High Court Series VI

Appeals against Magistrates Courts civil

Vol 2.

APPLs

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101

484

To the Honble Charles Bourchier Esqr
President & Governor of Fort St. George &c.a Council

Filed in my Office
the 14 September 1767
W. M. Goodlad Ck of Off.

Between Chippermaul Chitty of Madras
Merchant Administrator to the Estate & Effects
of Edward Edwards late of Fort St. George merch.t
deceased and Edmund Pascal Captain of Foot
in the Service of the Honble United English
East India Company on the Coast of Choromandel

Sheweth

The humble Petition of Appeal of the
said Chippermaul Chitty

That the abovenamed Edward Edwards died in his lifetime
on or about the Ninth day of March which was in the year of our Lord
1762 Exhibit a Bill of Complaint in the Honble the Mayors Court
against the abovenamed Edmund Pascall thereby setting forth that the
said Edmund Pascall stood indebted unto him in the full and just Sum
of Five hundred Pagodas Current Money of Madras arising upon
an Obligation which he annexed to his said Bill of Complaint bea-
ring date the 13th day of June 1756 To which said Bill of Complaint the
said Edmund Pascal put in his Answer whereby He admits to have
Executed the said Obligation But saith that he has the greatest reason
to believe that the same has been long since discharged because He says
that since the date of the said Note an Account of Transactions between
him the said Edmund Pascal and the said Edward Edwards have been
stated & Ballanced of which he says the Account which He annexes
is a Copy the Ballance of which He alledges is Acknowledged to be just
by a Letter from the Complainant and also because He says that on the
Debtor side of the said Account there appears a Sum of Five hundred
Pagodas debited to the said Edmund Pascal under date of the 7th July
1756 paid Mr. Carmac, and Your Petitioner further sheweth that soon after
the said Edmund Pascal had put in his said Answer the said Edward
Edwards departed this Life intestate whereby the said Suit abated and

Administration

Administration to his Estate was granted to your Petitioner in due
form of Law by the Honble the Mayors Court and your Petitioner
did on or about the 22d day of June in the said year 1762 File a Bill of
Revivor, to which the said Edmund Pascal appeared in the said Court
was revived accordingly against the said Edmund Pascal and your
Petitioner put in a Replication to the said Answer thereby setting forth
that what the said Edmund Pascal has in his said Answer alledged re-
-arding the said Obligation does by no means demonstrate that the Amo
thereof which is Five hundred Pagodas or any part thereof was ever disch
-ged either to the said Edward Edwards or any other person on his accoun
but that the same together with the Interest thereof is justly due and
Owing to your Petitioner as Administrator to the said Edward Edwards
as aforesaid and your Petitioner in his said Replication further
saith that the Account Current annexed to the said Answer is a matter
quite foreign to the said Obligation nor has it the least Connection the
-with nor does it by any means appear that the Sum of Five hundred
Pagodas therein debited as paid to Mr Carnac is the Sum sued for o
has any thing to do therewith for the Sum sued for and for which the
said Obligation was given by the said Edmund Pascal appears to
have been Borrowed and Received by the said Edmund Pascal from
the said Edward Edwards by the express words of the said Obligation
and not Money paid to Mr Carnac or any other Person on that acct
So that the express Words of the said Obligation must intirely Confu
the said Edmund Pascals Assertions relative thereto, And with regard
to the Letter which the said Edmund Pascal has annexed to his
Answer your Petitioner in his said Replication saith that it is only
relative to the said Account for there is not a Word mentioned therein
either relative to the Obligation in Question or any other Bond Obliga
-tion or note of the said Edmund Pascal besides it is hardly to be imagin
that either the said Edmund Pascal or any other Person would discharg
a Bond Obligation or Note for so large a Sum as Five hundred Pag
-das without either having such Security delivered up to him or a
Receipt for the Contents of it, neither of which appears to have been the
present case for the said Obligation is annexed to the said Bill of Comp
-laint

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Complaint now on Record in the Registry of the Honble the Mayors
Court and the said Edmund Pascal does not produce any receipt
nor mention any receipt for the discharge of it therefore your Petitioner
doubted not but that it would plainly appear to the Honble the Mayors
Court that the said Sum of Five hundred Pagodas still remains un
-discharged And your Petitioner hoped the said Honble the Mayors
Court would be pleased to Decree the said Edmund Pascal to pay the
same to your Petitioner as Administrator to the said Edward Edwards
as aforesaid with Interest and Costs of Suit, To which said Repli
-cation the said Edmund Pascal put in a Rejoinder thereby denying
to be indebted to your Petitioner as Administrator to the said Edward
Edwards as aforesaid chiefly for the reasons set forth in his said Answer
and upon these Proceedings Issue was joined and two Exhibits were
produced on the part of the said Edmund Pascal, and the Cause coming
on to be heard the Honble the Mayors Court were pleased to Decree that
the said Note or Obligation should be cancelled and that the said Bill
should stand dismissed with Costs as will more fully and at large
appear by the Decree of the said Court hereunto annexed for the Inspec
-tion of this Honble Court, from which said Decree your Petitioner doth
appeal to this Honble Court as he conceives the same is very Errone
-ous as the said Edmund Pascal has not produced one Evidence to
prove that the said Obligation is discharged nor does the Letters which
He has produced or the Matters which he Alledges, as your Petitioner
conceives and is fully of Opinion, by any means shew that the said
Obligation is discharged or that the said Sum of Five hundred Pagodas
or any part thereof was ever paid to the said Edward Edwards or to any
person on his account, nor is what is alledged in the said Decree as
reasons for cancelling and setting aside the said Obligation by any
means sufficient to shew that the said Note is discharged or that the
Five hundred Pagodas charged in the Account Current annexed to the
said Answer to have been paid to the said Mr Carnac is the Sum in
Question or has the least Connection with the said Obligation for
your Petitioner conceives that no Bond Obligation Note or other
Security can be cancelled or deemed to be discharged without either

such

such Security being produced by the person by whom such Security was given or a Receipt being given for the Amount or Contents of such Security by the person to whom the same was given, and further your Petitioner begs Leave to observe that had the said Five hundred Pagodas been passed in Account or had the Sum of Five hundred Pagodas charged in the Account Current annexed to the said Edmund Pascals Answer been on Account of the said Obligation it would have been particularly mentioned to be on that account and upon the settling of that Account the Note would have been delivered up to the said Edmd Pascal for it is not to be supposed that He would either pay that Sum or put it in Account without having the said Obligation delivered up, And your Petitioner further saith that Mr Carnac doth not in either of the Letters produced by the said Edmund Pascal as Exhibits mention a Word of the said Obligation or of any Security whatsoever but in that of the 23d June He says he has presented the said Edmund Pascals Draught to the said Edward Edwards who had accepted it, and in his Letter of the 7th July 1756 He says he has received from the said Edward Edwards Five hundred Pagodas agreable to the Draught which he got from the said Edmund Pascal for that purpose, both which is very foreign to the Obligation in Question for He could never style it a Draught nor was any Acceptance necessary therefore what he speaks of must have been a Bill, Besides the said Obligation is dated the 30th day of June and Mr Carnac says the Draught for the Five hundred Pagodas was accepted the 23d June which is seven days before the date of the said Obligation therefore your Petitioner conceives, and hopes it will so appear to this Honble Court that the said Edmund Pascal has produced no proof whatsoever either Absolute or Circumstantial to shew that the said Obligation was ever discharged or that the said Five hundred Pagodas or any part thereof was ever paid to the said Edward Edwards or to any person on his Account but that the same still remains due and that the said Edmund Pascal ought to pay the same to your Petitioner with Interest and Costs as Administrator to the said Edward Edwards as aforesaid. All which matters and things your Petitioner submits to the Judgment of this Honble Court and most humbly prays that the said Decree may be

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be reversed and set aside and that the said Obligation may be decreed Valid and that the said Edmund Pascal may be decreed to pay unto your Petitioner the said Sum of Five hundred Pagodas with all such Interest as now is or shall hereafter become due thereon also all Costs of Suit, And your Petitioner also prays such further and other relief as to this Honble Court shall seem Meet

John Sykes
Attr for the Appellant

Mayors Court at Madraspatnam } Tuesday the 1st day of September Anno Domini 1767

Present

Anthony Sadler Esqr Mayor
Peter Mariette — Reynold Adams
Arthur Cuthbert & John Holland
Aldermen

Between Edward Edwards of Madras Merchant Complainant and Captain Edmund Pascal Commandant of the Honble Companys Garrison of Chingleput Defendant

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with a Note of hand annexed, The Defendants Answer with an Account Current and a Letter annexed, The Bill of Reviver, The Replication, The Rejoinder, Two Exhibits on the part of the Defendant, On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon, It appearing to the Court from the Length of time which elapsed between the Date of the Note of hand on which the Complainant founds his Demand,

and

and the time the Suit was Commenced, which is near six years & from no mention being made of any Note of hand in the Acct. Current between the Complainant and Defendant stated from the 6th April 1755 to 19th January 1757 annexed to the Defendants Answer, the Ballance of which appears to have been paid. The Court are of Opinion that the said Note has been discharged, and as the very Sum for which the Complainant debits the Defendant under date the 6th July 1756 as so much paid to Mr. Carnac on the Defendants Account, The Court are the more induced to be of this Opinion from the Defendants being at the time he executed the Note of hand at Fort St. David and Consequently the Money must have been paid to some other Person on his Account, And the time the Money was received by Mr Carnac Agreeing nearly with the date of the said Note, and which Mr Carnac seems there a mistake, to have called a Draught, and particularly as the Complainant has not produced the Draught mentioned to be paid by him — This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the said Note shall be Cancelled, and that the Complainants Bill shall stand Dismissed with Costs of Suit

Jno Stone
Regr

In the Court of Appeals

Between Chepparmaul Chitty of Madras Administrator to the Estate & Effects of Edward Edwards late of Fort Saint George Merchant deceased And Edmund Pascal Captain of Foot in the Service of the Honble United English East India Company on the Coast of Choromandel

The Answer of Edmund Pascal to the Petition of Appeal of the said Chepparmaul Chitty

The

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The said Respondent saith that he admits of the said Edward Edwards having filed his Bill of Complaint against the said Respondent in the Honble the Mayors Court for the Sum of Five hundred Star Pagodas and that he the said Respondent did put in his Answer thereto as will appear by a reference to the same now before this Honble Court a Replication and a Rejoinder being put in, Issue was joined, Exhibits on the part of the said Respondent produced and the Matter in dispute came on to be heard and determined on the day and year as set forth in the said Petition of Appeal and in manner & form as is therein expressed from whence the said Chepparmaul Chitty as Administrator to the said Edward Edwards has appealed to this Honble Court which Petition of Appeal the said Respondent saith he conceives the Appellant had no just Cause to Appeal from the Judgement of the Honble the Mayors Court because the reasons alledged by the said Respondent in his Answer and Rejoinder being so full and sufficient as to induce the said Honble Court to pass their Judgement in the manner as set forth in the Decree annexed to the said Chepparmaul Chittys Petition of Appeal, For all which reasons the said Respondent prays that the Decree of the Honble the Mayors Court may stand confirmed and that the Appellant may be obliged to pay the Costs in both Courts and be granted such other relief in the premises as to this Honble Court shall seem necessary

Chas. Bromley
Atty for Respondent

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Court of Appeals at Madrasspatnam } Friday the 18th August 1769

Between Cheppermaul Chitty of Madras Merchant Administrator to the Estate and Effects of Edward Edwards deceased ... Appellant
Edmund Pascal ... Respondent

