Receipt a Translate whereof Marked A 1
No 1. was annexed to the Respondents Rejoinder. the Respondt
observed, that no greater proof could be shewn or produced,
than the Receipt of the very Person to whom the said Appellt
Says, the Respondent never Paid the Sum of thirty three Pags
and a half, the Respondent further Observed that as to any
Information the Appellant might have Received Relative
to the Policy of Insurance and the Order as to the payment
of the Sums Underwrote, that such Information must be
false because he the Respondent never as the Agent or Gomastah
of the Appellant or Undertook the Recovery of the Insurance
or gave any Orders or directions concerning the same, the
Respondent further denyed, that he ever Accepted of the
Consignment of the Cargoes of the two Vessells from Rangoon
or that he Paid Twenty Pagodas on Account of the Charges
thereon, and if such had been, Credit ought to have been
given by the Appellant on his Account with the Respondt
and that the Appellant could not in the least Shew any
Writing from the Respondent, in Answer to his the
Appellants Pretended letters of Advice that could shew an
Acceptance of the Consignments of the two Cargoes on the
Part of the Respondent, and that he never was or Chused
to be, either a Consignee or Agent for the Appellant and
this Sentiment of the Respondent was well known to
the Appellant, as Appeared by a letter under date 23d
November 1775. a Translate of which Marked B No 2
is annexed to his the Respondents Rejoinder, the Respondent
further Observed that the Appellant had been at much
Pains

Pains to introduce Sundry Letters, and Yet no One Letter from
the Respondent by way of Answer or Return, to Shew that the
Respondent Accepted of the Consignment, and if such an Acceptance
had taken Place, the Respondent Asserted, he was entitled to
Commission on the Sales of the respective Cargoes and Carried
to the Net Amount to the Credit of the Appellant, for the
Respondent observed, that he having been a Number of Years
in the Capacity of a Merchant Residing among Europeans
from his Infancy; must know, that if he once Accepted of the
Consignment he had it not in his Power to have relinquish
it, but by Order and Consent of the Consignor, the Respondt
further Asserted, as a proof of his not having Accepted of
the Consignment, that as there were several Mortgage
Respondentia Bonds running on these Cargoes, which if
the Respondent had Accepted of the Management of the
Cargoes for a Single day, that the Mortgagees would have
Applied to him for payment as far as the Consignment
would go, but the Real State of the Case, the Respondent
Proceeded to Set forth in his Rejoinder, that as soon as one of
these Vessells arrived in Road of Madras, the Noquedah of
the said Vessell and the said Coaty Chetty Comaspah as
Agent for and Gomastah to the Appellant, did wait on
him, the Respondent with a letter as from the Appellant,
desiring the Respondent to take Charge of the said Vessell
and The Vessell expected with their Cargoes, and Advance
to the Respective Respondentia Lenders, the amount of
their Principal and Premium, which on the part of the
Respondent was Refused who declared to the Noquedah and
the

the said Coaty Chitty Comrapah, that he would not Interfere in that or in any other business of the Appellants, the Respondent further Observed that he was Surprized at the Appellants introducing in his Replication a Matter so foreign to the matters in Question, and that the same was only introduced to Support the Allegations of the Appellant in his Endeavoures to Make appear, that the Respondent had been in the Management of his the Appellants Concerns the Respondent further Asserted, that as to the directions said to be sent him as to the loss of the Vessell, and to the receipt of the Money, and to keep the same in his Custody, that he the Respondent would not receive the letter, which the Appellant alledged he sent and delivered to the Respondent by the means of the Noqudah, and that he was not, nor ever had been in possession of the Policy, and if he had been in possession thereof, he had no Power or Authority to receive from the Underwriters, their Several Subscriptions, whilst the Agent or Gomastah of the Appellant was on the Spot. that he the Respondent was possessed of no Power to allow Ibrahim Cawn, to recover the Sum insured, nor could he the Respondent direct Jaggaser the Broker to Pay the Amount, and if he had done so, he must have Ordered it to be Paid to some one or another, but to whom Paid, did not appear by the Replication, as it there ought to be, for as the Matter Stood on the Replication it differed widely from the Charge in the Bill of Complaint, as there the Respond. is Charged with being in receipt of the Cash, and in the Replication it is Said, One Ibrahim Cawn Recovered the Amount by Orders of the Appellant, and that Jaggaser had

had Orders to Pay the Amount, the Respondent Observed, that he was totally ignorant of the Matter and could not give any Orders about the same as being in no Capacity so to do, the Respondent further Observed, that had he deemed himself responsible for the Amount of the Policy he would not have Permitted any Person but himself to have Received the Amount of the Policy, the Respondent further Asserts, that he told Jagaser, that he the Respondent had nothing to do with the Appellant he might do what he Pleased with the Policy as he the Respond. had nothing to Say to it, the Respondent further in his Rejoinder Saying that it was of Consequence, whether the said Coaty Chitty Comrapah be the Respondents Brother, or in affinity to him, as the Appellant did Assert in his Bill of Complaint, that he was, that having thus taken a liberty of Asserting falsity which he the Appellant Acknowledges carries with it no other Idea, than the desire of Perplexing the Respondent, the Respondent further Observed, that Notwithstanding what the Appellant has Asserted in his Reply, that the said Coaty Chitty Comrapah was a Common Broker to other Merchants, Yet the Respondent insisted on the said Coaty Chitty Comarapah being the Broker, Agent and Gomastah of the said Appellant, as Appeared by his letters translation whereof Marked B N2 C N3 D N4 and E N5 and annexed to the Rejoinder of the Appellant the Respondent further Observed that he was induced from a Duty to himself to invalidate the Assertions of the Appellant upon his own Grounds by his own Act and Deed, under which the Respondent Says, he was Necessary Compelled to Exhibit these letters, by one of

these

these letters, the Appellant has expresly directed the said Coaty Chitty Comrapah to Receive some Money at Respondentia from the Respondent and others, and to endeavour to bring over the said Respondent to his the Appellants measures the Respondent further Observed, that in none of these letters the Appt writes to the said Coaty Chitty Comrapah to Send him a speedy Answer to a desire which he made him in a Previous letter for an Insurance upon a Bengall Vessell. this the Respondt Observed, was an Instance in point and a proof of the said Coaty Chitty Comrapah being Concerned in procureing the Insurance in Question, and not the Respondent, and of his being the Agent or Gomastah of the said Appellant, and that to any matter or thing done by him for Account of the Appellant that he the Appellant was bound thereby, the Respondent further Asserted that he was a perfect Stranger to the Appellt untill he was made Known to him through the means of the said Coaty Chitty Comrapah, the Respondent further Observed, to the Assertion of the Appellant in his Replication that Corresponded with the said Coaty Chitty Comrapah, as Supposing him the Agent of the Respondent rather than employing him on his own Account, that this Assertion was false and done in Order to lessen the Evidence that the said Coaty Chitty Comrapah might give in the Cause, and in Order to Support the Respondents Argument, he Stated in his Rejoinder, that he resided from his Infancy at Madras and had his family to Assist him, if Necessary, in his Affairs, and of Course could not want any Assistance from the said Coaty Chitty Comrapah, the Appellants Observations in his Replication when

when Examined with the Translate of his letters Annexed to the Bill of Complaint Appears not to Correspond and of Course deserve Only to be plea the Respondent further in his Rejoinder made another Observation on a particular passage in the Appellants Replication wherein he Says "he the Appellant hopes to Prove that the Respondent did Recover and Receive from the Guzerats a part if not the whole of the Money insured." Whereas in the Bill of Complaint, the whole Sum is charged to have been Received by the Respondent on a particular day, the Respondents Observation was, that it was the duty of the Appellant to be Certain and fixed in his Claim, in Order that the Respondt might know what the Defence to make, for if the Respondent Received a part so much and no more ought he to Charged with, from whence it might be inferred, that the Appellant has brought his Action without any Certainty as it did not Appear that the Appellant Knew what Sum to fix. the Respondent further in his Rejoinder Accounted for making Use of the Appellants Sons Name Mahomed Murad, and that he did not write the letter to Coaty Chitty Comrapah of the 8.th December 1776. that as the said Mahomed Murad was an Infant letters were Usually wrote to Shak Sab and Madeen Sab the Agents for the Appellant to the Northward of Madras, and the answers thereto were always wrote in the Name of the Son, as Customary, and that therefore the Validity of the letter was unquestionable, the Respondent further observed, that he never Caused the Insurance in question to be effected, nor Received any of the Subscriptions, but that if such Subscriptions had been Received the Appellants right of Action was against the

Person

Person who Received the same. for the Respondent Observed, that there was no One Act or Deed of his that could be binding on him. No Commission was by him received. or any Insurance by him effected, or any thing done for the Appellant. nor is there any Voucher or Exhibit Produced in any Part of the Proceedings that had the least Appearance of Testimony against the Respondent but that the whole of the Proceedings. was a General Informal Charge made against the Respondent through Rancor and ill will. the Respondent further Observed that the Appellant in his Replication had discanted largely about Coaly Chitty Comrapah not being his Agent. and afterwards had Reduced the merits of the Cause to a Single Point. that if the Respondent had received the amount Insurance or any part thereof that the Respondent ought to be Responsible. the Respondent further in his Rejoinder denyed that his accepting a Bond from the Appellant through the means of the said Coaly Chitty Comrapah. could in any shape Oblige him to be Responsable for the Insurance. and further the Respondent was under the Necessity of Answering unto several Allegations contained in the Appellant's Replication. but as such Allegations did not tend to the Merits of the Cause, the same are hereon omitted to be inserted the Respondent having come to Acknowledge of some certain transaction since the Commencement of the Suit the same were incerted in the Rejoinder, wherein it was Alledged, that there being some Accounts depending between the Appellant and Ibrahim Cawn and a Ballance in his favor, he had Stopped the Policy and recovered the Money. but before he would part with the same to the Order of the said Coaly Chitty Comrapah. he the said Ibrahim Cawn insisted on Deducting what

What was owing to him. and how the Parties Settled the matter among themselves. the Respondent could not tell, but alledged in his Rejoinder, that a present was offered to him for his Interferrence in the Affair. the which the Respondent declined, not only in this Particular but in every thing Else which regarded the Affairs of the Appellant.

The Respondent Says, that he according to the Practise of the Honble the Mayors Court. filed his Cross Replication to the Cross Answer of the Appellant, who filed his Amended Cross Rejoinder. Issue being Joined and Witnesses Produced by both parties, four Witnesses on the Part of the Complainant. Deposing first whereof Jaggasher Dayy the Broker. and by the Proceedings Appears, to be interested in the Event of the Cause, Says in his Second Deposition, he was Employed for upwards of ten Years in the Capacity of an Insurance Broker, that he did Insure, at the Request of Chocapah Chitty the Respondent for Shake Abdul Rasac the Appellant a Vessell called the Cauder Meriam Bux to the Amount of One thousand and Six hundred Pagodas, and that he did deliver the Policy of Insurance to the said Respondent on behalf of the Appellant. and that he the Deponent has heard the said Vessell was lost in the Course of her Passage, for which she had been insured, that there was a Demand made for the Amount by Ibrahim Cawn who Presented the said Policy for payment. that he the Deponent first Asked the Respondent whether he should pay the said Amount to Ibrahim Cawn who told him to pay the same which the said Deponent Says, he did, and that he Supposed Such Sum so

Paid.

Paid was the Property of Shake Abdul Rosac as the Policy was made out in the Name of the said Shake Abdul Rosac and that he the Respondent did pay the Amount of the said Insurance by the Express Orders of the Respondent, in Observation to this Deposition the Respondent begs leave of this Honble Court to observe, that this Jagasher Davy Says that he insured for Account of the Appellant One thousand and Six hundred Pagodas by Orders of the Respondent, and that he delivered the Policy to the Respondent and that he afterwards heard she was lost, that Ibrahim Cawn Presented the Policy for payment, but that he the Respondent first asked whether he should Pay the said Amount to Ibrahim Cawn, in the first place, the Question arises who had the Policy of the said Jaggersy Davy, he could not have Collected the Several Subscriptions in the Port Where the Sum insured he could not have collected or Paid, because of the Agreement for an Abatement, neither is it mentioned what Sum he Collected, nor the Names of the Persons he so Collected the Several Subscriptions from nor the time when, nor by what Authority the said Chocapah Chetty, the Respondent had to Empower either him the Deponent to pay any Sum of Money on this Account, or for the said Ibrahim Cawn to receive it, nor does this Evidence Set forth the Premium Paid, nor from whom he the Deponent received it this want of Certainty in this Deponents Deposition carrys with it, a great Shew of Impropriety and Evidently tends to Shew that the Deponent has been playing with the Appellants Property, and finding he has done wrong Wishes to throw it upon the Respondent who had no Authority to delegate a third Person to Act for the Appellt.

Agavelly

Agavelly Satus, an Armenian Merchant, Deposes on the part of the Appellant, that he heard that Abdul Rosac wrote from the Northward to the Respondent to insure a Vessell belonging to the Appellant, as far as One thousand Pagodas, that he had heard the said Vessell was lost in the Course of her Passage, that he did not see the Policy of Insurance but ommagined it was made out in the Appellants Name as it was done by his Order and that the Policy was given to the Respondent, that Ibrahim Cawn came to his Brother Sarguis Satur with the Policy of Insurance and demanded payment of his the said Sarguis Satur's Share, that his said Brother desired Jaggazer the Broker to Enquire of Chocapah Chetty the Respondent if he should pay Ibrahim Cawn the Money and he was Answered in the Affirmative, Sarguis Satur in his Deposition Says, that he Underwrote and was Concerned in a Policy of Insurance of One thousand and Six Hundred Pagodas, as far as Two hundred Pagodas which was made by the Respondent for some Moorman, that he heard the said Vessell was lost in her Passage for which she was insured, that Ibrahim Cawn came and demanded the said Two hundred Pagodas of him that he sent for the Insurance Broker and Enquired of him how the said Policy came into Ibrahim Cawns hands who told him, that the Respondent had given him said Policy in Order to Receive the said Money, that he Scratched his Name out of the said Policy and paid the said Ibrahim Cawn his part of the Insurance, the Respondent begs leave to Observe, that here appears some Contradiction between the Deposition of Sarguis Satur and Jaggasher Davy - Jagagasher Davy Says, he Collected all the Money and paid the same to Ibrahim Cawn, Whereas Sarguis Satur deposes, he paid his

part

Part to Ibrahim Cawn whom he was told was desired as
from the Respondent to receive at Machala Pardapah another
Witness. Deposes on the part of the Appellant, that about two
Years before he gave his Deposition he was informed that the
Respondent Acted for the Appellant in the Management of an
Insurance effected on a Vessell called the Cawder Meeram Bua
for Account of the Appellant, and that the Policy was made out in
the Name of the Appellant for One thousand and Six hundred
Pagodas, and that the Policy was in the Hands of the Respondent
as Agent for the Appellant, that he heard the said Vessell was
since that transaction lost that the Respondent gave the Policy
to Ibrahim Cawn and that Ibrahim Cawn went and demanded
the said Sum from a Guzerat Man, and that the Guzerat Man
being a Stranger to Ibrahim Cawn, he Put off the Payment
from day to day for three Months, that afterwards the Respondt
met Jaggazeat Davy under the Sealgate of Fort Saint George
who told him, that as the Appellant was not here, how could
he pay the Demand of Insurance to Ibrahim Cawn, the
Respondent, the Deponent Says, told the Broker he might
Pay the Same to Ibrahim Cawn, who accordingly did pay
the Same to the said Ibrahim Cawn, that the Respondent
Endeavoured to get the said Sum by many ways from
Ibrahim Cawn but could not Succeed, that he the Deponent
carried two Receipts to Ibrahim Cawn, the Purport of which,
was to Acknowledge the Money received from the Broker
and for the said Ibrahim Cawn to Acknowledge he had
received it, which he the said Ibrahim Cawn Promised
to do, but put it off from day to day, and at last went away to
to day

Arcot

And without Signing said Receipt. The Respondent that by this
Deposition, there appears no Voucher or Receipt Produced to Shew or
that the Respondent was in the Receipt of the Cash, or that he
had any Transaction in this Insurance, for this Evidence is
only as he was informed and of Course is but a hearsay Evidence.
The Evidence on the part of the Appellant being thus ended the
Respondent proceeded to Examine such Witnesses as he deemed
Necessary in Support of his Defence and First.

Coaty Chitty Cornapah, the Person mentioned
in the Proceedings by both the Appellant and the Respondent
Deposed, that he was the Agent Gomastah and Broker for the
Appellant and that he so Acted for him in that Capacity about
Seven Years, and that he was reputed as such by the
Inhabitants of Madras and that to such Acts and Deeds as
by him were done in the said Capacity were Admitted and
allowed of by the Appellant himself and the Parties
Dealings and Trading with the Deponent for his Account
That some time in September 1775, he waited on the Respondent
with a Letter as from the Appellant then at Narsapore the
Purport thereof, was to Request the Respondent to lend some
Money at Respondentia which the Respondent would not
Comply with because he said, the Appellant was a trouble
some fellow, and that he the Respondent should find it
difficult to get his Money back again, at this Conversation
the Deponent Says, no Person was present in his 4th Deposition,
he Says, that he received Orders and Instructions from the
Appellant at Narsepore to insure a certain Sum, that he insured
One thousand and Six hundred Pagodas with Eight of the
Guzerat

Guzerat People, and that the Respondent did not Interfere or make any Promise to the Underwriters concerning the Premium, or make any Promise or Undertaking concerning the same to the Respondent, but that what was done was as the Act and Deed of him the Deponent in his fifth Deposition he Says, that he did in February 1776. Apply to the Respondent and tender to him a Respondentia Bond, as and from the Appellant for the Sum of Two hundred Pagodas to ren- on a certain Vessell called the Madenah Dux, that he required of the Respondent the Principal Sum and that he the Deponent did Offer to Receive the same under certain Deductions for money that was due to the Respondent, which the Respondent refused to Comply with, that he the Deponent repeated his Applications and Acquainted him, it was for the Use of the Appellant, and for what Particular Purpose the Money was wanted, and of the Neglect of the Appellant in sending him a Remittance to Effect this Insurance That he Solicited the Respondent to Advance him the ballance of the Two hundred Pagodas who at last Consented and Paid into his the Deponents hands the Sum of One Hundred and Sixty Pagodas upon that Account. That to the best of his Recollection the Respondt did not receive from the Appellant any Address on this Subject, that the Respondentia in Question came inclosed under an Address to the Deponent, which he delivered to the Respondent. In his Sixth Interrogatory the Deponent Says, he was Acquainted by the Appellants Son with the loss of the Vessell so insured and that he did Apply by his directions to the respective Underwriters of the Policy of Insurance for payment, the Amount of which being to be placed in the hands of a Soucar, that he the Deponent and Ibrahim Cawn Applied to the respective Underwriters for payment, but Objected

Objected as they were not made Acquainted with the loss, of which Circumstance the Deponent Says, he Certifyed the Appellants Son then at Narsepore, and desired him to Send a person to the Deponent to Demand the Amount of the respective Underwriters, which was Complied with, in Consequence whereof another demand was made on the Underwriters who promised payment in ten Days, that the Deponent falling Sick, Ibrahim Cawn did Settle and Adjust the Account, that an Abatement of One Hundred and Sixty Pagodas was made and that such Adjustment was made without the Privity or Knowledge of the Respondent and that the respective Shares were received as the Property of the said Appellant In his Seventh Deposition, he Says, that he was Acquainted of a Vessell belonging to the Appellant from Pegue arriving in April 1777 at Madras and that she brought a letter from the Appellt to the Respondent, that the Deponent did in Company with the Noquedah of the said Vessell, wait on the Respondent with such Letter, that he informed the Respondent of the Contents of such Letter and that the same was a Consignment of both Vessell and Cargoe from the Appellant to the Respondent, that the Respondent did Refuse to Accept of the Consignment and to the best of the Deponents Knowledge, never interfered in the Management thereof, and that the Respondent did make such a Declaration as the Appellant he said was a trouble some fellow, that the Noquedah of the said Vessell did take the Management thereof but never Accounted with or had any thing to Say to the Respondent on the Subject, neither did the Respondent Advance or Lend any Money for the Use of the said Vessell during the time she lay at an Anchor

In

in the Roads of Madras. In his Eighth Deposition, he Says, that he knew Machala Vodapah did bring a paper Writing to the Respondt. Respecting the Affairs of the Appellant, and that the Respondent did refuse the Personal thereof. Golam Mahomed Saib deposes in his Second Deposition, that the said Coaly Chitty Comrapah was of no Affinity to the Appellant, in his third Deposition he Says it was well known not only to him but to every one Else that had Dealings with the Appellant, that he the aforementioned Coaly Chitty Comrapah was the Gomastah or Attorney to the said Appellt, and that he Transacted his business for him. In his Sixth Deposition, he Says he knows that the Appellant had a Son an Infant of four Years Old at Narsapore, and that there were two Persons residing at that place, Relations to the Appellant, who Transacted all the business of the Appellant there, in his Absence & in his Seventh Deposition, Says, that they carried on the Appellants business in the Name of the said Son, and that the same was looked upon as valid as if it had been the Act and Deed of the said Appellant. In his Eighth Deposition, he Swears to the Original of the Paper Writing Marked B N°2. as the Act and Deed of the said two Persons, and that it was Customary for the said two persons to Transact the Appellants business in his Absence. In his Ninth Deposition he Says, he was present when a Noqueda of a Vessell belonging to the Appellant presented a letter from the Appellants to the Respondent which Letter the said Respondent threw away, and Said he had nothing to do with it. In his 10th 11th 12th 13th 14th & 15th Depositions he deposes as to his knowledge of the Hand Writing of the Appellant to the Original of the Writing / Marked D N°1 / A N°1. B N°2 C N°3 D N°4 and E N°5. / In his Eighth Deposition Speaks as to an Accomodation between the Appellant and the Respondent, through the means of the Respondents Sons, and with a Refusal on the part of the Respondent — and in his 20th Deposition he Speaks as to the Credibility of Machalah Vodapah and to his Endeavours of Subornation of Witnesses in behalf of the Appellant. Arunnapah in his 2d & 3d Deposition deposes the same as Golam Mahomed Saib, respecting the being of no Relationship or affinity between Coaly Chitty Comrapah and the Respondent and also of the said Coaly Chitty Comrapah being the Gomastah of the Appellt, in his Deposition to the 19th Interrogatory, he Says, that when One Jaggazar a Guzerat came to the Respondent and Requested of him to know whether the Money on Account of Insurance made for the Appellant was to be paid or not, that the Respondent Said, he did not know whether the said Money was to be paid or not. Ram Chitty in his 2d & 3d Deposition Says, the same as the aforegoing Witnesses In his Deposition to the 16th Interrogatory he Says that in his Presence Coaly Chitty Comrapah came to the Respondent and Acquainted him, that Ibrahim Cawn and the Appellant were disputing about a Policy of Insurance, and that he desired the Respondent to come and Decide the matter between them, which the Respondent Refused, as knowing Nothing of the matter. In his Deposition to the 19th Interrogatory he Deposes the same as the last Witnesses to the Conversation that passed between Jaggazar the Broker and the Respondent Soobah Chitty in his 2d 3d Deposition deposes as the Aforegoing Witnesses, and in his 4th 5th Deposition deposes, as to the Hand Writing of the Appellant to the Original of the Receipt Marked A N°1 and to the Purposes for which the same was given. In his Deposition to the 9th Interrogatory, he deposes to his being Present, when a Noqueda and Coaly Chitty Comrapah

Comrapah brought and tendered a Letter to the Respondent as from the Appellant which when the Respondent Read he refused to Act — In his Deposition to the 6th Interrogatory, he deposes that Coaty — Chitty Comrapah informed the Respondent that he and Ibrahim — Cawn had been to demand payment on a loss from a Soucar, who — informed them, that he would enquire about it, that Ibrahim — Cawn went a few days after and received the same, that Coaty — Chitty Comrapah demanded the Money of Ibrahim Cawn upon which he said, he had lent five Hundred Pagodas to the — Appellant on Respondentia and after deducting that Amount he would pay the Remainder to the said Coaty Chitty Comrapah — Cody Chitty the Son of Coaty Chitty Comrapah Deposes that his said Father the said Coaty Chitty Comrapah in his life time was the Agent and Gomastah of and to the said Appellant and that a — Constant Correspondence was Kept up between his said Father & the Appellant — In his 4th Deposition he Swears to the Hand — Writing of the Appellant to the Original of the Receipt Marked A N.1 In his 5th Deposition, he Says, he was present when his said Father Offered as the Agent and Gomastah of the Appellant a Respondentia for the Sum of Two Hundred Pagodas, and that his said Father made use of Several Arguments to induce the — Respondent to Accept of the said Bond which he at last Complied with In his Deposition to the Eighth Interrogatory, he Deposes — to the Hand Writing of those Persons, who Set the Same to the Original Writing Marked B. N 2 In his several other Depositions, he Swears as to his Knowledge of the Sundry Exhibits Produced to — him at the time of his Examination Nagoloo Chitty, to some — Additional Interrogatorys Deposes, as to the said Coaty Chitty — Comrapah

Comrapah being the Agent and Gomastah of the Appellant and of his being Universally Accepted and taken as such, and in his 4th Deposition, he Swears to some Transaction of Machalah Verdapah being Employed to Procure Evidence for the Appellant. Cundapah Chitty in his Depositions are to the same Purport and Effect as the aforegoing ones of Nagoolo — Chitty. The Witnesses being all Examined on both sides, Publication Closed and the Original Cause and Cross Cause were both Set — down for hearing and the same came on to be heard the 6th September 1781 and the said Causes were determined in manner and form and to the Purport and Effect as Setforth by the Appellant in his Petition and Appeal, as Reference to a Copy of the Decree annexed thereto will — more fully and at large Appear, from which said Decree, the Appellant has thought proper to Appeal to this Honble Court of Appeals, and — after having in his Petition Setforth some particulars of the Proceedings before the Honble the Mayors Court, he the Appellant proceeds to — Setforth his Several Causes for such his Appealing to this Honble Court of Appeals. And first that Jaggashee Davy proved he was Employed by the Respondent to insure the Vessell called the Cawder Meeram Boat, the Property of the Appellant for One thousand and Six hundred Pagodas, and that he delivered the Policy to the said Respondent, that the — Amount was demanded by Ibrahim Cawn for Account of the — Respondent, and that he Jaggajee Davy Asked him, if he should — pay the Amount to Ibrahim Cawn, that the Respondent told — him to do so. The Respondent Says, it is to be Observed in this — Deposition, that the said Jaggajee Davy does not Say, how he come to receive the Amount of Insurance from the respective Underwriters nor whom by Name they are, nor how he came by the Policy, only that he gave the Policy to the Respondent, and yet the said Jaggajee — Davy

Davy, could afterwards Receive the Cash without it, or any other Voucher or Proof of loss and Interest, as if Merchants who are Underwriters would Pay him a Sum of Money without any Authority for him to receive it, or any proof of Interest, and what is Remarkable that this Evidence should fail in given in Evidence the particular Circumstance Attending this Insurance, such as the Names of the Underwriters, the Premium paid, the real Sum that was Recovered, and Sundry other Particulars, Necessary to be Known and Produced in this Kind of Business, this Evidence is unfortunately Overset by Sargues Satur One of the Appellants Evidence, and One of the Underwriters, who Says he paid his Subscription to Ibrahim Cawn, but as to Coaty Chetty Comrapah the Appellant is totally Silent Regarding, and also as to the Person who furnished the said Jaggazar Davy with the Premium to pay the underwriters when the whole of the Depositions are Collectively taken together, they do not Amount to one positive Proof but seem to be made up in haste to a few questions in as great a hast Drawn out.

In Answer to the first Cause of the Appellant which he Assigns for his Appealing, that his Evidence does not even the least carry with it a probability of the Respondent being any ways, concerned in the Effecting of the Insurance in question, nor the Recovery of the Amount loss from the underwriters, nor does the said Appellant by Evidence Support his Charge against the Respondent, or Support his Allegations as to Coaty Chetty Comrapah, nor has he in any one instance proved one Assertion, but on the Contrary the Appellant has made use of, and Advanced pretended Transactions that never happened which apparently Served to Confuse and Perplex the Pleadings and Mislead the Honble the Mayors Court

In respect to the Appellants Second Cause for Appealing which Seemingly Appears from the Appellants own Relation, to take its Rise from the Respondents proceedings, and Particularly as to the Respondents Evidence, which the Appellant has much Misrepresented and Mutilated, and Especially in that Particular Part wherein the Appellant Says that the Tenor of the Evidence on the part of the Respondent tends only to throw all Responsibility on Coaty Chetty Comrapah as the pretended Agent of the Appellant in his Affairs in General and that no part of the said Evidence Proves that the said Coaty Chetty Comrapah Received any Instructions from the Appellant about the Insurance in question &c with Submission to this Honble Court of Appeals, that by a Reference to the Proceedings before the Honble the Mayors Court, the Evidence given by the said Coaty Chetty Comrapah himself, it will there Appear, that Instructions were given by the said Appellant and Received by the said Coaty Chetty Comrapah concerning not only this Insurance, but many other Concerns of the said Appellant, in Support of which are the Sundry Exhibits produced by the Respondent, and these Exhibits Proved in due form of Law, true it is, the Respondent, Says the Depositions on the part of the Appellant, do not Speak or take Notice of Coaty Chetty Comrapah, and it is to the Interest of the said Appellant that they did not, and as to their Knowledge of all the Matters Relative to this pretended Insurance from the Effecting the Policy to the Receipt of the loss, they Appear, the Respondent Says, totally ignorant of any of the Circumstances, The Respondent Says, that the Testimony of his Witnesses

were

were not Calculated with any view to impeach the General Character of the Appellant on the Contrary, they were produced in Support of what the Respondent had Said in Answer to some charges brought by him the Appellant in his Proceedings against the Respondt in Order if Possible to make it appear as if the Respondent had Transacted business for the Appellant, and as the Respondent denyed the Charge, he was under the Necessity of Producing this Proof. Whereas the Appellant was totally Silent in Support of his Charge, the Appellant in his Petition of Appeal Charges the other Parts of his the Respondents, Evidence as inadmissable, because he the Appellant Says their Testimony is founded on hearsay and from Incidents which happened since the Commencement of the Present Suits, the Respondent in Answer thereto pray a Reference to their Several Depositions and makes no doubt but their Testimony will Appear Clear, full and Circumstantial, and what they of themselves know and which when Compared with the Proceedings of the Respondent before the Honble the Mayors Court, will Agree in every respect and Prove not only the Probity of the Respondent in his Assertions, but Support his Charge in his Cross Bill of Complaint against the Appellant Whereas the Appellant in his Proceedings has ventured to assert many things which he Says, he will prove, and in his Evidence falls Short in every part, and what is remarkable that the Appellant should in some of his Proceedings Advance and Say, that he wrote to the Respondent through Coaly Chitty Comrapah, as Supposing him the Agent of the Respondent and the which he would prove in due time, the Appellant, the Respondent Says, has not Produced in any one Evidence in Support of this allegation, nor in Support of any other of his Assertions, but has rested all the

The Merits of his Cause on the Recovery of the Amount of the Loss insured, as finding the impossibility as well as the impracticability of shewing, that the Respondent Acted as an Agent on the Concerns of the Appellant in any shape whatever, If the Merits of the Cause rests on this Circumstance as to the Receipt of the loss insured, It will be Necessary the Respondent Says for the Appellant to Shew, by what Authority the Respondent caused the Policy to be Effected, who paid the Premium, by what Authority this Respondent had to give any Person liberty to receive from the underwriters their severall Subscriptions, and when, and to what Amount, and from Whom by Name, for if the Money was actually received It was very Easy for the Appellant to have produced the Account particulars, and this it may be Supposed he would have done if possible in Order to Support his Demand against the Respondent but what is the most Extraordinary, that in all these Transactions where so many letters have been written by the Appellant and his Agents, that not one in Answer thereto, as from the Respondent, should have been produced nor any one Voucher Exhibited of any Kind, all that is said by Jaggasee Davy.s. that he Received Orders to Pay the Amount of the Loss to Ibrahim Cawn, but who has given him Orders to Receive the Amount from the Underwriters, it is not Said, nor how he came to Receive it without the Policy but with Submission to this Honble Court, it appears plainly for the want of Candor in this Evidence, there has been some bad behaviour on his part and of Course is Interested in the Event of this Suit and therefore incompetent to give his Evidence it is also very Extraordinary the Respondent Says that none of the Guzerat Merchants

Merchants who were underwriters to this Policy, should have been Produced as Evidence on the part of the Appellant to shew to whom they Paid his and their Subscriptions. Whether any Policy has been Effected, and whether or no, the Respondent has not been Trick out of his Money, under the Pretext of the Respondentia and for which the Cross Bill of Complaint is filed the Respondent Says he is not certain, nor whether the Appellant has not entered into some Combination, with his Evidence to Set up his Charge of the Amount loss insured against the Respondent but which in the Establishment he has fallen very Short of doing For all which Causes and things herein before Set forth, the Respondent humbly prays this Honble Court of Appeals that the Appellants Petition and Appeal may be dismissed with Costs to be paid to the Respondent and that the Decree of the Honble the Mayors Court may Stand Confirmed

Charles Bromley
Attorney for the Respondent

Court of Appeals
at
Madraspatnam
} for Thursday the 13th February
Anno Domine 1783

Between Shaike abdul Razack by his Attorney John Fairney Appellant and Chocapah Chitty 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 September Anno Domine 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 Decree of the Honble the Mayors Court Dated the 6th Day of September Anno Domine 1781 Do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs

J Cur
Chas Freemantle

To the Kings Most Excellent Majesty in Council

Between Shake abdul Cozack by his Attorney John Fairney Original Complainant and Cross Defendant and Chocapah Chitty Original Defendant and Cross Complainant

The Humble Petition and Appeal of the said Shake Abdul Rosack by his Attorney John Fairney

Sheweth,

That your Petitioner by his said Attorney did on or about the Seventeenth day of May which was in the year of Our Lord One thousand Seven hundred and Seventy Nine file his Bill of Complaint in the Hon.ble the Mayors Court at Madraspatnam against the said Chocapah Chitty for the recovery of the Sum of One thousand Seven hundred and Seventy two Pagodas Twenty four fanams and forty four Cash due from the said Chocapah Chitty to your Petitioner on the ballance of an Account Current Copy whereof your Petitioner annexed to his said Bill of Complaint and your Petitioner by way of Explaining his Cause of Action did thro' his said Bill of Complaint to the said Mayors Court shew that before the time that is to say some time in the Year One thousand Seven hundred and Seventy Six your Petitioner had a Vessel at Coringa called Cawder Meeran Buash fitted out and ready to proceed to Bengall and your Petitioner being desirous of having the said Snow or Vessell insured did by letter to the said Chocapah Chitty desire

Filed in my office the 26. February 1783 Charles Freeman Clk

desire and direct him to Insure on the said Vessell for account of your Pet.r Two thousand Pagodas and that the said Chocapah Chitty in Pursuance and part performance of your Petitioners said direction did cause to be ensured among the Guzurat Merchants residing at Madras One thousand Six hundred Pagodas on the said Vessel in the name of your Petitioner and that the said Chocapah Chitty Received from the said Merchants the Policy of Insurance made out in your Petitioners name and your Petitioner did also Shew that he executed and sent to the said Chocapah Chitty a Respondentia Bond for two hundred Pagodas payable to him, and that the Value or Consideration thereof was in part made up to the Premium which the said Chocapah Chitty had advanced on the Insurance being One hundred and four Pagodas, and of other Sums which the said Chocapah Chitty had advanced and Promised to Advance for the use of your Petitioner making together in the whole the said Sum of Two hundred Pagodas and your Petitioner did further shew that part of the Correspondence on both sides occasioned by the aforesaid transactions had been thro one Coaty Chitty Comrapah whom your Petitioner understood to be a Relation to the said Chocapah Chitty from his so intermeddling on his behalf in the course of their said Correspondence and your Petitioner did thro his said Bill of Complaint further shew that the said Vessell so as aforesaid insured was afterwards lost whereof he Advised the said Chocapah Chitty to whom or to whose order the several underwriters Paid the respective Sums for which they had underwritten Notwithstanding which the said Chocapah Chitty refused Paying over the same to your Petitioner and your Petitioner sheweth, that tho' from the early stage the Cause then stood in he could Regularly only Refer to such Correspondence and

Circumstances

Circumstances as attend the transactions on Record yet since that time thro' the deposition of Jagashus Davys the Insurance broker and of Agavelly Satus and Sarquis Satus two Armenians Merchants of Madras of Reputation one of whom to wit Sarquis Satus had underwritten the said Policy your Petitioner hath established on Proof that the said Chocapah Chitty made or caused to have been made the said Insurance in manner aforesaid that the same was made in the name and for Account of your Petitioner and that afterwards the Insurers or underwritters Paid the Sum or Sums so insured to or to the Order of the said Chocapah Chitty and your Petitioner further Sheweth that the said Chocapah Chitty did on or about the Twenty Ninth day of June in the said Year One thousand Seven hundred and Seventy Nine put in his Answer to your Petitioners said Bill of Complaint therein not only denying being indebted to your Petitioner but Pretending that to the Contrary your Petitioner stood indebted to him in the Sum of three hundred and Twenty Nine Pagodas Twenty Seven fanams and forty eight Cash and referring as well to the Copy of an Account Current which he had annexed to his said Answer as to a Cross Bill of Complaint which he prefered against your Petitioner for the Recovery of the same, and your Petitioner Sheweth that the said Chocapah Chitty in and by his said Answer not only denied being indebted to your Petitioner as charged by your Petitioners said Bill of Complaint but also thought Proper to deny all such Knowledge or Correspondence respecting the said Insurance as he thought would make him Responsible to your Petitioner for the Sum Received of the Insurers in manner and for the account aforesaid and the said Chocapah Chitty in his said Answer did offer many Specious Suggestions to the Consideration of the Honble the Mayors Court with a view of Proving that the said Coaty Chitty Comrapah and not the said Chocapah Chitty was the Person who had the Management of the said Insurance for your Petitioner and also endeavouring to shew that the said Coaty Chitty Comrapah was Agent or Attorney for your Petitioner and your Petitioner Sheweth that the said Suggestions of the said Chocapah Chitty had no other evidence in their Support than a letter said to be written from your Petitioners Son at Narsapoor to the said Coaty Chitty Comrapah and which Letter as appeared in course of the evidence on the part of the said Chocapah Chitty and in particular by the Deposition of Gullam Mahomed Saib was at the time when the said letter was pretended to be written an Infant of the age of four Years whereas had he been of such full age as would give him weight of Appointment under proper transactions on that Occasion and had such letter at such full age been by him written the same by no means Concerned the affair between the said Chocapah Chitty and your Petitioner more especially as it has not been shewn that Coaty Chitty Comrapah acted under such letter or under any other appointment whatsoever from your Petitioner but to the Contrary your Petitioner begs leave to observe that the said Chocapah Chitty by his own shewing thro his said Answer must have Considered himself in an accountable Situation Respecting the said Insurance because in his said Answer he acknowledges the Receipt of a Letter from your Pet.r to him which thus takes Notice of the said Policy "My Policy of Insurance on the Bengal Ships for two thousand Pagodas you Must make haste" and your Petitioner further Sheweth that the said Chocapah Chitty did file his Cross Bill of Compl.t against your Petitioner for the said Sum of three hundred and twenty

twenty Nine Pagodas Twenty Seven fanams and forty eight Cash
which he had so as aforesaid in his said Answer Pretended to be
due to him and appears to be the very Sum and accruing from the
same Respondentia Bond as is Setforth to which said Cross Bill
of Complaint your Petitioner Put in his Answer and therein denied
being indebted to Chocapah Chitty either in that or in any other
Sum or Sums whatsoever and your Petitioner sheweth that he
Replied to the Answer put in by Chocapah Chitty to your Pet.rs
said Original Bill of Complaint and in a general manner
speaking to the evasive Arguments made use of in that Answer
and herein before in part taken Notice of did contend that all
Controversy respecting the Insurance ought to cease and became
determined in the event of Chocapah Chitty receiving or Ordering to
be received the amount upon the said Policy from the Insurers &
your Petitioner did further shew that by the said Chocapah Chittys
said Answer and Cross Bill of Complaint he shewed himself
liable to pay unto your Petitioner the amount of the Insurance
Money received by him of the said Insurance Brokers as the
said Respondentia of your Petitioner for two hundred Pagodas
was in part made up of the Premium advanced for the said
Insurance so made by the said Chocapah Chitty for account of
your Petitioner and your Petitioner further Sheweth that the
said Chocapah Chitty Replied to the Answer Put in by your Pet.r
to his said Cross Bill of Complaint and that your Petitioner on
his part Rejoined and that the said Chocapah Chitty did put in
his Rejoinder to your Petitioners Replication in the Original
Cause and the said Causes having so as aforesaid passed thro'
the said several Stages in the said Mayors Court and issue
being

being Joined thereon Rules for the Examination of Witnesses Issued
and Publication Passed the Cause and Cross Cause were set down
for hearing and Accordingly came on to be heard in and before
the said Mayors Court on Thursday the Sixth day of September
which was in the Year of our Lord One thousand Seven
hundred and Eighty One, when the said Court were Pleased to
Order and Decree and Did Order and Decree that the Original
Complainants Bill (meaning your Petitioners Bill) should
stand Dismissed with Costs, and that the Cross Defendant
also meaning your Petitioner) should Pay unto the Cross
Complainant meaning the said Chocapah Chitty the Sum
of Three hundred and Twenty Nine Pagodas Twenty Seven
Fanams and Forty Eight Cash with Interest and Costs of
Suit.

From which said Order of the said Mayors
Court your Petitioner did on the Twentieth day of the said
Month of September One thousand Seven hundred and eighty
one Appeal to the President and Governor &c. Council of
Fort Saint George as the Court of Appeals therein Setting forth
that he was Aggrieved by such the Order of the said Mayors
Court of the said Sixth day of September One thousand Seven
hundred and Eighty One, and in Support of the Grievance so
him alledged and as Reason for his so Appealing to the said
Court of Appeals at Fort Saint George He the said Petitioner
in his said Petition and Appeal after Reciting the Subject
Matter of Petition in effect as is herein before Recited did
Setforth that the said Decree of the Honble the Mayors Court
was erroneous for the following among other Reasons

First

First Because the Evidence of Jagashet Davis Proves that he was employed by Chocapah Chitty to insure a Vessel called Cawder Mura Beash the Property of Shake abdul Rosack for One thousand Sea hundred Pagodas and that he delivered the Policy to the said Chocapah Chitty. that he heard the Vessel was on the Course of the Voyage for which the Insurance was made that the Amount was Demanded by Ibram Cawn for account of Chocapah Chitty that Jagasher Davys asked Chocapah Chitty if he should pay the Amount to Ibram Cawn that Chocapah Chitty told him to do so and that he did pay the Amount by the express Order of the said Chocapah Chitty. and that he Supposes the Sum so Paid was the Property of the said Shake Abdul Rosack, as the Policy of Insurance was made out in his Name, and the Evidence of Agavelly Sateir Proves that Ibram Cawn came to his Brother Sarguis Sateir when he was present with the said Policy of Insurance and Demanded his Share whereupon Sarguis Sateir directed the Insurance Broker Jagasher Davy to inform himself of Chocapah Chitty if Payment thereof should be made to Ibram Cawn and that Jagasher Davys informed Sarguis Sateir that Chocapah Chitty had given the said Policy to Ibram Cawn that he might Receive the said Insurance and that the Reason of his Brothers so sending to Chocapah Chitty for said Information was because he Knew that Chocapah Chitty had acted for Shake Abdul Rosack in the said business &c.

And the Evidence of the said Sarguis Sateir Proves his having underwritten two hundred Pagodas in part of an Insurance of One thousand Sea hundred Pagodas on a Vessel belonging to a Moor man that at that time He did not know for what Moor man that he

He heard the Vessel was lost and on Ibrahim Cawn demanding the Amount of the Insurance Sarguis Sateir enquired of the Insurance broker how the Policy came into Ibram Cawns Power who said that Chocapah Chitty had given the Policy to Ibram Cawn in Order that he might Receive the Money - and in the Evidence of Machalah Vendapah he speaks first from Information to most of the Circumstances stated in the Evidence of Jagashes Davys Sarguis Santur and Agavelly Sateir, and he then speaks Positively to carry two Receipts to Ibram Cawn the Purport whereof was to Acknowledge his having received the Money from the Insurance Broker which the said Ibram Cawn did Acknowledge to have Received and said he would Sign the Receipts but he put it off from day to day and went to Arcot without Signing the same

All which Evidence taken collectively together with the Acknowledgement of Chocapah Chitty in his Answer upon Oath of the said Shake Abdul Rosack having written to him to make haste with the Insurance on his Bengal Ship Do as your Petitioner humbly apprehends fully establish the said Shake Abdul Rosacks Claim on the said Chocapah Chitty for the Amount Received under the said Policy Nor does it appear that the Nature of the transaction could Admit of fuller proof for Shake Abdul Rosack except from the Evidence of the said Ibram Cawn of whose Evidence your Petitioner was deprived by his having departed from the Jurisdiction of this Honble Court as appears from the Testimony of Machela Vendapah.

Secondly Because the Tenor of the Evidence on the part of Chocapah Chitty

Chitty tends only to throw all Responsibility on Coaly Chitty Comiapah as the Pretended Agent of Shake Abdul Rosack in his Affairs in General but no Part of the said Evidence Proves that Coaly Chitty Comiapah Received any Instructions from Shake Abdul Rosack About the Insurance in Question Nor do they venture to assert that he had any part in making the said Insurance or in Receiving the amount Insured or any part thereof nor is mention made of his Name by Sagashew Davys or by Agavelly Salue Sarkies Salue or Machalah Verdapah altho each of those Witnesses Speake fully of the said Insurance and of all matters Relative thereto from the Making the Insurance up to the Receipt of the amount insured by the express Order of Chocapah Chitty — and as to the Testimony of Several of the said Witnesses on the part of the Defendant it Appears to have been Calculated more with a View to impeach the General Character of Shake Abdul Rosack or the Pretended Aversion of the said Chocapah Chitty to have any Dealings with him than to disprove the Original Claim of the said Shake Abdul Rosack on the said Chocapah Chitty for the Amount of the said Insurance, and as to the Testimony of the Witnesses Adduced on the part of the said Chocapah Chitty the same is either founded on Hearsay, or take its rise from Conversations or from Incidents which happened since the Suit in Question hath been instituted and therefore inadmissible whereas the Merits of your Petitioners Claim on the said Chocapah Chitty are Supported by the Testimony of Two Armenian Merchants and an Insurance Broker of Credit and Reputation whose Evidence, as well as that of Machala

Machalah Verdapah on the Points of which he was himself informed is Clear, distinct and unequivocal —

And your Petitioner Sheweth that the said Appeal of your Petitioner Came on to be heard and determined before the said Honble the Court of Appeals on the thirteenth day of this Instant February when the said Court of Appeals were Pleased to Order and Decree and did Accordingly Order and Decree that the said Decree of the Honble the Mayors Court Dated the said Sixth day of September which was in the Year of Our Lord One Thousand Seven hundred and Eighty One, should Stand Affirmed and that your Petitioners said Petition be thence dismissed with Costs as by the said Several Proceedings in the said Mayors Court and the said Court of Appeals Reference being thereunto Respectively had may more fully Appear by which said Orders or Decrees Respectively your Petitioner Conceives he is Aggrieved for the Reasons above Set forth as also

First — Because that the Pretence Set up by the said Chocapah Chitty and which has, as your Petitioner Conceives, Actuated the Judgement of the said Mayors Court and the said Court of Appeals Namely that there is no Proof of the said Chocapah Chittys having been in due form of Law Authorized to act for your Pet.rs is not Sufficient to deprive your Petitioner of his Right against the said Chocapah Chitty for in such Case it might be in the Power of any Person of Commercial Faith and Reputation to act for Another in the Receipt of Monies and to evade the payment of such Monies to his Constituent if he has had that sort of Wily Caution which Appears to have been Practised by the

said

said Chocapah Chitty Namely to avoid Acknowledging to his Constituent his having Received the Authority under which he has Acted.

