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Appeals against the Mayor's court
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Records of the Honourable the Court of Appeals at Madrasspatnam

(fo: 1st)

Anno

To the Honourable Thomas Saunders Esqr
President and Governour of Fort St George &c
Council

The humble Petition and Appeal of Rawson Vincata-chilum Paupah Braminy

Sheweth

That about the beginning of March last One Seida Sheik Moosaw a Northern Merchant having Occasion for a Sum of Mony employ'd one Andiapaudum a Broker of this place, and Veamula to apply to this Appellant for the Loan thereof on the Mortgage of a Parcel of Grain, which this Appellant promised to comply with, first desiring the delivery of the said Grain; but as this Appellants House is situated in Peddanaigue's Pettah far from the Sea Side and the Ordinary Resort of the Dealers in Grain, the said Andiapandum and Veamula promised to put the Grain, being twelve Garse of Paddy and two Garse of Natcheny, into a Hutt or Thatched House by the Sea Side where Grain is usualy Kept and to deliver the Key thereof to this Appellant which this Appellant agreed to and sent his Conicoply and people to see the same Pursound, and ~~then~~ this Appellant did advance and lend unto the said Seida Sheik Moosaw the Sum of Three hundred and Seventy five Pagodas and took his Mortgage Bond for the same bearing Date the Eighth day of March Malabar Style thereby promising to redeem the said Pledge and pay this Appellant in four Months; but sometime after, to this Appellants great Surprise One Aga Mamusaabuy an Arab

Filed the 9th September 1754
Lavias Dupre Clerk of Appeals

Seida Sheik Moosaw from Pondy, and on their arrival here the said Seida Sheik Moosaw landed the Grain and other Goods and entred the same in the Sea Customer's Books in his own Name; he afterwards sold part of the Cargo publickly Mortgaged the Remainder to this Appellant and dispatch'd the Vessel back without Aga Manusserabury hindering him, which this Appellant humbly conceives he would have done had the same been Mortgaged to him; According to the Custom observed amongst the Northern Merchants and those of this place when a Northern Merchant arrives here, lands his Cargo in his own Name and disposes of it, he is looked upon to be the Proprietor here, and any engagements he enters into here are held good, preferably to what he may have done elsewhere; and it is from a due regard paid to this Custom that the Merchants here are encouraged to advance and lend their Money to the Northern Merchants and their Agents to enable them to carry on so great a Trade, which otherwise they would not do; the Bond given to Aga Manusserabury is not a Mortgage but a Respondentia Bond, as the Original will shew, the Translate thereof in the Mayor's Court being incorrect, for on perusing the original Bond in Court this Appellant found it did not correspond exactly with the Translate; that it plainly appears to be a Respondentia Bond; that the Witnesses whose Names are Mentioned in the Body of the Bond have not Sign'd to it at the Bottom or in the Margin as is Customary, and as they have to this Appellants Bond; the Bond to Aga Manusserabury runs thus "A Respondentia Bond given by Seida Sheik Moosaw to Aga Manusserabury" and ends "I shall sell the Cargo and pay you the Money, and if that dont suffice I shall sell the Vessel also" but doth not say that either is Mortgaged to him, and if Seida Sheik Moosaw hath not paid him with what Money he sold and Mortgaged the Cargo for, that does not make his a Mortgage Bond, nor lessen the Validity of this Appellants Claim

And that the said Seida Sheik Moosaw thought proper to land the Cargo at Madrass aforesaid and lodged the same by the Sea Side in a slight Enclosure of Sticks (as usual at that time of the Year) the Door whereof was only fastened with a String, wherefore this Respondent and his People watched the same Day and Night, for fear of any thing being Stole or sold by the said Seida Sheik Moosaw without the knowledge of this Respondent & without his receiving the Money for the same, and the said Seida Sheik Moosaw having a few days after Disposed of some of the said Goods and paid the Produce thereof to this Respondent, this Respondent permitted the same to be carried away, and this Respondent still continued to watch the Remainder and slept every Night in the said Enclosure, and that some Days after the said Seida Sheik Moosaw ordered the said Grain to be put into a Hut or thatched House which he had hired for that Purpose, and this Respondent having enquired for his Reasons for doing so, was answered by the said Seida Sheik Moosaw that he could not sell the said Grain directly and that he put it up there for fear of Rain, that accordingly Part of the said Grain (namely the Paddy) was put into the said Hut and the Natchiny remained still at the outside, without Measuring either and Nobody present but the Respondent, the said Seida Sheik Moosaw and their People. That some Days after to this Respondents great Surprise he missed the aforesaid Boat in the Road that thereupon he did send for the said Seida Sheik Moosaw, who could not be found for several days wherefore this Respondent (Concluding he was gone in his Boat) Applyed to Henry Powney Esqr for an Order to measure and sell the said Grain which having obtaind, this Respondent pursuant to the said Order had already Measured above one Garse of the said Grain before the Appellant (altho publickly Done) had any Notice thereof, which this Respondent humbly conceives will be a proof that the said Grain was not Delivered to the Appellant nor under lock and key and that the Appellants Relation thereof is false and meerly calculated to mislead the Judgement of this Honble Court, that the Appellant being informed of this Respondents Proceedings, he then and not before notifyed his Claim and also applyed to of the Matters therein severally contain'd and of the Pleadings & Arguments used by the Attorneys on both Sides. This Court doth think fit so order and Decree, and doth accordingly order & Decree that the Decree of the Honourable the Mayor's Court given in this Cause do Stand confirmed, and the Appellant's Petition be hence dismiss'd with Costs.

p Cur. [illegible] Clerk of Appeals

To the Honourable Thomas Saunders Esqr. President, & Governour of Fort Saint George, &ca. Council

29th May 1754.

The humble Petition & Appeal of Permaul Moodelaire, Malabar, Merchant now living and residing in Madrass.

Sheweth

That about the Month of July, in the Year One ~~thousand seven~~ hundred & forty Six, Samuel Troutback also of Madrass Merchant, having bought a Quantity of Batavia Arrack, ordered this Appellant (who had at that time a Sum of two thousand two hundred Pagodas, or thereabout running at Interest in his hands belonging to the said Samuel Troutback) to pay for the said Arrack, and this Appellant did pay so far as he had funds in his Hands belonging to the said Samuel Troutback, but as that was not sufficient to discharge the whole Cost of the said Arrack, it was agreed that this Appellant should favour the said Samuel Troutback with the loan of as much Money as should compleat the Payment of the said Arrack which should be repaid to this Appellant from the first Sale or any part thereof, which was accordingly performed, after which the said Samuel Troutback finding that the said Arrack did not sell off so soon as he had imagined, & that the Risque was too great for him alone, the French being then upon the Coast, who it was well known prepared to besiege Madrass, and besides that the said Samuel Troutback had reason to fear that he had disobliged the Governour by refusing to sell the said Arrack, to the Hon'ble Company at a small Profit the said Samuel Troutback depending upon the long experienced Friendship, & Assistance of this Appellant, proposed to this Appellant to be concerned with him, and his Partner in the said Arrack, to which this Appellant made Answer, that he never as yet had been concerned with him in any Contract whatsoever, & that he did not chuse it [illegible] But that nevertheless as he had for many Years assisted

and

[7]

The Appellant was well acquainted with this Respondent['s] [illegible] upon the Grain and that he did help and abet the said Seida Sheik Moosa in sending his boat away in the Night as aforesaid, and that he trusted his Contract would have the Preference for the Reasons by him alledged of the Customs of Merchants. All which this Respondent begs leave to Refer to the Consideration of this Honble Court, because this Respondent humbly Conceives that if the Appellant had not had Reasons to the Contrary he would and must have taken the Delivery of the said Grain by Measure and not have trusted to the bare word of the said Seida Sheik Moosa as to the Quantity thereof and that his not having Done so, the fault lyeth at his own Door, this Respondent therefore hopes that the Decree of the Honble the Mayor's Court is just and Equitable and humbly prays that the same may be Confirmed with his additional Costs and Charges of Suit

Peter Dencker
Attorney for the Respondent

To the Honble Thomas Saunders Esqr.
President and Governour of Fort St. George &c. Council

The Answer of Seida Sheik Moosa late of Vizagapatam but at present of Madrass Inhabitant Respondent To the Petition of Rauzon Vincatachillum Paupah Bramminy of the same place Appellant

This Respondent admits that he now stands indebted to the Appellant in the Sum of Three Hundred Seventy five Pagodas with the Interest that is Due Thereon and as a Security for the Payment thereof this Respondent did Mortgage to the Appellant a Quantity of Grain as mentioned in this Respondent's Answer in the Honble the Mayor's Court as by Reference being had thereto will more fully appear and that the said Debt was contracted at this Place

This Respondent likewise acknowledges that a Debt of Two thousand and Twenty Five Rupees with the Respondent [illegible] the Sum of Fifty Rupees being Deducted therefrom which this Respondent absolutely

Filed the 8th January 1754
Savins Dias Pr Clerk of Appeals

said Arrack; to which this Appellant reply'd that he would be answerable for what Arrack the said Gulam Mahomed Huſsein should take to his own Use, for which Reason this Apellant ordere One of his Servants to keep One Key of the said Arrack, and the Servant's of the Arrack Farmer another, which Servant of this Appellant did go every day for some time to the said Godowns in order to look after the said Arrack, and to take an Account of what the Arrack Farmer should take out for his own Use. And the French taking the Town shortly after, this Apellant was again applied to for his usual Aſsistance to save the said Arrack from the French, as he had most of his Effects, and by the Interest of this Apellant, and that of Bangarow, a Moor Woman at that time in keeping of the said Gulam Mahomed Huſse there was an Order of Mr. Dupleix affix'd upon the Door of the Godown where the Arrack was deposited that nobody should touch or carry away any of the said Arrack or molest the said Bangarow, in the Poſseſsion thereof, Sh having prov'd herself the Owner of the said Arrack, and rented the Arrac Farm, in Order to retail the same; But some Days after this, the said Samuel Troutback did in the Night betwixt Nine and Ten of the Clock go to the sd. Godown with Cooleys to take One Cask out which he had sold to Coja Parack, who was there present, and a French Officer called Le Blanc being at Supper with Coja Arretoon just fronting the Arrack Godown, upon hearing the Noise of the said Cooleys, did come into the Street to enquire from whence proceeded the said Noise, and finding the said Samuel Troutb there, demanded of him what his Busineſs there was at that time of Night, to which the said Samuel Troutback having made Answer that he was come there to take out a Cask of his Arrack, the said French Officer repli that he knew very well that the said Arrack did not belong to him, but that he was a Rogue come there to rob the said Godown and that he would send him to the Guard, and have him punish'd accordingly, to which the said Samuel Troutback said that he was no Rogue, but an honest Man, and an Inhabitant of the White Town, and that the said Arrack did belong to him, and called upon the two Armenians then present, Coja Parack, and Coja Arretoon to witneſs what he said, and They having told the Frenchman that it w[illegible]o, the said Frenchman told the said Samuel Troutback that he might go home, and that he would the next Morning make his Report of this Affair to the Governour, and accordingly the said Samuel Troutback having been called the next Morning before the French Governour, he there again repeated, and declared, that the said Arrack did belong to him, and

to

Mayor's Court were pleased upon hearing the Cause to order this Appellant to pay to the said Samuel Troutback the half of the said Arrack and several other Articles inserted in his Account which this Appellant has Reason to think not sufficiently prov'd Also all Costs of this Suit as it will appear Reference being had thereto, by the Decree of the said Honourable Court to the Proceedings had therein annexed, from which Decree of the Honourable the Mayor's Court bearing Date the twenty first Day of May One thousand Seven hundred and fifty four this Appellant doth appeal and humbly prays the said Decree may be reversed and set aside and that the said Samuel Troutback may be Decreed to pay unto this Appellant the Ballance of his Account annexed to the Proceedings in the year together with such Interest as now is, or shall hereafter become Due thereon, as also the Cost of this Suit in both Courts and that this Appellant may have such further and other General Relief touching the Premises as to this Honourable Court Shall seem Meet

Peter Dencker
Attorney for the Appellant

To the Honourable Thomas Saunders Esq.r President and Governour of Fort Saint George &c.a Council

The Answer of Samuel Troutback to the Petition of Appeal of Armau Moodelaire

Filed 17 June 1754

This Respondent admits that on or about the time specified in the Petition of Appeal there was a Quantity of Arrack bought but jointly by the Appellant and Respondent the former being the Person who agreed for the same and settled the Price before he ever advised Your Respondent therewith.

That the Appellant by saying he had two thousand two hundred Pagodas in his Custody of Your Respondent's running at Interest would seem to infer thereby that he had no more whereas he had in Reality the Sum of two thousand One hundred Pagodas and nine hundred Eighty nine Rupees for which your Respondent has still the Appellant's Note of hand besides the Sum of One hundred Pagodas which he has verbally acknowledged and your Respondent has (he humbly hopes) sufficiently prov'd the same in the Proceedings of the Honourable the Mayor's

Court

Justice he never has assigned any Reason for the said Agreement being binding only to the one Party and not the other being only said to be signed by the Respondent.

This Respondent well observing the Stress the Appellant would seem to lay on your Respondent's going to take the Arrack out of the Godown at Night after the French had Possession of this Place and the false light in which the Appellant has represented the same This Respondent is now and at all times, as this Honourable Court shall think proper to order, ready to disprove the same but as that particular Circumstance was only hinted at but not Debated in the Honourable the Mayor's Court and no further Notice took of it by the Appellant Your Respondent humbly conceives the same to be new Matter and therefore thinks that it is not material for him to give Answer to it in this Place, so humbly begs leave to go forward and further to observe,

That if the Appellant was not personally concerned in the said Arrack what other Inducement could engage him in all the Trouble he confesses he was at in endeavouring to secure the same or to interfere in the same at all and in such troublesome times when all Persons were so intent in the securing their private Concerns.

That the Appellant did produce several Witnesses to support his Cause (if they could) Your Respondent admits, but humbly refers, as before, to the Proceedings of the Honourable the Mayor's whereby it will fully appear on their cross Examinations how greatly the Major Part of them prevaricated from their Depositions sworn to before the Examiner.

And as the Appellant only says that several other Articles (he thinks) are not sufficiently proved without expressing the particulars. This Respondent not thinking it becoming him to run this Answer into an unnecessary Length by a Rehearsal of the said Particulars as the same are in the Proceedings of the Honourable the Mayor's Court begs leave to refer to the same submitting to the Proofs he has there already produced but if it should be the Opinion of this Honourable Court that any Circumstance in the Petition of Appeal contained requires any further Answer Your Respondent will with the greatest Willingness represent the same in a proper light as far as he may be therein enabled.

Therefore

Ordered to produce before this Honourable Court the several Receits of small and even trifling Sums which the Respondent obliged him to sign whenever he paid or advanced to this Replyant any Money on this or any other Account, but that the Respondent paid or ordered this Replyant to pay all the Money on his own Account is further proved by the Contract into which the Respondent entered with Gulam Mahomed Hussain whereby he does acknowledge that he had paid all the Money for the Arrach himself and that the Money arising from the Sale of the said Arrach should be paid to him again and that the profit thereof should be divided between them two, and altho' the Respondent has set forth in his proceedings in the Honourable the Mayor's Court that this Replyant would not consent that his Name should appear in the said Contract because he should be called Arrach Merchant, yet this Replyant humbly hopes that this Honourable Court will judge this but a poor Evasion, and it is well known that this Replyant did at that very time publickly sell about fifty Leaguers of Arrach to Nicholas Morse Esqr and would also have sold that of the Respondent if the Respondent would have been contented with a small profit, and even before he had Paid his Money for the said Arrach and if this Replyant had been concerned with the Respondent, this Replyant could have obliged him to sell or take himself the whole As to what the Respondent says that this Replyant has not produced any Witnesses to the Contract between him and Gulam Mahomed Hussain this Replyant is surprised that the Respondent has so soon forgot that the very Man Armagoplah that did write the said Bond was produced and that he did Declare that that the same Man also did write in the same Cadjan was the same Cadjan and by the Letters ST that that was the sign of the Respondent and this Cadjan was compared in the said Honourable Court with other Writings of the same Man and found to be the same, And the Respondent himself, when he was asked in the said Honourable Court whether he did sign the Cadjan then before him did Declare that he did sign a Cadjan but could not tell whether that was the same, which Declaration and that of the Conicoply of the Warehouse where this was transacted, this Replyant humbly conceives will be a sufficient Proof that there was a Contract made and signed at that time Because the Respondent has confessed that he did sign a Cadjan, Armagoplah has declared that he did write the Cadjan marked ST and did write by the said Letters that that was the sign of the Respondent,

and

Uncertainty the Respondent is in himself of the pretended Partnership the Respondent has hitherto not been able to determine in what Proportion this Replyant shall be concerned for in one part of his Proceedings in the Honourable the Mayor's Court he charges this Replyant with one third Concern and in another with the half and lastly with two thirds by which this Replyant humbly presumes it will appear to this Honourable Court that there never was any Partnership agreed upon between the Respondent and this Replyant and that Gulam Mohomed Hussain is his real Partner and whom the Respondent Admits to have accepted of as a Partner and this Replyant humbly submits to the Judgement of this Honourable Court whether this is not a Confession that the Respondent did sign the Agreement marked ST annexed to the Proceedings in this Cause and that therefore the same stands in no Need of any more Witnesses, and this Replyant humbly begs leave of this Honourable Court to shew that he was not secured at all, if there had been any such pretended Partnership, for if the said Arrack had sold for a considerable Profit what had this Replyant to prove that he was concerned therein and by what title could he have Demanded his Share of the said Profit, and can it be believed that this Replyant, who is an old Merchant, and who has been employed for many Years by the greatest Merchants in Madrass, would have been so neglectfull for almost four Months to take a proper Security if he had been concerned in the said Arrack, and in Particular when he had the greatest Reason to Demand the same for having continually been applyed to for his Advice and Assistance he could have insisted upon a Security, and if, as pretended, this Replyant had been concerned he could with Ease have saved the said Arrack, for having with a large Sum of Money procured a Passport from the French to carry away his own Goods, he not only saved his own but also some of other Peoples and some of the Respondent's as it is well known which Passport this Replyant has ready to produce

The Respondent sets forth in his Answer that his going in the Night to the Godown to take some of the Arrack out was only hinted at but not Debated in the Honourable the Mayor's Court and that therefore he conceives the same to be new Matter to which this Replyant says that nothing can be new Matter that has any Connexion with this Cause, it is very true that the said Honourable Court took no Notice of this particular Transaction but ordered this Replyant's Attorney to take the Recitation thereof out of this Replyant's Rejoinder and likewise that

Honourable

To the Honourable the Court of Appeals

22 July 1754

The Rejoinder of Samuel Troutback Respondent
to the Replication of Bernard Moodelaine Appellant

This Respondent with Submission to this Honourable Court begs leave to say that the first Paragraph of this Respondent's Answer is not contradictory to its self as to what regards the Replyants being concerned with him the Respondent in the purchasing of the Arrack for that the Replyant was concerned in the Arrack. The Proceedings in the Honourable the Mayor's Court and the several Depositions given (to which this Respondent most humbly refers) will, its hoped, sufficiently prove and this Respondent prays the Consideration of this Honourable Court whether what the Replyant saith in the first Part of his Replication that this Respondent alone agreed for the Arrack that Mr. Van Olson drew out the Bills for the said Arrack in the Name of this Respondent only, and why this Respondent did not take a Receit of the Replyant for his Concern in the Arrack and so forth is not a mere Subterfuge and Evasion considering how long this Respondent and the Replyant were acquainted and the Confidence this Respondent was ever known to repose in the Replyant by lending him Money from time to time and often considerable Sums. The Replyant will not seem as if he was sensible that People put out their Money at Interest only when they cannot employ it to more Advantage and that when they have a Prospect of more Profit from any Commodity they will recall their Money although it be to lay it out in the Purchase even of Batavia Arrack which the Replyant says is so perishable a Commodity and by his Manner of Expression would intimate as if it were the most perishable of all Commodities. This Respondent doth not know what the Replyant means by Receits for small or trifling Sums this Respondent has several promissory Notes of his which this Respondent is ready to produce to this Honourable Court for their Consideration. This Respondent admits that the Replyant did sell about the time he sets forth in his Replication about fifty Leaguers of Arrack but he had not any other Concern therein than as a Consignment from Mr. Vermont and the Evasion therefore (poor as it may be) of not chusing to be called Arrack Merchant as it came from the Replyant this Respondent humbly conceives he is not to be charged with it.

So far was the Replyant from intending to sell the Arrack to Mr. Morse for a small Profit (as he sets forth) that it was he the said Replyant that dissuaded

Gulam Mahomed Hussain's One Third Part before this Respondent would consent to his being admitted a Partner the Replyant's real Concern is two thirds and this Respondent's one third.

What the Replyant's Motives could be for not Demanding a proper Writing setting forth his having any Concern in the said Arrack when it was purchased, this Respondent cannot take upon him to say, but thinks the Replyant was sufficiently secured by having the sole Management of the Arrack put into his and his People's Hands and besides this Respondent hopes there are other sufficient Proofs of his side that will thoroughly convince this Honourable Court of the Replyant's being concerned in the Arrack

The Replyant says if he was concerned in the Arrack he could have easily saved it, as he did other Goods, But that he did more than once endeavour to save it (particularly by Bangarow a Moor Woman) will plainly appear to this Honourable Court. And if the Replyant had been noways concerned in the Arrack why should such Endeavours have been made by him at a time when every Person had enough to do to save his own real Property without busying himself about other People's Concerns. This Respondent humbly leaves this to the Consideration of this Honourable Court.