This Cause coming on this day to be heard and debated before this Court by the Attorneys on both Sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 7th day of September Anno Dominie 1767 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 & Decree and doth accordingly Order & Decree that the Decree of the Honble the Mayors Court given in this Cause do stand confirmed and that the Appellants Petition be hence dismissed with Additional Costs

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

Filed in my Office
the 19th September 1768
Th. Goodlad Esq Atty

Between James West of Fort St George Merchant and Nenah Chitty of the same place Merchant

Sheweth

The humble Petition of Appeal of the said Nenah Chitty

That the aforesaid James West did on or about the 15th day of December in the year of our Lord 1767 file a Bill of Complaint in the Honble the Mayors Court against your Petitioner alledging that he purchased of your Petitioner Five Candy of Iron at 10 Pagodas and a half p Candy pr[e]tending that your Petitioner was to deliver it to him immediately after the purchase, And that he was to pay your Petitioner for the same that on that account and as an Earnest and in part payment thereof gave your Petitioner Two Pagodas and a half, And that as he imagined your Petitioner would have delivered him the Iron as above set forth, did therefore dispose of the same for 13 Pagodas p Candy, and that your Petitioner refusing or neglecting to deliver the Iron to the said James West, obliged him to forfeit the said Agreement he made to and with the Person he sold it to, as aforesaid, And that he had thereby sustained a Loss of two Pagodas and a half on every Candy amounting to Twelve Pagodas and a half, and prays that your Petitioner may be decreed to deliver the said James West the five Candy of Iron and to pay all Costs of Suit

Your Petitioner to the said James West said pritended Bill of Complaint did on the 26th day of January last deliver in his Answer upon Oath admitting to have sold the said James West Five Candy of Iron at Ten Pagodas and a half p Candy but which the said James West was to receive from Mr Hodges Substorekeeper to the Honble Company on his first payeing him for it

at

at Ten Pagodas p Candy but was not to receive it from your Petitioner nor pay your Petitioner for it, The two Pagodas and a half allowid your Petitioner by the said James West, was as a Profit on the Iron at half a Pagoda to every Candy, but not as an Earnest to fulfill any Contract or Bargain, for the said James West immediately or soon after he had purchased the Iron sent his Dubash in search of your Petitioner to Mr Westcott and to acquaint him with the sale of the Iron and that he might deliver it to the said James West to whom he had sold the same, whenever he sends for it; Mr West-cott upon having your Petitioners consent, sent the said James West word, by his said Dubash, that he would deliver the Iron to him within twenty days time, or as soon as the China Ships thereon dispatch was gone; but instead thereof he applied to Mr Westcott for the Iron about forty or forty five days after when there was none left, and finding no hopes of getting any, he then requested of your Petit.r to go to Mr Westcott for the same, which your Petitioner refused doing for fear he might bring your Petitioner into Suit for the

The said James West did on the 16th day of February last file his Replication in the Honble the Mayors Court, contradicting all or the greatest part of the Matters and things related in your Petitioners Answer, and confirming his said Bill of Complaint

Your Petitioner did on the 8th day of March last file his Rejoinder into the said Honble the Mayors Court, therein refuting the Matters and things set forth in the said James Wests Replication and but justly confirming what your Petitioner hath set forth in his said Answer; And moreover of the said James West having sent to Mr Westcott for his Iron at a time when there was none left, And on the 15th day of March last Witnesses were examined on both sides, And publication passed on the 28th day of June last, and the Cause set down for hearing on the 26 day of July last, and accordingly heard on the 6th of this Inst September and in which the Honble the Mayors Court thought fit

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fit to Order and Decree, that your Petitioner shall deliver the five Candy of Iron to the said James West and each party to pay his own Cost

To which said Decree your Petitioner with the greatest Submission to this Honble Court, finds himself greatly aggrieved excepting that part wherein it expresses thus "That the Complainant did accordingly take measures for receiving it, but that "he was remiss in not sending for it at the time when other purchasers "received theirs, which Appears to have been the Reason why the Iron "was not delivered to him and the Cause of this present Suit"

All which said Matters and things, your Petitr most humbly lays before this Honble Court as well as of the unjust and illegal demand of the said James West against your Petitioner which your Petitioner humbly hopes the same will appear so by the Proceedings itself now before this Honble Court, and more particularly by the Evidence produced by the said James West himself, As well as from those produced by your Petitioner, for with farthest Submission to this Honble Court it must be very hard on your Petitioner to suffer thro the negligence of the said James West for his not sending for the Iron at the time the many other purchasers procured and received theirs, And which is very sufficiently supported by the Evidence of the said Mr Westcott and the Decree of the Mayors Court, to which your Petitioner most humbly refers this Honble Court unto; Mungapully the said James West's Dubash in his Deposition saith that his Master James West did purchase of your Petitr five Candy of Iron at 10½ Pags p Candy, whose Deposition together with that of Madurawail Venkata Chellum prove the said James West was to receive the Iron from Mr Westcott, on his paying him Ten Pagodas p Candy and that the two Pagodas and a half paid your Petitioner by the said James West was as a Profit, but not as an Earnest, which now might bind your Petitioner to deliver the Iron which said Depositions together with that of Mr Westcott's prove that the said James West had after the said purchase sent his Dubash to the said Mr Westcott in Company of your Petitr

and

and requested for the delivery of the Iron, the said James Westcott & Gibbs telling Mr Westcott at the same time, that his Master James West had purchased it of your Petitioner, and to which your Petitioner also gave his Consent, when your Petitioner was immediately cleared by Mr Westcott, by his sending the said James West word that he would deliver him the Iron within twenty days time, or as soon as the China Ship then in Dispatch should said, but the said James West instead of sending for it in time, he having sent for it so long after, when there was no Iron left, and towards the said James Wests requesting and your Petitioner rejecting to go to Mr Westcott afterwards is fully proved by the Evidence of both the said Munagapetty and Maduravoil Venkatashellum.

The whole of the said Matters and things your Petitioner humbly Submits to the Impartial Judgement of this Honble Court, and for all which reasons your Petitr most humbly Appeals to the Judgement of this Honble Court of the Honble the Mayors Court wherein may be reversed and set aside Granting your Petitioner such other and further relief in the premises as to this Honble Court shall seem meet and as in all duty bound shall ever pray

P. P. Reeffer
Atty for the Petitr

Mayors Court at Madrasapatnam } Tuesday the 6th day of September Anno Domini 1768

Present
Charles Smith Esquire Mayor
Peter Marsette, John Debonaire
Thomas Powney, Edward Stracey
John Holland Esq. Aldermen

Between

Between James West of Fort St. George Merchant Complainant & Kenah Chitty of Madras Merchant Defendant

This Cause coming on to be heard and debated this day in the presence of the Attornies on both Sides on Reading the Complainants Bill, The Defendants Answer, The Replication The Rejoinder, The Interrogatories and Depositions on the part of the Complainant, The Interrogatories and Depositions on the part of the Defendant, On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon, It Appearing to the Court that the Defendant was the purchaser of the Iron from the Company, and was alone answerable to them for the fulfilling the Contract, that the Bargain between the Complainant & Defendant was entirely private, and by vertue of which the Company would not oblige the Complainant to pay for the Iron purchased by the Defendant and that therefore the Defendant is obliged to stand to the Bargain made with the Complainant. This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Defendant shall deliver unto the Complainant the Five Candy of Iron purchased of him; But as the Complainant agreed with the Consent of the Defendant to receive the Iron from the Substorekeeper and which the Substorekeeper promised to deliver to him and that the Complainant did accordingly take measures for receiving it, but was remiss in not sending for it at the time when other purchasers received theirs, which appears to have been the Reason why the Iron was not delivered to him, and the Cause of the present Suit, there having been more Iron sold of that Quality than was in the Storehouse, It is therefore further Ordered and Decreed that each party shall pay his own Costs

By Court R. Maltone Regr

IX

To the Honble Chas. Bourchier Esqr
President & Governor & Council of Fort St. George

In the Court of Appeals

Filed in my Office
the 4th October 1768
Wm. Goodlad Dpy. Regr

The Answer of Jame West of Portsmt
Forge Merchant Respondent to the
Petition of Appeal of Ninah Chitty of
Madras Merchant Appellant

This Respondent saith that the Appellant having
on or about the month of June which was in the year of our Lord 1767
sold unto this Respondent five Candy of Iron at Ten Pagodas and a
half p Candy by the name Cundapah and afterwards refusing either
to deliver or cause the same to be delivered unto this Respondent he
this Respondent did on or about the 26th day of September in the
year of our Lord 1767 exhibit a Bill of Complaint in the Honorable the
Mayors Court against the Appellant by the said name of Cundapah
thereby setting forth that this Respondent did on or about the above
month of June purchase from the Appellant the above Quantity of
Iron at the above price which was to be delivered to this Respondent
immediately and for which this Respondent was to pay him upon
the delivery thereof in which account and as an Earnest of the said
Bargain and in part payment of the Amount of the said Iron this
Respondent gave or paid to the Appellant two Pagodas and a half
This Respondent did also further in his said Bill of Complaint
set forth that in pursuance of the said Agreement he this Respon
dent imagined that the Appellant would have delivered the said
Iron to this Respondent immediately as he ought to have done he
Respondent did therefore dispose of the same for Thirteen Pagodas
p Candy to be delivered to the Person to whom this Respondent so
sold the same upon this Respondent receiving the same from the
Appellant according to the said Agreement but the Appellant

refusing

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refusing or neglecting to deliver the said Iron to this Respondent obliged
this Respondent to forfeit the said Agreement which he made with
the Person to whom he had sold it as aforesaid and to compromise
that matter in a Disagreable and Disadvantageous manner
whereby this Respondent sustained a Loss of two Pagodas and a half
upon every Candy Amounting in the whole to twelve Pagodas and
a half. And this Respondent did on and by his said Bill of Comp-
laint pray that the Appellant might be Decreed to deliver unto this
Respondent the said five Candy of Iron and pay all Costs of the said
Suit. And this Respondent further saith that in pursuance of the
said Bill of Complaint being exhibited as aforesaid Three summonses
did Issue at different times against the Appellant by the name of
Cundapah and which were respectively served upon the Appellant
but to all which he refused to Appear alledging that his name was
not Cundapah but Comorapah, so that the said Summonses were
all returned by the Sheriff not to be found, and this Respondent
was under the Necessity of Amending his said Bill of Complaint
which he did on or about the 17th day of November last, by inserting
the name of Comorapah instead of Cundapah, and upon the said
Amended Bill being filed two Summonses Issued on different
Court days, which were served upon the Appellant as before, but
he still refused to Appear on which a Warrant of Arrest Issued
but the Appellant alledging that his name was not Comorapah
but Ninah Chitty he was not arrested, so that this Respondent
was under the Necessity of Amending his said Bill of Complaint
again, which he did on or about the 15th day of December last, and
which the Appellant mentions in his said Petition of Appeal
as if it was the first and only Bill which this Respondent had
exhibited against him in this Affair, the Contrary of which will
appear by the proceedings in this Cause now before this Honble
Court. And these Matters this Respondent setforth so particu
larly in order to explain to this Honble Court his reasons for
exhibiting the said Amended Bills and also to Demonstrate to
this Honorable Court the Artfull Contrivances of the Appellant

to

to Evade his Appearing to the said Suit, and thereby to prevent, if possible, this Respondent obtaining the Justice to which he thinks himself Intitled, and which he doubts not but this Honble Court will be pleased to Grant