Secondly Because that by a Comparative View of the Account Current and Exhibits annexed to your Petitioners Original Bill of Complaint with the Account Current annexed to the said Chocapah Chitty's Answer and Cross Bill it Appears that the Bond for the Amount of which the said Chocapah Chitty hath filed his said Cross Bill is made up of the Premium of Insurance on your Petitioners Vessel and some other Matters of Account between your Petitioner and the said Chocapah Chitty, and that the said Chocapah Chitty could not have been in possession of the said Bond without having at the said time received your Petitioners Instructions to insure his said Vessel nor could Chocapah Chitty have had a Legal Right to sue for the Amount of the said Bond without having paid for the Premium of the said Policy the amount of which Premium was the Principal part of the Consideration of the said Bond so that the said Chocapah Chitty by the very Act of Suing your Petitioner hath not only Acknowledged your Petitioners Instructions to make the said Policy but hath also acknowledged the Receipt of the Premium which was paid for the said Insurance and these Circumstances are evident also from a Comparison of the Items for which your Petitioner gives the said Chocapah Chitty Credit with those for payment of which the said Chocapah Chitty hath Sued your Petitioner

Thirdly Because that the Reasons urged at the hearing of the Cause

Cause in the Honble the Mayors Court and in the said Court of Appeals namely that the Right of Action lay against the Insurers and not against the said Chocapah Chitty is not under the Circumstances of your Petitioners Case Strictly founded in Law and are entirely void of Equity for your Petitioner humbly insists that having given Instructions to the said Chocapah Chitty to insure and the said Chocapah Chitty having on the Strength of those Instructions aided by his own Commercial Credit insured your Petitioners Vessel in your Petitioners own Name and for your Petitioners Account and having Received the Amount insured is Responsible in Law to your Petitioner for such amount so Received from such Insurers and still more so on the grounds of Equity under all the Circumstances of the Case especially as the said Chocapah Chitty could not legally insure on his own Account any Sum of Money on a Vessel the Property of your Petitioner and wherein he the said Chocapah Chitty had no Real Interest and your Petitioner further Submitteth to the Consideration of your Most Excellent Majesty in Council that had your Petitioner brought his Action in manner as in the said Mayors Court and Court of Appeals it was Suggested he ought to have done, to wit against the said Several Insurers with Those Insurers might with Propriety have Pleased the Instructions given by your Petitioner to the said Chocapah Chitty and his Orders to the Insurance Broker to Insure and to Abram Cawn to Receive the Amount Insured, as also the payment of the said Amount so insured in Bar to your Petitioners Right of Action against such Insurers especially as it Appears

That

that your Petitioner was Absent from Madras during the whole time from and Previous to the date of the Insurance up to and after the date of the payment unto the said Chocapah Chitty of the Sums Insured—

For all which Reasons and such others as May be offered unto Your Most Excellent Majesty in Council at the hearing of this Cause your Petitioner Prays that your Most Excellent Majesty in Council may be graciously pleased to Reverse the said two several Orders or Decrees of the Honble the Mayors Court and Court of Appeals and to Order and Decree that the said Chocapah Chitty may be Decreed to pay unto your Petitioner the said Sum of One thousand Seven hundred and Seventy two Pagodas Twenty four fanams and forty four Cash together with Interest thereon from the [illegible] day of March which was in the Year of Our Lord One thousand Seven hundred and Seventy Nine, also all Costs of Suit hitherto incurred or hereafter to be incurred by your Petitioner

Stephan Popham
Attorney for Appellant

Before the Kings Most Excellent Majesty in Council

Between Shake Abdul Rosack by his Attorney John Fairney the Original Complainant and Cross Defendant and Chocapah Chitty Original Defendant and Cross Complainant

The answer of Chocapah Chitty of Madras Merchant to the Petition and Appeal of Shake Abdul Rosack by his Attorney John Fairney to the Kings Most Excellent Majesty in Council—

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 Setforth, for Answer thereunto Says that very true it is that the Appellant did by the means of his Attorney John Fairney Prefer his Bill of Complaint in the 4th April 1773 aboveasaid to the Honble the Mayors Court at Madraspatnam against the said Respondent the aboveasaid Chocapah Chitty on the day and year and for the Sum of Money, as mentioned and Setforth by the Appellant in his said Petition and Appeal, the Cause of Action, as it is said, and Charged by the Appellant in his Bill of Complaint arising on a Policy of Insurance, said to be Effected by the Respondent for the account of the said Appellant Pursuant to some Orders or Instructions, which the said Appellant Charges he gave in Writing to Sum, for to be made on a Vessell Called the Cauder Meuam Bux to the amount of Two thousand Pagodas, that the Sum of One thousand and Six hundred Pagodas, was only effected with some Guzerat

Underwriters

Charles Treamake

Underwriters by the means of the said Respondent as from Coringa to Bengall. the Appellant alledging in his said Bill of Compl.t that he Executed and gave a Respondentia Bond to the Respondent. for the amount Premuem on the Sum insured being One thousand and Six hundred Pagodas. the said Appellant in his said Bill of Complaint further Charging. that thes said Vessell the Cawder Meeram Bux, soon after her departure from Coringa was lost that soon after the intelligence of this Ills, he the Appellant being then at Rangoon in the Kingdom of Pegue, Says he wrote to the said Respondent directing him to receive the amount of the Sum insured and keep it in his Custody a translate of an Extract of the said Letter, as is Charged to have been wrote by the Appellant is annexed to the Appellant's Bill of Complaint. the Respondent is further Charged with having received another letter from the Appellant dated the 15th May 1777. wherein he is said to be informed, that the Appellant intended to draw a Bill of Exchange for the amount in favor of a Soucar or banker which was to be paid on his receipt and the same to be remitted to the Appellant by another Extract of a Letter annexed to the Bill of Complaint the Original whereof is said to be written by one Comrapah at Madras under date the 28th June 1777. wherein the Appellant is informed that the Respondent had received the aforementioned two letters from the Appellant, but that he the Respondent had not received the amount of the Insured Money, and that he must not draw upon him the Bill of Exchange untill he

He Receives the Money, the Appellant further Asserted, that he had sent an Order to the Respondent for to Pay the amount of the Sum Underwrote unto one Madina Saib, which was never Complied with which induced the Appellant as he Says to leave his Employment at Masulipatam, and came to Madras, to this Bill of Complaint the Appellant annexed Translates of Sundry Extracts of letters, as written by himself and others, but no Exhibit is made of any letter or Extract of any Original letter, which is charged to have been written or sent by the Respondent in answer to any one letter sent by the said Appellant or his People, to this Bill of Complaint the Respond.t Appeared, and put in his Answer, and denied his being any ways indebted unto the Appellant in any Sum of Money whatever, but on the Contrary that the Appellant or his said Attorney Stood indebted unto the Respondent in the Sum of three hundred and thirty Pagodas four fanams, and Six Cash, as Appeared by an Account Current annexed to his answer for the ballance of which he said, the said Respondent preferred his Cross Bile of Complaint. the said Answer Specially Setting forth the several Circumstances attending the Correspondency, and denying to be any ways Privy, as to the receipts or Knowledge of the several Original letters or Extracts of Letters. Translates of which are annexed to the Appellants Bill of Complaint, but that he the Respond.t believed, that the whole of this Charge was a mere fiction to Harrass the said Respondent and that by an inspection into the several Dates of the Several Extracts and the

Charge

Charges alledged by the Bill of Complaint, there would appear many Erroneous and uncertainties, the said Respondent further Says, that this Answer of his, was very Special and Entered into a minute detail and Enquery of every particular alledged to his Charge in the Appellants Bill of Complaint the Respondent further Observed in his said Answer, that through out the Bill of Complaint he the Respondent is not charged directly or indirectly with having undertaking to Recover the Amount of the Sum insured, no wording or answer to the several letters said to be wrote by the Complainant has been Produced or Offered to be produced by the Appellant to Shew or Prove, that the Respondent assented to transact this business either in the Effecting of the Policy of Insurance, or the Recovery of the amount of the Loss, nor is the Respondent Charged with having received from any of the Underwriters, their respective Proportions of the loss, nor any one instance Produced so as to Charge the Respondent with the receipt of the loss from the Underwriters the Respondent observed further in his Answer, that had there been the least room or the least Shadow of Probability, that the Respondent had received either directly or indirectly this loss the Appellant would have with equal Industry Set forth the same, as he had done to Set forth what he calls Extracts of letters, which the Respondent asserted in his Answer, never Originated but were only introduced in the Bill of Complaint to aggravate Circumstances which in fact did no other Service than to Quash the Bill of Complaint for want of Certainty the Bill of Complaint being replete with Errors as to Persons dates and Circumstances the Answer Pointing out the same, and also the Person employed by the Appellant as his Agent or Broker in this Particular business, whose name was Cody Chitty Comrapah the Person mentioned in the appellants Exhibits to his Bill of Complaint, and which was Proved to be so, by the Sundry Exhibits annexed to the said Respondents Answer to the Bill of Complaint, by which it Appeared that the said Respondent had nothing to do with the Recovery of the loss, on the Policy of Insurance, but that the same was to be the Act and Deed of the said Cody Chitty Comrapah, who was the Person who Effected the Policy for Account of the said Appellant and with whom the Policy continued the Respondent in his Answer Admitted that a Letter wrote by the Appellant was brought by a Noqueda to Selsett from Rangoon Accompanied by Cody Chitty Comrapah, when the Respondent told the said Cody Chitty Chomrapah in the Presence of the said Noqueda that he would not interfere or intermiddle with the affairs of the said Appellant and on so Saying and Expressing himself, the Respondent Supposed, he had a Right so to do, as a person may Appoint another for to Act for him, but the other may Refuse to act, for without an Acceptance the Appointment is invalid and of no Effect as the Respondent was advised, the Respondent further Observed in his Answer that he did not Know how this Charge of the loss should be carried to his Account all that could be inferred from the Letters was for him the Respondent to hasten the Appellants Attorney at Gumastah to finish the Policy for two thousand Cyco das or to hasten the Recovery of the amount loss but as the Respondent had no business with it he did not give himself any

trouble

trouble about it, which if he had; he the said Respondent was entitled to Commission both on the Effecting of the Policy as well as on the Recovery of the Money if any had been by the Respondent which was never the Case for he Setforth in his said Answer, that he had heard and was informed that this said loss had been Settled by the means of the Appellants or his Agents for him after the rate of Twelve p.r Cent discount of which Circumstance he the Appellant or his People must best know, and what became of the Policy and what Receipt and Receipts was and were given for the respective Sums Received and who were the Persons that Received the same, and by whose Orders and directions he or they Received the same and for whose Account for nothing of this Appeared in the Appellants Bill of Complaint except by the Account Current wherein it is Charged as Received the 17th Day of Sept.r 1776 and by the Appellants own Shewing the Sum was not Received the 28th day of June 1777 all of which evidently tended to Shew the Absurdity of the Charge brought against the Respondent, for the Bill of Complaint did not even Say or Express that the Respondent did so much as give Receipts for the Money or that the underwriters payed the Respondent their Proportion of the loss nor does the Appellant on his Bill of Compl.t Charge the Respondent with having any Authority to receive the same, the said Respondent further on his said Answer Submitted it to the Consideration of the Court, whether he was Sufficiently Authorized to Receive the amount loss from the Respective Underwriters, the Respondent not being in possession of any Voucher so as to make up the amount of loss with the

Underwriters

Underwriters or to Support the Appellant in the demand the Respondt in his said Answer, Specially Setforth the Circumstances attending the Management as Committed by the Appellant to the Charge of his Agent or Broker the said Cody Chitty Comrapah in the Recovery of the amount loss the Respondent in his Answer Proceeded to Shew the Absurdity of the Appellants Account Current annexed to his Bill of Complaint, the Respondent further in his Answer Specially Answered unto some particular Interrogatories inserted in the Bill of Complaint, amounting to a total denial of every Article and thing as Charged to his Account by the Appellants Bill of Complaint: to this Answer were Sundry Exhibits annexed in proof of what the Respondent asserted in his Answer the Respondent at this the time of his filing his answer also put in his Cross Bill of Complaint against the Appellt for the Sum of three hundred and twenty Nine Pagodas twenty Seven fanams, and Forty Eight Cash, as the ballance of his Account Current with the Appellant to this Answer and Cross Bill of Complaint the Appellant filed his Several pleadings and Endeavoured by every Argument to Support his Bill of Complaint and his Answer to the Respondents Cross Bill of Complaint which induced the Respondent to Enter more Particularly and Minutely into the Merits of the business by filing several Special Papers as Replys and Rejoindas which when done the parties Appellant and Respondent Joined issued and Examined their several Witnesses the Evidence on the part of the Appellant being Sagashea Davy a Broker of Madras who deposed, that he at the Request of the Respondent insured for Account of the Appellant the Sum of

One

One Thousand Six hundred Pagodas, on a Vessell called the Cawder Meuam Buxe. and that he delivered the Policy to the Appellant that he had heard She was lost and that a demand was made for the Amount of the Sum insured by Ibram Cawn that he the Deponent asked the Appellant if he should pay the amount to Ibram Cawn who told him to pay the same which he the deponent Says he did that the Policy was made out in the Name of the Appellant. Sarguis Salar, deposes for the Appellant and Says that he paid his Subscription, being two hundred Pagodas on this Policy to Ibram Cawn, whereas the Evidence Jagasher Davy deposes that he Paid the amount loss to Ibram Cawn, by Order of the Appellant but of whom he Recovered the whole amount loss. the said Jagasher Davy does not Say any thing what he did with the Policy nor whether any and what Receipts he procured from the said Ibram Cawn. nor is there any dates nor any Sums, nor how this Account was Adjusted or Settled Set forth by this or any other Witnesses the part of the Appellant the remaining Witnesses on the part of the Appellant Speaking only as to information but Nothing Positives or certain on their part the Respondent on his part Proceeded to Examine Witnesses who Deposes their knowledge of Cody Chitty Comapah being the Gomastah or Attorney to the Appellant and transacted his business for him, likewise of the Respondents refusing to have any thing to Say or do with the business of the Appellant. the Witnesses also deposes as to their knowledge of the Hands Writing of the Appellant and others to the Oregenal letters translates of which were in the Course of the Proceedings Exhibited by the Respondent the said Respondent did also Examine Cody Chitty Comapah the Person

Person Mentioned in the Proceedings, to be the Gomastah or Agent for the Appellant, who deposes in every particular manner with his being the Agent Gomastah and broker for the Appellant for upwards of Seven Years that he was Reputed deemed and taken by all the Inhabitants of Madras as the broker Agent or Gomastah of the Appellant. and that what he the said Cody Chitty Comapah did for Account of the Appellant was allowed of by the Appellant that he the said Witness in the month of September 1775. waited on the Respondent with a letter as from the Appellant to the Respondent who Refused to Comply with the Contents, or having any thing to do with the Appellant that he the said Witness did by directions of the Appellant, cause to be insured for account of the Appellant the Sum of One Thousand Six hundred Pagodas with some Europ Underwriters, and his so doing was without any Interposition of him the Respondent in any Shape whatever the said Witness also deposes, that upon his hearing of the loss of the Vessell he did apply to the Respective Underwriters for payment, and which by Orders he was to place the same in the hands of a Soucar or Banker that he the said Witness did again in Company of the aforementioned Ibram Cawn demand payment, and the same was promised in Ten Days, in which time Witness fell ill and Ibram Cawn Settled and Adjusted the Accounts upon an Abatement of One hundred and Sixty Star Pagodas and Received the Respective Subscriptions of the Underwriters as the Property of the Appellt and this so done, without the Privity and Consent of the Respondt the said Respondent further Says that all the Witnesses on both Sides being Examined Publication Closed and the Cause Set down for hearing which came on and was Determined on the day and year

on

In manner and form as Setforth by the Appellant from which said Decree of the Honble the Mayors Court the said Appellant did Appeal to the Honble the President and Councell of Fort Saint George, as the Court of Appeals and therein did Pretended to Assign a Number of Causes as motives for his Petition and Appeal being Observations by him made on the Depositions of his Own Witnesses as also on those of the Respondent to which the Respondent did make his answer in every Special manner where a Candid and fair brief Recital of the whole was Clearly Setforth and Shewn, with certain Arguments made use of in Support of the Respondents Cause which Petition and Answer came on in the said Honble Court of Appeals on the day and year as Setforth in the Petition and Appeal, when the said Honble Court of Appeals were Pleased to Confirm the Decree of the Honble the Mayors Court with Costs to be Paid by the Appellant from which said Decree of the Honble the Mayors Court and the Affirmation of the Honble the Court of Appeals he the said Appellant has thought Proper to Appeal to the Kings Most Excellent Majesty in Council for certain Causes by him Assigned in his said Petition and Appeal. First he the Appellant alledges that the Pretence the Respondent Sets up in Support of his Assertions in his answer that there was no proof of the Respondents being duly Authorized to act for the Appellant, the same was not Sufficient to deprive the Appellant of his Right against the Respondent who only as the Appellant asserts made Use of this Plea to evade making Restitution to the Appellant of what he had Received. In answer thereto the Respondent Says, that in the first place he never Accepted of any Commission from the Appellant that the Business of Procuring Underwriters on the Policy of Insurance was transacted of Cody Chitty Comrapah the attorney or Gomastah for the appellt. the Stating and Settling of the Account on the loss with the Underwriters was a Transaction that Vested with the said Cody Chitty Comrapah as Agent aforementioned as it could not be Supposed, that the Underwriters would pay their Subscriptions to the Order of the Respondent who in the first place had no Authority to Compell them so to do, and in the next place no Document or Voucher Announcing the loss of the Vessell nor any Proof of Property in the Appellant, Save the Policy and what is became of that Writing the Appellant is Silent on, as well as the Names of the Respective Underwriters the Respondent further begs leave to Observe, that had any Orders been given by the Respondent for the Receipt of the Sum underwrote that the paying and Receiving would not have injured the Appellant nor worked to his Prejudice as the same was done without any Authority and it is further to be Observed and it is also well Known that the said Guzarats who are underwriters at Madras, and with whose Cast it has been time immemorial to underwrite and who are Noted for their Knowledge in this Particular branch of Business to be very Exact and very Cautious, how they pay Money upon the bare assertion of another all which leads the Respondent to Suppose that the Appellant has misunderstood his Suit as against the Respondent which should have been against the Person who Received the Amount of the Loss being Cody Chitty Comrapah the Appellants Agent or Attorney

To

To the Second Cause Assigned for the Appellants, Appealing to the Kings Most Excellent Majesty in Council, and wherein he Endeavours to make it Appear, that by the Respondents accepting of a Respondentia Bond from the Appellant in which was included the amount of the Premium advanced to the Guzerat Underwriters, that the said Respondent has admitted of having Received Instructions from the Appellant to make the Insurance the said Appellant forgetting at this time that the Transaction relative to the Respondent was the Act and Deed of Cody Chitty Comrapah the Agent or Attorney for the Appellant and that although instructions might be given the Respondent to get effected the Insurance yet it does not follow, that he the Respondent was thereby empowered to Receive the amount Lofs, or that he had any authority to employ another Person to Collect and Receive the amount of the same, To the Third and Last Cause Assigned by the Appellant for his Appealing Because the Respondent alledged at the hearing of the Cause that the Right of Action lay against the Insurers and not against the said Respondent which he the Appellant Says is not Strictly founded in law and entirely Void of Equity for as he the Appellt had given Instructions to the Respondent for insure and having so done in the Appellants Name and for the Appellants Account and having Received the amount insured he the Respondent in Law was responsible to the Appellant for the amount of the Lofs received the said Respondent in answer thereto Says that in the first place he never acknowledged to have Received any Instructions from the Appellant but on the Contrary when Application was made to him by Cody Chitty Comrapah, he Rejected the Application and Refused to have any thing further to do with the Appellant and as to the Receipt of the amount Lofs it has never been Charged to the Respondents Account to have been by him Received and as to any Plea, that the underwriters might have made Use of in bar of the Appellants Demand, the same is Ideal and Suppositions, Because they the Underwriters would not have Paid their Subscriptions upon the bare word of a Person no ways Authorized and indeed the Respondent Suspects the Truth of any Policy being Effected, for the Appellant as neither the Instrument has been produced the Names of the underwriters Lofforth nor how, or in what manner the account Lofs was Settled and when Paid by whom, and to whom, nor in short any one Voucher or Evidence Produced so as to Establish the Recovery of the amount Lofs from the Underwriters, who are very well Known to the Merchants to be Men of business and would not Pay a Single Cash of their Subscriptions, without the Neefsary proofs of the lofs and the Interest of the Insured therein the Respondent lastly Says that the Charge alledged against the Respondent by the Appellant in his Bill of Complaint is a great Injustice and wrong done to the Respondent and appears to have been invented by the Persons employed by the Appellant in the Transaction of effecting the Policy if the same was ever made which if really done and the lofs Settled and Paid they or some of the Guzerat Underwriters, might have been Examined as to this Single Circumstance by the Appellant who for Reasons best Known to himself has thought Proper to Omit the same, as well as to Omit Producing the Policy and the accounts of the lofs Adjusted.

For

For all which Causes the said Respondent humbly Conceives and is advised, that the said Decree of the Hontble the Mayors Court at Madraspatnam and the Affirmation of the Hontble the President and Council of Fort St. George as a Court of Appeals, is Agreable to Equity and Justice and therefore humbly hopes that the same shall be affirmed, and that the said Petition and Appeal before the Kings Most Excellent Majesty in Council, be dismissed with Costs.

Charles Bromley
Attorney Respondent

To the Honble the Court of Appeals at Madraspatnam

Between Francis Torrens of Fort Saint George a Lieutenant in the Hontble Companys Service Complainant and Charles Banks of the same place Merchant Defendant

The Humble Petition and Appeal of the said Defendt

Sheweth

That on or about the twenty third day of October which was in the year of our Lord One thousand Seven hundred and Eighty the Complainant did file a Bill of Complaint in the Hontble the Mayors Court at Madraspatnam against your Petitioner Setting forth. That your Petitioner was Indebted unto

Filed in my Office
the 30. July 1781
Charles Freeman
Clk

him in the Sum of three hundred and fifty Pagodas 350 Current Money of Madras, by Vertue of a Bond or written Obligation from your Petitioner bearing Date the Sixteenth day of April which was in the Year of Our Lord One thousand Seven hundred and Seventy Seven to which said Bill of Complaint a Copy of said Bond or Obligation was thereunto annexed and the Complainant did in and by his said Bill Pray a Decree or Judgement of the said Court against your Petitioner for the full amount of the said Bond or written Obligation, together with all Interest that then was or might thereafter became due and all Costs of Suit &c. To which said Bill of Complaint your Petitioner did on or about the Ninth Day of January in this Present Year One thousand Seven hundred and Eighty One file his Plea and Answer in which said Plea and Answer was fully Shewn unto the said Hontble the Mayors Court that some time after the Execution of the Bond or written Obligation in question that is to say on the Tenth Day of May One thousand Seven hundred and Seventy Seven, he your Petitioner at the Request and Desire of his Creditors or the Major Part of them did execute a Deed of Assignment by which certain Trustees of his Creditors Electing immediately became vested and Possessed of all his Estate Real Personal or mixed of any and every Kind Nature and Quality whatsoever or wheresoever for the Payment of all his debts then due and owing by him the overplus or Residue of such Estate and Effects after Satisfying his said Creditors being by the Trustees to be reassigned and vested in your Petitioner In consequence of which your Petitioners Creditors or the Major Part of them amongst which Number the Complainant in this Cause

Cause was one did Execute under their Respective hands and Seals a
letter of Licence bearing even Date with the said Deed of Asseignment
which said letter of licence setsforth that your Petitioner had in order to give
every Satisfaction in his Power to his Creditors assigned over all his
Estate Real and Personal to Certain Trustees by them appointed
Inconsequence whereof they Covenanted to and with your Petitioner
to allow give and grant unto him full and free Liberty Licence
Power and Authority to go about attend follow and Negociate any
Affairs business Matters and Things whatsoever without any
to or at any Place or Places whatsoever or whereso ever
Let Suit trouble Arrest Attachment or other impediment to be
offered or done unto him your Petitioner his Wares Goods monies or
other Merchandize whatsoever or any of them or any Part of them
by the said Creditors who had Executed the said Instrument their
Constitutions Heirs Executors Administrators or assigns of them
or any of them or by their means or Procurement for the space of
three Years from the Day of the Date thereof your Petitioner
further Setforth in his said Plea and Answer that his Estate
did then and doth yet remain vested in the hands of the said
Trustees to whom the Complainant ought to resort for satisfaction
of his said Debt Agreable to the Nature of the Assignment and
Deeds Executed by both Parties that untill the Trustees had
accounted for their Discharge of the Trust so reposed in them
by the Creditors and Declared the Estate fully Expended and
Disbursed in the payment of your Petitioners Debts or Vested the
Residue of the said Estate and Effects in your Petitioner he could
not be considered Personally liable to Account for and be
Answerable for such Debts as he had before Satisfied in the
best manner possible being by such Act for the satisfaction

of

of his Creditors Dispossessed and left without any means to answer
for or Pay the least Demand against him. he humbly Submitted
to the Judgement of the Honble the Mayors Court if he ought
not to be Dismissed with his Reasonable Costs your Petitioner
further Sheweth that on or about the thirtieth day of the said
Month of January in this Present Year the said Complainant
filed his Replication in which said Replication he strongly
Contended that he had a Right to Support and Maintain his
said Suit against your Petitioner tho' in the said Replication he
Admitted the Trust for the Uses and Purposes before recited
and that he the Complainant had Executed the said Letter of
Licence he also Admitted that he could resort to the Trustees of
the Estate for Satisfaction of his said Debt. but Persisted as it
were against Reasons and Equity to harrass and Persue a
Destitute man in preference for he fully insisted upon his
Right of Action against your Petitioner. to this Replication
your Petitioner filed in due Course agreable to the Practice of
the said Mayors Court his Rejoinder by which said Rejoinder
your Petitioner did Support and abide by all the matters and
things in his said Plea and Answer before Setforth humbly
Contending that it was Contrary to Reason and Equity to
hold him your Petitioner accountable for that very Property
he had at the Request and Desire of the Complainant in
Conjuction with his other Creditors long since parted with
in Order to Make him and the Rest of his then Creditors
full Satisfaction for their Respective Debts. Your Petitioner
further begs leave to Represent unto this Honble Court that
on the Seventeenth Day of July in this Present year One
thousand

thousand Seven Hundred and Eighty One, the said Cause came on to be heard by and before the said Honble the Mayors Court when amongst other things your Petitioners Attorney begged leave to claim the attention of the said Court to the particular Situation of your Petitioner and offered to lay before them an exact Statement of his Accounts by which it appeared that he had delivered over to the Trustees of his Estate Effects Bond and Book dates &c. to the amount of two hundred and Eighty thousand Pagodas 280000 Current Money of Madras and upwards and that his Debts did not amount at the time of the said Assignment to more than One hundred and ten thousand Pagodas 110000 that the heavy losses his Estate had Experienced by a low and bad Sale of a large and Valuable Stock in hand the Circumstances of the Country and the Nabobs Credit at this Crises all conspired against him and were circumstances for which he could not Answer Yet he hoped there would be enough remaining to Pay all his Creditors Notwithstanding these said matters and things so Stated and also his said Plea and Answer the said Honble the Mayors Court were Pleased to Order and Decree and did Accordingly Order and Decree your R.t to Pay the said Debt and Costs an attested Copy of which said Decree is hereunto annexed for the Inspection of this Honble Court and prayed by your Petitioner to be taken and received as part of this his Appeal by which Decree or Judgement of the said Honble the Mayors Court your Petitioner doth consider himself Particularly Aggrieved and Doth therefore Appeal from the said Judgement or Decree

Decree of the said Honble the Mayors Court to the Judgement of this Honble Court for the Reasons before stated and in his said Plea and Answer Set forth and Shewn as well as that he doth consider it Repugnant to the intent and meaning of the Laws of Great Britain to hold him responsible for such Debts so long since Satisfied by the full Assignment of his Estate and Effects and humbly hopes that this Honble Court will be Pleased to take his particular Situation into their Serious Consideration, and to Reverse the said Judgement or Decree of the said Mayors Court with Costs to be paid by the Complainant both in the said Mayors Court and in this Honble Court

Edward Ellis

Attorney for the Appellant

Mayors Court at Madraspatnam } Tuesday the 17th Day of July Anno Domini 1781

Present

Benj.n Roebuck Esquire Mayor

James Call and Edw.d Garrow

Aldermen

Between Frances Torrens of Fort Saint George a Lieutenant in the Honble Company's Service Complainant and Charles Darke of the

the same place Merchant 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 with Copy of a Bond Annexed The Defendants Plea and Answer the Replication and the Rejoinder 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 do pay unto the Complainant the full and Just Sum of three Hundred and Fifty Pagodas / Pags. 350. ... ... / 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—

P Cur
James Taylor
Regr.

In the Honble the Court of Appeals

Between Charles Darke of Fort Saint George Merchant Appellant and— Frances Torrens Lieutenant in the Service of the Honble the United English East— India Company Respondent

Filed in my Office
the 18th Augt 1786
Charles Freeman
Clk

The Answer of Lieutenant Frances Torrens to the Petition and Appeal of Charles Darke

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 Says, that he did file his Bill of Complaint in the Honble the Mayors Court on the day and Year against the Appellant, as is by him Set forth in his Petition and Appeal for the Sum of three hundred and fifty Pagodas as a Debt due— upon Bond, to this Bill of Complaint the Appellant did— Appear and Demurr but the same was over Ruled with Costs with an Order for the Appellant to Answer the Respondent further Says, that on the day and Year as Set forth by the Appellt in his Petition and Appeal, he the Appellant did file a Plea— and Answer and therein did allledge among many other matters, that the Respondent ought not to have made any Demand against him the Appellant as the same was contrary to Law and Equity because that on the Tenth day of May in the Year of Our— Lord One thousand Seven hundred and Seventy Seven, he the Respondent as the Appellant Says, did with the Concurrence— and Approbation of the Rest of his Creditors Accept of an— Assignment of all the Appellants Estate and Effects in Law, Discharge and full Compensation, of all and Singular his Debts of every Kind and Degree whatsoever, a Copy of which Assignment the Appellant has verbatim introduced in his aforementioned Plea and Answer, further Setting forth in his said Plea and Answer, that he the Appellant had Strictly fulfilled all and Singular his Engagements that were— Incumbent on him, and therefore that he had not to be— called before the Honble the Mayors Court or any other Court of Record Personally to answer such matters and—

things

things as are by vertue and force of such his Afsignment by his Creditors Accepted the said Respondent further Says that in this Plea and Answer the Appellant has introduced an Extract of an Act of Parliament Passed in the fourth and fifth Year of Queen Anne, as if such Act of Parliament was in favor of the Appellant, whereas on the Contrary the same is intirely for another Purpose and no ways relative to the matters in question the Appellant further in his Plea and Answer Submitted it to the Judgement of the Honble the Mayors Court whether the Afsignment so by the Appellant Executed and Accepted of by his Creditors, ought not to be Received in full Compensation and Discharge of all his Debts as were then Owing more particularly as his said Creditors had granted him a Letter of License a Copy of which the Appellant annexed to his said Plea and Answer, the Appellant further in his said Answer Asserting, that as his Creditors having so Accepted of the Afsignment that it was the business of the Creditors to resort to the Trustees for the payment of their respective Debts the Appellant further in his Plea and Answer Referred the Honble the Mayors Court to Copies of Accounts annexed to the same, thereby Pretending to give an Account of his Concerns which he Says the Creditors did of themselves Afsign over to certain Trustees of their own Electing and Choosing denying that he gave his Consent for such trust so to be Reposed, the Appellant further in his said Plea, by very Erroneous Argument and Conclusions Endeavoured to make it Appear, that he ought to be considered in the light of a Bankrupt on account of his having Afsigned over all his Effects to his trustees, and that it was the business of

of his Creditors to Exonerate him from all Incumberances or Difficulties that he might be Embarrafsed with an Account of any Law Suits, and that it was the business of the Creditors to Compell the Trustees to Account and Discharge the Trust in them Reposed by the Creditors to their Satisfaction and relief of him the Appellant the Respondent further Says, that the aforegoing is all the Substance of the Appellants Plea and Answer. To this Plea and Answer the Respondent was under the Necefsity of Specially Replying and thereon the Respondent did insist on the Propriety of his Demand and did thereon further insist that the Deed of Trust Pleaded by the Appellant did not in the Operation so as to bar the Respondent from his Demand more particularly so from the Expreſs words in the Afsignment wherein he the Appellant Says he being indebted to Sundry Persons and not being able to Pay or Satisfye them without Respite and time given him for the payment thereof, and in the Reply the Respondent further Observed that it did not any where in the Deed of Trust appear, that such Afsignment of his the Appellants Effects was in full Compensation and Discharge all his the Appellants Debts, but only that such Afsignment was made to Secure payment as far as his the Appellants Effects would go and the Respondent did also Observe and Count out, that the absolute Defeasance was not in the Trustees because of the right the Appellant had to the Overplus if any and which had been Specially Reserved to him by a Covenant or Clause inserted in the said Deed of Trust the Respondent further in his Reply did insist that he was not Precluded by

any

any Words of the said Deed of Trust from bringing his Actio
against the Appellant for the Amount of the Principal and
Interest due on his Obligation to the Respondent, the Respond
in his Reply denied that the Appellant had Strictly fulfil
his Engagements to his Creditors neither did the Respondent
Admit of his the Appellants Pleading the Act of Queen An
to be in Support of any part of the Appellants Plea, because the
Respondent in the first place had got no Satisfaction either
Part or in whole from the Appellant or his Trustees as their
Effects made Over were not Sufficient to pay his the Appel
Specially Creditors or those Creditors expressly mentioned
and provided for in the Deed of Trust, and in the Second
Place that the Act of Queen Anne expressly mentioned the
Payment of both Principal and Interest thoughand Strictly
to the Tenor and Condition of such Bond may be pleaded in bar of
Action, as if the Money had been Paid by the day on which th
same was Conditioned, but the Respondent insisted that this
Act of Queen Anne could not be Pleaded against the Respondent
as he was an unsatisfyed Creditor, the Respondent further
insisting that he could not be barred from bringing his Action
by means of the said Assignment or Deed of Trust, because such
Deed was not in the Nature of a bargain and Sale as a full
Discharge of the Appellant only as a Security for the payment
of his Debts as far as his Effects would go the Respondent
further in his Reply observed that the Appellant was not himself
clear as to the certainty of his Plea as he desires the Opinion
of the Court thereon, the Respondent Admitted that he did
Sign Seal, and Deliver the Original Letter of License a Copy
of

which is annexed to the Appellants Answer but denied that such
Letter of License made in favor of his the Appellants Plea, but on the
contrary tended to destroy the very matter he the Appellant meant
to Support for the Repliant observed, that when the Letter of License
was granted the meaning and intention of the Creditors was to give
a period on Order to give the Appellant an Opportunity of Settling
his Accounts and Assisting his Trustees, as the words of the Letter
of License Shews and expresses, which bears a Reference to the Deed
of Trust and bears even date therewith, and Recites the said Deed
of Trust the Respondent further Observed, that had the Creditors
Deemed themselves Sufficiently Discharged and Secured in their
respective demands by the Deed of Assignment, they would
have deemed it unnecessary to have entered into and given a
Letter of License to the Appellant the Respondent further asserted
that he held the Appellant responsible to him and that his
Agreeing to the Assignment was as a matter of favor done the
Appellant and as a Security to the Creditors as far as such
Assigned Effects would go, and that the granting a Letter of
License to the Appellant was more favorable to him the Appell
and an Absolute Ityes for the time being, on the Creditors the
Respondent further Observed in respect to the Appellants
alledging "that he the Respondent ought to have resorted to
the Trustees and not to him the Appellant that after his the
Respondent waiting until the Expiration of the time in the
Letter of License, Set forth he was at Liberty to resort to the
Appellant for Satisfaction and payment of his Bond for
it might so appear, that the Effects made over were not
Sufficient which the Respondent Says was the really the

Case

Case, and therefore the Respondent not Sloped in bringing his Action against the Appellant the Respondent further Observed, that it was of no Consequence to him what the Trustees had done with the Effects but that as the time limitted in which he ought to have been Paid was expired he had an undoubted Right to Prefer his Bill of Complaint against the Appellant the Respondent denied that the accounts which were annexed to the Answer were true or Just as they were many Dubious and very desperate Debts and some that remain to be Settled in doing of which many years would be Required and perhaps never Paid. the Respondent further Observed, that were he to Enter into a Discussion of these Accounts much time and great Expence would be the Consequence without the least benefit to the Respondent, further in his Replication, made Summary Observations on the Arguments made Use of by the Appellt in his Plea and Answer, and denied the Appellant any benefit that accrued to Bankrupts or that he was in the least intitled to any favor from either his Trustees or Creditors occasioned by the Duplicity of his Conduct and his inattention to his Concerns on many Occasions, the Respondent concluded his Special Replication with denying every Argument that the Appellant had Attempted to introduce in his Plea and Answer, and insisting that he the Respondent was at full Liberty to Seek his Redress against the Appellant, as he the Respondent never meant or intended to Release the Appellt from his Obligation but by a full Discharge of both principal and Interest to this Replication the Appellant did further a Rejoinder wherein he alledged that the Respondent endeavoured

more

More to harrass and Oppress him than to Recover the demand he had on the Appellant and Persisting in his Idea of the Creditors being under the Necessity of Exonurating him from any further demands by their having Accepted of the Assignmt and appointing Trustees for the better Management of the concerns the Appellant further in his Rejoinder insisted that his Estate and Effects so Assigned over were Estimated at a much greater Value than all his Just Debts nearly if not quite double the Amount of his the Appellants Debts, all of which he the Appellant Says he is deprived of and the Advantages and benefits Arising therefrom, but hoped they were Applied to the Discharge of his Just Debts, or that they remained in the Hands of his Trustees, would appear to the Honble the Mayors Court that he had done every thing in his Power to Satisfye his Creditors, and that his Creditors ought in Justice to see that a proper Use had been made of his Estate and Effects, and that they might be applied to the use of the Assignment, and that in Case of any Neglect or Waste committed by the Trustees, he the Appellant conceived they ought to be Responsible to the Respondent and his the Appellants Creditors, and that his Creditors ought to resort to the Estate and Effects so Assigned as aforementioned and not to him the Appellant, The Appellant further alledged that in Case the Respondent had Received no Satisfaction from his the Appellants Effects it was his the Respondents own fault or Neglect as he had Signed to a Letter of Licence and thereon acknowledged to have accepted or part with the other Creditors of the said Assignment of the Appellants Estate and Effects as a Satisfaction for his Debt

and

and therefore that the Respondent ought to resort to the Trustees &
and not to the Appellant the Appellant further in his Rejoinder
Persisting in his Ideas of the Creditors obliging the Trustees to
discharge the Trust so committed to them and that it was
his Opinion that had the Trustees demeaned themselves as
they ought to have done that the Amount Sales of his Stock on
Trade and his outstanding Debts would have been more
than sufficient to pay all his Debts Notwithstanding what
the Respondent did alledge to the Contrary and therefore
leaves the Respondent to his Remedy against the Trustees and
thus Concludes the Rejoinder Issue being Joined and no witnesses
Examined on account of the Merits in the Opinion of both parties
Depending only on Opinion the Cause was Setdown for hearing
and the same came on to be heard and was determined on the
day and Year and in manner and form as Setforth and Expressed
in an Attested Copy of the Decree annexed to the Appellants
Petition and Appeal from the Original whereof he the
Appellant has so Appealled as deeming himself Aggrieved
thereby because he Says that the holding him responsible
for the debt due to the Respondent is Repugnant to the Laws
of England which debt and all other his Debts have been
so long since Satisfyed by the full Assignment of his Estate
and Effects, for which reason he the Appellant prayed that the
said Decree of the Honble the Mayors Court might be reversed
and Set aside with Costs to be paid by the Respondent In answer
to the Petition and Appeal the Respondent humbly begs
leave and in which he is Advised to offer a few Arguments in
Support of his Action, and in Order to Confirm the Decree of
the

the Honble the Mayors Court. And first the Bond or Obligation
for the Sum and under the Hand and Signature of the Appellt
as Setforth in the Proceedings before the Honble the Mayors
Court is by him the Appellant Admitted and therefore needs
no further Proof to Establish its Existence and more especially
as the amount thereof does not in any Part of the Proceedings
Appear to be Discharged either in part or in whole in the
Second Place the Respondent Says, he has in the Proceedings
Admitted of his having Signed with others of the Appellants
Creditors a Letter of License whereby a Term of three Years was
granted the Appellant to Assist him in the Adjusting and
Settling of his Accounts the Terms of which Letter of Licence
the Respondent has complied with and has received neither
benefit or Advantage from such his the Respondents Lenity,
but that the whole of such Transaction was a Contrivance
of the Appellant to Embarrass and perplex his Creditors and
those Concerned in his Affairs in the third Place the
Respondent Admitts of having acceded to the Deed of Trust,
yet as there are not Assets Sufficient and the Respondent not
Paid, either in part or in whole that he is not barred from
bringing his Action against the Appellant fourthly, that
there does not appear any Clause, Covenant Condition or
Proviso in the Deed of Trust, that implies or Expresses a
Discharg of the Appellant, other than a payment in full to
all his Creditors and in Case the Deed of Trust had been
Accepted in the manner so strenuously asserted by the
Appellant there is not the least doubt of a Release being
required and given, but on the Contrary a Letter of Licence

is

as Applied for by the Appellant Limitted to three Years, in order to free him from Arrests during that Limitation, and the same was granted him. this Letter of License, the Respondent Says and is Advised is a flat Contradiction to what is Asserted in the Plea and Answer of the Appellant and Shews plainly, that by the Deed of Trust the Estate and Effects of the Appellant were never made over in full Compensation and Satisfaction of his Creditors but only made over to Trustees for the use of the Appellants Creditors as far as such Effects would go the Respondent further Says, that it is very unreasonable for the Creditors of the Appellant to be without relief, whose Demands remain unsatisfyed and that Owing to the Sales of the Effects falling short and bad and desperate debts outstanding, and which cannot be recovered in a Series of years the Respondent further Says that it is not reasonable to Suppose that he cannot put himself to the Expense and trouble of calling the Trustees to Account more Especially as he is well convinced they have done every thing that lay in their Power to Execute their trust which has in a great Measure been fructrated by the Negligence and inattention of the Appellant, and the Respondt being also very certain that the Trustees can Justifye their conduct so that it would have been to No Purpose to have entred a Prosecution against them the Respondent Lastly Says that he knows of no Laws Existing that does deprive him of Enforcing his Bill of Complaint against the Appellant, more Especially as the Respondent has fulfilled his part of his Engagements with the Appellant and of Course has his remedy over against the Appellt and of which Opinion was the Hond.ble the Majors Court when they Passed their Decree, and therefore the Respondent humbly

Hopes

Hopes that the said Decree will be Affirmed and that the said Petition and Appeal will be dismissed this Honble Court of appeals with Costs to be Paid by the Appellant

Charles Bromley
Attorney Respondent

Court of Appeals
at
Madraspatnam

} Fr. Thursday the 13th. February
Anno Domini 1783

Between Charles Darke Appellant
and Frances Torrens Respondent

The Attorney for the Appellant having prayed to Withdraw this Cause on payeng the Costs and the Attorney for the Respondent having Agreed thereto

Ordered Accordingly

per Curr
Wm. Greenhalgh

Thursday 3d April 1783.

Present

Court of Appeals &c

Anthony Sadlier
John Turing Cotton Bowerbank Dent
Edward Saunders.

To the Right Honble George Lord Macartney
President and Governor &c Council of Fort Saint George

In the Court of Appeals

Between Collingwood Roddam late of the Ship Ravensworth Owner and Commander of the Ship Ravensworth Complainant and Moses de Castro, Thomas Pilling and De Fries Merchants defendants

The Humble Petition and Appeal of the said Complaint

Sheweth,

That your Petitioner did in the Month of June last past file his Bill of Complaint in the Hon^ble the Mayors Court at Madraspatnam against the said Defendants for recovery of Twenty five thousand Pagodas your Petitioner being before that time by or thro means of the said Defendants Damaged to that Amount and your Petitioner thro his Bill of Complaint did explain his Cause of Action to the following Effect that he being at Calcutta and his said Ship Ravensworth in the River of Bengal in the Months of August and September which were in the Year One thousand Seven hundred and Eighty and he having then on board his said Ship Several things as well for his own Account as on Freight for Madras he did Insure the Sum of One hundred thousand Current Rupees on the said Ship and Cargo from the said River of Bengall to Madras your Petitioner shewing that from the then near approach of the North East Monsoon he was obliged to Pay and did actually Pay Premium of the said Insurance at the rate of five Per Cent and your Petitioner thro his said Bill did further Shew that among other Articles of Freight for Madras which he had so taken on his said Ship were two Chests of Treasure Contents unknown and Received on board from Messrs Crafts and John of Calcutta Merchants and Consigned to the said Defendants for which your Petitioner Signed Bills of Lading in the usual form and your Petitioner did by his said Bill of Complaint further Shew that having Compleated his Cargo and his Passengers for Madras having come on board he weighed Anchor took leave of the Pilot and on or about the eighth day of October which was in the said Year One thousand Seven hundred and Eighty Proceeded to the Southward but on the Twentieth day of the said Month your Petitioner being then on his Continued Course to the Southward and as he Conceived about Seven or Eight Leagues off Polycatt a Gale came on so Violent from the Northward and Northward of West as to Cause the said Ship to be laid to the Wind and so to continue for thirty hours after which your Petitioner was as nearly as he could ascertained from Observation forty Miles Southward of Madras from which Situation

Filed in my office the 8th Oct. 1784
Charles Freeman

Situation and the then approach of a Monsoon it Seemed to your Petitioner Necessary to shape his Course to Trincanomalee but the Current in the meantime did set in so Strong to the Southward that he founded it impossible to make the Harbour of Trincanomalee and the Weather was so violent that your Petitioner was obliged to direct his Course to the Malabar Coast and your Petitioner did further Shew that he Reached at Point Galle on the first day of November in the said Year One thousand Seven hundred and Eighty and in December following Arrived at Bombay where he Continued till Sir Edward Hughes who was then there, came Round to Madras where your Petitioner Arrived on the Second Day of June last past and your Petitioner Sheweth that on the Eleventh day of the said Month of June he did deliver to the said Defendants the said two Chests of Treasure so as aforesaid to them Consigned as by their Receipt in your Petitioners possession and Ready to be produced might appear but in the meantime and between such the time of your Petitioners Arrival at Madras and of his delivery of the said Two Chests of Treasure to wit on the fourth day of the said Month of June they the said Defendants did by a certain Paper writing Purporting to be in part a Protest Setforth among other things the following false and Libellous Charges in the following Words to wit, that the said Collingwood Roddam) meaning your Petitioner had determined to Commit the said deviation before his Sailing out of the River of Bengal altho' he never thought Proper to Acquaint the said Messrs. Croftes and Johnson of such his intended deviation, and your Petitioner did to the said Mayors Court absence that the said Libel had been the more aggravating from it's being Publicished tho' a Notary Publice in

in that Official Capacity whereby the same became recorded in the most Notorious manner and the conduct of the said defendants Still the more Reprehensible as the said Act was done by their Order and under their Instructions with a Manifest Tendency to destroy the Fair fame Character and Reputation of your Petitioner who followed the Occupation of Commander of Merchants Vessels and Ships for several years past and had been intrusted with the Freight of Goods wares Merchandize and Treasure to a large amount and that your Petitioners Success therein had been as much owing to the Confidence of his Employers as to any other Cause whatever your Petitioner having on all Occasions maintained and supported his Credit in every extensive degree as a Commander as aforesaid and his good Name and Reputation as an Individual unsullied until such time as the said Defendants did write or cause to be written and Published the said Paper writing which so contained a false Scandalous and Malicious Libel against your Petitioner and also contained Ample matter wherewith to Charge the Person or Persons who Published the same or who Caused the same to be Published with having been Guilty of a Libel against your Petitioner by means whereof your Petitioner in his said Bill of Complaint Charged to have been Injured & Damaged to the Amount of Twenty five thousand Pagodas and that he therefore brought such his Suit by way of Action on the Case against the said Defendants and did lay his damages in the said Sum of Twenty five thousand Pagodas and did pray that the said Defendants might be Decreed to Pay the same with Costs and your Petitioner further Sheweth unto this Honble Court of Appeals that the said Defendants on lead of

Answering

Answering or Pleading to his said Bill of Complaint did Demurrer thereunto and amongst other things by them offered as Cause of Demurrer they the said Defendants did say that they had aright in Consequence of their Consignment to make the Protest in manner they did and which to them appeared Necessary and could by them be Justified and that they did not Conceive such a Charge did Amount to a Libel as no Criminality or misdemeanour was Coupled to the Charge further adding that your Petitioner should have Protested in Order to clear himself from every possible Imputation and thereby to have Accounted for his deviation as they Deemed the Reasons Offered by your Petitioner's in his said Bill of Complaint insufficient as other Ships at that time made good the Passage from Bengal to Madras to which Demurrer your Petitioner did file his Joinder and Contend that the words by him Complained of did under the most Natural construction they could bear Convey with them an apparent meaning to injure your Petitioner and in such apt words as Constituted the Libel wherewith he Charged the Defendants and your Petitioner did further Contend that the said Protest and Particularly such Part thereof as charged your Petitioner with having Committed the said Deviation before his departure from the River of Bengal was the more Wanton and Malicious because it was unnecessary in as much as had there been any default imputable to him the same was Cured by the Defendants Order to deliver the said Treasure to Brigadier General Goddard as appears on the face of their said Protest which Order had your Petitioner received the same and Complied therewith must have for ever exempted him from their Charge of Deviation and your Petitioner did in his said

Joinder

Joinder further shew that the very words by him so Complained of and wherefrom he received his injury amounted to a very Certain and Sufficient Cause of Action and the more so as the Complainant could not have determined on such Deviation as the said Defendants said he had determined on without being at the same time guilty of a Flagrant breach of Trust and that therefore the Charge of a Libel lay against the Defendants for Publishing the same and your Petitioner did further Shew that a Protest could by no means Clear him from the Defendants imputation as the Crime is by them laid to his Charge as Committed by his intendment before his Departure from Bengal and your Petitioner did further in his said Joinder Contend that the Defendants Saying they had a Right in Consequence of their Consignment to make the Protest in manner they did rather aggravated than accounted for the injury which they had done your Petitioner because it became no part of their Duty as Consignees or otherwise to reveale your Pet.r nor could they as such or in any official Capacity or otherwise Justify their Conduct as far as they have acted to your Petitioners Prejudice and even if other Ships had made their Passage good from Bengal to Madras yet such Fact if so or any other argument they by them made use of in their said Demurrer could not nor ought it to Justify them for having Published in their said Protest what did tend so manifestly to Destroy the Character and reputation of your Petitioner and your Petitioner further Sheweth that the said Demurrer and Joinder having on the Twenty 17th day of September last Past come on to be Argued in and before the said Mayors Court that Court thought fit to Order and did Accordingly Order

that

that your Petitioners said Bill of Complaint should stand Dismissed with Costs as by the said Bill of Complaint Demurrer and Joinder and the said Order of the said Mayors Court herewith sent for the inspection of this Honble Court of Appeals reference being to them Respectively had may more fully and at large appear your Petitioner Craving as full and Ample benefit from them and each and every of them as if they and each and every of them had been hereinbefore at full Length Setforth and your Petitioner Sheweth that having reason to consider himself Aggrieved by the said Order of the said Mayors Court and that the same is Erroneous he doth appeal to this Honble Court of Appeals therefrom for the following among other Reasons

First BECAUSE, as a Libel in a Strict Sense is a Malicious Aspersion of another expressed either in Printing or writing and tending either to blacken the memory of one who is dead or the Reputation of one who is alive and to expose him to Public Hatred Ridicule or Contempt and as the Charging your Petitioner with having determined to commit the said Devation before his Sailing out of the River of Bengal altho as they say he never thought Proper to acquaint the said Messrs Croftes and Johnson of such his intended devation is a Deed Charged of a Fraud of the first Magnitude and such a one as tended directly to blacken his Reputation in the Line of his Business as Commander of a Merchant Vessel the said Charge constituted a Libel against your Petitioner and the said Defendants having declared that they were credibly informed thereof is such an aggravating made of imputing the Fraud Charged thereby by your Petitioner that seems as your Petitioner humbly conceives not to be authorized by any Situation under which the said Defendants may Presume to screen such their unwarrantable Conduct

whether as Consignees of Messrs Croftes and Johnson or otherwise Howsoever

For all which reasons and such others as may be offered at the hearing your Petitioner Prays that the said Order of the said Mayors Court be set aside by this Honble Court of Appeals with Costs to be paid by the said Defendants and that they be put upon their Answer in the said Mayors Court and a day given them thereon to Answer your Petitioners said Bill of Complaint

Stephen Popham
for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 25th day of Sept. Anno Domine 1781

Present

Mr. James Call Senor alderman
William Webb and Robert Hughes
Aldermen

Collingwood Roddam
vers
Moses De Castro Thomas Pelling and John de Frias

Bill 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 Complainants Bill the Demurrer, the

the Lords On Hearing the Pleadings and Arguments made use of by the Attorneys and the Court having had due Consideration thereon are of Opinion that the Pleas made use of by the Defendants in their Demurrer are good and Sufficient This Court doth therefore think fit to Order and doth Accordingly Order that the Complainants Bill do Stand Dismissed with Costs to be paid by the Complainant

Attes Extract

James Taylor

Regr

In the Court of Appeals

Between Ellingwood Raddarn

Appellant and Moses De Castro Thomas

Belling and John De Fries Respondents

The Answer of Moses De Castro, Thomas Belling and John De Fries all of Fort Saint George Merchants to the Petition and Appeal of Ellingwood Roddarn late Owner and Commander of the Ships Ravensworth &c.

The said Respondents 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 Setforth, and for further Answer the Respondents Say, that very true it is that the Appellant did on the Month of June last file or prefer his Bill of Complaint in the Hon^ble the Mayors Court against the Respondents for an injury or Supposed Damage, which the Appellant Charged he had Sustained

Filed in my office the 27th Oct. 1781
Charles Freeman Att^r

Sustained in his Fame and Reputation by some pretended Opprobrious and Defamatory Words said to be inserted in a Protest made by the Respondents as Consignees against the Appellant and which words or Expressions the Appellant took upon himself to Construe and Extend as Libellous, and from such Construction took upon himself to Prejudice the Amounted to a Libell and as a Penalty thereon Charged the Respondents with the Sum of Twenty thousand Pag^s or Ten thousand Pounds, which the Appellant alledged was equal to the Damage he said he had Sustained and for which he prayed a Decree the Respondents Admit that the Appellant in his Bill of Complaint did alledge and Setforth of his having Received Freight on board of his Ships the Ravensworth then at Calcutta for Madras and that he might have Entered into certain Engagements with the Supreme Council there and insured his Ships to Madras, and also that the Appellant did Receive from Mess^rs Crofts and Johnson at Calcutta the two Chests of Treasure Consigned to the Appellant, which they do Say were on Account of Lieutenant General Sir Eyre Coote Knight of the Bath and Commander in Chief of all the British Forces in the East Indies and that such Consignment was Received on board of the Said Ships the Eighteenth day of September in the year of our Lord One thousand Seven hundred and Eighty and that the said Ships did take her departure from the River on the day and Years as mentioned by the Appellt in his Bill of Complaint and that the said Ships might from the Violence of the Winds and weather passed to the Southward of Madras and afterwards Shaped her Course of Bombay. but how the Respondents were to come to the Knowledge thereof, they cannot Setforth nor does the Appellant in his said Bill of Complaint Setforth

Set forth or Declare that he made any declaration or Protest as —
Customary in the like Cases, the Respondents further do Say and
Admit that upon the arrival of the said Ship in the Road of Madras,
being the Second of the Month of June / the difference of time between
the putting the Consignment on board and the arrival of the —
Ship in the said Roads being Nine Months or thereabouts / they in
two Days after, made their Declaration before One of the Notary —
Publicks of this Town of Madras legally appointed thereto and
Caused him to Protest against the Proceedings of the said Appellt,
in manner and form as is Set forth by the Appellant in his Bill
of Compliant, though not with that intention as Charged by the —
Appellant in his said Bill, but made with an intention that the
Appellant should be Responsible to the aforementioned Lieutenant
General Sir Eyre Coote for the Loss of Interest, Costs, and Charges of —
Reinsurance the difference of Exchange and Re exchange between
Madras and Bombay, and many other Charges incidental to
such a Devation in a Course of business, and more particularly
from the Appellants Neglect and Remissness in not making the
Regular Protest at the first Port he came to whereby the —
Respondents in Case of Accident to the Consignment might
Recover from the underwriters the Amount of the Sum insured,
in Case of a Loss of the whole or recover so much of the —
Extraordinary Charges, the Consignment was to put to from
the Devation since said to be occasioned by bad Weather,
the want whereof occassions a certain Loss to the said Lieutenant
General Sir Eyre Coote, the Respondents further Says, that true
it is, that the Appellant in his Bill of Complaint does —
Charge that this Writing tends much to the injury of him the
Appellant

Appellant in as much as the same contained as the Appellant —
Extended Libellous Charges against him, particularly in a certain
Part which the Respondents Say the Appellant has Mutilated
and Seperated for the Purposes of laying his Action for Damages
against the Respondents Whereas if the Sentence had been taken
all together, the Sense thereof would have appeared as intended,
for the Respondents Say, their Words in the Protest were "that
they were Credibly informed that the said Collingwood Roddam / —
meaning the Appellant / had determined to Commit the Devation
before his Sailing out of the River of Bengall, although he never
thought Proper to Acquaint Messrs. Crofts and Johnson of such
his intended Deviation to the great loss and Detriment and damage
of the said Sir Eyre Coote by the long delay of time loss of Interest
Additional Insurances and Occasioned thereby" the Appellant
in his Bill of Complaint Charges "that he should be guilty of
every atrocious Offence had he taken the two Chests of Treasure
for Madras when his intentions were of going to Bombay" In —
Answer thereto the Respondents Say that there is a possibility that
for many Causes best known to the Appellant he might deem it
Necessary to Deviate from his Orginal intentions and this —
from Necessity and which the Appellant Says in his Bill of
Complaint was the Case and from this said Bill the Respondents
had the first Notice of the Cause of the Appellants Deviating, there
being no Protest made against the Causes for such Deviation as
According to the Usage and Custom of all Commanders and —
Mariners under the like Circumstances and in fact which all
Consignees and others any ways interested in the Vessell and —
Cargoe have a Right to from the Appellant and from others —

Commanders

Commanders and Masters of Vessells because the Protest is a matter
of Evidence in which every British Subject concerned have aright to,
and which the Law enjoyns to be done, and gives the Subject a remedy
in Case of Refusal the Appellant further in his said Bill of Compla
observes that by the laws of England and by the determination of
the Courts of Civil Justice not only Charges of a Flagrant nature
and which Reflect amoral Turpitude on the party are Libellous
but also such as Set him in a Scurrilous and ignominious light
In Answer thereto the Respondents Say that before any forro or
Set of Words or Expressions Whether in Writeing or otherwise can
be Deemed a Libel or Scandalous, the intention of the Party Speak
or writing is to be first considered, and in the Next place whether
such Words or Expressions are certain and Positive, because the
Law will not allow of an Innuendo to Supplie the place of
Certainly as any Set of Words in writing or otherwise may be
construed and wrested in the very Sense thereof at the Arbitrary
will or Pleasure of the Person they are Spoken of or wrote against and
this is Evident from the Appellants own Shewing in his Bill
of Complaint, wherein he has taken apart of the Sentence and not
the whole for if the whole is read or Expressed and Shewn it will
Appear that the Respondents did not Speak as of their own knowledg
but that they were Credibly informed that the Appellant intended
to Deviate that is to Say, from the Voyage Expressed in his Bill
of Lading but for what Cause such Deviating was done the
Respondents could not tell as they were not Possessed of any
Documents or Vouchers from the Appellant and for the want of
which the Respondents deemed it Necessary to Protest for and on
Account of Lieutenant General Sir Eyre Coote, as reserveing to him a
Right

Right hereafter to Demand a full Repairation for the Expences and
Loss of Interest he had been put to and Suffered, so that in fact the Protest
so much Complained of took its rise from the Appellants own
Neglect and Remisness in not doing that which the Law of Merchants
Strictly directs to be done, and untill that is done the Appellant
Remains Responsible to Lieutenant General Sir Eyre Coote for
every loss he has Sustained and whatever Expressions there may
be in the Protest and declaration of the Respondents against the
Appellant Stile the said Protest is not destroyed thereby nor will
the Appellant in any Shape by his Bill of Complaint Effect the
same because it is an Official Instrument or Deed taken and
made by a Person legally Authorized so to do and if there had been
any Positive matter, That was Scandellous and Libellous in the said Protest
which the Respondents do not in any Sort Admit of to be yet as
such allegations where in a Legal Proceeding they do not Amount
to a Libel because the Protest was regularly made before a Legal
Publick Office the Respondents further Say that the Appellant
in his Bill of Complaint layed his Damages to twenty five
thousand Pagodas as an adiquate Compensation for the Supposed
Injury he had Sustained in his Character, to this Extraordinary Bill of
Complaint the Respondents did Appear and Demurr, as by law and the
Usage and Practise of the Courts do allow and which the great
Lays of the Law do recommended to be Observed in Practise, that were
the matters Charged as in the Bill of Complaint against the
Respondent to be libellous were not so and that it was the Opinion
of the Council and attorney it was not a libell it would be but
Candid in the attorneys Practise and Shewed an Accuracy in
his Profession by Advising his Client to Demurr but whereby he
would

would have Admitted no more than what would be at the Trial on the Genrial Issue and that the matter of the libell would have fairly come before the Court to be considered whether the Papers were libellous or not," upon these Grounds the Respondents Say they did demurr as they were Advised and deemed such Demurrer as very Proper to destroy such vexatious litigation in the first Stage of the business by Striking at the very Root and Heart of the Suit and taking the Sense of the Honble the Mayors Court upon the words of the Protest as they then were expressed and which Course of Proceedings the Respondents were Advised was most Proper and more particularly so because, if the Words on which the Appellant founds his Action are by the Court Adjudged not defamatory the Suit drops to the Ground, for which Purpose the Respondents did Demurr and in such demurrer did assign certain Causes for Demurring to the Bill of Complaint particularly that the words or expressions on which the Appellant founded his Action, did not contain any Certainty or Positive Affirmation so as to make them defamatory neither was any Criminally charged or imputed to the Appellant by his Deviation in the Demurrer, the said Respondents insisted on their right of Protesting as in Consequence of their Encouragement and that they deemed such Steps as Proper and Necessary but insisted that they did not know how the Appellant could be injured in his Character by such Protest nor did they conceive that the same Amounted to a libel, the Respondents further in their Demurrer did insist that the Appellant ought to have cleared himself of the imputation if any by a Protest against Winds and weather before he brought his Action for Damages more Especially so when as Set forth in the Demurrer that Vessells in the same Season which Sailed before and after the Appellants Vessell from Bengall arrived in Safety at Madras the said Respondents further Say, that in their Demurrer, they did Assign as a Cause for their Demurring other special matters with Arguments to Support, all founded on the usage and Custom of Merchants Freighters &c. And to this Demurrer did the Appellant Put in a Joinder and thereon did endeavour by Argument to Support his Charge of Defamation alledged in his Bill of Complaint but as all Actions that are founded on Defamation must contain a Certainty no good Argument could or was Produced in Support of the said Bill, and therefore the whole rested on this question whether the Words or Expression as made use of in the Protest or Declaration were Defamatory or not and the same was Submitted to the Consideration of the Honble the Mayors Court who Adjudged the same were not Defamatory and Dismissed the Bill of Complaint with Costs to be Paid by the Appellant from which Order of the said Honble the Mayors Court the said Appellant has thought proper to Appeal to this Honble Court of Appeals as considering himself Aggrieved thereby and alledging as a Cause for his so doing that as a Libel in a Strict Sense is a Malicious Aspersion another expressed either in Printing or Writing and as the Charging the Appellant with having determined to Commit a Deviation before his Sailing out of the River of Bengall was a direct Charge of a Fraud of the first Magnitude and such as tended to blacken the Appellants Reputation in the line of his business In Answer thereto, the Respondents Say, that true it is that a Libel in a Strict Sense of the Word is a Malicious Aspersion of a Person's Character and tends greatly to his injury but then it must be first found by the Court, whether such Words or Expression do Amount to a Libel before any

Action

Action for Damages can lye or be Proceeded on, and if no Libel then the Action falls to the Ground and no implication can Supply the want of Certainty nor can any Subsequent Charge omitted in the Bill of Complaint be brought in Aid or Assistance to the Bill of Compl.t as for instance the Appellant alledges in his Petition and Appeal that the Respondents charging him with an intention to deviate from the Voyage oreginally intended was a direct Charge of a Fraud here the Respondents beg leave to Observe that this Charge in the first Place is Out of Order and contrary to all Form and Regularity, and merely Suppositions and is a charge from implication as neither the Protest nor the Bill of Complaint charges the Appellants with any Fraud or Criminality and all that can be inferred or implyed from the Expressions and words of the Protest, that the Appellant was Irregular in omitting to Protest whereby the said Lieutenant General Sir Eyre Coote run a great Risk of his Property and did Suffer an Additional Expence for the want of Advice from the Appellant the Respondents further do Say and as they are Advised that the Protest in question from any words therein do not in the least Amount to a Libel and Particularly that it has been Adjudged that no Writing taken in due Course of Law can Amount to a Libell as Quoted by Hawkins in his Pleas of the Crown Book 1.st Page 194 Entitled Libels Sect.n 8.th but it hath been resolved that no false or Scandalous matter contained in Petition to a Committee of Parliament or in Articles of the Peace Exhibited to Justices of Peace or in any other Proceedings in a Regular Course of Justice will make the Complaints Amount to a Libell for it would be a great Discouragement to Suitors to Subject them to Publick Prosecutions in Respect of their Applications to a Court of Justice

Justice with Submission to this Honble Court the Respondents Say they were under the Necessity of Wording the Protest in the manner they did they having heard that the Appellant intended to alter his Orgenal intended Voyage if that was the Case no injury could arise to the Appellant from so doing on his Reputation as they know of but then a Declaration being made of the same the Respondents on Account of Lieutenant General Sir Eyre Coote would have been in the Condition as Customary in the like Cases the want of this Instrument is the sole Cause of the present difference and might have been avoided had the Appellant Produced a Regular Protest against Winds and Weather as the Cause of his Deviating from the Voyage expressed in the Bill of Lading but so far from this being done, even upon the arrival of the Appellant at Madras that he was and has been totally Silent on the Subject and thereupon Occasioned the Protest to be made by the Respondents in the manner and form as is by the Appellant Set forth at large in his Bill of Complaint the Respondents with all due Submission to this Honble Court of Appeals beg leave to Set forth what has been Said, where Words and Expressions carry with them a double Meaning it Said the Rule laid down in the Law Books concerning Libels according to the Definition of Mr. Sergeant Hawkins is founded on the reason of the thing and is the same which is to be observed in other matters that depend upon the Construction of Words and Writings which are Signs only or Images of Ideas intended to be Conveyed to the understandings of the Reader there may indeed by divers Rules be Applied According to the Circumstances of the Case and this among the rest that where Words are Capable of two Senses the one faulty the other Innocent

the

the Latter is to be taken provided such Construction may be made without Violence to their Natural Import and meaning from whence it will follow, that Some Cases may happen that are doubtful and do not come under any Standard Rule on all which Occasions the impartial Judge will incline to the favorable Side thus much the Respondents Say for Libels and as to the Idea of an Action on the Case of Defamation as alledged by the Appellant the same does not lye as the Respondents have been informed and Advised upon this Special Maxim laid down in the Books of Law, "that there must be a Sufficient Certainty in the thing Charged and not by Inferrence or Argument as if with a Crime he must not be Charged with a bare Intent with Submission to this Honble Court of Appeals the Appellant has by his Petition and Appeal attempted by an Innuendo therein to Explain the meaning of the Respondents in their Expressions made use of in their Protest that they are further Advised that it is the nature of an Innuendo to Explain Words that are some what doubtful but yet that matter thus Explained by the Innuendo must be matter sufficient to Maintain the Action but if the words before the Innuendoes do not Sound in Slander, no words made use of under the Innuendo shall make the Action Maintainable for it is not the nature of the Innuendo to be get an Action,

For all which Causes and things herein before Set forth the Respondents humbly pray this Honble Court of Appeals that the Appellants Petition and Appeal may be dismissed with Costs to be Paid to the Respondents and that the Order of the Honble the Mayors Court may Stand Confirmed

Charles Bromley
Attorney Respondt

Court of Appeals
at
Madraspatnam

} Thursday the 3. April
anno Domine 1783

Between Collingwood Roddam late owner and Commander of the Ship Ravensworth Appellant and Moses De Castro Thomas Belleny and John De Fries all of Fort Saint George Merchants 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 Order of the said Court given in this Cause on Tuesday the 25th day of September Anno Domini 1781 and upon due Consideration had of the matters therein Severally contained and of the Pleadings and Arguments Used by 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 Honble the Mayors Court Dated the 25th day of September Anno Domini 1781 do stand Affirmed and that the Appellants Petition be hence dismissed with Costs.