As to the Manner in which the Arrack came to be seized by the French was never mentioned by this Respondent in his Rejoinders in the Mayor's Court but in the Surrejoinder which the said Court would not receive as thinking they had Evidence sufficient to judge the Cause without it And that the Manner in which it was related how the Arrack came to be seized was not necessary to Determine whether the Replyant was concerned in it or not. But now as the Replyant hath mentioned it in his Replication this Respondent begs leave to relate the Fact, which is thus, There was an Armenian by Name by Muscove who is now at Ganjam came to the Replyant and Desired he would spare him a Cask of Arrack he having five or six French Officers lodged with him and that they had nothing to Drink but Water, Upon which the Replyant came and told the Respondent what the Armenian had told him, this Respondent consented that the Replyant should sell it and as much more if he could get ready Money for it, for that this Respondent said he did not know what might happen, Upon which the Armenian came and brought a French Officer with him the Replyant being present as the Respondent told him that he would not let the Armenian have it without such a Person's Privity for fear of getting himself into trouble; whilst they staid at the Godown Door this Respondent went into Arratoon's House and going the backway into th[illegible]own opened the Door and a single Cask was rould into the Street.

This

begs leave to observe that the Replyant would seem to indicate by the Respondents endorsing Cam Oelson's Bill for the Sixty four and One third Leaguors of Arrack the same were become the sole property of the Respondent, whereas the Fact is, the Replyant after praying for the same came to your Petitioner desiring he would sign the Bill as a Proof of Consent that such Money was paid in Partnership but the other Bill of Cam Oelson's for thirteen Leaguors of Arrack was not endorsed by the Respondent as Gulam Mahomud Huſsain was not concerned therein.

That the Replyant has greatly differed in his several Accounts of the Arrack &c.ª will plainly appear by the Proceedings in the Honble the Mayors Court, those had in this Honble Court and the Narrative, Replyant's Answer with the Respondent's Reply delivered to the Gentlemen Justices of the Choultry before the constituting of the Honble the Mayor's Court which last Papers your Respondent is ready to produce as this Honourable Court shall think proper; and to corroborate the Proofs already produced of the Replyant's being concerned in the Arrack and of his being indebted to your Respondent after the Loſs of the place, Your Respondent refers to the Letter the Replyant wrote to Your Respondent from Conjeweram, among the Papers of the Honble the Mayor's Court which he the Replyant artfully paſses over with two Bonds sent the Respondent at Fort St. David by the Replyant for Moneys Due from One Pencal Rapranapah. The Estimate of the Respondent's Estate taken and wrote by Captain Collins so long ago as during the siege of the place September the sixth Day in the Year One Thousand seven hundred and forty six when it's presumed no Person could have any sinister Views therein Especially the whole Dispute now but not then being so recent, every One of which Papers are produceable at what time this Honourable Court shall be pleased to Order with a Surrejoinder ready to have been delivered into the Honble the Mayor's Court if it had been thought neceſsary.

The Respondent humbly presuming he has fully and at large answered the several Objections of the Replyant, Prays as in and by his Answer he hath already prayed.

Isaac Merigeot
Attorney for the Respondent

Court of Appeals at Madraſspatnam } ſs. Between Permaul Moodelaire
of Madraſs Conicoply — Appellant
&
Samuel Troutback
of the same place — Respondent
Thursday

China on the Ship Warwick and who is also since deceas'd, the Sum of One thousand five hundred Pagodas Current of Madrass, the same being to run at Respondentia at Eighteen p Cent for the said Voyage, as will appear by the Bond ready to be presented when required, and the said Samuel Greenhaugh having perform'd the said Voyage in the said Ship did on his Return pay unto this Appellant's said Brother Levy Moses deceas'd, the Sum of Pagodas 1133. 26. 32 in part of the Premium and Principal of the said Respondentia Bond which amounted in the whole to Pagodas One thousand, Seven hundred, and Twenty, leaving the Sum of Pagodas 857. 16. 38, unpaid as will appear by an Account Current annex'd to the Proceedings had in the Mayor's Court, Reference being had thereto. And whereas the said Samuel Greenhaugh did afterwards on, or about the 19th Day of July in the Year 1753, Embark on a Voyage to Manilha in the Ship Lavencore without discharging the remaining Sum due on the aforesd. Respondentia Bond, altho' hereunto frequently required by the said Levy Moses deceas'd, and the Honble the Mayor's Court not being then re-establish'd by whose Authority this Appellant might have compell'd the said Samuel Greenhaugh to have paid the same with Interest due thereon, And the said Samuel Greenhaugh Dying Insolvent on his late Voyage to Manilha, and Administration of his Estate being granted by the Honble the Mayor's Court to John Smith Esqr. and Salomon Franco, and this Appellant as Executor to his Deceas'd Brother's Estate being [illegible] that the sd. Administrators did intend to make a Dividend amongst the Respondentia Bond Creditors of the said late Manilha Voyage. This Appellant did apply to the said Administrators that he might also be admitted as a Respondentia Bond Creditor on the said Samuel Greenhaugh's former Voyage to China to a Dividend of the said Samuel Greenhaugh's Estate which Request of this Appellants being by the said Administrators refused, This Appellant on or about the 15th Day of August in the Year 1755, As Executor to the Estate of

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To the Hon^ble George Pigot Esq^r
President and Governour of Fort S^t George &c^a Council.

Filed 3^d Jan^ry 1756.
J^s DuPré Clerk of Appeals

The Answer of John Smith & Salamon Franco of Fort S^t George Merchants, Administrators to the Estate of Samuel Greenhaugh deceased late of Fort S^t George Merchant, Executor of the last Will & Testament of Levy Moses deceas'd late of Fort S^t George Merchant

These Respondents humbly conceive that the Appellant cannot in Equity be admitted to a Dividend with the Respondentia Creditors of the late Samuel Greenhaugh in his late Voyage to Manilha in the Ship Travencore, for the reasons of which they humbly beg leave to refer this Hon^ble Court to their Answer to the Bill of Complaint prefer'd in the Hon^ble the Mayor's Court, But these Respondents observe that the Case the Appellant has set forth in his Petition of Appeal in regard to Samuel Greenhaugh's having embark'd on board the Travencore to Manilha without paying the remainder of his Bond, is unfairly Stated, for the said Samuel Greenhaugh did give unto the said Levy Moses, a Draught on his Dubash Permaul Moodelaire for the Payment of his Debt, payable in Six Months; The said Levy Moses having accepted of the said Draught, these Respondents humbly conceive the Bond then became Void, as it is not equitable that a Person should have two Obligations for one Debt, and tho' the said Samuel Greenhaugh might have forgot to withdraw the Bond, yet these Respondents imagine that cannot be a Reason why it should be Valid, and as there are many things put in practice amongst Friends and Merchants which may not consist with the Rigour of the Law, yet the Customs of Merchants are Laws in Courts of Equity.

These Respondents further say, that the Appellant Samuel Moses, did (some small time before the Arrival of the Ship Travencore in this Road) wait on the said Samuel Greenhaugh's Mother to desire Payment of the said Note, when f31

Anno Domini 1755. And upon due Consideration had of the Matters therein severally contain'd, and of the Pleadings and Arguments used by the Attorneys on both Sides, This Court doth think fit to Order & Decree, and doth accordingly Order & Decree that the Decree of the Mayor's Court given in this Cause do stand confirmed, and that the Appellant's Petition be hence dismiss'd with Additional Costs.

P Cur: [illegible] Clerk of Appeals.

To the King's Most Excellent Majesty In Council

The humble Petition and Appeal of Samuel Moses of Fort St. George in the East Indies Merchant, Executor of the last Will & Testament of Levy Moses, late of the same Place Merchant, his Brother, Deceas'd,

Against

John Smith Esqr. and Salamon Franco of Fort St. George aforesd. Merchants, Administrators of All & Singular the Goods and Chattels Rights & Credits, of Samuel Greenhaugh late of the same to pay the remaining Sum due upon the said Bond, which He, the said Samuel Greenhaugh did promise to do from time to time, but did not perform, and there being at that time no Mayor's Court or other Legal Authority establish'd at Fort St George, by means whereof the said Samuel Greenhaugh might have been compelled to discharge the said Bond, Your Petitioner's said Brother Levy Moses could not by any Means prevail on the said Samuel Greenhaugh to discharge the Remaining Sum due thereupon.

Your Petitioner begs leave to set forth that the said Samuel Greenhaugh being on or about the Month of July 1753 about to depart from Fort St George aforesaid in the Ship Travancore on a Voyage to Manilha, and finding Himself pressed by Your Petitioner's said Brother Levy Moses for the Payment of the said Remaining Sum, did the Night before He embarked desire of Your Petitioner's said Brother Levy Moses an Accot to shew the Ballance then due upon the said Bond, which Account the said Levy Moses did accordingly deliver to the said Samuel Greenhaugh, and for the Ballance thereof the said Samuel Greenhaugh did deliver to Your Petitioner's said Brother Levy Moses a Draught upon his Dubash (or Broker) Permaul Moodelaire, notwithstanding which he the said Levy Moses did not deliver up the said Bond, but Ordered Your Petitioner (who was sent to transact this Matter with the said Samuel Greenhaugh) not to deliver up the said Bond, but to keep the same that it might still remain in Force in case the said Draught should not be duly Discharged.

That the said Draught was presented soon after soon after it was granted, but Acceptance refused, the Dubash (or Broker) declaring that he had no Money nor Effects of the said Samuel Greenhaugh's to pay the remaining Sum due upon the said Bond, which He, the said Samuel Greenhaugh, did promise to do from time to time, but did not perform; and there being at that time no Mayors Court or other Legal Authority establish'd at Fort St George, by means whereof the said Samuel Greenhaugh might have been compelled to discharge the said Bond, Your Petitioner's said Brother Levy Moses could not by any Means prevail on the said Samuel Greenhaugh to discharge the Remaining Sum due thereupon.

Your Petitioner begs leave to set forth that the said Samuel Greenhaugh being on or about the Month of July 1753 about to depart from Fort St George aforesaid in the Ship Travancore on a Voyage to Manilha, and finding Himself pressed by Your Petitioner's said Brother Levy Moses for the Payment of the said Remaining Sum, did the Night before He embarked desire of Your Petitioner's said Brother Levy Moses an Accot to shew the Ballance then due upon the said Bond, which Account the said Levy Moses did accordingly deliver to the said Samuel Greenhaugh; and for the Ballance thereof the said Samuel Greenhaugh did deliver to Your Petitioner's said Brother Levy Moses a Draught upon his Dubash (or Broker) Permaul Moodelaire, notwithstanding which he, the said Levy Moses did not deliver up the said Bond, but Ordered Your Petitioner (who was sent to transact this Matter with the said Samuel Greenhaugh) not to deliver up the said Bond, but to keep the same that it might still remain in Force in case the said Draught should not be duly Discharged.

That the said Draught was presented soon after soon after it was granted, but Acceptance refused, the Dubash (or Broker) declaring that he had no Money nor Effects of the said Samuel Greenhaugh;

Granted for Money taken up at Respondentia upon the
Travencore, in which Ship he the said Samuel Greenhaugh
went to Manilha, and upon which almost All the Effects left
by the said Samuel Greenhaugh were loaded, & returned, it being
their Intention to pay those Bonds in Preference to the Demand
made by Your Petitioner of the Ballance which he Claim'd
by Virtue of the said Bond Granted by the said Samuel Greenhaug
to Your Petitioner's said Brother, the said Administrators
thereby insinuating (and Your Petitioner apprehends the
Case to be so) that the Effects of the said Samuel Greenhaugh
would produce very little more than what would pay
the Respondentia Bonds Granted by him or the said
Manilha Ship, thus intending to Exclude Your Petitioner
(besides Whom there is no other Bond Creditor of the said Samuel
Greenhaugh, as Your Petitioner has reason to believe, except
such as have Bonds on the said Ship Travancore) from an
equal Dividend with Those Who are the Bond Creditors on
that Voyage to Manilha, Because, say these Administrators,
Your Petitioner had no risque upon that Ship; Besides which
the said Administrators alledged against Your Petitioner's
said Demand, that his said Deceas'd Brother having sign'd
and Deliver'd an Account Current of the Sums Owing by &
the said Payments made upon the said Bond, and having
taken the said Samuel Greenhaugh's Draught for the Ball^{ce}
thereof, did in Effect alter the Nature of this Debt from a
Specialty to a Simple Contract Debt, upon which last footing
They would consider it in Dividing Amongst the Simple
Contract Creditors whatever might fall to their Share after
paying the Respondentia Creditors on the Manilha Voyage

That

hereunto Annex'd, to which Your Petitioner humbly begs leave to be referr'd. That the said Administrators, altho the Question is One of the Plainest that can arise, Viz.t whether all Bonds, be they Respondentia Bonds on the same, or different Voyages, or Bonds carrying Common Interest do not in Law stand in an equal Degree of Right, put in an Answer, Insisting that Your Petitioner ought not to be admitted as a Respondentia Bond Creditor to the Estate of the said Samuel Greenhaugh Deceas'd, Because the Sum remaining due on the said Bond did not run the risque of the Voyage on the Ship Travencore to, and from Manilha, and that therefore the Respondentia Bond Creditors of that Voyage ought to be paid in Preference to Your Petitioner, and further to invalidate Your Petitioners said Demand, the said Administrators did in their said Answer set forth, the Account Current drawn out by the s.d Levy Moses deceas'd, and deliver'd to the said Samuel Greenhaugh at the time of his Departure for Manilha, although that Account served only to State the Ballance due on the said Bond at that time, and the said Answer did likewise set forth the Draught given by the s.d Samuel Greenhaugh, on his Dubash (or Broker) in manner herein before related, as will more fully appear by the said Answer hereunto Annex'd, to which Your Petitioner begs leave to be referr'd. And Your Petitioner Sheweth that on the 5th December 1755. This Cause came on to be heard, by Bill and Answer only, before the Mayor's Court, Consisting of the Senior Alderman, and two Other Members when they were pleased to Order & Decree as follows —

Friday

all his other Bond Creditors, and that He might be relieved from all Costs of Suit, all which will more fully appear by the said Petition of Appeal hereunto Annexed, to which Your Petitioner humbly begs leave to be Referr'd. To this Petition of Appeal, The said John [illegible] Esq.r & Salamon Franco, put in their Answer, in which they lay a Particular Stress upon the Draught given by the said Samuel Greenhaugh, on his Dubash (or Broker) in favour of Your Petitioner's Testator, for the Ballance Due on his Bond, and conceiving that the Bond by that Means became Void, and this Argument the Respondents Still made Use of, Notwithstanding that Your Petitioner had before set forth, and that the Respondents them-selves had never denied that Acceptance was actually refused to the said Draught, for want of Assetts of the Drawers, but for the better Proof of What Your Petitioner alledges in the Premises with regard to the Defence made by the Respondents in the Court of Appeals, Your Petitioner, humbly begs leave to be referr'd to their Answer in that Court hereunto Annexed —

Your Petitioner further begs leave to set forth that On the 27th April 1756, the said Cause came on to be Heard, and Determin'd by the Court of Appeals, when the said President & Council were pleased to confirm the said Decree of the Mayor's Court, and likewise that Your Petitioner should pay all Costs of Suit in both the Courts.

May it please Your Most Excellent Majesty

That Your Petitioner Conceiving Himself greatly Aggrieved by the said Decree of the President, and Council of Fort St. George, and the said Decree of the Mayor's Court of Madrass Patnam doth bring this his humble Petition, and from both those Decrees to your Most Excellent Majesty

[A]/ Proportion with those Creditors who had Bonds from the said Samuel Greenhaugh, on the Ship Travencore &c; and from Manilha, or any other Creditors of the said Samuel Greenhaugh by Specialty, together with such further Costs as shall, or may be incurr'd in the Prosecution of this Your Petitioner's Appeal. And that Your Petitioner may have such other Relief in the Premises as to your Most Excellent Majesty shall seem Meet

And Your Petitioner as in Duty bound shall ever Pray—

Samuel Moses, Executor to the Estate of Levy Moses Deceas'd—

Filed in my Office the 7th May 1756—

Jos. DuPré Clerk of Appeals.

B
Exd. T.H.—

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Cash which Sum the said Antonio DeCruz told this Appellant had been disbursed on his Master's Account, and that he had Orders to receive more when he had Occasion for it, This Appellant in Consequence of the Answer of the said Antonio DeCruz took the first Opportunity to acquaint the said Richard Starke with what the said Antonio DeCruz had said & the said Richd Starke answered that it was his Order that this Appellant should supply and Advance him what he should apply for, which Orders this Appellant strictly observed. Some time after this Appellant found there was a considerable Ballance due to the Cash Chest by advancing Sums to the said Antonio DeCruz he waited on the said Richard Starke to acquaint him therewith who told this Appellant he had order'd the said Antonio DeCruz to pay it, and at the same time order'd this Appellant to draw out the Monthly Accounts for the Presidency, which this Appellant did accordingly and wrote on a separate Piece of Paper the Ballance due to the Cash Chest at that time from Antonio DeCruz, and delivered the same to the said Richard Starke, In the Month of June or July which was in the year of Our Lord One thousand Seven hundred and fifty five, this Appellant settled his Accounts with the said Antonio DeCruz, and there appeared a Ballance due to the Cash Chest from the said Antonio DeCruz of the Sum of Four thousand Eight hundred and Sixty Nine Pagodas, fourteen fanams, & fifty four Cash, upon which this Appellant acquainted the said Richard Starke therewith, who sent for the said Antonio DeCruz, and asked him if it was true such a Ballance was due from him who answered him Yes, and that the said Sum was disbursed on his /the said Richard Starke's/ own Account upon which the said Richard Starke seemed Satisfied. A few

Days

Appellant was due from this Appellant, and this Appellant further begs leave to set forth that the Deposition of Richard Fairfield, Number thirteen, is a sufficient Proof that the Sum aforesaid was not due from this Appellant, as also Depositions of Ishippa Chitty, Shreshellapetty, and Nautchepah Chittee, Number five, seven, and Nine, sufficiently prove that the said Richard Starke had an Intention to take the Advantage of this Appellant in procuring and offering to procure a Note or Certificate from the hands of the said Ishippah Chittee, Shreshellapetty, and Nautchepah Chittee, setting forth that what Money was advanced them was advanced always by this Appellant, and which this Appellant has reason to believe would have been produced as Proof had not this Appellant been obliged to examine the said Ishippah Chittee, Shreshellapetty, and Nautchepah Chittee to prove some Articles in favour of his Cause, when they confessed the Fact upon the General Interragatory being put to them. All which this Appellant submits to the Consideration of this Hon'ble Court. And this Appellant further begs leave to remark that the said Antonio DeCruz did write the Papers Number One, two, and three, & four, at the request of the said Richard Starke, and therein did insert his own Name, and that he remarked on Paper Number two, that there was a Deficiency of the sum of One thousand, Eight hundred, and twenty Eight Pagodas, Sixteen fanams, and Sixty One Cash at the time that this Appellant took Charge of it, and transferr'd the same to Paper, Number three; Notwithstanding all which Proof as aforesaid the Hon'ble the Mayor's Court were pleased upon hearing the Cause to order and Decree that this Appellant should pay to the said Richard Starke the Sum of One thousand Seven

hundred

of the Depositions taken in the Proceedings in the Hon:ble the Mayor's Court on the Part and Behalf of this Respondent's Constituent No. 1 and 2. being the Depositions of Yar Mahomed, and Pedriah Nabah that the Charge & Key of the Cash was delivered to the Appellant by this Respondent's Constituent upon the Decease of the Appellant's Brother named Armongam, some time in the Month of March, in the Year of our Lord, One thousand, Seven hundred, and fifty three, and as a further Proof of the Appellant's having the Charge of the Cash at that time, this Respondent begs leave to Refer to the Deposition of Bartholomew Rawlin No. 3. and a Bill of Exchange drawn by Thomas Maunsell upon this Respondent's Constituent which was exhibited in the Proceedings in the Hon:ble the Mayor's Court, and which the Appellant paid by this Respondent's Constituent's Order, which Payment was made sometime in the Year of Our Lord, One thousand Seven hundred and fifty three; The Appellant aſserts, "that Antonio DeCruz, this Respondent's Constituent's Writer had the "Charge of the Cash untill the Month of April in the Year of Our "Lord One thousand Seven hundred and fifty four," when he pretends to have taken that Trust, which this Respondent denies, and it appears by the Bill of Exchange before Referr'd to, by this Respondent, that the Order of this Respondent's Constituent to the Appellant to pay the said Bill was wrote by, and ſigned by Antonio DeCruz, which plainly proves that the said Antonio DeCruz had not the Charge of the Cash as is alledged by the Appellt. The Appellant further aſserts, that this Respondent's Constituent sent for him after the Departure of the said Antonio DeCruz to Madraſs to know of him the Appellant whether the said Antonio

DeCruz

/A9/

did ever deliver to his (the Respondent's) Constituent upon a Separate Piece of Paper as is alledged by him, An Account of the said Ballance which was due from the said Antonio De Cruz. This Respondent acknowledges that the Appellant did in the Month of July in the Year of our Lord One thousand Seven hundred and fifty five, and not before, acquaint his (this Respondent's) Constituent that there was a Ballance due from the said Antonio De Cruz to the Cash Chest of Four thousand Eight hundred and Sixty Nine Pagodas, fourteen fanams, and fifty four Cash, but this Respondent denies that upon his Constituent's sending for the said Antonio De Cruz he ever made any such Answer as is set forth by the Appellant. "The Appellant asserts that it was by this Respondent's Constituent's particular Order that he advanced the said Company's Cash at sundry times to the said Antonio De Cruz" which this Respondent absolutely denies, nor has the Defendant ever been able to prove that this Respondent's Constituent ever gave the Appellant either a written or Verbal Order. "The Appellant further asserts that this Respondent has not proved by any Witnesses that the Deficiency (this Respondent sued him the Appellant for) was due by him. This Respondent cannot but be surpriz'd at so Ridiculous an Assertion as it appears by the Deposition of Yar Mahomed, and Pedna Nabah which this Respondent has already referred to that upon this Respondent's Constituent appointing the Appellant Shroff, and giving him the Charge of the Company's Cash the Respondent's Constituent then told the Appellant he must be answerable for all Deficiencies. "The Appellant has alledged that Mr. Fairfield's deposition taken on his behalf proves that the Ballance was not due from him. This Respondent begs leave to remark that that part of the said Deposition to which he transferr'd to the Paper endorsed N.º 3. This Respondent acknowledges that after the Appellant acquainted his Constituent in the Month of July One thousand Seven hundred, and fifty five as is before alledged of the Ballance that was due from Antonio DeCruz to the Cash Chest that this Respondent's Constituent then order'd the said Antonio DeCruz to take in writing the Appellant's Accounts from his the Appellant's own Cadjans from the time of his the Appellant's being Shroff, and entrusted with the Charge of the Cash, By which means the said Antonio DeCruz inserted his own Name for several Receits & Disbursements that he the said Antonio DeCruz had no concern with any more than as Writer to this Respondent's Constituent, and by which Erroneous Stating of the said Accounts there appears to be Receipts to a Considerable Amount by the hands of the said Antonio DeCruz which upon sight of the said Accounts seems to be made for the use of the said Antonio DeCruz, whereas the Receipts under the said Antonio DeCruz's Name were made, some on this Respondent's Constituents Account, and a very small part on his the said Antonio DeCruz's Account, And this Respondent's Constituent also ordered the said Antonio DeCruz to draw out his own Account as well to see how the Ballance arose, as to endeavour by comparing them together to find out any Errors, and the said Antonio DeCruz acknowledges that upon his taking the said Accounts that he remark'd on the Back of Paper N.º 2 that there was a Defficiency of One thousand Eight hundred, and twenty Eight Pagodas Sixteen fanams, and Sixty One Cash as aforesaid, and that the said Remark was occasioned by the Appellant's

Directions

upon due Consideration had of the Matters therein severally Contain'd, and of the Pleadings and Arguments used by the Attorneys on both sides. This Court doth think fit to Order & Decree, and doth accordingly Order and Decree, that the Decree of the Mayor's Court given in this Cause do stand Confirmed; That the Appellants Petition be hence dismiſs'd, And that the Appellant do pay all Costs of this Appeal

Exd. with T. H.