To which said Bills of Complaint the Appellant did on or about the 26th day of January last put in his Answer in wherein he saith that sometime in the month of April which was in the Year of our Lord 1767 his the Appellants Pagoda Cundapah purchased by Publick Outcry at the Sea Gate from the Honble Company one Lot of Iron consisting of five Candy at Ten Pagodas p Candy, That the Appellant a few days after the said purchase was made which was sometime in or about the month of June in the said Year 1767 having met this Respondent at the Sea Gate he sold him the said Iron at Ten Pagodas and a half p Candy, on Condition this Respondent was to receive the same of Mr Wescott the Subs tore keeper to the Honble Company when he required the same, paying him for it after the rate of Ten Pagodas p Candy, being the rate the Appellant purchased the same; And to Allow the Appellant a profit of half a Pagoda on every Candy, Amounting to two Pagodas and a half, But denying to have ever promised this Respondent to deliver him the said Iron immediately or to have received the said Sum of two Pagodas and a half as an earnest or Bargain or in part payment of the Amount of the said Iron, As he pretends as Artfully set forth by this Respondent in his said Bill of Complaint, But that the same was intended by this Respondent and received by the Appellant as a profit on the said Iron. That immediately after he this Respondent had purchased the said Iron of the Appellant he desired the Appellant to go with his Dubash to Mr Wescott and acquaint him of the said purchase, and to deliver him the said Iron when he should send for it, and the Appellant did accordingly go to the said Mr Wescott with this Respondents said Dubash and request him to deliver the said Iron to this Respondent which the

the said Mr Wescott promised doing and Ordered this Respondents Dubash to tell him that he would weigh the same off and Deliver it to him within Twenty Days or as soon as the Multiplicity of Business he had then in hand on account of the China Ships was over which Message he says this Respondent duly received and Satisfyed therewith, did two Days afterwards pay him the said profit of two Pagodas and a half and that this Respondent about Forty or Forty five Days afterwards sent for the Appellant and told him that he had been to the said Mr Wescott for the said Iron but had not been able to procure it from him and requested him to go to Mr Wescott for the Delivery of it which he refused doing as he did not think himself Obliged to do any thing further than what he had already done, But the Appellant does not in his said Answer say that he refused applying to Mr Wescott for fear he might bring him in Question for the Same, as set forth in the said Petition of Appeal, But which however this Respondent Conceives Indicates that the Appellant Apprehended there was some reason for his being called in Question about it or being Answerable for it.

To which said Answer this Respondent did on or about the ninth Days of February last put in a Replication, whereby he admits that he was to receive the said Iron from the said Mr Wescott in case he would Deliver it to him, and that this Respondent was to pay him for it after the rate of Ten Pagodas p Candy, But saith that was only mentioned and Intended to be done in order to settle the matter at once Instead of it's being Delivered to the Appellant and the Appellant Delivering it to this Respondent And not with any View either to free the Appellant from his Contract or Bargain for the same with the Honorable Company or from the Appellants Bargain with this Respondent, So that both the Appellants Bargain with the Company and with this Respondent continued good and was as Valid as if this Respondent had not been to receive the said Iron from the said Mr Wescott But

from

from the Appellant, therefore the Appellant Notwithstanding what was mentioned on that head, was still Answerable to this Respondent for the said Iron and was bound to fulfill his Contract with this Respondent for the same Consequently was obliged either to Deliver the same or see it Delivered to this Respondent. That this Respondent believes he did after he had made the said Purchase desire the Appellant to go to the said Mr. Westcott with this Respondent's Dubash and Acquaint him with the said Purchase and desire him to Deliver the said Iron to this Respondent which he believes the Appellant did and that the said Mr. Westcott promised to Deliver the same to this Respondent But saith that this was done with no other Intent than to settle the matter as before set forth and in case the said Mr. Westcott had delivered the same to this Respondent accordingly it would have been Just the same as if the Appellant had delivered it And this Respondent would have been equally satisfied therewith but upon this Respondent Applying to the said Mr. Westcott some time afterwards for the Delivery of the same the said Mr. Westcott told this Respondent that he had no Iron therefore could not Deliver the same to this Respondent, And this Respondent being convinced that he had not Purchased the said Iron from the said Mr. Westcott but from the Appellant and therefore that he could not oblige the said Mr. Westcott to Deliver the same to him as the said promise to Deliver it to him was no Contract or Bargain But meant to Deliver it to this Respondent Instead of the Appellant by way of fulfilling the said Bargain with the Appellant this Respondent was obliged to have Recourse to the Appellant for the same and the Appellant refusing to Deliver the said Iron to this Respondent he was under the Necessity of making this said Application to the Honourable the Mayor's Court to Oblige him to fulfill his said Bargain with this Respondent. That Notwithstanding the two Pagodas and a half which this Respondent gave or paid to the Appellant on Account of the said Iron was profit to the Appellant on the

same

same as he was to pay only Ten Pagodas pr Candy for it Yet this Respondent so gave or paid it to the Appellant on the Account in his said Bills of Complaint mentioned and set forth, nor is that Assertion in the least Artfull as the Appellant set forth And in case Mr. Westcott would have Delivered the said Iron to this Respondent, and he this Respondent had been properly Discharged from the Amount thereof, it would not have made any Difference to this Respondent whether he had paid the money to Mr. Westcott or the Appellant.

To which said Replication the said appellant did on or about the Eighth Day of March last put in a Rejoinder thereby Endeavouring still to Evade the fulfilling the said Contract with this Respondent by Alledging he was Discharged therefrom &c. Notwithstanding this Respondent in his said Replication did so particularly describe the real Nature and true Intent and meaning of his said Contract with the Appellant and of the said Transaction with regard to the said Mr. Westcott and Notwithstanding also that the Appellant must be sensible of the truth and Justness of the same.

Upon these Proceedings Issue was Joined and Witnesses Examined both on the part of the Appellant and this Respondent, Publication was passed, And the Cause coming on to be heard on the Sixth day of September last And it Appearing to the said Honourable the Mayor's Court that the Appellant was the Purchaser of the said Iron from the said Honourable Company and was alone Answerable to them for the fulfilling the Contract, That the Bargain between the Appellant and this Respondent was entirely Private and by Virtue of which the Company would not oblige this Respondent to pay for the Iron Purchased by the Appellant, and that therefore the Appellant is Obliged to Stand to the Bargain made

with

with this Respondent, The said Court did therefore think fit to order and decree and did accordingly order and Decree that the Appellant should Deliver unto this Respondent the five Candy of Iron Purchased of him But the said Court Alledgeing as this Respondent Agreed with the Consent of the Appellant to Receive the Iron from the Sub Storekeeper and which the Sub Storekeeper promised to Deliver to him, and that this Respondent did Accordingly take measures for receiveing it but was Remiss in not sending for it at the time when other Purchasers received theirs which the said Court Alledged Appeared to have been the reason why the Iron was not Delivered to him and the Cause of the said Suit their having been more Iron sold of that Quality than was in the Store house, It was therefore further order and Decreed that each party should pay his own Costs, as will more fully and at large Appear by the said Decree now before this Honourable Court.

By which decree this Respondent Conceives the Appellant is not in the least Aggrieved nor had the least reason to Appeal to this Honourable Court therefrom As he Conceives the same is not in the least Erroneous with regard to the Appellant, But that the part of it wherein this Respondent is decreed to pay his own Costs of the said Suit is much in the Appellants favour, and that all the rest of it is fair Just and Equitable, and this Respondent humbly hopes it will so Appear to this Honourable Court, But this Respondent begs Leave to observe that he thinks himself so much Aggrieved by that part of the said Decree wherein each party is decree to pay his own Costs that he should have Appealed therefrom to this Honourable Court had he not been Unwilling to give this Honourable Court Trouble and he chose rather to sustain that Loss than Appeal to this Honourable Court for that reason, But as the Appellant has by Appealing Alleged this Respondent to Answer his Allegations and Assertions in his said Petition of Appeal

And

and, in order that this Honourable Court might not be misled thereby to Make the matter in a fair and Just Light as it really happened and in Circumstanced this Respondent humbly hopes this Honourable Court will be pleased not only to take the said matters into Consideration with regard to the Appellant, whether he is or is not Aggrieved by the the said Decree, But also whether this Respondent is or is not Aggrieved by that part of it which he has before pointed out, And if it should Appear to this Honourable Court that this Respondent is Aggrieved thereby as he flatters himself it will, that this Honourable Court will be Pleased to Reverse and set aside the said Decree in that particular, as if this Respondent had Appealed therefrom to this Honourable Court, And this Respondent further saith that he conceives it does not by any means Appear that this Respondent was Remiss in sending for the said Iron, as set forth in the said Decree and the said Petition of Appeal, for it Appears by the Depositions of Mungapatty this Respondents Dubash taken on the part of the Appellant and this Respondent, that he this Respondent was ready and willing to have received the said Iron upon his Purchasing it, and that he sent his said Dubash for it about the time mentioned by the said Mr. Westcott, four or five days is the most time that appears to have Elapsed after the Expiration of the time mentioned for the Delivery of it, which this Respondent Conceives cannot with any Degree of propriety be Construed as Remissness or Neglect in this Respondent nor could the Appellant Lard Suffer thereby as he alledges in his said Petition and more particularly as the way in which the time mentioned for the Delivery of it could not by any means amount to a Limitation, as it was to be after the Dispatch of the China Ships which might be in about Twenty days but the time of the Dispatch of the China Ships being Uncertain the time of Delivery of the said Iron must of Course fall under the same Denomination, Consequently there could be no forfeiture or Remissness on the part of this Respondent, Nor can or ought this Respondent to be Answerable for what has been the

Consequence

Consequence of more Iron having been sold of that Quality than was in the Store house as mentioned in the said Decree—

Which matters and things this Respondent Submits to the Judgment of this Honourable Court and humbly hopes it will clearly Appear to this Honourable Court that the said Decree is a fair Just and Equitable Decree in every respect, except that part of it wherein it mentions this Respondents Premisses and where each party is Decreed to pay his own costs And that this Honourable Court will not find any Cause to Alter, but will be Pleased to Confirm the same in every respect Except as to those Articles, and with regard to them this Respondent humbly hopes this Honourable Court will be Pleased to Reverse and set aside the said Decree and Decree the Appellant to pay all costs of the said Suit And this Respondent most Humbly prays that the said Petition of Appeal may be Dismissed with Costs and also such further and other Relief in the Premisses as to this Honourable Court shall seem meet

John Sykes

Attorney for the Respondent.

Friday the 18th August 1769.