J. Orr
Chief Secretary

To the Kings Most Excellent Majesty in Council

Between Collingwood Roddam heretofore Owner and Commander of the Ship Ravensworth Complainant and Moses D Castro Thomas Belling and John De Fries Merchants Defendants

The Humble Petition and Appeal of the said Complainant

Sheweth,

That your Petitioner did in the Month of June last past file his Bill of Complaint in the Honble the Mayors Court at Madras Filed in my Office the 16th April 1783 Charles Freeman Actg

Patnam against the said Defendants for Recovery of Twenty five thousand Star Pagodas your Petitioner being before that time by or the Defendants damaged to that amount and your Petitioner thro his said Bill of Complaint did explain his Cause of Action to the following effect that he being at Calcutta and his said Ship Ravensworth in the River of Bengal in the Month of August and September which were in the year One thousand Seven hundred and Eighty and he having then on board his said Ship Several things as well for his own account as on Freight for Madras he did Insure the Sum of One hundred thousand Current Rupees on the said Ship and Cargo from the said River of Bengal to Madras your Petitioner Shewing that from the then near approach of the North East Monsoon he was Obliged to pay and did actually Pay Premium on the said Insurance at the rate of Five per Cent and your Petitioner thro his said Bill did further Shew that among the Articles of Freight for Madras which he had so taken on his said Ship were Two Chests of Treasure Contents unknown and received on board from Messrs Croftes and Johnson of Calcutta Merchants and Consigned to the said Defendants for which your Petitioner Signed Bills of Lading in the usual form and your Petitioner did by his said Bill of Complaint further Shew that having Compleated his Cargo and his Passengers for Madras having Come on board he weighed Anchor, took leave of the Pilot and on or about the eighth day of October which was in the said Year One thousand Seven hundred and Eighty Proceeded to the Southward but on the Twentieth day of the said Month your Petitioner being then on his Continued Course to the Southward and as he Conceived about Seven or Eight Leagues off Polycacalo a Gale Came on so Violent from the Northward and North East as to Cause the said Ship to be laid to the wind and so to Continue for thirty hours after which your Petr was nearly as he could ascertain from observation forty Miles Southward of Madras from which Situation and the then approach of a Monsoon it Seemed to your Petitioner Necessary to Shape his Course to Trincomallee but the Current on the mean time did Set in so Strong to the Southward that he found it impossible to make the Harbour of Trincomallee and the weather was so Violent that your Petitioner was Obliged to direct his Course to the Malabar Coast and your Petitioner did further Shew that he Reached Point de Galles on the South Side of the Island of Ceylon on the first day of November in the said Year One thousand Seven hundred and Eighty and in December following arrived at Bombay where he Continued till Sir Edward Hughes who was then there Came Round to Madras where your Petitioner Arrived on the Second day of June last past and your Petitioner Sheweth that on the Eleventh day of the said Month

Month of June he did Deliver to the said Defendants the said Two
Chests of Treasure so as aforesaid to them Consigned as by their Receipt in
your Petitioners Possession and Ready to be Produced might appear but
in the mean time and between such the time of your Petitioners arrival
at Madras and of his delivery of the said Two Chests of Treasure to wit on
the fourth day of the said Month of June they the said Defendants
did by a Certain Paper writing Purporting to be a Protest Set forth
among other things the following false and Libellous Charges in the
following Words to wit "that the said Collingwood Roddam (Meaning
"your Petitioner) had determined to Commit the said deviation before
his Sailing out of the River of Bengal altho he never thought Proper to
Acquaint the said Messrs Croftes and Johnson of such his intended
Deviation" and your Petitioner did to the said Mayors Court observe
that the said Libel had been the more Aggravating from its being Published
in a Notary Publick in that Official Capacity whereby the same be-
came Recorded in the most Notorious manner and the Conduct of
the said Defendants Still the more Reprehensible as the said Act was
done by their Order and under their Instructions with a Manifest
Tendency to destroy the Fair Fame Character and Reputation of your
Petitioners who followed the Occupation of Commander of Merchant
Vessels and Ships for Several Years Past and had been intrusted with
the Freight of Goods Wares Merchandize and Treasure to a large
Amount and that your Petitioners Success therein had been as much
owing to the Confidence of his Employers as to any other Cause whatever
your Petitioner having on all occasions Maintained and Supported
his Credit in a very extensive Degree as a Commander as aforesaid and his
good Name and Reputation as an Individual unsullied until such
time as the said Defendants did write or Cause to be written and
Published the said Paper writing which so contained a false Scandalous
and Malicious Libel against your Petitioner and also Contained ample
matter wherewith to Charge the Person or Persons who Published
the same or who Caused the same to be Published with having been
guilty of a Libel against your Petitioner by means whereof your Pet.
in his said Bill of Complaint Charged that he was Injured and
Damaged to the amount of Twenty five thousand Star Pagodas and
that he therefore brought such his Suit by way of Action on the
Case against the said Defendants and did lay his Damages in the
said Sum of twenty five thousand Star Pagodas and did pray that
the said Defendants might be Decreed to pay the same with Costs and
your Petitioner further Sheweth unto your Most Excellent Majesty in
Council that the said Defendants instead of Answering or Pleading to
his said Bill of Complaint did Demurrer thereunto and amongst
other things by them offered as Cause of Demurrer they the said
Defendants did Say that they had a right in Consequence of their
Consignment to make the Protest in manner as before stated
and which to them appeared Necessary and Could by them be
Justified and that they did not conceive such a Charge did amount
to a Libel as no Criminality or misdemeanour was Coupled to the
Charge, further Adding that your Petitioner should have Protested in
Order to Clear himself from every Possible Imputation and thereby
to have accounted for his Deviation and the Defendants did also
Pretend that the Reasons offered by your Petitioner in his said Bill
of Complaint as the Cause of his Deviation as aforesaid were insufficient
as other Ships at that time made good the Passage from Bengall
to Madras to which Demurrer your Petitioner did file his Joinder and
Contend that the words by him Complained of did under the most
Natural

Natural Construction they could bear Convey with them an Appearent
Meaning to injure your Petitioner and in such apt words as Constituted
the Libel wherewith he Charged the Defendants and your Petitioner did
further Contend that the said Protest and Particularly such part thereof
as Charged your Petitioner with having Committed the said Deviation
before his departure from the River of Bengal was the more wanton and
Malicious because it was unnecessary in so much as had there been
any default imputable to him the same was Cured by the defend.ts
Order to deliver the said Treasure to Brigadier General Goddard
as appears on the face of their said Protest which Order had your Pet.r
Received the same and Complied therewith must have forever
exempted him from their Charge of Deviation and your Petitioner did
in his said Joinder further Shew that the very words by him so complained
of and wherefrom he Received his injury amounted to a very Certain
and Sufficient Cause of Action and the more so as the Complainants
could not have determined on such Deviation as the said Defendants
said he had determined on with being at the same time guilty of a
Flagrant breach of Trust and that therefore the Charge of a Libel lay
Against the Defendants for Publishing the same and your Petitioner did
further Shew that a Protest could by no means Clear him from the
defendants imputation as the Crime is by them laid to his Charge
as Committed by his intendment before his departure from Bengall
and your Petitioner did further in his said Joinder Contend that
the Defendants Saying they had a Right in Consequence of their
Consignment to make the Protest in manner they did Rather
Aggravated than accounted for the injury which they had done
your Petitioner because it became no part of their Duty as
Consignees or otherwise to Invade your Petitioner nor could they as
such

Such or in any Official Capacity or otherwise Justify their Conduct
as far as they have Acted to your Petitioners Prejudice and even if their
Ships had made their Passage Good from Bengall to Madras yet
such fact if so or any other argument by them Made use of in
their said Demurrer could not nor ought it to Justify them for
having Published in their said Protest what did tend so mani-
festly to destroy the Character and Reputation of your Petitioner
and your Petitioner further Sheweth that the said Demurrer and
Joinder having on the Twenty fifth day of September last Past
come on to be Argued in and before the said Mayors Court that
Court thought fit to Order and did Accordingly Order that your
Petitioners said Bill of Complaint Should stand Dismissed with
Costs as by the said Bill of Complaint Demurrer and Joinder
and the said Order of the said Mayors Court Reference being to
them Respectively had may more fully and at large Appear
your Petitioner Craving as full and Ample benefit from them
and each and every of them as if they and each and every of them
had been herein before at full length Set forth and your Petitioner
Sheweth that having Reason to Consider himself Aggrieved by the
said Order of the said Mayors Court and that the same was
Erroneous he did Appeal therefrom to the Hon.ble the Court of
Appeals on the Eighth day of October which was in the said year
of Our Lord One thousand Seven hundred and Eighty One within
the time limitted for that Purpose and did therein among other
things State the Matters and things above in Part Set forth
and also that the said Order or Decree of the said Mayors Court
was Erroneous Because that the Charging your Petitioner with
having determined to Commit the said Deviation before his

Sailing

Sailing out of the River of Bengal all tho as they say he never thought Proper to Acquaint the said Messrs. Crofts and Johnson of such his intended deviation is a direct Charge of a Fraud of the first Magnitude and such a One as tended directly to blacken his Reputation in the line of his business as Commander of a Merchant Vessel the said Charge Constitutes a Libel Against your Petitioner and the said Defendants having declared that they were Credibly informed thereof is such an aggravating mode of imputing the Fraud Charged thereby to your Petitioner that Sums as your Petitioner humbly Conceives not to be authorised by any Situation under which the said Defendants may Presume to Screen such their unwarrantable Conduct whether as Consignees of Messrs. Crofts and Johnson or Otherwise howsoever. For which Appeal the Defendants Put in their answer and did therein among other things Pretend that the said Protest wanted Certainty and also that the same Came under the Exception laid down by Serjeant Hawkins respecting writings taken in due Course of Law, the Contrary whereof your Petitioner humbly Submits to be the Case in both Points and your Petitioner Sheweth unto Your Most Excellent Majesty in Council that on the third day of this Instant April the said Petition and Appeal together with the Answer of the said Defendants Came on to be heard before the Right Honble the President and Council of Fort Saint George and the said President and Council did on the aforesaid day think fit to Order and Decree and did Accordingly Order and Decree that the said Order of the said Mayors Court of the said Twenty fifth day of September One thousand Seven hundred and Eighty One, Should Stand Affirmed and that your Petitioners Petition be dismissed with Costs as by the said Order of the said Court of Appeals herewith Sent for the inspection of Your Most Excellent Majesty in Council Reference being thereunto had may More fully Appeared by both which Orders of the said Mayors Court and of the said Court of Appeals your Petitioner doth Consider himself greatly Aggrieved and doth therefore Severally Appeal therefrom to your Most Excellent Majesty in Council and doth Pray a Reversal of the said Several Orders or Decrees and also Judgement in favor of your Petitioner for the said Sum of Twenty five thousand Star Pagodas or ten thousand Pounds Sterling and also all Costs of Suits for the following Among other Reasons-

First BECAUSE, that the Protest in Question is a Clear Certain and Unequivocal Charge made and Expressed in direct Terms against your Petitioner and imputes to your Petitioner a fraud of the first Magnitude, and therefore is a Libel against your Petitioners Good Name Character and Reputation as tending to destroy the same.

Secondly BECAUSE, that the same is false and Scandalous in as much as it is Stated in your Petitioners Bill of Complaint and Can be Proved that the Deviation made by your Petitioner was made by Necessity in Consequence of the Violence of the Weather and Contrary winds and Currents

Thirdly BECAUSE, Such False and Scandalous Matter Charged and Published as aforesaid does not Come within the Meaning Suggested by the Defendants in their answer to your Petitioners Appeal to the Honble the Court of Appeals at Madraspatnam aforesaid and Quoted from the Authority of Serjeant Hawkins

the

the Intention of the said writer and the meaning of the Law on the said Point being Confined to words or Expressions in writting uttered written and Published in the Course of Pleadings made or — Proceedings had in Courts of Justice Competent to hear and — determine and to give Relief in Cases of Injury done and where — Relief is Sought for, but your Petitioner Sheweth that such Sanction or Latitude Cannot be given or by the said Law written or by the — Law is intended to be given to a Protest Made as aforesaid before a Notary Publick

Fourthly Because, the said Protest is the more aggravating and — Merits the more Severe Censure of the Law as being Made by the Defendants who are Merchants and Copartners in Trade of the — Most Extensive Credit and Reputation, whose Situation gives the more Serious and Solemn Sanction to any words they may Utter or to any writing which they may Subscribe and as the — Situation of your Petitioner and his Character hath been heretofore established and of Good Repute the said Charge made as aforesaid is the More grievous and Merits an Exemplary Compensation at Law

Fifthly Because, that under and by Virtue of a Certain Statute or act of Parliament Made in the Twenty Seventh Year of the — Reign of Queen Elizabeth Caples the fifth and also under and by Virtue of One other Statute or act of Parliament Made in the fourth Year of the Reign of her Majesty Queen Anne and which is Conformatory of the said Statute or act of Parliament of Queen Elizabeth Your Petitioner is entitled to Judgement as the Protest in Question and which is the Foundation of your Petitioners Action as also the Several Matters and things Set forth and Charged by your Petitioner in his Bill of Complaint are

Are Admitted and the Pleadings made use of by the Defendants are frivolous and Vexatious nor have they advanced One Reason in Law or otherwise why Judgment should not Pass against them.

For all which Reasons and such others as may be offered at the hearing your Petitioner Pray that the said — Several Orders made in the Honble the Mayors Court and the said Court of Appeals in the above Cause may be Reversed and that Your Majesty in Council may be Pleased to give Judgment unto Your Petitioner for the Sum Sued for with all Costs of Suit — and your Petitioner also Prays Such further or other Relief in the Premisses as to Your Majesty in Council he may Appear to — deserve—

Stephen Popham
Attorney for Appellant

Before the Kings Most Excellent Majesty in Council

Between Collingwood Roddam late Owner and Commander of the — Ship Ravensworth Appellant and Moses De Castro Thomas Belling and John de Frees of Fort Saint George — Merchants Respondents

Filed in my office the 19th May 1783
Charles Freeman
Clk

The Answer of Moses De Castro Thomas Belling and John de Frees to the Petition and Appeal of — Collingwood Roddam abovementioned

the

The said Respondents 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 Setforth for Answer thereunto Say, that they admit of the Appellants having in the Month of June in the Year of our Lord 1782 Preferred his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the Respondents, for the recovery of the Sum of 25000 Star Pagodas or ten thousand Pounds of Sterling Money of Great Brittain which the Appellant Charges is the amount of the Damages which he Sustains in his Reputation by certain Expressions inserted by the Respondents in a Notorial Declaration made by them against the Appellant which Bill of Complaint the Respondents Shew contains the whole of the Declaration and Protest which quotation is only a part of a Sentence as the beginning of the Sentence is as follows Viz.t "the said Declarants further Say that they are "Credibly informed that the said Collingwood Roddam (meaning the "Appellant) had determined to Commit the said Deviation before his "Sailing out of the River of Bengall although he never thought Proper "to Acquaint the said Messrs. Crofts and Johnson of such his intended "Deviation," the said Respondents Say that as the Appellant has thought Proper to omit the inserting of the Context in his Petition and Appeal, they the Respondents have thought Proper to do it for him in manner and form following that is to Say "On this Day being "the fourth day of June in the Year of our Lord One Thousand Seven hundred "and Eighty One before me John Sykes Notary Publick dwelling "and Practising at Fort Saint George in the East Indies by Lawfull "Authority Duly Admitted and Sworn Personally appeared Messrs. "Moses De Castro, Thomas Pelling and John de Fries of Fort St. George "aforesaid Merchants and Declared as follows, that is to Say "that "Messrs. Crofts and Johnson of Calcutta Merchants did on the Eighteenth "Day of September which was in the Year of Our Lord 1780 Ship Two "Chests of Treasure Containing Four Thousand Four hundred and Thirty "Six Gold Mohurs Value Eighty Six Thousand Six hundred and Thirty "four Current Rupees of Calcutta Four Annas and Six Pice in the Ship "Ravensworth Captain Collingwood Roddam Commander bound for "Madras and Consigned to the said Declarants for Account of Lieutenant "General Sir Eyre Coote Knight of the Bath, that the said Collingwood "Roddam in direct Contravention to his said Engagement Proceeded to the "Malabar Coast and Bombay instead of coming to the Port of Madras "to Deliver the said Treasure as aforesaid the said Declarants further Say "that they are Credibly informed that the said Collingwood Roddam had "determined to Commit the said deviation before his Sailing out of the "River of Bengal altho' he never thought Proper to Acquaint the said "Messrs. Crofts and Johnson of such his intended deviation to the great "Loss detriment and damage of the said Sir Eyre Coote by the long delay "of Time Loss of Interest Additional Insurances &c.a Occasioned thereby "the said Declarants further Say that on their hearing of the Arrival of "the said Collingwood Roddam with the said Ships at Bombay they "the said Declarants Addressed a letter to him under date the Nineteenth "Day of February last thro' the Channel of the President and Council "of Fort St. George directing the said Collingwood Roddam to deliver the "aforesaid Treasure unto Brigadier General Goddard which they understand has not been done the said Declarants further Say that under "Standing the said Collingwood Roddam is now arrived at this Port of "Madras they the said Declarants think Proper to make this Protest Wherefore I the said Notary at the Request of the said Messrs. De Castro Pelling and De Fries have Protested and by these Presents do Solemnly Protest

" Protest against the said Collingwood Roddam for and on Account of all and
" every Loss and Losses, Costs, Charges, Interest, Damages and Expences
" which the said Sir Eyre Coote and the said Messrs. Croftes and Johnson
" and all and every other Person or Persons what and whomsoever have
" Suffered Sustained Paid or been put unto, or which he they or any of them
" Shall or may suffer Sustain pay or be put unto in all or any respect
" whatever by Reason or on Account of the said Collingwood Roddam
" deviating from the said Voyage to Madrass and not delivering the said
" Treasure to the said Declarants as he should have done and did undertake
" to do as aforesaid

Signed

Moses De Castro

Belling and De Fries

" Thus Done and Protested on Fort Saint George aforesaid the Day
" and Years first above Written.

John Sykes
Not: Publ: (L S)

A true Copy
John Sykes
Not: Publ:

The Respondents further Say that the Appellant in his Bill of Compl[t]
layed great Stress on the Words that he quoted from the declaration
and Protest as being Libellous and Defamatory and that he was thereby
injured to the Amount as by him Charged in his Bill of Complaint
To this Bill of Complaint the Respondents after Entering their
Appearance did in the Month of June 1781. throw in a Demurrer to
the said Bill as the Respondents Supposed that there was no matter
or thing contained in their said Protest and Declaration that had
the least Shaidow of Defamation, and of Course that no Action would
lay

lay on the same, for which Reason the Respondents were induced as they were
advised to bring this Action to a Speedy Issue by Subscribing the Tenor of the
Declaration to the Sence of the Honble the Mayors Court upon a Demurrer
which Appeared to the Respondents to be the most Eligible Mode for all Parties
To this Demurrer the Appellant did Rejoin and thereby insisted on his having
good Cause of Action against the Respondents for that the Expressions made
use of by the Respondents under the most natural Construction Conveyed
with them a Meaning to injure the Appellant and Constitute a Libel
against him, the Appellant in his said Joinder Endeavouring by every
Argument to Support the Basis of his Action and Praying that the
Appellants Demurrer might be dismissed with Costs. This Demurrer
the Respondents Say, was Set down to be Argued and the same came
on and was determined the Twenty Fifth day of September One thousand
Seven hundred and Eighty One, when the Honble the Mayors Court
were Pleased to Order that the Appellants Bill of Complaint should be
dismissed with Costs to be Paid by the Appellant, from which Order of
the Honble the Mayors Court the said Appellant did on the Eighth
of October following file his Petition and Appeal to the Right Honble
the President and Council of Fort Saint George as a Court of Appeals
under his Majesty's Most Gracious Charter and in such his the said
Appellants Petition and Appeal did State the Merits of his pretended
Cause of Action and Recited Sundry Causes in Justification of the
Measures for his deviation from the Voyage his Ship was originally
intended for the Appellant assigning in his said Petition and Appeal
his Reason for his Appealing, First. Because as a Libell in a Strict
Sense, is a Malicious Aspersion of another expressed either in Painting
or Writing and tending either to blacken the Memory of one who
is Dead or the Reputation of one who is a Live and to expose him to
Publick

Publick Hatred Ridicule or Contempt and as the charging the Appellant with having determined to commit the said Deviation before his Sailing out of the River of Bengal was a direct Charge of a Fraud of the first Magnitude and such one as tended directly to blacken his Reputation in the Line of his Business as a Commander of a Merchants Vessell," the said Charge the Appellant said constituted a Libell against him. for which Reason and such others as might be offered at the hearing of the Petition the Appellant Prayed that the Order of the Honble the Mayors Court might be set a Side by the Honble the Court of Appeals. and that the Respondents might be put upon their Answer in the said Mayors Court and a day given them to answer the Appellants Bill of Complaint To this Petition and Appeal was the Respondents under the Necessity of Answering by an Order of Court and in such their Answer they were Compelled from the Nature of the Petition and Appeal for to Enter Specially into the Merits and Support of their Demurrer wherein they did admit of the Appellants Receiving freight on board of her Ships Ravenaworth then bound from Calcutta to Madrass and that he did Receive on board Two Chests of Treasure from Crofts and Johnson for account of Lieutenant General Sir Eyre Coote to be delivered to the Respondents at Madras and that this said Ships did take her departure but meeting with bad Winds and Weather the said Ships was under the Necessity of shaping her Course for Bombay but how the Respondents were to come to the Knowledge thereof they could not Set forth as no declaration or Protest as Customary in the like Cases were made by the Appellant or any one for him the said Respondents further in their Answer, did say and admit that upon the Arrival of the said Ships in the Roads of Madras being the Second day of the Month of June the difference of time between the Putting the Consignment on board and the Arrival of the said Ships in the said Roads being upwards of Nine Months they the said Respondents in two Days after made Declaration before one of the Notary Publicks of this Town of Madrassapatnam and Caused him to Protest against the Proceedings of the Appellant in manner and form as is Set forth by the Appellant in his Bill of Complaint though not with that Intention as charged by the Appellant in his Bill of Complaint but made with an Intention that the appellant should be Responsible to the aforementioned Lieutenant General Sir Eyre Coote for the Loss of Interest Costs and Charges of Reinsurance the difference of Exchange and Recxchange between Madras and Bombay and many other Charges incidental to such a Deviation in a Course of Business and this Declaration and Protest arose more Particularly from the Appts Neglect and Remissness in not making the Regular Protest at the first Consignment might Recover from the Underwriters the amount of the Sum insured in Case of a Total Loss or recover so much of the Extraordinary Charges the Consignment was put to from the Deviation the Respondents further in their Answer Proceeded to answer the Appellants Charge of Defamation and therein they the said Respondents did say that the Appellant had Mutilated the said Declaration and Protest and Seperated particular Parts for the Purposes of laying his Action for Damages against the Respondents Whereas as the said Respondents alledged that if the Sentence had been taken altogether the Sense would have appeared as intended the said Respondents further Answered and Sayed that the Appellant might have had Sufficient Causes for his Deviation from his Orginal Intentions and this from Necessity which was the Case but the Respondents never had any

Notice

Notice of it untill the filing of the Bill of Complaint against them. there-
being no Protest against the Causes for such Deviation according to the
Usage and Custom of all Seafareing People under the like Circumstances
and in fact, which all Consignees and others any ways interested in
the Vessell and Cargo have a Right to from the Appellant. Because
the Protest was a Matter of Evidence in which every British Subject
Concerned have a Right to, and what the Law enjoyns to be done. the-
said Respondents further in their said Answer observed to the observations
the Appellant made in his Bill of Complaint that by the Laws of-
England and by the determination of the Courts of Civil Justice not-
only Charges of a Flagrant Nature and which Reflects a Moral-
Turpitude on the Party a Libellous but also such as set them in a-
Scurrilous and ignominious Light The Respondents in their answer
Observed that before any Form or Set Words or Expressions were made
Use of Whether in Writing or otherwise can be deemed a Libell or-
Scandalous the intention of the Party Speaking or writeing is to be first
Considered and in the Next Place whether such Words or Expressions
are certain or Positive. Because the Law would not allow of Innuendo's
to Supply the Place of certainty's as any Set of words or Writings or-
otherwise, might be construed and wrested in the very Sence thereof at the
Arbitrary Will and Pleasure of the Person they are Spoken of or wrote-
against. and this was Evident. the Respondents observed from the-
Appellants own Shewing in his Proceedings wherein he had taken a
Part of the Sentence and not the whole for if the whole is read or-
Expressed and Shewn it would appear that the Respondents did not
speak as of their own Knowledge but that they were Credibly-
informed that the Appellant intended to Deviate that is to Say-
from the Voyage expressed on the Bill of Lading but for what-

Cause

Cause such Deviation was done the Respondents could not tell as they were
not Possessed of any Documents or Vouchers from the Appellant and for
the want of which the Respondents deemed it Necessary to Protest that
this Protest in fact took its Rise from the Appellants own Neglect
and Remissness in not doing that, which the Laws of Merchants-
Strictly directs to be done and untill that is done, the Respondents
Remain Responsible to the Parties concerned in the Consignment-
the Respondents in their said Answer further Observed that having
demurred to the Appellants Bill of Complaint they deemed the same
as very Proper to destroy such a Vexatious Litigation in the first Stage
of the Business by striking at the very Ground and Basis of the Suit
and taking the Sense of the Honble the Mayors Court upon the
Words of the Protest. Because if the Words were adjudged by the
Court not defamatory the Suit drops to the Ground for which-
Purpose the Demurrer was filed and in such their Demurrer-
were many Special Matters incerted all founded on the Usage-
and Custom of Merchants the said Respondents in their said-
Answer did Procead to make several Observations on the Causes-
Assigned by the Appellant in his Petition and Appeal for his-
Appealing to the President and Council and praying that the
Order of the Honble the Mayors Court might stand Confirmed-
with Costs this Petition and Appeal coming on to be argued the
third Day of April last Past the Honble the President and Council
of Fort Saint George at a Court of Appeals were Pleased to confirm
the Order of the said Honble the Mayors Court, with Costs to be-
Paid by the Appellant. the which the Respondents well hoped
the Appellant would have Complied with but instead of which
and contrary to all Rules of Justice and Equity and in Order to-

harrass

Harrass and Perplex the Respondents the said Appellant has deemed it necessary and expedient for to Appeal to the Kings Most Excellent Majesty in Council both from the Sentence and Order of the Honble the Mayors Court and the Affirmation of the Honble the President and Council of Fort Saint George for certain Reasons by him the Appellant alledged in his said Petition and Appeal which he Pretends are very Just which the Respondents cannot, or any Existence admit to be so.

For all which Causes the said Respondents humbly Conceives and is advised, that the said Decree of the Honble the Mayors Court at Madraspatnam and the Affirmation of the Honble the President and Council of Fort Saint George as a Court of Appeals is Agreable to Equity and Justice and therefore humbly hopes that the same shall be Affirmed and that the said Petition and Appeal before the Kings Most Excellent Majesty in Council, be Dismissed with Costs.

Charles Bromley
Attorny for the Respondents

Court of Appeals
ffs.

Thursday 8th May 1783
Present
Anthony Sadlier
John Turing Robert Maunsell

Much delay in the Adjudging Causes in this Court having happened from the Non Attendance of the Attornies Resolved that Notice be given to them that in default of their Personal Attendence in this Court when duly Summoned or of finding some other Attorney to Plead the Causes for them which may be Next in Rotation on the file for hearing it is from this day forth become a Rule of this Court that the Cause so delayed to be heard will be put at the Bottom of the file of the Causes depending in this Court and the Attorney Offending against this Rule will incur the displeasure of the said Court.

A Copy
Chas. Freeman Clk

To the Right Honble George Lord Macartney K.B.&c.
President and Governor &c. Council of Fort Saint George

In the Court of Appeals

Between Paul Benfield Complanant
and George Savage James Call Andrew Majendie
and James Taylor Defendants

Filed in my Office
the 2d February
1783
Charles Freeman
Clk

The Humble Petition and Appeal of the said Defendants
Sheweth,

That the said Paul Benfield filed a Bill of Complaint
In

in the Honble the Mayors Court on the Tenth day of December last Past and which was in the year of our Lord One thousand Seven hundred and Eighty One, for Recovering the Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash Pretended by the said Complainant to be due unto him from your Petitioners and the said Paul Benfield did cause to be annexed to his said Bill of Complaint the Copy of a Certain Bond of your Petitioners bearing date the fifth day of April which was in the year of our Lord One thousand Seven hundred and Seventy Seven in the Penal Sum of Six hundred and Eighty three thousand Star Pagodas Conditioned for the payment unto the said Paul Benfield of the Sum of three hundred and forty one thousand five hundred Pagodas at such times and in such manner as in the said Bond is Setforth and there were also annexed to the said Bill of Complaint the Copies of Several Endorsements for monies Paid by your Petitioners or some of them in part of the said Bond and of an Acknowledgement at the foot of the said Receipts bearing date the fifth day of December which was in the year of our Lord One thousand Seven hundred and Seventy Eight whereby it was declared that the Ballance then due upon the said Bond Amounted to the said Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and Fifty Six Cash and your Petitioners shew that the said Bill also states that the said Paul Benfield had frequently and in an Amicable manner Requested Payment of the said Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and Fifty Six Cash Current money of Madras from your Petrs who had obsolutely and wilfully Refused to Pay the same or to give the said Paul Benfield any manner of Satisfaction touching the Premises and he therefore Prayed that your Petitioners may be Summoned &c. and that they be decreed to Pay unto the said Paul Benfield the aforesaid Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash with such Interest as then was or hereafter should become due thereon also all Costs of Suit and your Petitioners Shew that by any thing Setforth in the said Bill of Complaint it doth not Appear that your Petitioners and the said Paul Benfield had entred into any Articles in writing or had any other money dealings whatsoever excepting such as appear on the face of the said Bonds or that the said Paul Benfield was in Possession of any Mortgage or Securrity for Payment thereof. Whereas your Petitioners shew that Several Money Dealings and Negociations had been carrying on and several Articles and Endorsements in writing entred into and executed between your Petitioners or some of them on behalf of the whole and the said Paul Benfield and that your Petitioners had made over several Mortgages assignments and Securities unto the said Paul Benfield and had invested him with full and Ample Powers to Collect Recover and receive and to give Receipts for the Monies due or to grow due thereon from time to time as he received such Monies all which the said Paul Benfield should have stated in his said Bill of Complaint and he should have also setforth the Nature Quantity and Quality of the said Several Securities so deposited with him by your Petitioners and what he had received under them and each of them Respectively and to the account of which Particular Bond Security or money dealing the same should have been Carried and if he had not Received the several Amounts due on each Respectively, the Reasons why he had failed of or been prevented from receiving such amounts or any of them and the said Paul Benfield should have thence Reduced a fair and full Account of the whole and drawn a Proper Ballance thereon by which your Petitioners might have

been

been enabled to form a Judgment as to the state of their Accounts with the said Paul Benfield and how far the said Paul Benfield had acted up to the true intent Spirit and meaning of the several Covenants Conditions Provisoes Trusts and Arguments expressed or implied under and by virtue of the several Articles so entred into between your Petitioners and the said Paul Benfield and how far he had Performed the duties he owed unto your Petitioners and those interested with them or either of them under and by Vertue of the several Trusts mentioned and Contained in such articles or Instruments in writing to the Performance whereof your Petitioners humbly Conceive he was bound by having accepted such Trusts and by having in Consequence of such Acceptance taken upon himself the Burden and Execution of the several Trusts Specified therein and by having also thereby effectually Precluded your Petitioners from any interference in the Collection Recovery or Receipt of the Monies due under and by vertue of the said Securities or any or either of them—

Your Petitioners Shew that the said Paul Benfield having in manner aforesaid filed his Bill of Complaint against your Petitioners and having omitted to state all or any of the matters and things above in part Setforth your Petitioners did on the Twelfth day of the said Month of December file a Demurrer thereunto and for Cause of Demurrer did in the first place state that on the fourth day of April which was in the year of our Lord One thousand Seven hundred and Seventy Eight Certain Articles were entred into and duly Executed between James Call Andrew Mayendie and James Taylor three of your Petitioners and the said Paul Benfield the Copy whereof your Petitioners did Setforth in their said Demurrer and your Petitioners did also Setforth a Copy of Certain Articles of Agreement Executed between the said James Call James Taylor two of your Petitioners and the said Paul Benfield and bearing date the Seventeenth day of September which was in the year of our Lord One thousand Seven hundred and Seventy Eight and your Petitioners did also setforth a Copy of a Certain Instrument in writing bearing date the Seventeenth day of September in the said Year of Our Lord One thousand Seven hundred and Seventy Eight and Executed by the said James Taylor and James Call two of your Petrs and your Petitioners did also setforth the Copy of a Certain other Instrument in Writing bearing date the Twenty Seventh day of June in the said year of our Lord One thousand Seven hundred and Seventy Eight and Executed by James Call Andrew Mayendie and James Taylor three of your Petitioners all which your Petitioners said that the said Paul Benfield should have setforth in his said Bill of Complaint and for further Cause of Demurrer your Petitioners did say that the said Paul Benfield was possessed of Securities to a much larger Amount than any demand he could have had upon your Petitioners and that being possessed as above in part setforth of Sundry Powers and authorities and under and subject to such Trusts Covenants Conditions and Provisoes as are expressed or implied therein respectively your Petitioners were Precluded from interfering in the Collection Receipt or Recovery of the said several Securities or of their Produce the said Paul Benfield ought not to have said your Petitioners but should have exerted his best Endeavours in the Recovery of the Amount of the said Securities or the growing Produce thereof or of such Part thereof as in the Situation of affairs he could have done and your Petitioners did Shew such further and other Causes of Demurrer as on the said Demurrer now of Record in the Honble the Mayors Court reference being thereunto had may appear—

your

Your Petitioners further shew that on the fourteenth day of the Month of January last Past and in the Present year of our Lord One thousand Seven hundred and Eighty two the Complainant did file a Joinder to the said demurrer and did therein state such matters and things as in the said Joinder now of Record in the Hontble the Mayors Court Reference being thereto had may appear

Your Petitioners further shew that on the Twenty Second day of the said Month of January last past the Attorney for the Complainant Prayed that the said demurrer and Joinder might come on to be Argued to which the Attorney for your Petitioners Objected as your Petitioners had prayed for an Injunction to stop Proceedings in the said Cause and the Attorney of your Petitioners therefore Prayed that the Arguing the Demurrer and Joinder may stand over till the said Mayors Court had determined that the Answer of the said Paul Benfield to the Bill of Complaint of your Petitioners filed in the said Court the Twelfth day of the said Month of December was good and sufficient notwithstanding which the said Mayors Court did Proceed to take the said Demurrer into Consideration and after reading the Bill of Complaint the Demurrer with an Affidavit the Joinder Two Original Articles of Agreement and two Copies of Papers marked B and D on hearing the Pleadings made use of by the Attorney for the Complainant the Attorney for your Petitioners declining to Plead for the reason Assigned on the Minutes as above and the Court having considered thereon were of Opinion that the Pleas made use of by your Petrs in their Demurrer were insufficient and they therefore Ordered that the Demurrer be thrown out with Costs and that your Petitioners be put upon their said Answer To all which several

Proceedings

Proceedings Respectively being now of Record in the Hontble the Mayors Court as also to the said Order of the Twenty Second day of January last Past your Petitioners Pray leave to refer and to have such full and Ample benefit therefrom and from each of them as if they and each of them were hereinbefore fully and at large set forth

Your Petitioners shew that they do Conceive themselves aggrieved by the said Order of the said Mayors Court of the Twenty Second day of the said Month of January and do therefore Appeal therefrom to this Hontble Court of Appeals for the following among other Reasons

First Because, that when it appeared by the Records that your Petitioners had Prayed for an Injunction to stay Proceedings in the above Cause till it should have been determined by the said Court that the Answer of the said Paul Benfield to the Bill of Complaint of your Petitioners was good and sufficient the said Court ought not to have Proceeded in the above Cause before they had determined on the sufficiency of the said Answer the more so as no Injury could arise to the said Paul Benfield by so doing, and by determining otherwise your Petitioners were left in a Situation of Serious Consequence to them being open to Prosecutions at the Suit of the said Paul Benfield for the amount of a Pretended ballance due on Sundry Bonds Executed by your Petrs or some of them while the said Paul Benfield was in possession of Securities to a much larger amount than the whole of his Claims on your Petitioners without having given any account to your Petitioners or taken any effectual measures for the Recovery thereof

Secondly Because, that as it is the Established Practice of the Mayors Court that if a Mortgage has been given for securing the Payment

Payment of a Debt no Bail is Required the said Paul Benfield by charging in his said Bill of Complaint that your Petitioners were indebted to him as upon the ballance of a Simple Bond and by secreting or Suppressing the several Securities deposited with him by your Pet.rs by way of Mortgage towards the discharging among other things of the said Bond he hath Attempted to Surprize the Justices of the said Court by suking or by Putting himself in a Situation wherein it was in his option to have sought further and other Relief in the Premises than according to the said Established Practice of the said Court and According to the Rules of fair Justice and Equity he could have done, And in consequence whereof it might have been Possible to have Put your Petitioners in such a Situation that the said Court might According to their said Practice have Required Bail of your Petitioners or some of them to the amount of several Lacks of Pagodas and your Petitioners or some of them might for want of such Bail be Put in Prison

For which Reasons as well as those which may be offered at the hearing your Petitioners Pray that the said Order of the Mayor's Court of the Twenty Second of January last be Reversed with Costs to be paid by the said Paul Benfield in both Courts and that the said Demurrer May stand Good

Stephen Popham
for the Appellants

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d day of January Anno Domini 1782

Present

Edw.d Garrow Esq.r Mayor
Edw.d I Holland. William Webb
Thomas Cooper Robert D. Munro &
Hugh Maxwell Aldermen.

Paul Benfield
vers
Geo.e Savage James Call Andrew Majendie and James Taylor

The Attorney for the Complainant Prays that the Demurrer and Joinder may Come on to be Argued the Attorney for the Defendants Objects to the Demurrer and Joinder Coming on to be argued because they have Prayed for an Injunction to Stay Proceedings in this Cause He therefore Prays that the Arguing the Demurrer and Joinder may Stand Over till this Court shall have determined that the answer of the said Paul Benfield to the Bill of Complaint of these defend.ts filed the 12.th December last is good and Sufficient the Court having taken the same into Consideration are of Opinion that the Prayer made by the Attorney for the defendants is Highly irregular and from the very Nature of the Case is Virtually Null and Void. being only a Repetition of the Prayer of the Demurrer which is and must be a Prayer to quash all Proceedings in this Cause the Demurrer and Motion being in their Opinion one and the same thing in Praying a Decree upon the one they give Judgement upon the other the Court do therefore Proceeded to take the Demurrer into Consideration. Bill Read Demurrer with affidavit

Affidavit Read Joinder Read Two Original Articles of Agreement and Two Copies of Papers Marked B and D 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 the Demurrer with an Affidavit the Joinder Two Original Articles of Agreement and Two Copies of Papers Marked B and D On Hearing the Pleadings Made Use of by the Attorney for the Complainant the attorney for the Defendants declining to Plead for the Reason Assigned on the Minutes of this Day and the Court having had due Consideration thereon are of Opinion that the Pleas made use of by the Defendants in their Demurrer are Insufficient It is therefore ordered that the Demurrer be thrown out with Costs and the Defendants be put upon their Answer.

Day is given the defendants till the 22d Febry Next to Answer the Complainants Bill indefault of which Judgement will be given for the Complainant

A true Extract
Chas. Bromley
Dept. Regr.

In the Court of Appeals
at
Madraspatnam

Between Paul Benfield of Fort Saint George Esqr. Complainant and George Savage James Call Andrew Majendie and James Taylor

Taylor of the same place Esquires Defendts

The Answer of Paul Benfield of Fort Saint George Esquire to the Petition and Appeal of the said George Savage James Call Andrew Majendie and James Taylor

This 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 or is mentioned Expressed and Setforth for Answer thereunto Saith that the Appellants being Jointly and Severally indebted unto him this Respondent in a Certain and Specifick Sum of Money by them the said Appellants Entered and declared to be justly due and owing unto this Respondent as the ballance of a Certain Bond or written Obligation under their and each of their Respective hands and Seals which said Sum of Money remained due and unsatisfied from the said Appellants unto this Respondent for a Considerable time under the Assurances of Payment from time to time but which this Respondent Says they the Appellants have long Neglected and afterwards Refused to Pay or make good unto him Wherefore he this Respondent was drove to the Necessity of Preferring his Bill of Complaint in the Hontble the Mayors Court for Recovery of a Just Debt long due and owing to him from the said Appellants to which said Bill was annexed a Copy of the said Bond or written Obligation from whence the said Debt Originated and became due to this Respondent with true Copies of Receipts for every Sum or Sums of Money Received in Part Satisfaction from time to time by this Respondent or any other Person for him or on that Account and also a Copy of the said declaration of the Appellants Dated in Fort St. George, on the Fifth day of December which was in the Year of Our Lord

Filed in my Office the 2d March 1784
Charles Freeman Clk

Lord One thousand Seven hundred and Seventy Eight by which they
Acknowledged that the Specific or Certain Sum of Eighty five thousand
and three hundred Pagodas thirty Six fanams and fifty Six Cash Current
Money of Madras was then due and owing from the said Appellants
to this Respondent since which time this Respondent avers that
he has not by himself or attorney or any other Person or Persons whatsoever
Received any Sum or Sums of Money towards the discharge thereof but
that the same remains to this time unpaid and wholly unsatisfied
Notwithstanding any thing by the Appellants alledged or Setforth to
the Contrary for this Respondent Says, that he never Received or could
Receive any Sum or Sums of Money but thro the hands of the said
Appellants, who are and ever have been in the Actual Possession of
the Securities by which alone Money could be Received or Collected
and which were declared meant Provided and intended for the discharge
of their the Appellants Bonds to this Respondent Wherefore it is
Evident the Duties Pretended to be shewn as incumbent upon this
Respondent are improperly alledged for in fact and in truth the
Contrary must appear as is well known to the Appellants and
that the Duty arose and is owing from the Appellants to this
Respondent who ought in fair Justice and Equity to have discharged their obligation
which was in it self Simple and unconditional for a Certain Sum of Money
for Just and Valuable Considerations nor could this Respondent derive any
Power to act Recover or Receive Monies in the manner they the Appellants
have Setforth by vertue of those Pretended Powers and Authorities
deposited with him much less deprive or Preclude them the Appellts
from Receiving for this Respondent Says that they the Appellants not
only Received all and every Sum or Sums of Money which was to
be had or Procured therefrom and Paid such Parts only to this

Respondent

Respondent or his Attorney as they thought Proper but that he never did
or could Receive any Money therefrom thro other hands because they the
said Appellants always Retained and held Possession of the Essential
Writings for that Purpose and this Respondent for further Answer
Saith that to his said Bill of Complaint the said Appellants filed a
Demurrer thereby endeavouring to defeat this Respondent of his Just Claim
and Demand in which said Demurrer were introduced and exhibited
many matters and things foreign to the Purpose of Establishing a fair
Demurrer on either Law or Equity nor could the said Articles for
Agreement therein Exhibited operate or tend to annul or make Void
this Respondent his demand in manner and form As by him is
Charged alledged and Setforth in and by his said Bill of Complaint
and this Respondents Says had they the Appellants acted up to the
true intent Spirit and Express Meaning of such said Articles of
Agreement this Respondent would not have been under the necessity
for Recovery of a Just Debt intended and declared to be Provided for
and the Payment Secured unto this Respondent in and by the said
Articles of Agreement which were Originally meant and intended
as Mode of Securing the Payment of the several Sums of Money due
and Owing from the Appellants to this Respondent and in no
Ways or upon any Account whatever to Prevent or Preclude this
Respondent from his Right of Action in Case of Non performance
on the part of the Appellants as Appears by their the Appellants
own shewing in and by their said Demurrer in a Certain Clause and
Provison of the said Articles of Agreement to the following Effect
that after the fifth day of April which was in the Year of Our Lord
One thousand Seven hundred and Seventy Seven it is declared and
Expressly Shewn that the said Bond or written Obligation on which this

Respondt

Respondents Cause of Action arose/ should be in full force notwithstanding any other matter or things in the said Articles of Agreement contained to the Contrary and it is therein declared that it was the intention of the Parties that by any thing therein Contained the said Paul Benfield meaning this Respondent shall be deprived of or Precluded from any Rights Claims or Benefits Proceeding or originating from any of the therein recited Bonds independantly according to the terms tenor and dates of the said Bonds Respectively and this Respondent Says that According to the Rules and Practice of the Hontble the Mayors Court he filed his Joinder to the said Demurrer and did therein Shew that he had brought and Exhibited his Bill of Complaint for the Recovery of a Specific Sum assured to him under one of the Bonds the Right of Recovery for which was in and by the said afore recited Clause or Provision in the said Articles of Agreement so Reversed unto this Respondent against which it is Presumed the Appellants could shew no cause or they would not by Demurrer have Pleaded Collateral Matters and things which could not operate or have any force either in Law or Equity against this Respondent his Right of Action in manner and form as by him is Established or they would have availed themselves thereof by Plea or Answer therefore this Respondent in his said Joinder did Pray the Judgement of that Court and that they would Decree unto him Payment of his Just Debt and Costs Agreable to certain Acts of Parliament therein Pleaded and which will fully Appear by Reference to the said Joinder now before this Hontble Court this Respondent further Saith that on the twenty Second day of January last past the said Bill of Complaint Demurrer and Joinder came on to be heard and Argued before the said Hontble the Mayors Court of which the Attorney for the Appellants had Received Eight days Notice in

Open

Open Court and therefore could not be unprovided unless from a Sense of having introduced many vague and frivolous Pleas which ought not in fair Justice and Equity to Operate or have any Effect in Precluding this Respondent from his Right of Action in manner and form as by him is Exhibited at which hearing the said Court were Pleased to consider the said Pleas introduced and Exhibited in and by the Appellants said Demurrer as insufficient and Ordered the said Demurrer to be thrown out and that the Defendants should Answer by which Order of the said Court the Appellants could not in fact Consider themselves Aggrieved yet they have with an intent to Procrastinate and delay the Payment of a Just Debt long due unto this Respondent Appealed unto this Hontble Court under several Evasive and frivolous Pretences for it is well known to the said Appellants that the Pretended Securities Mortgaged or deposited in this Respondents hands can Produce or afford no means of Payment whilst they the said Appellants continue to hold Enjoy and Possess the Punkaws orders or assignments on the several Countries from which monies were to be Received and applied long since to the Discharge of this Respondent his demand and this Respondent further Saith that Notwithstanding the Inefficacy of the Securities for the several Sums of Money due from the Appellants to him this Respondent he has not attempted to hold them Personally to Bail, on the Contrary this Respondents Readiness at all times to Accomodate and make Easy the several Payments for large Sums of Money due from them the said Appellants have frequently put him to much inconveniency loss and hazard this Respondent says that he is willing and Ready to give up and Resign all and every Security in his Possession which is are or ever were deposited with him upon Receiving his Just Demands

For

For all which Reasons and for others which may be offered at the hearing this Respondent humbly Prays that the Order of the Honble the Mayors Court may be confirmed so far as Respects the throwing out of the Appellants said Demurrer and that upon due Consideration of the Premises this Honble Court will be Pleased to make such Order and Decree as in Justice and Equity they shall see Right — and which may According to the Laws of England in such Cases be Especially Provided for and this Respondent prays that in this Matter he may be dismissed with his Costs in this Cause most Wrongfully Sustained.

Charles Bromley
Edward Ellis
Attornies for the Respondt

In the Court of Appeals at Madraspatnam } Fr Thursday the 15th May anno Domini 1783

Between James Taylor James Call George Savage and Andrew Majendie of Fort St George Esqrs Appellants and Paul Benfield of the same place Esq Respondent

The Attorney for the Appellant having Moved to — Withdraw this Cause and each party Paying their own Costs and the Attorney for the Respondent having Agreed thereto.

Ordered Accordingly

Thos Chas Freeman Actr

To the Right Honble George Lord Macartney K. B.
President and Govrnor &c. Counci of Fort Saint George

In the Court of Appeals at Madraspatnam } Between Paul Benfield of Fort Saint George Esquire Complainant and George Savage James Call James Taylor and Andrew Majendie of the same place Esquires Defendants

The Humble Petition and Appeal of the said Paul Benfield of Fort Saint George Esquires

Sheweth.