℘ Cur. Jos: du Pré
Clerk of Appeals

Filed in my Office the
7 January 1757
Jos du Pré
Clerk of Appeals

To the Honourable George Pigot Esq^r.
President and Governour &c. Council at
Fort S^t. George

The Humble Petition and Appeal of Vincent Quintin Delamettrie of Madraſs Merchant Attorney for Francisco Carvalho

That on or about the Seventeenth day of June which was in the Year of Our Lord One thousand seven hundred and forty six Muta Rashapah Chittee did borrow and receive of this Appellants Constituent the sum of One thousand Pagodas and for Securing the repayment of the said Sum the said Muta Rashapah Chittee did mortgage and make over to this Appellants Constituent One House and Ground situated in the Black Town in Ayopa Chitties Street One House and Ground situated in Triplicane in Somby Chitties Garden Street and One House and Ground situated at Trivitore in Tegapa Paundara Street as also eleven Garce and half of Indigo seed value One hundred and Seventy five Pagodas To have and to hold the said Premiſses unto this Appellants Constituent his Heirs and Aſsigns for ever provided the said Muta Rashapah Chittee his Heirs and Aſsigns should not well and truly pay or cause to be paid the said sum of Pagodas One thousand with the Interest due thereon. The Cause coming on to be heard the Honourable the Mayor's Court were pleased to dismiſs this Appellants Bill with Costs because the said Muta Rashapah Chittee sets forth that this Appellants Constituent did forcibly take out of the said Muta Rashapah's House (at the time the French had Poſseſsion of this Place) sundry Goods amounting to the Sum of Four thousand six hundred and Twenty Six Pagodas and carried the same to his this Appellants

To the Honourable George Pigot Esqr
President and Governour &ca Council at
Fort Saint George

Filed in my Office
the 28th January 1757
Jos: du Pré Clerk of
Appeals

The Answer of Mootoo Rashapah Chittee of Madrass Merchant, to the Petition of Appeal of Vincent Quintin De La Mothie Attorney for Francisco Cawalho.

That on or about the time Specified in the Appellant's Petition of Appeal this Respondent Acknowledges to have borrowed the sum of One thousand Pagodas of the Appellants Constituent, and to have mortgaged the Several Houses, and Eleven Garce of Indigo seeds, as also mentioned in the said Petition of Appeal, About Three months after the place being in the Possession of the French (as this Respondent was securing his Effects, Ceatoo Kistnama Chitte, the Appellants Constituents Servant) came to Demand the aforesaid One thousand Pagodas, This Respondent having not money Sufficient by him at that time, desired he might be allowed a longer time, Upon which the said Ceatee Kistnama Chittee carried this Respondent before the Appellant's Constituent, who told this Respondent that he was Ordered to Pondichery and must have his money by any means, this Respondent told him that the Tenour of his Bond, was not Elapsed and that he had not Money Ready to Pay him at the same time, this Respondent told the Appellant's Constituent, that he would deposit in his hands a Quantity of Goods either for further Security or Sale as he should think proper, which tho the Appellant's Constituent would not accept; This Respondent then desired that two of his Peons might go with him to Collect Money from his Debtors in the Country which the Appellant's Constituent likewise Refused, this Respondent was then put under the care of Ceatee Kistnama Chittee who set two Peons over him, from whom this Respondent made his Escape leaving his House and Effects to the care of a boy named Mootiah, who is since dead; the Appellant's Constituent being informed of this Respondent's Escape sent his People to this Respondents House, where they found the aforesaid Boy and carried him to the Appellants Constituent who ordered him to be confined in the Polligar's House, where, having beat him in Order to make him Confess where this Respondents Goods were deposited, the Boy not able to bear such cruel Usage Shew'd the Appellants Constituent in the presence of a French Justice all the Effects belonging to this Respondent, who sent for Coolys and took away every thing that was buried in this Respondent's Godown to the Value of Four thousand Six hundred and Twenty Six Pagodas, On hearing this Cause, the Circumstances being fully proved not only by the Depositions of the Witnesses before the Examiner but by their Examination in Court, that the Honourable the Mayors Court were Unanimous in Opinion that the Appellant's Constituent's Bond should be Cancelled and the Bills of Sale delivered to this Respondent. Therefore this Respondent humbly hopes that the Decree of the Honourable the Mayor's Court is just and Equitable, and humbly prays that the same may be Confirmed and that the Appellts

To the Honourable George Pigot Esq.r
President and Governour &c.a Council of
Fort St. George

Filed in my Office
the 19th of Aug.st 1757
Jas. [illegible]
Clerk of Appeals

The Humble Petition and Appeal of Anatheon Badramy of Madrass
Merchant

Sheweth

That on or about the thirtieth Day of November in the Year of O.r Lord One thousand Seven hundred and Fifty Six, Catchick Gregorio and Aviat Nazar of Madrass Merch.ts and Executors to the last will and Testament of Minasacawn De Lucas deceased did file a Bill against this Appellant in the Honourable the Mayor's Court for the sum of One hundred and Seventy Two Pagodas ten Fanams and Ten Cash for the Amount of Sundries bought at the Outcry of the Estate of Minasacawn de Lucas deceased, although the Estate of the said Minasacawn was at that time indebted unto this Appellant in the Sum of One thousand and Seventy-Six Pagodas, nine Fanams, and Six Cash, for which said Sum this Appellant did file a Cross Bill in the said Honourable the Mayor's Court; But as there had been an Award given by Shamier Sultan of Madrass Merchant, by which the said Honourable the Mayor's Court imagined that all Disputes between the said Estate and this Appellant had been settled and adjusted by the said Shawmier Sultan; The said Honourable the Mayor's Court were pleased to order and Decree that the said Award should stand Good, and that this Appellant should pay unto the said Executors the sum of One hundred and Seventy two Pagodas ten Fanams and Ten Cash, after deducting the sum of Sixty Pagodas with the Interest due thereon agreeable to the Tenour of the Award above Recited, and moreover that the Appellants said Cross Bill should stand dismissed with Costs, as will appear upon Reference being had unto the Decree of the said Honourable the Mayor's Court bearing Date the fifth Day of August in the Present Year of our Lord One thousand Seven hundred and fifty Seven. But as this Appellant doth aver that the said Award doth not Relate to the Whole Accounts between the Estate of the said Minasacawn De Lucas and this Appellant, but only to a particular Account of Goods delivered to Joannes Ovanjan, by order of the said Minasacawn De Lucas, for which said goods the said Joannes Ovanjan obliges himself to cause to be paid to this Appellant the Sum of Sixty Pagodas for Commission thereon, and to the Date of which said Obligation the said Shawmier Sultan does in his said Award particularly refer and moreover as this Appellant humbly Presumes that supposing the said Award did Relate to all the Accounts between the Estate of the said Minasacawn De Lucas and this Appellant, Yet that the said Cachick Gregorio and Aviat Nazar have certainly Rendered the said Award, void, and of no Effect, by filing their Bills in the said Honourable the Mayor's Court for the Sum of One hundred and Seventy two Pagodas, Ten Fanams and Ten Cash, without giving this Appellant Credit for the Amount of the said Award; For all which Reasons as aforesaid this Appellant of Sundry Effects purchased at the Auction of the said deceased Minasacawn de Lucas but these Respondents absolutely deny that the Estate of the said deceased Minasacawn de Lucas was indebted to the Appellant in the sum of One thousand and Seventy Six Pagodas nine fanams and Six Cash as Setforth by the Appellant in his Croſs Bill but that before the Death of the said Minasacawn de Lucas there were some Accounts depending between the Appellant and the said Deceased and after the Death of the said Minasacawn de Lucas the Appellant laid in his Claim as a Creditor to the Estate of the said Deceased as the said Accounts were not Settled whereupon the Appellant and these Respondents as Executors to the said Deceased Agreed to refer those Accounts in dispute to Arbitration and entered into a Penalty Bond and after the Arbitrator had examined the said Accounts an Award was given for the Respondents to pay the Appellant the sum of Sixty Pagodas with the Interest due thereon as will more fully and at large appear upon reference being had to the Penalty Bond marked A and the Award B annexed to these Respondents Answer to the Appellants Croſs Bill delivered into the Honourable the Mayor's Court and these Respondents further Say that although the Appellant positively aſserts that the award was not for all Disputes between the said Estate and the Appellant these Respondents absolutely declare it was and as a proof thereof these Respondents beg leave to refer this Honourable Court to the Deposition of Shawmeer Sultan Number One (annexed to the Proceedings had in the Honourable the Mayors Court) which particularly sets forth that the Accounts related to Effects and Merchandize the Appellant had saved when the French were in Poſseſsion of Madraſs as also what Expences the Appellant had been at in saving and selling the aforementioned Goods with his Commiſsion and which Appears to be the Contents of the Appellants whole Account Current And further these Respondents cannot help taking notice of that part of the Appellant's Petition which sets forth that the Honourable the Mayors Court gave a Decree in favour of these Respondents upon their imagining that all Disputes were settled when it is very notorious that it was upon good and Sufficient proof that all Disputes are settled and upon which the Honourable the Mayor's Court gave their Decree, As to what the Appellant sets forth in regard to this Respondents Suing him for the Amount of Sundry Effects purchased at the Auction of Minasacawn de Lucas deceased without giving him Credit for the Amount of the aforesaid Award have rendered the said Award void and of no Effect These Respondents beg leave to Say that they tendered the sum Awarded to the Appellant but as he refused to accept it (as will appear by the Depositions of Moocartoom Mirzam and Gereek Jacob Numbered two and four annexed to the Proceedings already had in the Honourable the Mayors Court) These Respondents humbly conceive that could be

no-

Did preferr'd a suit in the Honourable the Mayor's Court Against one Mootah Rashapah Chittee also of this Place Merchant for the Amount of a Bond of the Sum of One thousand Pagodas Given by the said Mootah Rashapah Chitty to the said Francisco Carvalho in which said Cause the said Mootah Rashapah Chitty filed a Cross bill Against Your Petitioner Attorney as aforesaid for an Exorbitant demand of the sum of Three thousand Six hundred and Twenty Six Pagodas which said Cause coming to Issue Judgement was given thereon on the twenty fourth day of December in the Year of Our Lord one Thousand seven hundred and Fifty Six by the said Mayor's Court in the Following manner. It appearing to this Court that the Original Complainant's Constituent had found means to possess himself of the Defendants Effects and thereby to procure the Payment of the Mortgage Bond — Due to him This Court doth think fit to Order and decree and doth Accordingly Order and Decree that the — Mortgage Bond annexed to the Complainants Bill shall be cancelled in the presence of this Court And that the Bills of Sale of the Mortgage Premises be delivered up to the Defendant and likewise that the Original Complainants Bill as well as the Bill brought by the Cross Complainant do both Stand dismiss'd and That each Party pay the Costs of his own Suit. But your Petitioner for divers good reasons not being Satisfyed with the said Decree did appeal therefrom to this Honourable Court when it pleased this Honourable Court to pass a Decree on the merits of the said Cause in the Following manner. This Court doth think fit to Order and Decree and doth accordingly order and Decree that the said Decree of the Honourable the Mayor's Court be reversed and set aside — and that the Respondent do pay unto the Appellant the sum of One thousand Pagodas being the principal money Appearing to be due on the Bond now in suit Together with all Interest that may become due thereon and also — all Costs of Suit in both Courts. By which said Decree of this Honourable Court Your Petitioner conceived he was — intitled to the Payment of the said Sum of One thousand Pagodas with the Interest thereon from the said Mootah Rashapa Chitty and Accordingly demanded the Same according to the Tenour and by Virtue of the said Decree But the said Mootah Rashapah Chitty Refusing to Comply with your Petitioner's demand Your Petitioner did on the 7th day of October Last apply to the aforesaid Honourable the Mayor's Court to put the said Decree in Execution when the said Mootah Rashapa Chitty Opposed Your Petitioner's Motion in the said Court And filed a petition in the said Court setting forth that as this Honourable Court had in their Decree before recited Ordered that Decree of the Honourable the Mayor's Court should be reversed and set aside He the said Mootah Rashapa Chitty was thereby Intitled to the Payment of his Exorbitant demand in his Cross Bill of Complaint as by Reversing the said Decree of the Mayor's Court (which Decree dismiss'd his the said Mootah Rashapa Chitty's bill) such Reversion confirmed his the said Mootah Rashapa Chitty's Suit But Your Petitioner — having in Answer to the said Petition Strenuously denyed that the said Decree could admitt of such Interpretation and maintaining that the said Decree of this Honourable Court was for the Relief of your Petitioner Your Petitioner Requested the said Mayor's Court to put the said Decree in Execution When the said Court upon hearing the Merits of the said Petition And your Petitioner's Answer thereto Refused to Award Execution on the said Decree as will more fully and at Large Appear by an attested Copy of the Minutes of the said

Moota Rashapah Chitty against the said Quintin De La Mettrie Attorney for Fran[illegible] Carvalho notwithstanding which the Honourable the Court of Appeals have thought proper to reverse, and set aside the Decree given by this Court in both Causes by which decision that part of the Decree of this Court which dismiss'd the Cross Bill brought by the said Moota Rashapah Chitty against the said Quintin De Lamettrie Attorney for Francisco Carvalho, was reversed, and set a side as much as that other part thereof which dismiss'd the Original Bill brought by the said Quintin De Lamettrie Attorney for Francisco Carvalho Against the said Moota Rashapah Chitty, which Judgment does allow in effect the Claim made by the said Moota Rashapah Chitty in his Cross Bill (which was also for a much Larger Sum then the Original Complainant had demanded of him) to be good, and of Course, that the said Quintin De La Mettrie Attorney for Francisco Carvalho must Account to the said Moota Rashapah Chitty for a Considerable Ballance altho' it is further Ordered by the Decree of the Court of Appeals, that the Respondent Moota Rashapah Chitty shall pay unto the Appellant Quintin De La Mettrie Attorney for Francisco Carvalho the sum of One thousand Pagodas being the Principal Sum sued for, together with all Interest and Costs of Suit in both Courts; and this has given Occasion to the said Quintin De La Mettrie Attorney for Francisco Carvalho to apply to this Court for a Warrant of Execution upon the Decree of the Court of Appeals, as that other part of the said Decree which is in favour of the said Moota Rashapah Chitty as a foresaid has furnished him with cause to Petition this Court that Execution may not be granted to the said Quintin De La Mettrie, Attorney for Francisco Carvalho and may further give him room to believe that he likewise is intitled to Apply to this Court for a Warrant of Execution upon the said Decree which is not only Repugnant, but would also furnish Continued ground of dispute between the Party instead of determining the Suit, which is Contrary to the Rules of Justice; and therefore it is the unanimous opinion of the Court that if a Warrant of Execution should be granted to either of the parties upon the Decree of the Court of Appeals as it now Stands, it might prove the Means of introducing great irregularity and errors, in their Proceedings and might hereafter be made use of as a President productive of Confusion and Contention this Court doth therefore unanimously think fit to agree and resolve and doth Accordingly agree and resolve that the Prayer made by the Attorney for the said Quintin De La Mettrie Attorney for Francisco Carvalho for a Warrant of Execution on the said Moota Rashapah Chittys Effects shall not be granted, But if the Attorney for the said Quintin De La Mettrie Attorney for Francisco Carvalho will Apply to the Court of Appeals by Petition to have their Decree reviewed and the Court of Appeals will upon such Application give notice to the Apposite Party that he may have an Opportunity of demurring to such Petition, and will then find it proper to alter their Decree so as not to admit of ambiguity or Error this Court will then put the said Decree in Execution in the usual manner.

Town Hall
November 22. 1757.

Ꝑ Cur: Danl. Morse
Regr.

To the Honourable George Pigot Esqr.
President and Governour &ca. Council of
Fort St. George

Filed in my Office
31 July 1756
Jos. Du Pré
Clerk of Appeals

The Humble Petition and Appeal of Meer Bauker Merchant
now living and Residing at Madraſs

Sheweth

That on or about the Thirtieth day of August in the Year of Our Lord One thousand Seven hundred and Fifty three, John Andrews and Gauzi Cawn of Madraſs Mariners did borrow and receive of Guerack Jacob of Madraſs Merchant the sum of Four hundred and Ten Pagodas, at Respondentia on the Ship Ally Seroff to return from this Port of Madraſs, to that of Merguey at the rate of Eighteen p Cent if the Voyage was concluded in Eight months, but if it was longer Prorate was then to be allowed, And this Appellant did at the Entreaty of the above mentioned John Andrews and Gauzi Cawn, become bound unto the said Guerack Jacob for the said Sum of Four hundred and Ten Pagodas if they the said John Andrews and Gauzi Cawn did not comply with the Terms mentioned in their Bond within the Time Limited, which sum this Appellant hath agreeable to his Obligation already Paid, But there was not the least word mentioned in this Appellant's Obligation of his being answerable either for Premium or Prorate; Yet He the said Guerack Jacob did file a Bill in the Honourable the Mayor's Court against this Appellant for the sum of One Hundred and Eighteen Pagodas, Twenty Six fanams, and Twenty Two Cash, as being the Prorate Due on the said Sum of Four Hundred and Ten Pagodas and as a Proof of the Justneſs of His Demand did annex a false Translation of this Appellant's Obligation to his said Bill of Complaint whereby it did really appear that this Appellant was Obliged to comply with the Terms mentioned in the Bond Given by John Andrews and Gauzi Cawn to the said Guerack Jacob, which Translation was deemed to be Expunged upon a True one's being given in by Moodu Kistna which both parties agreed to abide by; and is in the following Words, "I Meer Bauker hereby affirm that with respect to this Bond if the said Mariner John and Nacoda Gauzi Cawn do not Pay or deliver the money at the Limitted Time I shall be Answerable for the said Sum of Four hundred and Ten Pagodas, But there is not one word mentioned of this being Obliged to be answerable either for the Premium or Prorate. Nevertheleſs The Honourable the Mayor's Court were Pleased upon Hearing this Cause to order this Appellant to pay unto the said Guerack Jacob the said Sum of One hundred and Eighteen Pagodas, Twenty Six fanams, and Twenty Two Cash, as being the Prorate due on the said Sum of Four hundred and Ten Pagodas together with such Interest as should become due thereon untill full Payment is made also all costs of this Suit, as will appear upon reference being had unto the Decree

of the said

To the Honourable George Pigot Esq.r
President and Governour &c.a Council of
Fort S.t George

Filed in my Office
the 17th Aug.st 1757
Jos. Du Pré
Clerk of Appeals

The Answer of Guerack Jacob of Madrass Merchant Respondent
To the Petition of Appeal of Meer Banker of the same Place Merchant
Appellant

This Respondent admits that on or about the thirtieth day of August in the Year One thousand Seven hundred and fifty three he lent the Principal Sum of Four hundred and Ten Pagodas to John Andrews and Ganzi Cawn, that the same was on Respondentia at Eighteen ℘ Cent that if the Voyage Exceeded Eight Months, a Prorate to be paid, That this Respondent did File a Bill against the Appellant for the Sum of One hundred and Eighteen Pagodas Twenty Six Fanams and Twenty Two Cash and that this Respondent Obtained a Decree of the Mayor's Court against John Andrews one of the Principals for the Prorate that was (The other Principal Ganzi Cawn having left this Place) with costs of Suit, and Land Interest on the said Prorate, but the said John Andrews having Declared himself Insolvent the Appellant was the Sole and Indeed only Person this Respondent had ever placed Confidence in, as the others were not thought Worthy of Trust by this Respondent nor would he have lent the Principals any money had not the Appellant been Security. That although the Apellant Insists he only became bound for the Principal Sum of Four hundred and Ten Pagodas yet he the Appellant paid to this Respondent Four hundred and Eighty five Pagodas being the Principal and Premium due on the said Respondentia Bond for Eight Months together with thirteen Days Interest, so that if the Appellant did not think Himself Responsible for more than four hundred and Ten Pagodas How came the Appellant to Pay so large a Sum of Money more than he was bound to do, This Respondent with Reasons therefore Conceives he thought himself Obliged to the Performance of the Bond in all it's parts That in the Proceedings had in this Cause in the Honourable the Mayors Court together with the Reasons Assigned in their Decree to which this Respondent most humbly Refers it will fully appear that this Respondents Demand was Justly founded and this Respondent presumes This Honourable Court will also be Convinced that the said Mayor's Court in Equity Judged no other Construction could be put on the Appellants Intent than that the Appellant was in the true meaning of the said Respondentia Bond bound for the General Execution of the same. For all which reasons this Respondent therefore humbly prays that the Appellants Petition of Appeal may stand Dismissed and that the Decree of the Honourable the Mayor's Court be Confirmed with all Costs of Suit in both Courts.