Court of Appeals at Madraspatnam } ss

Between Venah Chitty — Appellant
James West — Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both Sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause

Cause on Tuesday the 6th day of September Anno Domini 1768. And considering the transaction between the Appellant and Respondent and as a Sale of certain Quantity of Iron which the Appellant undertook himself to deliver to the Respondent But in the Nature of a Bargain or Sale of the Appellants Right to a Lot of Iron purchased at the Honble United East India Companys Sale which Bargain or Sale so made having been by both parties notified to and admitted by the said Company in the Person of their Agent the Respondent thereby actually relinquished his Claim on the Appellant and took his Recourse on the said Company— This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause be reversed and all Costs in both Courts paid by the Respondent and this Court doth further Order and Decree that the Appellant shall be good and sufficient Writings in the Law Assign transfer and make over unto the Respondent, the said Lot of Iron so purchased of the said Company and transferred by him to the Respondent in such manner as that the said Respondent may be invested with the Legal Right Title and Claim to the said Lot of Iron, and maintain his Action for the same in as full and ample manner as the said Appellant might have done—

Elliot

To the Honble Charles Boucher Esqr

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

Filed in my Office
the 16 October 1768
H. Goodlad Regr Appls

The humble Petition of Appeal of Namasheway
late of Cuddalore Inhabitant

Sheweth:

That on the nineteenth day of August, which was in the year of our Lord one thousand seven hundred and sixty six the Appellee Henry Powney by his Attorney Thomas Powney filed his Bill of Complaint in the Honble the Mayors Court against this Appellant for the sum of seven hundred and eighty nine Pagodas twenty five fanams and fifty Cash for the Ballance of an obligation given to the Appellee by this Appellant the sixteenth day of January one thousand seven hundred and fifty six. To which Bill of Complaint this Appellant put in his Answer the eighteenth day of November one thousand seven hundred and sixty six. Denying to be indebted to the Appellant in any sum or sums of money whatsoever and this Appellant hath further set forth that Mariapah Moodelair was the genuine Proprietor of the said obligation who is justly and truly indebted to him the sum of three hundred and ninety four Pagodas fifteen fanams and seventy seven Cash on a true stating of Accounts, as will more fully and at large appear by this Appellants Account Current annexed to his answer and to which he humbly prays reference. This Appellant hath further set forth in his said answer the amount of the said obligation was received from the said Mariapah Moodelair and not from the Appellee, and all the money which hath been paid by this Appellant were paid to the said Mariapah Moodelair as also that the Appellees name is only nominal by reason the Native Indians cannot recover any debt from one another without Transferring it. To which answer the Appellee replied the thirteenth day of January one thousand seven hundred and sixty seven, and insisted on this Appellants being indebted to him the said sum of seven hundred and eighty nine Pagodas

Pagodas twenty five fanams and fifty one Cash as the Ballance of an Account Current arising upon the said obligation, and the Consideration of which was a Ballance due to him from this Appellant, and he hath further set forth in his said replication that this Appellant were one of his Comicoplias as he acted in the Capacity of Export and Import Warehouse keeper and the said Warehouses were under this Appellants care and that by this Appellants bad management the best goods and Merchandize out of the said Warehouses to the amount of three thousand Pagodas and upwards the Appellee finding so large an embezzlement insisted on this Appellants making good the loss which this Appellant complied with by payment of two thousand and seventy nine Pagodas in ready Cash and the remainder by the Bond now sued for. To which replication this Appellant rejoind to on the seventeenth day of February and in the aforesaid year one thousand seven hundred and sixty seven, the purport of which is a confirmation of his answer, and denying to be entrusted with the said Warehouses, as he was only an Assistant to the Comicoplias one of the head Comicoplias there, and that the said Warehouses were under the care and management of the said head Comicoplias, and Consequently they are and were the Persons to answer for the deficiencies that should happen, and not this Appellant. This Appellant further sheweth that Issue was Joined, and all the other necessary proceedings had thereon. The Witnesses on the part of the Appellant prove this Appellant signed to the Bond at the House of the Appellee in Saint Thomas Street, and that the sum of seven hundred and fifteen Pagodas paid to the Appellee was received from this Appellant by the said Mariapah Moodelair. The Witnesses on the part of this Appellant have deposed as follows viz. Pallacapah Vadamalayah and Ponnapah have deposed in their deposithions that this Appellant mortgaged some long Pepper, Cardamoms and saffron with the said Mariapah, and the two former of these evidences have further deposed that these goods were mortgaged to the

the said Mariapah on account of his promising to assist this Appellant with money and they have further deposed that some time after the Appellee's Ballance not being quite made up He put both this Appellant and the said Chengalroy in Jail who were released by the said Mariapah's promising the Appellee to be answerable for the payment of the money. Comrapah proves after the siege of Monsieur Lally the said Mariapah told him this Appellant was indebted to him and he had sent a Peon to demand the same. Chengleroy hath proved this Appellant was an under Contracter in the said Export and Import Ware houses and entertained by him and Mochiah and the said Deponent hath further deposed he hath heard that the said Mariapah did take an obligation from this Appellant in the name of the Appellee and that Chinnatomboo told him he hath seen the same some days before the commencement of this suit in the hands of the said Mariapah. Parseramonah hath deposed that the said Mariapah told him at the time Madras was invested by Monsieur Lally he had this Appellant's obligation for nine hundred and odd Pagodas and which was made payable to the Appellee and that he would give it up to him if he would pay him the amount of it, which the said Deponent refused as not liking the offer, then the said Mariapah said as he was in distress he would accept of five hundred Pagodas for the said Bond, which was also rejected by the said Deponent. Chellappah hath proved the said Mariapah desired him to acquaint this Appellant if he would pay him two hundred Pagodas in part of this Bond to the Appellee He might discharge the remainder by degrees, and he would get Mr. Thomas Pooney the Appellee's Attorney to withdrawn the suit immediately and the said Deponent hath further deposed he knows of a horse and some other things being sold by the said Mariapah belonging to this Appellant about twelve years ago. Tremengadum hath deposed the said Mariapah told him about three years ago He had wrote to this Appellant three or four times requesting

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requesting this Appellant to discharge the obligation taken in the name of their Appellee, and the said Deponent hath further deposed the said Mariapah acknowledged to have received some money in part of the said obligation. Chinnatomboo hath deposed that the said Mariapah told him this Appellant was greatly indebted to him and desired the said Deponent to read the Obligation this Appellant had given the said Deponent after reading it found it to be a penalty Bond from this Appellant to the Appellee for nine hundred and odd Pagodas and the said Deponent hath moreover deposed that this Appellant after he was sued by the Appellee shewed him a Note from Mr. Bromley acquainting this Appellant if he did not immediately settle with Mariapah he would be sued in the Honble the Mayors Court. Mariapah in his deposition acknowledges this Appellant deposited with him goods consisting of Long Pepper Cardamoms and Saffron some Jewels a Horse a Palanquin &c^a and he hath further acknowledged that the three Letters shewn to him at the time of his examination were wrote by this Appellant and written by his directions and on Account of the said Obligation. Ponnapah hath deposed that he heard that Mariapah had taken an Obligation from this Appellant in the name of the Appellee for nine hundred and twenty one Pagodas and the said Deponent hath further deposed that the said Mariapah did take a deposite from this Appellant to about one thousand and two hundred Pagodas. Besides he hath deposed the said Mariapah about four Years afterwards gave him the said Deponent an Account of the money this Appellant had received from him and the goods that were deposited with him by this Appellant and afterwards sold by the said Mariapah's directions which Account the said Deponent signed in the absence of Bird without the Consent of this Appellant, and at the same time the said Mariapah shewed the said Deponent this Appellant's obligation, and the said

Deponent

Deponent hath moreover deposed that while this Appellant and himself were in camp before Pondichewry, the Appellant came there and saw this Appellant, But never made any demand on him, although this appellant served James Boucher Esqr and the Appellee used to see this Appellant daily. This Appellant further sheweth that on Tuesday the fourth day of October last past this Cause came on to be heard before the Honble the Mayor's Court, when the said Court were pleased to give a Decree in favour of the Appellee Henry Powney, as will Appear upon reference to the said Decree hereunto annexed for the inspection of this Honble Court. By which Decree this Appellant with great submission conceives himself aggrieved for the following reason. That this Appellant have proved by his Witnesses and the three letters from Mariapah to this Appellant that the said Mariapah is the genuine Proprietor of the obligation this Appellant is sued for. Besides it obviously appears by this Appellant's account current annexed to his answer the said obligation is discharged, and that there is a Ballance of three hundred and ninety four Pagodas, fifteen Fanams and seventy seven Cash due from the said Mariapah to this Appellant and as an convincing proof of the Justness of the said account, is the Appellee's not making the least objection to the same. And lastly it doth not appear, that either the Appellee or his Attorney made any demand on this Appellant until the Bill of Complaint was filed. 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 may be Decreed the said sum of three hundred and ninety four Pagodas, fifteen fanams and seventy seven cash being the Ballance justly due to him from the said Mariapah, as also that this Appellant may stand discharged from all Costs of suit had

on

in either this Honble Court or the Mayor's Court, with such further and General relief touching the Premisses, as to this Honble Court shall seem meet.

William Cranwell
Attorney for the Appellant

Mayor's Court at Madraspatnam } Tuesday the 4th Day of October Anno Domini 1768.

Present

Charles Smith Esquire Mayor
John Debonaire — Edward Stracey
John Holland — Aldermen

Between Henry Powney by his Attorney
Thomas Powney of Fort St. George Merchant
Complainant and Namsheway of Cuddalore
Inhabitant Defendant

This Cause coming on to be Heard and debated this day in the Presence of the Attornies on both sides on Reading the Complainants Bill with an Account Current annexed, The Defendants Answer with an Account Current annexed, The Replication, The Rejoinder, The Interrogatories and Depositions on the part of the Complainants with a Bond annexed, The Interrogatories and Depositions on the Part of the Defendant with three Malabar Letters and translates thereof Annexed, On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon

Whereon Appearing to the Court that the Complainant has produced sufficient Proof of the Justness of this Demand This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and just Sum of Seven hundred and Eighty Nine Pagodas Twenty five Fanams and fifty One Cash / Pagodas 789.25.51. / together with such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit

By Order

J. M. Stone
Cler

Between Namchiway of Vadalore Inhabitant Appellant

And Henry Poiney by his Attorney Thomas Poiney of Fort St. George Merchant Respondent

This Answer of Henry Poiney by his Attorney Thomas Poiney to the Petition of Appeal of Namchiway

The Respondent Admits that he did file his Bill of Complaint in the Honble the Mayors Court on the day and Year and for the Ballance of an obligation as setforth by the Appellant in his Petition to this Honble Court

The Respondent further says that the Appellant did put in his Answer to the said Bill of Complaint and therein setforth by way of denial an evasive plea to endeavour to invalidate the obligation by him entred into and given to the said Respondent

annexing

annexing an Account Current depending between himself the Appellant and one Mariapah Modelair an Inhabitant of Madras and a near Relation of the Appellants which Account Current the Appellant in his Answer says makes appear that Mariapah Modelair is the original Proprietor of the Obligation in dispute and that the Respondents Name was only made use of as a Practice common among the Native Indians To this Answer the Respondent Replied in some measure general as knowing that should any Arguments be made use of other than what the Law allows of that such Opinions as might offer thereon and Committed to Writing would only appear Absurd and attended with an unnecessary expence and therefore the Respondent omitted to enter Specially into the merits of the Obligation other than setting forth that the Obligation was given to the Respondent by the Appellant in Consequence of a Ballance of an Account being the Amount of a Defficiency in a Trust reposed in the Appellant by the Respondent, to prove the forgery of the Respondent and that the Obligation was voluntarily entred into by the Appellant this Respondent left the same to be rendered valid by the Depositions of the Evidence that the Respondent intended to produce in the course of the Proceedings To this Replication the Appellant Excepted and entred his exceptions to that Part of the Replication that setforth the consideration for which the Bond in dispute was given the Appellant imagining that in case he could bring the Honble the Mayors Court to be of Opinion that the manner in which the Consideration was related was scandalous and impertinent and thereby obtain of the Court an order to expunge that Part of the Replication that he the Respondent would effectually have destroyed the right of Complaint the Respondent then had against the Appellant this Exception being argued and the said Honble the Mayors Court entring into the merits of the the same they dismissed the Exception and allowed of the Replication To this

Replication

Replication the Appellant Rejoined and there insisted that he was not Responsible for any Defficiencies as he was acting under another Person who was immediately under the Respondent, as the Plea of Appellant in this Rejoinder was of no material consequence in the present Suit the Respondent declined making any further Reply thereto. Issue being Joined and the Witnesses Examined on both Sides and the Authenticity of the Respondents obligation Proved by the testimony of the Evidence given on both sides this Cause Coming on to be heard before the Honble the Mayors Court the Sixth day of this instant October the said Honble Court were Pleased to Decree the matter in dispute in favor of the Respondent in the manner and form as setforth in their Decree annexed to the Appellants Petition of Appeal —