That George Savage James Call James Taylor and Andrew Majendie abovementioned Standing Jointly and Severally Indebted unto your Petitioner in the full and Just Sum of Pagodas Eighty five thousand and thirteen thirty Six fanams and fifty Six Cash Current Money of Madras as by a certain written Acknowledgement dated in Fort Saint George on the fifth day of December which was in the year of Our Lord One thousand Seven hundred and Seventy Eight executed by and between your Petitioner and the said James Call and James Taylor for themselves and the concerned and by them given unto your Petr for and on Account and behalf of themselves and the said George Savage and Andrew Majendie by which said written Acknowledgement it is expressly declared that there was on the said fifth day of December then due and owing unto your Petitioner from the said George Savage James Call Andrew Majendie and James Taylor the said Sum of Pagodas Eighty five thousand and thirteen thirty Six fanams and fifty Six Cash Current Money of Madras as the Ballance then due from them on a Certain Bond or Written Obligation

Filed in my Office the 4th Febry 1782
Charles Freeman Actr

Obligation by them the said George Savage James Call Andrew —
Majendie and James Taylor given and granted unto your Petitioner
under their Respective hands and Seals in Fort Saint George the fifth
Day of April which was in the year of our Lord One thousand Seven
hundred and Seventy Seven for the Penal Sum of Pagodas Six —
hundred and Eighty three thousand Pagodas three hundred and
forty One thousand and five hundred which they thereby —
Acknowledged to have borrowed and Received of your Petitioner and
by the said Bond became Jointly and Severately bound for Payment
thereof unto your Petitioner which said Bond your Petitioner Sheweth,
hath long since become due and Payable your Petitioner further —
Sheweth that the said George Savage James Call Andrew Majendie
and James Taylor having refused to pay or make good and unto your
Petitioner the aforementioned Sum of Pagodas Eighty five thousand
and thirteen thirty Six fanams and fifty Six Cash Current Money
of Madras so by them as aforesaid declared and Acknowledged to
be due unto your Petitioner your Petitioner was reduced to the Necessity
of Preferring his Bill of Complaint in the Honble the Mayors —
Court against the said George Savage James Call Andrew —
Majendie and James Taylor for the said Sum of Pagodas Eighty
five thousand and thirteen thirty Six fanams and fifty Six Cash
and the said Bill of Complaint was filed on the Tenth day of
December in the year of our Lord One thousand Seven hundred
and Eighty One, to this Bill of Complaint the said George Savage
James Call and James Taylor for themselves and the said —
Andrew Majendie did Appear and by Motion of their Attorney
did obtain time to Plead Answer or Demurr and on the twelfth
day of December last Past and which was in the year One thousand
Seven

Seven hundred and Eighty One, they the said George Savage James —
Call Andrew Majendie and James Taylor did file their Demurrer
wherein they Setforth and Shew Many Matters and things foreign
to the Purpose of Establishing a fair Demurrer in either Law or Equity
as will fully Appear by Reference to the said Demurrer herewith
before this Honble Court, to which your Petitioner filed a Joinder —
thereon and thereby Supporting his said Bill of Complaint and
Shewing the many Groundless and frivilous Pleas Setforth and
Exhibited in and by the said Demurrer and that nothing therein
Contained was good Certain or Sufficient in the Law or Preclude —
your Petitioner from his Right of Action in manner and form
as by him is Exhibited charged alledged and Setforth in and by
his said Bill of Complaint which being brought or Commenced
for the Recovery of a certain and Specifick sum by them this —
Defendants declared to be Justly due and owing unto your Petitioner
the fact was fully confessed and Established by their Demurrer for
was there any Reason or Just Cause to have Precluded or deprived
your Petitioner of his Right of Action the same should have been
Shewn and Setforth in a Plea or Answer nor could the Pleading
of any collateral Matter or thing be implied deemed or taken to
Operate or have any force either in Law or Equity to Preclude your
Petitioner from his Right of Action in manner and form aforesaid
nor in fact was there any Cause existing for the very Pleas or —
Pretexts they the said Defendants Setforth in their Demurrer was
and must be considered over Ruled annulled and made void in —
and by their the Defendants own Declaration which they themselves
shew and Setforth to the following Purport that the said Bond
on which your Petitioners action is founded as well as others Given

and

and Granted unto your Petitioner for good and valuable consideration
by the said George Savage James Call Andrew Majendie and
James Taylor should after the fifth day of April One Thousand Seven
Hundred and Seventy Seven be in full force According to the Stipulated
Periods of Payment Mentioned in each Bond Respectively any
Matter therein contained to the Contrary Notwithstanding as it is
not the intention of the Parties that by any thing therein contained
the said Paul Benfield shall be deprived of or Precluded from any
Right Claims or benefits Proceeding and Originating from any of
the Aforementioned Bonds independantly according to the terms
Tenor and dates of the said Bonds respectively and the Fact
being thus fully Established by it's being Confessedly Acknow-
ledged and by this Demurrer and your Petitioner Doth therefore
Pray the Judgement of the said Honble the Mayors Court and that
they would Decree the said Sum of Eighty five Thousand and Three
Pagodas Thirty Six fanams and fifty Six Cash together with
such Interest as was or might become due thereupon and Costs
of Suit to be Paid unto your Petitioner as Agreable to the Rules of
Law in such case made and Provided in and by a Certain act of
Parliament made in the 27 Year of Queen Elizabeth Chapter the
5th entitled an act for the furtherance of Justice in case of Demurrer
and Pleadings

For as much as excessive Charges and Expences
and great Delay and hindrance of Justice hath Grown in actions
and Suits between the Subjects of this Realm by reason that
upon some small mistaking or want of form in Pleading
Judgements are often Reversed by writs of Error and often times
upon Demurrers in law given otherwise than the Matter in law
and very Right of the Cause doth require whereby the Parties are
constrained

Constrained either utterly to lose their Right or else after long time and great
Trouble and Expences to Renew again their Suits [2] for remedy whereof
be it enacted by the Queens most Excellent Majesty the Lords Spiritual
and Temporal and the Commons in this Present Parliament assembled
and by the Authority of the same that from henceforth after
Demurrer Joined and entred in any Action or Suit in any Court of
Record within this Realm the Judges shall Proceed and give
Judgement According as the very Right of the Cause and matter in
Law shall Appear unto them without regarding any Imperfection
Defect or want of form in any such Writ Return Plaint Declaration or Other
Pleading Process or Course of Proceeding whatsoever except those only
which the Party Demurring shall especially and Particularly
Set down and express together with his Demurrer [3] and that
no Judgement to be given shall be Reversed by any writ of Error
for any such Imperfection Defect or want of form as is aforesaid
Except such only as is before excepted. Which said Act of
Parliament and all the matters and things therein Expressed is
Established and Confirmed by another Act of Parliament made
in the 4th Year of Queen Anne Chapter the 16th entitled an act
for the Amendment of the Law and the better Advancement of
Justice whereby it is Enacted that for the amendment of the law
in Several Particulars and for the easier Speedier and better
Advancement of Justice be it Enacted by the Queens Most
Excellent Majesty by and with the Advice and Consent of the
Lords Spiritual and Temporal and Commons in this Present
Parliament Assembled and by the Authority of the same,
that from and after the first Day of Trinity Term which
shall be in the Year of our Lord One Thousand Seven Hundred

and

and Sea where any Demurrer shall be Joined and entred in any action
or Suit in any Court of Record within the Realm the Judges shall
Proceed and give Judgment According as the very Right of the Cause
and Matter in Law shall Appear unto them without regarding
any Imperfection omission or Defect in any writ of Return Plaint
Declaration or other Pleading Process or course of Proceeding whatsoever
except those only which the Party demurring shall especially and
Particularly Set down and Express together with his Demurrer as
Cause of the same Notwithstanding that such Imperfection Omission
or defect might have heretofore been taken to the matter of Substance
and not aided by the Statute made in the twenty Seventh Year of
Queen Elizabeth entituled an act for the furtherance of Justice in case
of Demurrer and Pleadings so as Sufficient matter Appear in the
said Pleadings upon which the Court may give Judgement according
to the very right of the Cause".

Your Petitioner further Sheweth unto this Honble Court that on Tuesday the Twenty Second day of January last past the said Bill the Defendants Demurrer and your Petitioners Joinder came on to be heard before the Honble the Mayors Court when they were Pleased to Order the said Demurrer to be thrown out with Costs and Put the said Defendants to answer instead of giving Judgement thereon as in Right and Justice they ought to have done in favour of your Petitioner which will more fully Appear by an

Attested

Attested Copy of the said Order hereunto annexed for the inspection of this Honble Court by which said order of the Honble the Mayors Court your Petitioner is much delayed and Considers himself thereby Aggrieved and Appeal therefrom to the Judgement of this Honble Court and most humbly Prays that this Honble Court will be Pleased to take the same into their Serious Consideration and grant your Petr. such Relief in the Premises as to them shall Appear Agreable to Law Equity and good Conscience and that they will as in Law and of Right your Petitioner Considers himself entitled unto Grant him a Decree or Judgement for his Just Debt Interest and Costs with such other and further Relief as to this Honbles Court shall Seem Meet.

Charles Bromley
Edward Ellis
Attorneys Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d. day of January Anno Domine 1783

Present

Edw.d Garrow Esqr. Mayor
Edw.d L. Holland William Webb
Thomas Coper Robt. D. Munro &
Hugh Maxwell Aldermen

Paul

Paul Benfield

vers

George Savage James Call Andrew Majendie and James Taylor

The Attorney for the Complainant Prays that the Demurrer and Joinder may Come on to be Argued the Attorney for the Defendants objects to the Demurrer and Joinder Coming on to be Argued because they have Prayed for an Injunction to Stay Proceedings in this Cause he therefore Prays that the Arguing the Demurrer and Joinder may stand Over till this Court shall have determined that the answer of the said Paul Benfield to the Bill of Complaint of these Defendants filed the 12th December last is good and Sufficient the Court having taken the same into Consideration are of Opinion that the Prayer made by the Attorney for the Defendants is highly irregular and from the very Nature of the Case is virtually null and Void being only a Repetition of the Prayer of the Demurrer which is and Must be a Prayer to quash all Proceedings in this Cause the Demurrer and Motion being in their Opinion one and the same thing in Passing a Decree upon the one they give Judgement upon the other the Court do therefore Proceed to take the Demurrer into Consideration Bill Read Demurrer with affidavit Read Joinder Read Two Original Articles of Agreement and two Copies of Papers Marked B and D 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 the Demurrer with an Affidavit the Joinder Two Original Articles of Agreement and Two Copies of Papers Marked B and D on Hearing the Pleadings Made Use of by the Attorney for the Complainant the Attorney for the Defendants declining to Plead for the Reason Assigned on the Minutes of this day and the Court having had due Consideration thereon are of Opinion that the Pleas made use of by the Defendants in their Demurrer are Insufficient It is therefore Ordered that the Demurrer be thrown out with Costs and the Defendants be put upon their Answer

Day is given the Defendants till the 22d Febry Next to Answer the Complainants Bill indefault of which Judgement will be given for the Complainant

A true Extract

Chas. Bromley

Deputy Regr.

A true Copy

Charles Bromley

Edward Ellis

Attorneys Appellants

In

In the Honble the Court of Appeals at Madraspatm

The Answer of George Savage James Call Andrew Majendie and James Taylor to the Petition and Appeal of Paul Benfield

Filed in my Office
the 22d Febry 1782
Charles Freeman
Clk

These Respondents do Admit that the said Appellant died on the Tenth day of December which was in the year of our Lord One thousand Seven hundred and Eighty One, file a Bill of Complaint in the Honble the Mayors Court for Recovery of the Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash Charged by the said Appellant to be due unto him by these Respondents and that these Respondents did appear thereto and by motion did Obtain time to Plead Answer or Demurr and that on the Twelfth day of the said Month of December these Respondents did file a Demurrer but these Respondents deny that the said Demurrer did Contain any matters or things foreign to the Purpose or that the Pleas therein used were Groundless or frivolous or that the said Demurrer wanted Certainty Sufficiency or that by any thing Setforth in the said Demurrer these Respondents did Confess or Acknowledge that they were indebted unto the said Appellant in the said Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash or in any other Sum of Money whatsoever on the contrary it appears on the face of the said Demurrer and of the Affedavit of George Savage James Call and James Taylor three of these Respondents filed in the said Mayors Court the said Twelfth day of December which was in the Year of our Lord One thousand Seven hundred and Eighty One that the said Appellant was in profession of Sundry Securities by Mortgages and Assignments to a much larger Amount than the Sum Sued for and that the very Bond for the ballance whereof the said Appellant filed his said Bill of Complaint is one of the Bonds the payment whereof is Secured unto the Appellant by the said Several Mortgages Assignments and Securities or some of them as would more fully Appear by Sundry Articles of Agreement and other Paper Writings delivered into the Honble the Mayors Court the said Twelfth day of December and at the same time they filed their said demurrer to which said demurrer and to the said Articles of Agreement and said other Paper Writings these Respondents Pray leave to Refer and to have such full and ample benefit from them and each of them as if they and each of them respectively were herein fully stated and Setforth and it also Appears on the face of the Bill of Compt of the said Appellant and under the Circumstances Stated as Causes of Demurrer by these Respondents that the Appellant had no right to recover of these Respondents by Reason of all or any of the matters and things alledged and Charged by the Appellant in his said Bill of Complaint for the Appellant having had Divers and Sundry Dealings and Money transactions with these Respondents and having received divers and Sundry Securities by Assignments and Mortgages and having under and by Vertue thereof and of the several Articles and writings Setforth in the said Demurrer had Authority to receive and for ought these Respondents know to the Contrary as he might have received divers Sums of Money for and on Account or in full Payment of the very ballance so Charged

Charged in his said Bill of Complaint to be due unto him by these Respondents the Appellant should have stated in his said Bill of Complaint as well the Nature Quantity and Quality of the several Securities deposited with him by these Respondents and what he received upon them and each of them Respectively as to what — Account and to the Credit of which Bond of these Respondents he was to Place such Receipts or Sums of Money respectively and he should have drawn out a Proper Account Current thereof and have stated the Several Ballances thereon and have thence deducted one fair and definite Claim against these Respondents and in Order to have Shewn that such definite Claim was well founded According to the Principles of Equity the Appellant should have — made it Appear to the Satisfaction of the said Mayors Court that he had fully acted up to the true intent and Spirit of the trust — Reposed in him by the said Several Articles and Instruments in writing and that he had not in any Respect Committed any Act to the Prejudice of the Persons for whom he had undertaken to Act in trust nor Omitted to do any Act which might Advance the Interests of those Concerned in the said Several Articles and — Instruments in writing and in the Coontenal Produce of the said Mortgages Assignments and other Securities so deposited with the Appellant under and Subject to such several Trusts Provisoes Covenants and Arguments as are Specially expressed in the said Articles and other Papers Writings Respectively or as Result therefrom by Plain Construction of Law and under the actual Intent of the Several Persons Parties thereto at the time the same were Respectively Executed and these Respondents further Say that for as much as it is the Established — Practice of the Mayors Court not to Oblige a Defendant or Defendants

in

In any Suit instituted therein to find Bail where the Cause of Action is founded on any Note Bond or Promise whatsoever the Payment or Performance whereof is Secured by Mortgage the Appellant ought to have constituted his Suit in such amanner as to have made it appear that such Mortgages had Existed, and not to have put these Respondts in a Situation that left it in the Option of the Appellant whether or no to Pray for Bail Against these Respondents Whereas the said Appellant instead of stating all and every the Matters and things above Setforth hath Endeavoured to mislead the Judgment and Surprize the Justice of the Hon^ble the Mayors Court by bringing his Action on a Simple Bond and Secreting or Suppressing the said Several Securities and thereby Seeking other Relief in the Premises than in Justice he ought to have done and these Respondents further say that after the Appellant had Possessed himself of the Property of these Respondents with Ample Powers to Recover the same to an Account for Superior to the whole of the — Appellants Claims he Neglected to Recover or Receive the said Property in manner as is Stated in the said Demurrer of these Respondents and by such his Neglect the Appellant Appears to have Subjected himself as these Respondents conceive to the Payment unto these — Respondents of the Sum due on the said several Securities so assigned in Consequence whereof the said Appellant will Appear to be debtor to these Respondents in a very Considerable Ballance all which with several other matters these Respondents have setforth as Causes of Demurrer and they humbly Submit that such Causes of Demurrer were good and Sufficient Causes and were so Specially setforth as to have — intitled these Respondents to the Order of the said Mayors Court for Dismissing the Appellants said Bill of Complaint with Costs and these Respondents do absolutely deny that by any thing setforth by

by them in their said Demurrer they have Acknowledged themselves
Debtors to the Appellant in the said Sum of Eighty two thousand
and thirteen Pagodas thirty Six fanams and fifty Six Cash or in —
any other Sum of Money whatsoever On the Contrary these Respondents
have throughout their said Demurrer not only denied being indebted
unto the Appellant in any Sum or Sums of Money whatever but
have Setforth and Alledged such special matters as fully and Clearly
Prove as these Respondents humbly Conceive that the Appellant
has no Just Cause of Action whatever against these Respondents
or any or either of them and that so far from these Respondents
being indebted unto the Appellant in any Sum or Sums of Money
it will hereafter Appear that the Appellant stands indebted unto
these Respondents in many Lacks of Pagodas and in Order the —
better to ascertain the amount thereof these Respondents conform &c
to the Practice of the high Courts of Chancery and Exchequer in
England and the Supreme Court of Judicature at Fort William in
Bengall have filed a Bill in Equity against the Appellant —
for a discovery of certain matters and things relative to the large —
Property belonging to these Respondents and make over in trust to
the Appellant of which the Appellant has rendered no Account to
these Respondents but on the Contrary has attempted to Secret the
same as will Appear on Reference being had to the Appellants said
Bill of Amplaint against these Respondents and these Respondents
do humbly Contend that under all the Circumstances stated and
Setforth or referred to in the several Proceedings in this Cause the —
Appellants action against these Respondents is highly unjust —
Vexatious and fabricated with a View to mislead this Honble Court
and to oppress these Respondents and as to the Suggestions of the —

Appellant

Appellant in his Joinder to the Demurrer of these Respondents and in
his said Appeal from the Order of the said Mayors Court of the said
Twenty Second day of January last wherein he says he is entitled to
Judgement for the Amount Sued for these Respondents Say that it
Appears of the Appellants own Shewing in his said Quotations from
the several Statutes Passed in the Twenty Seventh Year of the
Reign of her Majesty Queen Elizabeth and in the fourth Year of
the Reign of her Majesty Queen Anne that the Appellant ought
not to have a Decree or Judgement for the Amount Sued for by his
said Bill of Complaint by Reason of any matter or thing Alledged
or Setforth by these Respondents in their said Demurrer For by
the said Statute of the fourth Year of the Reign of her Majesty Queen
Anne and which has reference to the said Statute of Queen Elizabeth
and which said Statute of Queen Anne has the Clause following
to wit. —

"For the Amendment — of the Law in Several —
"Particulars and for the easier Speedier and better Advancement of
"Justice be it enacted by the Queens Most Excellent Majesty by and
"with the Advice and Consent of the Lords Spiritual and Temporal
"and Commons in this Present Parliament assembled and by the
"Authority of the same that from and after the First day of Trinity
"Term which shall be in the year of our Lord One thousand Seven
"hundred and Six where any Demurrer shall be Joined and entred
"in any Action or Suit in any Court of Record within this Realm
"the Judges shall Proceed and give Judgement according as the
"very Right of the Cause and matter in Law shall appear unto
"them without Regarding any Imperfection Omission or Defect
"in any writ Return Plaint Declaration or other Pleading Process or

Course

Course of Proceeding whatsoever except those only which the Party
Demurring shall specially and Particularly Set down and Express
together with his Demurrer as Causes of the same Notwithstanding
that such Imperfection Omission or defect might have heretofore been
taken to be matter of Substance and not aided by the Statute made
in the twenty Seventh Year of Queen Elizabeth entituled an Act
for the furtherance of Justice in case of Demurrer and Pleadings
upon which the Court may give Judgement according to the very
Right of the Cause and therefore from and after the said first day of
Trinity Term no Advantage or exception shall be taken of or for an
immaterial Traverse or of or for the default of entring Pledges upon
any Bill or declaration or of or for the default of alledging the
bringing into Court any Bond Bill Indenture or other Deed
whatsoever mentioned in the declaration or other Pleading or of or for
the default of alledging of the bringing into Court Letters Testamentary
or Letters of Administration or of or for the Omission of Vicl Armus &
contra Pawn or other of them or of or for the want of Averment of Hoc
Paratus est verificare or Hoc Paratus est verificare per Recordum
or of or for not alledging Profert Debet Hoc Recordum but the Court
shall give Judgement according to the very Right of the Cause as
aforesaid without Regarding any such Imperfections Omissions and
Defects or any other matters of like nature except the same shall be
Specially and Particularly Set down and shewn for Cause of Demurrer
It is expressly excepted that where the Causes of Demurrer are specially
and Particularly set down and shewn Judgement shall not be given
which said Statute of the fourth year of Her Majesty Queen Anne
hath in no wise been abrogated repealed or made void but the same
now Remains in full force Wherefore these Respondents Submit that
the

the Causes Set forth by these Respondents in their said Demurrer are so Specially and Particular as not only to Preclude the Appellant from any Right to Judgement as against these Respondents for the said Sum Sued for by the Appellant but even to entitle these Respondents to an Order from the said Mayor's Court for the dismissing the Appellants said Bill of Complaint with Costs to be Paid by the said Appellant

For which Reasons and such others as may be offered at the Hearing these Respondents Pray that the Appellants said Petition and Appeal be dismissed with Costs to be Paid by the Appellant.

Stephen Popham
Attorney for the Respondents

Court of Appeals
at
Madraspatnam

Thursday the 15th May
anno Domini 1783

Between Paul Benfield Esqr of Fort St George Appellant and James Taylor James Call George Savage and Andrew Mayendie of the same place Esqrs Respondents

The Attorney for the Appellant having Moved to Withdraw this Cause and each Party Paying their own Costs and the Attorney for the Respondents having Agreed thereto

Ordered Accordingly

P Cur
Geo Fremeaux

To the Right Honble George Lord Macartney K. B. &c.
President and Governor &c. Council of Fort Saint George

In the Court of Appeals

Between George Savage James Call
Andrew Maynadier and James Taylor Complaina
and Paul Benfield defendant

Sheweth,

The Humble Petition and Appeal of the said Complainants

That the said Paul Benfield filed a Bill of Complaint in the Honble the Mayors Court on the Tenth day of December last Past and which was in the year of our Lord One Thousand Seven hund
Filed in my Office and Eighty One, for Recovering the Sum of Eighty five thousand and
the 4th Febry 1782 Pagodas thirty Six fanams and fifty Six Cash Pretended by the sa
Charles Freeman Paul Benfield to be due unto him from your Petitioners and tha
Clk Paul Benfield did Cause to be annexed to his said Bill of Compl
the Copy of a certain Bond of your Petitioners bearing date the fif
day of April which was in the year of our Lord One Thousand Seve
hundred and Seventy Seven in the Penal Sum of Six hundred a
and Eighty three Thousand Star Pagodas Conditioned for the
Payment unto the said Paul Benfield of the Sum of three thousa
and forty One thousand Five hundred Pagodas at such times an
in such manner as in the said Bond is Set forth and there were
annexed to the said Bill of Complaint the Copies of several Endorse
for monies Paid by your Petitioners or some of them in Part of the sa
Bond and of an Acknowledgement at the foot of the said Recpts bear
date the fifth day of December which was in the year of our Lord One thousand Seven hundred and Seventy Eight whereby it was declared that the Ballance then due upon the said Bond Amounted to the said Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash and your Petitioners shew that the said Bill also States that the said Paul Benfield had frequently and in an amicable manner Requested Payment of the said Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash Current Money of Madras from your Petitioners who had absolutely and wilfully refused to Pay the same or to give the said Paul Benfield any manner of Satisfaction touching the Premises and he therefore Prayed that your Petitioners may be Summoned &c. and that they be decreed to Pay unto the said Paul Benfield the aforesaid Sum of Eighty five thousand and thirteen Pagodas thirty Six fanams and fifty Six Cash with such Interest as then was or should thereafter should become due thereon also all Costs of Suit and your Petitioners shew that by any thing setforth in the said Bill of Complaint it doth not Appear that your Petitioners and the said Paul Benfield had entred into any Articles in writing or had any other money dealings whatsoever excepting such as Appear on the face of the said Bond or that the said Paul Benfield was in Possession of any Mortgage or Securety for Payment thereof Whereas your Petitioners shew that several money dealings and Negociations had been Carrying on and Several Articles and Instruments in writing entred into and Executed between your Petitioners or some of them on behalf of the whole and the said Paul Benfield and that your Petrs had made over several Mortgages Assignments and Securities unto the said Paul Benfield and had invested him with

full

full and Ample Powers to Collect Recover and Receive and to give Receipts for the Monies due or to grow due thereon from time to time as he Received such Monies all which the said Paul Benfield should have stated in his said Bill of Complaint and he should have also Setforth the Nature Quantity and Quality of the said Several Securities so deposited with him by your Petitioners and what he had Received under them and each of them Respectively and to the Account of which Particular Bond Security or money dealing the same should have been carried and if he had not Received the Several Amounts due on each Respectively the Reasons why he had failed of or been Prevented from Receiving such Amounts or any of them and the said Paul Benfield should have thence deduced a fair and full Account of the whole and drawn a Proper ballance thereon by which your Petitioners might have been enabled to form a Judgement as to the state of their Accounts with the said Paul Benfield and how far the said Paul Benfield had acted up to the true intent Spirit and meaning of the several Covenants Condetions Provisoes Trusts and agreements expressed or implied under and by Virtue of the several Articles so entred into between your Petitioners and the said Paul Benfield and how far he had Performed the Duties he owed unto your Petitioners and those Interested with them or either of them under and by Virtue of the several Trusts mentioned and contained in such Articles or Instruments in Writing to the Performance whereof your Petitioners humbly Conceive he was bound by having Accepted such Trusts and by having in Consequence of such Acceptance taken upon himself the Burden and Execution of the Several Trusts Specified therein and by having also thereby effectually Precluded your Petitioners from any interference

interference in the Collection Recovery or Receipt of the Monies due under and by Virtue of the said Securities or any or either of them.

Your Petitioners shew that the said Paul Benfield having in manner aforesaid filed his said Bill of Complaint against your Petitioners and having Omitted to state all or any of the several matters and things above in part setforth and having thereby endeavoured to injure your Petitioners very materially in their concerns your Petitioners did on the Twelfth day of the said month of December file a Bill in the said Mayors Court against the said Paul Benfield stating among other things the several matters and things above in Part setforth and did fully setforth all and every the money Transactions dealings and Concerns Subsisting between your Petitioners and the said Paul Benfield and did afterwards interrogate the said Paul Benfield as well to the said Several Money transactions dealings and Concerns as to such other matters whether of Fact or of Conference between the said Paul Benfield and your Petitioners or some of them as might at all tend to affect their Mutual Concerns or by elucidating the Confidential and Conversations which had been Carried on between the said Paul Benfield and your Petitioners or some of them might tend to explain the Real Grounds of their dealings and the Equitable Points which by fair Construction might Result therefrom and your Petitioners shew that being apprehensive of further Vigorous Proceedings at Law against your Petitioners in consequence of the Premises they did Pray that until the said Paul Benfield should have fully and truely Answered unto all matters and things whereunto the said Benfield had been interrogated by your Petitioners all Proceedings at Law as well on the said Bill of

Compt.

Complaint of the said Paul Benfield so filed against your Petitioners on the said Tenth day of December as on any Cause matter or thing between the said Paul Benfield and your Petitioners or either of them may be stayed in the said Court and that as the said Paul Benfield by having so filed his said Bill against your Petitioners under all the Circumstances thereinbefore stated did so file the same with an intent to injure your Petitioners and without having any Just Cause of Action against your Petitioners and having also filed the same without having first Accounted with your Petitioners as he ought to have done for the Amount of the said several Bonds Mortgages Assignments and Securities or the Produce thereof that the said Paul Benfield might be Decreed to Pay all Costs of the said Suit

Your Petitioners shew that the Attorney for your Petitioners did on the fifteenth day of the said Month of January Pray that the Injuction Prayed for by your Petitioners in their said Bill of Complaint might be granted and that all the Proceedings in the said Court against your Petitioners as Defendants to the said Bill of Complaint filed against your Petitioners the said Tenth day of December by the said Paul Benfield might be stayed and that the said Paul Benfield might be restrained from instituting any Suit in the said Mayor's Court against your Petitioners or either of them for Account of any other Cause matter or thing until the said Paul Benfield should have fully Answered the said Bill of Complaint of your Petitioners so filed the said Twelfth day of Decr last and your Petitioners shew that the said Court Deferred taking the same into Consideration till the then Next Court day when a full Court was Ordered to be Summoned

Your

Your Petitioners further shew that on the Twenty Second day of the said Month of January being the next Court day after the said Court of the said Fifteenth day of January and before the Court had taken into Consideration the said Prayer of your Petitioners made on the said Fifteenth day of January the answer of the said Paul Benfield with Six different Exhibits and which was said to be Sworn to before the Mayor the Twenty first day of the said Month of January was filed whereupon the Attorney for your Petrs Prayed leave to withdraw the said Motion made the then last Court day upon Payment of Costs which was granted and he thereupon Prayed that fourteen days might be allowed your Petrs to get a Copy of the Answer of the said Paul Benfield and to inquire into its Sufficiency and in case the same was found insufficient to file Exceptions thereto which was also granted and the said Attorney for your Petitioners did thereupon Pray that an Injunction might issue against the said Paul Benfield to stay all Proceedings in that Court against your Petitioners as Defendants to the said Bill of Complaint filed in that Court the said Tenth day of December last by the said Paul Benfield and also that the said Paul Benfield might be restrained from instituting any Suit in the said Court against your Petitioners or either of them for Account of any other Cause matter or thing arising out of the several Bonds Mortgages Assignments Securities or other dealings stated and referred to by your Petitioners in their said Bill of Compt against the said Paul Benfield until it should have been determined by the said Court that the said Paul Benfield had fully Answered the said Bill of Complaint of your Petitioners filed the said Twelfth day of December last to which the

Attorney

Attorney for the said Paul Benfield objected as the said Paul Benfield had filed a full and Sufficient Answer and the said Court having taken the same into Consideration were of Opinion that the injunction ought not to be granted.

To all which Proceedings respectively now of Record in the Mayor's Court as well as to the said Order of the said Twenty Second Day of January last Your Petitioners Pray leave to refer and to have such full and Ample benefit therefrom and from each of them as if they and each of them had been herein before fully Stated and Setforth your Petitioners Shew that the said Answer of the said Paul Benfield being in many Points Scandalous unnecessarily Prolix by the insertion of Matters foreign to the Merits evasive and insufficient your Petitioners did on the first day of this Instant February file Exceptions thereto the same being within the time for that Purpose Prescribed by the said Order of the said Court of the Twenty Second day of January as by the said Exceptions now of Record in the said Mayors Court Reference being thereto had may Appear.

Which Answer being therefore Exceptionable in manner aforesaid your Petitioners shew that they conceive themselves Aggrieved by the said Order of the said Mayors Court of the said Twenty Second day of January last Past and they therefore Appeal therefrom for the following among other Reasons

First Because the Charter whereby the said Mayors Court is established hath delegated unto the said Mayors Court full Powers to try Hear and determine all Civil Suits Actions and Pleas between Party and Party under which Powers and According

According to the Constitution and Practice of the said Court the said Mayors Court Partakes of the Principles as well as the Rules of Practice of the High Court of Chancery the Equity Side of the Court of Exchequer the Court of Kings Bench and the Ecclesiastical Court the said Court therefore ought to apply the Principles as well as the Rules of Practice of those Courts respectively according to the respectively Natures, Qualities, or merits of the Causes respectively which are Submitted to the Discussion and Decision of the said Courts and therefore in the Case in Question the said Court ought to have Proceeded in the said Suit or Action of the said Paul Benfield for Recovery of the said ballance on Bond charged by him to be due from your Petitioners upon the same Principles as are Practised in the Kings Bench at Westminister in an Action of Debt upon Bond and your Petrs had Filed their said Bill against the said Paul Benfield by way of a Bill of Discovery Suggesting therein Strong Grounds of Equity in their favour and Praying for an Injunction until the said Paul Benfield had fully and truly Answered thereto and when they had afterwards on the said Answer being filed Previous to the Court taking the Merits of the Prayer for an Injunction into there Consideration Prayed for the Injunction to issue till the Court should have determined that the said Paul Benfield had fully Answered the Bill of Complaint of your Petitioners the Mayors Court should have Proceeded thereon upon the same Principles which are Practiced in the like Cases in the Courts of Chancery or Exchequer where Application is made to Stay the Regour of the Law on Suggesting Good and Sufficient Grounds of Equity and as by the

Practice

Practice of the Court of Exchequer and Injunction Stays of
Proceedings from the day on which the Process for an injunction
issues and is therefore by being less Expensive more beneficial
to the Suitor than the mode Practised in like Cases in the
Court of Chancery the Mayors Court ought to have granted the said
Injunction in manner as Prayed for by your Petitioners.

Secondly Because that the said Charter being Granted for the
due Administration of Justice consonant to the Rules of Equity
and Right and being to operate for the benefit of his Majestyes
Subjects or others living under the Jurisdiction of his Courts in
a distant Part of the World ought on all Points to be
Construed most beneficially and its Powers and Practice
extended for the best in favour of the Suitors of the Court according
to the Circumstances of the Case and if the Case in Question be
such as your Petitioners conceive it is as would warrant an
Injunction to issue from Either of the Courts of Equity in England
to Stay Proceedings in any of the Courts of Record at Westminster
an Injunction to the like Purpose ought to have been granted
in the Present Case the more so as it is not inconsistent with
the Institution or Practice of Courts to grant Injunctions on
Suggestions of Equity to Stay Proceedings at Law arising in
the same Courts the same being now and having been frequently
heretofore Practised in the Supreme Court at Calcutta where the
same Judges in the same Court and in the same Cause and
between the same Parties Proceed on the Merits at Law who
determine also on the Points in Equity and where it is the
constant Practice if the Case Admits of it for the Defendant at
Law to file his Bill as Complainant (or Plaintiff) in Equity

and

and to Obtain if the Case Admits of it an Injunction to Stay
Proceedings at Law till the Merits in Equity are determined

Thirdly Because the Case of your Petitioners bears a very Strong
Analogy to the Case of Edwards against Brice and Blakeway
wherein the Court of Exchequer exercised both its legal and
Equitable Powers in the same Cause and which is reported as
follows

"Edwards Against Brice and Blakeway in
"Error the Defendants Obtained Judgement in Ejectment in
"Michaelmas Term 1732 whereupon Edwards brought his writ of
"Error Returnable in the Exchequer Chamber and Afterwards filed
"his Bill in the Equity Side of this Court, and for want of an
"Answer Obtained an Injunction and the Defendant in Equity
"in Error having soon afterwards Put in their Answer in Equity the
"Court upon the Exceptions to their Answers Continued the Injunction

For all which Reasons as well as such as
may be offered at the hearing your Petitioners Pray that the said
Order of the said Mayors Court of the Twenty Second day of January
last may be Reversed with Costs to be Paid by Paul Benfield and
that an injunction may issue against the said Paul Benfield to
Stay all Proceedings in that Court against your Petitioners as
Defendants to the said Bill of Complaint filed in that Court the
said Tenth day December last by the said Paul Benfield and
also that the said Paul Benfield may be Restrained from
Instituting any Suit in the said Court against your Petitioners
or either of them for Account of any other Cause matter or thing arising
out of the several Bonds Mortgages Assignments Securities
or other dealings Stated and Referred to by your Petitioners

in

In their said Bill of Complaint against the said Paul Benfield untill it shall have been determined that the said Paul Benfield hath fully Answered the said Bill of Complaint of your Petitioners so filed in the said Mayors Court against the said Paul Benfield the said Twelfth day of December last.

Stephen Popham
Attorney for the Appellants

Extrad from the Minutes of a Court Held at the Town Hall on Tuesday the 22d day of January Anno Domini 1782.

Present

Edward Garrow Esqr Mayor
Edw.d John Hollond Wills.m Webb
Thomas Cooper Rob.t Dun Munro
and Hugh Maxwell Aldermen

George Savage James Call Andrew Majendie & James Taylor
vers
Paul Benfield

Answer with Six different Exhibits Sworn to before the Mayor the 21st Instant and filed this day. The Attorney for the Complainants Prays leave to Withdraw the motion made last Court day upon Payment of Costs which is granted He further Prays that the fourteen Days may be allowed the Complainants to get a Copy of the defend.ts Answer and to examine into its Sufficiency and in case the same shall be found insufficient to file Exceptions thereto the Court having taken the same into Consideration Ordered that the fourteen days be allowed the Complainants to put in Exceptions The Attorney for the Complainants also Prays that an injunction may issue against the Defendant to Stay all Proceedings in this Court against the Complainants as Defendants to a Bill of Complaint filed in this Court the 11th day of December last by the said Paul Benfield, and also that the said Paul Benfield may be Restrained from instituting any Suit in this Honble Court Against the said George Savage James Call Andrew Majendie and James Taylor or either of them for Account of any other Cause Matter or thing Arising out of the Several Bonds Mortgages Assignments Securities or other dealings Stated and referred to by the said George Savage James Call Andrew Majendie and James Taylor in their said Bill of Complaint against the said Paul Benfield untill it shall have been determined by this Honble Court that the said Paul Benfield hath fully Answered the Bill of Complaint of the said George Savage James Call Andrew Majendie and James Taylor filed the 12th December Last to which Mr. Edward Ellis one of the Attorneys for the Defendant Objects and Prays that the Injunction may not issue as his Client has this Day filed a full and Sufficient Answer The Court having taken the same into Consideration are of Opinion that the Injunction ought Not to be granted

A true Extract

Charles Bromley
Dpty Regr

In the Court of Appeals
at Madraspatnam

Between George Savage James Call
Andrew Majendie and James Taylor of Fort Saint
George Esqrs. Complainants and Paul Benfield
of the same Place Esqr. Defendant

The Answer of Paul Benfield of Fort Saint George
Esqr. to the Petition and Appeal of the said George Savage
James Call Andrew Majendie and James Taylor

This 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 or is mentioned Expressed and Setforth
Filed in my office the 18th March 1782 for Answer thereunto Saith that the Appellants being Jointly and
Charles Freeman Seperately Indebted unto this Respondent in a Certain and Specific
Clk Sum of Money by them the said Appellants Declared and
Acknowledged to be long Since due and owing from them unto this
Respondent but which they have hitherto Neglected and
Positively Refused to Pay or make good unto this Respondent
Wherefore he was drove to the Necessity of Preferring a Bill of
Complaint Against them in the Hontble the Mayors Court on
or about the time as Setforth in the Appellants said Petition
and Appeal whereby he this Respondent Sought nothing more
than the Recovery of his Just debt and from which Right of
Action he was in no Way or by any means Precluded or Barred
as is fully Shewn in and by the Proceedings in the said Cause and
Now before this Hontble Court to which if need be this Respondent

Craves

Craves leave to Refer nor was there any Accounts to be Stated or Rendered
from this Respondent to the Appellants the Cause of Action wherein
this Respondent was forced to Seek Relief Arising from a Simple and
unconditional Engagements of the said Appellants by them duely
Executed and given unto this Respondent for a Specific and declared
Sum of Money which ought long since to have been Paid by the
said Appellants Agreeable to their Express Engagement and Promise
for that Purpose since the Executing of which this Respondent has not either
by himself or others or by any ways or means whatsoever Received any Sum
or Sums of Money for or on Account thereof or towards the Satisfaction or
Payment thereof Notwithstanding the many insinuations from the said
Appellants to the Contrary and this Respondent further Saith he knows
not for what Purpose the said Bill of the Appellants was so Exhibited
Against him in the said Mayors Court at Madraspatnam on the
Twelfth day of December last past and which was in the Year of our
Lord One Thousand Seven Hundred and Eighty One unless to harrass vex
and Put this Respondent to Excessive Charges and Trouble for Certain
this Respondent is that it Contains no Equitable or Just Grounds for
Complaint against him this Respondent but this Respondent verily
believes the same was so Exhibited against him to dismay and
Prevent this Respondent from Endeavouring to Recover his Just
Demands from the said Appellants and which they had Contemptously
Refused to make good or Satisfie Contrary to Justice and every
Equitable Principal this Respondent further Saith that the Prayers or
Applications of the said Appellants as will fully Appear by the
Extracts from the Records hereunto Annexed and to which this
Respondent begs Leave to Refer and which were made on the Fifteenth
and Twenty Second days of January last past to the said Hontble

the

the Mayors Court for an Injunction to Prevent this Respondent from further Proceeding against them were made under many false and — Groundless Pretences with an Intent to Injure this Respondent and defeat him on his just Pursuits and that the said Appellants did by such applications attempt to mislead the Judgement of the said Mayors Court as must Appear from the very Nature and Institution of the said Court Limited and Prescribed by the Charter which Establishes it nor does the Book of Instructions sent out with the Charter from the Honble the Court of Directors Lay down the Rules for Practice or Provide for the — Regulation of Proceedings under an Injunction from which it must Evidently Appear that no such Power was ever intended by the Legislature but that the said Mayors Court should be open to all Suitors upon Equitable fair and just Principles nor ought an Injunction from — that or any other Court of Record to Issue to Stay its own Proceedings nor can the appellants Produce any Instance wherein it ever was done or in no Case under such Vague and frivolous Suggestions as are made use of by the said Appellants of which the Judges of the said Honble the Mayors Court were fully convinced when they discharged the said Motions of the Appellants said Attorney for an injunction against this Respondent this Respondent further Saith that in — Order to Acquit himself from every Imputations of Oppression or — desire of Seeking Relief other than in fair Justice he was Strictly — Entitled unto he did on the twenty first day of January last past file a full and Sufficient Answer unto the Appellants said Bill of Complaint to which no Reasonable Objection or Exception could be made or taken it nevertheless the said Appellants did by their Attorney on the Twenty Second day of January last past Repeat their Application to the said Mayors Court for an Injunction to —

Exhibit

Prohibit and Restrain this Respondent from Proceeding against the said Appellants for or on Account of any Matter or thing for which he was drove to Seek Relief in and by his said Bill of Complaint Preferred against the said Appellants on the Tenth day of December last past and which was in the Year of our Lord One thousand Seven hundred and Eighty One, and that this Respondent might be Restrained from Instituting any Suit against the said George Savage James Call Andrew Majendie and James Taylor or either of them for or upon — Account of any other Cause Matter or thing Arising out of the several Bonds Mortgages Assignments Securities or other dealings Stated or Referred to by the said George Savage James Call Andrew Majendie and James Taylor in their said Bill of Complaint against this Respondt — until it should be determined by that Court that this Respondent hath fully Answered the Bill of Complaint of the said George — Savage James Call Andrew Majendie and James Taylor filed the Twelfth Day of December last Past which unprecedented Prayer of the said Appellants by their Attorney was over Ruled by the said Mayors Court as improper by which order of the said Mayors — Court the Appellants Pretend to be Aggrieved although it fully Appears by the former Part of the said Order that fourteen days was allowed for the said Appellants to Examine into the — Sufficiency of this Respondents Answer and to file Exceptions — thereunto which said Answer of this Respondent was full — Proper and Sufficient yet nevertheless the said Appellants — Pretend that the said Answer of this Respondent to their said Bill of Complaint was Evasive and Insufficient and Set forth in their said Petition and Appeal that they did on the first day of Febry last Past file Exceptions thereto on the Records of the Honble the Mayors Court

In

In Answer whereunto this Respondent Saith that no Court day — interrened between the day of filing the said Exceptions of the Appellts as Complainants to the Respondents Answer as Defendant before — Tuesday the fifth day of February last Past on which day Notice in Court was Received by the Register of the said Mayors Court from the Clerk of this Honble Court that the said Appellants had Lodged their Petition and Appeal Consequently the Papers on Record before the Mayors Court were Removed and brought before this Honble Court without allowing this Respondent to Answer the said Exceptions of the said Appellants or having the same Argued and adjudged before the said Mayors Court wherefrom they might decide and determine whether the said Answer of this Respondent was full and Sufficient as he this Respondent avers it is and which must Evidently Appear from the unprecedented mode of the Appellants filing Exceptions and Causeing the Records to be removed to a Superior Court before the Court below could take Cognizance thereof in Contempt of the Authority of the said Mayors Court and Subversion of the Established Rules of Practice in such Cases made and Provided Yet upon filing their Pretended Exceptions the Appellants Come before this Honble Court as if Aggrieved by an Order of the said Mayors Court when in fact they have as much as in them lay Endeavoured to Prevent the Merits of their Cause Coming before the said Mayors Court to determine thereupon nor ought the said Exceptions to be allowed upon the Records in this Cause as the Appellants have themselves — Prevented the same to be inquired into in the Regular mode and — Attempted to make them a Cause of their Application to this Honble Court for an Injunction to Prohibit and Restrain this Respondent — from his legal Pursuits for it is Expresly laid down by Viner that Exceptions being filed taken are not a Sufficient cause for Granting an Injunction because they are often Put in for delay but there must be a — Report also of the Answers Insufficiency

This Respondent further Saith that the Pretended Reasons Suggestions and Matters Urged by the said Appellants as motives for their coming before this Honble Court are Vague frivolous and Ill Grounded without any Just Cause or Pretext whatsoever nor have they any foundation in Law or Equity for such their Application to this Honble Court for an — Injunction against this Respondent For as this Respondent is advised and verily believes no Authority or Power is vested in this Honble Court to grant a Prohibition or Injunction in the manner and for the Purposes — Requested by the said Appellants the Charter under by Vertue of which this Court is Empowered to sit for the due Administration of Publick Justice having made no such Provision or granted any such Authority nor can any Construction be drawn therefrom as would warrant such Proceedings nor ought the Practice in the Supreme Court at Calcutta to be brought in Competition with this Honble Court of Appeals or the Mayors Court because its Powers Nature and institution are so Essentially different that no Comparison can be drawn without Endangering the Rules of Right and Equity fully laid down for the due Administration of Publick — Justice in the said Courts under and by Vertue of the said Charter and as this Respondent is advised there can be no Reason for such application for Agreable to the Late Judge Blackstone when an Injunction is — Prayed for in Chancery upon Urgent Matters it is Granted till the Defendant Puts in his Answer only nor will an Injunction Issue Even from the High Court of Chancery to Stay Proceedings on a Bond (which is the Case of this Respondent) without Judgement is first — Confessed for the Debt due and Security given for the Performance or Money brought into Court to Answer such Judgement and this Respondt

Saith

Saith that he is Advised that it is a Settled Rule of the High Court of Chancery that on a Demurrer being filed by the Defendants an injunction cannot be moved for which this Respondent Says is the Case with the Appellants who did Demurr to his Bill of Complaint Preferred against them for Recovery of a Specifick and declared balance upon a Bond due from them the Appellants to this Respondent and now Prays an Injunction from this Honble Court to Stay further Proceedings thereupon Contrary to every Principal of Law Reason or General Practice in his Majestys Courts of Record at Westminster This Respondent by way of further Answer to the said Petition and Appeal of the said Appellants observe that the Adjudged Case of Edwards against Bruce and Blakeway in Error Introduced in the said Petition and Appeal as Partially quoted and only a part thereof Recited the Case is, that the Defendants Bruce and Blakeway obtained Judgement in Ejectment in Michaelmas Term 1732 Whereupon Edwards brought his Writ of Error Returnable in the Exchequer Chamber and afterwards filed his Bill in the Equity Side of that Court and for want of an Answer Obtained an Injunction and the Defendants in Equity and in Error having soon afterwards Put in their Answer in Equity the Court upon the Exceptions to their Answers Continued the Injunction

The Defendants in Error thereupon moved the Court of Exchequer for leave to Proceed in the Exchequer Chamber in Order to get their Judgement affirmed on the Writ of Error Notwithstanding the Injunction which was Ordered on Terms that no Execution should Issue till the Injunction was Dissolved

This Respondent further Saith that was his Cause before any of his Majestys Courts of Record at Westminster where an Injunction could have been obtained it could not have operated against him because Admitting there was Grounds for an Application to obtain an Injunction against any further Proceedings in his Cause it would not have been allowed to Issue in the first Instance without Judgement Confessed for his Just Debt and must have been dissolved of Course upon his Answer being filed which this Respondent Avers he has done in a full Proper and Unexceptionable manner

For all which Reasons as well as for others which may be Offered at the Hearing this Respondents Prays that the said Order of the Mayors Court of the Twenty Second day of January last Past may be affirmed and that this Respondents said Answer so filed in the said Mayors Court on the Twenty first Day of January may be Deemed Adjudged and taken as full Good and Sufficient and that upon due Consideration this Honble Court will be Pleased to Dismiss the said Petition and Appeal of the said George Savage James Call Andrew Majendie and James Taylor and order their said Bill of Complaint filed against this Respondent on the Twelfth Day of December last and which was in the Year of our Lord One thousand Seven hundred and Eighty One, to be dismissed in the Honble the Mayors Court this Respondent having fully and Sufficiently Answered to all the Matters and things therein Contained and this Respondent further Prays that he may in this Suit be Dismissed with his Costs and Charges therein Most Wrongfully Sustained

Charles Bromley

Edward Ellis

Attorneys for the Respondent

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th. day of January Anno Domini 1782

Present

Edward Garrow Esquire Mayor
Thomas Cooper and Robert Duncan Munro
for Mr. Alderman Hughes Aldermen

George Savage James Call, Andrew Majendie and James Taylor

Esqrs
Paul Benfield.

The Attorney for the Complainants Prays that the Injunction Prayed for by the said Complainants in their Bill of Complaint filed the 12th. December last in this Court against the Defendant may be granted, and that all Proceedings in this Court against the Complainants as Defendants to a Bill of Complaint filed in this Court the 10th. of December last by the said Paul Benfield may be stayed, and that the said Paul Benfield may be restrained from instituting any Suit in this Honble Court against the said George Savage James Call Andrew Majendie and James Taylor or either of them for account of any other Cause Matter or thing untile the said Paul Benfield shall have fully Answered the said Bill of Complaint of the said George Savage James Call Andrew Majendie and James Taylor so filed the 12th. of December last Affidavit in Support of the Motion filed the 12th. December and Read in Court this day

The Attorneys for the Defendant Pray leave till Next Court Day to Answer to this Motion. Ordered that the same do stand over to Next Court Day and that the Bailiffs be sent Round to all the Members and that a full Court be Assembled.

A true Extract
Chas. Bromley
Dep.ty Regr.

A true Copy of Extract
Charles Bromley
Edward Elles
Attornies for the Respondent

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d. Day of January Anno Domini 1782

Present

Edward Garrow Esquire Mayor
Edward John Hollond William Webb
Thomas Cooper Robert Duncan Munro
and Hugh Maxwell Aldermen

George Savage James Call Andrew Majendie and James Taylor

Esqrs
Paul Benfield

Answer with six different Exhibits Sworn to before the Mayor the 21st. Instant and filed this day the Attorney for the Complainants Prays leave to withdraw the Motion made last Court day upon Payment of Costs which is granted He further Prays that fourteen days may be allowed the Complainants to get a Copy of the Defendants Answer and to Examine into its Sufficiency and in Case the same shall be found insufficient to file Exceptions thereto the Court having taken the same into Consideration Ordered that fourteen days be allowed the Complainants to Put in Exceptions the Attorney for the Complainants also Prays that an Injunction May issue against the Defendant to Stay all Proceedings in this Court against the Complainants as Defendants to a Bill of Complaint filed in this Court the 10th. day of December Last by the said Paul Benfield and also that the said Paul Benfield may be restrained from instituting any Suit in this Honble Court against the said George Savage James Call Andrew Majendie and James Taylor or either of them for Account of any other Cause Matter or thing arising out of the Several Bonds Mortgages Assignments Securities or other Dealings

Dealings Stated and Referred to by the said George Savage James Call Andrew Majendie and James Taylor in their said Bill of Complaint Against the said Paul Benfield untile it shall have been determined by this Honble Court that the said Paul Benfield hath fully Answered the Bill of Complaint of the said George Savage James Call Andrew and James Taylor filed the 12th December last to which Mr. Edward Ellis one of the Attorneys for the Defendant Objects and Prays that the injunction may not issue as his Client has this day filed a full and Sufficient Answer— the Court having taken the same into Consideration are of Opinion that the Injunction ought not to be granted—

A true Extract

Charles Bromley
Dep.ty Regr.