Isaac Merrigeot
Att.o for the Respondent

The Attorney for the said Vincent Quintin dela Mettrie Attorney for Francisco Carvalho moves the Court that the Sum of Six hundred and fifty two Pagodas levied by the Sheriff by Sale of the goods and Chattles of the said Mootu Rashapah Chitty may be paid to the said Vincent Quintin dela Mettrie which is Ordered accordingly and that the contested Effects remaining under the Sheriffs Seal do remain so untill the matters in dispute be legally determined.

To the Honourable George Pigot Esqr.
President and Governour &ca. Council of
Fort St. George

Filed in my office
the 23d. August 1757
Josias Du Pre
Clerk of Appeals

The humble Petition of Appeal of David Rannie of Calcutta in the Kingdom of Bengall, but lately residing at this Place Mariner

Sheweth

That this Appellant did on or about the Second Day of June which was in the year of our Lord One thousand Seven hundred and fifty six as Attorney for Thomas Raitt of Calcutta in the Kingdom of Bengall Merchant sell at Calcutta aforesaid unto Edward Holden Cruttenden also of that Place Merchant a Parcell of Cotton amounting to the Sum of Nineteen Thousand Seven hundred and eighty three Current Rupees, twelve Annas and Nine Pice the property of the said Thomas Raitt, which said Cotton, was after the same was sold and before the Delivery thereof unfortunately lost by the unhappy Capture of Calcutta by the Moors on or about the twentieth Day of June aforesaid; upon the said Thomas Raitts Arrival at Calcutta, soon after the Loss of that Place, and hearing of the whole affair He imagined that the said Edward Holden Cruttenden was to Account with him for the said Cotton, and did Accordingly when the said Edward Holden Cruttenden came to this Place from Calcutta aforesaid in the month of October last, send a proper Power of Attorney to Mr. Andrew Munrow to prosecute the said Edward Holden Cruttenden for the amount of the said Cotton, if He should refuse to pay for the same, Whereupon He the said Andrew Munrow did upon the said Edward Holden Cruttendens refusing to discharge the same file a Bill of Complaint in the Honourable the Mayor's Court for the Amount of the Cotton as aforesaid, And the said Edward Holden Cruttenden did demurr to the said Bill of Complaint, but upon arguing the said Demurr the Court was pleased to order the same to be dismissed, and put the said Edward Holden Cruttenden upon his Answer, which was accordingly delivered in, after which a Replication and rejoinder

and twelve Current Rupees, fifteen Annas and three Pice with the Interest due thereon, after deducting
therefrom the sum of five hundred and seventy two Current Rupees Six Annas and Six Pice with
the Interest due thereon, on Account of Sundry China Goods which the said Edward Holden Cruttenden
had forgot to give this Appellant Credit for in his Account Current annexed to his Bill of Complaint,
and moreover that each party should pay their own Costs, as will appear upon reference being
had unto the Decree of the said Honourable the Mayor's Court bearing Date the [illegible] day of this
Instant August Now this Appellant prays leave to appeal to this Honourable Court from the said
Decree, because He is humbly of Opinion that the Person whose fault it was that the Cotton was not
delivered agreeable to the Intention of the Contract ought to be the only sufferer as the Contract itself is
not in the least contested or denied by either party; Since therefore the Non Delivery of the Cotton is
the sole matter in Dispute this Appellant prays leave to set forth the following Particulars, by w.ch
means this Hon.ble Court will be better able to judge whether the Non Delivery of the Cotton was
occasioned by the Delay in the part of this Appellant, or on the Part of the said Edward Holden
Cruttenden This Appellant hath in his Declaration before Roger Drake Esq.r which was produced as an
Exhibit in the Cause of Andrew Munro against Edward Holden Cruttenden And which is likewise
produced as an Exhibit in this Suit solemnly sets forth that a Day or two after the Sale of the said Cotton,
He this Appellant desired the said Edward Holden Cruttenden to weigh of and receive the Cotton he had
bought, which part of the said Declaration the said Edward Holden Cruttenden does in every particular
manner in his Answer in the former Suit, which is produced as an Exhibit in this Suit, corroborate, For
the said Edward Holden Cruttenden in his said Answer does say „ That he asked this Appellant that
„ if he should want to keep the Cotton in this Appellants Godowns or Warehouses for a few Days whether
„ it would be any Inconvenience to him this Appellant, to which this Appellant Answered in the
„ Negative. And the said Edward Holden Cruttenden further saith that the next morning when his
„ Banian or Broker Naian Mullock came to him He acquainted him the said Naian Mullock of
„ the Contract He had made with this Appellant, and also of his having requested this Appellant to
„ let the Cotton remain in this Appellants Godowns or warehouses, if He should have occasion to make
„ use of that Liberty, to which the Banian Replied that as He the said Edward Holden Cruttenden had
„ a very considerable Quantity of Cotton unsold, the fewer Hands it was in the better it would sell, and
„ that the Dealers in Cotton, so long as it remained in this Appellants Godown or Warehouse, would
„ not look upon it as his the said Edward Holden Cruttenden's Property, and that He had better send
„ and weigh it off „ By which clear and positive Declaration made by the said Edward Holden
Cruttenden himself, it is very evident that the Delay which happened in the Delivery of the Cotton,
did actually happen at his the said Edward Holden Cruttenden's Request, and for his Convenience; By
which

Appellant for a Parcell of Cotton And this Respondent also admits that the said Cotton being so Bargained for as aforesaid the Capture of Calcutta by the Moors shortly after happened to Wit on or about the Twentieth day of June aforesaid. This Respondent also admits that Andrew Munro Attorney for Thomas Raitt did prefer a Bill in the Honourable the Mayor's Court of this Place for the amount of the said Cotton as this Respondent refused to Discharge the same to which the said Bill of Complaint this Respondent did Demurrer and upon Arguing the said Demurrer the Court dismiſsed the same and put this Respondent upon his Answer after which a Replication and Rejoinder were also filed in the said Cause and other Proceedings had thereon untill the said Cause came to a hearing. This Respondent denies that he ever aſserted he was answerable to the Appellant alone for the said Cotton but expreſses himself in his said Demurrer thus— " This Defendant therefore doth not acknowledge himself "any ways indebted to the Complainant Andrew Munro nor to have any dealings with him who Charges this "Defendant with a parcel of Cotton said to be purchased by this Defendant from his Constituents Attorney "David Rannie which if so or was there any Contract paſsed between this Defendant and David Rannie This Defendant humbly conceives he is answerable to David Rannie alone and to no other Person which paſsage by the word (if) raises a doubt in respect to the Bargain or Contract with the Appellant and is the point now before this Honourable Court The said Cause coming on to be heard the Honourable the Mayor's Court were pleased to give a Decree in favour of this Respondent with costs as it appeared very Clear to them that the said Cotton was not delivered or any legal tender made thereof to this Respondent as by the Decree of the said Court may more fully appear. This Respondent admits that soon after the said Decree was given the Appellant arrived at this Place to Wit on or about the month of February last and that this Respondent did file a Bill of Complaint against the Appellant in the said Honourable the Mayor's Court for the sum of Twenty one thousand four hundred and twelve Rupees fifteen Annaes and three pice and the Appellant did Answer the said Bill and did also annex to his Answer to the said Bill an Account Current wherein he debted this Respondent for the amount of the said Cotton the quantity whereof he did thereby take upon him to ascertain although the said Cotton had never been weighed off either in this Respondents presence or in the presence of any other person on his behalf. To which Answer this Respondent not sufficiently instructed in the forms of Law did reply instead of Demurring (as he is since Advised he should have done and that amongst other reasons, for that the Appellant in his Voluntary Declaration upon Oath taken before Roger Drake Esquire of Calcutta in the Kingdom of Bengal aforesaid did therein Renounce his right to the said Cotton to the aforesaid Thomas Raitt, by declaring that the said Cotton was the property of the said Thomas Raitt and sold as such which declaration was produced on the part of the said Thomas Raitt in the beforementioned Suit between the said Thomas Raitt by his Attorney Andrew Munro and this Respondent in order the better to establish the right of the said Thomas Raitt to the said

Cotton

for aught this Respondent knows or has been made appear there might or might not have been in the said Godowns all or any part of the Cotton said to be in them and if any such Cotton might or might not have been sound or damaged or of the common or inferior Quality to what was bargained for which Circumstances this Respondent conceives do evince that the Appellant is unjustly founded in his demand upon this Respondent in regard that it is made for Goods of an unknown Quantity and Quality and undelivered and though this Respondent does acknowledge that at the time of the Bargain he did desire that he might have the Liberty of leaving the said Goods in the Appellants Godown a few days if he should have occasion such request can only be supposed to take place from the time the Goods were to be at his risque but ſince no period at which such risque was to commence and therefore that risque can only be supposed to commence at such a period as is customary with Merchants that is to say when the Quantity and Quality of the Goods are ascertained to the Satisfaction of both Partys Buyer and Seller and delivery thereof made to the former without which the Sale cannot be Compleated, but this Respondent finding it his Interest (for the reasons set forth in this Respondents Answer in the Cause between him and the said Thomas Raitt by his Attorney Andrew Munro) to compleat the sale by obtaining poſseſsion of the said Goods, he did the very next day use such means to obtain the same as is customary with merchants that is he ordered his Banyan or Chief Servant to apply to the Appellant to have the said Cotton weighed off and delivered who informed this Respondent that he did Accordingly send the persons usually employed under him to the Appellant's House for that purpose but the Appellant (who was in actual poſseſsion of the said Cotton was gone out of Town to His House at Dum Dumma, and on that Account the said Cotton was not and could not at that time be weighed off and Delivered to this Respondent and here this Respondent must acknowledge that relying too much on the equity of his Cause and desirous that he might be determined as speedily as poſsible as he purposed returning to Europe and would not willingly have left an Affair of such Consequence to him unadjusted, he hath ommitted to procure such absolute proof of the means he did so use to obtain poſseſsion of the said Cotton as he might have done by the Disposition of his Banyan and other Servants but as they are at Bengal and a Commiſsion must have been sent thither for that purpose the delay that would have been thereby occasioned (in case the Honourable the Mayors Court had judged it reasonable to admit of such delay) would have exceded the term of this Respondents proposed stay in India but though such proofs have been omitted this Respondent hopes the Presumption shall not therefore lie against him that he did not use such means as are alledged especially as there do not appear any Circumstances to make it improbable but a transaction which followed does tend to establish one or both of the points this Respondent hath argued to Wit either that the Sale of the Cotton was never

compleated

Friday the 23d June 1758.

Vs. Vincent Quintin de la Mettrie Attorney for Francisco Carvalho . Appellant
Moodu Rashapah Chitty . . . . Respondent

Reference being had to an Order of Court of the 2d February last it thereby Appears that a Warrant of Execution having issued out of this Court against the Effects of the said Moodu Rashapah Chitty and the Sheriff having thereon made return that certain Effects still remained under his Seal by virtue of the said Warrant the Title to which was contested in the Honourable the Mayor's Court, This Court did thereupon order that the said Contested Effects should so remain under the Sheriffs Seal untill the matters in dispute should be legally Determined. The Attorney for the Appellant now produces to the Court a Decree of the Honourable the Mayor's Court of the 16th May last past in a Cause between Moodu Ramah Linga Chitty of Madrass Merchant Complainant and Francis Carvalho by his Attorney Vincent Quintin de Lamettrie Defendant touching the said Contested Effects, and prays that the Sheriff may proceed to the Sale thereof by Virtue of the aforesaid Warrant issued out of this Court. Ordered that the Sheriff do make Sale thereof and have the money before this Court on or before the 10th day of July next ensuing.

To the Honourable George Pigot Esqr.
President and Governour &ca. Council of
Fort St. George

Filed in my Office
the 15th May 1758
Jos.s Dupré
Clerk of Appeals

The Humble Petition and Appeal of Aviat Torese of Madrass Merchant

Sheweth

That sometime in the month of June which was in the Year of our Lord One thousand Seven hundred and forty Eight this Appellant being at Puliacat one Seeva Chitty who also resided there requested of this Appellant to deliver in his (this Appellants) Name unto one Marcar Petrus who arrived there in a Macao Ship called the Rozarinho sundry of his the said Seeva Chitty's Goods and Merchandize amounting to the Sum of One thousand one hundred seven and half Pagodas in order for the said Marcar Petrus to dispose of the said Goods and Merchandize to the best Advantage at the Eastward or China on the said Seeva Chitty's Account and risque whereupon this Appellant did deliver the said Goods to the said

Marcar

the said Cause between the said Marcar Petrus and this Appellant was settled, but the said Cause between the said Marcar Petrus and this Appellant appearing to be very intricate as the Accounts annexed to the proceedings consisted of many Articles It was judged most expedient to refer the same to some of the Armenian merchants who were by consent of the Parties appointed by the Honourable the Mayor's Court as Referees to examine and Report their Opinion on the said Accounts. In which said Account the produce of the abovementioned concern was included and after the said Referees had duely weighed and considered the said Article they gave it as their Opinion that no more than Nine and Seven eighths Per Cent Profit ought to be allowed this Appellant by the said Marcar Petrus, and that this Appellant should be Obliged to deduct the difference, being twelve and one eighth Pagodas Per Cent as will more fully and at Large appear by an Extract of the said Report annexed to the proceedings of the Honourable the Mayor's Court. The said Cause coming on to be heard, the Report of the Referees became a Decree of the Honourable the Mayors Court after which said Cause was heard the said cause between this Appellant and the said Seeva Chittee was heard on Tuesday the second day of this Instant May when the Honourable the Mayor's Court Decreed this Appellant to pay the said Seeva Chitty, the amount of the Obligation because this Appellant had Inadvertently (after having settled the Accounts of the Profit on the Goods sent by the said Marcar Petrus with the said Seeva Chitty) given the aforesaid Obligation to the said Seeva Chitty without insisting on an Indemnification in case the said Marcar Petrus should refuse to pay this Appellant at the rate of Twenty two per Cent Profit, And this Appellant also begs leave to set forth that it is also Decreed that this Appellant is not to be allowed the the Amount of Sundry Articles taken from this Apellant by the said Seeva Chitty as the said Seeva Chitty has artfully aſserted that the same were presents from this Appellant except an Article of Betteelas which he insists has been already paid for neither of which aſsertions he has been able to prove although his utmost endeavours have not been wanting as will appear by the Severall Depositions annexed to the proceedings of the Honourable the Mayor's Court, For all which Reasons as aforesaid this Appellant doth Appeal from the Decree of the said Honourable the Mayor's Court and humbly prays that the said Decree may be reversed and set aside and that the said Seeva Chitty may be Obliged to pay all costs of this Suit in both Courts and that this Appellant may likewise have such General relief in the Premisses as to this Honourable Court shall seem meet.

John Palmer

Attº for the Appellant

pay unto the Complainant the full, and just sum of one thousand five hundred and four Pagodas, twenty four fanams and forty Cash, being the sum sued for together with such Interest as now is or shall hereafter become due thereon, Untill full Payment is made, also all Costs of this Suit.

Exur. Danl. Morse
Regr.

To the Honourable George Pigot Esqr.
President and Governour &ca. Council of
Fort St. George

Filed in my Office
the 29th. May 1758
Jos. Dupré
Clerk of Appeals

The Answer of Seeva Chitty of Madrass Merchant to the Petition of Appeal of Aviat Jorose also of the same place Merchant.

This Respondent admits that there were Sundry Dealings between him and the Appellant from the Year One thousand seven hundred and forty Eight to the Year One thousand Seven hundred and Fifty, when closed between this Respondent and the Appellant who gave to this Respondent an Account Current which is Annexed to this Respondents Replication delivered into the Honourable the Mayor's Court, But as to the Appellants imagining that He ought to be allowed the Difference that He says arose on a joint concern delivered to one Marcar Petrus by the Appellant and this Respondent. This Respondent prays leave to acquaint this Honourable Court that it was upwards of three Years from the time that affair was settled, to the Time He the Respondent gave this Appellant the Note of hand on which this Respondent sued the Appellant, That during the said Space of three Years He the Appellant never mentioned any such difference to this Respondent altho' the said Marcar Petrus had as the Appellant very well knew been so precautious as to have taken an Indemnification from him the Appellant that in Case the adventure should not produce twenty two p Cent He the said Marcar Petrus was only to be Answerable for the Real Out turn thereof and altho' both the Appellant and the said Marcar Petrus were in the place during that whole Space of three years, so that if there was any such loss as the Appellant mentions He must have been Acquainted with the same before he gave this Respondent the aforesaid Note of hand, and the Appellant can only blame himself that he did not take the same Indemnification from this Respondent, that the said Marcar Petrus Received from him the Appellant, And with Respect to the Sundry Articles amounting to thirty eight Pagodas charged to this Respondent, by the Appellant, this Respondent prays leave to acquaint this Honourable Court that as the Dates of the said Articles are much prior to the Date of the Note of hand, this Respondent prays leave to say that it is not likely that the Appellant

would

Monday the 17th July 1758

Vincent Quintin De la Mettrie attorney for Francisco Carvalho . . Appellant
Mootu Rashapah Chitty . . . . Respondent

Pursuant to order of Court of the 23. June last directed to the Sheriff returnable the 15th Instant to make Sale of Certain Effects remaining under his Seal by Virtue of a Warrant of Execution Issued out of this Court the 14th December against the Effects of the said Mootu Rashapah Chitty, The Sheriff hath accordingly returned that he hath levied by Sale of the said Effects the sum of One hundred and twenty nine Pagodas four fanams and thirty two Cash. Ordered that the same be paid to the Appellant.

To the Honourable George Pigot Esqr.
President and Governour &ca. Council of
Fort St. George

Filed in my
Office the 11th July 1758.
Josias du Pre
Clerk of Appeals

The Humble Petition and Appeal
of Joakin Joze de Mello of Madrass
Surgeon.

Sheweth

That on or about the Sixth day of December last Salomon Franco of madrass Merchant did file a Bill of Complaint in the Honourable the Mayors Court, Against your Petitioner for the payment of a Respondentia Bond (for the principal Amount of One thousand Arcot Rupees with premium and Interest thereon) Given by your Petitioner to the said Salomon Franco But which said sum not being paid your Petitioner, The said Salomon Franco set forth that he remitted the same at your Petitioner's particular Request to one Raphael Joseph Semide in Bengall together with the sum of One thousand Pondichery Rupees deposited by your Orator in the hands of the said Salomon Franco, as will more fully Appear upon reference being had to the said Bill

of

said Court were pleased to order and Decree "That it appearing to the Court that the defendant (your Petitioner) was privy and consenting to the manner whereby the complainant (Salomon Franco) remitted the One thousand Arcot Rupees now sued for to Bengal by his (your Petitioner) not protesting against the complainant so doing before the defendant departed himself for Bengal, where he was to have Received the said sum of Raphael Joseph Sumido as mentioned in a Letter directed to the said Raphael Joseph Sumido which the complainant Delivered Open to the defendant and as by the Custom of Merchants, A person who receives a Draught on one who fails or dies Insolvent before payment thereof is Subject to the Loss in case he the possessor hath been either negligent in procuring payment or of protesting and duely advising the drawer If payment has been refused; and since the neglect of the defendant to protest against the Complainant or Raphael Joseph Sumido for non payment of the said sum of One thousand Arcot Rupees at Bengal, or to require his Bond to be delivered up by the Complainant when he the defendant Arrived here again with a Letter concerning the said one thousand Arcot Rupees from the said Raphael Joseph Sumido to the Complainant leave a Strong presumption that the Defendant your Petitioner was Satisfied that the said sum of one thousand Arcot Rupees should remain with the said Raphael Joseph Sumido at his the defendants risque and though the Complainant did not upon the defendants coming back from Bengal, demand payment of his Respondentia Bond Yet as he did not renounce his right thereto This Court doth unanimously think fit to order and decree and doth accordingly order and decree that the defendant Shall pay to the Complainant the full and Just sum of One thousand Arcot Rupees together with such premium and Interest as now is or shall thereafter become due thereon untill full payment is made According to the Tenour of his Bond also all costs of this suit" as will appear upon reference being had to the said decree bearing date the twenty Sixth day of June in this present Year. NOW your Petitioner begs Leave to represent to this Honourable Court that he cannot but think he is greatly agrieved by the said decree For although (your Orator was privy to the manner in which the said Solomon Franco remitted the said sum of One Thousand Arcot Rupees to the said Raphael Joseph Sumido at [illegible]

Yet

that by the said decree of the Honourable the Mayors Court they have decreed the said Salomon Franco his respondentia premium when it plainly appears that the remittance made by the said Salomon Franco was made by Bill in which there was no risque by which Action of the said Salomon Franco your Petitioner conceives that supposing your Petitioner had duly receiv'd the remittance at Bengal aforesaid he the said Salomon Franco could not be entitled to a premium thereon. For all which reasons aforesaid your Petitioner doth Appeal from the said decree of the Honble the Mayors Court and Humbly prays that the same may be set aside and Mone that the said Salomon Franco may be Obliged to pay all costs of this suit in both Courts and also that your Petitioner may have such General relief touching the premises as to this Honble Court shall seem meet.