The Respondent further saith that with Submission to this Honble Court he begs leave to make this observations on the Evidence given on both sides the which he the Respondent hopes will be a sufficient refutation of the Appellants Pretences for Appelling as in fact the Respondent says that the Appellant has not setforth a sufficient Plea for this Appeal to this Honble Court. The Appellant in his Petition of Appeal Sets forth that he had Produced Evidence who in their Depositions made it Appear that Mariapah Modelier was the genuine Proprietor of this disputed obligation in Answer to which the Respondent saith it does not in the least appear by the Appellants evidence that the said Mariapah Modelier is or was the Proprietor of the obligation but on the contrary, the evidence of Pallaiapah Vadamalayapah two of the Witnesses for the Appellant agree in their testimony of the Appellant standing indebted to the Respondent and is a confirmation of the Assertion setforth in the Replication — Further the Deposition of Mariapah Modelier the person mentioned by the Appellant in his Proceedings as the Proprietor of the obligation in dispute Sets forth to the questions put by the Appellant that the Appellant stood indebted to the Respondent in a considerable Sum of Money he the said Mariapah Modelier did advance and lend the Appellant one thousand and six hundred Pag^s in part to pay off his debt and that the Appellant did likewise borrow Money from other people for the like occasion and standing indebted to the Respondent he the Appellant gave the Bond now before this Honble Court to the Respondent as a Security for such aforementioned Ballance — as to any Right or title to the said obligation the said Mariapah Modelier declared he had none nor was he concerned therein — The said Evidence declared that he was ignorant of this Bond by Mr Thomas Pooney having entrusted the same to his charge that he had received several Sums of Money on account of this Bond and paid the same to Mr Thomas Pooney that the several Letters written to the Appellant was at the instigation of the said Mr Pooney as the said Mariapah Modelier was the Respondents Relation this Evidence being taken and produced by the Appellant himself, is a confirmation of the Right the Respondent has to the Obligation, and a contradiction of what the appellant advances in his Answer before the Honble the Mayors Court, and so material an Evidence being Produced this Respondent conceives that the matter in dispute might have been heard upon the same as the Writing in all other particulars was legall and just The Respondent further begs leave to Observe that the Testimony of this last Evidence is upon a brief Examination and the depositions given therein is commonly taken most strongly against the person on whose Account he is examined if such deposition agree with his first Examination. The Respondent further saith that Appellant hath Examined another Person by name Narrayne Pillah who

who was a party concern in accomodating the difference between the Appellant and the Respondent the deposition of this evidence corroborates what the Respondent has asserted and refutes the Appellant in every particular The Respondent having pointed out to this Honorable Court the evidence given by the Appellant in favor of the Respondent this of an Unknown is sufficient to render valid the Writing obligatory of the Appellant and that he the Respondent is under no Necessity of troubling this Honble Court with any further observations upon this matter — The Respondent further says that it does not appear in any part of the evidence given on behalf of the Appellant that the Account Current delivered in to the Honble the Mayors Court is true or just supposing the merits of the suit depended upon the Proof of this said Account Current for that the Respondent declined making any objection thereto in his Proceedings which the Appellant appears very ignorant of by the Nature and meaning of a General Reply is a flat denial of all and every part of the Answer and pleas the Defendant upon his Proof which Proof Admitting of the Account Current to be the subject matter of the Controversey is in no shape produced The Respondent further saith that he is of an opinion that it appears very plainly throughout the whole of the Proceedings that a demand was made and that several sums of Money had been Received on Account of the said Bond of the Appellants and which Bond was deposited in the hands of the said Mariapah Modelier for that purpose he being the relation of the Appellants and who took upon himself to see the business finally Concluded thereby postponing the Respondents intentions of suing the said Appellant into the Mayors Court which he the Respondent could have done some Years ago The Respondent further saith that the said Decree from which the Appellant appeals is as the said Respondent is advised just and equitable and well warranted

Warranted by the Rules of Equity and therefore hopes this Honble Court will find no Cause to Alter but will confirm and enforce the same And the Respondent humbly Prays that the said Petition of Appeal may stand dismissed with exemplary Costs —

Thos Bromley
Atty Respondt

Court of Appeals at Madrass Patnam } Fs Friday the 18th August 1769

Between Ramshewoy of Cuddalore Inhabitant ..... Appellant
Henry Vowney by his Attys
Thomas Bowney of St George
Merchant ..... 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

Dent

To the Honble Charles Bourchier Esqr
President & Governor of Fort St George & Co.a Council

In the Court of Appeals

Filed in my Office
this 3d April 1769
Wm Goodlad Ky of Apps.

Between the East India Company of Holland
by their Agent Daniel Barthelomew Sruter and
the Reverend John Philip Fabricius Danish
Missionary of Vepery and John Calland of Madras
Merchant Executors to the Estate of Chas Louis
Hagemeister deceased late Junior Merchant
in the Service of the said East India Company and
Second in the Charge of Bemelipatam, a Settlement
belonging to the said East India Company

The humble Petition of Appeal

of the said East India Company of Holland by
their said Agent

Shewelh

That your Petitioners did by their said Agent on or
about the 27th day of April which was in the year of our Lord 1762 Exhibit
a Bill of Complaint in the Honble the Mayors Court at Madraspatam
against the abovenamed John Philip Fabricius and John Calland
as Executors to the said Charles Louis Hagemeister deceased, thereby
setting forth that the said John Philip Fabricius and John Calland
as Executors as aforesaid stood indebted to your Petitioners on account of
the said Estate in the Sum of Thirteen thousand two hundred and Sixty
Pagodas as would more fully appear upon reference to an Account
thereunto annexed and to which your Petitioners most humbly refer
and praying that the said John Philip Fabricius & John Calland
might be Decreed to pay unto your Petitioners the said Sum of Thirteen
thousand two hundred and sixty Pagodas with all such Interest as
there was or should thereafter become due thereon also all Costs of the
said Suit

To which said Bill of Complaint the said John Philip
Fabricius and John Calland put in their Answer thereby setting forth
that

that as to the Estate of the said deceased Charles Louis Hagemeisters
being indebted to the Complainants as set forth in their Bill of Complaint
the same was a demand that they could not see any just grounds for having
Examined the Books of the said deceased and that they could not find
any reasons that your Petitioners had for any such Demand on the said
Estate, And particularly the said Executors in their said Answer Allege
with regard to the first Article or Charge in your Petitioners said Account
annexed to their said Bill of Complaint of Eight thousand seven hundred
and thirty two Florins Eight Stivers and Eight pence for an Overcharge made
by the said deceased in his Transactions on account of your Petitioners and
which he was ordered to refund by the Government of Negapatam the 18th
June 1761 that they are greatly at a loss why this affair was not adjusted
before the said deceased was permitted to leave Bemlipatam, taking
advantage of this Era from a mistake made in the Account annexed to
your Petitioners said Bill, wherein the order of the Government of Negapatam
is mentioned to be made the 18th January instead of the 18th June 1761 and
from thence Inferring that if there had been any such demand on him the
Chief would not have suffered him to leave Bemlipatam in June, being
as they Allege from the said Mistake, so long a time from the date of the
said Order, And that your Petitioners have saying that it is an overcharge
that was ordered by the Government of Negapatam that the said Charles
Louis Hagemeister must refund does not Argue that the said John
Philip Fabricius and John Calland should pay it without your
Petitioners shewing sufficient reason why it was an Overcharge, as the
Chief of Bemlipatam had settled with the deceased about eight days
before the said Charles Louis Hagemeister's departure from thence
And they also Allege that as no such Debt appears upon the Books
of the said deceased they do not see any reason which can oblige the Estate of
the said Charles Louis Hagemeister to discharge this demand, That
with regard to the second Article or charge in your Petitioners said Account
for a Deficiency of Seven thousand five hundred and one Pound and a
half of Surat Cotton that Arose upon delivering that Article then under
his charge belonging to your Petitioners at Bemlipatam to his Successor
in

on that Employ the said John Philip Fabricius & John Calland as they cannot admit of this Charge because the Account of his delivering the Stores of the said Company to his Successor signed by his Successor and by two other Gentlemen who were Appointed to be present on the part of the said Company shews that the said Deficiency was lost by the Blockade of that Factory upon the Walls and Batteries of the Fort. That with regard to the third Article or Charge in your Petitioners said Account of Twenty seven thousand and eighty three Florins and Nineteen Stivers being the Ballance of the Amount of the Prime cost and Twenty five p Cent thereon, together with a Deduction of the Amount of what it sold for, for a Loss Arising on One hundred and thirty five thousand four hundred and thirty Pound of Cotton under the charge of the said Charles Louis Hagemeister, and which Loss happened thro his Neglect, the said John Philip Fabricius & John Calland in their said Answer pretend that there is a great Error committed by your Petitioners in the Quantity of the said Cotton, it being only One hundred and eleven thousand three hundred and Nineteen Pounds and fifteen sixteenths of a Pound, and say they cannot allow that the Damage of a part of that Cotton happened thro the Neglect of the said Charles Louis Hagemeister, because on the said Clerks of the delivery of the Stores they find that those two Gentlemen have given a Declaration concerning the Cause of the said Damage & without ever making any mention of a Neglect of the said Charles Louis Hagemeister, That a great deal, that is, several Bales was spoiled and foul by serving upon the Batteries and the Walls of the Fort & likewise the Pack Cloths and Cords on the Straw Houses Rattan and the Cotton on one Side two or three Inches damaged and became unfit to be Spun therefore that Damage of the Cotton suffered by being upon the Walls and Batteries of the Fort in the time of the Blockade, Consequently is not to be Ascribed to the Neglect of the said Charles Louis Hagemeister, And as to the rest of the Cotton it cannot be Ascribed to the Neglect of the said Charles Louis Hagemeister but to the want of more proper places than Straw houses to put it in, And therefore the deceased's

Estate

Estate is not Answerable for it. And say the Cotton might have laid many years in the Straw houses, And if so it must have Contributed greatly to its being rotten and Unfit to be Spun. That with regard to the fourth and last Article or Charge in your Petitioners Account annexed to their said Bill, for a third part of the Outstanding Debts due to your Petitioners at the time of his leaving Bimlipatam which according to a standing Rule of your Petitioners the said deceased was to take upon his own Account, the said John Philip Fabricius & John Calland in their said Answer pretend that the same is Unreasonable as not one of them that they know was Contracted by the said deceased, And if they were they pretend it must have been for the benefit of your Petitioners And what the deceased could receive no Advantage from but the promoting your Petitioners Interest And be by the Direction and Approbation of the Chief of the Factory. These they Assign as Argumental reasons why the said Debts were Outstanding or Contracted, At the same time it appears by what they further say of the Uncertainty of there being such Debts, or of the time of their being Contracted, that they are not at all Acquainted with the Circumstances Attending them. The said John Philip Fabricius and John Calland further in their said Answer say that they are very ready to Discharge any Just and Lawfull Debts that the deceaseds Estate may Owe, but they pretend your Petitioners demand Appears not to be so, but made up since the Deceaseds Death, which your Petitioners just beg leave to observe is now Evasion

To which Answer your Petitioners did by their said Agents put in a Replication thereby confirming their said Bill of Complaint and setting forth that Notwithstanding what the said John Philip Fabricius and John Calland Alledge that upon Inspecting the Books of the said deceased they cannot find any Entry of your Petitioners Charge on his Estate, yet your Petitioners doubted not to produce to the Honble the Mayors Court in due time sufficient proof of their said Demand, & which your Petitioners think they have done and humbly hope this Honble Court will be of the same Opinion, And particularly with regard to the first Article or Charge in the account annexed to your Petitioners said