A true Copy of Extract

Charles Bromley
Edward Ellis
Attornies for the Respondent

Court of Appeals
at
Madraspatnam
} Ju. Thursday the 15th May
Anno Domini 1783

Between James Taylor James Call George Savage and Andrew Majendie of Fort St. George Esqrs Appellants and Paul Benfield of the same place Esqr Respondent—

The Attorney for the Appellants having Moved to With-Draw this Cause Each party Paying their own Costs and the Attorney for the Respondent having Agreed thereto

Ordered Accordingly

Pleur
Chs. Freeman Clk

To the Right Honble George Lord Macartney K.B.
President Governor & Council of Fort Saint George

In the Court of Appeals
at Madraspatnam
} Between Paul Benfield of Fort Saint George Esqr. Complainant and James Taylor George Savage and James Call of the same place Esquires and Andrew Majendie formerly of Fort Saint George but now of the Country of Middlesex in the Kingdom of Great Britain Esquire Defendants—

The Humble Petition and Appeal of the abovenamed Complainant

Sheweth

That the said James Taylor, George Savage James Call and Andrew Majendie being Jointly and Severally indebted unto your Petitioner in the full and Just Sum of Two hundred and Six thousand Pagodas Current Money of Madras or Eighty two thousand four hundred Pounds Sterling Money of Great Britain at the Rate of Eight Shillings Sterling for the Current Pagoda being for the Principal Sum due and owing by them the said Defendants unto your Petitioner upon a Certain Bond or written obligation duly Executed in Fort Saint George by them the said James Taylor, George Savage, James Call and Andrew Majendie given and granted unto your Petitioner his Heirs Executors Administrators or Assigns under their respective hands and Seals in Fort Saint George aforesaid upon the twelfth day of December which was in the year of our Lord One thousand Seven hundred and Seventy Six for the Penal Sum of four

Filed in my office 30th Sept. 1782
Charles Freeman Clk

four hundred and twelve thousand Star Pagodas Conditioned for
Securing the certain Payment of Two Hundred and Six thousand Star
Pagodas with Interest which said Principal Sum of Two Hundred
and Six thousand Star Pagodas, they the said James Taylor George
Savage, James Call and Andrew Majendie thereby Acknowledged to
have borrowed and Received of and from your Petitioner at Fort
Saint George aforesaid, on or before the said twelfth day of December
One thousand Seven hundred and Seventy Six by which said Bond
or written obligation they the said James Taylor George Savage
James Call and Andrew Majendie their Heirs Executors and
Administrators became and are Jointly and Severately bound for
Payment of the said Principal Sum of Two hundred and Six
thousand Star Pagodas and Interest unto your Petitioner his Heirs
Executors Administrators or Assigns at a day or certain Period long
since elapsed Your Petitioner further Sheweth that the said James
Taylor George Savage James Call and Andrew Majendie having
Neglected and Refused to Pay or make good and unto your Pet.r
the said Principal Sum of Two hundred and Six thousand Pag.s
and Interest due thereupon and every Part thereof your Petitioner
was Reduced to the Necessity of Preferring his Bill of Complaint on
the Honble the Mayors Court at Madrasspatnam against them
the said James Taylor George Savage James Call and Andrew
Majendie for recovery of his Debt Principal and Interest so declared
by them to be due and owing unto your Petitioner which said Bill
of Complaint of your Petitioner was filed on the twenty Ninth day
of April last past and in this Present year of our Lord One thousand
Seven hundred and Eighty two, to which Bill of Complaint the said
James Taylor George Savage James Call and Andrew Majendie
appeared

Appeared by their Attorney at Law, and by Motion made on their behalf
by their said Attorney Obtained leave to Plead or Demur and on the
twenty first Day of May last Past and in this Present Year of Our
Lord One thousand Seven Hundred and Eighty two they filed their
Demurrer on the Records of the said Court And for Cause of Demurrer
Unjustly and evasively Setforth that your Petitioner had on the twenty
third day of February last Past exhibited a Bill against them the said
James Taylor, George Savage James Call and Andrew Majendie for
Recovery of Six hundred and Twenty thousand Pagodas Current
Money of Madras in which said Sum it was Pretended that the
Principal and Interest due unto your Petitioner upon his said Bond
for the Principal Sum of Two hundred and Six thousand Star Pag.s
was included which Pretence of the said Defendants was Groundless
and evasive and Contrary to the Real Matter of fact For the said
Bill so Referred to by the said Defendants in and by their said
Demurrer had No Tendency to Obtain a Decree for any Sum of
Money whatever from the said Defendants the said Bill so
Referred to and unfairly Stated was commenced against the said
Defendants by your Petitioner to Compel them the said Defendants
to discover Setforth and fully disclose unto your Petitioner certain
Transactions and Occurrences within their own Knowledge relative
to the Management of Concerns and Receipts of Money intrusted
to them by your Petitioner, and upon Particular Matters wherein
Your Petitioner was Materially interested and legally Strictly and
clearly entitled to such information from them the said Defendants
as by him was Required in and by his said Bill for discovery Nor
did your Petitioner seek for or expect any other or further Relief by or
from the said Bill than a Discovery of Matters which he was

entitled

entitled unto a full Knowledge of. and which were in the Power of the Defendants alone to give or Render him. but by them with held from your Petitioner these being matters very foreign to the payment of the Bond or written obligation in Question from the said — Defendants to your Petitioner which being a Special Obligation for a Declared or certain Sum of Money simple and unditional in itself for Just and valuable considerations unconnected with and independant of any other matter or transaction between the said Defendants and your Petitioner No other Plea ought in Justice to be Admitted thereto but the payment thereof which having been the Case in any Part your Petitioner did According to the Course of — Practice in the said Mayors Court file a Joinder to the said — Demurrer of the said Defendants wherein he Supported his said Bill of Complaint and all the matters and things therein — Set forth and Proved the Plea made use of by the Defendants in — their said Demurrer to be frivolous dilatory evasive and insufficient either in Law or Equity to Preclude your Petitioner from his Right of Action in manner and form as by him is Preferred against the said Defendants for the Recovery of his Debt and Interest — Justly Due and Owing upon the Special Bond or written — obligation of the said Defendants whereby they are Jointly and — Severally bound unto your Petitioner for the Payment of the principal and Interest in and by the said Bond or written obligation declared to be due and Owing unto your Petitioner from them the said Defendants against which the said Defendants can have No Just cause or excecuse - For your Petitioner Avers that his — Demand as Set forth or exhibited in and by his said Bill of — Complaint against them the said Defendants is Just true and — Right

Right and therefore your Petitioner in and by his said Joinder prayed the Judgement of the said Mayors Court and that they would according to Law grant him a Decree for his Just debt Interest and Costs arising due and Owing unto him upon the said Bond or written Obligation of the said Defendants to which said Decree or Judgement of the said Honble the Mayors Court your Petitioner considered — himself Justly entitled unto as of Justice and Right agreeable to the Acts of Parliament made in the twenty Seventh Year of Queen Elizabeth Chapter the fifth and fourth of Queen Anne Chapter the Seaventh the former of which Entitled an Act for the furtherance of Justice in case of Demurrer and Pleadings made and declares — that "for as much as Excessive charges and Expences and great — Delay and hindrance of Justice hath growne in Action and Suits "between the Subjects of this Realm by reason that some small "Mistaking or want of form in Pleading Judgements are often "Reversed by Writs of Error and oftentimes upon Demurrers in — "Law given otherwise than the Matter in law and very Right of "the Cause doth require whereby the Parties are constrained either — "utterly to lose their Right or else after long time and great trouble "and Expences to renew again their Suits /2/ for remedy whereof — "be it enacted by the Queens Most Excellent Majesty the Lords — "Spiritual and Temporal and Commons in this Present Parliament "Assembled and by the Authority of the Same that from henceforth "after Demurrer Joined and entered in any Action or Suit in any "Court of Record within this Realm the Judges shall Proceed "and give Judgement according as the very Right of the Cause and "matter in Law shall Appear unto them without regarding any "Imperfection Defect or want of form in any writ Plaint Declaration

Or other Pleadings Process or Course of Proceeding whatsoever except those only
" which the Party Demurring shall especially and Particularly set down
" and express together with his Demurrer / 3 / and that no Judgement
" to be given shall be Reversed by any writ of Error for any such —
" imperfection defect or want of form as is aforesaid except such only as is
" before excepted." which said Act of Parliament and all the matters and
" things therein expressed or Contained is established and Confirmed by
" the said Act of the Fourth year of Queen Anne Chapter the Sixteenth
" entitled." An Act for the Amendment of the Law and the better —
" Advancement of Justice." whereby it is enacted that for the Amendment
" of the Law in Several Particulars and for the easier Speedier and better
" advancement of Justice be it enacted by the Queens Most Excellent —
" Majesty by and with the advice and Consent of the Lords Spiritual
" and Temporal and Commons in this Present Parliament assembled
" and by the Authority of the same that from and after the first —
" day of Trinity term which shall be in the year of our Lord One
" thousand Seven hundred and Six where any Demurrer shall be —
" Joined and entered in any Action or Suit in any Court of Record within
" the Realm the Judges shall Proceed and give Judgement according as
" the very Right of the Cause and matter in law shall appear unto them
" without Regarding any imperfection Omission or Defect in any writ —
" Return Plaint declaration or other Pleading Process or Course of Proceeding
" whatsoever except those only which the Party demurring shall especially
" and Particularly Set down and express together with his Demurrer
" as Cause of the same Notwithstanding that such imperfection —
" Omission or Defect might have heretofore been taken to the matter of
" Substance and not aided by the Statute made in the twenty Seventh
" Year of Queen Elizabeth entitled an Act for the furtherance of Justice

In

" In Case of Demurrer and Pleadings so as Sufficient Matter appear on the —
" said Pleadings upon which the Court may give Judgement According to
" the very Right of the Cause." Your Petitioner further Sheweth unto this —
Honble Court that on Tuesday the Seventeenth day of this Present Month
of September One thousand Seven hundred and Eighty two the said Bill
of Complaint the Defendants Demurrer and your Petitioners Joinder —
thereunto came on to be Argued before the Honble the Mayors Court
when the said Court considered the Plea made use of by the Defendants
in and by their said Demurrer and Pleadings thereupon insufficient —
Ordered the said Demurrer of the Defendants to be thrown out with
Costs and further Ordered the Defendants to Answer the Bill of —
Complaint of your Petitioner instead of giving Judgement thereon as in
Right and Justice they ought to have done in favour of your Petitioner
for his just Debt Interest and Costs which may more fully Appear —
by an Attested Copy of the said Sentence Order or Decree of the said Mayors
Court hereunto annexed for the inspection of this Honble Court and
which is Prayed by your Petitioner to be taken and Received as part
of this his Petition and Appeal which said Order Sentence or Decree
of the said Mayors Court your Petitioner Considers Erroneous and is
thereby much Aggrieved and delayed in his Suit Contrary to Justice
and Right He therefore Appeals from the said Order Sentence or —
Decree of the said Mayors Court of the said Seventeenth day of this —
Present Month of September One thousand Seven hundred and —
Eighty two, to the Judgement of this Honble Court of Appeals for the
following among other Reasons.

First Because the Plea made use of by the Defendants in and by
their said Demurrer was frivolous evasive and dilatory without the
least Reason or Cause Assigned to Preclude your Petitioner of His

Right

Right of Action in manner and form as was by him in his said Bill Preferred which being for the Recovery of a Specific Sum of Money — due from the Defendants unto your Petitioner upon their Joint and Seperate Bond, under their Respective hands and Seals given and granted unto your Petitioner for good and valuable considerations Payable and due at a time long since elapsed, is Simple absolute and unconditional wherein no Point of Law can arise to make a decision intricate or uncertain for your Petitioners demands which is in its Nature and from the express Condition thereof unconnected with and independant of any other matter or transaction between your Petitioner and the said Defendants.

Secondly Because your Petitioner is Strictly and clearly by the Laws of his Country entitled to Judgement and a Decree of the said Mayors Court ought to have passed against the said Defendants for the amount — Principal and Interest of their debt so due and Owing upon their — Joint and Seperate Bond or written Obligation under the Respective hands and Seals of the said Defendants Valuable and good Considerations and which According to the Practice of the said Court your Petitioner had good Cause to expect as may appear in the Cause of Bayno Vers Boyd wherein Judgement was given by the said Mayors Court against the Defendant upon Demurrer on the twenty eighth day of May One — thousand Seven hundred and Eighty two, which although a Precedent on Point established by the Authority of the said Mayors Court was not Regarded or Considered as a Rule for their guidance in Subsequent Decisions of a like Nature.

Thirdly Because your Petitioner his demand against the said — Defendants being upon their Bond or written Obligation long since Due and Payable no Plea in abatement could or ought to be Admitted under the Title of a Demurrer, for as your Petitioner is advised had any such matter as is Assigned by them the said Defendants for Cause of Demurrer existed they ought to have Pleaded their Special Matter in Abatement and Shewn that Judgement had passed against them — upon the said Cause for nothing less than Judgement or payment can be a good Plea against a Bond to prevent Judgement for the Complainant upon the Defendants Demurring a Demurrer neither in Law or in Equity being a Confession of all Matters of fact which are Material and — alledged from which the Defendants could not depart or Shew good — Cause against therefore in Law Reason and Equity Judgement ought to have passed for your Petitioner nor ought any Plea or Excuse whatever to be Admitted against your Petitioners demand For it has been solemnly Pronounced in the Court of Kings Bench in England, that upon — Demurrer Judgement must be given which shall be as conclusive and binding as if Obtained by Verdict it being Obtained from a Confession of the Parties against which no Relief can be given, for if a defendant in an Action of Debt upon a Bond (who has a good defence on the Merits) should by Advice of Counsel hazard his Cause on a — Demurrer which is Adjudged against him this Mistake of Counsel will not be allowed in Chancery as a good Cause of Relief The Plea — made use of by the defendants being in the Judgement of the said Mayors Court insufficient to Support the said Demurrer Judgement ought to have been given for your Petitioner instead of the defendants being put upon their Answer, the Law having Prescribed a certain and determinate mode to be Observed, leaves it not in the Power of — any Court to deviate therefrom or to pass Judgement otherwise than According to Right, and the Rules of Law in such Cases made and Provided.

For which Reasons as well as those which

may

May be offered at the Hearing your Petitioner Prays that this Honble Court will be Pleased to take the Premisses into their Serious Consideration and that they will as in Law and Right your Petitioner Considers himself entitled unto) grant him Judgement or a Decree for his Just Debt Interest and Costs and that this Honble Court will be Pleased to grant him such other and further Relief in all and Singular the Premisses as shall Appear Agreable to Law Justice and Equity.

Edward Ellis
Thomas Jones
Attornies for the Petitioner

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of September Anno Domini 1782

Present

Edward Garrow Esqure Mayor
Edwd. John Hollond Benj.n Roebuck
William Webb Thomas Cooper
Hugh Maxwell Edward Frowd
William Oram and Eyles Irwin
Aldermen

Paul Benfield
vers
James Taylor George Savage James Call and Andrew Mayendie

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 Complainants Bill with Copies of Two Exhibits annexed. The Demurrer, The Joinder and the Court having had due Consideration thereon are of Opinion that the Pleas Made Use of by the Defendants in their Demurrer are insufficient This Court doth therefore think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendants be put upon their Answer.

Day is given the Defendants till the 1st day of October Next to Answer the Complainants Bill in default of which Judgement will be given for the Complainants.

A true Extract
Charles Bromley
Depty Regr.

To the Honble the Court of Appeals at Madraspatn.

The Answer of James Taylor George Savage and James Call of Fort Saint George Esqrs. and Andrew Mayendie formerly of Fort St. George but Now of the Country of Middlesex in the Kingdom of Great Britain Esqr. Defendants to the Petition and Appeal of Paul Benfield of the same place Esqr. Complainant.

Filed in my office this 4th Decr. 1783
Charles Freeman Clk.

These Respondents do Admit that the said Appellt. did on the Twenty Ninth day of April last past and which was in this Present Year of Our Lord One thousand Seven hundred and Eighty

Eighty Two file a Bill of Complaint in the Honble the Mayors Court for Recovery of the Sum of Two hundred and Six thousand Pagodas Charged by the said Appellant to be due unto him by these Respondents on the ballance of a certain Bond Charged to have been executed by these Respondts on the Twelfth day of December which was in the Year of Our Lord One thousand Seven hundred and Seventy Six for the Principal Sum of Two hundred and Six thousand Pagodas to which said Bill of Complaint these Respondents did on the Twenty first day of May last past file a Demurrer and for Cause of Demurrer these Respondents did Set forth Among other things that the said Appellant had on the Twenty third day of February then and Now last past exhibited a Bill of Complaint in the said Mayors Court Against these Respondents for the Sum of Six hundred and Twenty thousand Pagodas Charged to be due unto him on Divers Bonds or other Writings Charged to have been Signed and executed by these Respondents one of which said Bonds Appeared to be the very same Bond for Payment of the ballance due whereon the said Appellant had so filed his said Bill of Complaint on the said Twenty Ninth day of April last to which said Bill of Complaint these Respondents had filed a Demurrer and the said Appellant had filed a Joinder thereto which said Bill of Complaint Demurrer and Joinder had not than as these Respondents Set forth been heard and determined and therefore the said last Bill of the said Appellant so filed as Aforesaid Against these Respondents Appeared to be vexatious and Solely Calculated to harrass these Respondents and was on that Account Contrary to Law and not entitled to Relief in a Court of Equity.

These Respondents further Shew that the said Appellant did file a Joinder to the said Demurrer and did therein Amongst other things Set forth that the said Appellant had not any other Bill of Complaint against these Respondents for Recovery of the Principal and Interest due unto him upon the said Bond and that the said Bill of Complaint of the said Paul Benfield so filed the said Twenty third day of February last was for a Discovery and Account of Sundry Receipts of Money and other matters to which said Paul Benfield was as he Pretends Strictly and Legally entitled from these Respondents which said Bill of Complaint Demurrer and Joinder Came on to be Argued and determined before the said Honble the Mayors Court on the Seventeenth day of September last past when the said Mayors Court were Pleased to Order and Decree and doth Accordingly Order and Decree that the said Demurrer of these Respondents should be thrown out with Costs and that these Respondts should file an Answer to the Bill of Complaint of the said Appellant from which said Order and Decree the said Appellant hath lodged an Appeal to this Honble Court on the Thirteenth day of the said Month of September Pretending that he is entitled to Judgement on the Merits of the said Bill Demurrer and Joinder Whereas these Respondents Allledge that under and by Virtue of the very Acts Mentioned or Referred to by the Appellant to wit the Act Passed in the Twenty Seventh Year of Her Majesty Queen Elizabeth and the Act Passed in the Fourth year of the Reign of Queen Anne and by Reason of the matters Stated and referred to by these Respondents in their said Demurrer the said Mayors Court could not have given Judgement for the Appellant.

First Because these Respondents by their said Demurrer have denied the Justice of the Appellants Demand and because their said Demurrer doth not contain any of those frivolous dilatory or evasive Pleas which are intended to be Remedied by the said Acts of Parliament on the contrary these Respondents have in their said Demurrer Specially and Particularly

Set down

Setdown and Expressed the Causes on which their Demurrer was
Grounded and are therefore within the very exception to the giving of
Judgement on a Demurrer to which those Acts Avert.

Secondly Because that as the Demurrer of these Respondents hath specially expressed and Setforth that another Bill of Complaint had been filed by the Appellant for Recovery of the very Same Bond for the Ballance Charged to be due whereon the said Appellant hath filed his Present Bill of Complaint the said Mayors Court ought to have taken
immediate Notice thereof as being upon their Records and Reforred so to be by these Respondents and should have followed the Practice of the Court of Chancery in the like Cases which as laid down in
Vezey's Reports Vol. 1. P. 544. Gage Vers Lord Stafford is that
where Two Suits are brought in the same name and for the same
Matter the Proceedings on the last are Stopped.

Thirdly Because that if the said Demurrer of these Respondents as above Setforth was good at the time of filing the same As is so Now Nor Can it be affected by any after determination or Decision of the Hon^ble the Mayors Court Respecting the said First Bill of Complaint so filed the said Twenty third day of February last.

Fourthly Because that the Points stated in the Demurrer of Boyd at the Suit of Baine are evidently different from those on which these Respondents have founded their Demurrer to the Appellants
said Bill of Complaint for Boyd Appears on the face of his
Demurrer to have Admitted the Several Charges in the Complainants Bill but Urged that the Agreement between him and Baine
was Annulled by an Edict Published by the King of Denmark and that the Complainant having been in a foreign Service
Ought to have Submitted to the Laws Customs and Regulations of
that

that Particular Service which Demurrer was Considered as a Direct Admission of the Complainants Right of Action in every Particular and that the Plea of a Danish Edict or Danish Customs not being Admissiable Against a written Agreement for a Special Sum in Compensation of Special Service sued for in the Mayors Court Judgement ought to Pass for the Complainant — but these Respondents say they have Never Admitted in any One Respect but on the Contrary they have denied the Justness of the Appellants Demand and
have on their Demurrer Stated such Causes Against the Appellants Bill of Complaint as they Conceive ought to have entitled these Respondents to have had their said Demurrer held as good and Sufficient and the Appellants Bill dismissed with Costs.

For all which Reasons and such others as are Setforth in these Respondents Petition and Appeal in this Cause now on Record in this Hon^ble Court and to which these Respondents Prays
leave to Refer and for such other Reasons also as may be Offered at the hearing these Respondents Pray that the Appellants said Petition and Appeal be Dismissed with Costs to be Paid by the Appellants.

Stephen Popham
Attorney for the Respondents

Court of Appeals at Madraspatnam } Thursday the 15 May Anno Domini 1783.

Between Paul Benfield Esq^r of Fort St George Appellant and James Taylor James Call George Savage & Andrew Majendie of the same place Esq^rs Respondent

The Attorney for the Appellant having Moved to withdraw this Cause and each party Paying their own Costs and the Attorney for the Respondents having Agreed thereto.

Ordered accordingly

Thos Mar. Freeman Esq^r

To the Right Honble George Lord Macartney K B
President &c. Council of — Fort Saint George

In the Court of Appeals

Between Paul Benfield Complainant

and

James Taylor George Savage James Call and
Andrew Majendie Defendants

The Petition and Appeal of the above Named
Defendants —

Sheweth.

That the said Paul Benfield did on the Twenty —
Ninth day of April last past and which was in this Present Year of
the Lord One thousand Seven hundred and Eighty two Enter his Bill
of Complaint in the Honble the Mayors Court against your Petitioners
Charging your Petitioners with being indebted unto the said Paul —
Benfield in the Sum of two hundred and Six thousand Pagodas Current
Money of Madras as the ballance due on a certain Bond charged by
the said Paul Benfield to have been executed by your Petitioners on the
Twelfth day of December which was in the year of our Lord One thousand
Seven hundred and Seventy Six for the Principal Sum of two hundred
and Six thousand Pagodas to which said Bill of Complaint your Pet.rs
did on the Twenty first day of May last past file a Demurrer and for —
Cause of Demurrer your Petitioner's did Setforth among other things —
that the said Paul Benfield had on the Twenty third day of February
then and now Last past exhibited a Bill of Complaint in the said —
Mayors Court against your Petitioners for the Sum of Six hundred

and

Filed in my Office
the 30th Sept.r 1782
Charles Truman
Clk

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and Twenty thousand Pagodas charged to be due unto him on Divers
Bonds or other Writings charged to have been Signed and executed by your
Petitioners one of which said Bonds appeared to be the very same Bond
for Payment of the ballance due whereon the said Paul Benfield had so
filed his said Bill of Complaint on the said Twenty Ninth day of April
last to which said Bill of Complaint your Petitioners had filed a — r
Demurrer and the said Paul Benfield had filed a Joinder thereto — r
which said Bill of Complaint Demurrer and Joinder had not then as
your Petitioners Setforth been heard and determined, and therefore the
said last Bill of the said Paul Benfield so filed as aforesaid against
your Petitioners Appeared to be Vexatious and Solely Calculated to harrass
your Petitioners and was on that Account contrary to Law and not — r
entitled to Relief in a Court of Equity —

Your Petitioners further Shew that the said
Paul Benfield on the Twenty Seventh day of the said Month of
May file a Joinder to the said Demurrer and did thereon amongst other
things Setforth that the said Paul Benfield had not any other Bill
of Complaint against your Petitioners for Recovery of the Principal and
Interest due unto him upon the said Bond and that the Bill of — r
Complaint with the Demurrer and Joinder then depending before the
said Honble Court and by these Petitioners referred to in their said
Demurrer was a Bill for a Discovery and Accounts of Sundry Receipts
of Money and other matters which the said Paul Benfield was — r
Strictly and legally entitled unto from your Petitioners but that the
said Bill had no Tendency or Relation to obtain a Judgement or — r
Decree for the Sums of Money due to the said Paul Benfield from — r
your Petitioners and the said Paul Benfield in his said Joinder did
further Setforth that the Demurrer of your Petitioners contained — r

Nothing

Nothing material or any Clea or matter either in Law or Equity to — B.
Establish or shew good and Sufficient Cause for a fair Demurrer &c.
wherefore the said Paul Benfield Prayed Judgement of the said Hontble
Court upon his Cause without further Pleadings being Admitted and
that they would Decree him Payment of his Debt with Interest and
Costs and to which he says he is entitled according to the Statute
or Act of Parliament made in the Twenty Seventh Year of Queen —
Elizabeth Chapter the fifth whereof the Clause relating thereto is as
the said Paul Benfield says therein after setforth - and which —
Clause the said Paul Benfield says is established and confirmed by
another Act of Parliament made in the fourth year of the Reign of Queen
Anne Chapter the Seventh entitled an act for the Amendment of the
Law and the better Advancement of Justice and whereof the First —
Clause as the said Paul Benfield says Contains what the said Paul
Benfield hath in his said Demurrer thereinafter Setforth but your
Petitioners charge that the said Extracts are partially Quoted and that
the latter part of the Clause in the said Acts of Parliament setforth
makes certain Exceptions to Demurrers where the Causes are Specially
Setforth and which is the Case as to the Demurrer of your Petitioners
for your Petitioners Shew that no matter does Appear in the said —
Pleadings by which this Honble Court can Proceed to give Judgement
Against your Petitioners for your Petitioners have Neither Admitted
by their Demurrer the Justness of the Complainants Demand nor —
does the same contain any of the frivolous Pretexts intended to be
Remedied by the said Acts of Parliament on the Contrary they have —
by their said Demurrer denied the Justness of the Complainants
Demand and have Setforth as a Special Cause of Demurrer that the
Complainant had filed Two Bills against your Petitioners for the same

Bond

Bond which your Petitioners conceive to be contrary to Law and Equity
and your Petitioners further Shew that the said Demurrer and Joinder
came on to be Argued and Determined before the said Hontble the Mayors
Court on the Seventeenth day of this Instant September when the said —
Mayors Court were Pleased to Order and Decree and did Accordingly
Order and Decree that the said Demurrer of your Petitioners should be
thrown out with Costs and that your Petitioners should file an —
Answer to the Bill of Complaint of the said Paul Benfield in fourteen
days from the date thereof by which said Order of the said Mayors
Court your Petitioners do conceive themselves Aggreeved and do —
therefore Appeal therefrom for the following among other Reasons.

First Because that Notwithstanding what is Advanced by the
said Paul Benfield to the contrary thereof in his said Joinder —
Relation to the Bill of Complaint filed Against your Petitioners on the
Twenty third day of February now last past and the matters and
things therein Setforth and that the same had no Tendency or —
Relation to Obtain a Judgement or Decree against your Petitioners —
Nevertheless your Petitioners humbly insist that the matters in the
said Bill charged the several Interrogatories therein put to your
Petitioners and the Relief and Decree therein and thereby prayed
against your Petitioners are Sufficient if fully Admitted by your
Petitioners or Proved by the said Paul Benfield to entitle him
to Judgement for the Sum of Money now charged to be due but
which your Petitioners deny to be due by Virtue of the Bond so
Charged to have been executed by your Petitioners on the said —
Twelfth day of December which was in the Year of Our Lord —
One thousand Seven hundred and Seventy Six for the said Bill
chargeth in the words following to wit —

That

"That Whereas George Savage James Call
"Andrew Majendie and James Taylor of Fort Saint George Esquires
"were Jointly and Severally indebted unto your Orator in the Sum of
"Star Pagodas Six hundred and Twenty thousand for which said Sum
"of Money they the said George Savage James Call Andrew Majendie
"and James Taylor did enter into and give unto your Orator three
"Bonds or Obligations under their respective hands and Seals bearing
"Date the Twelfth day of December One thousand Seven hundred and
"Seventy Six for the Several Sums of Two hundred and Six thousand
"Pagodas Payable in three years Pagodas Two hundred and Eight
"thousand Payable in four Years and Pagodas Two hundred and Six
"thousand Payable in five Years from the said Twelfth day of December
"One thousand Seven hundred and Seventy Six with Simple Interest
"at the Rate of Six Per Cent Per Annum"

"And the said Bill afterwards chargeth that
certain Nabobs now Consolidated Bonds to the amount of Pagodas
Eight hundred and Nineteen thousand two hundred and Ninety
Six and an half were among other things mortgaged and Assigned
over to the said Paul Benfield and that the Dividends and Interests
arising thereon were to be received by the said Paul Benfield his
Attorney or Attorneys Hers Executors Administrators or Assigns
towards Payment of the said Bonds and other Sums charged to be due
and owing by your Petitioners to the said Paul Benfield and the
said Bill of Complaint interrogates your Petitioners on the words
and to the Tenor and Purport following is viz.

"And more especially that the said George Savage
"James Call Andrew Majendie and James Taylor may set forth
"whether they and each of them Jointly and Severally stand indebted

unto

"Unto your Orator from the Month of December One thousand Seven
"hundred and Seventy Six in the Sum of Pagodas Six hundred and
"Twenty thousand and whether they did not at Fort Saint George Enter
"into and give unto your Orator for the Amount thereof three Bonds or
"Obligations bearing date the twelfth December One thousand Seven
"hundred and Seventy Six under their respective hands and Seals for the
"several Sums of Pagodas Two hundred and Six thousand Payable in
"three Years Pagodas two hundred and Eighty thousand Payable in
"four Years and two hundred and Six thousand Payable in five years
"from the said Twelfth December One thousand Seven hundred and
"Seventy Six with a Simple Interest of Six P Cent P Annum"

And the said Bill Prayeth for Relief and a Decree in the
Words and to the Tenor and purport following

"And that your Orator may have such further and other Relief
"in all and Singular the Premises as shall Appear Agreeable to
"Equity and good Conscience

"May it Please this Honble Court to Cause the said
"George Savage James Call Andrew Majendie and James Taylor to
"be Summoned and Required by the Sheriff of Fort Saint George Town
"of Madraspatnam and the Desbuds thereof Personally to be and
"Appear before this Honble Court at a certain time and place to be by
"this Honble Court Prefixed and Appointed then and there to
"Answer this your Orators Bill of Complaint and further to Stand
"to and abide by such Order and Decree thereon as to this Honble Court
"shall seem Meet"

Which Bill of Complaint in the manner in which the
same is Preferred contains matter sufficient Provided Legal Evidence
be given in Support thereof to bring your Petitioners to Judgement for

the

the Sum of Pagodas two hundred and Six thousand being the ballance charged to be due by your Petitioners to the said Paul Benfield in his said Bill of Complaint so filed against your Petitioners the said — Twenty Ninth day of April last past and therefore if this said Bill of Complaint was to be held good the said Paul Benfield might in the Event have two Seperate Judgements or Decrees and Executions thereon for the same Sum of Money and for the Discharge if Satisfied of one and the same Debt

Secondly Because that where two Bills are filed in the same name and for the same Matter the Practice of the Court of Chancery is to stop the Proceedings of the last and therefore whether the Demurrer of your Petitioners was held good or not Nevertheless no Rule for your Petitioners to answer the said Bill of Complaint of the said Paul Benfield so filed the said — Twenty Ninth day of April against your Petitioners should have — Ceased but all Proceedings thereon should have been Stopped until — Judgement had been finally given on the said Bill of Complaint of the said Paul Benfield so filed the said Twenty third day of February last Past

For which Reasons and such others as may be offered at the Hearing your Petitioners Pray that the Demurrer of your Pet^rs may be Adjudged good and the said Bill of Complaint may be — dismissed with Costs to be Paid by the said Paul Benfield or that the Proceedings on the said Bill so filed the said Twenty Ninth day of April may be stopped until the merits of the said Bill so filed the said Twenty third day of February shall have been finally — determined and that your Petitioners may have such further and other Relief in the Premises as to this Honble Court shall Seem Meet —

Stephen Popham

Attorney for the Appellants

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of September Anno Domini 1782

Present

Edward Garrow Esq^r Mayor
Edw^d John Hollond Benj^n Roebuck
William Webb Thomas Cooper
Hugh Maxwell Edw^d Frowd
William Oram and Eyles Irwin
Aldermen

Paul Benfield
Vers
James Taylor George Savage James Call and Andrew Mayendie

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 Complainants Bill with Copies of Two Exhibits annexed the Demurrer the Joinder and the Court having had due Consideration thereon are of Opinion that the Pleas made use of by the Defendants in their Demurrer are Insufficient This Court doth therefore think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendants be Put upon their Answer

Day is given the Defendants till the 1st day of October Next to Answer the Complainants Bill in default of which Judgement will be given for the Complainant —

A true Extract

Charles Bromley

Dep^ty Reg^r

In the Court of Appeals
at
Madraspatnam

Between Paul Benfield of Fort Saint George Esqr. Complainant and James Taylor George Savage James Call and Andrew Mayendie Defendants.

The answer of the said Paul Benfield to the Petition and Appeal of the above named James Taylor George Savage James Call and Andrew Mayendie

This 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 or is mentioned expressed and Setforth for answer thereunto Saith that the Appellants very jointly and Severally indebted unto him this Respondent in the certain declared and Specific Sum of two hundred and Six thousand Pagodas Current Money of Madras or Eighty Two thousand four hundred Pounds Sterling Money of Great Britain by them the said Appellants Acknowledged and declared to be due and owing unto this Respondent on the Twelfth day of December which was in the year of our Lord One thousand Seven hundred and Eighty as the Principal sum of Money due upon a Certain Bond or written Obligation given and Granted unto this Respondent by the said Appellants under their and each of their respective hands and Seals bearing date in Fort Saint George on the Twelfth day of December which was in the year of our Lord One thousand Seven hundred and Seventy six whereby they the said Appellants became Jointly and Severally held and firmly bound unto unto this Respondent his Heirs Executors Administrators and Assigns in the Penal Sum of four hundred and twelve thousand Pagodas Current Money of Madras for Securing the Just and certain Payment of Two hundred and Six thousand Pagodas Current Money of Madras and Interest thereupon or Eighty two thousand four hundred Pounds Sterling Money of Great Britain at a day long since Elapsed — which said Principal Sum of Two hundred and six thousand Pagodas Current Money of Madras they the said Appellants Acknowledged to have borrowed and Received of and from the said Respondents before they the said Appellants executed and delivered the said Bond or Written Obligation the said Principal Money with Interest thereon being long due and owing unto this Respondent from the said Appellants under the Assurances of Payment from time to time but which Assurances being broke and disregarded by the said Appellants this Respondents was drove to the Necessity of Preferring his Bill of Complaint in the Honble the Mayors Court at Madraspatnam for the Recovery of the said Principal and Interest so Promised and Assured unto him this Respondent his Heirs Executors Administrators and Assigns from the said Appellants in and by their said Bond or written Obligation which said Bond or written Obligation being unconnected and independent of every other transaction between this Respondent and the said Appellants is absolute and binding upon them the said Appellants and each of them for the declared and Certain Sum of Money as aforesaid which will Appear by a true Copy of the said Bond or Written Obligation annexed to this Respondt Bill of Complaint now before this Honble Court to which this Respondent Craves Reference if need be this Respondents Admits that his said Bill of Complaint was so Exhibited against the said Appellants on the Twenty Ninth day of April last Past and on this

Present

Filed in my Office
the 20th Nov. 1782
Charles Freeman
Actr.

Present Year of our Lord One thousand Seven hundred and Eighty two as is Setforth in and by the Appellants said Petition and Appeal against which said Bill and the Claim or Demand of this Respondent in and by the same the said Appellants can neither in Justice or Equity shew any good or sufficient Cause whereby to Preclude this Respondent from his Right of Action in manner and form as by him is Preferred and this Respondent for further Answer to the Appellants said Petition and Appeal Admit that the said Appellants did on the Twenty first day of May last Past file a demurrer against this Respondents said Bill of Complaint thereby endeavouring to Defeat this Respondent of his Just Claim and Demand which said Demurrer was frivolous and evasive containing no good Cause or Sufficient Ground to establish a fair Demurrer in either law or Equity nor could any matter therein Pleaded or shewn operate or tend to annul or make void this Respondents Demands in manner and form as by him is Charged Alledged and Setforth in and by his said Bill of Complaint filed on the said Twenty Ninth day of April last past for this Respondent saith that the matter Setforth or shewn for Cause of Demurrer was false Groundless and Manifestly introduced to Mislead the Judgement of the said Mayors Court the Bill of this Respondent against the said Appellants filed on the Twenty third Day of February last past and referred to by the said Appellants in their said Demurrer was a Bill for discovery of a certain matters and transactions in Accounts and concerned committed and entrusted by this Respondent to the Management of the said Appellants to which this Respondent was legally and Justly intitled from the said Appellants nor had the said Bill any other tendency but to Obtain an Account of such transactions matters and occurrences unfairly

unfairly withheld from the knowledge of this Respondent by the said Appellts this Respondent further says that the Judgement of the said Court ought Agreable to the Rules of Law and Equity to have so materially differed that nothing could be drawn from the one to bar or Preclude this Respondent his Right of Action upon the other the nature of them being so essentially different the One for Discovery the Judgement could be only be to Account and thereupon no Writ of Execution could Possible Issue or any Decree Pass or be given for any Specific Sum in Specie the other for an absolute and declared Sum in Debt or Bond the Judgement on law should be final and conclusive upon Demurrer and this Respondent says that the Attempt of the said Appellants by their said Demurrer and the Pleas made use of on the same were nugatory and Solely designed to mislead the said Mayors Court and defeat this Respondent in his Just and Legal Pursuit all which this Respondent setforth and made Apparent by his Joinder to the Appellants said Demurrer before the said Honble the Mayors Court and did as in Right and Justice he was entitled unto pray a Decree and the Judgement of the said Honble the Mayors Court for his Just Debt Interest and Costs which said Bill of this Respondents Joinder came on to be heard and determined before the Honble the Mayors Court afore the Seventeenth day of September last Past and in this Present year of our Lord One thousand Seven hundred and Eighty Two when the said Honble the Mayors Court were Pleased to Order the Demurrer of the said Appellants to be thrown out with Costs and the Appellants were allowed fourteen days to answer the Bill of Complaint of this Respondent by which Order of the said Mayors Court the Appellants could not in fact consider themselves Aggrieved as they unfairly Setforth in their said Petition and Appeal and under many Vague and frivolous Evidences they come before this Honble Court

to

to Procrastinate and delay the Payment of a Just Debt long due and owing from them the said Appellants unto this Respondent nor ought they to Introduce such matters and things as they have done in their said Petition and Appeal for it was and is well known unto the Appellants that no Attempt was ever made by this Respondent to Obtain two Judgements for his Debt as is falsely Pretended and Set forth as Cause of Complaint in the said Petition and Appeal for this Respondent Avers as he before hath done that the said Bill for Discovery upon which such weight and Stress is Apparently laid never was exhibited or intended to be Exhibited against the said Complainants for Recovery of any Sum of Money but for discovery of Matters transactions and Accounts that concerned this Respondent and in which the said Appellants could alone Satisfie him as before is Stated the said Bill so filed on the twenty third day of February last past and in this Present Year of our Lord One Thousand Seven hundred and Eighty two, not having the least tendency to obtain any Judgement or Decree in Specie as is fully shewn by this Respondents Joinder to the Demurrer of the said Appellants and this Respondents further says that it is Negatory in the said Appellants to pray this Honble Court to Stop Proceedings in this Cause until the merits of the said Bill so filed on the said Twenty third day of February last past shall have been finally determined final Judgement having Passed thereupon on the Seventeenth day of September last past This Respondent further Saith in answer to the Appellants said Petition and Appeal that the Suggestions or Grounds for their Preferring such and Appeal are frivolous Evasive and Dilatory without the least Reason or cause of existing for such proceedings for even admitting that such cause as is Set forth by the said Appellants really

Existed

Existed which is by no means the case it would not be good or sufficient cause either in law or in Equity to Preclude this Respondent from his Right of Action in manner and form as by him is Preferred It being for the Recovery of a Specific Sum of Money due from the said Appellants unto this Respondent upon their the said Appellants Joint and Seperate Bond under their and each of their Respective hands and Seals by them Executed given and Granted unto this Respondent for Just and Valuable Considerations Payable and due as a time long since Elapsed in Simple Absolute and unconditional wherein no Point of Law can arise to make a Decision intricate or uncertain Against this Respondent his Demand in manner and form as by him is Preferred nor ought any other Plea to be admitted but payment of the said Bond or written Obligation or a Judgement Previously Obtained for the same the Bond or written Obligation whereupon the sum aforesaid is now sued for by this Respondent being long due and owing from the said Appellants and in its nature and by the Express Condition thereof being absolute stands unconnected with and Independant of any other Matter concern or transaction between this Respondent and the said Appellants

For all which Reasons and for others which may be Offered at the hearing this Respondent humbly Prays that the Order of the Honble the Mayors Court of the said Seventeenth day of September last past and which was in this Present year of our Lord One Thousand Seven hundred and Eighty two may be confirmed so far as it Respects or relates to the throwing out of the Appellants said Demurrer with Costs and that upon due Consideration of the Premises this Honble Court will be Pleased to make such Order and Decree as in Law Justice and Equity they shall see Right and which

may

may According to the Law of England in such Cases be especially provided for and this Respondent Prays that in this Suit he may be Dismissed with his Costs in this Cause most wrongfully Sustained

Edward Ellis
Thomas Jones
Attornies for the Respondent

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th Day of September Anno Domini 1782

Present

Edward Garrow Esqr. Mayor
Edw. John Hollond Esqr. Roebuck
William Webb Thomas Cooper
Hugh Maxwell Edward Frowd
William Oram and Eyles Irwin
Aldermen

Paul Benfield
Vers
James Taylor George Savage James Call and Andrew Majendie

Bill with Copies of Two Exhibits annexed Read
Demurrer Read
Sounder Read

The Demurrer and Sounder Coming on to be Argued and determined this day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of two Exhibits annexed the Demurrer the Sounder and the Court having Said had due Consideration thereon are of Opinion that the Pleas made use of by the Defendants in their Demurrer are Insufficient This Court doth think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendants be Put upon their Answer

Day is given the Defendants till the 1st October next to answer the Complainants Bill indefault of which Judgement will be given for the Complainant

A true Extract
Chas. Bromley
Depty Regr.

A true Copy
Edward Ellis
Thomas Jones
Attornies for the Respondent

Court of Appeals
at
Madraspatnam

Fort St. George Thursday the 15th May anno Domini 1783

Between James Taylor James Call George Savage and Andrew Majendie of Fort St. George Esqrs. Appellants and Paul Benfield of the same place Esqr. Respondent

The Attorney for the Appellants having Moved to Withdraw this Cause Each Party Paying their own Costs and the Attorney for the Respondent having Agreed thereto

Ordered Accordingly

By Court
Chas. Brownell Secr

To the Right Honble George Lord Macartney K.B
Gr. President and Governor &c. Council of Fort Saint George

In the Court of Appeals
at
Madraspatnam

Between Paul Benfield
of Fort Saint George Esqr. Complainant
and James Taylor George Savage James Call
of the same place Esquires and Andrew
Majendie formerly of Fort Saint George
but now of the County of Middlesex in the
Kingdom of Great Britain Esquire
Defendants

The Humble Petition and Appeal of the above named
Complainant

Sheweth

That the said James Taylor. George Savage James Call and
Andrew Majendie being Jointly and Severally indebted unto your Pet.
in the full and Just Sum of two hundred and thirty two thousand
Nine hundred and Sixty Pagodas Current Money of Madras or Ninety
three thousand one hundred and Eighty four Pounds Sterling Money of
Great Britain at the Rate of Eight Shillings Sterling for the Current
Pagoda as by a certain written Acknowledgment Appears bearing
date in Fort Saint George on the twelfth day of December which was
in the year of our Lord One thousand Seven hundred and Eighty duly
executed by and between your Petitioner and the said James Taylor and
James Call for themselves and the said George Savage and Andrew
Majendie

Filed in my Office
the 30th Sept. 1782.
Charles Freeman
Clk

Majendie they the said James Taylor and James Call being fully
impowered to represent and Act in the Premisses for the said George
Savage and Andrew Majendie for whom as well as for themselves
they Executed the said written Acknowledgment and delivered the same
unto your Petitioner whereby it is expressly Acknowledged and declared
that there was upon the said twelfth day of December One thousand
Seven hundred and eighty then due and owing unto your Petitioner from
them the said James Taylor George Savage James Call and Andrew
Majendie Jointly and Severally the said Sum of Two hundred and
thirty two thousand Nine hundred and Sixty Pagodas Current Money
of Madras as the Principal and Interest of certain bond or written
Obligation duly executed by them the said James Taylor George
Savage James Call and Andrew Majendie given and granted unto
your Petitioner his Heirs Executors Administrators or Assigns under
their respective hands and Seals in Fort Saint George aforesaid upon
the twelfth day of December which was in the year of our Lord one
thousand Seven hundred and Seventy Six, for the Penal Sum of
four hundred and Sixteen thousand Star Pagodas conditioned for
Securing the certain Payment of the Principal Sum of Two hundred
and Eight thousand Star Pagodas with Interest thereon which
said Principal Sum of Two hundred and Eight thousand Star
Pagodas they the said James Taylor. George Savage James Call and
Andrew Majendie thereby Acknowledged to have borrowed and
Received of and from your Petitioner at Fort Saint George aforesaid
on or before the said twelfth day of December One thousand Seven
hundred and Seventy Six by which said Bond or written obligation
they the said James Taylor George Savage James Call and Andrew
Majendie their Heirs Executors and Administrators became and
are

are Jointly and Severately bound for Repayment of the said Principal Sum of Two hundred and eight thousand Star Pagodas and Interest unto your Petitioner his Heirs Executors Administrators or Assigns at a day or certain Period long since elapsed Your Petitioner further sheweth — that the said James Taylor George Savage James Call and Andrew — Majendie having Neglected to pay or make good unto your Petitioner the said Principal Sum of Two hundred and Eighty thousand Star Pagodas and Interest due thereupon and every part thereof your Pet.r was Reduced to the Necessity of Exhibiting his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against them the said James Taylor George Savage James Call and Andrew — for recovery of his Debt Principal and Interest so declared by them to be due and owing unto your Petitioner on the said Twelfth day of December One thousand Seven hundred and Eighty, which said Bill of Complaint of your Petitioner was filed on the thirteenth day of April last past and in the Present Year of our Lord One thousand Seven hundred and Eighty Two. To which said Bill of Complaint the said James Taylor George Savage James Call and Andrew Majendie — Appeared by their Attorney at Law and by Motion made on their behalf by their said Attorney obtained Leave to Plead or Demur and on the Twenty third day of the same Month of April they filed their Demurrer on the Records of the said Court and for Cause of Demurrer — unjustly and wrongfully setforth that your Petitioner had on the twenty third day of February last past exhibited a Bill against them the said James Taylor George Savage James Call and Andrew Majendie for — Recovery of Six hundred and twenty thousand Pagodas Current Money of Madras in which said Sum it was Pretended that the Principal and Interest due unto your Petitioner upon the said Bond for the Principal Sum of Two hundred and Eight thousand Star Pagodas was included which Pretence of the said Defendants was Groundless and wrong and Contrary to the Real Matters of fact for the said Bill so refered to by the said Defendants in and by their said Demurrer had no — Tendency to obtain a Decree for any Sum of Money whatever from the said Defendants the said Bill so referred to and unfairly — stated was commenced against the said Defendants by your Pet.r to compel them the said Defendants to discover setforth and fully — disclose unto your Petitioner certain transactions and occurrences within their own Knowledge relative to the Management of Concerns and — Receipts of Money entrusted to them by your Petitioner and particular Matters wherein your Petitioner was Materially interested and legally strictly and clearly intitled to such information from them the said Defendants as by him was Required in and by his said — Bill for Discovery Nor did your Petitioner Seek for or Expect any other or further Relief by or from the said Bill than a Discovery of Matters which he was intitled unto a full Knowledge of, and which were in the Power of the Defendants alone to give or render him but by them withheld from your Petitioner those being Matters very foreign to the payment of the Bond or written obligation in Question from the Defendants to your Petitioner which being a Special Obligation for a Declared or certain Sum of Money Simple and unconditional on Sight for Just and valuable considerations unconnected with and independant of any other matter or transaction between the said Defendants and your Petitioner No other Plea ought in Justice to be Admitted thereto but the payment thereof which not having been the Case in any part your Petitioner did According to the Course of Practice in the said Mayors Court file a Joinder to the said Demurrer of the

Sum

the said Defendants wherein he Suppported his said Bill of Complaint and all the Matters and things therein Setforth and Proved the Plea made use of by the Defendants in their said Demurrer to be — frivolous dilatory evasive and insufficient either in Law or Equity to Preclude your Petitioner from his Right of Action in manner and — form as by him is Preferred against the said Defendants for the — Recovery of his Debt and Interest Justly due and owing upon the — Special Bond or Written Obligation of the said Defendants whereby they are Jointly and Severally bound unto your Petitioner for the payment of the Principal and Interest in and by the said Bond or written — Obligation declared to be due and owing unto your Petitioner from — them the said Defendants against which the said Defendants can have no Just Cause or excuse for your Petitioner Avers that his — demand as Setforth or Exhibited in and by his said Bill of Compl.t Against them the said Defendants is Justly true Right and — therefore your Petitioner in and by his said Joynder Prayed the — Judgment of the said Mayors Court and that they would according to Law grant him a Decree for his Just Debt Interest and Costs arising due and owing unto him upon the said Bond or Written Obligation of the said Defendants to which said Decree or Judgment of the said Honble the Mayors Court your Petitioner considered himself fully — entitled unto as of Justice and Right Agreable to the Acts of Parliament made in the Twenty Seventh Year of Queen Elizabeth Chapter the fifth and forth of Queen Anne Chapter the Sixteenth the former of which Entitled "An Act for the furtherance of Justice in case of Demurrer and Pleadings" Enacts and declares that "Forasmuch as Excessive charges and Expences and greatly delay and hindrance of "Justice hath growen in Actions and Suits between the Subjects of this

"this Realm by Reason that some Small mistaking or want of form "in Pleading Judgments are often Reversed by Writs of Error and often "times upon Demurrers in law given otherwise than the matter in "Law and every Right of the Cause doth require whereby the Parties are "constrained either utterly to lose their Right or else after long time and "great trouble and Expences to Renew again their Suits (2) for remedy "whereof be it enacted by the Queens Most Excellent Majesty the "Lords Spiritual and Temporal and the Commons in this Present "Parliament assembled and by the Authority of the same that — "from henceforth after Demurrer Joined and entered in any Action or "Suit in any Court of Record within this Realm the Judges shall — "Proceed and give Judgement according to the very Right of the Cause "and matter in Law shall Appear unto them without Regarding any "Imperfection Defect or want of form in any Writ Return Plaint — "Declaration or other Pleadings Process or course of Proceeding whatsoever "except those only which the Party Demurring shall especially "and Particularly Set down and Express together with his Demurrer (3) And that no Judgement to be given shall be Reversed by any "Writ of Error for any such Imperfection defect or want of form as is "aforesaid except such only as is before excepted." Which said Act of Parliament "and all the Matters and things therein expressed or contained is — "established and Confirmed by the said Act of the fourth Year of Queen "Anne Chapter the Sixteenth entitled "an Act for the Amendment of the "Law and the better advancement of Justice," whereby it is enacted that "for the Amendment of the law in several Particulars, and for the — "easier Speedier and better Advancement of Justice, be it enacted by the "Queens Most Excellent Majesty by and with the advice and — "Consent of the Lords Spiritual and temporal and Commons in this

Present

Present Parliament assembled and by the Authority of the same that from and after the first day of Trinity Term which shall be in the year of our Lord One thousand Seven hundred and Six where any Demurrer shall be Joined and entered in any Action or Suit in any Court of Record within the Realm. the Judges shall Proceed and give Judgement according as the very Right of the Cause and matter in law shall Appear unto them without Regarding any Imperfection Omission or Defect in any writ Return Plaint Declaration or other Pleading Process or Course of Proceeding whatsoever except those only which the Party demurring shall especially and Particular Set down and express together with his Demurrer as cause of the same. Notwithstanding that such Imperfection Omission or Defect might have heretofore been taken to the matter of Substance and not aided by the Statute made in the Twenty Seventh year of Queen Elizabeth intituled, an Act for the furtherance of Justice in case of Demurrer and Pleadings, so as Sufficient matter appear in the said Pleadings upon which the Court may give Judgement According to the very Right of the Cause" Your Petitioner further sheweth unto this Honble Court that on Tuesday the Seventeenth day of this Present Month of September One thousand Seven hundred and Eighty two the said Bill of Complaint the Defendants Demurrer and your Petitioners Joinder thereunto came on to be Argued before the Honble the Mayors Court when the said Court considered the Pleas made use of by the Defendants in and by their said Demurrer and Pleadings thereupon insufficient Ordered the said Demurrer of the Defendants to be thrown out with Costs and further Ordered the Defendants to Answer the Bill of Complaint of your Petitioner instead of giving Judgement thereon as in Right and Justice they ought to have done in favor of your Petitioner for his Just Debt Interest and Costs which may more fully appear by an Attested Copy of the

the said Sentence Order or Decree of the said Mayors Court hereunto annexed for the inspection of this Honble Court and which is Prayed by your Petr. to be taken and Received as part of this his Petition and Appeal which said Order Sentence or Decree of the said Mayors Court your Petitioners considers erroneous and is thereby much Aggrieved and delayed in his Suit contrary to Justice and Right. He therefore Appeals from the said Order Sentence or Decree of the said Mayors Court of the said Seventeenth day of this Present Month of September One thousand Seven hundred and Eighty Two, to the Judgement of this Honble Court of Appeals for the following among other Reasons.

First Because the Plea made use of by the Defendants in and by their said Demurrer was frivolous evasive and dilatory without the least Reason or cause assigned to Preclude your Petitioner of his Right of Action in manner and form as was by him in his said Bill preferred which being for the Recovery of a Specific Sum of Money due from the Defendants unto your Petitioner upon their Joint and Seperate Bond under their Respective hands and Seals given and granted unto your Petitioner for Just and Valuable considerations Payable and due at a time long since elapsed is Simple absolute and unconditional wherein no Point of law can arise to make a decision intricate or uncertain for your Petitioners demand which is in its nature and from the express condition thereof unconnected with and independant of any other matter or transaction between your Petitioner and the said Defendants

Secondly Because your Petitioner is Strictly and clearly by the Laws of his Country entitled to Judgement and a Decree of the Honble the Mayors Court ought to have passed against the said Defendants for the Amount Principal and Interest of their Debt so due and owing upon their Joint and Seperate Bond or written Obligation under the respective hands and

Seals

Seals of the said Defendants for Valuable and good considerations and which
According to the Practice of the said Court your Petitioners had good Cause
to expect as may appear in the Cause of Bayne Vers Boyd wherein Judgement
was given by the said Mayors Court against the Defendant upon Demurrer on
the twenty eighth day of May One thousand Seven hundred and Eighty two.
which all the a Precedent in Point established by the Authority of the said —
Mayors Court was not regarded or considered as a Rule for their Guidance
in Subsequent decisions of a like Nature.

Thirdly Because your Petitioner his demand against the said defendants —
being upon their Bond or written Obligation long since due and payable
no Plea in Abatement could or ought to be Admitted under the Title of a —
Demurrer for as your Petitioner is advised had any such matter as is —
Assigned by them the said defendants for Cause of Demurrer existed they
ought to have Pleaded their Special Matter in abatement and shewn —
that Judgement had Passed against them for the said Cause For nothing less —
than Payment or Judgement can be a good Plea against a Bond to prevent
Judgement for the Complainant upon the Defendants demurring A demurrer
either in Law or in Equity being a Confession of all matters of fact which are
Material or alledged from which the defendants could not depart or shew
good Cause against Therefore in Law Reason and Equity Judgement ought
to have Passed for your Petitioner. Nor ought any Plea or excuse whatever
to be admitted against your Petitioners demand For it has been Solemnly
Pronounced in the Court of Kings bench in England that upon demurrer
Judgement must be given shall be as conclusive and binding as if —
Obtained by Verdict it being obtained from a Confession of the Parties against
which no Relief can be given for if a defendant in an Action of Debt upon —
a Bond (who has a good defence on the Merits) should by advice of —
Counsel hazard his Cause on a demurrer which is adjudged against him
this Mistake of Counsel will not be allowed in chancery as a good Cause of
Relief the Plea made use of by the defendants being in the Judgement of the
said Mayors Court insufficient to Support the said demurrer Judgement
ought to have been given for your Petitioners instead of the defendants
being Put on their Answer the Law having Prescribed a certain and —
determinate mode to be observed leaves it not in the Power of any Court
to deviate therefrom or to pass Judgement otherwise than According to
Right and the Rules of Law in such Cases made and Provided —

For which Reasons as well as those which
may be offered at the hearing your Petitioner —
Prays that this Honble Court will be Pleased
to take the Premisses into their Serious —
Consideration and that they will (as in Law and
Right your Petitioner considers himself entitled
unto) grant him Judgement or a Decree for his
Just Debt Interest and Costs and that this —
Honble Court will be Pleased to grant him such
other and further Relief in all and Singular —
the Premisses as shall Appear agreable to Law
Justice and Equity.

Edward Ellis
Thomas Jones
Attorneys for the Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of September Anno Domini 1782

Present

Edward Garrow Esqr. Mayor
Edwd. John Hollond Benj.n Roebuck
William Webb Thomas Cooper
Hugh Maxwell Edward Frowd
William Cram and Eyles Irwin
Aldermen

Paul Benfield
vers
James Taylor George Savage James Call and Andrew Majendie

Bill with Copies of Two Exhibits 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 Complainants Bill with Copies of Two Exhibits Annexed the Demurrer the Joinder and the Court having had due Consideration thereon are of Opinion that the Pleas made Use of by the Defendants in their Demurrer are Insufficient This Court doth therefore think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendants be Put upon their Answer

Day is given the Defendants till the 1st Day of October Next to Answer the Complainants Bill indefault of which Judgement will be given for the Complainant

A true Extract

Charles Bromley
D. Regr.