Archdale Palmer

Attº for the Appelt.

Mayors Court
at
Madraspatnam

Tuesday the 27th day of June Anno Domini 1758

Between Salomon Franco of Madras Merchant Complainant, and Joachim Jooz de Mello also of the same Place Surgeon Defendant

Present

Samuel Ardley Esquire Mayor James Alexander, Edward Burman, and Walton Stevens, Aldermen

This Cause Coming on to be heard, and debated this day in the presence of the Defendant, and of the Attorneys on both sides, the Complainant the full and just [illegible] of one thousand Arcot Rupees, together with such Premium, and Interest as now is, or shall hereafter become due thereon, untill full payment is made, agreeable to the Tenour of his Bond, [illegible] of this Suit

Flur

Danl. Morse
Regr.

To the Honourable George Pigot Esqr. President and Governour &c.a Council at Fort Saint George

Filed in my
Office the 24th July 1758
by
Jos: Du Pre
Clerk of Appeal

The Answer of Salomon Franco of Fort Saint George Merchant to the Petition of Appeal of Joachim Jorge de Mello also of the same Place Surgeon.

This Respondent admit that or on about the Sixth day of December Last which was in the Year of Our Lord One thousand Seven hundred and fifty seven he did file a Bill of Complaint in the Honble the Mayors Court against the Appellant for the Payment of a Respondentia Bond with the Premium and Interest due thereon which said Bond was given by the Appellant to this Respondent and although this Respondent did not deliver the amount of the said Bond to the Appellant yet he did at the particular request of the Appellant remit the amount thereof as also the sum of One thousand Pundichery Rupees, which were deposited in the hands of this Respondent by the Appellant to one Raphael Joseph Simmedo in Bengal who was

Concern

Remittance he accepted from the hands of this Respondent an open
Letter of Order upon the said Raphael Joseph Simmis for the
delivery of the said Sum of One thousand Arcot Rupees as also for
the Sum of one th [illegible] Pondichery Rupees to which Order the
Appellant made no objection — The Appellant has [illegible] asserted
in his said defence that the said Raphael Joseph Si[illegible] refused
the Payment of the said Sum of One thousand Arcot Rupees and in order
to Corroborate his assertion refers to the Letter marked
C annexed to this Respondents Bill of Complaint, but even if
this was true this Respondent conceives that the Appellant having
neglected to protest or return the said Order to this Respondent
according to the Custom of Merchants did make himself answerable
for the same but there arises a strong presumption that the
Appellant did receive some kind of satisfaction for the same since
he had dealings in Trade with the said Raphael Joseph Simmis
during the space of above twelve Months and proceeded with him
to the Diamond Mines For all which reasons as aforesaid this
Respondent conceives that the Appellant ought not to be excused
the Payment of a Bond which is duely executed under the Artfull
Pretext that he had not received the amount thereof as he made
himself answerable for the same by his neglecting to protest or return the said
aforementioned Order according to the Custom of Merchants and
even neglected to make any mention in his Letter (to this Respondent)
marked B that the said Order had not been paid — And this
Respondent farther Saith that he never looked upon the Letter
marked C (which the Appellant seems to imagine discharged him
from the performance of this Bond) as a discharge of the Appellants
Bond and that the only motive that induced him not to demand the
payment of the said Bond at the arrival of the Appellant was becaus
he imagined the Appellant was employing his money to advantag
and not because he looked upon the said Letter from Raphael

Joseph

(2) Claimed the said Grain, and commenced a Suit in the Honble the Mayors Court against the said Seida Sheik Moosaw for Money pretended to be lent him on the Mortgage of the said Grain, of which this Appellant being informed Notify'd his Claim and the limited four Months being expired he this Appellant also prefer'd a Bill against the said Seida Sheik Moosaw and annexed to it a Translate of the Mortgage Bond, to which Bill the said Seida Sheik Moosaw gave an Answer, Acknowledging the Justness of the Debt and the Mortgage and praying the same might be disposed of to pay this Appellant, but Aga Mamuseerabury insisting on his Right of a prior Mortgage (as he pretends) of the Grain to him, the Honble the Mayor's Court on this Appellant's Motion appointed a Day for bringing what Proofs this Appellant could to invalidate the said Aga Mamuseerabury's Claim to the said Grain, which this Appellant did as well as the short Time allowed him would permit, and the Cause coming to be heard on the twenty seventh Day of August last, the Honble the Mayor's Court were pleas'd to Decree that the said Aga Mamuseerabury had a prior Right to the said Grain and that the produce thereof should be paid to him (all which, reference being thereto had, will more fully appear by the proceedings of the said Honble Court) from which decree this Appellant humbly Appeals to the Judgement of this Honble Court. Because the Bond given to this Appellant is a clear strong and regular Mortgage Bond expressing the Quality and Quantity of the Mortgaged premises, and it is properly drawn and witness'd, which the other is not, The said Grain was publickly Mortgaged to, and put in possession of this Appellant without Aga Mamuseerabury's in the least hindering it, The said Aga Mamuseerabury came in the same Vessel with

A/ For all which Reasons this Appellant prays this Cause may be reheard and the Decree reversed and set aside; that this Appellant be paid his Principal and Interest out of the Produce of the said Grain; that this Appellant may not be charged with the Costs of Suit, and that he may have such other Relief in the Premises as to this Hon.ble Court shall seem meet

John Passwater
Attorney for the Appellant

To the Hon.ble Thomas Saunders Esq.r
President & Governour of Fort S.t George &c.a C.l

The Answer of Aga Mamusearabeg to the Petition of Appeal of Rawson Vincatachilum Paupati Complaining

led 30 Sept.r 1753

This Respondent says that he knows nothing of any Dealings there may have been between the Appellant and Seida Sheik Mannar and that such pretended Dealings (if any there have been) have been carried on unknowing to this Respondent altho' it had been in his Presence for that he does not understand the Country Language being a Stranger and but lately arrived on this Coast, and this Respondent further says that the Appellant has maliciously misrepresented his Case in some Parts of his Petition This Respondent therefore humbly begs leave to set the same in its proper light so far as he is able and has been Witness to, That this Respondent arrived at this Place from Cundore (a Northern Port) in a Boat belonging to Seida Sheik Mannar laden with Grain and other Goods, upon which this Respondent had advanced a Sum of Money and taken a Mortgage Bond upon the said Boat and Goods Payable after the safe Arrival of the said Boat at Madrass or Saint Thome as it will appear by the Translation of the said Bond annexed to the Proceedings had in this Cause in the Hon.ble the Mayor's Court

B.

the said Henry Downey Esqr and stopped this Respondent from proceeding any further, whereby this Respondent found himself obliged to apply to the Honble the Mayor's Court for Relief, and the said Seida Sheik Moosaw having about this Time been Discovered & brought before the Honble the Mayor's Court he then did acknowledge this Respondents Mortgage Bond to be his own Act and Deed and prayed that the Mortgaged premises might be sold to pay this Respondent his Demand but did not at that Time say any thing of his Mortgage given by him to the Appellant and the Honble the Mayor's Court requiring an Answer in form, both Parties duly submitted their Difference to the determination of the said Honble Court, the Process was carried on to the Usual length and a Day being appointed for hearing the said Cause the Appellant then preferred a Petition to the said Honble Court therein setting forth his pretended second Mortgage and Demanding the said Grain to be delivered to him, Notwithstanding which the Honble the Mayor's Court Were pleased to order and Decree that the sum of Two thousand and Ninety three Rupees Due from the said Seida Sheik Moosaw together with the Respondentia and Interest Due thereon or shall hereafter become due thereon shall be paid to this Respondent out of the Produce of the Paddy and Batching mortgaged to this Respondent and sold by Virtue of a Warrant of Execution and that the Overplus (if any be) shall be paid to Rawson Vincata chilum Pauprasy Braminy, intimating at the same Time to the Appellant that he had been imposed upon and had lent Money upon Goods that were already Mortgaged before, This Respondent further says that the Appellant gives a long Relation of the Customs of Northern Merchants which this Respondent humbly apprehends is new Matter and therefore not material for him to make answer unto. The Appellant says that "if Seida Sheik Moosaw has not paid him with what "Money he sold and Mortgaged the Cargo for &c." To which this Respondent answereth and says that he always suspected he had to Deal with a Slippery Debtor who would cheat him if he could and therefore kept a guard over the Mortgaged Premises But the Appellant by contracting secretly with the said Seida Sheik Moosaw not only deprived this Respondent of all Means of getting the said Money into his Hands But also has given good Reason to believe that he

Dinars now Receiving) is Due to Aga Mannuscarabury for which Sum this Respondent did give a Respondentia Bond for the same, but as the said Respondentia is so exorbitant as thirty seven & half p Cent; And the Occasion of this Respondents Consent to such an extravagant Respondentia will fully appear in this Respondents Answer, Reference being had to the Proceedings in the Hon^ble the Mayors Court. This Respondent humbly prays that this Hon^ble Court will be pleased to take the same into Consideration and that just and Reasonable Respondentia may be allowed thereon, the usual Respondentia from Pondy to this Place being twelve and a half p Cent. And that this Debt was contracted at Pondy.

And this Respondent leaves the whole of the abovementiond Reasons to the Consideration of this Hon^ble Court, humbly praying that the Appellant may be orderd payment of his Demand here out of the Sale of the Grain belonging to this Respondent and sold by order of the Hon^ble the Mayors Court. And that Aga Mannuscarabury be ordered to Receive his Demand at Pondy where this Respondent is capable of paying the same but being an Utter Stranger in this Place it is not in his Power to procure Friends that will assist him in the Discharge of the aforesaid Debt due to Aga Mannuscarabury.

Isaac Merigeot
Attorney for the Respondent

Court of Appeals
at
Madrasspatnam

Between Rawson Vincatachulum Puspah Bramany
Appellant
and
Aga Mannuscarabury
&
Seida Sheik Mosen
Respondents

Thursday the 12 June 1755

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 Appeals and Answers and the several Exhibits of the Hon^ble the Mayors Court Together with the Decree of the said Court given in this Cause on Tuesday the 27th Day of August Anno Domini 1754 and due Consideration had and helped Him in his Business so he would help him now to a Partner, and accordingly prevail'd upon Gulam Mahomed Hussun the then Arrack Farmer to be his Partner in the said Arrack, The said Samuel Troutback having previously sold to different Inhabitants of this Town at Twenty five P Cent profit, thirteen & a third Leaguers of the said Arrack, and repaid to this Apellant so much as he had advanced above the Money in his hands belonging to the said Samuel Troutback, after which the said Samuel Troutback did in the Presence of this Apellant and several other Witnesses sign and give to the said Gulam Mahomed Hussun, a Bond, or Agreement, thereby declaring that he the said Samuel Troutback did consent & agree with the said Gulam Mahomed Hussun, that he the said Gulam Mahomed should be his Partner, and concerned with him of One half of the said Arrack then remaining unsold, which was Sixty four Leaguers, or thereabouts, the said Samuel Troutback having taken to his own Use, the Profit already made, amounting to above One hundred Pagodas without giving any Account thereof to his Partner, Which Bond or Agreement Originall and Translate, are annexed to the Proceedings had in the Honourable the Mayor's Court thereby further specifying that the Produce of the Sale of the said Arrack, or any part thereof should Nor they be paid to the said Samuel Troutback as it will more fully appear by the said Bond, reference being had thereto. And this Apellant did as usually assist the said Samuel Troutback by lending him his Servants to see the said Arrack to the Arrack Farmer's Godowns in the Black Town to save Godown Rent, for this was One of the Advantages of the said Samuel Troutback with the Arrack Farmer specified in the aforesaid Contract, that the Arrack Farmer was not to charge any Godown Rent for the said Arrack, but that the said Samuel Troutback was to receive Interest for the Money laid out for the Purchase of the said Arrack, by which Advantage he would have gain'd considerably, had not the said Arrack been confiscated by the French, and this Appellant also kept his Servants by the Arrack after it had been lodged in the Arrack Farmer's Godowns, because at the time when this Appellant proposed to the said Saml Troutback the Arrack Farmer as a Partner the said Samuel Troutback objected to his Circumstances, and that he was not only poor, but much involved, and might perhaps imbezzle some of the to Nobody else, and the said French Governour upon the Declaration ordered the said Arrack to be confiscated, and some time after, this Appellant, as well as the said Samuel Troutback left the Town, and after their Return to Madrass the said Samuel Troutback has applied to the Honourable the Mayor's Court by Bill of Complaint, on the Eleventh Day of September, in the Year of Our Lord One thousand Seven hundred & fifty three, thereby pretending a Partnership and a half Concern with this Appellant in the said Arrack, and demanding the half of the Money he lost by the said Arrack, to which Complaint this Appellant did appear and Answer therein, saying, that he never had any Concern or Partnership with the said Samuel Troutback; that his real Partner was Gulam Mahomed Hussain with whom (as he knew) he had entered into a formal Contract of Partnership for the said Arrack and who in consequence of that Contract had secured the said Arrack and obtained a Licence from the French for selling the same, and that the said Arrack had been safe enough, if He, the said Samuel Troutback had not meddled with it, & by his Imprudence as aforesaid, occasioned the Loss thereof, And that this Appellant believ'd that the said Samuel Troutback would never have made any Complaint against this Appellant, if the said Gulam Mahomed Hussain had been able to pay; after which Answer the Process was carried to the usual Length in order to bring the Cause regularly to a hearing before ~~the said~~ the Honourable the Mayor's Court. And this Appellant did, to controvert the Demand of the said Samuel Troutback, produce several Persons for Witnesses, who, under Oath, deposed, as № Number One to Eight, The Contents of which Depositions are that they know that the said Samuel Troutback, and the said Gulam Mahomed Hussein were concerned, and Partners in the said Arrack, that the said Samuel Troutback signed the Codgan S.T, annexed to the Proceedings had in the Honourable the Mayor's Court and that they could not for certain say that this Appellant had any Concern therein. Notwithstanding all which Proof as aforesaid the Honourable the Mayor's

Court. And as to the Appellant's setting forth it was agreed that he the Appellant should advance and favour this Respondent with the loan of so much Money as should compleat the payment of the said Arrack; this Respondent humbly conceives to be very absurd as the said Appellant never had any Bond Note or Agreement for any such favour'd Moneys nor ever asked for any from the Respondent and to lend Moneys on an uncertain Security without a written Obligation especially at a time the Appellant confesses it was well known the French were on the Coast and preparing to besiege Madrass is so contradictory to the General Tenor of the Appellant's Behaviour, besides his not taking up his own own Notes which he gave your Respondent for the abovementioned Moneys will, it's presumed sufficiently destroy such Assertion.

This Respondent further begs leave to say that so far from proposing the Appellant's being concerned, as he says, he on the contrary asked Your Respondent to enter into Agreement with him to purchase the said Arrack that Your Respondent admits he Did agree to accept of Gulam Mahomed Hussain as a Partner in one third of the Arrack but on Condition that the Appellant should be responsible for his, the said Gulam Mahomed Hussain's Share To prevent giving this Honourable Court any Trouble by unnecessary Repetitions tho' the Appellant has greatly variegated from the Process in the Honourable the Mayor's Court Your Respondent begs leave to refer to the Proceedings of the aforementioned Honourable Court where this Affair (concerning the Arrack) is fully stated humbly presuming to make the following Remarks

The Appellant alledging that there was what he calls a Bond or Agreement drawn between the said Gulam Mahomed Hussain and Your Respondent and executed before several Witnesses Your Respondent is surprised that in the Length of time the Cause has been Depending in the Honourable the Mayor's Court the Appellant never produced those Witnesses, the only One they offered to produce deposing on Oath that he never saw the same executed, And as an Agreement Contract, or whatever the Appellant may be pleased to Stile it, must (Your Respondent humbly apprehends) be equally binding to the Parties concerned and Signed by them. In all the Weak and Inconsistent Pleas the Appellant has made Use of to retard and (if possible) to impede

Justice

Therefore this Respondent humbly hopes that the Decree of the Honourable the Mayor's Court is just and equitable and humbly prays that the same may be confirmed with his Additional Costs of Suits.

Isaac Merigeot
Attorney for the Respondent.

To the Honourable Thomas Saunders Esqr. President and Governour of Fort St. George &ca. Council

July 1754

The Replication of Permaul Moodelaire
Appellant to the Answer of Samuel Troutback
Respondent

This Replyant humbly begs leave of this Honourable Court to observe that the first Paragraph of the Respondent's Answer is contradictory to itself, for that the Respondent says that the Arrack was bought Jointly by the Appellant and Respondent but immediately subjoins that the Appellant agreed for the same and settled the Price before he advised the Respondent therewith which this Replyant Denies and is ready to prove the Contrary by the Bills of Mr. Van Nelsen of whom the said Arrack was bought and where no Mention is made of this Replyant, which plainly proves that this Replyant did not agree for the said Arrack and that at that time he was not concerned therein, And why should the Respondent pay for the whole Amount of the said Arrack when this Replyant was well able to pay for his Share if he had been jointly concerned therein, and why should not the Respondent take a Receit from this Replyant for his half Concern in the said Arrack when this Replyant refused to pay the Bills of Van Nelsen before the Respondent had endorsed them and the Respondent had then a just Reason to Demand from this Replyant the same Security that this Replyant had Demanded from him, or why should the Respondent chuse to draw his Money out of this Replyant's Hands where it was at Interest and for which he had Bonds to lay it out in a perishable Commodity wherein he was but half concerned and for which he had no Security at all, surely this can hardly be believed by any Person that knows the Respondent, and to show further that there was not a Point of Confidence from the Respondent in this Replyant's Honesty, This Replyant prays the Respondent may be

advised

And it has also been Declared by other Witnesses then present in the same Warehouse that there was a Cadjan wrote, read, and Explained to the Respondent and this Replyant humbly submits to the Consideration of this Honourable Court, why the Respondent, Replyant, several other Persons should meet in the same Place in the Black Town and that all should agree that there was a Cadjan drawn up, read and Explained to the Respondent if it had not been with some Design, that the Respondent did request the loan of so much Money as would compleat the Payment of the said Arrack is evident by several Circumstances and that this Replyant did not take any Bond for such Money, is true, But this Replyant did take great Care to be repaid again directly and on the first Sale of Part thereof, by obliging the Respondent to sign and give the Notes to him to collect the Money of the first Thirteen Leaguers that were sold a few Days after the said Arrack had been bought as it will appear by the proceedings had in the Honourable the Mayor's Court and this Replyant further says that he had no Occasion to take up his Notes now in the Hands of the Respondent because he has receits for the Money he paid on the Respondent's Account and signed by him and as the Respondent says in his Answer that he conceives it to be very absurd that this Replyant should advance Money on an uncertain Security without a written Obligation altho' this is said without any Foundation as before mentioned, yet the Respondent thereby has supplyed this Replyant with the very Argument this Replyant stood in Need of For that he humbly conceives it to be absurd that the Respondent should draw his Money out of this Replyant's Hands and pay himself for a perishable Commodity in which this Replyant was (as he pretends) his Partner and that without taking Bond, Note, or Agreement from this Replyant for such pretended Partnership and that at a time circumstanced as he sets forth, And supposing the Respondent should say that he was otherwise employed at that time or that he trusted to this Replyant's Honour, yet he cannot say that he was busy for two Months after, till the French took the Town nor almost two Months after that, till the French siezed upon the said Arrack and when there was an apparent Necessity for the Respondent to secure himself, neither can the Respondent say that he trusted to this Replyant's Honour, for in that Case this Replyant had sufficiently showed him that he did not trust the Respondent by securing his Money advanced to compleat the payment of the said Arrack as already mentioned, and to shew still further the

Uncertainty

/20/

Honourable Court did not take any Notice of it when the same was mentioned again at the Croſs Examination of the Witneſses, notwithstanding this Replyant is humbly of Opinion that the same is of great Consequence to him and humbly prays this Honourable Court to make a thorough Enquiry into the same, for that the Respondent by his Confeſsion that the said Arrack did belong to him has been the Occasion of this Suit which never would have been moved if he had not been obliged to make that Declaration, And this Replyant further says that it is Evident the Respondent has no solid Reasons to aſsign against the Validity of the Cadjan marked ST since he is obliged to make Use of so weak a Plea as to say that it is binding only to the one Party. But the contrary this Replyant conceives will plainly appear to this Honourable Court and that the said Gulam Mahomed Huſsain is thereby bound to pay monthly the Money of all the Arrack that shall be sold by him he is also bound to bare an equal Loſs if any should happen on the Sale of the said Arrack and to receive and lodge the same into his Warehouses without Rent whereby the Respondent reaped a Benefit to himself of about ten Pagodas a Month he was also bound to pay a greater Price for what he should sell by Retail than what should be sold by the Cask, insomuch that all Circumstances considered the said Gulam Mahomed Huſsain is thereby stronger bound than the Respondent and the said Contract very advantageous to the Respondent if he had not, as aforesaid, by his Imprudent Behaviour delivered it into the Hands of the French, that some of this Replyant's Witneſses did not stand to their Depositions taken before the Examiner when croſs examined may be owing to their not understanding what was meant by Croſs Examination and they being Servants poor and weak of Understanding and not able to stand the Test of that Croſs Examination which was carried on by Multiplicity and Variety of Questions to a great Length in that Honourable Court But this Replyant humbly presumes with Submiſsion to this Honourable Court that their Depositions at their Croſs Examinations of thinking and believing that this Replyant was concerned in the said Arrack is not a sufficient Proof, This Replyant also humbly conceives that the Article of One Hundred Pagodas under no Date in the Respondent's Account is not sufficiently proved, this Replyant therefore humbly prays as in and by his said Petition of Appeal he has already Prayed

Peter Dencher
Attorney for the Replyant

To

Diſsuaded this Respondent from selling it to Mr. Morse alledging that the were offered no more than forty two or forty three Pagodas ꝑ Leaguer out o which, Custom was to be paid to Gruappah that Gentleman's Dubash whereas what was sold of it already went for fifty One, fifty, fifty four an forty six Pagodas ꝑ Leaguer.