Bill

Bill of Eight thousand seven hundred and thirty two Florins Eight Stivers and Eight pence, as the said John Philip Fabricius and John Calland seemed by what they set forth in their said Answer to be ignorant in what manner 1
this Article Arose, your Petitioners in their said Replication set forth that upon the Blockade of the said Settlement of Bumlipatam there were sundry Article of Provisions purchased for the use of the Garrison, the Accounts of which Disbursements were under the charge of the said Charles Louis Hagemeister which Accounts upon being Examined at Negapatam were found Overcharged in the several Articles therein inserted to the above Amount, And as the said deceased Charles Louis Hagemeister According to the Nature of his Office and the Established Customs of your Petitioners, was responsible to your Petitrs for any Overcharge that might Appear in such Accounts he was ordered to discharge the same by the order of the Presidency at Negapatam dated the 28th day of June 1761 and not the 28 day of January, which was a mistake in your Petitioners said Bill as before mentioned, As would appear upon an Authentick Extract thereof which your Petitioners set forth should be produced in due time, So that it could not then Appear any Ways Malicious as the said John Philip Fabricius and John Calland represented in their said Answer, that the Successor of the said deceased should permit him to come away from the said Settlement at a time when he had not received the said Order from Negapatam, which did not arrive till after his Departure 3
That as to the Article of Two thousand Eight hundred and eighty five Florins Seven Stivers and eight pence for a deficiency of seven thousand five hundred and one Pound and a half of Surat Cotton your Petitioners in their said Replication still maintained the justness and equity of the said Charge, for they set forth that they could not Admit of the Plea made use of by the said John Philip Fabricius and John Calland of the said Deficiency arising by the said Cotton's being exposed on the Walls & Batteries which is only an Imaginary method of accounting for this deficiency nor is the Account mentioned by the said John Philip Fabricius and John Calland to have been signed by his Successor sufficient proof to support the fact, for had that really been the Case, And the said Deceased desirous of availing himself of this Plea, it was his Indispensible Business to have made it appear immediately after the Blockade was over to the Gentlemen of that Settlement, And not have left so material a matter to the time that he was ordered to deliver over the said Goods to his Successor who no doubt did all he could to put the most favorable Construction upon this deficiency, But this without being supported by more Authentick Vouchers your Petitioners presumed could have no Weight in the Judgement of the said Honble the Mayors Court, And your Petitioners still presume and hope the same will not have any Weight with this Honble Court — As to the Article of One hundred and thirty five thousand four hundred & thirty Pound of Cotton damaged thro the neglect of the said deceased your Petitrs in their Replication denyed that they had committed any Mistake in the Quantity of the said Article, As set forth by the said John Philip Fabricius and John Calland, for that the Article of One hundred and eleven thousand three hundred and Nineteen Pounds and fifteen sixteenths of a Pound has no manner of Connection with the above Article charged to the Estate of the said deceased nor was any Demand made for it, Nor was the said Cotton, for the Damage of which your Petitioners demanded satisfaction Expended upon the Walls and Batteries of the Settlement or kept in the Straw Houses and damaged thereby as set forth by the said John Philip Fabricius and John Calland, But your Petitioners in their Replication said and still say that the said Cotton was kept in proper Magazines for that purpose at that Settlement belonging to your Petitioners, And did actually there suffer the Damage Alledged through the Negligence and Mismanagement of the said deceased, And as to the last Article demanded by your Petitioners being a third part of the Outstanding Debts then due in the said Settlement, And which Debts the said Charles Louis Hagemeister together with the Chief of that Settlement had taken upon themselves, upon their coming to the charge of it, and according to the Custom of your Petitioners they were and are responsible for the same, However your Petitioners in their said Replication set forth that they would be ready to return to the said John Philip Fabricius and John Calland the Amount of any such part thereof as might be Recovered if any could be so

To

To which Replication the said John Philip Fabricius and John Calland put in a Rejoinder, thereby endeavouring to evade the justness of your Petitioners just demand on the said Estate

Upon these Proceedings Issue was joined Exhibits were produced, and publication passed, And the Cause coming on to be heard the 25th day of March in the present year of our Lord 1769 the Honble the Mayors Court were of Opinion that your Petitioners had not brought the least proof in support of any of their Demands made on the said Estate the said Court did therefore Order and Decree that your Petitioners Bill should stand dismissed with Costs. As well more fully and at large appear by the Decree of the said Court hereunto annexed for the Inspection of this Honble Court

From which said Decree your Petitioners do Appeal to this Honble Court, As they conceive the same is very Erroneous for the reasons

who could not have any View in ordering the said Reimbursement but that of doing the Justice to your Petitioners that they found themintitled to, And ordering the Reimbursement of a Sum which the said deceased had Overcharged and received on Account and out of your Petitioners Cash, And your Petitioners also submit to this Honble Court the Justness of that part of the said Decree wherein it says that it appears to the Court that your Petitioners have not brought the least proof in support of any of their said Demands on the Estate of the deceased, And in Consequence thereof Decree that their Bill should be Dismissed with Costs - Your Petitioners conceive that the Credit which is due to the Orders of their said President and Council has not been paid thereto otherwise the said Decree would not have been made nor such reasons given for so doing - And with regard to the respective Charges for a Deficiency of Cotton and a Loss on Cotton your Petitioners Conceive that the same stands bound to all Intents and Purposes as the said John Philip

of it was just. Notwithstanding which your Petitioners conceive the
deceased was by no means cleared by the said delivery over, but
that when that Loss and Defficiency was really found out that he
was as much Answerable for it as if no such delivery over had been
for it was impossible for either those persons or any body else by any
Signature or Declaration to clear the said Ch. Louis Pagemeister
from the same, or to deprive your Petitioners of the amount thereof; for
should that be the Case no person who was inclined to wrong any
other person or body of People whose Affairs he had the Management of
or whose property he had in his hands, to get some body to make a declar-
-ation which would Colour an Embezzlement of such property and
produce such Declaration as an Acquittance for the Amount thereof
your Petitioners therefore conceive that his Estate is as much Answer-
-able to your Petitioners for the same as if no such Declaration had
been made, tho' your Petitioners, in order that the Family of the said
Deceased might not be distressed by the whole of the said Amount
being paid out of the said State, have since the Commencement of the
said Action and filing the said Proceedings Relinquished any Claim
to the Sum of Nine thousand three hundred and twelve Florins four-
teen Stivers and Eight pence being the Amount of the Twenty five per Cent
charged on the Loss of Cotton in the third Article of your Petitioners
said Demand, of which the said Honble the Mayors Court were
acquainted at the time of the hearing of the said Cause, your Petitioners
contenting themselves with demanding the Amount of the Prime cost
of that Cotton after a deduction of the Amount Sales of it on account of

have Relinquished any demand on that Account, of which the said
Honble the Mayors Court were also informed at the time of the hearing
the said Cause. From which circumstances your Petitioners humbly
hope that it will clearly Appear to this Honble Court that they only
demand what they are justly intitled to. And want nothing but what
is just and Equitable. And your Petitioners beg leave further to Add
that they humbly hope that by what is before And in the said Proceedings
set forth, it will plainly and clearly appear to this Honble Court
that your Petitioners said demand is a fair just and Equitable One &
that the said Decree is Erroneous and that your Petitioners are
Aggrieved thereby. And your Petitioners most humbly pray that the
said Decree may be Reversed and set aside, And that the said John
Philip Fabricius and John Balland may be decreed to pay unto your
Petitioners the Amount of their said demand, except the Sums to which
your Petitioners have, as before set forth Relinquished their Claim to
for the reasons before mentioned, together with all such Interest as
now is or shall hereafter become due thereon, Also all Costs of Suit
And your Petitioners also pray such further and other Relief in the
Premises as to this Honble Court shall seem meet. John Sykes
Atty for the Petitrs

Mayors Court at Madraspatnam } Tuesday the 25th day of March
Anno Domini 1760

Present
Edward Stracey Esquire Mayor

Blockade of that Settlement; and by the special order of the Chief and doubtless to save the Appellants a much greater loss, which these Appellees conceive, doth Justify the deceased's Conduct & Indemnify his Estate from the demand made by the Appellants for the same as what the deceased did was for the good of the Service, and by the Chief's order. The sum of Twenty seven thousand and eighty three Florins and nineteen Stivers for Cotton alledged by the Appellants to be damaged through the Negligence of the deceased: These Appellees have, and do deny that this loss was owing to the remissness of the deceased, But say, it must be attributed to the want of more Commodious places than Straw Houses to put or keep such a valuable and perishable commodity in, which is liable to damage on the least wet getting to it, Besides the said Cotton might have laid many years in the said Straw houses or have been damaged before the deceased came to Bimlipatam and it is probable, it might have gotten damage during the Blockade, with Submission it is conclusive from these circumstances, that the said Cotton got damaged either, for want of more proper Repositories than straw houses, or in the Blockade, and which loss these Appellees presume the Appellants must bear, as it doth not appear that the said Cotton was damaged through any fault or Negligence of the deceased. The Sum of Twenty thousand two hundred and thirty one Florins, five Stivers and eight Pence, for a third part of the Appellants Outstanding Debts at Bamlipatam; These Appellees with Submission conceive as this is an Extraordinary charge to demand from the said deceased's Estate, Debts he never Contracted and which might probably have been entered into many years before the deceased came to that Settlement, and which does demonstratively shew the Illegality of the Appellants demand, these Appellees having finished the recital of such matter in their Answer, as they with Submission conceive is pertinent to their Case, and as succinctly as possible. These Appellees Admit, that the Appellants put in a Replication

to

to their Answer conforming their Bill of Complaint, and these Appellees admit, they filed a Rejoinder to the same, and that Issue was Joined, and all the other necessary proceedings had therein, until the same came to a hearing, and that the Honble the said Mayors Court were pleased at the hearing of the Cause to dismiss the Appellants Bill with Costs, and which Equitable Decree of the Honble the Mayors Court, these Appellees hope, will be confirmed by this Honble Court, as their Judgement was formed from a diligent attention, to the whole regular process; Besides, the deceased's discharge from the Appellants Service must invalidate the Appellants demand. And these Appellees presume the exhibits produced by the Appellants are of no Efficacy, as they are only Extracts from their own Proceedings and therefore cannot be admitted as Evidences in their own Cause, nor can the attestation of their Secretary, add any validity to them, as he was never sworn before a person disinterested in the Cause, and properly Authorized to administer an Oath to him. These Appellees cannot admit, that the Appellants have made it appear that the said deceased Charles Louis Hagemeister hath made any civil charge in the Article of Provisions for the Garrison of Bimlipatam, nor do they see any just reason for such a demand. These Appellees hope, that the Resolution of the Appellants and their President and Council of Affairs on the Coast of Coromandel will not sway this Honble Court on an Affair, that hath altogether the appearance of truth, or Equity and therefore it is presumed that it will not have the Approbation of this Honble Court. These Appellees presume the honor and Credit of the Appellants in this Matter is not to be considered as Equity hath the pre-eminence of them. These Appellees cannot admit, that the Appellants had no By ends in view, if this was true, how came they to relinquish such a great part of their Demand at the hearing of the Cause? This Question these Appellees have here taken the Liberty to Answer, It was not out of Lenity to the Orphans