857

To the Honble the Court of Appeals at Madraspatnam

The Answer of James Taylor George Savage and James Call of Fort Saint George Esquires and Andrew Majendie formerly of Fort Saint George but now of the County of Middlesex in the Kingdom of Great Britain Esquire Defendants to the Petition and Appeal of Paul Benfield of the same place Esquire Complainant

These Respondents do Admit that the said Appellant Did on the thirteenth day of April last past and which was in this Present Year of our Lord One thousand Seven hundred and Eighty Two file a Bill of Complaint on the Honble the Mayors Court for Recovery of the Sum of Two Hundred and thirty two thousand Nine hundred and Sixty Pagodas Charged by the said Appellant to be due unto him by these Respondents on the ballance of a certain Bond Charged to have been Executed by these Respondents on the Twelfth day of December which was in the year of our Lord One thousand Seven hundred and Seventy Six for the Principal Sum of Two hundred and Eight thousand Pagodas to which said Bill of Complaint these Respondents did on the Twenty third day of April last past file a Demurrer and for Cause of Demurrer these Respondents did Set forth among other things that the said Appellant had on the Twenty third day of February then and Now last Past Exhibited a Bill of Complaint on the said Mayors Court against these Respondents for the Sum of Six hundred and Twenty thousand Pagodas Charged to be due unto him on divers Bonds or other Writings Charged to have been Signed and Executed by these Respondents One of which said Bonds Appeared to be the very Same Bond for Payment of the ballance due whereon

Filed in my Office Complaint in the Honble the Mayors Court for Recovery of the Sum of Two Hundred and thirty two thousand Nine hundred and Sixty Pagodas
The 4th Decr. 1782
Charles Freeman Attk

whereon the said Appellant had so filed his said Bill of Complaint on the said thirteenth day of April last to which said Bill of Complaint these Respondents had filed a Demurrer and the said Appellant had filed a Joinder thereto — which said Bill of Complaint Demurrer and Joinder had not then as these Respondents Sefforth been heard and determined and therefore the said last Bill of the said Appellant so filed as aforesaid against these Respondents — Appeared to be Vexatious and Solely Calculated to harrass these Respondents and was on that Account Contrary to law and not entitled to Relief in a Court of Equity

These Respondents further shew that the said Appellant did on the Twenty Ninth day of April file a Joinder to the said Demurrer and did therein amongst other things Sefforth that the said Appellant had not any other Bill of Complaint against these Respondents for Recovery of the Principal and Interest due unto him upon the said Bond and that the said Bill of Complaint of the said Paul Benfield so filed the said Twenty third day of February last was for a discovery and Account of Sundry Receipts of money and other matters to which said Paul Benfield was as he Pretends Justly and Legally entitled from these Respondents which said Bill of Complaint Demurrer and Joinder came on to be Argued and determined before the said Honble the Mayors Court on the Seventeenth day of September Last past — when the said Mayors Court were Pleased to Order and Decree and did Accordingly Order and Decree that the said Demurrer of these — Respondents should be thrown out with Costs and that these Respondents should file an Answer to the Bill of Complaint of the said Appellant from which said Order and Decree the said Appellant hath lodged an Appeal to this Honble Court on the thirteenth day of the said Month of September Pretending that he is entitled to Judgement on the Merits of the said Bill Demurrer and Joinder — Whereas these Respondents —

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alledge that under and by Virtue of the very Acts mentioned or referred to by the Appellant to wit the Act passed in the Twenty Seventh year of her Majesty Queen Elizabeth and the act passed in the fourth Year of the Reign of Queen Anne and by Reason of the Matters Stated and referred to by these Respondents in their said Demurrer the said Mayors Court could not have given Judgement for the Appellant —

First — Because these Respondents by their said Demurrer have denied the Justice of the Appellants demand and because their said Demurrer doth not Contain any of those frivolous dilatory or evasive Pleas which are intended to be Remedied by the said Acts of Parliament on the Contrary these Respondents have in their said demurrer Specially and Particularly Set down and Expressed the Causes on which their demurrer was grounded and are therefore within the very exceptions to the giving of Judgement on a Demurrer to which those acts Advert

Secondly — Because that as the Demurrer of these Respondents hath Specially expressed and Sefforth that another Bill of Complaint had been filed by the Appellant for Recovery of the very Same Bond for the ballance — Charged to be due whereon the said Appellant hath filed his Present Bill of Complaint the said Mayors Court ought to have taken immediate Notice thereof as being upon their Records and Referred to to be by these — Respondents and should have followed the Practice of the Court of Chancery in the like Cases which is laid down in Vizeys Reports Vol. 1. P. 564. Gage Vers Lord Stafford is that where two Suits are brought in the same Name and for the same Matter the Proceedings on the last are Stopped

Thirdly — Because that if the said Demurrer of these Respondents as above — Sefforth was good at the time of filing the same it is so now nor can it be Affected by any after determination or decision of the Honble the Mayors Court respecting the said first Bill of Complaint so filed the said Twenty

third

third day of February last

Fourthly Because that the Points dated in the Demurrer of Boyd at the Suit of Baine are widely different from those on which these Respondents have founded their Demurrer to the Appellants said Bill of Complaint for Boyd Appears on the face of his Demurrer to have Admitted the Several Charges in the Complainants Bill but urged that the Agreement between him and Baine was annulled by an Edict Published by the King of Denmark and that the Complainant having been on a foreign Service ought to have Submitted to the Laws Customs and Regulations of that Particular Service which Demurrer was considered as a direct Admission of the Complainants right of Action in every particular and that the Plea of a Danish Edict or of Danish Customs not being Admissible against a written Agreement for a Special Sum on Consideration of Special Service Sued for in the Mayors Court Judgement ought to pass for the Complainant but these Respondents say they have never Admitted in any one respect but on the contrary they have denied the Justness of the Appellants demand and have on their Demurrer Stated such Causes against the Appellants Bill of Complaint as they conceive ought to have entitled these Respondents to have had their said Demurrer held as good and Sufficient and the Appellants Bill Dismissed with Costs

For all which Reasons and such others as are Set forth in these Respondents Petition and Appeal in this Cause now on Record in this Honble Court and to which these Respondents Pray leave to refer and for such other Reasons also as may be offered at the hearing these Respondents Pray that the Appellants said Petition and Appeal be Dismissed with Costs to be Paid by the Appellant

Stephen Popham
Attorney for the Respondents

Court of Appeals
at
Madraspatnam

} Fr. Thursday the 15th May anno Domini 1783

Between Paul Benfield of Fort St. George Esq. Appellant and James Taylor James Call George Savage and Andrew Majendie of the same place Esqrs Respondents

The Attorney for the Appellant having Moved to Withdraw this Cause and Each Party Paying their own Costs and the Attorney for the Respondents having Agreed thereto

Ordered Accordingly

P Cur
Chas Frecniall Cler

370/372

To the Right Honble George Lord Macartney
Knight of the Bath President &c. Council of
Fort Saint George

In the Court of Appeals

Between Paul Benfield Complainant
and
James Taylor George Savage James Call and
Andrew Maynder Defendants

The Petition and Appeal of the above named Defendants

Sheweth

That the said Paul Benfield did on the thirteenth day of April last past and which was in the Present Year of the Lord One thousand Seven Hundred and Eighty Two Prefer his Bill of Complaint in the Honble the Mayors Court against your Petitioners Charging your Petitioners with being indebted unto the said Paul Benfield in the Sum of Two hundred and thirty two thousand Nine hundred and Sixty Pagodas Current Money of Madras as the ballance due on a Certain Bond Charged by the said Paul Benfield to have been Executed by your Petitioners on the Twelfth day of December which was in the Year of our Lord One thousand Seven Hundred and Seventy Six for the Principal Sum of Two Hundred and Eighty thousand Pagodas to which said Bill of Complaint your Petitioners did on the twenty third day of April last past file a Demurrer and for Cause of Demurrer your Petitioner did Set forth among other things that the said Paul Benfield had on the twenty third day of February then and now last past exhibited a Bill of Complaint in the said Mayors Court against your Petitioners for the Sum of Six hundred and twenty thousand Pagodas Charged to

Filed in my office
the 30 Sept. 1782
Charles Freeman
Clk

be

be due unto him on divers Bonds or other writtings charged to have been Signed and Executed by your Petitioners one of which said Bonds appeared to be the very same Bond for Payment of the ballance due wherein the said Paul Benfield had so filed his said Bill of Complaint on the thirteenth day of April last to which said Bill of Complaint your Petrs had filed a Demurrer and the said Paul Benfield had filed a Joinder thereto which said Bill of Complaint Demurrer and Joinder had not then as your Petitioners Setforth been heard and determined and therefore the said last Bill of the said Paul Benfield so filed as aforesaid against your Petitioners appeared to be Vexatious and Solely Calculated to harrass your Petitioners and was on that Account Contrary to Law and not entitled to Relief in a Court of Equity

Your Petitioners further Shew that the said Paul Benfield did on the twenty Ninth day of the said March file a Joinder to the said Demurrer and did therein amongst other things setforth that the said Paul Benfield had not any other Bill of Complaint against your Petitioners for Recovery of the Principal and Interest due unto him upon the said Bond and that the Bill of Complaint with the Demurrer and Joinder then depending before the said Honble Court and by these Petitioners referred to in their said Demurrer was a Bill for a discovery and Account of Sundry Receipts of Money and other matters which the said Paul Benfield was Strictly and legally entitled unto from your Petitioners but that the said Bill had no Tendency or relation to obtain a Judgement or Decree for the Sums of Money due to the said Paul Benfield from your Petitioners and the said Paul Benfield in his said Joinder did further Setforth that the Demurrer of your Petitioners contained nothing Material or any Plea or matter either in Law or Equity to establish or shew good and sufficient

Cause

Cause for a fair Demurrer &c. Wherefore the said Paul Benfield Prayed Judgement of the said Honble Court upon his Cause without further Pleadings being Admitted and that they would Decree him Payment of his Debt with Interest and Costs and to which he says he is intitled According to the Statute or act of Parliament made in the Twenty Seventh Year of Queen Elizabeth Chapter the Fifth whereof the Clause Relating thereto is as the said Paul Benfield says therein after setforth and which Clause the said Paul Benfield says is established and Confirmed by another act of Parliament made in the fourth Year of the Reign of Queen Anne Chapter the Seventh intitled an act for the Amendment of the law and the better Advancement of Justice and whereof the first Clause as the said Paul Benfield says Contains what the said Paul Benfield hath in his said Demurrer thereinafter setforth for your Petitioners Charge that the said Extracts are partially quoted and that the latter part of the Clause in the said Acts of Parliament Setforth makes certain Exceptions to Demurrers where the Causes are Specially Setforth, and which is the Case as to the Demurrer of your Petrs by which this Honble Court can Proceed to give Judgement against your Petitioners for your Petitioners have neither Admitted by their Demurrer the Justness of the Complainants demand nor does the same contain any of the frivolous Pretexts intended to be Remedied by their said acts of Parliament on the Contrary they have by their said Demurrer denied the Justness of the Complainants demand and have Setforth as a Special Cause of Demurrer that the Complainant had filed two Bills against your Petrs for the same Bond which your Petitioners Conceive to be contrary to Law and Equity and your Petitioners further shew that the said Demurrer and Joinder came on to be Argued and determined before the said Honble the

Mayor

Mayors Court on the Seventeenth day of this instant September when the said Mayors Court was Pleased to Order and Decree that the said Demurrer of your Petitioners should be thrown out with Costs and that your Petitioners should file an Answer to the Bill of Complaint of the said Paul Benfield in fourteen days from the date thereof by which said Order of the said Mayors Court your Petitioners do conceive themselves Aggrieved and do therefore Appeal therefrom for the following among other Reasons.

First Because that Notwithstanding what is Advanced by the said Paul Benfield to the Contrary thereof in his said Sounder Relative to his Bill of Complaint filed against your Petitioners on the Twenty third day of February now last Past and the matters and things therein Setforth and that the same had no Tendency or Relation to Obtain a Judgement or Decree against your Petitioners Nevertheless your Petitioners humbly insist that the Matters in the said Bill Charged the several Interrogatories therein Put to your Petitioners and the Relief and Decree therein and thereby Prayed against your Petitioners are Sufficient if fully Admitted by your Petitioners or Proved by the said Paul Benfield to entitle him to Judgement for the Sum of Money now charged to be due but which your Petitioners deny to be due by Virtue of the Bond so charged to have been executed by your Pet.rs on the said Twelfth day of December which was in the year of Our Lord One thousand Seven hundred and Seventy Six for the said Bill Chargeth in the words following to wit.

That whereas George Savage James Call Andrew Majendie and James Taylor of Fort Saint George Esquires were Jointly and Severally indebted unto your Orator in the Sum of Six Pagodas Six hundred and Twenty thousand for which said Sum of Money they the said George Savage James Call Andrew Majendie and James Taylor did enter into and give unto your Orator three Bonds or obligations under their respective hands and Seals bearing date the Twelfth day of December One thousand Seven hundred and Twenty Six for the several Sums of Two hundred and Six thousand Pagodas Payable in three years Pagodas Two hundred and Eight thousand Payable in four Years and Pagodas Two hundred and Six thousand Payable in five Years from the said Twelfth day of December One thousand Seven hundred and Seventy Six with Simple Interest at the Rate of Six Per Cent Per Annum.

And the said Bill afterwards Chargeth that Certain Nabobs New Consolidated Bonds to the Amount of Pagodas Eight hundred and Nineteen thousand two hundred and Ninety Six and an half were among other things Mortgaged and Assigned Over to the said Paul Benfield and that the Dividends and Interests arising thereon were to be received by the said Paul Benfield his Attorney or Attornies Heirs Executors Administrators or Assigns towards Payment of the said Bonds and other Sums Charged to be due and owing by your Petitioners to the said Paul Benfield and the said Bill of Complaint Interrogates your Petitioners in the Words and to the Tenor and Purport following to wit.

"And more especially that the said George Savage James Call Andrew Majendie and James Taylor may Setforth whether they and each of them Jointly and Severally stand indebted unto your Orator from the Month of December One thousand Seven hundred and Seventy Six in the Sum of Pagodas Six hundred and Twenty thousand and whether they did not at Fort Saint George enter into and give unto your Orator for the Amount thereof three Bonds or Obligations bearing date the Twelfth December One thousand Seven hundred and Seventy

"Seventy Six under their Respectuctive hands and Seals for the several Sums
"of Pagodas Two hundred and Six thousand Payable in three Years Pagodas
"Two hundred and Eight thousand Payable in four Years and Two hundred
"and Six thousand Pagodas Payable in five Years from the said Twelfth
"December One thousand Seven hundred and Seventy Six with Simple
"Interest of Six p Cent p Annum"

And the said Bill Prayeth for Relief and a Decree in the Words and to the Tenor and Purport following—

"And that your Orator may have such further and other
"Relief in all and Singular the Premisses as shall Appear agreable to
"Equity and good Conscience—

"May it Please this Honble Court to Cause the said George Savage James Call Andrew Majendie and James Taylor to be Summoned and Required by the Sheriff of Fort Saint George Town of Madraspatnam and the Districts thereof Personally to be and Appear before this Honble Court at a certain time and Place to be by this Honble Court Prefixed and appointed then and there to answer this your Orators Bill of Complaint and further to stand to and abide by such Order and Decree therein as to this Honble Court shall Seem Meet"

Which Bill of Complaint in the manner in which the same is Preferred contains matter sufficient Provided legal Evidence be given in support thereof to bring your Petitioners to Judgement for the Sum of Pag.s Two hundred and Thirty two thousand Nine hundred and Sixty being the ballance charged to be due by your Petitioners to the said Paul Benfield in his said Bill of Complaint so filed against your Petitioners the said thirteenth day of April last past and therefore if the said Bill of Complaint was to be held good the said Paul Benfield might in the Event have two Seperate Judgements or Decrees and Executions thereon for the same Sum of Money

Money and for the discharge if Satisfied of One and the same Debt—

Secondly Because that where two Bills are filed in the same name and for the same matter the Practice of the Court of Chancery is to stop the Proceedings of the last and therefore whether the Demurrer of your Petitioners was held good or not Nevertheless no Rule for your Petitioners to Answer the said Bill of Complaint of the said Paul Benfield so filed the said thirteenth day of April against your Petitioners should have passed but all Proceedings thereon should have been Stopped untile Judgement had been finally given on the said Bill of Complaint of the said Paul Benfield so filed the said Twenty third day of February last past—

For which Reasons and such others as may be offered at the hearing your Petitioners Pray that the Demurrer of your Petitioners may be Adjudged good and the said Bill of Complaint may be dismissed with Costs to be Paid by the said Paul Benfield or that the Proceedings on the said Bill so filed the said thirteenth day of April may be stopped untel the Merits of the said Bill so filed the said Twenty third day of Febry shall have been finally determined and that your Petitioners may have such further and other Relief in the Premises as to this Honble Court shall Seem Meet—

Stephen Popham
for the
Appellants—

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of September Anno Domini 1782

Present

Edward Garrow Esq.r Mayor
Edw.d John Hollond — Benj.n Roebuck
William Webb — Thomas Cooper
Hugh Maxwell — Edward Frowd
William Oram and Eyles Irwin
Aldermen

Paul Benfield
vers
James Taylor George Savage James Call and Andrew Majendie

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 Complainants Bill with Copies of Two Exhibits annexed the Demurrer The Joinder and the Court having had due Consideration thereon are of Opinion that the Pleas Made Use of by the Defendants in their Demurrer are Insufficient This Court doth therefore think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendants be put upon their Answer

Day is given the Defendants till the 1.st October Next to Answer the Complainants Bill indefault of which Judgement will be given for the Complainant

A true Extract

Charles Bromley
Deputy Regr

In the Court of Appeals
at
Madraspatnam

Between Paul Benfield of Fort Saint George Esq.r Complainant and James Taylor George Savage James Call and Andrew Majendie Defendants

The Answer of the said Paul Benfield to the Petition and Appeal of the above named James Taylor George Savage James Call and Andrew Majendie

This 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 or is mentioned Expressed and Setforth for Answer thereunto Saith that the Appellants being Jointly and Severally Indebted unto him the 20.th Novr 1782 this Respondent in the certain declared and Specific Sum of Two hundred thirty two thousand Nine hundred and Sixty Pagodas Current Money of Madras or Ninety three thousand One hundred and Eighty four Pounds Sterling Money of Great Britain by them the said Appellants Acknowledged and declared to be due and Owing unto this Respondent on the Twelfth day of December which was in the Year of our Lord One thousand Seven hundred and Eighty as the Principal and Interest of a certain Bond or written Obligation given and granted unto this Respondent under their and Each of their Respective hands and Seals bearing Date in Fort Saint George on the Twelfth day of December which was in the Year of our Lord One thousand Seven hundred and Seventy Six whereby they the said Appellants became Jointly and Severally held and firmly bound unto this Respondent his Heirs Executors Administrators and Assigns in the Penal Sum of Four hundred and Sixteen thousand Pagodas

Charles Freeman Clk

Pagodas Current Money of Madras for Securing the Just and certain
Payment of Two hundred and Eight thousand Pagodas Current Money
of Madras and Interest thereupon or Eighty three thousand Two —
hundred Pounds Sterling Money of Great Britain at a day long since
Elapsed which said Principal Sum of Two hundred and Eighty thousand
Pagodas Current Money of Madras they the said Appellants —
Acknowledged to have borrowed and Received of and from this said
Respondent before they the said Appellants Executed and delivered
the said Bond or written Obligation the said Principal Money —
and Interest thereon being long due and Owing unto this Respondent
from the said Appellants under the Assurances of Payment from
time to time but which Assurances being broke and disregarded
by the said Appellants this Respondent was drove to the Necessity
of Preferring his Bill of Complaint in the Honble the Mayors Court
at Madrasapatnam for the Recovery of the said Principal and —
Interest so Promised and Assured unto him this Respondent his
Executors Administrators and Assigns from the Appellants in and
by their said Bond or written Obligation which said Bond or written
Obligation being unconnected with and independent of every other —
transaction between this Respondent and the said Appellants is —
absolute and binding upon them the said Appellants and each of
them for the declared and certain Sum of Money as aforesaid which
will Appear by a true Copy of the said Bond or written Obligation —
Annexed to this Respondents Bill of Complaint now before this
Honble Court to which this Respondents Craves Reference if need
be this Respondent Admits that his said Bill of Complaint was
so Exhibited Against the said Appellants on the thirteenth day
of April last Past and in this Present Year of Our Lord One —
thousand Seven hundred and Eighty two, as is Setforth in and by the
Appellants said Petition and Appeal Against which said Bill and
the Claim or Demand of this Respondent in and by the same the —
said Appellants can either in Justice or Equity shew any good or Sufficient
Cause whereby to Preclude this Respondent from his Right of Action in
manner and form as by him is Preferred and this Respondent for —
further Answer to the Appellants said Petition and Appeal Admit
that the said Appellants did on the Twenty third Day of April last
past file a Demurrer against this Respondents said Bill of Compt.
thereby Endeavouring to Defeat this Respondent of his Just Claim —
and Demand which said Demurrer was frivolous and Evasive —
containing no good cause or Sufficient Ground to Establish a fair demurrer
in either Law or Equity nor could any matter therein Pleaded or Shewn —
Operate or tend to annull or make Void this Respondents Demand in
manner and form as by him is Charged alledged and Setforth in and
by his said Bill of Complaint filed on the said thirteenth Day of April
last past for this Respondent saith that the matter setforth or shewn
for Cause of Demurrer was false Groundless and Manifestly introduced
to mislead the Judgement of the said Mayors Court the Bill of this
Respondent Against the said Appellants filed on the Twenty third
Day of February last Past and Referred to by the said Appellants in
their said Demurrer was a Bill for Discovery of Certain Matters and
transactions in Accounts and Concerns committed and Entrusted
by this Respondent to the Management of the said Appellants to
which this Respondent was legally and Justly Entitled from the
said Appellants — Nor had the said Bill any other tendency but
to obtain an Account of such transactions matters and Occurrences
unfairly withheld from the Knowledge of this Respondent by the said
Appellants

Appellants this Respondent further Says that the Judgement of the said Court ought Agreable to the Rules of Law and Equity to have so materially differed that Nothing could be drawn from the one to bar or Preclude this Respondent his Right of Action upon the other the Nature of them being so Essentially different the One for Discovery the Judgement could only be to Account and thereupon no writ of Execution could Possibly Issue or any Decree pass or be given for any Specifick Sum or Specifick the other for an absolute and declared Sum in Debt on Bond the Judgement in Law should be final and conclusive upon Demurrer and this Respondent Says that the Attempt of the said Appellants by their Demurrer and the Pleas made use of in the same were Nugatory and Solely Designed to Mislead the said Mayors Court and defeat this Respondent in his Just and legal Pursuit all which this Respondent Setforth and made Appear on and by his Joind to the Appellants said Demurrer before the said Honble the Mayors Court and did as in Right and Justice he was entitled unto Pray a Decree and the Judgement of the said Honble the Mayors Court for his Just Debt Interest and Costs which said Bill of this Respondent the Appellants Demurrer thereto and this Respondents Joinder came on to be heard and determined before the Honble the Mayors Court upon the Seventeenth Day of September last past and in this Present Year of Our Lord One thousand Seven hundred and Eighty Two, when the said Honble the Mayors Court were Pleased to Order the Demurrer of the said Appellants to be thrown out with Costs and the Appellants were allowed fourteen Days to Answer the Bill of Complaint of this Respondent by which Order of the said Mayors Court the Appellants could not in fact consider themselves Aggrieved as they unfairly

unfairly Setforth in their said Petition and Appeal and under many vague and frivilous Pretences they come before this Honble Court to Procrastinate and delay the Payment of a Just Debt long due and Owing from them the said Appellants unto this Respondent nor ought they to Introduce such matters and things as they have done in their said Petition and Appeal for it was and is well known unto the Appellants that no Attempt was ever made by this Respondent to Obtain two Judgements for his Debt as is falsely Pretended and setforth as Cause of Complaint in the said Petition and Appeal for this Respondent Avers as he before hath done that the said Bill for Discovery upon which such weight and Stress is Apparently laid never was Exhibited or intended to be Exhibited or intended to be Exhibited Against the said Complainants for Recovery of any Sum of Money but for Discovery of Matters transactions and Accounts that Concerned this Respondent and in which the said Appellants could alone Satisfie him as before is Stated the said Bill so filed on the Twenty third Day of February last past and in this Present Year of our Lord One thousand Seven hundred and Eighty two not having the least tendency to obtain any Judgement or Decree in Specie as is fully shewn by this Respondents Joinder to the Demurrer of the said Appellants and This Respondent further says that it is Nugatory in the said Appellants to Pray this Honble Court to Stop Proceedings in this Cause untill the merits of the said Bill so filed on the said Twenty third Day of February last past shall have been finally determined final Judgement having Passed thereupon on the Seventeenth Day of September last past this Respondent further saith in answer to the Appellants said Petition and Appeal that the Suggestions or Grounds for their Preferring such an Appeal are frivilous Evasive and Dilatory without the least Reason or Cause Existing for such Proceedings for even Admitting that such Cause as is Setforth by the said Appellants Really Existed (which is by no means the case) it would not be good or Sufficient cause either in Law or in Equity to Preclude this Respondent from his Right of Action in

in manner and form as by him is Preferred It being for the Recovery of a Specific sum of Money due from the said Appellants unto this Respondent upon their the said Appellants Joint and Seperate Bond under their and Each of their Respective Hands and Seals by them Executed given and granted unto this Respondent for Just and Valuable Considerations Payable and due at a time long since Elapsed is Simple absolute and unconditional whereon no Court of Law can Arise to make a Decision intricate or uncertain Against this Respondent his Demand in manner and form as by him is Preferred not ought any other Plea to be Admitted but Payment of the said Bond or written Obligation or a Judgement Previously Obtained for the same the Bond or written Obligation whereupon the sum aforesaid is now Sued for by this Respondent being long due and Owing from the said Appellants and on its nature and by the Express Condition thereof being absolute Stands unconnected with and Independent of any other matter concern or transaction between this Respondent and the said Appellants

For all which Reasons and for others which may be Offered at the hearing this Respondent humbly Prays that the Order of the Honble the Mayors Court of the said Seventeenth day of September last Past and which was in this Present Year of Our Lord One thousand Seven hundred and Eighty two, may be confirmed so far as it Respects or Relates to the throwing out of the Appellants said Demurrer with Costs and that upon due Consideration of the Premisses this Honble Court will be pleased to make such Order and Decree as in Law Justice and Equity they shall see Right and which may According to the Laws of England in such Cases be Especially Provided for and this Respondent Prays that in this Suit he may be Dismissed with his Costs in this Cause most wrongfully Sustained

Edward Ellis
Thomas Jones
Attornies for the Respondent

Extrad from the Minutes of a Court Held at the Town Hall on Tuesday the 17th Day of September Anno Domini 1782

Present

Edward Garrow Esquire Mayor
Edward John Holland Benj.a Roebuck
William Webb Thomas Cooper.
Hugh Maxwell Edward Frowd
William Cram and Eyles Irwin

Aldermen

Paul Benfield

vers

James Taylor George Savage James Call and Andrew Mayendie

Bill with Copies of Two Exhibits 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 Complainants Bill with Copies of Two Exhibits annexed the Demurrer the Joinder and the Court having had due Consideration thereon are of Opinion that the Pleas made use of by the Defendants in their Demurrer are Insufficient This Court doth think fit to Order and doth Accordingly Order that the Demurrer be thrown out with Costs and that the Defendants be put upon their Answer.

Day is given the defendants till the 5th October Next to Answer the Complainants Bill indefault of which Judgement will be given for the Complainant

A true Copy
Edward Ellis
Thomas Jones
Attornies for the Respondent

A true Extract
Charles Bromley
D.t Reg.r

Court of Appeals
at
Madraspatnam

Thursday the 15th May
Anno Domini 1783

Between James Taylor James &
Call George Savage and Andrew Majendie
of Fort Saint George Esqrs Appellants and
Paul Benfield of the same place Esqr
Respondent.

The Attorney for the Appellants having Moved
to Withdraw this Cause Each Party Paying their own Costs and the
Attorney for the Respondent having Agreed thereto

Ordered Accordingly

Pr Cur
Chas Freeman Regr

To the Honble the Court of Appeals at Madraspatnam

Between Thomas Powney of Madras Esqr
Complainant and Sharmulla Dofs Balla &
Moodie Chitty and Sana Cenevasa Chitty of the
same place Merchants Defendants

The Humble Petition and Appeal of the abovenamed
Sharmulla Dofs

Sheweth,

That on or about the fourteenth or fifteenth Day of December which
was in the Year of our Lord One thousand seven hundred and seventy eight the
abovenamed Thomas Powney the Complainant did Exhibit a Bill of Compt.
in the Honble the Mayors Court against your Petitioner and the said two
other Defendants Balla Moodie Chitty and Cenevasa Chitty for the Sum
of four thousand One hundred and fifty four Pagodas sixteen fanams
and forty Cash on an Account which he Annexed thereto To which said
Suit your Petitioner being Summoned did Appear by his Attorney and
gave Bail after which Rules passed for Answer and the same being
Expired and your Petitioner not putting in any Answer to the said Bill
the said Complainant did by his Attorney pray for a Decree against your
Petitioner which was granted on the ninth day of February which was in
the Year of our Lord One thousand Seven hundred and Seventy Nine for
the Sum of One thousand three hundred and eighty four Pagodas thirty
three fanams and forty Cash Agreable to the Practice of the said Court
in Prosecutions of the like Nature That the said Complainant did
afterwards make several Attempts to overset or get the said Decree
Altered and made for the whole Amount of the said Sum Sued for but

Filed in my Office
the 18th June 1781
Charles Freeman
Clk

to

to no Purpose As Appears by the Records of the said Court and as will hereinafter Appear that your Petitioner died on the thirteenth Day of March One thousand seven hundred and seventy nine Satisfy the said Decree by paying unto the said Complainant by his means of his Attorney the full Amount of Principal and Interest thereof and was ready to pay the Costs had the Account thereof been made out or had the Amount thereof been Communicated to him which was not your Petitioner further Sheweth unto this Honble Court that Notwithstanding all the said matters the said Complainant not being Satisfyed with your Petitioner being Decreed to Pay what he was altho' he never appealed therefrom and praying the same as before mentioned and being determined if possible to Obtain Payment from your Petitioner of the said full and whole Amount of his Demand Sued for did on the first day of April in the said Year One thousand Seven hundred and Seventy Nine file another Bill which he called an Amended Bill of Complaint in the said Mayors Court against your Petitioner and the said Balla Moodu Chitty and Sana Cenvasa Chitty for the Sum of two thousand eight hundred and thirty two Pagodas Six fanams and fifty Six Cash on an Account for the same Matters as the former Bill only annexing a Copy of Bond from your Petitioner as Gomasta (or Agent) to Lall Dass Vallapoo Dass and the said Balla Moodu Chitty and Sana Cenvasa Chitty to him the said Complainant and giving Credit in the said General Account for the Amount Principal and Interest Paid by your Petitioner in Satisfaction of the said Decree as Cash on Account and as if the same had been paid on Account and not in Discharge of the said Decree and the said Complainant did in what he calls his said Amended Bill Setforth and shew that he did file his said former Bill without annexing the Copy of the Bond thereto that Your Petitioner Appeared thereto by his Attorney that after Rules for Answer were

were Expired he the said Complainant by his Attorney Prayed for a Decree which was Accordingly granted for the Sum before mentioned (Save and Except some little Errors which the Complainant makes in the Fanams and Cash) being One third of the Sum Sued for Pretending that by your Petitioner having Refused (as he calls it) to Answer his said first Bill of Complaint he the said Complainant was deprived of the Opportunity of Examining Witnesses and of Proving as well the Execution of the said Bond as of Proving other Circumstances which he Pretends would have induced the said Court to have granted him a Joint and Seperate Claim on each of them your Petitioner Balla Moodu Chitty and Sana Cenvasa Chetty for the whole of the said Sum but he the said Complainant doth not nor could he shew that he had laid his Action so as to entitle him either to introduce the said Bond thereon or enter into the Kind of Proof he Pretends and the Decree was Granted on his own Prayer by his Attorney the said Complainant doth in his said latter Bill called an Amended Bill Setforth Several other Matters which your Petitioner Conceives do not anyway concern your Petitioner Circumstanced as he is as before and hereinafter mentioned and Prays that Your Petitioner the said Balla Moodu Chitty and the said Sana Cenvasa Chitty may be severally Decreed to be liable for and to pay the whole of the said Sum of two thousand eight hundred and thirty two Pagodas six Fanams and fifty six Cash together with all Interest due or to grow due thereon also all Costs of Suit

To which said latter Bill of the said Complainant your Petitioner being Summoned to Appear he did Appear accordingly by his Attorney and did on or about the thirteenth day of the said Month of April in the said Year One thousand seven hundred and Seventy Nine File a Plea to the said Second Bill and for Plea thereunto said that the said Complainant did theretofore as Appears by his own Shewing in his said

Bill

Bill Cause a Bill of Complaint to be filed in the said Honble Court against your Petitioner and also against Balla Moodu Chitty and Sara Cenvasa Chitty the other Defendants in the said Bill Named for a Sum of Money on an Account Current Arising upon or for and on Account of the same Matters for which the Present Bill is Exhibited to which said former Bill your Petitioner did Appear by his Attorney and gave Bail after which Time for Answering being Expired and your Petitioner not putting in any Answer to the said Bill the said Complainant by his Attorney did pray for a Decree which was granted on the Ninth Day of February in the Present Year of our Lord One thousand seven hundred and Seventy Nine which said Decree was made for the Sum of One thousand three hundred and eighty four Pagodas thirty three fanams and forty Cash agreable to the Practice of the said Honble Court in Prosecutions of the like Nature that on the twenty third Day of the said Month of February the Attorney for the said Complainant did pray that the said Honble Court might Reverse the said Decree because he conceived the Decree should have been for the whole Sum sued for instead of One third being One thousand three hundred and Eighty four Pagodas thirty three fanams and forty Cash As Specified in the Decree To which motion the Attorney for your Petitioners did Object as irregular because the time allowed by the Charter for Appealing Expired that Day the said twenty third Day of February your Petitioners said Attorney did also Object to any alteration being made in the said Decree it having been made out Conformable to the constant Practice of the Court which said Motion the said Honble Court were Pleased to defer taking into Consideration untill Tuesday the Ninth day of March last on which day to wit the said Ninth day of March the Attorney for the Complainant Prayed leave to file a Bill of Review Previous to the Reversing the said Decree and the said Honble Court having taken the same into Consideration were of Opinion that

that the filing the Bill of Review or any other Paper Previous to the determination of the Matter then before the Court was irregular it was therefore Ordered that the Bill of Review be Rejected and the said Honble Court having duly considered the Motion of the Attorney for the Complainant for Reversing the said Decree were of Opinion that the same was not made within the time limited by his Majesty's Charter for Appealing from the Decree of the said Court it was therefore Ordered that the said Motion be Over Ruled with Costs As will more fully and at large Appear by the said former Bill and the said Decree and Proceedings in and the Records of the said Honble Court to which your Pet. craved Reference and your Petitioner further for Plea said and did Aver that he hath since the said determination of the said Honble Court with Regard to the said Matters Paid or caused Amounts Principal and Interest of the said Decree to be paid to or on Account and behalf of the said Complainant As will Appear by an Indorsement upon the said Decree in the hand writing of the said Complainant's Attorney which is in the Words and Figures following

"Amount of Decree 1384 33 40

"Int to 13 March 30 8 40

"Star Pagodas 1415

"Recd the above Sum of One thousand four hundred and fifteen Pagodas being in full Satisfaction of the within Decree (Costs Excepted)

March 13. 1779

"Stephen Popham

"Attorney for

"Thomas Powney"

Which said former Bill Decree Proceedings and Matters your Petitioner did Plead in Bar to the Complainants said Present Bill and of his the said Complainant's Pretended Demands on your Petitioner and humbly Prayed the Judgement of the said Honble Court whether he should be Compelled to

make

make any further or the Answer thereunto and also prayed to be hence
Dismissed with his Reasonable Costs and charges in this behalf wrongfully
Sustained As will more fully and at large Appear on Reference to the said
Plea or Indorsement thereon and the said Orders or Proceedings of the said
Honble the Mayors Court thereon or Relative thereto mentioned and Referred
to by your Petitioner in his said Plea Marked A.B. C.D. come herewith
for the inspection of this Honble Court and which your Petitioner Prays may
be Admitted as part of this his Petition and Appeal

To which said Plea the said Thomas Bourney the
Complainant did on or about the Seaventh Day of August in the said Year
One thousand seven hundred and Seventy Nine file a Reply Acknowledging
the several Matters and things Set forth and Alledged by your Petitioner in his
said Plea and particularly that he did Receive the Sum your Petitioner was
Decreed to pay as aforesaid in manner as is Stated in the said Plea but
Pretending that for Notwithstanding all the said Matters and things he
has a full Right and Title to Recover and Receive of your Petitioner the said
Sum of two thousand eight hundred and thirty two Pagodas Six fanams
and fifty six Cash under Credence of the said Bond, that your Petitioner ought
not to receive any Advantage of his own Default in not answering to the said
former Bill of Complaint which the said Complainant Pretends if he
had done and the said Cause had been at Issue he would have had an
Opportunity of Proving the said Bond and Shewing in like Manner as he
Says he has done in his said Bill of Complaint that the said Debt was
Originally founded on a Bond wherein the different Obligors were Jointly
and Severally bound to Pay the whole of the said Bond the said
Complainant in his said Reply further Says, that when a Judgment has
been Procured by a Collusion of Parties tho' it may stand upon Record
and may not Actually be Expunged or taken from the File it Nevertheless

is a mere nothing to those who not being Privees can shew it false and Covinous
mentions the Trial of the Duchess of Kingston a Case cited from Coke's Reports
and what Lord Coke Says about Judgments being Procured by the Collusion
of Parties and Several other matters very inconsistent with the Matters on
Question and some of them very improper your Petitioner further Sheweth that
the said Complainant having Alledged so many matters in his said Reply which
your Petitioner could not with any Degree of Propriety or Justice to himself
or his Cause pass over he Your Petitioner found himself under the Necessity
of Rejoining Specially thereto Denying that the said Complainant has a Right
and Title to Recover and Receive of your Petitioner the said Sum of two thousand
eight hundred and thirty two Pagodas six fanams and fifty Six Cash that
the said Complainant cannot or ought not Circumstanced as the matters
in Question now are to Avail himself of the said Bond with Regard to
Your Petitioner or make Your Petitioner Answerable or Accountable for the
Amount of the said Bond or any part thereof what your Petitioner was
Adjudged to pay of the Amount Sued for by the said Complainant having
been Paid and Acknowledged so to be by the Complainant's Attorney
for and on Account and behalf of him the said Complainant as stated
in your Petitioner's said Plea, whereby your Petitioner was and is discharged
from any Demand whatever by or from the said Complainant or the
Matters in Question therefore the said Complainant Pretending to claim
the Sum by him now Sued for from your Petitioner on Account of the Bond
he mentions having been Executed by your Petitioner as well as by Balla
Roodu Chitty and Sara Cenevasa Chetty the two other Defendants and
that they were Jointly and Severally bound to Pay the whole Amount of
the said Bond can by no means avail him or make your Petitioner
Answerable for the Sum Sued for or any part thereof thereof but as the said
Complainant Introduces or mentions the said Bond and now makes his
Claim

Claim by Virtue thereof tho' very improperly and irregularly as to your Pet.r for the Reasons Assigned he your Petitioner said that by Reference to the Copy of the Bond annexed to the said latter Bill of Complaint it Appears that your Petitioner gave entered into or Executed the said Bond as Gomasta to Lall Dass Vallaboo Dass it also therefore Appears that he your Petitioner was only an Agent in the said business Your Petitioner further said that the Assertions of the said Complainant about your Petitioner not Recovering any Advantage of his own default in not Answering the said former Bill and if he had done so he could have had an Opportunity of Proving the said Bond and matters of that Nature, are very Extraordinary Indeed and very Inconsistent with Legall Proceedings that the Complainant might as well have said that having commenced his Action wrong your Petitioner should have Supplyed such Defect that your Petitioner by not making any Answer to the said Bill submitted to the said Court what he should be Decreed to pay and a Decree was in Consequence made for the Sum mentioned in the said Plea, which he your Petitioner hath paid, whereby your Pet.r said he Conceived and did humbly Insist the said Complainant was and is concluded and for ever Precluded from Maintaining any Action against or Recovering any Sum of Money from your Petitioner for or on Account of the Matters in Question or any thing Relative thereto and that your Petitioner is fully and clearly freed and Discharged from the same therefore what the said Complainant observes of a Judgement Procured by a Collusion of Parties being a mere nothing to those who not being Parties can shew it false and Covinous is quite out of the Question for the said Judgment was neither Obtained by a Collusion (or if it was so Obtained by the said Complainant and not by your Petitioner) nor was it without the Complainants Privity he the said Complainant having by his Attorney Prayed for the same, Nor was it either false or Covinous but entirely consistent with the Complainants

Action

Action in consequence of which it was granted therefore what the said Complainant has Stated in his Present Bill and Reply can by no means avail him or Support this his Illegal and Unwarrantable Action against your Petitioner, that with Regard to the Trial of the Duchess of Kingston or Case of Richard Vernor against Thomas Smith or what the said Complainant Sets forth that Lord Coke says about Judgments being Procured by a Collusion of Parties and of Fraud and Covin those matters being foreign to the Present Case your Petitioners could not Admit them to Stand in Opposition to your Petitioners said Plea which he verily believed Lord Coke himself would have held good and Valid and a Sufficient Plea in Bar to the Present Action against your Petitioner and your Petitioner did further refute every other thing alledged by the said Complainant and entirely Confirm his said Plea As will Appear on Reference to the said Rejoinder your Petitioner further Sheweth that the said Sana Cenevasa Chitty departing this Life the said Suit was Revived by the said Complainant and Afterwards the said other Defendant Balla Moodu Chitty filed his Seperate Answer to the said Bill thereon Endeavouring all in his Power to throw the matter of the Sum Sued for by the said Complainant on your Petitioner in Order to wade payment of all or any part of the said Sum Sued for himself but your Petitioners Case being so different from the said other Defendant Balla Moodu Chitty, who had not paid or been discharged from the Amount of the Demand in question or any part thereof and he Your Petitioner having no concern whatever either with the said Defendant or with the said Complainant after what had passed relative thereto your Petitioner did not think Proper to take the least Notice thereof but to abide by his said Plea as he has done and Still doth Nevertheless the said Complainant thought Proper to Reply to the said Answer and the said Balla Moodu Chitty Rejoined Issue was Joined Rules passed for the Examination of Witnesses your Petitioners Plea being a matter of

Record

Record there was no Occasion for any Examination of Witnesses on his part the said Balla Moodu Chitty did not Produce a Single Witnesses to Support his Defence or Asertions nor did the said Complainant Produce any other Evidence than about the said Bond which cannot Affect your Petitioner for the Reasons Sheun before and on his said Plea and Rejoinder Set forth on the contrary your Petitioners conceives the Depositions of Sangala Tomboo tends in some measure to Refute both to what the said Complainant and the said Balla Moodu Chitty has Asserted regarding the borrowing the said Money, and shews that your Petitioner was not the only Person concerned in the borrowing the said Money tho' that is no way further Material to your Petitioner in his Present Situation than to shew to this Honble Court that the Case was not as Stated and Asserted by the said Complainant and the said Balla Moodu Chitty your Petitioner further Sheweth that 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 fifth Day of this Present Month of June One thousand Seven hundred and Eighty One the said Court did think fit to Order and Decree and did Accordingly Order and Decree that he your Petitioner and the said Balla Moodu Chitty do Jointly and Severally pay unto the Complainant the Sum Sued for being two thousand eight hundred and thirty two Pagodas six fanams and fifty Six Cash which the said Court in their said Decree calls the ballance due on their Bond together with such Interest as then was or should thereafter become due thereon untill full Payment is made and it was further Ordered and Decreed that the Complainant Thomas Bowney do pay all Costs which have arisen in this Suit between your Petitioner and him and that the Defendant Balla Moodu Chitty do pay such Costs as have arisen between the Complainant and him As will more fully and at large Appear by the

the said Decree which comes herewith for the Inspection of this Honble Court — Marked E.

From which said Decree of the Mayors Court your Petitioner — doth Appeal to this Honble Court as he conceives the same Erroneous and that he your Petitioner is Aggrieved thereby

First Because your Petitioner having Submitted to the Judgment of the said Honble the Mayors Court what he was liable or ought to pay for or on account of the Matters in Question in the said first Suit (which was for the very monies and on Account of the very Matters in the Second) and the said Court not only having passed Judgement thereon and Decreed your Petr to pay the Sum before mentioned but having also absolutely and clearly — Confirmed the said Decree on the Most pointed and particular Application or Motion of the said Complainant by his said Attorney both to Reverse the said Decree and also to file a Bill of Review and your Petitioner having Complyed with and Satisfyed the said Decree, as by him your Petitioner Pleaded and by the said Complainant Acknowledged your Petitioner — Conceives and humbly contends that he is fully Discharged from any — Demand or Action whatever for or on Account of the said Matters in every or any Respect whatever-

Secondly Because by His Majesty's Charter if any Person or Persons think himself herself or themselves Aggrieved by any Judgement Sentence or Decree of the said Mayors Court he she or they is or are at Liberty to Appeal thence from to this Honble Court within fourteen Days, if not the Decree of the Mayors Court is conclusive and in full force, and the party in whose favor such Decree is — may if not so Satisfyed Proceed to Execution and take Legal Methods for the Recovery of the Sum Decreed, and so Sensible was your Petitioner of this being the Case that he Complyed with the said Decree without any compulsion or any Process whatever to Oblige him so to do- and the said Complainant

Dead

ded by his said Attorney Accept of such Satisfaction which must as
your Petitioner Conceives and humbly Contends be conclusive

Thirdly Because the said Complainant not availing himself of the benefit of His Majestys Charter by Appealing from the said Decree did thereby
Submit thereto and Suffer himself to be bound thereby

Fourthly Because the said Complainant having so as aforesaid Submitted to the said Decree of the said Mayors Court could not legally Commence any other Suit whatever against your Petitioner for the said Matters not consequently can he Maintain the same

Fifthly Because altho the said Complainant might Amend his Bill
against the said two other Defendants Balla Moodu Chitty and Sana
Cenevasa Chitty who were not in Judgement and against whom no Decree
whatever had passed in or regarding the said Matters Yet the said
Complainant could not legally file or Supported an Amended Bill or any
Bill whatever against your Petitioner after he your Petitioner had been
so as aforesaid in Judgement After a Decree had passed against him in or
with Regard to the said Matters, and after it had been Confirmed and
Satisfyed as before related and Pleaded

For all which Reasons and others which may be offered
at the hearing of this Cause your Petitioner doth Appeal from the said Decree of the
said Mayors Court of the fifth day of this present Month of June to the Judgement
of this Honble Court and most humbly Prays that the same may be Reversed
and set aside as to so much or such part thereof as Regards your Petitioner or
wherein he your Petitioner is Decreed to pay the Sum Sued for or any part
thereof and that the said second Bill of the said Complainant called an Amended
Bill may be Dismissed as to your Petitioner with Costs to be paid to your Pet.r
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

John Sykes Attorney for the Appellant

Mayors Court at Madraspatnam } Tuesday the 5.th day of June Anno Domini 1781

Present

Benj.a Roebuck Esquire Mayor
Edw.d Saunders and Robt. Duncan Munro
Aldermen

Between Thomas Powney of Madras Esquire Complainant and Shamalla Doss Balla Moodoo Chitty and Sana Cenevasa Chitty of the Same place Merchants Defendants

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 with Copy of a Bond and Account Current Annexed The Plea of Shamala-dofs The Reply The Rejoinder The Seperate Amended Answer of Balla Moodoo Chitty The Replication The General Rejoinder The Bill of Revor The Interrogatories and Depositions on the part of the Complainant with an Exhibit 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 Defendants Shamaladofs and Balla Moodoo Chitty do Jointly and Seperately pay unto the Complainant the Sum Sued for being Two thousand Eight hundred and thirty Two Pagodas Six fanams and Fifty Six Cash (Pagodas 2832.6.56.) the Ballance due on their Bond together with such Interest as now is or shall hereafter become due thereon until full Payment is made and its further Ordered and Decree that the Complainant Thomas Powney do pay all Costs which have Arisen in this Suit between Shamala Dofs and him and that the Defendant Balla Moodoo Chitty do pay such

Costs

Costs as have Arisen between the Complainant and him

To Wit

James Taylor

Regr.

To the Right Honble George Lord Macartney K. B

President and Governor &c. Council of

Fort Saint George

In the Court of Appeals

Between Thomas Bowney of Madras Esqr.

Complainant and Shamalla Dofs Balla Moodoo

Chitty and Sana Cenvasa Chitty of the same

Place Merchants Defendants

The Answer of the said Thomas Bowney to the Petition and

Appeal of the said Shamala Dofs

This Respondent by way of Answer to the Petition and Appeal of

the said Shamalla Dofs or unto so much thereof as Concerns this Respondent to

Make Answer unto Saith he Admits it to be true that he this Respondent did

on or about the fifteenth day of December which was in Year of our Lord One

Filed in my office the 12th July 1781 Charles Sherman Clk

thousand Seven hundred and Seventy Eight his Bill of Complaint in the Honble

the Mayors Court Against the Appellant and the said two other Defendants

for Recovery of Four thousand One hundred and fifty four Pagodas Sixteen

fanams and forty Cash and that the Appellant did by his Attorney Appear

thereto and the Respondent doth also Admit that upon the Appellants not

Answering this Respondent did by his Attorney Pray for and Obtain a Decree

as Against the Appellant and that such Decree being granted for no more

than the Sum of One thousand three hundred and Eighty four Pagodas

thirty three fanams and forty Cash this Respondent did endeavour to

oversett the same and have the Decree made for the whole Sum Sued for as

ought to have been the Case and this Respondent doth further Admit that the

Appellant did at the time and in the manner by him for that Purpose

Setforth in part Satisfy the said Decree by Payment of its Amount

Principal and Interest but did not pay the Costs and this Respondent

doth further Admit that Having been Decreed to Receive only one third part

of the Sum for which he Sued the Appellant and the said Balla Moodoo

Chitty and Sana Cenvasa Chitty this Respondent under the Conviction of his

having a Legal Right to be Decreed the whole of the said Sum So by him Sued

for did make Such Motions to the Honble the Mayors Court for the Revisal

of the said Decree and for Leave to file a Bill of Review as are Stated in

the said Appeal and this Respondent doth also Admit that the said

Mayors Court Refused to Comply with either of this Respondents

Motions and this Respondent doth further Admit that Notwithstand-

ing the Mayors Court had thought Proper so to Reject this Respondents

Motion Nevertheless this Respondent being Satisfied that such their

determinations were more in Consonance to their former Practice than to any

Established Rule of Law or Principle of Equity did on or about the said first

Day of April which was in the Year of our Lord One thousand Seven

hundred and Seventy Nine file his Amended Bill of Complaint in the

said Mayors Court Against the Appellant and the said two other

Defendants for Two thousand Eight hundred and thirty two Pagodas

Six fanams and fifty Six Cash being the Remaining two thirds of the

Sum for which he had Commenced his Suit as aforesaid and that to

such Bill of Complaint was annexed an Account for the Amount of

the said Two thirds and the Copy of a Bond from the Appellant and

the said two other Defendants to this Respondent and that in such

account

Account this Respondent gave Credit for such Sum or part as the Appellant has so as aforesaid Paid and this Respondent doth Admit that in such his said last Mentioned Amended Bill he did Recite his said former Bill of Complaint and the Proceedings thereon had together with the said Decree granted against the Appellant in manner as the Appellant for that Purpose in his said Petition and Appeal doth Setforth and that this Respondent did in his said last Mentioned amended Bill of Complaint Charge that he was deprived of the Opportunity of examining Witnesses as to the Execution of the said Bond and of sun other Circumstances thro means of the Appellant not Answering the Respondents said first Bill and the Respondent was therefore in the first instance and thro Such the Appellants Neglect of Answering the said first Bill of Complaint prevented from his having granted to him by the said Mayors Court a Joint and Seperate Claim on the Appellant and on the said other Defendants for the whole of the said Sum but this Respondent Absolutely denies that he said Action was so laid as not to entitle him to a Decree as Against the Appellant for the full Amount for the Recovery of which this Respondent had originally instituted his Suit but this Respondent Admits that in and by such his said last mentioned Amended Bill of Complaint he did pray that the Appellant and the said two other Defendants might be Severally Decreed to be liable for and to Pay the whole of the said Sum of two thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash with Interest and Costs and this Respondent doth Admit that to such his said last Amended Bill of Complaint the Appellant by his Attorney did Appear and did Plead thereto in manner as is by him Setforth in his Appeal and this Respondent doth Admit that he did about the time in the said Petition and Appeal for that Purpose mentioned Reply to the Appellants said Plea so filed by the said Appellant and did Contend that Notwithstanding the Matters and things Pleaded in the said Plea this Respondent had full Right and good title to Recover and Receive of the Appellant the said Sum of Two thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash under the said Bond and did therein among other things Setforth such Arguments in Support of his said Right as are in part Setforth in the said Appeal and this Respondent doth Admit that the Appellant did Rejoin and did among other things Setforth in his said Rejoinder such Matters as are stated in the said Petition and Appeal and this Respondent doth further Admit that Issue was Joined that Rules Passed for the Examination of Witnesses and that Publication Passed and that the said Cause was Set down for hearing and that on the fifth day of June last the Same came on to be heard before the said Mayors Court when the said Court was Pleased to Order and Decree that the said Appellant and the said Defendant Balla Moodu Chitty do Jointly and Severally Pay unto the Respondent the Sum Sued for being two thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash the Ballance due on their Bond with Interest until full Payment should be made the Respondent to pay such Costs as arose in the said Suit between him and the said Appellant and that the Defendant Balla Moodu Chitty should pay such Costs as Arose between him and the Respondent as may more fully and at large Appear by the said Several Proceedings Now of Record Reference being thereunto respectively had and this Respondent humbly Conceives and is Advised that the said Decree of the said Fifth day of June last and in Particular Such Part thereof as Relates to the said Appellant is Agreable to Equity and Justice for the following Among other Reasons

First Because the said first Decree so as aforesaid by the said Appellant Pleaded in bar not being for the full Amount Sued for the same could by no means Release him from the said Bond Nor can his Satisfying such

such Decree in manner by him in his first Reason for Appealing Set forth
cause or discharge him from his being Subject and liable in the Decree
so by him Appealed from in such Court and Seperate Capacity as he stood
in the Bond for ballance whereof such Decree was granted and tho' the
Appellant doth in his said first Reason for Appealing endeavour to —
Shew that the said first Decree so by him pleaded gained an —
Extraordinary degree of Confirmation from the Respondents Attempts
to have the Same Revised and to have a Bill of Review filed Yet this
Respondent Contends that such Argument Neither Shews that the said
Decree ought not to be Revised and altered as Appealed for nor does it —
imply that the said Decree could therefrom become a Release from the
said Bond for the Application of the Respondent Respecting an —
Alteration in the said Decree was not ever Ruled or Directed on the Merits
of such Application but was as Appears by the Minutes of Court —
Respecting the same / because such the Respondents Application was
not made within the time limitted by his Majesty's Charter for Appealing

Secondly Because the Appellants Satisfying the said first Decree without
Appealing therefrom and the Respondents Acceptance thereof as urged
by the said Appellant in his Second Reason for Appealing did not —
otherwise extend to or Concern the said Bond than that of Reducing
the Amount thereof by the Credit given for what the Respondent had
So Received under such Decree

Thirdly Because Notwithstanding what the Appellant in his fourth
Reason for Appealing Urges to the Contrary the Respondent Contends he
brought his Action / wherein the Decree Appealed from was Obtained /
in such Manner as he had a Right to do and as he ought to have done

and

and that the same was not / as the said Appellant in his said fourth Reason
Calls it / for the said Matters. because the Respondents action wherein the
Decree so Appealed from was Obtained was not for the Recovery of a Sum —
then already Recovered but was for the Recovery of a ballance due on a Bond
wherein the Appellant Stood Jointly and Seperately bound with the other
Defendant

Fourthly Because that tho' the Court in Conformity to their Ideas of Practice
Rejected the Motions of this Respondent for a Revisal of the Decree or for
leave to file a Bill of Review they were Nevertheless So well Satisfied
from the facts Stated in the answer of the said Balla Moodu Chetty
which Answer Remains Uncontroverted as well as from the other Evidence
in this Cause that this Respondent ought to have a Decree for the whole —
Sum due under a Bond for Payment whereof the Appellant was Jointly
and Seperately bound with the said other two Obligors that they gave —
Decree in his favour Accordingly being as Zealous to Do Substantial —
Right to the Suitor According to the Merits of his Claim when fully
before them as they had been before of a Strict adherence to those —
forms which had before Prevailed and which were Presumed to be
Right. because the Propriety thereof had Never before been Controverted

Fifthly Because that if the Decree of the Mayors Court of the fifth of June
last Should not be Confirmed this Respondent is not only deprived of his
Right to Recover the said ballance from the Appellant but the Situation
of a Lender who has Trusted his Property on the Security of Several Persons
will be more Precarious than if he had Trusted in the Obligation of one
only as the Insolvency of One would in such a Construction of the Law
Deprived the Creditor of a Certain Proportion of his Claim

For

For all which Reasons and such others as may be offered at the hearing this Respondent humbly Prays that the said Decree of the said Mayor's Court of the fifth day of June as far as the same relates to the said Appellant's being Subject to the Payment of the said Sum of two thousand Eight hundred and thirty two Pagodas Six fanm. and fifty Six Cash together with Interest thereon in manner as is therein Setforth may be Affirmed in this Honble Court and that the Petition and Appeal of the said Appellant may be dismissed with such Costs of Suit to be paid by the said Appellant as under all the Circumstances of the Case he may Appear to deserve.