As to what the Replyant saith about Witneſses an a Cadjan and it's being read and explained to this Respondent in the Black Town; had it been so, the Replyant should have produced some Proo of it in the Mayors Court for such as he brought there deposed quite the Contrary as the Minutes of that Court will shew, to which this Respond humbly refers for all that relates to the said Cadjan and Witneſses only praying leave to mention that when the Matter about the Cadjan afo said was examining the Court not only thought that Cadjan a very irregu One to come from such a Man as the Replyant but that the Honourable Court enquiring into it Armogapulah did say he wrote the Cadjan b Denied seeing the Respondent sign the same.

The Replyant sets forth that this Responde Did borrow Money of him to compleat the Payment of the Arrack an that it is evident by several Circumstances but hath not at the sa time related so much as one single Circumstance to support his Aſsertion And this Respondent can prove he never borrowed any Money of the Replyant on any Account whatsoever but that the Replyant was always indebted to this Respondent.

The Replyant will do well to produce the several Receits he mentions this Respondent did use to give him and to Account to this Honourable Court in a better Manner than he has done for his not having withdrawn his several Promiſsory Notes Cancelled or indorsed.

It will appear in the Proceedings had in the Mayor's Court that the Concern the Replyant had in the Arrack was h in the whole Quantity being Seventy Seven and One third Leaguers ou of which having Ourselves sold thirteen Leaguers and the Replyant afterwards admitting Gulam Mahomed Huſsain a third Concern in the Remaining Sixty four One third Leaguers, the several Concerns then became thus, The Replyant and this Respondent each of them One hal of the thirteen Leaguers sold, and Gulam Mahomed Huſsain, the Replyan and this Respondent One third each in the remaining Sixty four One thir Leaguers. But as the said Replyant promised to be answerable for the said

Gulam

This was done at four o'Clock in the Afternoon and not at Night as the Replyant pleases to insinuate. Whilst this was transacting Monsr Le Blanc came out of a House in that street and stopped the said Ca upon which this Respondent rowled it into the Godown again an went about his Business. The next Morning passing by the Compan Horse Stable this Respondent met the said Mr Le Blanc who takin this Respondent by the Hand told him that he must go before the Governour Monsieur Bartholomie, accordingly this Respondent in his Way thither, passing by Mr Munro's Door, went in and related the Affair to him who advised this Respondent by all Means to go and this Respondent accordingly did, and related the whole Story to the Governour as also that the said Monsieur Le Blan was the Person that stopped the Cask upon which the said Governou seemed to be very Angry with him and dismissed this Respondent. But notwithstanding which a short time after ordered the Arrack to be brought into the white Town saying that he did it for it's Security and that if the French had made use of it, it should be paid for, for that there was no Persons property to be siezed but the Companys. Yet Notwithstanding this Assurance Monsr Pardie the succeeding Governour having Declared the Town did belong to the French this Respondent never had the least Account of the said Arrack. This as well as every thing else that this Respondent has or shall advance he is ready to aver, maintain and prove not doubting but that he shall gain Credit in the most minute Article. The Replyant would insinuate that the Prevarication of his Witnesses at their cross Examination should be imputed to their Weakness and Ignoran not understanding what was meant by cross Examination. Surely the Replyant cannot be in Earnest in saying the Witnesses did not know what cross Examinations are appointed for. This Respon humbly conceives it is not to take Advantage of Peoples Weakness of Understanding or Ignorance for if the Witnesses are ignorant of the Nature of Cross Examination the Judges are not, but this Respondent's not in the least surprised they could not stand the Test.

As to the Article of One Hundred Pagodas the Respondent humbly leaves it to the Consideration of this Honble Court whether this Replyant having received it has not been sufficiently proved.

And Your Respondent &c.a with Submission further begs

This was done at four o'Clock in the Afternoon and not at Night as the Repleygant pleases to insinuate. Whilst this was transacting Mons.r Le Blanc came out of a House in that Street and stopped the said Cash upon which this Respondent rowled it into the Godown again and went about his Business. The next Morning passing by the Companys Horse Stable this Respondent met the said M.r Le Blanc who taking this Respondent by the Hand told him that he must go before the Governour Monsieur Bartholome, accordingly this Respondent in his Way thither, passing by M.r Munro's Door, went in and related the Affair to him who advised this Respondent by all Means to go and this Respondent accordingly did, and related the whole Story to the Governour as also that the said Monsieur Le Blanc was the Person that stopped the Cash upon which the said Governour seemed to be very Angry with him and dismissed this Respondent. But notwithstanding which a short time after ordered the Arrack to be brought into the white Town saying that he did it for it's Security and that if the French had made use of it, it should be paid for, for that there was no Persons property to be seized but the Company's. Yet Notwithstanding this Assurance Mons.r Pardie the succeeding Governour having declared the Town did belong to the French this Respondent never had the least Account of the said Arrack. This as well as every thing else that this Respondent has or shall advance he is ready to aver, maintain and prove not doubting but that he shall gain Credit in the most minute Article. The Repleygant would insinuate that the Prevarication of his Witnesses at their cross Examination should be imputed to their Weakness and Ignorance not understanding what was meant by cross Examination. Surely the Repleygant cannot be in Earnest in saying the Witnesses did not know what cross Examinations are appointed for. This Respondent humbly conceives it is not to take Advantage of Peoples Weakness of Understanding or Ignorance for if the Witnesses are ignorant of the Nature of Cross Examination the Judges are not, but this Respondent is not in the least surprised they could not stand the Test.

As to the Article of One Hundred Pagodas this Respondent humbly leaves it to the Consideration of this Hon.ble Court whether this Repleygant having received it has not been sufficiently proved.

And Your Respondent with all Submission further begs

Thursday the 11th December 1755.

This Cause coming on this Day to be heard and debated before this Court by the Attorneys on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Hon^ble the Mayor's Court together with the Decree of the said Court given in this Cause on Tuesday the 21st Day of May Anno Domini 1754. And upon due Consideration had of the Matters therein severally contained and of the pleadings and Arguments used by the Attorneys on both sides this Court doth think fit to Order and decree and doth accordingly order and decree that the Decree of the Honourable the Mayor's Court given in this Cause do stand confirmed and that the Appellant's Petition be hence dismissed with Costs.

P. Cur. Jos. Du Pré Clerk of Appeals

To the Honourable George Pigot Esq^r. President and Governour of Fort Saint George, and the Council thereof.

The humble Petition & Appeal of Samuel Moses of Fort S^t. George Merchant, Executor of the last Will & Testament of Levy Moses deceas'd, late of Fort S^t. George Merchant

Filed 18th Dec^r. 1755
Jos. Du Pré Clerk of Appeals

Sheweth

That whereas, on or about the 1st Day of July in the Year 1751, this Appellant's Brother the said Levy Moses deceas'd, lent to Samuel Greenhaugh, then bound on a Voyage to China of his late Brother Levy Moses deceas'd, Filed a Bill of Complaint in the Honourable the Mayor's Court against the aforesaid Administrators, To which Complaint the said Administrators made Answer, and Whereas the Honble the Mayor's Court were pleased on the hearing of the said Cause to order that this Appellant's Bill of Complaint should stand dismiſs'd with Costs, as will more fully appear by the Decree of the said Honble Court, dated the 5th day of December in the Year 1755, by which Decree this Appellant with great Submiſsion thinks Himself Agriev'd, for that he humbly apprehends all Bonds whether Respondentia or Interest are Specialties, and that all Specialties have an equall Claim and Preference to Simple Contract Debts.

This Appellant therefore humbly Appeals to this Honble Court, and Prays that the said Decree of the Honble the Mayor's Court may be reversed, and that this Appellant as Executor of the last Will and Testament of the said Levy Moses Deceas'd, may be admitted to a Dividend of the Estate of the said Samuel Greenhaugh as a Respondentia Bond Creditor for a former Voyage of the said Samuel Greenhaughs to China in equal Proportion with all the Bond Creditors; As also that this Appellant may stand dismiſs'd from all Costs of Suit had either in this or the Mayor's Court, with such further and General Relief touching the Premises as to this Honble Court shall seem Meet,

Isaac Merigeot,
Attorney for the Appellant

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when the said Samuel Greenhaugh's Mother told him, She had not any of her Son's Money then, but that She expected Some, and that when it came She would discharge the Note which These Respondents think amounts to some Proof, that the Apellant rested his Claim on the Note not on the Bond.

Therefore these Respondents humbly hope that the Decree of the Honble the Mayor's Court is just, and Equitable, and humbly Pray that the same may be confirmed, and that the Apellant's said Petition of Appeal may be hence dismiss'd with his Additional Costs.

Court of Appeals at Madrasspatnam } ss:

Tuesday the 27th April 1756.

Between .. Samuel Moses of Fort St George Merchant Executor of the last Will & Testament of Levy Moses deceas'd } Appellant.

And .. John Smith & Salamon Franco of Fort St George Merchants, Administrators of the Estate of Samuel Greenhaugh deceas'd } Respondts.

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 Mayor's Court, together with the Decree of the said Court, given in this Cause on Friday the 5th day of December

Anno

same Place Merchant Deceas'd

Most humbly Sheweth

That the said Samuel Greenhaugh Deceas'd, having on the 1st day of July 1751, Borrow'd of Your Petitioner's said Brother Levy Moses deceas'd, the Principal Sum of One Thousand Five hundred Pagodas Current Money of Madrass, to run at Respondentia on the Ship Warwick Nicholas Webb Commander from the Port of Madrass aforesaid to the Port of Canton in China, did execute a Respondentia Bond, bearing Date the said 1st day of July 1751, in the Penal Sum of Three thousand Pagodas, with the Condition that the same should be Void if the said Samuel Greenhaugh should pay unto the said Levy Moses within twenty One Days after the safe Arrival of the said Ship Warwick at the Port of Madrass aforesaid, the Principal Sum of One Thousand five hundred Pagodas aforesaid, together with a Respondentia Premium of Eighteen P Ct. thereupon, in Consideration of the Usual Risque of the Seas for the Term of the said Voyage. Your Petitioner further most humbly Sheweth that the said Ship Warwick having perform'd her said Voyage, and returned in Safety to the said Port of Madrass, the said Samuel Greenhaugh did, on or about the 30th Day of August 1752, Pay unto your Petitioner's said Deceased Brother Levy Moses the Sum of One thousand Pagodas in Part of the Principal & Premium due on the above Recited Bond, and did afterwards on or about the 2nd of March 1753 Pay unto Your Petitioner's said Brother another Sum of One hundred & thirty three Pagodas twenty Six Fanams and thirty two Cash in further Part thereof. That Your Petitioner's said Brother Levy Moses did frequently sollicit the said Samuel Greenhaugh

to

Greenhaugh's in his Hands, and therefore would by no
means be prevail'd upon to Accept or Pay the said Draught.
That the said Samuel Greenhaugh actually Embarked on
his said intended Voyage to Manilha, before the above mention'd
Answer of the Dubash (or Broker) to the Presentment of the
Draught could be known: so that your Petitioner's said
Brother having then no Way left to inforce the Payment of the
Ballance due upon the abovementioned Bond, was obliged to
let the same lay Dormant till the said Samuel Greenhaugh
should return from Manilha. But so it fell out, Your
Petitioner humbly begs leave to set forth, that the said
Samuel Greenhaugh never did return to Madrass, He having
departed this Life at Manilha, and upon the return of the
Ship Travancore in which He went thither, the Administration of his Goods, and Chattles &ca was granted by the
Hon'ble the Mayor's Court to John Smith Esquire, and
Salamon Franco Merchants of Fort St George. Your Petitioner further begs leave to set forth that the abovenamed
Levy Moses died at Fort St George on, or about the 10th of
October 1753. And he having appointed your Petitioner
Executor in India to his last Will & Testament, a Probate
thereof was duly granted by the Hon'ble Mayor's Court
to your Petitioner, who in consequence thereof tender'd the
said abovementioned Bond to the said Administrators
of the Estate of the said Samuel Greenhaugh Demanding
Payment of the Sum due thereon; To which They answered
that they considered themselves as obliged to Pay those
Bonds first which the said Samuel Greenhaugh had

Granted

[36] That Your Petitioner did thereupon on the 12th of August 1755 Exhibit his Bill of Complaint against the said John Smith Esqr. and Salamon Franco as Administrators of the Goods and Chattles &ca. of the said Samuel Greenhaugh in the Hon the Mayor's Court at Madrass Patnam, reciting the said Bond, and likewise setting forth that the said Samuel Greenhaugh died Insolvent, and that the said John Smith Esq: and Salamon Franco as Administrators of the Goods & Chattl &ca. of the said Samuel Greenhaugh stood Indebted to the Estate of Your Petitioner's said Brother Levy Moses Deceas'd, in the Sum of Eight hundred & fifty Seven Pagodas, Sixteen Fanams, and thirty Eight Cash Current Money of Madrass, upon the said Bond, and he being informed that the said Administrators did intend to make a Dividend of the Estate of the said Samuel Greenhaugh amongst the Respondentia Creditors of the said Samuel Greenhaugh in the said Manilha Voyage only, thereby denying Your Petitioner his Right of being let in to a Dividend of the Estate of the said Samuel Greenhaugh in equall Proportion with the Respondentia Bond Creditors of the said Manilha Voyage; from which Your Petitioner desired Relief; and Pray'd, that He, as Executor to his late Brother Levy Moses, being a Creditor of the Estate of the said Samuel Greenhaugh by Virtue of the hereinbefore recited Respondentia Bond, might be admitted to an equall Dividend of the said Estate with such as were Respondentia Creditors of the said Samuel Greenhaugh in the said Manilha Voyage, as will more fully appear, by the said Bill of Complaint

hereunto

Friday the 5th day of December 1755.

Between Samuel Moses of Fort St George (Executor of Levy Moses Deceas'd) Complainant, and John Smith & Salamon Francos Administrators of Samuel Greenhaugh Deceased (of the same Place Defendants.

(LS)

Mayor's Court

This Cause coming on to be heard and Debated this Day, in Presence of the Attorneys on both Sides, On reading the Complainant's Bill with the Bond and Account Current annexed, and the Defendants Answer with the Account Current Annexed, and on Examination of the Several Matters in this Cause, and on due Consideration had thereon, This Court doth think fit to Order & Decree, and doth accordingly Order & Decree that the Complainants Bill do stand Dismiss'd with Cost

℘ Cur Danl. Morse Regr.

That your Petitioner thinking Himself Aggriev'd by the said Decree of the Mayor's Court, Appeal'd therefrom to the President and Council of Fort St George; Reciting in his Petition of Appeal the Contents of his Bill of Complaint which He exhibited to the Mayor's Court, and particularly setting forth that He apprehended all Bonds whether at Respondentia, or at Common Interest, are Specialties, and that all Specialties have an equall Claim, and Preference to Simple Contract Debts, and therefore Praying that the said Decree of the Mayor's Court might be Revers'd, and your Petitioner might be admitted to a Dividend of the Estate of the said Samuel Greenhaugh, in equall Proportion with all

all

/40/

Majesty in Council, Because Your Petitioner humbly Conceives that if Both these Decrees are not Reversed, & set aside, the Estate of his Testator will be greatly injured by his being thereby excluded from an Equal Dividend, of the Estate of the said Samuel Greenhaugh Deceased, with the Respondents as Bond Creditors on the Ship Travancore's Voyage to, and from, Manilha, with Whom He humbly apprehends he ought to be admitted to an equal Share of the Dividend which may arise on the said Estate, since the Bond which He sues upon is by Law a Specialty, and therefore of equal Validity with any other Specialties, or with those Bonds granted by the said Samuel Greenhaugh on the said Ship Travancore, For all which Reasons, and from other good Causes Him hereunto moving, Your Petitioner does conceive the said Decree of the Honble the Mayor's Court, and of the Honble the Court of Appeals as above specified to be contrary to Law, Equity & good Conscience, and therefore humbly begs leave to appeal to Your Most Excellent Majesty in Council from the aforesaid Decree of the Honble the Mayor's Court and likewise from the Decree of the Honble the Court of Appeals.

Your Petitioner most humbly praying that the said Decree of both the Courts may be reversed, an that Your Petitioner may be Decreed the Payment of his Demand, (which with Interest & the Costs of Suit in both Courts does amount to One thousand & five Pagodas, Twelve Fanams & Seventy Eight Cash) as a Bond Creditor to the Estate of the said Samuel Greenhaugh Deceased, in an equal Proportion

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Filed in my Office
the 14th March 1757.
Jo: DuBell Clerk of Appeals

To the Honble George Pigot Esqr President
and Governour of Fort St George &ca Council

The Humble Petition & Appeal of Servannah Chittee Shroff,
now living and residing in Madrass,

Shewith

That on or about the Month of April which was in the Year of Our Lord One thousand Seven hundred and fifty four, Richard Starke then Deputy Governour of Fort St David did request of this Appellant to take Charge of the Key of the Company's Cash Chest, as Antonio De Cruz his Clerk (who had always had the Key & Charge of the Company's Cash Chest before) was upon his Departure to Fort St George; This Appellant accordingly took Charge of the Key, and the said Antonio De Cruz did proceed on his Journey before he had delivered over to this Appellant the Ballance of the Cash. After the Departure of the said Antonio De Cruz for Fort Saint George, the said Richard Starke sent for this Appellant and asked him if Antonio De Cruz his Clerk had settled the Company's Cash Accoun and delivered to him the Ballance, upon which this Appellant returned him for Answer that the said Antonio De Cruz had set o for Fort St George without either settling the Account or paying Ballance. The said Antonio De Cruz being returned to Fort Saint Da (After having been at Fort Saint George about a Month) the said Richard Starke did send for him to settle Accounts with this Appellant and pay the Ballance. The said Antonio De Cruz thereupon drew out the Accounts, Number One, two, three, and four, which are annexed to the Proceedings already had in the Honble the Mayor's Court, and there appeared to be a Ballance due to the Company's Cash Chest of One thousand Eight hun and twenty Eight Pagodas, Sixteen fanams, and Sixty One

Cash

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Day past, when the said Richard Starke sent for this Appellant at Night to his House at Chemundelum and on his being admitted to the said Richard Starke, the said Richard Starke asked this Appellant if he would satisfy the Ballance due to the Company's Cash Chest, upon which this Appellant was somewhat surpriz'd at the unjust Demand of the said Richard Starke and returned him for Answer that as he had by his particular Orders advanced Money on his Account to his Clerk Antonio De Cruz he would not. And this Appellant further begs Leave to set forth that the said Antonio De Cruz did pay at sundry times to this Appellant the Sum of three thousand One hundred and Fifty Six Pagodas which being deducted from the Sum of Four thousand Eight hundred and Sixty Nine Pagodas, fourteen fanams, and fifty four Cash, there will then remain a Ballance of One thousand Seven hundred, and thirteen Pagodas, Sixteen fanams, and fifty Nine Cash from the said Antonio De Cruz and for which the said Richard Starke prefer'd a Suit in the Hon'ble the Mayor's Court setting forth that the said Sum of One thousand seven hundred, and thirteen Pagodas, Sixteen fanams, and fifty Nine Cash was due from this Appellant although the said Richard Starke was well acquainted that this Appellant had never receiv'd the true Ballance of the Cash from the said Antonio De Cruz, but only the Key of the Cash Chest had been deliver'd this Appellant, neither does the said Richard Starke prove by any of his Witnesses that the Ballance for which he sued this

Appellant

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hundred, and thirteen Pagodas, Sixteen fanams, and fifty Nine Cash being the Deficiency which the said Richard Starke alledges was due from this Appellant, which this Appellant apprehends has never as yet been proved. Also all Costs of this Suit as it will more full and at large appear upon Reference being had to the Decree of the said Hon^ble the Mayor's Court annexed to the Proceedings had thereon; From which Decree of the Hon^ble the Mayor's Court bearing Date the first Day of March in the Year of our Lord One thousand seven hundred and fifty Seven, this Appellant doth Appeal and humbly prays that the said Decree may be reversed and set aside and that this Appellant may have such further and other general Relief touching the Premises as to this Hon^ble Court Shall seem Meet

John Palmer
Attorney for the App^t.