that

that induced them to make these relinquishments; But as the same were unreasonable and too obvious, and to give a Action of Quity to their other demands. These Appellees cannot admit, that the Appellants said Overcharge of Provisions is founded on motives of Justice surely it cannot be deemed an Act of Justice and Servity, to sue the Estate of the deceased, and Beggar his Orphans for a fictitious Debt and which is not supported by one single Evidence, and for which reason the Decree of the said the Honble the Mayors Court, especially respecting to the fallacious demand of an Overcharge in the Provisions is given on solid and mature Consideration, and which Decree these Appellees hope, will be confirmed by this Honble Court as no Error in Judgement doth appear by any Arguments of the Appellants. These Appellees further conceive that the Appellants bonot and Credit was not to Bias the Judgement of the Honble the Mayors Court. These Appellees cannot admit, that the defficiency or loss of the Cotton is proved, to all intents and Purposes, as these Appellees never acknowledged the said loss to be owing to the remissness of the said deceased, and which matter is truely related, for in fact the same were really used as Bulwarks for the Walls & Batteries of the Garrison of Bimlipatam and by the special order of the Chief of that Settlement as before said. Besides, the Appellants had only Straw houses for the reception of this valuable & perishable Commodity; And these Appellees further conceive, as these Appellees have denied, that the loss was owing to the Negligence of the d. deceased it was the indispensable and Necessary business of the Appellants to prove, it was owing to the deceaseds remissness, that this loss did accrue, or proceed from, and which if it had been true, it is presumed they would have done. These Appellees further say, the Appellants are so Arbitrary and Despotic in their Government, that it was, & is impossible to get any Evidence for to prove any thing against them. These Appellees further say, that the using the said Cotton as Bulwarks

for

for the Walls and Batteries of the said Garrison of Bimlipatam was highly necessary for the defence of that Settlement at the time of the investment, and to save the Appellants a much greater loss, and as it was done for the good of the Service, and by the Special order of the Chief of Bimlipatam, the Appellants must Bear it and not the deceaseds Estate as aforesaid, These Appellees further say they are extremely sorry, the Appellants are so Suspicious & have so mean an Opinion of their own Servants in alledging they have relyed upon the Deceaseds Word too much, else, they did not know what a great Quantity Cotton there was, or ought to be, this is Repugnant to reason, to imagine that Gentlemen, who were sent to Survey or Inspect in to the Stores to be delivered over by the d. deceased should sign to Anotorious falsity or Palliate the Affair by a favorable representation, when it were their Interest to discover the deceaseds faults to the Appellants, and it is probable one of them was appointed Successor to the deceaseds Employment. These Appellees do conceive, that the Declaration of the Surveyors is of sufficient force and not of such validity, as to indemnify the said deceaseds Estate from any demand of the Appellants on that head. These Appellees say they cannot admit, that the Appellants have relinquished so great a part of their debt out of Compassion to the deceaseds Orphans; But as they were conscious the same were very unreasonable and to Palliate their other demands they made these relinquishments. These Appellees say they cannot admit that the Appellants present demand is just & Equitable, for the same hath not the least shadow or Glimpse of Quity For all the reasons herein set forth and for the reasons given by these Appellees in their proceedings had in the Honble the Mayors Court and because the Appellants have failed in supporting their demand. These Appellees do humbly pray that the said Decree of the Honble the Mayors Court, may be Ratified and confirmed by this Honble Court, and further that Appellants may be taxed with Additional Costs for their Litigiousness with such further and General relief in the Premises as to this Honble Court shall seem meet. William Cranwell
atty for the Appellees

Court of Appeals
at
Madraspatnam

Friday the 18th August 1769

Between the East India Company of Holland by their Agent Daniel Bartholomew Sruter Appellants, and the Reverend John Philips Fabricius of Vepire and John Balland of Madras Merchant both Executors to the Estate of Charles Louis Hagemeister deceased late Junior Merchant in the Service of the said East India Comp.y Respondants

This Cause coming on this day &c. heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 25 day of March Anno Domini 1769 and upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order & Decree and doth accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand confirmed and that the Appellants Petition be hence dismissed with additional Costs in this Court

Per Curr

In the Court of Appeals

Between John Rosing of the Ship Royal Admiral Commander Complainant and John Sykes of Fort St George Gentleman Defendant

To the Honble Tho.s Bourchier Esq.r President and Governor of Fort St George &c.a Council

Filed in my Office
the 31st July 1769
Tho.s Goodlad Sec.y of Appls

The humble Petition of Appeal of John Rosing

Sheweth

That your Petitioner did sometime in the Month of October in the Year of our Lord 1767 apply unto the abovenamed John Sykes for a quantity of Salt to be delivered to your Petitioner at Trivatore, your Petitioner sheweth, that the said John Sykes promised to deliver to your Petitioner at this aforementioned place Forty Garce of Salt at the rate of twenty Pagodas p.r Garce which your Petitioner agreed to, your Petitr further sheweth that soon after this Agreement the said John Sykes sent to your Petitioner to take the necessary measures for the taking in of the Salt at the place it was said to be provided, your Petitioner further sheweth that he being apprehensive, from the Weather being Stormy and the lateness of the Season a permission from the Honble President and Council would not be obtained for your Petitioner, to stop with the Ship Royal Admiral at Trivatore, where your Petitioner intended to take in the Salt pursuant to his Agreement with the said John Sykes, your Petitr acquainted the said John Sykes with his apprehensions and left the

Salt

Salt under his care and Management to be disposed of in the best manner that could be to the Advantage and benefit of your Petitioner, who left a Power of Attorney in his the said John Sykes's hands, to enable him to put your Petitioners instructions into Execution, not only regarding the Salt but other matters that your Petitioner intrusted to his Management

Your Petitioner soon after this sailed from this Port to Calcutta in the Royal Admiral without touching to the Northward of Madras but before your Petitioner set Sail he directed one Nellanah his then Dubash to attend on the said John Sykes and give him his Assistance not only in the disposal of the Salt but also in the disposal of other Goods and Merchandize of your Petitioners in his hands, your Petitioner further sheweth that the said Nellanah your Petitioners Dubash did whilst your Petitioner was absent attend upon the said John Sykes and did advise him to sell and dispose of your Petitioners Salt at a time when it bore a considerable price, as appears by his testimony given on the Cause before the Honble the Mayors Court who evaded it by saying he had no Authority to dispose of it, your Petitioner further sheweth that the said Nellanah not knowing what to make of this Answer did for his own Satisfaction send to Trivatore to see what Quantity of Salt belonging to your Petitioner was lying at the said place, and found not above thirteen or fourteen Garce belonging to your Petitioner lay there on the beach, and that there was no more in that place or about it belonging to any one

Your Petitioner having on his return from Calcutta to Madras met with very bad Weather he was obliged to put into Pullicat from which place he sent to the said John Sykes a Message by means of Mr Daniel Lawrence the Second Mate of the Royal Admiral to be by him given to the said John Sykes which said Message the said John Sykes did receive and in Answer thereto did tell the said Daniel Lawrence that he had sold your Petitioners Salt for fourteen Pagodas p Garce but that in case your Petitioner did not approve of it, that he the said John Sykes had made such a Condition with the purchaser that your Petitioner might have it at any time your Petitioner wanted it, or words to that or the like Effect as will more fully appear by the Deposition of the said Daniel Lawrence as also his Letter to your Petitioner exhibited in the Honble the Mayors Court, your Petitioner further sheweth that soon after the arrival of the Ship Royal Admiral at this Port your Petitioner waited in person on the said John Sykes and demanded the Salt to be delivered, who promised to deliver the Salt in two or three days, which your Petitioner acquiesced with, he telling the said John Sykes that if the Salt was delivered in the said time it would do, your Petitioner having entered into a Contract with some Merchants to give them forty Garce of Salt at the rate of thirty Pagodas p Garce with a Penalty of Pagodas four hundred, in case of failure to be paid by your Petitioner, your Petitioner further sheweth that he did soon after this apply in writing to the said John Sykes telling him that your Petitioner had People ready to go to Trivatore to take in the Salt, and therefore begged of him to tell your Petitioner what time he could deliver the Salt, to which your Petitioner received for Answer that he could not tell as he waited for an Answer from the Man who was to deliver the Salt, in the several Letters of the said John Sykes no place was mentioned were the Salt was to be delivered therefore your Petitioner took it by Implication that the Salt was to be delivered at Trivatore agreeable to the Original Contract, as the said John Sykes promised to deliver the Salt at any time your Petitioner should demand it, which promise naturally led your Petitioner to immagine that the Salt would be always ready at Trivatore to be delivered to your Petitioner or his People, your Petitioner being thus positive that the Salt was ready and would be delivered at Trivatore upon your Petitioners demanding it, that your Petitioner entered into the Contract

Contract aforementioned upon being offered a good Price, which Contract your Petitioner was not able to perform by reason of the breach of Promise on the part of the said John Sykes. Your Petitioner further sheweth that upon the last application to the said John Sykes he was acquainted that the Salt was to be delivered to him at the Armogums, which was the first time your Petitioner was acquainted with the place he intended to deliver the Salt to. as soon as your Petitioner heard that the Armogum was the place intended your Petitioner declared against it and insisted that the Salt should be delivered at Trivatore agreeable to the first Contract as it was impossible to go to the Northward of Madras with the Ship Royal Admiral to take in the Salt and more particularly so, as your Petitioner had entered into an agreement to dispose of the said Forty Garce of Salt to be delivered at Trivatore. Your Petitioner cannot help observing further that had the said John Sykes once undeceived him as to the place of delivery before the Contract entered into, it would have been acting with that uprightness as is consistent with the Character of Merchant and saved much Expence and trouble to all parties. Your Petitioner further sheweth that he did acquaint the said John Sykes with his having sold the said Salt to the Merchants and of his entering into a Penall Bond to them and altho' he so told him yet the said John Sykes never undeceived him, your Petitioner finding by this evasive behaviour what aloss he was likely to sustain, he applied to his Dubash Nellanah aforementioned and enquired into the particulars of the said John Sykes's Conduct during your Petitioners Absence from Madras and was by him informed that he had advised the said John Sykes to dispose of the Salt but an enquiry found that the quantity of Salt that the said John Sykes promised at first to deliver was not nor had not been at Trivatore and from enquirys among the Salt Merchants themselves your Petitioner found that the whole of the Quantity to be delivered at Trivatore to your Petitioner by the Order of the said John Sykes had never been there and they further informing your Petitioner that the said John Sykes had obliged them to take back again the Salt at the rate of fourteen Pagodas P Garce your Petitioner was induced to believe that there were some unfair dealings, which appearing so mysterious to your Petitioner in this Transaction, your Petitioner was determined to bring the said John Sykes to an Account and accordingly did in the Month of June one thousand seven hundred and sixty eight file his Bill of Complaint in the Honble the Mayors Court against the said John Sykes for the sum of one thousand six hundred and twelve Pagodas and four fanams as the amount of Salt that was in the hands of the said John Sykes and for Damages that your Petitioner sustained as will more fully appear by a reference to the Account annexed to your Petitioners Bill of Complaint, your Petitioner further sheweth that the said John Sykes did on the sixteenth Day of August One thousand seven hundred and sixty Eight put in the Answer wherein he denied to be indebted to your Petitioner in the sum of One thousand six hundred and twelve Pagodas and four fanams and Setforth a narrative of some transactions a vindication of his behaviour to your Petitioner respecting the Trust reposed in him and also Setforth your Petitioners request by Mr Daniel Lawrence beforementioned in this petition and also the Conversation that passed between your Petitioner and him the said John Sykes an Extract whereof is as follows "That on or about the first day of May last the Complainant applied to this Defendant among other things and the Conversation which they had this Defendant told him that he

had

"had sold the said Salt at fourteen Pagodas ℔ Garce. at the
"same time explaining to him what he meant by it, that as he
"could have sold it for that price he would allow him that as
"he had kept it for a Vessell which he had expected would
"arrive here as beforementioned with which the Complainant
"appearing to this Defendant not to be well satisfyed this
"Defendant did immediatly in order to give the Complainant
"all the Satisfaction in his Power tell him that if he did
"not approve of that price he might have the Salt or to that
"Effect, to which the Complainant agreed but whether from
"the Conversation which the Complainant and this Defendant
"had happened to the Royal Admiral at Sea, or what else,
"this Defendant cannot say but he believes it was the Circum-
"stance, for this Defendant was sorry for it, he this Defendant
"did not at that time think of acquainting the Complainant
with the Agreements that he had made about the said
Salt as aforesaid," The Omission of not acquainting your
Petitioner with the place of delivery was the inducements
that led your Petitioner to expect it to be at Trivatore
as originally intended, your Petitioner further sheweth
that the said John Sykes in his Answer setforth that your
Petitioner on the fifth day of same Month of May that
your Petitioner first spoke to him, he says he acquainted
your Petitioner that the Salt was to be delivered at the
Armegum and that your Petitioner agreed to receive it
there, your Petitioner absolutely denies this intimation
as it was impossible for your Petitioner to carry the Ship
Royal Admiral to any port or place to the Northward of
Madrass and had this Place been fixed upon, your
Petitioner would have obsected to it, as he did to the offer
made by Vingah Chitty, setforth in Ninnapah Deposition
wherein he deposes that your Petitioner did refuse receiving
the