Stephen Popham
for the Respondent

Court of Appeals
at
Madraspatnam
} Jr. Thursday the 22d. May
Anno Domini 1783

Between Shamulla Dos Appellant
and Thomas Powney 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 5th. day of June 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 Decree of the Honble the Mayors Court dated the 5th. day of June Anno Domini 1781 do stand Affirmed and that the Appellants Petition be hence dismissed with Costs in this Court

By Cur
Chas. Freeman Cler

To the Kings most Excellent Majesty in Council

Between Thomas Powney of Madras Esqr. Complainant and Shamulla Dos's Balla Moodu Chetty and Sana Cenvasa Chetty of the same place Merchants Defendants

The Humble Petition and Appeal of the abovenamed Shamulla Dos

Most Humbly Sheweth

Filed in my Office
the 1st. June 1783
Charles Freeman
Clk

That on or about the fourteenth or fifteenth day of December which was in the Year of Our Lord One thousand Seven hundred and Seventy Eight the abovenamed Thomas Powney the Complainant did Exhibit

Exhibit a Bill of Complaint in the Hondble the Mayors Court at —
Madrasapatnam against your Petitioner and the said Two other Defendts
Balla Moodu Chitty and Sana Cenvasa Chitty for the Sum of Four thousand
One hundred and fifty four Pagodas Sixteen fanams and forty Cash on
an Account which he annexed thereto To which said Suit your Petitioner
having been Summoned did Appear by his Attorney and gave Bail after
which Rules passed for Answer and the same having expired and your
Petitioner not having Put in any Answer to the said Bill the said —
Complainant did by his Attorney Pray for a Decree against your Petitioner
which was granted on the Ninth day of February which was in the year
of Our Lord One thousand Seven hundred and Seventy Nine for the —
Sum of One thousand three hundred and Eighty four Pagodas thirty
three fanams and forty Cash Agreeable to the Practise of the said Court
in Prosecutions of the like Nature that the said Complainant did —
Afterwards make Several Attempts to Oversett or get the said Decree —
Altered and made for the whole Amount of the said Sum Sued for but
to no Purpose as might Appear by the Records of the said Court and as
would thereafter Appear that your Petitioner did on the thirtenth day of
March One thousand Seven hundred and Seventy Nine Satisfy the said
Decree by having paid unto the said Complainant by means of his —
Attorney the full Amount Principal and Interest thereof and by being
Ready to Pay the Costs had the Account thereof been made out or had the
Amount thereof been Communicated to or demanded from him which
was not your Petitioner further Sheweth that Notwithstanding all the
said Matters the said Complainant not being Satisfyed that your Petr
had been Decreed to Pay the said Sum of One thousand three hundred —

and

and Eighty four Pagodas thirty three fanams and forty Cash altho the said
Complainant Never Appealed therefrom and your Petitioner had Satisfied
such Decree as before mentioned Yet the said Complainant being —
determined if possible to Obtain Payment from your Petitioner of the said
full and whole Amount of his Demand Sued for did on the first day of
April in the said Year of Our Lord One thousand Seven hundred and
Seventy Nine after the said Proceedings had been fully Ended and —
concluded and the Decree which had been given had been fully Satisfyed
and Discharged file another Bill which he called an Amended Bill
of Complaint in the said Mayors Court against your Petitioner and the
said Balla Moodu Chitty and Sana Cenvasa Chitty for the Sum of —
Two thousand Eight hundred and thirty two Pagodas Six fanams and
fifty Six Cash on an Account for the same matters as the former Bill
only Annexing a Copy of a Bond from your Petitioner as Gomasta (or Agent)
to Loll Doss Vellapoo Doss and the said Balla Moodu Chitty and
Sana Cenvasa Chitty to him the said Complainant and having given
Credit in the General Account which he had annexed to his former —
Bill of Complaint for the Amount Principal and Interest Paid by your
Petitioner in Satisfaction of the said Decree as Cash paid on Account and
as if the same had been paid on account and not in discharge of the said
Decree and the said Complainant did in what he calls his said Amended
Bill Setforth and Shew that he did file his said former Bill without
having annexed the Copy of the Bond thereto that your Petitioner —
Appeared thereto by his Attorney that after Rules for Answer had —
Expired he the said Complainant by his Attorney Prayed for a Decree —
which was Accordingly granted for the Sum before mentioned / Save and

Except

Except some little Error which the Complainant made in the fanams and Cash / being One third of the Sum Sued for Pretending that your Petitioner having Refused / as he called it to answer his said first Bill of Complaint he the said Complainant was deprived of the Opportunity of — Examining Witnesses and of Proving as well the Execution of the said Bond as of Proving other Circumstances which he Pretends would — have induced the said Court to have granted him a Joint and Seperate Claim on each of them your Petitioner Balla Moodu Chitty and Sana Cenvasa Chitty for the whole of the said Sum but he the said — Complainant did not nor could he shew that he had laid his Action so as to entitle him either to introduce the said Bond thereon or enter into the Kind of Proof he Pretended and the Decree was granted on his own Prayer by his Attorney the said Complainant did in his said Latter Bill called an Amended Bill Set forth several other matters which your Petitioner Conceived did not any way Concern your Petitioner Circumstanced as he was then before and thereon after mentioned and Prayed that your Petitioner the said Balla Moodu Chitty and the said Sana Cenvasa Chitty might be Severally Decreed to be liable for and to Pay the whole of the said Sum of Two thousand Eight hundred and thirty Two Pagodas Six fanams and fifty &c Cash together with all Interest due or to grow due thereon also all Costs of Suit To which said Latter Bill of the said Complainant your Petitioner having been Summoned to Appear he did Appear Accordingly by his Attorney and did on or — about the thirteenth day of the said Month of April on the said Year One thousand Seven hundred and Seventy Nine, file a Plea to the said Second Bill and for Plea thereunto said that the said Complainant

did

did therefore as Appeared by his own Shewing in his said Bill Cause a Bill of Complaint to be filed in the said Honble the Mayor's Court against your Petitioner and also against Balla Moodu Chitty and Sana Cenva -sa Chitty the other Defendants in the said Bill Named for a Sum of Money on an Account Current which had arisen upon or for and on Account of the same matters for which the then Bill was Exhibited To which said former bill your Petitioner had Appeared by his Attorney and gave Bail after which Rules for Answering having Expired and — your Petitioner not having put in any Answer to the said Bill the said Complainant by his Attorney did pray for a Decree which was granted on the Ninth Day of February in the Year of Our Lord One thousand Seven hundred and Seventy Nine which said Decree was made for the — Sum of One thousand three hundred and Eighty four Pagodas thirty three fanams and forty Cash Agreeable to the Practise of the said Honble Court in Prosecutions of the like Nature that on the twenty third day of the said Month of February the Attorney for the said Complainant had Prayed — that the said Honble Court might Revise the said Decree because he — conceived the Decree should have been for the whole Sum Sued for instead of one third part thereof being One thousand three hundred and Eighty — four Pagodas thirty three fanams and forty Cash as Specified in the said Decree To which motion the Attorney for your Petitioner had Objected as irregular because the time allowed by Your Majestys most Gracious Charter for Appealing from such the Decree of the Honble the Mayor's Court had Expired on that day the said Twenty third day of February your Petitioner's said Attorney did also Object to any Alteration being made in the said Decree as it had been made out — —

Conformable

Conformable to the Constant Practice of the said Court which said Motion the said Honble Court were pleased to Defer taking into Consideration untile Tuesday the Ninth Day of March then following on which Day to wit the said Ninth Day of March the Attorney for the Complainant Crayed leave to file a Bill of Review Previous to the Revising the said Decree and the said Court having taken the same into Consideration were of Opinion that the filing the Bill of Review or any other Paper Previous to the Determination of the matter then before the said Court was irregular it was therefore Ordered that the Bill of Review be Ejected and the said Honble Court having duly Considered the motion of the Attorney for the Complainant for Revising the said Decree were of Opinion that the same was not made within the time limitted by Your Majestys Most Gracious Charter for Appealing from the Decree of the said Court it was therefore Ordered that the said Motion should be Over Ruled with Costs as would morefully and at large Appear by the said former Bill and the said Decree and Proceedings on and the Records of the said Honble Court to which your Petitioner craved Reference and your Petitioner further for Plea said and Did Aver that he had since the said Determination of the said Honble Court with Regard to the said matters paid or Caused the Amount of the Principal and Interest of the said Decree to be paid to or on Account and behalf of the said Complainant as would Appear by an Indorsement upon the said Decree in the hands Writing of the said Complainants Attorney which is in the words and Figures following Viz.t

"Amount of Decree	1384	33	40
"Int to 13 March	30	8	40
	Pd. 1415	"	"

Rec.d

Received the above Sum of One thousand four hundred and fifteen Pagodas being in full Satisfaction of the within Decree (Costs Excepted)

March 13 1779

"Stephen Popham"

Attorney for

"Thomas Powney"

Which said former Bill Decree Proceedings and matters your Petitioner did plead in bar to the Complainants said Bill and of his the said Complainants pretended Demands on your Petitioner and humbly prayed the Judgement of the said Honble Court whether he should be Compelled to make any further or other Answer thereunto and also prayed to be thence Dismissed with his Reasonable Costs and Charges in that behalf most wrongfully Sustained as would more fully and at large Appear on Reference to the said Plea Attested Copies of which said former Bill Decree with the Discharge or Indorsement thereon of the said Orders or Proceedings of the said Honble the Mayors Court thereon or Relative thereto Mentioned and Referred to by your Petitioner on his said Plea Marked A.B.C.D were sent therewith for the inspection of that Honble Court and which your Petitioner did prays might be Admitted as part of such his Petition and Appeal To which said Plea the said Thomas Powney the Complainant did on or about the Sixteenth Day of August in the said Year One thousand Seven hundred and Seventy Nine file a Reply Acknowledging the several matters and things Set forth and Alledged by your Petitioner in his said Plea and particularly that he had received the Sum Your Petitioner was Decreed to Pay in manner as was Stated in the said Plea but pretended that for and Notwithstanding all the said Matters and things he had a full Right and title to Recover and Receive of your Petitioner the said Sum of Two thousand Eight hundred

hundred and thirty Two Pagodas Six fanams and fifty Six Cash under —
Pretence of the said Bond that your Petitioner ought not to receive any advantage
of his own default in not Answering to the said former Bill of Complaint —
which the said Complainant pretended if he had done and the said Cause
had been at Issue he would have had an Opportunity of proving the
said Bond and of Shewing in like manner as he said he had done in his
said Bill of Complaint that the said Debt was Originally found on
a Bond wherein the different Obligors were Jointly and Severally bound
to pay the whole of the said Bond the said Complainant in his said
Reply further said" that when a Judgement has been procured by a —
Collusion of Parties tho' it may stand upon Record and may not —
Actually be Expunged or taken from the file it Nevertheless is a mere
Nothing to those who not being Privies can Shew it false and Corrupt
mentions the Trial of the Duchess of Kingston a Case Cited from Coke's
Reports and what Lord Coke Says about Judgment having been —
Procured by the Collusion of Parties and Several other Matters very —
Inconsistent with the Matters in Question and some of them very —
improper your Petitioner further Sheweth that the said Complainant —
having alledged so many matters in his said Reply which your Pet.r
could not with any Degree of Propriety or Justice to himself or his Cause
pass Over he your Petitioner found himself under the Necessity of —
Rejoining Specially thereto denying that the said Complainant had a
right and title to Recover and Receive of your Petitioner the said Sum
of Two thousand Eight hundred and thirty two Pagodas Six fanams
and fifty Six Cash that the said Complainant could not or ought not —
Circumstanced as the matters in Question were to avail himself of the said

Bond

Bond with regard to your Petitioner or make your Petitioner Answerable or
Accountable for the Amount of the said Bond or any part thereof what —
your Petitioner had been Adjudged to pay of the amount Sued for by the
said Complainant having been paid and Acknowledged so to have been
by the Complainant's Attorney for and on Account and behalf of him the
said Complainant as Stated in your Petitioners said Plea whereby he —
your Petitioner was discharged from any demand whatever from the said
Complainant in the matters in Question therefore the said Complainant
having Pretended to Claim the Sum by him Sued for, from your Pet.r
on Account of the Bond he mentioned having been Executed by your —
Petitioner as well as by Balla Moodu Chitty and Sana Canavasa Chitty
the two other Defendants and that they were Jointly and Severally bound
to pay the whole Amount of the said Bond could by no means Avail
him or make your Petitioner Answerable for the Sum Sued for
any part thereof but as the said Complainant introduced or mentioned
the said Bond and there made his Claim by Virtue thereof the very
improperly and Irregularly as to your Petitioner for the Reason assigned
he your Petitioner said that by Reference to the Copy of the Bond —
Annexed to the said latter Bill of Complaint it Appeared that your —
Petitioner gave entered into or Executed the said Bond as Gomastah
to Lold Doss Vallaboo Doss it also therefore Appeared that he your Pet.r
was only an Agent in the said business your Petitioner further said that
the Assertions of the said Complainant about your Petitioner not Receiving
any Advantage of his own Default in not Answering the said former
Bill if he had done so he would have had an Opportunity of Proving
the said Bond and matters of that Nature were very Extraordinary —

Indeed —

Indued and very Inconsistent with legal Proceedings that the Complainant might as well have said that having commenced his Action Wrong Your Petitioner should have Supplyed such Defect that your Petitioner by not making any Answer to the said Bill Submitted to the said Court what he should be Decreed to pay and a Decree was in Consequence made for the Sum mentioned in the said Plea which he your Petitioner had paid, whereby your Petitioner said he Conceived and humbly Insisted the said Complainant was and is concluded and for ever Precluded from Maintaining any Action against or Recovering any Sum of Money from your Petitioner for or on Account of the matters in Question or any thing Relative thereto and that your Petitioner was fully and clearly freed and Discharged from the same therefore what the said Complainant Observed of a Judgement Procured by a Collusion of Parties being a mere nothing to those who not being Privies could Shew it false and Covinous was quite out of the Question for the said Judgement was Neither Obtained by a Collusion / or if it was it was so Obtained by the said Complainant and not by your Petitioner / Nor was it without the Complainants privity that he the said Complaint had by his Attorney prayed for the same nor was it either false or Covinous but intirely consistent with the Complainants Action in Consequence of which it was granted, therefore What the said Complainant had Stated in his Bill Reply could by no means Avail him or Support such his Illegal and Unwarrantable Action against your Pet that with Regard to the Trial of the Duchess of Kingston or the Case of Richard Farmer against Thomas Smeth or what the said Complainant Setforth that Lord Coke Says about Judgements being procured by a Collusion

Collusion of Parties and of Fraud and Covin those matters being foreign to the Case your Petitioner could not Admit them to Stand in Opposition to your Petitioner said Plea which he verily believed Lord Coke himself would have held good and Valid and Sufficient Plea in bar to the Present Action against your Petitioner and your Petitioner did further Refute every other thing Alledged by the said Complainant and entirely Conform his said Plea as will Appear on Reference to the said Rejoinder your Petitioner further Sheweth that the said Sana Canvasa Chetty having Departed this Life the said Suit became abated with Respect to him and was Revided by the said Complainant and afterwards the said other Defendants Balla Moodubhilly filed his Seperate Answer to the said Bill having therein endeavoured all in his Power to throw the matter of the Sum Sued for by the said Complainant on your Petitioner in Order to Evade Payment of all or any part of the said Sum Sued for himself but your Petitioners Case being so Different from that of the said other Defendant Balla Moodu Chetty who had not paid or been Discharged from the Amount of the Demand in Question or any part thereof and he your Petitioner having had no concern whatever either with the said Defendant or with the said Complainant after what passed Relative thereto Your Petitioner did not think Proper to take the least Notice thereof but to abide by his said Plea Nevertheless the said Complainant thought proper to Reply to the said Answer and the said Balla Moodu Chetty Rejoined Issue was Joined and Rules passed for the Examination of Witnesses your Petitioners plea being a matter of Record there was no Occasion for any Examination of Witnesses on his part the said Balla Moodu Chetty did not produce a Single

Witnesses

Witness to Support his Defence or Assertions nor did the said Complainant Produce any other Evidence than about the said Bond which cannot affect your Petitioner for the Reasons therein before and in his said Plea and Rejoinder Setforth on the contrary your Petitioner conceived the Deposition of Sangala Tamboolended in some measure to refute both what the said Complainant and the said Balla Moodu Chetty had Asserted Regarding the borrowing the said Money and Shewed that your Petitioner was not the only Person Concerned in the borrowing the said Money Tho' that is no way further Material to your Petitioner on his Present Situation than to Shew that the Case not as Stated and Asserted by the said Complainant and the said Balla Moodu Chetty Your Petitioner further Sheweth that Publication passed the said Cause was Set down for hearing and the same having come on to be heard by and before the said Mayors Court on Tuesday the fifth day of the Month of June One thousand Seven hundred and Eighty One the said Court did think fit to Order and Decree and did Accordingly Order and Decree that your Petitioner and the said Balla Moodu Chitty do Jointly and Severably pay unto the Complainant the Sum Sued for being two thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash which the said Court on their said Decree called the ballance due on their Bond together with such Interest as then was or should thereafter become due thereon untill full payment is made and it was further Ordered and Decreed that the Complainant Thomas Downey do pay all Costs which have arisen in this Suit between your Petitioner and him and that the Defendant Balla Moodu Chitty do pay such Costs as have arisen between the Complt

Complainant

Complainant and him as would more fully and at large Appear by the said Decree which came therewith for the Inspection of that Hon^ble Court Marked E.

From which said Decree of the said Mayors Court your Petitioner did Appeal to the Hon^ble Court of Appeals as he Conceived the same Erroneous and that he your Petitioner was Aggrieved thereby.

First Because your Petitioner had Submitted to the Judgment of the said Hon^ble the Mayors Court what he was liable or ought to pay for or on account of the Matters in Question in the said first Suit which was for the very Monies and on Account of the very matters in the Second Suit and the said Court not only having passed Judgement thereon and Decreed your Petitioner to pay the Sum beforementioned but having also absolutely and clearly Confirmed the said Decree on the most Pointed and particularly Applications or motions of the said Complainant by his said Attorney both to Reverse the said Decree and also to file a Bill of Review and your Petitioner had Complyed with and Satisfyed the said Decree as by him your Petitioner Pleaded and by the said Complainant Acknowledged your Pet^r Conceived and humbly Contended that he was fully Discharged from any Demand or Action whatever for or on Account of the said matters in every or any Respect whatever.

Secondly Because by his Majesty's most gracious Charter if any Person or Persons think themself herself or themselves Aggrieved by any Judgement Sentence or Decree of the said Mayors Court he she or they is or are at Liberty to Appeal therefrom to the Hon^ble Court of

Appeals

Appeals at Madras within fourteen days if not the Decree of the Mayor's Court was to become Conclusive and in full force and the party in whose favor such Decree was may if it was not Satisfyed proceed to execution and take legal Methods for the Recovery of Sum Decreed and so — Sensible was your Petitioner of this being the Case that he Complyed with the said Decreed without any compulsion or any Process — whatever to Oblige him so to do and the said Complainant did by his said Attorney Accept of such Satisfaction which must as Your Petitioner conceived and humbly contended have been — Conclusive —

Thirdly Because the said Complainant not having Availed — himself of the benefit of his Majesty's most Gracious Charter by — Appealing from the said Decree thereby Submitted thereto and Suffered himself to be bound thereby

Fourthly Because the said Complainant having so as aforesaid — Submitted to the said Decree of the said Mayors Court could not — legally have Commenced any other Suit whatever against your Pet.r for the said Matters Nor consequently could he have Maintained the same —

Fifthly Because all this the said Complainant might have amended his Bill against the said two other Defendants Balla Moodu Chetty and Lana Cenvasa Chetty who were not in Judgement and against whom no Decree whatever had passed in or regarding the said matters Yet the said Complainant could not legally file or Susport an Amended Bill or any Bill whatever against your Petitioner after he your Petitioner had been so as aforesaid in Judgment after a Decree had

had passed against him in or with regard to the said Matters and after it had been Confirmed and Satisfyed as before Pleaded and Pleaded —

To which said Petition and Appeal the said — Thomas Downey did put in his Answer Setting forth many waswe — matters and things as reasons why the said Decree was not erroneous and why the Prayer of your Petitioner in his said Appeal should not be — complied with which matters your Petitioner did not nor doth by any means Admit your Petitioner further Sheweth that before any further proceedings were had in the said Court of Appeal the said Thomas Downey departed this life and the said Suit became abated by his Death and your Petitioner further Sheweth — that on or about the Eighteenth Day of March in the present Year of our Lord One thousand Seven hundred and Eighty three Catharine Downey the — Widow and Executrix of the said Thomas Downey Deceased file a Bill of Review in the Honble the Mayors Court whereby the said Suit became and was Revived your Petitioner further Sheweth that the said Petition and — Answer came come on to be heard and was determined on the Twenty Second Day of May in the Present year of our Lord One thousand Seven hundred and Eighty three by the said Honble the ... Court of Appeals who were Pleased to Confirm the Decree of the said Honble the Mayor's Court with Costs of Suit in the said Court of Appeals as will more fully and at large Appear by the said Decree of the said Honble Court of Appeals a Copy of which is hereunto annexed —

From which said Decree of the said Mayors — Court and Court of Appeals Your Petitioner most humbly Appeals to — Your most Excellent Majesty in Council for the Reasons Assigned in your Petitioner's said Appeal to the President and Council of

Fort

Fort Saint George as a Court of Appeals as to the Decree of the said Mayors
Court and with Regard to the said Decree of the said Court of Appeals your
Petitioner doth Appeal therefrom because the said Court of Appeals —
Instead of Reversing the said Decree of the said Mayors Court have confirmed
the same with Costs in the said Court of Appeals so that your Petitioner
is left Remediless without the gracious and Assistance of Your most
Excellent Majesty in Council to whom your Petitioner doth with
all due Submission refer the said matters and things most humbly
Craying that the said Decree of the said Mayors Court and Court of
Appeals may be Reversed and Set aside for the following Reasons

First Because your Petitioner Sheweth unto Your most Excellent
Majesty in Council that the Decree or Judgement of the said Mayors
Court so passed and Obtained against your Petitioner on the fifth day of
June which was in the Year of Our Lord One thousand Seven hundred
and Eighty One and Affirmed by the said Court of Appeals at Fort
Saint George on the said Twenty Second day of May last past as aforesaid
Petitioner is Aggrieved and humbly Conceives contrary to Law reason and
Equity and ought not to Operate against your Petitioner or the Estate of
Your Petitioner having made full Satisfaction according to law for the
Cause or matter or Suit against him —

Secondly Because your Petitioner Sheweth unto Your most Excellent
Majesty in Council that final Judgement passed against your
Petitioner on the Ninth Day of February which was in the Year of Our
One thousand Seven hundred and Seventy Nine for the same Debt
Matter and Cause of Action whereupon your Petitioner is again sued
on Duetson and now in Judgement before Your Most Excellent Majesty

in Council To which Judgement so Obtained on the ninth day of February
One thousand Seven hundred and Seventy Nine your Petitioner Submitted
and Execution might have issued against your Petitioner and his Effects
Goods and Chattles were thereby bound according to the Rules and —
Practise of the said Court and Conformable to His Majesty's Royal —
Charter which Judgement and Decree of the Ninth day of February One
thousand Seven hundred and Seventy Nine your Petitioner fully —
Satisfyed by Paying the Debt and Interest thereupon in full as demanded
on the thirteenth Day of March following which payment or Satisfaction
so made by your Petitioner was Indorsed and Acknowledged on the
back of the said Judgement by the Attorney for the Plaintiff and —
Satisfaction was Accordingly entered of Record which Payment or —
Satisfaction your Petitioner humbly Conceives ought to bar and prevent
all future or other Actions Suits or Controversies against your Petitioner
for any Cause matter or thing arising therefrom or that before made any
part of the Cause of Action or Complaint against your Petitioner —

Thirdly Because your Petitioner further Sheweth unto your most Excellent
Majesty in Council that the Bill of Complaint so Exhibited and filed
against your Petitioner on the said Eleventh day of April One thousand
Seven hundred and Seventy Nine under the pretence of being an amended
Bill was irregular Illegal and an Open Violation of the several — —
Statutes for Preventing the Multiplying of Vexatious Laws Suits and —
Litigations your Petitioner having fully Satisfied the said Debt and
Satisfaction thereof being then upon Record before Court no further or
other Proceedings ought to have been had against your Petitioner much
less an Amended Bill for which not the least Shadow of Right or any

Cause

Cause or Pretext existed to call your Petitioner again in Question before the said Mayors Court or any other Court whatsoever for the same your Petitioner having before Submitted to the Judgement of the said Court for the same matter Cause and thing and Suffered final Judgmt to pass against him for Debt and Costs at the Prayer or instance of the Complainant without Opposition Let or hindrance and the said Judgement being so entered at the instance of or by the said Complaint it is to be Presumed that he the said Complainant well knew what was his due at the time Judgement was so entered against your Petr and that he the said Complainant accordingly would have his said Judgement entered for the full Amount of his Debt if he did not it ought to suffice it being his own Omission or fault to Demand less than was his Due

Fourthly Because your Petitioner further Sheweth unto your most Excellent Majesty in Council that he is Advised there is no Cause or "matter in law or in Equity for the Complainant to call your Petitioner in Question for the matter in Dispute it being laid down as Aphorism of Law Vide Vol: 14 Page 607." where three are bound in the whole "and the Oblige impleads one and recovers thereupon and "Plaintiff hath Execution against the one and thereupon obtains "Satisfaction Ibs. bar against all future Actions and must be taken "and Considered as full Satisfaction for the whole"

Fifthly. Because Your Petitioner further Sheweth unto your most Excellent Majesty in Council that he is Advised that it hath been Solemnly adjudged in the Court of Kings Bench in England in the Case of "Wright vers the Mayor of Wickham 37th of Elizabeth" that a man obtained Judgement to recover One hundred and fifty Pounds and he released Twenty Pounds of it and after sued out execution and the other brought an Audita Querela upon the Release and defeated all the Executions. To that was the Ground of Action against your Petitioner as Stated by the Complainant and your Petitioner having Paid all that was Demanded of him and Satisfied the Judgement he ought not in law or in Equity to be brought in Question again touching or Regarding the said matter. But your Petitioner humbly Represents to your most Excellent Majesty in Council that he not only paid the Debt and Interest as Demanded in full Satisfaction but all Costs of Suit thereupon

For all which Reasons and such others as may be Offered at the hearing by your Petitioner his Council or Solicitor your Petitioner most humbly prays that the said Decree or Judgement of the said Mayors Court at Madraspatnam of the said fifth day of June One thousand Seven hundred and Eighty One and also the said Decree of Judgement of the said Court of Appeals at Madraspatnam of the Twenty Second of May One thousand Seven hundred and Eighty three be Reversed and for ever Set aside with full Costs to be paid unto your Petitioner and your Petitioner most humbly Prays that your Most Excellent Majesty in Council will be graciously Pleased to grant him such General and Particular Relief in all and Singular the Premises as shall Appear Agreable to law and Equity

And Your Petitioner as in Duty bound will Ever Pray &c.

James Johnson
Attorney for the Appellant

Court of Appeals
at
Madraspatnam

Thursday the 22d. day of May
Anno Domini 1783

Between Shamuldoss of Madras Merchant Appellant and Thomas Powney of the same place Merchant 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 5th. day of June 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 Decree of the Honble the Mayors Court dated the 5th. day of June Anno Domini 1781 do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs on this Court.

By Ctr

(Signed)

Charles Freeman
Clk

A true Copy

James Johnson
Attorney for the Appellant

To the Honble the President and Governor &c.
of Fort Saint George

In the Court of Appeals

Between Thomas Powney
Complainant and Shamuldoss Balla
Moodu Chitty and Sana Conavaa Chitty
Defendants

The Petition and appeal of the said Balla
Moodu Chitty

Sheweth

That on the first day of April One thousand Seven hundred and Seventy Nine the Complainant did exhibit in the Honble Mayors at Madraspatnam his Amended Bill of Complaint against your Petitioner and the said Defendants for the Sum of Two thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash founded upon the ballance of a certain Bond and Account Current annexed unto the said Bill to which said Bill your Petitioner did appear and did found his Answer upon the effect and intention evident in the said Bill To wit to hold the said Shamuldoss Answerable and Responsible for the whole of the said Debt Your Petitioner not having received any part of the Sum of Money on account of which the said Bond was given which is Acknowledged by the Complainant himself and that the said Shamuldoss had paid all the different Sums received by the Complainant on Account of the said

Filed in my Office
the 18th. June 1784
Charles Freeman
Clk

Bond

Bond your Petitioner did likewise upon Oath in his Answer further
Sett forth that the Complainant had by frequently Assurances exonerate
your Petitioner from any Responsibility on that Account which the
Complainant did partly Acknowledge in his Replication and after
Your Petitioner had Rejoined and the said Cause being Sett down to
be heard and coming on to be heard without any Witnesses being
Produced on the part of the Complainant to disprove your Petitioners
said Answer your Petitioner did not doubt but that the same would
have Received full and entire according to Practice but instead thereof
the said Honble Court did Join your Petitioner in the Decree with the
said Shamulla Dofs to pay the ballance of the said Bond and account
Current and that your Petitioner should pay all Costs by which said
Decree your Petitioner conceives he is much Aggrieved and doth
therefore Appeal therefrom. because your Petitioner ought not to be held
Responsible for the said Money he not having Received the same
nor any part thereof as is particularly Charged in his Answer together
with the Complainants Assurances Repeatedly made of Relinquishing
all Right of Responsibility from your Petitioner and of the Complainants
Attaching himself solely to the said Shamulla Dofs for the discharge of
the said Bond Your Petitioner doth therefore pray that the said Decree
as far as Relates to your Petitioner may be Reversed and Set a Side and
that the Complainant may pay all Costs

Henry Du Pre
Attorney for the Appellant

Mayor's Court at Madraspatnam } Tuesday the 5th day of June anno Domini 1781

Present

Benjn Roebuck Esquire Mayor
Edwd Saunders and Robt Duncan Munro
Aldermen

Between Thomas Bowrey of Madras Esqr Complainant and Shamulla Dofs Balla Moodu Chitty and Sana Cenevasa Chitty of the same place Merchants Defendants

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 with Copy of a Bond and Account Current Annexed the Plea of Shamulla Dofs the Reply the Rejoinder the Separate Amended Answer of Balla Moodu Chitty the Replication the General Rejoinder the Bill of Review the Interrogatories and Depositions on the part of the Complainant with an Exhibit 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 Defendants Shamulla Dofs and Balla Moodu Chitty do jointly and Severately pay unto the Complainant the Sum Sued for being Two thousand Eight hundred and thirty two Pagodas Six fanams and Fifty Six Cash / Pags 2832. 6. 56 / the ballance due on their Bond together with such Interest as now is or shall hereafter become due thereon until Payment is made and it is further Ordered and full

Decree

Decreed that the Complainant Thomas Powney do pay all Costs which have Arisen in this Suit between Shamulla Dofs and him and that the Defendant Balla Moodu Chitty do pay such Costs as have Arisen between the Complainant and him

P Cur

James Taylor

Regr

To the Right Honble George Lord Macartney K B.

President and Governor &c. Council of

Fort Saint George

In the Court of Appeals

Between Thomas Powney of Madras Esqr. Complainant and Shamulla Dofs Balla Moodu Chitty and Sana Cenevasa Chitty of the same place Merchants Defendants

The Answer of the said Thomas Powney to the Petition and Appeal of the said Balla Moodu Chitty

The Respondent by way of Answer to the said Petition and Appeal or unto so much thereof as concerns him to make Answer unto Saith he Admits it to be true that he the Respondent filed his amended Bill of Complaint in the Honble the Mayors Court at Madraspatnam Against the Petitioner and the said other Defendants at such time for such Sum and upon the ballance of such Bond and of such account as

Filed in my Office the 9th July 1781 Charles Freeman Clk

as in the said Petition and Appeal is or are for that Purpose Setforth or Recited and this Respondent doth also Admit that the Petitioner did put in his Answer and did thereon as his Defence deny his having Recvd any part of the Money on Account whereof the said Bond had been Given and did in his said Answer pretend that the Respondent had by frequent Assurances exonerated the Petitioner from being Responsible to which said Answer of the said Petitioner this Respondent did Reply and the Petitioner did Rejoin and this Respondent further Admits and Says that the Cause was Set down for hearing and came on to be heard in and before the Honble the Mayors Court on the fifth day of June last when that Court was pleased to Order and Decree that the Defendant Shamulla Dofs and Balla Moodu Chitty (meaning the Petitioner) should Jointly and Severally pay unto the Complainant (Meaning the Respondent) the Sum Sued for being two Thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash the ballance due on their Bond together with Interest thereon till full payment thereof should be made and that the Complainant Thomas Powney (Meaning the Respondent) should pay all Costs that Arose on the said Suit between him and the said Shamulla Dofs and that the Defendant Balla Moodu Chitty (Meaning the Petitioner) should pay such Costs as had Arose between the Complainant and him (Meaning the Respondent and the said Petitioner) as by the Proceedings had thereon in the said Mayors Court and the said Decree thereon reference being thereunto respectively had may more fully and at large Appear and wherefrom and from each and every of them this Respondent Craves as fully and ample benefit as if they and each of them respectively had been

herein

herein before at full length Set forth and this Respondent humbly
Conceives and is Advised that the said Decree is Agreable to Equity and
Justice for the following among other Reasons

Because from the prayer of this Respondents Bill of Complaint and
from the Connection Created between the said Petitioner and the other
Defendant Shamulla Dofs by their Joint and Sparate undertaking the
Petitioner had not the least Right to expect that any Reconveration in favor of
the Appellant could take place in any Decree that should pass thereon
Notwithstanding the several Pleas made use of by the Appellant and
Proofs given in Support thereof for this Respondent Saith that he
Received the Joint Bond or Obligation of the Appellant of Shamulla
Dofs and of Sana Cenvasa Chitty (since deceased) and therefore humbly
Submitteth that such Joint Bond or Obligation and the force and
Virtue thereof must Remain good in favor of this Respondent and that
if the Appellant hath in any manner been aggrieved in consequence
of his Concerns with or the improper Conduct of the said Shamulla
Dofs this Respondent ought not in any wise to be affected thereby but
the Appellant hath his Remedy over in Law or in Equity Accoding
to the Circumstances of the Case Against the said Shamulla Dofs

For all which Reasons and such other as may be offered at the
hearing this Respondent humbly prays that the said Decree of the said
Mayors Court may be Affirmed by this Honble Court of Appeals in its
full extent and as far as it Relates to the said Petitioner with such reasonable
Costs to be paid by the said Petitioner as under all the Circumstances of the
Case ought to be Adjudged Against him

Stephen Popham
for the Respondent

Court of Appeals
at
Madraspatnam

} Thursday the 22d day of May
Anno Domini 1783

Between Balla Moodie Chitty
Appellant and Thomas Powney 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 5th day of June 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 Decree of the Honble the Mayors Court Dated the 5th day of June
Anno Domini 1781 do Stand Affirmed and that the Appellants
Petition be hence dismissed with Costs in both Courts

Per Curiam Test Lucius Heathcote

To the Kings Most Exallent Majesty in Counal

Between Mary Catherine Powney Executrix Named in the last Will and Testament of Thomas Powney Deceased by her Attorney Charles Bromley Complainant and Shamulla Dofs and Audiapaw Sawmy Chetty, Nillaram, and Mooduram Executors named in the last will and Testament of Ballamoodu Chitty deceased Defendants.

The Humble Petition and Appeal of the said Audempaukum Sawmy Chitty, Nillaram, and Mooduram, Executors of Ballamoodoo Chetty Deceased

Sheweth

That the Abovenamed Thomas Powney did on or about the first Day of the Month of April which was in the Year of our Lord One thousand Seven hundred and Seventy Nine Exhibit and file an Amended Bill of Complaint in the Honble the Mayors Court at Madraspatnam against Shamulla dofs Ballamoodu Chitty and Sanaunwasa Chitty for the Recovery of the Sum of Two thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash Current Money of Madras which he the said Thomas Powney Charged therein the said Shamulla Dofs Ballamoodu Chitty and Sana Cenwasa Chitty to be Jointly and Severally indebted Unto him the said Thomas Powney as and for the ballance of an Account Current Arising upon the Joint and Seperate bond of them the said Shamulla Dofs Ballamoodu Chitty and Sanabenwasa Chitty to him the said Thomas Powney duly given granted and Executed your Petr further Shew unto your Most Excellent Majesty in Counal that the said Thomas

Filed in my Office the 1st June 1786
Charles Freeman Clerk

Thomas Powney did in his said Amended Bill of Complaint setforth and declare that on the fifteenth Day of the Month of December which was in the Year of Our Lord One thousand Seven hundred and Seventy Eight he the said Thomas Powney did Exhibit and file a Bill of Complainant in the said Honble the Mayors Court at Madraspatnam Against the said Shamulla Dofs Ballamoodu Chitty and Sana Senwasa Chitty for the Recovery of the Sum of Four thousand One hundred and fifty Pagodas Sixteen fanams and forty Cash due upon an Account Current without annexing to the said Bill of Complaint the Bond on which the said Account Current arose and that the said Shamulla dofs Appeared by his Attorney to the said Bill of Complaint and gave Bail thereto after which the Rules for Answering being expired the said Thomas Powney did by his Attorney pray for a Decree which was Accordingly Granted by the said Honble the Mayors Court at Madraspatnam which said Decree was filed ufonly for the Sum of One thousand three hundred and Eighty four Pagodas thirty two fanams and Sixty Six Cash together with Interest which was only one third of the said Sum of Four thousand One Hundred and fifty four Pagodas Sixteen fanams and Fourty Six Cash Your Petitioners further Shew unto Your Most Excellent Majesty in Counal that the said Thomas Powney did and by his said Amended Bill of Complaint further Setforth and declare that by the said Shamulla Dofses having so Refused to Answer to his the said Thomas Powney's said Bill of Complaint he the said Thomas Powney was Deprived of the Opportunity of Examining witnesses and of proving as well the Execution of the Bond Copy of which is by the said Thomas Powney annexed to his said Amended Bill of Complaint as of proving other Circumstances which he the said Thomas Powney declared would have induced the said Honble the Mayors Court at Madraspatnam

Madraspatnam to have granted him the said Thomas Powney a Joint and Seperate Claim upon the said Shamulla Dofs Ballamoodu Chitty and Sana Senevasa Chitty for the whole of the said Sum, as it would Appear by inspection of the said Bond that the said Shamulla Dofs Ballamodu Chitty and Sana Senevasa Chitty became Jointly and Seperately Bound to pay unto him the said Thomas Powney the Principal Sum of thirty thousand three hundred and Eighty Pagodas together with all Interest to grow due thereon your Petitioners further Shew unto your Most Excellent Majesty in Council that the said Thomas Powney did in and by his said Amended Bill of Complaint further setforth and declare that the said Ballamoodu Chitty and Sana Senevasa Chitty Applied unto him the said Thomas Powney for the Loan of the said Sum of thirty thousand three Hundred and Eighty Pagodas which he the said Thomas Powney refused to Advance unless they the said Ballamoodu Chitty and the said Sana Senevasa Chitty could Procure some Responsible person to be Joined with them to Secure the payment thereof whereupon they the said Ballamodu Chitty and Senevasa Chitty did propose the said Shamulla Dofs into whose Character and Credit he the said Thomas Powney enquired and being Satisfied therewith he the said Thomas Powney did Agree to make the Requested Loan which was effected Accordingly since which time the said Shamulla Dofs had paid unto him the said Thomas Powney all and every the Sums of Money which Appear to have been paid on Account of the said Bond Your Petitioners further Shew unto Your Most Excellent Majesty in Council that the said Thomas Powney did in and by his said Amended Bill of Complaint further setforth and Declare that he the said Thomas

Powney

Powney had been informed and had Reason to believe that the said Shamulla Dofs was the Person principally interested in the said Money transactions though he the said Shamulla Dofs wished had it been possible that his Name should not have Appeared on the Loan and that the said Ballamoodu Chitty and Sana Senevasa Chitty were only Gomastahs or agents to the said Shamulla Dofs and that the said Shamulla Dofs Suffered the so to pass against him with a View of Precluding him the said Thomas Powney from a possibility of entering into the proof of the Merits of his Claim in Order thereby to evade the payment of the whole of the said Sum so Justly due and Owing unto him the said Thomas Powney and for the payment whereof in the whole the said shamulla Dofs Ballamoodu Chitty and Sana Senevasa Chitty were Jointly and severally bound unto him the said Thomas Powney Your Petitioners further Shew unto your most Excellent Majesty in Council that the said Ballamoodu Chitty did Appear to the said Amended Bill of Complaint of the said Thomas Powney and after having taken out an Office Copy thereof he the said Ballamoodu Chitty did file his Answer thereto in the said Honble the Mayors Court at Madraspatnam the truth whereof and of every part thereof he the said Ballamoodu Chitty did then and there verify upon his Corporal Oath on which said Answer he the said Ballamoodu Chitty did absolutely deny standing indebted unto the said Thomas Powney either in the Sum of Two thousand Eight hundred and thirty Two Pagodas Six fanams and fifty Six Cash Current Money of Madras as was most unjustly Charged and Setforth by the said Thomas Powney in his said Amended Bill of Complaint and the Account Current thereunto Annexed or in any other Sum or Sums of Money whatsoever but he the said

Ballamoodu

Ballamoodu Chitty did in his said Answer Admit that one Shamulla Dofs a Soucar had borrowed a Sum of Money of the said Thomas Powney through the interposition of him the said Ballamoodu Chitty and Sana Senevasa Chitty who acted as brokers or Agents thereun of which the Sum of Two Thousand Eight hundred and thirty two Pagodas Six fanams and fifty Six Cash now sued for by the said Thomas Powney is a part your Pet.rs further Represent unto your Most Excellent Majesty in Council that some time in the Year of our Lord One thousand Seven hundred and Seventy Six One Bauma Rauze being in want of Cash Applied unto Sana Senevasa Chitty to procure the loan of the Sum of thirty thousand Pag.s and upwards and as a Recompence for the trouble he the said Sana Senevasa Chitty would be at in procuring so large a Sum he the said Bauma Rauze promised to allow him the said Sana Senevasa Chitty Some thing per Cent by way of Brokerage which induced the said Sana Senevasa Chitty to exert himself to procure the Sum Required but being unable to effect a Loan for so large a Sum by himself he the said Sana Senevasa Chitty Consulted with him the said Ballamoodu Chitty about the means of Procuring the Money which the said Bamau Rauze wanted when it was Agreed between the said Sana Senevasa Chitty and Ballamoodu Chitty to Apply unto the said Thomas Powney to Supply the Money wanted by the said Bamau Rauze which they the said Sana Senevasa Chitty and Ballamoodu Chitty Accordingly did but the said Thomas Powney Refused to lend any Money unto the said Bauma Rauze unless good and proper Security should be given for Securing the Repayment of such Sums of Money as he the said Thomas Powney Might think proper to Advance or that a Soucar or Banker of good Credit and Reputation would grant him the said

Thomas

Thomas Powney a Bond for the Sum of thirty thousand Pagodas with a Premium of Seventeen and a Quarter per Cent Nine per Cent whereof to be inserted in the Bond to be given by the Soucar and another Bond to be given for the Remaining eight and a Quarter per Cent Your Petitioners further Shew unto Your Most Excellent Majesty in Council that the said Ballamoodu Chitty and the said Sana Senevasa Chitty took great pains in endeavouring to find out and procure a Soucar or Banker who would Agree to the proposals of him the said Thomas Powney and at last they the said Sana Senevasa Chitty and Ballamoodu Chitty Met with the said Shamulla Dofs who Readily Agreed to give his Bond for thirty thousand Pagodas with Interest at the Rate of Nine Pagodas by the hundred by the Year and another Bond for the Sum of Two thousand Two hundred and Eighty One Pagodas as and for the Remaining eight and a Quarter per Cent Premium and to take Bills of Exchange Drawn by the said Thomas Powney in favour of him the said Shamulla Dofs upon Mr. John Sulivan to the Northward all which Matters being thus finally Adjusted Bills of Exchange were drawn by the said Powney upon Mr. John Sulivan in favour of the said Shamulla Dofs for the Sum of thirty thousand three hundred and Eighty Pagodas which were by the said Thomas Powney delivered to the said Shamulla Dofs and the said Thomas Powney then drew out a Bond not only in the Name of the said Shamulla Dofs but also in the Names of the said Ballamoodu Chitty and the said Sana Senevasa Chitty whereby the said Shamulla Dofs Ballamoodu Chitty and Sana Senevasa Chitty were Jointly and Severally held and bound to pay unto the said Thomas Powney the said Sum of thirty thousand three hundred and Eighty Pagodas with Interest After the rate of Nine Pagodas by the hundred by the Year which

Said

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said Bond he the said Thomas Powney Presented to the said Shamulla Dofs who immediately Signed and executed the same after which he the said Thomas Powney tendered the same to the said Ballamoodu Chitty and the said Sana Senevasa Chitty and desired them to execute the same also which they the said Sana Senevasa Chitty and the said Ballamoodu Chitty Absolutely refused to do as they had no further Interest therein than as Brokers who were to Receive their Brokerage as a Recompence for their trouble in procuring the said Loan but the said Thomas Powney and the said Shamulla Dofs were so very pressing with them the said Ballamoodu Chitty and the said Sana Senevasa Chitty to execute the said Bond and the said Thomas Powney made so many Promises and assurances to them the said Ballamoodu Chitty and the said Sana Senevasa Chitty that he the said Thomas Powney would not molest or trouble them or either on Account of the said Bond nor Compell them or either of them to Discharge the said Bond or any part thereof that they the said Ballamoodu Chitty and the said Sana Senevasa Chitty ~~suffered themselves~~ to be prevailed upon to execute the said Bond which they accordingly did, and which they the said Ballamoodu Chitty and the said Sana Senevasa Chitty had the Reluctance to do on Account of the said Thomas Powneys Refusing to lend the Money on their Security and Accepting that of the said Shamulla Dofs which left them the said Ballamoodu Chitty and the said Sana Senevasa Chitty no room to Suspect that the said Thomas Powney would ever Resort to them or either of them for the payment of the said Bond but Confirmed them in the belief that the said Thomas Powney would always have Recourse to the said Shamulla Dofs whose Security he the said Thomas Powney had Deemed so far more eligible

than

than that of the said Ballamoodu Chitty and the said Sana Senevasa Chitty Your Petitioners further Shew unto Your Most Excellent Majesty in Council that it was evident from he the said Thomas Powneys Refusal to lend the Sum Required upon the Security of the said Ballamoodu Chitty and the said Sana Senevasa Chitty, that he the said Thomas Powney did not hold the said Ballamoodu Chitty and the said Sana Senevasa Chitty in the least Credit or in any degree Responsible as he the said Thomas Powney, Pointedly insisted upon having either good and Proper Security or the Bond of a Soucar or Banker of good Credit before he the said Thomas Powney, would lend the Sum Required Your Petitioners further Represent unto your Most Excellent Majesty in Council, as a Proof that he the said Thomas Powney had no Idea of the least Responsibility being thrown upon the said Ballamoodu Chitty and the said Sana Senevasa Chitty that he the said Thomas Powney, drew the Bills of Exchange upon Mr. Sulivan, which were given as and for the Consideration for the Bond in Question, in the name and payable to the Order of the said Shamulla Dofs, only, and not in the Joint Names and payable to the Joint Order of Shamulla Dofs Ballamoodu Chitty and Sana Senevasa Chitty which he, the said Thomas Powney, ought and Certainly would have done, and which the said Ballamoodu Chitty and the said Sana Senevasa Chitty would have insisted upon being done had either the said Ballamoodu Chitty and the said Sana Senevasa Chitty or the said Thomas Powney entertained even the most distant Idea of the least Responsibility resting upon them the said Ballamoodu Chitty and the said Sana Senevasa Chittys Shoulders, the Omission of whose Names in the Bills of Exchange clearly exonerates them from every degree of Responsibility whatever

whatever it being Repugnant to Reason Equity and Justice to make
Ballamoodu Chitty and Sana Senevasa Chitty Answerable for
what Shamulla Dofs alone had Received and of which he the said
Shamulla Dofs had the absolute Disposal independent of all Control
or Authority on the part of the said Ballamoodu Chitty and the said
Sana Senevasa Chitty whose Concurrence was not even Necessary to make
the said Shamulla Dofs to Appropriate the Money Received to what
Purposes he thought Proper Your Petitioners further Shew unto
Your Most Excellent Majesty in Council that the said Thomas
Powney frequently declared that he considered the said Ballamoodu
Chitty and the said Sana Senevasa Chitty only in the light of
Brokers and that he the said Thomas Powney would never make
any Demand whatsoever upon them the said Ballamoodu Chitty
and the said Sana Senevasa Chitty or either of them on Account of the
Bond in Question as he the said Thomas Powney held the said
Shamulla Dofs Solely Responsibility for the Amount of the said Bond
as he the said Shamulla Dofs had Received the whole of the Consideration
given therefor and therefore he the said Thomas Powney should look
and Receive the whole Amount of the said Bond from the said
Shamulla Dofs to whom and whom only he the said Thomas Powney
declared he should upon all Occasions resort for payment Your Petitioners
further Represent unto your Most Excellent Majesty in Council that
the said Shamulla Dofs did by Virtue of the Bills of Exchange to
him for that Purpose given and granted by the said Thomas Powney
Receive of and from Mr. John Sullivan the Sum of thirty thousand
three hundred and Eighty Pagodas out of which he the said Shamulla

Dofs

Dofs only Lent and Advanced unto the said Bauma Pauze the Sum of Twenty
Thousand Pagodas instead of the whole Sum of thirty thousand three hundred and Eighty Pagodas
as was intended and for which the said Ballamoodu Chitty and the said Sana
Senevasa Chitty had negotiated for the due repayment of which he the said
Shamulla Dofs Obtained of and from the said Bauma Pauze a Bond in
the Name of the said Thomas Powney which he the Shamulla Dofs detained
in his Possession and Custody and the Remaining Ten thousand three
hundred and Eighty Pagodas he the said Shamulla Dofs reserved to himself
or Lent to some other Person without the other the Knowledge Privity or
Consent of the said Ballamoodu Chitty or the said Sana Senevasa Chitty
whose Concurrence for the Disposal of the whole or any part of the Sum borrowed
never was Applied for by the said Shamulla Dofs who had the entire
Management and absolute disposal of the whole of the Money Received from
the said Thomas Powney Your Petitioners further Shew unto Your Most
Excellent Majesty in Council that the said Shamulla Dofs did at his own
Pleasure and without even the Knowledge Privity or Consent of the said
Ballamoodu Chitty and the said Sana Senevasa Chitty pay unto the said
Thomas Powney what ever Sums have been Received on Account of the said
Bond with which neither the said Ballamoodu Chitty or the said
Sana Senevasa Chitty ever interfered or took the least Notice thereof as
they the said Ballamoodu Chitty and the said Sana Senevasa Chitty
never enquired whether the whole or any and what Part of the said Sum
of thirty thousand three hundred and Eighty Pagodas was paid unto the
said Thomas Powney or not as no Demand had nor could they entertain
an Idea that any Demand would be made upon them the said Ballamoodu Chitty and the said Sana Senevasa Chitty or either of them on

Account

Account of the said Bond fully Confiding in the Promises and Assurances of the said Thomas Powney which in Equity Certainly released them the said Ballamoodu Chitty and the said Sana Senevasa Chitty from every Degree of Responsibility Your Petitioners further Represent unto your Most Excellent Majesty in Council that when the said Thomas Powney filed his Original Bill Against the said Shamulla Dofs and the said Ballamoodu Chitty and Sana Senevasa Chitty they the said Ballamoodu Chitty and Sana Senevasa Chitty were struck with astonishment conceiving it impossible that the said Thomas Powney would after his repeated Promises and Assurances Pledged and given in the Most Solemn manner to the Contrary Molest or Trouble the said Ballamoodu Chitty and the said Sana Senevasa Chitty for the payment of the Money by him the said Thomas Powney lent to the said Shamulla Dofs alone but as the said Ballamoodu Chitty was inemical to litigation and had long been upon Terms of Friendship with the said Thomas Powney whom he the said Ballamoodu Chitty wished to Serve he the said Ballamoodu Chitty at his own Costs and Charges sent his Son and Another Person to the said Bauma Rauze at Bauma Rauze Bollam in order to Receive from the said Bauma Rauze the Sum of Four thousand One hundred and Fifty four Pagodas Sixteen fanams and forty Cash which was the Sum due to the said Thomas Powney on Account of the said Bond for the Recovery of which the said Thomas Powney had filed his Bill in Manner herein before stated Your Petitioners further Represent unto Your Most Excellent Majesty in Council that the said Ballamoodu Chitty was prevented from Receiving the ballance due to the said Thomas Powney upon the Bond in Question by the said