To the Hon^ble George Pigot Esq^r.
President & Gov^r. &c. Council of
Fort S^t. George,

The Answer of Isaias Du Pré Attorney for Richard Starke of Madrass Merch^t. Respondent to the Petition of Appeal of Sewannah Chitty now residing at the same Place Appellant

Filed in my Office the 28th March 1757
J. Pybus Clerk of Appeals

This Respondent absolutely denies the Appellant's Charge "that he the Appellant did not take Charge of the Cash till the Month "of April in the Year of Our Lord One thousand Seven hundred and "Fifty four," For this Respondent affirms and it appears by two

of

Antonio DeCruz had settled the Company's Cash Account for the Month of March in the Year of Our Lord One thousand Seven hundred and fifty four, and whether the said Antonio DeCruz had delivered over the Ballance of Cash to him the Appellant, and that the Appellant upon his being questioned as aforesaid, Replied that the said Antonio DeCruz had set out for Madrass without doing either, Which this Respondent also denies, and to invalidate which Assertion of the Appellant this Respondent prays to Refer to the Deposition of Bartholomew Rawlin before referr'd to by this Respondent, who deposes that the said Antonio DeCruz did take down in writing, from the Appellant's own Cadjans, the Company's Cash Account for the Month of March in the Year One thousand Seven hundred and fifty four, which said Account the said Antonio DeCruz carried to this Respondent's Constituent before his Departure to Madrass. But this Respondent denies that the Appellant ever acquainted his Constituent with the said Antonio DeCruz's Answer to the Appellant, upon the Appellant's acquainting him the said Antonio DeCruz that there was a Considerable Ballance due to the Cash Chest from the said Antonio DeCruz, nor did this Respondent's Constituent ever tell the Appellant or Words to that purpose that it was his, this Respondent's Constituent's Orders that the Appellant should advance the said Antonio DeCruz what Sums he should apply for, and this Respondent further denies that the Appellant ever acquainted his, this Respondent's Constituent that there was a Ballance of One thousand Eight hundred and twenty Eight Pagodas, sixteen fanams, Eighty five Cash due to the Cash Chest, and this Respondent denies that the Appellant

his

he refers must be allow'd entirely foreign to the Matter in Dispute as the Appellant confesses in his Answer sworn to in the Hon'ble the Mayor's Court that the Ballance sued for was due from Antonio DeCruz —— The Appellant further attempts to prove that the Respondent's Constituent's intention was to take advantage of the Appellant by procuring Certificates from under the hands of Irshappah Chitty, Shechallapetty, and Nautchepah Chitty, that the Money advanced to them was by the hands of the Appellant only, with regard to which Assertion This Respondent cannot but say that the Appellant has gone too far as this Respondent conceives that no Man can be guilty of taking an Advantage of another by procuring all lawfull Means for the putting of his Dispute in the clearest Light, as this Respondent's Constituent made use of no force in procuring the Certificates aforesaid. And it is very well known that every Malabar will inspect his Accounts before he gives any thing under his hand Relative to Them, which they really did, though they pretend to evade it "The Appellant also affirms that
"Antonio DeCruz did write the Papers N:o 1, 2, 3, & 4, at the
"Request of this Respondent's Constituent which are annexed
"to the Proceedings had in the Honourable the Mayor's Court,
"And that the said Antonio DeCruz did therein insert his
"own Name, and that the said Antonio DeCruz remarked on
"Paper N:o 2 that there was a Deffeciency Of One thousand
"Eight hundred and twenty Eight Pagodas, Sixteen fanams &
"Sixty One Cash at the time that the Appellant pretends he took Charge of the Cash, and that the said Ballance was

transfer'd

directions, after he the said Antonio DeCruz had taken the Cash Accounts for the Month of April in the Year One Thousand Seven hundred and fifty four from the Appellant's own Cadjans, which the said Antonio DeCruz always did Monthly by the Order of this Respondent's Constituent. And this Respondent for all these Considerations humbly prays that the Decree already had in the Hon^ble the Mayor's Court in favour of this Respondent may stand Confirmed, And that the Appellant's Petition may be Dismiss'd with Costs.

Archdale Palmer
Attorney for the Respond^t.

Court of Appeals
at
Madrasspatnam } ss

Saturday the 23^d day of
July Anno Domini 1757

Between Serrannah Chitty now of
Madrass, Shroff } Appellant,

And Josias Du Pre of Madrass
Merchant, Attorney for
Richard Starke Merchant } 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 Appeals, and Answer, and the several Exhibits of the Mayor's Court together with the Decree of the said Court given in this Cause on Tuesday the 1^st Day of March last past, and

upon

Appellants Constituents House in order to pay himself the Amount of the said Bond which circumstance this Appellants Constituent absolutely denies to be true, This Appellant doth therefore Appeal from the said Decree which is hereunto annexed and humbly prays that the said Decree may be reversed and set aside and also that the said Moota Rashapah Chittee may be Obliged to pay the aforesaid Bond also all the costs of this suit in both Courts and that this Appellant may moreover have such further and other General Relief touching the Premises as to this Honourable Court shall seem meet.

Archdale Palmer
Attor for the Appellant

Mayors Court
at
Madrasspatnam

Friday the 24th day of December Anno Domini 1756

Between Vincent Quintin de La Mettrie of Fort St. George Merchant Attorney for Francisco Carvalhos Complainant and Moota Rashapah Chittee of Madrass Merchant Defendant; Moota Rashapah Chittee of Madras Merchant Complainant and Vincent Quintin de La Mettrie of Fort St. George Merchant Attorney for Francisco Carvalhos Defendant

L.S.

Mayors Court

These Causes coming on to be heard and debated this day In the presence of the Parties and the Attorneys on both sides, On hearing the proofs produced in these Causes, and the Several pleadings made Use of by the Attorneys, and on due Consideration had thereon. It appearing to this Court that the Original Complainants Constituent had found means to possess himself of the Defendants Effects and thereby to procure payment of the Mortgage Bond due to him, This Court doth think fit to Order and Decree, and doth Accordingly Order and Decree that the Mortgage Bond annext to the Complainants Bill shall be Cancelled in the presence of this Court, and that the Bills of Sale, of the Mortgage Premises be delivered up to the Defendant and likewise that the Original Complainants Bill as well as the Bill brought by the Cross Complainant do both stand dismissed and that each party pay the Costs of his own Suit

Danl. Morse
Regr.

/56/ Appellants said Petition of Appeal may be hence dismissed with his Additional Costs.

George Pyne
Attor. for the Respondent

Court of Appeals
at
Madraſspatnam } ſs. Saturday the 27th day of August Anno Domini
1757.

Between.... Vincent Quintin De la Metrie of Madraſs
Merchant Attorney for Francisco Cawalho } Appellant

And...... Mootu Rashapah Chittee of Madraſs Merchant..... } 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 Honourable the Mayors Court together with the Decree of the said Court given on Friday the 24th day of December last past in certain Causes wherein the said Vincent Quinton De la Mettrie Attorney for the said Francisco Cawalho was Complainant and the said Mootu Rashapah Chittee Defendant And the said Mootu Rashapah Chittee Complainant and the said Vincent Quintin De la Mettrie Attorney to the said Francisco Cawalho Defendant, and upon due Consideration had of the matters therein severally contained and of the Pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the said Decree of the Honourable the Mayors Court given in the said Causes be reversed and set aside And that the Respondent do pay unto the Appellant the sum of One thousand Pagodas being the principal money appearing to be due on the Bond now in Suit together with all Interest that may become due thereon And also all Costs of Suit in both Courts.

Appellant doth appeal from the Decree of the said Honourable the Mayor's Court, and humbly prays that the said Decree may Stand reversed and set aside, and also that the said Cachick Gregorie and Aviat Nazar, may be Obliged to pay all the Costs of these Suits in both Courts, and that this Appellant may moreover have such General relief touching the Premises as to this Honourable Court shall seem meet.

J. M. Stone
Att.o for the Appellant

Mayor's Court
at
Madrasspatnam

Friday the 5th day of August Anno Domini 1757.

Between Aviat Nazar and Catchick Gregorie of Madrass Merchants and Executors to the Last Will and Testament of Minasacawn de Lucas Deceased Complainants, and Aratoon Badramy also of the same Place Merchant Defendant. And Aratoon Badramy of Madrass Merchant Complainant, and Aviat Nazar, and Catchick Gregorie also of the same place Merchants and Executors to the Last Will and Testament of Minasacawn de Lucas Deceased Defendants.

L. S.

Mayors Court

These Causes coming on to be heard and debated together this day in the presence of the Parties and their Attorneys on both Sides on hearing the Pleadings, and Arguments made use of by the Attorneys, and on due Consideration had thereon, This Court doth unanimously think fit to order and Decree, and doth Accordingly Order and Decree that the Original Defendant shall pay unto the Original Complainants the full and just sum of One hundred and Twenty two Pagodas, the Sum of Sixty Pagodas with the Interest of Eight per Cent per annum from the 20th day of May 1747, being just decreed thereon, and likewise that the Cross Complainant's bill do stand dismissed, and that the Cross Complainant, do pay the Costs of both these Suits.

P Cur

Dan.l Morse
Reg.r

To the Honourable George Pigot Esq.r
President and Governour &c.a Council of
Fort S.t George

The Answer of Catchick Gregorie and Aviat Nazar to the Petition of Appeal of Aratoon Badramy

Filed in my Office
the 31st August 1757.
Jos.s Aubrey Clerk of Appeals.

These Respondents admit that on or about the Thirtieth day of November which was in the Year of Our Lord One thousand seven hundred and Fifty six these Respondents as Executors to the last Will and Testament of Minassrawn de Lucas deceased did file a Bill of Complaint against the Appellant for the Sum of One hundred and Twenty two Pagodas, ten fanams, and ten Cash for the Amount of be no hindrance to their Sueing the Appellant for the Amount of Sundry Effects purchased as aforesaid as it was a Sum not Contested consequently could have no Connection with the Award. Therefore these Respondents humbly hope that the Decree of the Honourable the Mayor's Court is just and equitable and humbly pray that the same may be confirmed with their Additional Costs of Suit

John Palmer
Attº for yᵉ Respondents

Court of Appeals
at
Madrasspatnam } ss.

Wednesday the 14th day of
December Anno Domini 1757

Between … Avathoon Bedramy of Madrass Merchant … } Appellant

And … Catchick Gregorio and Aviat Nazar of Madrass Merchants and Executors of the last Will and Testament of Minasa Cawn de Lucas deceased … } Respondents

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 Honourable the Mayor's Court together with the Decree of the said Court given on Friday the 5th day of August last past in Certain Causes wherein the said Aviat Nazar and Catchick Gregorio Executors to the last will and Testament of Minasa Cawn de Lucas deceased were Complainants and the said Avathoon Bedramy Defendant and the said Avathoon Bedramy Complainant and the said Aviat Nazar and Catchick Gregorio Executors to the last Will and Testament of Minasa Cawn de Lucas deceased Defendants, and upon due Consideration had of the Matters therein severally contained and of the pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honourable the Mayors Court given in the said Causes do Stand Confirmed. That the Appellant's Petition be hence dismissed and that the Appellant do pay all the Costs of this Appeal

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To the Honourable George Pigot Esqr
President and Governour &c. Council of
Fort St George

The Humble Petition of Quinton de Lemethrie of Madras Merchant on Behalf of Francisco Carvalho of Pondichery Merchant

Sheweth

That Whereas your Petitioner as attorney for the said Francisco Carvalho having some time in the month of December in the Year of Our Lord One thousand Seven hundred and Fifty five of the said Honourable Mayor's Court for the inspection of this Honourable Court hereunto annexed.

Your Petitioner therefore humbly prays the aid and Assistance of this Honourable Court in the premises And that it may please this Honourable Court to Review the said Decree as it now Stands on the Records of this Honourable Court. And If upon Reviewing the same any part of the said Decree should be deemed in the Judgment of this Honourable Court Erroneous or Repugnant to the other part thereof It may then please this Honourable Court to cause the said Decree to be amended in such manner as may give Your Petitioners Constituent the Relief intended him by this Honourable Court But If on the Contrary the said Decree should appear to be good and consistent That it may please this Honourable Court to put the same into Execution for the Relief of your Petitioners Constituent.

And your Petitioner Shall ever Praye

Archdale Palmer

Atto. for ye Pet.

Quintin De La Mettrie Attorney for Francisco Carvalho

Vers:

Moota Rashapah Chitty

Et E Contra,

Petition ex parte Moota Rashapah Chitty delivered in in the 11th Ultimo read, Answer of Quintin De La Mettrie Attorney for Francisco Carvalho to the said Petition delivered in the 18th Ultimo read, The Petition and Answer Coming on to be argued this day in the presence of the Attorneys on both sides On reading the Petition of Moota Rashapah Chitty and the Answer of Quintin De Lamettrie Attorney for Francisco Carvalho to the said Petition On hearing the pleadings made use of by the Attorneys on both sides and on due Consideration had thereon it Appearing to this Court that the Decree of the Honourable the Court of Appeals was given upon the Petition which was Preferred in that Court by Quintin De La Mettrie Attorney for Francisco Carvalho alone Praying to be relieved from the Judgment of this Court, in dismissing the Bill brought by him against Moota Rashapah Chitty who on his part did not think proper to make any Application to the Court of Appeals for Relief from that other Part of the Decree of this Court which also Dismissed the Cross Bill brought by him the said Moota

Wednesday the 14th December 1757.

Upon reading the foregoing Petition and Extract it appearing to this Court that the Honourable the Mayor's Court do refuse to carry into Execution the Decree of this Court given in the Cause recited in the said Petition in which case this Court is empowered by the Charter to cause the same to be executed in the like manner as the Mayor's Court might have done. Ordered that a Warrant of Execution in the usual form be issued accordingly.

By the Court of Appeals at Madraspatnam.

Court of Appeals

Whereas it appears to this Court by Inspection of a Decree in this Court and the proceedings thereon that Mootu Rashapah Chitty of Madrass Merchant is adjudged and Decreed to pay to Vincent Quintin De Lamettrie of Madrass merchant as Attorney for Francisco Carvalho the sum of One thousand Pagodas together with all Interest that may become due thereon which Interest this day amounts to Nine hundred and Twenty two Pagodas Twenty four fanams making together the sum of One thousand Nine hundred and Twenty Two Pagodas Twenty four Fanams as a Debt due to the said Francisco Carvalho together with all costs of Suit in both Courts which Costs amount to the sum of Two hundred and Six Pagodas fourteen fanams which the said Mootu Rashapah Chitty hath not hitherto done. And Whereas it further appears to this Court as well by the Humble Petition of the said Vincent Quintin De Lamettrie on behalf of the said Francisco Carvalho as by an Attested Copy of the Minutes of the Honourable the Mayors Court thereunto annexed that the said Court hath Refused to Execute the said Decree These are therefore to require you without delay to levy or cause to be levyed the said Debt of One thousand Nine hundred and Twenty two Pagodas Twenty four Fanams and the said sum of Two hundred and Six Pagods. fourteen Fanams for Costs of Suit out of the Goods and Chattels of the said Mootu Rashapah Chitty and to that end if necessary you are to cause Sale to be made of Such Goods and Chattels and to have the money before the Court of Appeals at Nine of the Clock in the forenoon on the Thirtieth day of January next ensuing to render the said Debt and Costs to the said Vincent Quintin De Lamettrie and to render the Overplus (if any be) to the said Mootu Rashapah Chitty Given under the hands and Seals of George Pigot Esquire the President and Henry Powney and Robert Orme Esquires two of the Judges of the Court of Appeals this Twenty Ninth day of December Anno Domini 1757.

George Pigot ... (L.S.)
Henry Powney ... (L.S.)
Robert Orme ... (L.S.)

To the Sheriff of Fort St. George
Town of Madraspatnam
and the Districts thereof

of the said Honourable Court, bearing Date the Twentieth day of July One thousand Seven hundred and Fifty Six, hereunto annexed; from which Decree this Appellant as imagining he is not Obliged to be Answerable for any thing more than the Express Terms of his Bond, doth Appeal and humbly Prays that the said Decree may be reversed, and set aside, And also that the said Guerach Jacob be obliged to Pay all Costs of this Suit in both Courts, and that this Appellant may moreover have such further and other General relief touching the Premises, as to this Honourable Court shall seem meet.

J. M. Stone
Att.y for the Appellant

Mayors Court
at
Madrasspatnam

Tuesday the 20th day of July Anno Domini 1756

Between Guerach Jacob of Madrass Merchant Complainant And Meer Baukir also of the same Place Merchant Defendant

L. S.

Mayor's Court

This Cause coming on to be heard and debated this day in presence of the Parties as also their Attornys Upon Consideration had of the Several Matters therein contained and the Pleadings of the Attorneys on both sides It appeared to this Court that tho' the principal Sum only of Pagodas 110 is expressed in the Defendants Obligation yet by the manner of his underwriting the Respondentia Bond and his having paid off Pagodas 185 on Account thereof (being the principal and Premium for 8 Months together with 13 days Interest) it was meant that he was Security for the General Execution of the said Respondentia Bond, and that the Pro rata had been withheld because it was a Contested Point at that time if any was due on the said Respondentia Bond, This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and just Sum of Pagodas 118, 26, 22, (being the Pro rata due on the said Respondentia Bond as by the Decree of this Court of the 23 March last in a Suit the Complainant against John Andrews) together with Interest thereon at the usual rate of 8 p Cent p Annum till the whole is p.d also all Costs of this Suit

P Cur Dan.l Morse
Reg.r

Court of Appeals at Madraſspatnam } ſct.

Saturday the 24th day of December Anno Domini 1757.

Between.. Meer Bauker of Madraſs Merchant .... } Appellant.

And ..... Gueraek Jacob of Madraſs Merchant .... } 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 Honourable the Mayor's Court together with the Decree of the said Court given in this Cause on Tuesday the 20th day of July Anno Domini 1756. and upon Due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honourable the Mayor's Court given in this Cause be reversed and set aside and that the Respondent do pay all Costs in both Courts.

Ex.d J H —

Vinct. Quintin de la Mettrie Attorney for Fran.co Carvalho Appel.t
Mootu Rashapah Chitty respond.t

Thursday the 2d February 1758

A Warrant of Execution having been Iſsued by order of the Court the 14th December at the Suit of Vincent Quintin de la Mettrie as Attorney to Francisco Carvalho againſt the Goods and Chattles of Mootu Rashapah Chitty returnable the 30th of January. The s.d Warrant was accordingly returned by the Sherif in the following manner Viz.t

By Virtue of the within written Precept to me directed, I have Levyed by Sale of the Goods and Chattels of the Within named Mootu Rashapah Chitty the Sum of Six hundred and fifty two Pagodas as parcell of the within mentioned Debt and Costs, which I am ready to render to the said Vincent Quinton De Lamittrie at the time and Place within mentioned, But there Still remains under my Seal by Virtue of the within Precept certain other Effects the Title to which is contested in the Honourable the Mayors Court

Edw.d Edwards

rejoinder were filed in the said Cause and such other proceedings had thereon, untill the same came to an hearing. And this Appellant prays leave to remark that the said Edward Holden Cruttenden hath more than once in the said suit particularly in his Demurrer his Answer and rejoinder in the said suit positively aſserted that he was answerable to this Appellant alone for the Cotton He had bought of him as aforesaid; For as this Appellant was at the time the Cotton was lost indebted unto the said Edward Holden Cruttenden about the Amount of the said Cotton on Bonds, and as He the said Edward Holden Cruttenden imagined that this Appellant was by the Loſs of Calcutta aforesaid rendered insolvent, and unable to discharge the same He thought that if this Appellant should Account with him for the Amount of the said Cotton, He could only lose the said Cotton; whereas, was He to account with the said Thomas Raitt for the said Cotton He must inevitably lose near twenty Thousand Rupees more than the Amount of the Cotton as aforesaid, Upon hearing the Cause the said Honble the Mayor's Court was pleased to order and Decree that the said Bill should stand diſmiſsed with Costs. Soon after the said decree was given, this Appellant arrived at this place in the month of February last, when the said Edward Holden Cruttenden did file a Bill of Complaint in the said Honourable the Mayor's Court against this Appellant for the Sum of Twenty one thousand four hundred and twelve Current Rupees, fifteen Annas and three pice; whereupon this Appellant being well perswaded that the said Edward Holden Cruttenden ought to account with him for the Amount of the Cotton He the said Edward Holden Cruttenden had bought of this Appellant as aforesaid He was resolved not pay the said Demand unleſs the said Edward Holden Cruttenden would agree to give him Credit for the said Cotton; which He the said Edward Holden Cruttenden refusing to do, this Appellant did annex to his Answer given into the said Bill an Account Current wherein he debted the said Edward Holden Cruttenden for the Amount of the said Cotton, whereupon the said Edward Holden Cruttenden did give in a Replication to the said Answer, wherein by making use of Several Arguments and Pleas with an Intention to confute what this Appellant had alledged in his Answer with regard to the said Cotton, He establishes a certain and undoubted right in this Appellant, to oblige him the said Edward Holden Cruttenden to account with him for the said Cotton, which However He refuses to do by aſserting that He ought not to Account with this Appellant for the said Cotton, notwithstanding his having in so positive a manner in his Demurrer, his Answer, and Rejoinder in the former Suit between Wm Andrew Munrow and him declared that this Appellant was the only Person he ought to account with for the Amount of the Cotton as aforesaid; which palpable Prevarications this Appellant humbly presumes cannot escape the notice of this Honourable Court, and does not doubt they will be taken as strong and unanswerable Arguments against the Person who makes use of them; However the said Honble the Mayor's Court upon hearing this Cause was pleased to order and decree that this Appellant should pay unto the said Edward Holden Cruttenden the said Sum of Twenty one thousand four hundred

and

which means the said Edward Holden Crittenden did certainly make himself liable for any unavoidable Accident that might happen by the non Delivery of the said Cotton. As to that part of the said Answer of the said Edward Holden Crittenden immediately following the abovementioned Paragraph as which is in these Words "Agreeable to which advice He told his Banian to send his People to this Appellants to weigh of and receive the said Cotton, who went accordingly and upon their return acquainted his Banian, who told him that this Appellant was gone to his Country House and that it could not be weighed off till his return to Town" If the Truth of this matter had been proven by the Oaths of Nasain Mullock and the People said to be so employed by him, or by this Appellants own Confeſsion, He the said Edward Holden Crittenden might then have been acquitted of the Loſs, but as the truth thereof hath been positively denied in both Suits, the said Edward Holden Crittenden was thereby put under a neceſsity of proving the same by the Depositions of the People said to be employed as aforesaid, and that he ought not to think it sufficient barely to aſsert the same in his replication in this suit instead of proving the same, which he might easily have done either in the former Suit with Mr. Andrew Munro or in the present Suit, if it did actually happen so; And since He has neglected so doing, his bare aſsertion ought not to affect this Appellant; But his positive Confeſsion that the Delay in not receiving the Cotton was owing to himself alone, will be sufficient, as this Appellant humbly hopes, to satisfie this Honourable Court that He thereby makes himself liable to Account for the same with this Appellant. For all which Reasons as aforesaid this Appellant doth appeal from the Decree of the said Honourable the Mayors Court, and humbly prays that the said Edward Holden Crittenden may be obliged to Account with him for the Cotton bought as aforesaid, And moreover that he the said Edward Holden Crittenden may be obliged to pay all Costs of this Suit in both Courts And that this Appellant may likewise have such General Relief in the Premises, as to this Honourable Court shall seem meet.

J M Stone
Att for the Appellant

To the Honourable George Pigot Esqr
President and Governour &ca Council of
Fort St George

Filed in my Office
the 6th September 1757
Josias Du Pré
Clerk of Appeals

The Answer of Edward Holden Crittenden of Calcutta in the Kingdom of Bengal but lately residing at this Place Merchant to the Petition of Appeal of Davis Prannie also of the Kingdom of Bengal but late of this Place Mariner.

This Respondent admits that on or about the first or second day of June which was in the Year of Our Lord One thousand Seven hundred and Fifty Six he Bargained with the Appel

lant

Cotton and his Claim upon this Respondent for the Value thereof in which said cause a Decree having passed in the Honourable the Mayor's Court in this Respondents favour which was Submitted to by the said Thomas Raitt without appeal this Respondent humbly conceives he could not be again called to Account for the said Cotton by the Appellant who had so given up his right to the said Thomas Raitt and hopes that an Error Arising from the Ignorance of Forms in this part of the World where the Advice of persons Learned in the Law cannot be obtained shall not avail against the equity of his Cause which notwithstanding still remained the same more especially as this Respondent in his said Reply did urge the unreasonableness of the Appellants said Answer because of the Declaration and Decree aforesaid, but as this Respondent did so as aforesaid reply instead of Demurring the Merits of the Appellants Claim set up in his said Answer together with that made by this Respondent for a Bond Debt as set forth in his Bill of Complaint came on to be heard together when the Honourable the Mayor's Court proceeded to Judgment and did Decree that the Appellant should pay unto this Respondent the sum Sued for by the Respondent after deducting the sum of Five hundred and Seventy two Rupees Six annas and Six pie with Interest for Sundry China Goods which this Respondent had omitted to give the Appellant Credit for and that each party should pay their own Costs as by the said Decree may more fully appear by which said Decree the said Appellant thinking himself aggrieved for the Reasons set forth in his said Petition this Respondent is again called upon to support the equity of his Cause and that he may do it with the greatest perspicuity he proceeds to Answer the Objections in the Order they are raised — And first it is Alledged by the Appellant that a Bargain was made between him and this Respondent for a parcell of Cotton which this Respondent Admits but what quantity of Cotton does not appear nor was the sale actually compleated by reason of the Capture of Calcutta which the Appellant does not deny but contends that the Loss of the Cotton should remain for the Account of the party by whose default the Sale was not actually compleated by the delivery of the said Cotton and endeavours to charge such default on this Respondent because he desired the Cotton might remain in the Appellants Godowns a few days in case he should have occasion to make use of that Liberty. This Respondent (in his Answer in the forementioned Cause between the said Thomas Raitt by his Attorney Andrew Munro and this Respondent) did Admit and does now Admit that something to that effect did pass between the Appellant and Respondent the meaning of which he conceives cannot be construed to charge this Respondent with a large parcell of Cotton which had never been weigh'd off or delivered to this Respondent or any tender thereof made to him and the quality of which had not been examined had any of these Steps been taken or even had the Key of the Godown been delivered into this Respondents possession there might be some Colour for deeming this Respondent therefore the Answerable for the said Cotton but nothing tending to a delivery of the Possession of the said Cotton was done untill it was out of this Respondents power to receive the same as will hereafter be shown so that

for

Compleated but that it was understood to remain in the Appellants Godown at his risque untill the Compleation of the sale, or that the Appellant knew of this Respondents Application to have it weighed off for as no Action can be assigned to change where a probable cause to Appear, so the Application made by the Appellant to the Respondent shortly after (to Wit not exceeding four days from the day of the Bargain and immediately on his return from Dum Dumma) to weigh off and receive the said Cotton must be referred to some Motive and none does appear so probable as that the Appellant conscious that the said Cotton remained at his risque as it remained unweighed unexamined and undelivered would willingly have thrown that risque on the Respondent or that the Appellant hearing of the Application made by the Respondent some days before to have the said Cotton weighed off would have complied therewith on his return from Dum Dumma but it proved then too late the Nabobs Approach towards Calcutta had thrown every thing into disorder all the Labouring People and Cooleys that could be found were pressed to through up some temporary defences to the Town the Publick safety was first to be provided for with which private property could not be set in Competition thus the sale of the said Cotton remained uncompleated by the Nondelivery thereof at the time the Nabob possessed himself of the Town of Calcutta and of the Effects found in it for all which reasons this Respondent humbly hopes the Decree of the Honourable the Mayor's Court will be found just and equitable with a respect to the Sum Decreed to be paid by the Appellant to this Respondent and prays that it may be so far Confirmed but as this Respondent thinks himself aggrieved in being ordered by the said Decree to pay his own Costs when the Decree was in his favour this Respondent prays that part of the Decree may be reversed and set aside and that the Appellant may be ordered to pay the whole Costs of the said Suit as also the Costs in this Court.

John Palmer }
Archdale Palmer } Attys. for the Respondent

Thursday the 2d. February 1758.

David Rannie — Appellant
Edward Holden Cruttenden — Respondent

The Attorney in this Cause for the Appellant moves the Court for leave to withdraw the Appeal on paying all Costs which is granted the Attorney for the Respondent being present in Court and consenting thereto.

Marcar Petrus and did also give unto the said Marcar Petrus such Instructions in his this Appellants Name as he had received from the said Seeva Chitty and this Appellant further Alledges that after the said Marcar Petrus had sold part of the said Goods at Quedah Malacca and Batavia for the sum of One thousand seven hundred and Sixty one Rix Dollars and fourteen Stivers the said Marcar Petrus took up the said Sum at Respondentia to Canton at Ten ꝑ Cent Premium where on his Arrival the said Principal and Premium produced at the rate of Two Rix Dollars for each Tale the sum of Nine hundred and Sixty Tales eight Mace, seven Candarines and five Cash and the produce of the remainder of the said Goods sold at Quedah, the said Marcar Petrus did there Invest in fourteen Picul and Seventy eight Cattys of Tin and Carried the said Tin to Canton which said Tin produced Two hundred and Seven Tales from which Sum the usual Freight, and Commission being first deducted there remained in the hands of the said Marcar Petrus on that Account the Sum of one hundred and Ninety four Tales and three mace which together with the abovesaid Sum of Nine hundred and Sixty Tales, eight mace seven Canderins, and five Cash amount to the Sum of One thousand, one hundred, and fifty five Tales one Mace seven Candirines and five Cash, for which said Sum, the said Marcar Petrus gave this Appellant a Concern under him in his Adventure to this Place in the Year of our Lord One thousand seven hundred and fifty and that upon the said Marcar Petrus's Arrival at this Place, this Appellant wrote to the said Marcar Petrus to enquire of him what the said Adventure produced, whereupon the Writer of the said Marcar Petrus wrote this Appellant by Order of his said Master that this Appellant might Settle the Account with the said Seeva Chitty at the rate of twenty two per Cent Profit at which rate this Appellant accordingly settled Accounts with the said Seeva Chitty, by which he became answerable to the said Seeva Chitty in the whole for the sum of One thousand four hundred and Nine Pagodas eleven Fanams, and twenty Cash but sometime after this Appellant being about to settle Accounts with the said Marcar Petrus, the said Marcar Petrus did then acquaint this Appellant that there was a considerable loss upon the said Concern whereupon this Appellant acquainted the said Seeva Chitty therewith who refused to make this Appellant any allowance for the Loss that might arise thereon (which loss this Appellant could not ascertain untill such time as a Cause then depending in the Honble the Mayor's Court between this Appellant and the said Marcar Petrus, was determined) but Commenced a Suit in the Honourable the Mayor's Court against this Appellant for the amount of an Account in which was included the abovementioned profit of twenty two ꝑ Cent arising in manner aforesaid. This Appellant did therefore acquaint the Honble the Mayor's Court with the aforegoing Circumstances whereupon the Honourable the Mayor's Court did Order that the said Cause between this Appellant and the said Seeva Chitty should remain undecided untill the

said

Mayors Court
at
Madrasspatnam

Tuesday the 2d day of May Anno Domini 1758.

Between Seeva Chittee of Madrass Merchant Complainant, and Aviat Torose also of the same Place Merchant Defendant.

Present

Samuel Ardley, Esquire Mayor, James Alexander, Edward Burman, and Charles Turner, Aldermen.

This Cause Coming on to be heard and debated this day in the presence of the Complainant, and of the Attorneys on both sides, on reading the Complainants Bill with a Note of hand, and an Account Current annext The answer with a List annext the Replication, with an Account Sale, and an Account Current annexed, the Rejoinder the Interrogatories on the part of the Complainant, and three Depositions taken thereunto, and also two Exhibits on the part of the Defendant, together with the Extract from the Report of the Referees delivered in in the Causes between Marcar Petrus, and Aviat Torose, on hearing the pleadings made use of by the Attorneys, and on due Consideration had thereon; It Appearing to this Court by the Extract from the Replication of Marcar Petrus, delivered in as an Exhibit in this Cause, that the said Marcar Petrus did take an Indemnification from the present Defendant, Aviat Torose, about the same time, he, the said Aviat Torose did settle the Accounts of the same Adventure, with the present Complainant, Specifying, that if the Adventure to China should not produce a profit of 22 ℔ Cent that he, the said Marcar Petrus should be Answerable for no more than the real outturn thereof but since the Defendant did not procure such an Indemnification from the Complainant, regarding the said Adventure it seems most probable, that the Defendant did at his own risque, make himself answerable to the Complainant for that profit, more especially as the Defendant did long after upon Joining this, with other Accounts depending between him, and the Complainant, give his Note of hand for the Ballance thereof, the above profit of 22 ℔ Cent being still included; and with respect to the sum of thirty eight Pagodas, charged by the Defendant for Sundry Articles supplied the Complainant, the date of the delivery of the Articles appearing to be greatly antecedent to the date of the Note of hand, granted by the Defendant, upon which the Complainant now sues, This Court doth therefore think fit to order, and Decree, and doth accordingly order and Decree that the Defendant shall pay would have given this Respondent a note of hand, without first Deducting the Amount of those articles, if this Respondent was at that time really indebted to the Appellant, for the same, and this Respondent further says that if he had been really indebted to the Appellant for the amount of those Articles, (which this Respondent however absolutely denies) Yet this Respondent does say that in Law The Note of hand would have been looked upon as a full discharge for the same, For all which reasons this Respondent Humbly conceives that the Decree of the Honourable the Mayor's Court is just Equitable and humbly prays that the same may Stand confirmed, and that the Appellant may be obliged to pay all Costs of this Suit in both Courts.

J M Stone
Att^y. for the Respondent

Court of Appeals
at
Madrasspatnam } ss

Friday the 23^d. day of June
Anno Domini 1758.

Between ...... Aviat Torose of Madrass
Merchant .... } Appellant

And .... Seeva Chitty of Madrass
Merchant .... } Respondent.

This Cause coming on 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 Honourable the Mayor's Court together with the Decree of the said Court given in this Cause on Tuesday the Second day of May last past and upon due Consideration had of the matters therein severally contained and of the pleadings and Arguments used by the Attorneys on both sides. This Court doth think fit to Order and Decree and Doth accordingly order and Decree that the Decree of the Honourable the Mayor's Court given in the said Cause do Stand confirmed, That the Appellant's petition be hence dismissed and the Appellant do pay all Costs of this Appeal.

of Complaint In Answer to which said Bill your Petitioner did Assert upon Oath in the first part of his defence, that he never did at the time of executing the said Bond nor at any other time or times whatever receive of the said Salomon Franco or of any other person whatever the Value of the said Bond any part thereof and as proof of such Assertion your Petitioner related in his said Answer at large the said Raphael Joseph Sumido's receipt of the payment of the said sum to your Petitioner at Bengall and to Corroborate which your Petitioner did then (and does now) pray reference to the Exhibit marked Annexed to the Complainants said Bill of Complainant, which is copy of a Letter from the said Raphael Joseph Sumido to the said Salomon Franco brought by your Petitioner from Bengal and delivered by your Petitioners own hand to the said Solomon Franco, wherein the said Raphael Joseph Sumido acquainted the said Solomon Franco that the sum of One thousand Rupees remained with him the said Raphael Joseph Sumido and that the said Solomon Franco had nothing to do with your Petitioner for the same than which nothing can be a Stronger proof that the said sum of One thousand Arcot Rupees never came to your Petitioners hands and your Petitioner to Shew (that he was not responsible for the risque of the said sum in the hands of the said Raphael Joseph Sumido) positively Swore that he never gave the said Solomon Franco either any written or Verbal order to remitt the said sum of One thousand Arcot Rupees (which was to have been at Respondentia for the said Raphael Joseph Sumido at Bengal But that it was entirely the Action of the said Solomon Franco for it was your Petitioners intention that the risque should Still remain upon the Ship Peril according to the Tenour of the Bond as appears by your Petitioner's said Answer and as the said Solomon Franco has never proved in his proceedings in the Mayor Court his Assertion of your Petitioner's particular Request to him to remit the said Sum in the manner aforesaid your Petitioner cannot think himself any ways Responsible for the said Sum, But whereas the said Cause coming on to be heard in the said Honourable the Mayors Court the

said

Yet as it was not at your petitioners Request nor Order that such remittance was made and as the said Sum was for your Petitioners Sole use and for no other person whatsoever Your Petitioner cannot be deemed Answerable for the Resque in the hands of the said Raphael Joseph Sumido Nor does your Petitioner think he was under any necessity to protest against such remittance And it moreover appears upon reference had to your Petitioners Answer and the deposition of Mannel de Cruz that your Petitioner was not very well Satisfied with the said remittance; and although it may be the Custom of Merchants that Aperson (who is negligent in procuring payment of a draught or of protesting and duely Advising the drawer) is Subject to a Loss in case the person on whom it is drawn fails or dies Insolvent (But of which your Petitioner is not fully Satisfied of) yet although Your Petitioner did not protest at Bengal against the said Raphael Joseph Sumido's non payment of the Letter of the said Salomon Franco And did not duely Advise the said Salomon Franco) which was owing to your Petitioners little knowledge of Mercantile Affairs and also as the Instrument directed to the said Raphael Joseph Sumido was only a Letter your Petitioner conceives it was not regularly protestable as there was no time limitted therein for payment Yet as the aforesaid Raphael Joseph Sumido was not dead nor Insolvent He did not dye till nigh two Years after your Petitioner came from Bengal and delivered the Letter of the said Raphael Joseph Sumido to the said Salomon Franco (of which Letter the said Salomon Franco Accepted) and did not at that time nor for a considerable time after demand payment of his Bond now sued for (your Petitioner cannot but think he thereby became free of being responsible for the resque of the said remittance, although the Bond remained in the hands of the said Salomon Franco which Bond your Petitioner could not but think remained of no force as your Petitioner never Received a Valuable Consideration for the same which your Petitioner conceives he has clearly proved. And further your Petitioner represents to this Honourable Court

That

On reading the Complainants Bill with Translates of a Respondentia Bond, and two Letters annext, the Defendants Answer with Translates of two Letters annext, the Replication, and Rejoinder together with the Interrogatories on the part of the Defendant, and One Deposition taken thereunto, On hearing the pleadings made use of by the Attorneys, and on due consideration had thereon, It Appearing to the Court that the Defendant was privy, and Assenting to the manner whereby the Complainant remitted the one thousand Arcot Rupees now sued for to Bengal by his not protesting against the Complainants so doing, before he the Defendant, departed himself for Bengal where he was to have received the said Sum, of Raphael Joseph Semmido as mentioned in a Letter directed to the said Raphael Joseph Semmido, which the Compleinant deliver'd open to the Defendant, And as by the Custom of Merchants, a Person who receives a Draught on one who fails, or dies insolvent before payment thereof, is subject to the Loss, in case he the Possessor, hath been either Negligent in procuring payment, or of protesting, and duely advising the Drawer, if payment has been refused; And since the Neglect of the Defendant to protest against the Complainant, or Raphael Joseph Semmido for non payment of the said Sum of one thousand Arcot Rupees at Bengal, or to require is Bond to be delivered up by the Complainant when he, the Defendant, arrived here again with a Letter concerning the said One thousand Arcot Rupees from the said Raphael Joseph Semmido, to the Complainant, leaves strong presumption that the Defendant was satisfied that the said one thousand Arcot Rupees should remain with the said Raphael Joseph Semmido, at his, the Defendants risque, And tho' the Complainant did not, upon the Defendants coming back from Bengal, demand payment of his Respondentia Bond. Yet as he did not renounce his right thereto, This Court doth Unanimously think fit to order and decree and doth accordingly order and Decree that the Defendant shall pay unto

the

concerned in Tra[illegible]th the Appellant and at whose Instance this Respondent lent the said Sum of One thousand Arcot Rupees to the Appellant — The Appellant indeed has asserted upon Oath in the first part of his defence that he never [illegible] tim[illegible] of executing the said Bond nor at any time or times whatever rece[illegible] Respondent or of any other person whatsoever the Value of the said Bond or any part thereof — This Respondent has admitted that the amount of the said Bond was not paid by this Respondent to the Appellant but remitted at the particular request of the Appellant to one Raphael Joseph Simmedo in manner aforesaid and Notwithstanding that the Appellant pretends he never gave such Order to this Respondent yet it will appear upon reference being had to one part of the Appellants defence that he denies he was apprized of this Respondents intention to remit any Sum of Money to the said Raphael Joseph Simmedo but only requested this Respondent would have the Sum of One thousand Arcot Rupees and the Sum of One thousand Pondichery Rupees remitted to himself at Bengal and immediately after in said Defence the Appellant alledges that sometime in the Month of July which was in the Year of Our Lord One thousand seven hundred and fifty two he wrote a few Lines to this Respondent in order to know from whom he was to receive the said two Sums in Bengal which this Respondent conceives does imply that he had Consented to the Respondent remitting those Sums to somebody at Bengal without which such an enquiry would have been absurd And this Respondent absolutely denies that the Appellant did request this Respondent to remit those said Sums to himself as such a request this Respondent conceives would have been absurd when he was going to Bengal and could with ease have carried them with him, & as a proof that the Appellant was satisfied with the said

Remittance

Joseph Simmonds as a discharge of the Appellants Bond.

For all which reasons as aforesaid this Respondent humbly conceives that the Decree of the Hon.ble the Mayors Court is just and Equitable to which Decree this Respondent most humbly refers and prays that the same may stand confirmed and that the Appellant may be obliged to pay all Costs of this suit in both Courts

John Calmer
Att.o for the Re

Court of appeals at Madrasspatnam } ss

Wednesday the 30th day of January anno Domini 1760

Between Joachim Joze de Mello ... Appellant
Solomon Franco ... Respondent

This Cause coming on 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 Honourable the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 27th day of June 1758 and upon due Consideration had of the matters therein severally contained and of the Pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly order and Decree that the Decree of the Hon.ble the Mayors Court given in the said Cause do stand Confirmed, That the Appellants Petition be hence dismissed, and the Appellant do pay all Costs of this Appeal

George Payne
Clerk of Appeals