Shamulla

Shamulla Dofs who sent Positive Orders to the said Bauma Rauze not to pay a Single fanam unto the said Ballamoodu Chitty as he the said Ballamoodu had Nothing to do with him the said Bauma Rauze whose Bond was in his the said Shamulla Dofses hands and that he the said Shamulla Dofs was Solely Answerable to the said Thomas Powney for the ballance due on the Bond in Question towards the Discharge of which if he the said Bauma Rauze Paid any thing to the said Ballamoodu Chitty it must be at his the said Bauma Rauzes own Risk as he the said Shamulla Dofs would not allow such payment to be placed to his Account Your Petitioners further Represent unto Your Most Excellent Majesty in Council that in Consequence of the Orders of the said Shamull Dofs the said Bauma Rauze Absolutely Refused to pay a Single fanam unto the said Ballamoodu Chitty but insisted upon the said Ballamoodu Chittys Son immediately removing from his the said Bauma Rauzes Territories which he was Obliged to Comply with not having any Vouchers to Shew the Right he had to make a Demand upon the said Bauma Rauze for the Sum of Four Thousand One hundred and Fifty four Pagodas Sixteen fanams and Fifty Cash as the Vouchers were Kept by the said Shamulla Dofs who alone Managed the whole Transactions Your Petitioners further Represent unto Your Most Excellent Majesty in Council that after the said Thomas Powney had filed his Original Bill of Complaint in the said Honble the Mayors Court at Madraspatnam which was some time in the Year of our Lord One thousand Seven hundred and Seventy Eight for the Recovery of the Sum of Four thousand One hundred and fifty four Pagodas Sixteen fanams and Fifty Cash being

the

the Ballance due upon the said Bond for thirty thousand Three hundred and Eighty Pagodas borrowed by the said Shamulla Dofs in manner herein before stated. Summonses were issued Against the said Shamulla Dofs Ballamoodu Chitty and Sana Senevasa Chitty not being within the Jurisdiction of the said Honble the Mayors Court at Madraspatnam the said Shamulla Dofs alone was Served with a Summons who Appeared by his Attorney and put in Bail According to the Practice of the said Honble Court which issued several Rules requiring the said Shamulla Dofs to Answer to the said Thomas Powneys said Bill of Complaint which he the said Shamulla Dofs from a Consciousness that the Demand of the said Thomas Powney was fair and Just and that he could make no legal or valid Objection thereto and being desirous of Satisfying the said Thomas Powneys Demand and of Avoiding Litigation and Trouble he the said Shamulla Dofs declined doing but Committed Judgement to go by Default whereby he the said Thomas Powney was entitled to the benefit of his Prayer in his said Bill of Complaint contained in the utmost extent and was not as he the said Thomas Powney has in his Amended Bill of Complaint uncandidly declared thereby deprived of any Advantage whatsoever as it is scarcely Possible to Construct the granting of every thing that a Man himself requires into an Act of injustice Your Petitioners further Represent unto your most Excellent Majesty in Council that the said Shamulla Dofs was ready and willing to have Satisfied the whole of the said Thomas Powneys Demand had not a Mistake of the said Thomas Powney in not founding his said Bill of Complaint upon the Bond in Question and Omitting to annex the Bond thereto, warped the Integrity of the said Shamulla Dofs by affording

him

him an Opportunity of Contesting some part of the said Thomas Powneys Demand for Your Petitioners Represent unto Your Most Excellent Majesty in Council. That the said Thomas Powney founded his said Bill of Complaint Against the said Shamalla Dofs Ballamoodu Chitty and Sana Senevasa Chitty upon an Account without Pleading or annexing the said Bond or Declaring that the said Shamulla Dofs Ballamoodu Chitty and Sana Senevasa Chitty were Jointly and Severally bound to Pay the full Amount thereof in Consequence of which when a Decree Passed in the said Honble the Mayors Court at Madraspatnam against the said Shamulla Dofs the said Decree was filled up for only One third Part of the Sum Sued for instead of the full Amount which Coming to the Knowledge of the said Shamulla Dofs he took an unfair and Dishonest Advantage thereof and by the means of his Attorney Paid and Discharge the amount of the said Decree and took a Receipt for the same upon the back of the said Decree and then Publickly Avowed his Intentions of not Discharging the remaining two thirds, thinking himself Completely guarded Against all future Actions on account of the said Bond by the said Decree which was Recorded as Satisfied which Malpractices the said Shamulla Dofs would not have been Able to have had Recourse to but for the Negligence and Inattention of the said Thomas Powney in not Commencing his Action properly for which it would be the height of Cruelty and injustice to Punish the said Ballamoodu Chitty and make him the Innocent Victim to Ignorance and Knavery Your Petitioners further Represent unto your Most Excellent Majesty in Council that had not the said Shamulla Dofs Considered himself as solely Responsible for the

whole

whole Amount of the Debt sued for by the said Thomas Powney he the said Shamulla Dofs would not have Permitted Judgement to have gone by default. but would have Put in an Answer to the said Thomas Powney said Bill of Complaint and have Shewed some good and Sufficient Cause why Judgment should not go Against him for more than One third nor would the said Shamulla Dofs unless from the fullest Conviction of his Responsibility for the full Amount of the Money borrowed from the said Thomas Powney have of himself solely Reduced the Debt due to the said Thomas Powney from the Sum of Thirty Thousand three hundred and Eighty Pagodas to the Sum of Four thousand One hundred and forty five Pagodas Sixteen fanams and Forty Cash nor would the said Thomas Powney have Applied to him the said Shamulla Dofs Solely to make such payments had not he the said Thomas Powney regarded him the said Shamulla Dofs and him only as Answerable for the full Amount borrowed independent of the said Ballamoodu Chitty and the said Sana Seewasa Chitty your Petitioners further Represent unto Your Most Excellent Majesty in Council that the said Thomas Powney did in a Replication filed by him to the Answer of the said Ballamoodu Chitty Admit that he the said Thomas Powney would not have lent and advanced the Money for which the Bond in Question was given and Granted unless the said Shamulla Dofs had become Security for the due Repayment thereof and the said Thomas Powney did also Admit that During the Transaction he the said Thomas Powney did Consider and look upon the said Shamulla Dofs as the Most eligible Security upon the faith and Credit of whose Security alone he the said Thomas Powney was induced to lend the Sum Required and the said Thomas Powney did also Admit

that

that upon the said Shamulla Dofs Agreeing to Sign the Bond in Question he the said Thomas Powney did draw out Bills of Exchange for the Sum herein before Specified in the Name of Shamulla Dofs only which he the said Thomas Powney delivered to the said Shamulla Dofs upon his executing the Bond in Question and the said Thomas Powney did also Admit that the several Sums paid in part of the said Bond and Credited on the Account Current Annexed to the said Thomas Powney's amended Bill of Complaint were all paid by the said Shamulla Dofs Alone Notwithstanding all which acknowledgments on the part of the said Thomas Powney he the said Thomas Powney Persisted in his demand upon the said Ballamoodu Chitty Avowing that though he the said Thomas Powney Admitted that the said Ballamoodu Chitty had never Received any Part of the Money lent from which the said Ballamoodu Chitty was in fact Precluded by the Act and Deed of the said Thomas Powney in drawing the said Bills of Exchange in the name of the said Shamulla Dofs only Yet as the said Ballamoodu Chitty had executed the said Bond he was equally bound and liable to the payment thereof with those who had Really Received the Consideration which Doctrine however true in Point of Strict rigid Law Your Petitioners humbly Represent is Certainly Repugnant to every Principle of Reason Equity and Justice and the more Pointedly so when it is Considered that the said Thomas Powney who so rigidly and unfeelingly endeavours to inforce the Cruel Letter of the Law against the said Ballamoodu Chitty, was the very Persons who by his intreaties Persuasions and Solemn Promises Prevailed upon the said Ballamoodu Chitty to do that Act which has Subjected him the said Ballamoodu Chitty to the Present vexatious cruel rigorous and litigious

Prosecution

Prosecution but which he the said Ballamoodu Chitty never would have
experienced had not the said Thomas Powney, by breaking thro the most
Solemn engagements and violating and disregarding Promises which
every honest man must deem Sacred and inviolable, Adopted a line of
Conduct which ought to exclude from either the Countenance or support of
a Court of Justice Your Petitioners further Represent unto your Most
Excellent Majesty in Council that the said Ballamoodu Chitty did
file a Rejoinder to the Replication of the said Thomas Powney refuting the
Arguments of the said Thomas Powney in Support of his unjust demand upon
the said Ballamoodu Chitty and Substantiating and Supporting the Contents
of his the said Ballamoodu Chitty's said Answer upon which said —
Proceedings the full and Ample benefit of which and other Proceedings in
this Cause is prayed by your Petitioners Issue was Joined and Rules prafed
for the Examination of Witnesses when the said Thomas Powney Contended
himself with barely Proving the Execution of the Bond in Question and left
all the Charges made by the said Ballamoodu Chitty Against him —
the said Thomas Powney for grossly imposing upon him the said Balla
Moodu Chitty and endeavouring to make him the said Ballamoodu
Chitty the Dupe of and Victim to his the said Thomas Powney's Artifices
by Promising what he the said Thomas Powney never intended to perform
and setting at nought and disregarding Engagements which every Just man
would Deem and observe as valid and binding Totally uncontradicted and
unrefuted but Your Petitioners humbly Represent unto Your Most —
Excellent Majesty in Council that the said Ballamoodu Chitty Conscious
of the uprightness of his Intentions the Integrity of his Conduct and —
relying on the Equity of his Cause could not be Contended with such —

Negative

Negative Kind of Proof, but like an honest Man Challenged investigation
and Discussion Confident that the more his Cause was Sifted and —
examined the more fair open and Candid it would Appear wherefore he,
the said Ballamoodu Chitty Produced a great Variety of Witnesses all of
whom were Acquainted with the Nature of the Transaction relative to the
Bond in Question whose Pointed clear unequivocal and Concurring —
Testimony Proved beyond a possibility of Doubt that the said Balla —
moodu Chitty had acted throughout the whole of the Transaction relative
to the Bond in Question merely as a broker having no other Interest or —
Concern therein than what his Commission as a Broker gave him, —
that the said Shamulla Dossi had Received the whole of the Money lent
which was appropriated to his the said Shamulla Dossi's use independent
of any Controul from the said Ballamoodu Chitty, that the said —
Thomas Powney had in Order to induce the said Ballamoodu Chitty
to Sign the Bond in Question which he the said Ballamoodu Chitty at
first Peremptorily refused to do promised and ingaged in the most Solemn
Serious, and Sacred Manner Never to make any demand on the said —
Ballamoodu Chitty on account of the said Bond but would upon all
Occasions Resort to the said Shamulla Dossi who had Received the whole of the
Consideration for the same, that on Consequence of the said Promises and
ingagements of the said Thomas Powney and from no other motive —
whatever the said Ballamoodu Chitty had been induced to Sign the Bond
in Question Your Petitioners further Represent unto Your Most —
Excellent Majesty in Council that Publication having Passed in this
Cause and being Set Down for hearing, the same came on to be heard —
before the said Honble the Mayor's Court at Madras patnam upon the

fifth

Fifth Day of the Month of June, which was in the Year of our Lord One
thousand Seven hundred and Eighty One, where the said Honble the
Mayors Court were Pleased to Order and Decree, and did Accordingly order
and Decree that the said Ballamoodu Chitty should pay unto the said
Thomas Powney the full and just Sum of Two thousand Eight hundred
and thirty two Pagodas Six fanams and fifty Six Cash Current Money of
Madras together with the interest Due also full Costs of Suit, by which said
Order Sentence and Decree of the said Honble the Mayors Court at
Madraspatnam the said Ballamoodu Chitty Conceived himself greatly
Aggrieved and did therefore within the time Prescribed by his Majestys
Royal Charter Appeal therefrom and lodge his Petition and Appeal
unto the Honble the President and Council of Fort Saint George and its
Dependencies as the Court of Appeals at Madraspatnam established by
his Majestys Royal Charter in which said Petition and Appeal he
the said Ballamoodu Chitty did fairly openly and Candidly state the
foregoing Matters and Circumstances and prayed that the said Order
Sentence and Decree of the said Honble the Mayors Court at Madraspatnam
of the fifth Day of the Month of June which was in the Year of Our Lord
One thousand Seven hundred and Eighty One, so far as it regarded him
the said Ballamoodu Chitty Might be Reversed and set aside and
that the said Thomas Powney might Pay all Costs Your Petitioners
further Represent unto Your Most Excellent Majesty in Council that
the said Thomas Powney did file in said Honble the Court of Appeals
an Answer to the said Petition and Appeal of the said Ballamoodu
Chitty After which the said Thomas Powney and the said Ballamoodu
Chitty Departed this Life upon which Bills of Revivor were filed and

the

the said Suit being Revived the said Petition and Answer came on to be
heard and Determined upon before the said Honble the President and
Council of Fort Saint George and its Dependencies forming the Court of
Appeals at Madraspatnam on the Twenty Second Day of the Month of
May in this Present Year of our Lord One thousand Seven hundred and
Eighty three at which said Hearing Your Petitioners Solicitor did represent
to the said Court of Appeals the Real State of the Transactions Relative
to the Bond in Question herein before stated which your Petitioners
said Solicitor endeavoured to impress upon the minds of the said Court
and to Convince them that Your Petitioners Case was in an eminent
Degree entitled to their favourable Interposition as a Court of Equity whose
Particular Province it was to Alleviate and Moderate the severe Decrees
Grounded upon a Strict literal Construction of Law whose equitable
Relief Could not be Applied to a more fit and Proper Object than to
the Case of Your Petitioners further Represent unto Your Most
Excellent Majesty in Council that whether imposed by wrong Ideas from
Reading the said Thomas Powneys Answer or from Error in Judgement
and want of Knowledge of the Practice of Courts of Equity under the like
Cases the said Honble the Court of Appeals upon hearing the said Ballamoodu
Chittys Petition and Appeal and the Said Thomas Powneys Answer
thereunto with the Pleadings Made use of by the Solicitors on both Sides were
Pleased to Order and Decree and did Accordingly Order and Decree
that the Sentence Order and Decree of the said Honble the Mayors Court
at Madraspatnam of the fifth Day of the Month of June which
was in the Year of Our Lord One thousand Seven hundred and Eighty
One should Stand Affirmed with Costs in both Courts to be Paid by

Jous

Your Petitioners as will fully Appear by an Attested Copy of the said Order Sentence and Decree of the said Honble Court of Appeals at Madraspatnam of the said Twenty Second Day of May in the Year of our Lord One thousand Seven hundred and Eighty three hereunto Annexed for the inspection of Your Most Excellent Majesty in Council and prayed by Your Petitioners to be Accepted and taken as part and Parcel of this Your Petitioners Petition and Appeal Your Petitioners further Represent unto Your Most Excellent Majesty in Council that your Petitioners Conceives themselves to be much injured and Aggrieved by the said Order Sentence and Decree of the said Honble the Court of Appeals of the said Twenty Second Day of May in the Year of Our Lord One thousand Seven hundred and Eighty three and therefore do Appeal therefrom unto the Judgement and Decision of Your Most Excellent Majesty in Counc.l for the following Among other Reasons.

Because the said Thomas Powney having filed his Original Bill of Complaint Against the said Shamulla Dofs Ballamoodu Chitty and Sana Senvasa Chitty for the Recovery of the Sum of Four thousand One hundred and fifty four Pagodas Sixteen fanams and forty Cash Current Money of Madras by him the said Thomas Powney in his said Bill of Complaint charged to be Jointly and Severally due and Owing unto him the said Thomas Powney from the said Shamulla Dofs Ballamoodu Chitty and Sana Senvasa Chitty and praying that they the said Shamulla Dofs Ballamoodu Chitty and Sana Senvasa Chitty might be Jointly and Severally Decreed to pay the same and the said Thomas Powney having Obtained Judgement upon his said Bill of Complaint and Recieved the full Amount of such Judgmt. he

He the said Thomas Powney was by such Satisfying of such Judgement for ever barred and Precluded by law from bringing any other Action or Suit on Account thereof and he the said Thomas Powneys Amended Bill of Complaint ought to have been Dismissed upon the Answer of the said Ballamoodu Chitty who Specially Setforth and Pleaded the said Judgement therein Because it clearly Appears from the Conduct of the said Thomas Powney the whole of the Transaction relative to the Loan for which the Bond in Question was Given that the said Thomas Powney had not the Most Distant Idea of the least Responsibility resting upon the said Ballamoodu Chitty and the said Sana Senevasa Chitty on Account of the Bond in Question at the time of the Execution thereof and therefore ought not by a Decree of any Court at this distant Period to be put into a better Situation in Point of Security than what he the said Thomas Powney had Contracted for at the time of making the Loan.

Because the said Thomas Powney at the time of Concluding the Loan and Receiving the Bonds in Question Drew the Bills of Exchange which were given in Consideration of the Bond in Question in the Name of and Payable to the Order of the said Shamulla Dofs only thereby by his the said Thomas Powneys own Act and Deed excluding them the said Ballamoodu Chitty and the said Sana Senvasa Chitty from participating in the Proceeds thereof and Consequently effectually exonerating them from every Species of Responsibility Relative thereto it being Repugnant to Reason and Equity and Justice to make Ballamoodu Chitty and Sana Senvasa Chitty Answerable for what Shamulla Dofs only had Recieved.

Because the said Thomas Powney did, by his Repeated promises of Never

never Making any Demand whatever on the said Ballamoodu Chitty or the said Sana Senvasa Chitty on account of the Bond in Question Virtually Cancell the said Bond to all Intents and Purposes as far as it related to the said Ballamoodu Chitty & the said Sana Senvasa Chitty and thereby Created a matter of Equity properly Cognizable before Your Most Excellent Majesty in Council, whose decisions being always Consonant to strict Justice give your Petitioners Reason to hope that they shall be Relieved from an Obligation which though perhaps binding in the strict Construction of Law was not Deemed Obligatory by any of the Contracting Parties at the time of Executing the same.

For all which Reasons and for others which may be offered at the hearing by your Petitioners Council or Solicitor Your Petitioners most humbly Pray that the Order Sentence and Decree of the Honble the Court of Appeals at Madraspatnam of the Twenty Second day of May in the Year of Our Lord One thousand Seven hundred and Eighty three, also the Order Sentence and Decree of the Honble the Mayors Court at Madraspatnam of the fifth Day of June in the Year of our Lord One thousand Seven hundred and Eighty One may be Reversed and set a side with full Costs to be paid by the said Thomas Powney and that the said Thomas Powney's said Amended Bill of Complaint may stand Dismissed Lastly Your Petitioners most humbly pray that Your Most Excellent Majesty in Council will be Graciously Pleased to Afford them such General and Particular Relief in all and Singular the Premises as shall Appear Agreable to Equity and Good Conscience And Your Petitioners as in Duty Bound will Ever Pray.

Thomas Jones
Solicitor for Appellant.

Court of Appeals at Madraspatnam } Thursday the 22d Day of May Anno Domini 1783

Between Ballamoodu Chitty Appellant and Thomas Powney 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 5th Day of June 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 Decree of the Honble the Mayors Court dated the 5th Day of June anno Domini 1781 Do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs in this Court.

Per Cur

Charles Freman
Clk

(A True Copy)
Thomas Jones
Solicitor for Appellant.

Court of Appeals
at Madraspatnam } ss Thursday the 22d. May Anno Domini 1783

John De Fries John Balfour and Robert Ewing of Fort Saint George Merchants Agents or Attornies for the Society of Madras Insurence Complainant and George Smith of the same Place Defendant.

An Appeal in the above Cause having been Lodged from that part of the Decree of the Honble the Mayors Court in the said Cause under date the 20th day of October Anno Domini 1781 wherein the Exceptions of the Complainants to the Interrogatories to and Deposition of Alexander De Larche were Adjudged to be good and Sufficient — Resolved that the Honble the Mayors Court be informed thereof that they may Order the said Interrogatories to and Deposition of Alexander De Larche to be laid before this Court they not being sent up with the other Exhibits in the said Cause.

Hur
Chs. Freeman Cler

To the Right Honble George Lord Macartney K.B.
President and Governor &c. Council of Fort Saint George

In the Court of Appeals

Between Felix Victor Amalric by his Attorney George Isaac Hoissard —
Vers
John de Fries John Balfour and Robert Ewing.

The Humble Petition and Appeal of the said Felix Victor Amalric.

Sheweth,

That Your Petitioners did some time on about the Twenty Seventh day of October which was in the Year of our Lord One thousand Seven hundred and Seventy Nine Exhibit in the Honble the Mayors Court Filed in my office the 28th Dec. 1781. Charles Freeman Clk a Bill of Complaint against John De Fries John Balfour and Robt Ewing for the Sum of Nine thousand Nine hundred and One Pagodas and Twelve fanams as the same did more fully and at Large Appear by an Account Current unto the said Bill annexed Marked A. and whereto your Petitioner did Refer praying that the Same Might be Admitted as part of his said Bill of Complaint.

And your Petitioners did further Shew that by the Means and agency of Francis Jourdan Esqr. he did on or about the fifth day of October which was in the Year of Our Lord One thousand Seven hundred and Seventy Six Make an Insurance at the office of the Society of Madras Insurers of the Sum of Eight Thousand Pags

in

in the Name of a certain Ship called the Victoriana from Madras to Pegue at and from thence to Madras upon the Body tackle &c of the said Ship as would more particularly and at Large Appear by Copy of a Policy of Insurance unto his said Bill annexed which said Policy your Petitioner did Set forth was so under wrote and Signed by Andrew Majendie John Turing and Belling and de Fries of Madras Merchants for and on behalf and Account of the said Society and your Petitioner Sheweth that in Consideration of the Sundry Undertakings and Asswrances of the said Andrew Majendie John Turing and Belling De Fries on behalf of the said Society of Insurers your Petitioner did Pay unto the said Andrew Majendie John Turing and Belling De Fries the Sum of Four hundred and Eighty Pagodas and twenty One fanams, being Six per Cent upon the aforesaid Sum of Eight thousand Pagodas as by them aforesaid insured and also for charges of the said Policy and your Petitioner did further Shew that the said Vessell did Accordingly Proceed on her Voyage to Pegue, but meeting with Sundry Accidents thro' Wind and Weather and otherwise arising the said Ship was Notwithstanding all the Efforts Skill and Endeavours of the Captain Officers Crew and others called into the Assistance of the said Ship lost in the River of Pegue, as would more particularly and at Large Appear by Sundry Declarations of the Various Stages of Distress the said Ship was in until her utter Loss in Pegue River contained in the Exhibits unto the said Bill annexed in the following Words and figures.

I Subscribe and Testify the Same

Du Puy delafaye Captain of the Ship the Victoriana did apply to

to and desire the Senior Reives in the Capacity of Pilot of this River to go on Board to Conduct his Ship in the Gody but the said Pilot Answered him in Presence of Witnesses that he could not go on board but that he would send one Named D'Auvert the Second Pilot to go in his Place to Conduct the Ship in the Gody but this Last mentioned person was intoxicated and incapable of Doing duty I went on Board myself as being Acquainted with the entrance of my Gody that the said Ship was to go in there after having placed Marks in the Pass we hauled the Ship as far as the Month but the Ship making much water and Sinking we were not able to Succeed which we declare to be true to Serve where the Same shall be Required Rangoon the 26th Day of September in the Year One thousand Seven hundred and Seventy Six,

Moncourtes Aviet

True translation from the Original in the French Language by

Henry Du Puy

Inter Preter

Translation of the State of the Ships off the Nicobars declared by the Ca[pt]
Chief Officer Supr Cargoes and Passengers

We the Underwritten Capitain Chief Officers Supercargoes and
Passengers of the Ships the Victoriena Certify that on Friday the 23d of
August in this Present Year being in the latitude 12 Degrees North and
79. Degrees 40. Minutes longitude at five Clock in the afternoon the
Vessell Making much Water the Carpenter by my Order went Down in the
hold to Examine and hear from whence the Water came he discovered on the
Larboard side be hind the main mast a Seam and some Wormholes through
which the water entered very fast we immediately lay the Ship to on the
larboard side with several Sails on the Mast to make her encline to the
Starboard afterwards the Master Calker went over board suspended by
Ropes he found a Seam under the Water without Oakum from three to
four feet long which he calked and Nailed upon it a band of lead as well
as Possible, he Saw at the Role of the Ships under the Surface of the water
several Seams and Places which were defective which might increase the
leak but we were not able to Remedy it being too much under water the
Next day I assembled all the Officers Allso Saw Supr Cargo and the
most Commanders who were passengers to consult with them Respecting
our Present Situation they all advised me to abandon the design of
Going to the Nicobars because the Season was already too far advanced
and we might miss it and Observed that from the time of our departure
from Madras we had always had a heavy Sea from the Southward
which had greatly fatigued the Vessell by frequent and Violent Rollings
and Pitchings which had Always increased the leak from the Seam

an hour to thirty and that being Obliged to keep the Crew day and
night at the Pumps was much fatigued and if the Water should
encrease any more it would be dangerous for us to continue our
Voyage to the Nicobars and that it was most Prudent to take the
Opportunity of the fair Weather to get to Pegue as soon as possible to
carreen the Ship which it Stood in great need of upon this
deliberation we Steered for Pegue which we Declare and attest to
be true to be of use where it should be Required on Board the
Ships Victoriana the 24th of September 1776

Du Puy delafaye Labeyrie
Dufaye dela Brancher

Declaration of the Necessity of Running the Ships on Shore

We the Undersigned Passengers Super Cargoes and Officers of
the Ships Victoriena certify that on Sunday the 15th of September in
this Present Year being anchored in the River of Rangoon employed
in unloading the Vessell having remained two hours without Pumping
it was found all on Sudden there were Six feet of Water in the hold
which extremly alarmed the Crew we encouraged them to throw out
the water with buckets as well as with the two Pumps they
labored at it for upwards of four hours without being able to Clear
them the Capitain was then Obliged to go on Shore to ask Assistance

and

and their came on board about 30, or 40 Bramans who worked the whole Afternoon with the Crew to Clear the Vessell Seing ourselves thus in evident Danger of Sinking in the middle of the River and likely to be Drowned we then sett about heaving anchor and to Turn the Vessell upon the Mud to unballast her and discharge her intirely and wait the high tide to put her in a Gody in Order to which we Supported the Vessell with three Top Masts and a Yard on the Starboard side, which was to the Sea and afterwards put on the Larboard side considerable weights with the Boat full of Water upon the blocks to make the Vessell incline towards the Shore but in Spite of all our Precautions the shore being steep sent back the Ship on the Starboard side the Masts were buried in the Mud the Yard broke and the tide falling the Ships fill to the Starboard Gunnel in with a Considerable Shock then the Vessell worked very hard all the Scarfs gave way many Planks Started and the tide Rising the Ships filled with Water We were two Days in this Cruel Situation, being obliged every tide to remove the planks Near the Keel to let the water Run off, afterwards we fixed two Anchors on shore with Cables and Double blocks upon each mast and by force of Sail we almost righted the Ships and endeavoured to our utmost to get every thing on shore even the Top Mast and Mizen Mast, and we should have taken away the Lower Masts if they had not been Necessary to Support the Ships all the Scarfs and blocks which had given way were refitted as well as it was Possible to work in soft Mud in which the ships sunk more than three feet in this Posture we expected the coming in of the tide to endeavour to save the Ships and to put her if possible in a Gody which we Declare and Attest to be true to Serve as it may be Required at Rangoon the 16th day of September 1776.

Richd Tyson — Dupuy dela faye
Rose Bolts — La Beyree
Chopon — Dufaye dela branchore
N Boutier — A. Andouard fils
— Moncourtois Avicts

Declaration of the utter Loss of the Ship

We the under written Captain Officers and English french Moor and Armenian Merchants and Ships Builders Certify that on Tuesday the 25th of September in this present Year the Ship called the Victorieux having Sunk in the Mud Sustained and Supported by three Top Masts on the Star board with double Purchases on shore to each Mast the Vessell being Old and her bottom very thin the Poop and the Stern fell in and bent so considerably that the Deck the think Stuff and the Capstown gave way the Ship then made Water to that Degree that we could not clear her with the Pumps Seing ourselves thus necessitated to loose the Ship or to abandon her

her we made the last effort to put her in a Gody and save her if Possible in Order to which we asked the Assistance of the English French and Moor Captains who sent on board their Crews with their Officers together with more than 40 Burmahs which we had on board the Stay by the Pumps afterwards we got Ready and hauld upon the Ground tackling to bear out as soon as the Tide would Permit thus being athwart a Straight in which there was about Sixteen foot Water where we had fixed Marks in Order to enter the Gody of Mr. Moncourtis We carried one Tackle on shore and the other out to Swing the Ships round. our hausers caught hold of the Piles of Wood of which the bottom and mouth of the Gody are full which detained us some time and impeded our Work during this interval the water always increased in the Ships Sunk Down and took in a great Quantity of water and the Tide failing the Ships Touched on one Side of the Gody and the Gunnel on the Starboard side Sunk into the water then all the Scarfs Parted the Nails the planks broke the fore foot the Stern Seperated from the Keel as likewise the Stern Post the Ships weighed down all its Parts Seperated and Opened every where and fell in a profession not to be Recovered Notwithstanding we stood all Night in the mud with Captain Millet and his Crew and that of Mr. Andouard and Chapon who stuve with us to Stop and place plugs and Oakum about the Ships with a View to put her Still a float but all

all our trouble and Paine were useless the tide Rising the Water came over and it being impossible to Raise the Ships again was adjudged lost Particularly on a Country where there are neither Pantons nor Vessells Proper to keep up and right a Ship We endeavoured Generally to save every thing for the Account and Risk of the concerned which we Declare and Attest to be true to Serve where it may be Required at Rangoon the 26th September 1776.

Witnesses { Richd. Tyson / Ross Bolts

Dupuy delafaye
N Boutter
Moncourtis Avert
L. Bernonts
Chapon
A. Andouard fils

Your Petitioner did further shew that since the loss of the said Ships in the manner before mentioned the said Society of Insurers had become dissolved and seperated and had in Order to collect in their outstanding Concerns Nominated and Appointed John De Fries John Balfour and Robert Ewing as their Agents who had accepted of the said Nomination and had Accordingly undertaken to collect and Demand and Recive Moneys and commence suits for Moneys and other things the Property Appertaining and belonging

belonging to the said Society in their former aggregate Capacity and your Petitioner did further charge that Since the said loss had been notified to them they the said John de Fries John Balfour and Robert Ewing had paid away very considerable Sums, for— exceding your Petitioners demand by them received on account of the said Society, and which had been by them paid away and Devided among the different Members of the said Society and that they were at that time imbursed with very considerable Sums equal if not exceding his your Petitioners demand wherefore— your Petitioner did charge that they were in their then Capacities equally liable to Appear to and Answer your Petitioners Bill of Complaint as they the said John Ewing Andrew Mayndew Belling and De Fries or the Members of the said Society— collectively were before the Nomination of and consequent acceptance of the same by the said John de Fries John Balfour and Robert Ewing

And your Petitioner did further Shew that he had made frequent demands and Applications for payment of the loss he had as aforesaid sustained from the said Society and also from the said John De Fries John Balfour and Robert Ewing— Particularly Your Petitioner did therefore pray that they the said John De Fries John Balfour and Robert Ewing might accordingly Answer to the said Bill and that they might be Summoned thereto &c.ª

Unto which said Bill of Complaint the said John de Fries John Balfour and Robert Ewing did Accordingly

Appear

Appear and did on the thirteenth day of December which was in the Year of our Lord One thousand Seven hundred and Seventy Nine file an Answer thereto and did therein Acknowledge that they together with Sundry other Persons were engaged under certain Articles of Agreement for the Purposes of underWriting such Policys of— Insurance as might offer upon Ships Snows and other Vessells— trading to and from the Several Ports and places in the East Indies and to other Ports and places in the different Parts of the World and that they were Authorized to act as a Committee and— Agents for the Conducting and Managing of all and every the concerns Relative to the said Orginal Compact and that being so Authorized they were empowered not only on their own Accounts as Parties under the said Agreement but also on Account of all and every other the Persons concerned under the Form of the society of Madras Insurers to Appear and Answer make to the above said of Complaint and therefore they did Answer and say that they by no means did Admit that the Society of Madras Insurers did Stand indebted unto Your Petitioner in the said Sum of— Nine thousand Nine hundred and One Pagodas and twelve fanams nor in any other Sum or Sums of Money Notwithstanding they the said Defendants did Admit of the Policy of Insurance According to the day and Date and for the Sum therein— Specified and Set forth and that the same was upon the Hull and tackle of the Ship as the same was therein Specified and mentioned &c.ª Yet Nevertheless the said Defendants say they are

not

not bound thereby to make Good to your Petitioners Loss or Damage Sustained by the Loss of the said Ships which your Petitioner with humble Submission conceive is a contradiction to the Nature of a Policy of Insurance in General and to the one in Question in Particular especially as the Defendants Do Admit that the Premium upon the said Policy was duely and Regularly paid by the means of the said Frances Jourdan in your Petitioners Bill named the said Defendants Pretending that the said ship was not in the Condition as described in the Policy but on the contrary that the ship was old and crazy and weak in very Part and Leaky and that the worms had occasioned sundry Leaks in parts dangerous to the Ship when at Sea which Matters the Defendants have misconstrued from the declarations laid before them by Your Petitioner or those Persons on his behalf and of which the Defendants Say they were uninformed the Defendants Admitting at the same time that the Ships had laid at an Anchor in the Road of Madras a Considerable time by which your Petitioner with Submission would infer that the Defendants or any of the Numerous Members of the Society of Madras Insurers had a Considerable time to be informed and Know the State of Repair she was in And that by so large an Opportunity given for that Purpose a Strong Evidence is produced of the fairness of Your Petitioners intentions as well as of the intentions of every other Party concerned in the said Ship and in the Insurance thereof and therefore it is inconsistent for the

the Defendants in their Answer to say that the Committee who Sett their Names to the said Policy did Suppose that the Ship was in good Condition by the Words of the Policy wherein it is said that Frances Jourdan did cause to be insured at and from Pegue and back the Good Ships or Vessell called the Victoriana which the Defendants say was not the Case for that she was in bad Condition and unfit to go the Voyage insured for that she wanted Repair &c. your Petitioner Prays to Observe that the same are General Charges which ought to have been Proved and therefore cannot be Admitted the Defendants Again Answer very evasively by alledging that if the true State of the Ship had been known at the time of her departure or whilst the Ship lay in the Road of Madras they the then Committee would have Required such a Premium as was adequate to the Risk or have declined under writing &c. the Defendants after the aforesaid Vague Plea of what they are pleased to term a concealment of the true State of the Ship Do make use of another Plea quite opposite in its Nature and which is a Palpable contradiction of the former, as it is not likely that the Captain would have attempted to extend and lengthen his Voyage to Pegue if he had been of Opinion that the Ship was in so bad a Situation as is Represented by the Defendants and in case the same had been a deliberation it is a Demonstrable Proof of his Opinion to the Contrary and for the aforesaid very Opposite Pleas so irregularly Made use of and so little Supported the Defendants did pray that the Policy of Insurance in Question might be delivered

Ufs

up to be cancelled upon their paying back the Premium and that your Petitioners Bill might be Dismissed with Costs the Defendants did also annex a letter from the said Francis Jourdan under the date of the twelfth day of January in the Year of our Lord One thousand Seven hundred and Seventy Seven giving Notice to Mr. Charles Bromley in the Capacity of Clark to the said Society of Insurers of the loss of the said Ship also a letter from the Captain of the Victoriana giving him the said Francis Jourdan an account of her loss under the Date of the twelfth day of December One thousand Seven hundred and Seventy Six and the Defendants do also annex unto their said Answer Copy of an Extract from the Minutes of a Committee of the said Society refusing to make Good the loss of the said Ship under the date of the fifth day of April One thousand Seven hundred and Seventy Seven the said Defendants do further annex unto their said Answer Copy of a Request from your Pet.r which Appears to be so badly translated as to be totally unintelligible and further more an Account given by a Captain Reid of the Loss of the Victoriana and lastly another Extract from the Minutes of the said Committee of Insurers under the Date of the twelfth Day of November One thousand Seven hundred and Seventy Seven Your Petitioner Sheweth that he did Reply generally unto the said Answer of the Defendants in order to put them the said Defendants to a proof of the Sundry matters and allegations by them in their said Answer set forth and the Defendants did undertake to do the same by Rejoining generally unto

unto the said Replication that thereupon Issue did Join and Rules did pass to examine Witnesses that the Defendants well Knowing that Your Petitioner could prove the Sundry Matters and things alledged mentioned and set forth in the Sundry Declarations and Protest Relating to the Accidents the said Ship underwent untill her final loss did not put your Petitioner upon Proof thereof but did Admit all and every part thereof as true and Proved at the Passing of Publication in the above Cause and the Defendants did only examine One Witness in Support of the many and Various Matters by them in their Answer set forth that the said Cause was Set down to be heard and coming on to be heard on Saturday the fifteenth day of this Present month of December the Honble the Mayors Court, did Order and Decree that your Petitioners Bill should Stand Dismissed with Costs and that your Petitioner should deliver up unto the Defendants the Policy of Insurance in Question upon their the said Defendants paying back unto your Petitioner the Sum of Four hundred and Eighty Pagodas being the premium paid thereupon by which said Order and Decree of the said Honble Court Your Petitioner doth find himself Aggrieved and doth therefore Appeal therefrom and for Cause of Appeal unto this Honble Court Sheweth that by the Nature and Tenor of the said Policy of Insurance and the Sundry Covenants entered into by the said Insurers in Consideration of the said Premium and Sum of Money paid them by your Petitioner the

the Defendants ought to have made good the Loss your Petitioner hath
Sustained he your Petitioner having given them the said Defend.ts
due Credit for the Amount the Salvage upon the said Loss by
him your Petitioner saved and recovered that the Sundry
matters Set forth in Objection to the payment of the said loss
by the Defendants are by no means conclusive but are Vague
suppositicious and unconnected that in Order to warrant an
Avoidance of the said Policy some Suppression of the truth or false
allegation on behalf of your Petitioner or of those by whose
means the said Assurance was effected should have been proved
and clearly stated not upon Surmise arguments or Opinion
but upon some certain fact of fraud collusion or Covin on
the Parties that the Nature of fraud but particularly of the
stamp cast by the Defendants upon conduct of your Petitioner
and other concerned in this Insurance is of that turpitude
Odium that is never to be conceived much less admitted in
a Court of Judicature without the Strongest and most
unexceptionable Proof that your Petitioner is advised and
with humble Submission Suggest that Nothing but an
established intentional fact to defraud can release the
Insurer from a performance with the Covenants he so
Solemnly binds himself in that the Tenor of a Policy of Insurance
is of that latitude that every accident every event whether
Proceeding from the heavens the Earth or Seas are comprehended
in the Risk ingaged to be born by the Insurers that among
the

the Number of various Cases of trials upon Policies of Assurance
a fraud was never Admitted but where proved and then only
upon such strong and insurmountable Evidence as left
nothing to be doubted of the Real dishonest intention of the
Assured that no certain charge of intention much less of
Commission has been proved upon the parties of any design
to make themselves gainers by this Insurance further than
to Cover themselves from those Accidents and Misfortunes which
are incident to the hazardous undertaking of a Voyage by Sea
that it Appears by the Sundry declarations exhibited by your
Petitioner that it was not his intention to give the loss of the
Ship Victoriana any other Appearance than is warranted
by the Real State of the Case that the Accident of the Ship
Meeting with a leak at Sea is Naturally within those
intended and covenanted to be born by the Insurer and
may Proceed from such a Variety of unforeseen Causes, that
it should not be looked for as more incidental to an Old than a New
Ship, The Circumstances in favor of the said Ship being esteemed
by the Captain Officers and passengers in good condition are much
more Pregnant with Probability than any to the Contrary
Suggested by the Defendants as it is not Natural to Suppose if
they had the most distant Idea of her being unfit for Sea, that
they would have embarked on Board of her to go so long a
Voyage as to Pegue, that the shortness of time after the Ship had
left Madras, is no Proof of the leak Proceeding from any
known Defect if being well known that a heavy Sea with a

Strong

Strong Current will Occasion a Vessell to fatigue and work to that Degree so as to Produce a leak in a Ship when there was none before, or to increase a leak which was not before dangerous which Appears to have been the Case with the Victoriana and your Petitioner prays to Observe that the said Ships having been last in the River of Rangoon, so he was at that time at the risk of the Insurers her Insurance continuing from Madras to Pegue at and from thence to Madras, that by the Declaration on the Sixteenth of September it Appears that on the fifteenth of September One thousand Seven hundred and Seventy Six that being on the River of Rangoon employed in unlading the Cargo, having Remained two hours without Pumping a Sudden leak broke out which ultimately was the Occasion of her loss, and that every possible means were used which human Skill could exert to put her in as good a Situation of Safety as was possible and this Declaration is Witnessed by Richard Tyson and Ross Bolts the last of whom is the Defendants only Evidence The Declaration of her to all loss Exhibits the most Ardent efforts which could be exerted or Devised in the extreme Danger the Vessell was in as well as every one on board her to do their utmost even to the last for the benefit of the Insurers by saving what they could of the Wreck which declaration is further authenticated by the Testimony of the said Ross Bolts The Declaration of Moncourtes Averitt likewise Shews that the Ships had not that Assistance which the Commander was desirous of Procuring her having first Applied to one Reeves in the

the Capacity of Pilot to conduct her into the Dock or Gody who refused Going on board but referred him to one Dauxert who was so intoxicated that he could not go on board that the said Moncourtes Averitt being Acquainted with the entrance of his Own Gody or Dock undertook to conduct the Ships in himself but was not able to Succeed owing to the Quantity of Water the Ship made All which Matters being in the Course of the Proceedings Admitted by having been used of as part of the Arguments of the Defendants Own Answer and further at the passing of Publication your Petitioner further prays to contrast the same with the Evidence produced by them the said Defendants Captain Raits Declaration even if taken in most exaggerate construction in favor of the Defendants Amounts to mere Matter of Opinion upon the Propriety of what was done or not done and altho' he says he was Present Yet is so inattentive as to not to remember whether any thing was put to Support her at the same time that it Appears by the Declarations attested by a Crowd of Witnesses that every Practicable endeavour was exerted to Save the Ships and his Declaration of their not taking a Pilot on board is no further true than that they could not get one, but they made use of Moncourtes Averitt in that extremity who Appears altho' not acting in the Qualified Station of a Pilot to have had every Qualified Knowledge for it the only Remaining evidence is that of Captain Bolts which is Chiefly Matter of Opinion and as to those Circumstances of fact to which he Speaks to Your Petitioner is humbly of Opinion that as far as they deviate from the Circumstances contained

Contained in the Declarations by him produced they may very
Justly and Regularly be Opposed more especially as the said
Ross Bolts is Evidence in the said Declarations and Consequently
well informed of the Contents thereof at the time of his being a
Witness thereto for if he had Known or had thought they contained
any matter which was not true / and he could not Suppose
they would have made any Declarations against themselves / he
most certainly would not have Assisted them so far as by
Attesting the said Declarations by signing the Same or indeed
if Matters had been as he has Stated would he in any case
have had any interference therein Neatly as to the Objection
for not paying and making good the said loss To Wit the
Deviation by intending to go to the Nicobars, Your Petitioner
with humble Submission conceives the same to be no Cause of
Objection for many reasons even if the said Ship had actually
Deviated by going to the Nicobars which she did not because
it is Notorious that a Ship / at the time of the Year the
Victoriana Sailed especially / bound from Madras to Pegue
always touches at the Nicobars for a Cargo of Coconuts and
again she was not lost at the Nicobars but in Rangoon River a
Port where the Insurers were bound to Answer every Risk and
make good any loss or Damage she might any way sustain
there but your Petitioner prays to observe that they had
scarcely entered upon the Voyage before the intention of going
to the Nicobars was abandoned and their going to Pegue
Directly was determined upon which greatly, upon Alter the
Case as much as the fact can in any Case Differs from the
mere

Mere intention of committing it and there being only an intention
(and which intention is only discovered by the honest declaration
of the Captain and Officers / your Petitioner conceives that he
should not be Charged as if the same had Really been effectually
compleated.

Your Petitioner therefore leaves the whole of the
aforesaid Matters to the Consideration of this Honble Court as
they Stand on either side Charged or Opposite and your Petr
Lastly prays to Observe to this Honble Court that in case this
Honble Court should find as he humbly hopes they will that
Your Petitioner and every Party interested in the Policy did
Policy did not mean or intend any thing further by Assuring
the said Ship from the Ordinary and extraordinary dangers
of the Elements and other Risks agreed to be borne by the Assurers
than to be covered and Secured therefrom the[y] they will Order
and Decree that the Decree of the Mayors Court be Reversed
with Costs humbly praying the Attention of the Honble Court
how far in Case no fraud Appears in their proceedings the said
Policy can be legally or equitably voided Your Petitioner with
Submission Presuming that no fraud can be surmized but
what ought to be Proved and the only Proof of the loss of the Ship
is that which Your Petitioner has produced in Support of his
Demand in doing which he has not Omitted concealed or
Suppressed any one Paper which could any way tend to
throw a light upon the Matter in question and to give the
Honble the Mayors Court all the illucidation and Satisfaction
of the Minutest transaction from the first embarkment on

the

the Voyage untill her utter loss which with Submission to this Honble Court exhibits to abander in the Parties so Opposite to a Subtility or Deceit as entirely to efface the most Distant conception of a Contrary Conduct your Petitioner humbly Relying upon the Justice of this Honble Court pray as they have already and also such further and other Relief in the Premises as to this Honble Court shall seem Meet

Henry Du Pury

Attorney for the Appellant

Mayors Court at Madraspatnam } Saturday the 15th day of Decr Anno Domini 1781

Present

Mr James Call Senior Alderman
William Webb Robert Hughes and
Hugh Maxwell Alderman

Mr Senior Alderman Call being interested goes off the Bench and Mr Alderman Webb takes the Chair

Between Felix Victor Amalric of Pondicherry Merchant by his Attorney George Isaac Hoefsand of Madras Merchant Complainant and John de Freis Forbes Balfour, and Robert Ewing of the same Place Merchants Defendants

This Cause Coming on to be heared and Debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with an Account Current and Five Exhibits annexed The Defendants Answer with Six Exhibits annexed The General Rejoinder, the Interrogatories and Depositions on the part of the Complainant Four Exhibits on the Part of the Complainant Five Exhibits on the part of the Defendant On Hearing the Pleadings Made Use of by the Attornies and on due Consideration Thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Complainants Bill do Stand Dismissed with Costs and It is further Ordered and Decreed that the Complainant Do deliver up to the Defendants the Policy of Insurance in Question to be Cancelled upon the Defendants paying back to the Complainant the Sum of Four Hundred and Eighty Pagodas / Pagodas 480 ...../ being the Amount of the Premium Received by the Defendants Pursuant to the Tender of the Defendants in their Answer

Per Cur

James Taylor

Regr

In the Court of Appeals

Between Felix Victor Amatrice by his Attorney George Isaac Hoffgard Appellant and John de Fries John Balfour and Robert Ewing Respondent

The Answer of John de Fries John Balfour and Robert Ewing Respondents to the Petition and Appeal of Felix Victor Amatrice by his Attorney George Isaac Hoffgard

The said Respondents not confessing or acknowledging all or any of the matters or things to be true as are and by the said Petition and Appeal are mentioned and Set forth for Answer thereunto Say that they Admit that the Appellant did on the day and Year in the said Appeal for that Purpose Set forth Exhibit his Bill of Complaint in the Honble the Mayors Court against the Respondents for the Sum of Nine thousand Nine hundred and One Pagodas Twelve fanams to which Bill of Complaint the said Appellant did annex an Account Current by him Stated the said Respondents further Admit that the Appellant did Set forth and allege that their his Demand arose upon and by Virtue of a Policy of Insurance Effected on the Ships Victoriana Dupuy Commander from Madras to Pegue and the said Respondents Do Admit that the said Policy was underwrote by Messrs John Ewing Andrew Majendie and Messrs Thomas Pilling and John De Fries as the then Committee of the Madras Society of Insurers and that the Copy of such Policy to the Bill of Complaint as to the Terms and Conditions was of the same Tenor and Date as the Original The said Respondents further Say that true it is the said Appellant hath in his said Bill of Complaint Set forth that this Ship did proceed on her Voyage to Pegue but when and at what Time or what was her Condition at the time of such Departure the Appellant in his said Bill of Complaint has for Reasons best Known to himself Omitted to Set forth the Bill of Complaint also Set forth that this Vessell did proceed on her Voyage but Meeting with Sundry Accidents through Wind weather &c thereunto arising occasioned her loss in the Straits of Pegue In Support of what Charge the said Appellant hath in his Bill of Complaint Annexed Sundry Exhibits being Declarations as Extended & have been Various Stages of their Pretended Distress The Respondents further say that for any thing they these Respondents know to the contrary Moncourtiers Arrest might make and give the Certificate the Translate of which is annexed to the Bill of Complaint but as this Person was no Pilot and much Interested no Credit could be given to the same the said Respondents further say they do Admit of the Translate of the Declaration as made by the Captain Super Cargoe and Officers &c of the Ship Victoriana and which is dated on board the said Ship the Twenty Fourth September One thousand Seven hundred and Seventy Six and the Respondents do further Admit of the Appellant annexing a Translate of the Declaration of the Captain &c of the said Ship and that the same may be a true Translate as

as made from the Original in the French Language dated the
Eighteenth September One Thousand Seven hundred and Seventy
Six and that the Several other Translates as annexed by the
Appellant to his Bill of Complaint may be true and the originals
thereof right for any thing these Respondents know to the Contrary
but as to the Merits thereof the said Respondents will hereafter
on this their Answer Speak more fully upon The said Respondents
further Admit that the Remainder of the Appellants Bill of
Complaint was to the Purport as is by him Set forth in his Petition
of Appeal To this Bill of Complaint the said Respondents did on
the Fourteenth Decembr in the Year of our Lord One Thousand Seven
hundred and Seventy Nine file an answer and did
said Answer Set forth that they together with Sundry Persons did
enter into and were engaged under certain Articles of Agreement for
the Purposes of Underwritting certain Policies of Insurance on
Sundry Vessells trading to at and from the Several Ports and
Places in the East Indies and to other Parts of the World and that
they the said Respondents were Appointed Agents for the manag
ing of the concerns relative to such Original Compact and they
were Enabled to Appear and make Answer to such the
Appellants Bill of Complaint and on such their Answer the
said Respondents denied to the be Indebted unto the Appellant
in the Sum of Nine Thousand Nine hundred and One Pag
and Twelve Fanams Three Respondents on their Answer did
Admit of the Policy of Insurance to the full Extent Set forth
by the Appellant in his Bill of Complaint but on such

Answer they the said Respondents denyed that they were bound to
make good any Part of the Appellants loss as such loss did not
under the Policy of Insurance in Question and which as the said
Respondents Observed was evident from the Appellants own
Shewing and Particularly from two exhibits annexed to his Bill
of Complaint The Respondents further on their said Answer did
Acknowledge the Receipt of the Premiums from Isaacus Sourdan
Esqr for the Risk of the said Society of Insurers were to Run and which
the Policy described and Particularly Expressed the said Policy
Warranting the said Ships in a Good Condition fitting and
Proper for the Voyage she was intended and under such Assurances
Respondents in their Answer said the Sum Commitee underwrote
and Subscribed their Names Whereas the Respondents did in
their said Answer Observe that this said Ship the Victorrana
not on that Condition as Expressed by the Pol on the contrar
for the Respondents did Say and Assert in their sa Answer that
this Ships was Old and Crazy Weake in very par and Leaky the
Worms having Occasioned Sundry Leaks in parts Dangerous to the
Ships when at Sea which as the said Respondents Shewed in their
Answer was Evident from the Declarations of the Parties concerned
in the Same all of which the Respondents did Say and positively
Assert were unknown to the Persons who had underwrote the said
Policy of Insurance the Appellant and his Agents being totally
Silent as to the Condition of the Ships the said Respondents
further in Answer do Say that the Commettee who had Set their
Names to the said Policy did Suppose that the said Ships was
in a good Condition as Warranted by the Policy which afterwards

Proved to the Contrary for she was unfit and in a bad Condition to go the Voyage as Appeared by the Declarations of the Appellants own Shewing She as the Respondents did observe was fitter for a Dock — a Voyage the Respondents further on their Answer did say that Lastly the Appellant or his Agents at the time the Policy was Effected Declared or made known the real State and Condition of the said Ships Whilst She lay at an Anchor in the Road of Madras they the then Committee would have Regarded such a Premium as was Adiquate to the Risk or Underwriting, Whereas the then Committee was not in any Shape made Acquainted with the true State and Condition of the Ships other than from the warranty Expressed in the said Policy under which warranty the said Respondents did say the then Committee was induced to underwrite at a Low — Voluntary Premium given upon good Ships and their Vessells on the like Voyage Undertaken at a Proper Season of the Year the Respondents Observed in their Answer that the true State and Condition of the said Ships was Misrepresented at the time of the Effecting of the Policy which the Respondents did Observe was contrary to the Law of Merchants it being the business of the Assured and those concerned for him and them to make a Declaration of the true State and Condition of the said Vessell to the underwriter in order that both Parties might be Mutual in their Covenants to each other the measure thereof being the Premium and binds the underwriters to the Assured the Respondents having thus far in their Answer Assigned their reasons for Nonpayment they did proceed to Assign another reason being a Deviation from the Voyage Expressed in the Policy as the said Vessells Attempted to touch at the Nicobars by beating to windward as the Appellant Shewed in his Exhibits which these Respondents say in a great Measure together with her own Defects Occasioned her loss at Pegue The Respondents did in their Answer further Proceed to Set forth the facts on which they Grounded their Objection and which the Appellant never took the least Pains to Dispute or clear up That upon an Inspection of the Declaration Marked D Annexed to the said Bill of Complaint the Original thereof being a Declaration of the Ships State and Condition off the Nicobars the Twenty fourth September One Thousand Seven hundred and Seventy Six that the said Ships on the Twenty Third of August being the Day the Underwrote made much water through a Seam and some Worm Holes behind the main Mast in the Hold of the said Ships that Seam under water was found without any Door four foot long and that at every Roll the Ships Iron Commander says he Discovered under the Surface of the Water Several Seams and Places which were defective which increased the Leak and was too low under Water to Remedy it these Respondents Observed that this Part of the Declaration did decidedly determine the Matter in favor of these these Respondents and the Society of Madras Insurers for from Declarations it Appears that the make water and the increase of the Leaks arose from the Ships Defect as it was worm Eating and must be so before departure from Madras and could not have begun in her Passage to the Nicobars being a Term of Seven or Eight days at farthest that the Ships must have wanted Caulking at the Terme of her departure

Proved to the Court

go the Voyage as

and that there were the Defects in the said Ship which

at Rang[illegible] the Ship took from Madras to the Northward encreased

Not not

Sudders was

Water was

Upon

Ship

Pumped no extraordinary Accident happened

if undertaken would be very desperate the Petitioner took further