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the Salt at any other place than at Trivatore as the Agreement
was to deliver the Salt there your Petitioner further Sheweth
that the remainder part of the said John Sykes's Answer
being Copies of the several Letters passing between your Peti-
tioner and him and a long Chain of Agreements to support the
Defence, your Petitioner further sheweth that on the twenty
seventh day of September One thousand seven hundred and
sixty eight he replied to the Answer of the said John Sykes
wherein your Petitioner setforth the Matters of fact as they
really were and according to the best of your Petitioners
Knowledge to this Reply the said John Sykes, as your
Petitioner sheweth rejoined and endeavoured to support his
Answer and to refute what your Petitioner had related in
his Reply, Issue was Joined and Witnesses Examined
on both sides, those on the part of your Petitioner disposing
that the Salt should be delivered in your Petitioners demand-
ing it and that it should be delivered to him on the first
fair day, the Witnesses thereto being Daniel Lawrence
and further the Depositions of several other Evidences setforth
that your Petitioner declined receiving the Salt at the
Armegums as your Petitioner declared that he had
made a Contract with the said John Sykes to have the
Salt delivered at Trivatore, the Depositions of Pellanah
and others declare the quantity of Salt ready to be delivered
to your Petitioner on the original Agreement and of their
having advised the said John Sykes to dispose of the said
Salt to your Petitioners benefit as the price of Salt at that
time bore a Considerable price which he declared doing,
saying that he had no orders so to do, the Evidence on the
part of the said John Sykes as your Petitioner Sheweth
deposeth much to the same purpose as your Petitioners
Evidence relating to the quantity of Salt that was originally

to

to be delivered at Trivator to your Petitioner the Evidence of Geraldo Gonsalves the Writer of the said John Sykes, who positively declares that he ever heard the Conversation that passed between the said John Sykes and your Petitioner wherein your Petitioner agreed to receive the Salt at the Arnogum, and that he was in the Office of the said John Sykes a room adjoining to the Hall where your Petitioner and the said John Sykes where when this Conversation passed the Deposition of Nincapah another Servant of the said John Sykes who Corroborates what the said Geraldo Gonsalves had in his Deposition declared these two Evidences being so positive were the only material Witnesses for the said John Sykes, exhibits were delivered into Court by your Petitioner and the said John Sykes, Publication duly passed and the Cause set down for hearing which came on and was determined the eighteenth day of this present Month of July in manner as set forth in the Copy of the Decree hereto annext for the inspection of this Honble Court from which said Decree of the Honble the Mayors Court your Petitioner Appeals to this Honble Court of Appeals as he thinks himself aggrieved thereby, because your Petitioner says that really no place was mentioned by the said John Sykes to your Petitioner on his return to Madraps from Bengal, where the said Salt was to be delivered and therefore your Petitioner was induced to believe that it was to be delivered at Trivatore the Original place of delivery and was not by the said John Sykes acquainted with the Contrary till it was too late to recede from the bargain your Petitioner had made with the Black Merchants, your Petitioner further observes that he is induced to believe that little or no dependence ought to be placed in the Deposition of

Geraldo Gonsalves and Nincapah as they both are the Servants of the said John Sykes and why they should be so extremly attentive to a Conversation that passed between your Petitr and the said John Sykes at that time and that the said Geraldo Gonsalves should be particularly so is something very extraordinary, and what makes it more so, that the said Geraldo Gonsalves should be in another room, where it is impossible for him to hear the whole of the Conversation, unless your Petitioner and the said John Sykes elevate their Voices, the propriety of their Depositions your Petitioner submits to the Consideration of this Honble Court, but humbly hopes that the same will not pass unnoticed, for further observation as reason for appealing your Petitioner, and which your Petitioner, is of opinion strongly corroborates what he has asserted in his Pleadings respecting Trivatore the place of delivery supposed to be, the Deposition of Daniel Lawrence taken on behalf of the said John Sykes, who deposith "that the Complainant meaning your "Petitioner did go himself to the Defendant and apply to him "for a quantity of Salt, the Deponent being present at the time "that he heard the Defendant promise the Complainant the "Salt should be delivered to him the first fair day, the Weather "being at that time rainy, that two or three Gentlemen whom this "Deponent did not know were also present at that time" this Deposition on the part of the said John Sykes implies that the place of delivery was very near, and therefore your Petr took it for granted that the said John Sykes meant to deliver the Salt at Trivatore the first fair day, and further that had the Arnogum been the place of delivery how could the said John Sykes with propriety say, that he would deliver the Salt there the first fair day as it was impossible for him to have known what weather there was at the

Arnogum

Armogum or any other place so far to the Northward of Madras, and further your Petitioner observes that the said Nonapah the Dubash disposes that the Salt which is said to be ready at the Armogums, was washed away by a hard Storm and that there was a quantity ready at Kistnapatam a place contiguous to the Armogums, if this last mention'd place was so contiguous, surely the Salt at that place would have met with the like fate as the Salt at the Armogums so that it appears that there was no Salt for your Petitioner but that the whole of this business was an imposition, and further this Honble Court must know that your Petitioner could not go either to the Armogum or Kistnapatam for the Salt which the said John Sykes at that time well knew from these Circumstances your Petitioner really imagins the said John Sykes meant to impose upon your Petitioner as is very evident from his shifting the places of delivery and more particularly so as the price of Salt at the time your Petitioner demanded it bore a greater price in the Bazar than Rice of which the said John Sykes was apprized of and knew the loss he should sustain had he performed his promise by giving your Petitioner the forty Garce of Salt at Trivatore

Your Petitioner most humbly prays this Honble Court that the said Decree may be set aside and reversed and that your Petitioner may have such other Relief as in and by his said Bill of Complaint to this Honble the Mayors Court hath already prayed or such other Relief as to this Honble Court shall seem meet

And your Petitioner shall ever Pray

Charles Bromley
Attr Appellant

Mayors Court at Madraspatnam } Tuesday the 12th day of July Anno Domini 1769

L. S.

Present
Edward Stracey Esqure Mayor
Peter Mariette John Deboriare
Thomas Powney & John Holland
Aldermen

Mayors Court

Between John Rosing Mariner at present residing at Madras Complainant, and John Sykes of Fort St. Pore Gentleman Defendant

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides, on reading the Complainants Bill with an Account Current annexed, the Defendants Answer, the Replication the Rejoinder, the Interrogatories and Depositions on the part of the Complainant, seven Exhibits on the part of the Complainant, the Interrogatories and Depositions on the part of the Defendant, One Exhibit on the part of the Defendant, on hearing the Pleadings made use of by the Attornies and on due consideration had thereon, Appearing to the Court that the Defendant had full Power from the Complainant to dispose of the Salt as he should judge proper, and that the Complainant before he made the Contract with Monogapah, Guiapah and Condapah, was informed by the Defendant that the Salt was to be delivered at the Armogam, and to which the Complainant assented This Court doth therefore think fit to Order and Decree

and

and doth accordingly Order and Decree that the Complai=
nants Bill shall stand dismissed with Costs.

Hur
John Mast.r Stone Regr

To the Honble Charles Boucher Esqr
President and Governor of Fort St. George & Council
In the Court of Appeals

The Answer of John Sykes
of Fort St. George Gentleman Respon=
dent to the Petition of Appeal of John
Rosing of the Ship Royal Admiral
Commander Appellant

This Respondent saith that in or about the Month
of May which was in the Year of our Lord One thousand
Seven hundred and sixty Eight the Appellant did Exhibit
a Bill of Complaint against this Respondent in the Honble
the Mayors Court for One thousand and two hundred
Pagodas being the Amount of Forty Quire of Salt purchas
by him of this Respondent in the Month of October which
was in the Year of our Lord One thousand seven hundred and
sixty seven together with a Sum of four hundred Pagodas
as a penalty which he alledged he had forfeited and for which
he pretended this Respondent should be responsible, but not
Content with this extraordinary and unjust Demand on
this Respondent the Appellant did on or about the seventh
day of June then next following exhibit another Bill of
Complaint against this Respondent under the Appellation

of

of an Amended Bill not only Charging this Respondent with
the said Amount Purchase and Penalty but also with the
Amount Sales of Salt by himself at thirty Pagodas p.r
Guarce which made an addition of four hundred Pag.s
and also twelve pagodas and four fanams for Costs of a
Suit which he alledged was commenced against him
on that account thereby swelling his Demand on this
Respondent to One thousand six hundred and twelve
Pagodas and four fanams. And as a Sanction for wak=
ing such an extraordinary Demand and in Order to induce
the said Honble the Mayors Court to believe it was a
just one and to Allow of the same and to Decree this
Respondent to pay it, he setforth the Purchase of the said
Salt, that it was to be ready for him to take in at Trivatore
in his passage to Bengal, that this Respondent did insist
on him giving an Obligation for the same notwithstanding
he had left Goods with this Respondent to dispose of almost
to the Amount of two thousand Pagodas, that he being ordered away
in haste on account of the notherly Monsoons he requested this
Respondent to Dispose of the said Salt to the best Advantage
which he promised to do, that He met with an Accident at Sea
and on or about the twenty sixth day of April in the said Years
One thousand seven hundred and sixty Eight put in at Pulli=
cate and was there informed that this Respondent had not at
Trivatore above twenty six Guarce out of the said forty Guarce
of Salt and that this Respondent had insisted on fifty pagodas
being paid him by the Person from whom he had brought the
said Salt and returned the said twenty six Guarce on his
hands for not having the whole quantity ready at the time agreed
on, that he dispatched his second Mate to Madrass with

Orders

Orders to apply to this Respondent about the said Salt and that he Wrote the Appellant that this Respondent said he would Allow him fourteen Pagodas ℔ Cuerce for the said Salt else he might have the said Salt and he chose the latter. And in Consiguence thereof he sold the said Salt on the seventh Day of May then next following to Quapah Moorgapah and Condapah for thirty Pagodas a Cuerce to be Delivered on or before the fifteenth day of the said Month of May under a Penalty of four hundred Pagodas, that he Wrote before and after entering into the said Contract unto this Respondent requiring him to deliver the said Salt at Trivatore who generally Answered he had not received the Satler or Salt Man's Answer with whom he had Contracted for the said Salt, and pretended that by this Respondent's negligence in not delivering the said Salt he had incurred the said Penalty and Costs. And upon these Matters he founded his Demand, as will more fully appear on Reference to the said Bills of Complaint and the Account current annexed to the amended Bill

To which said amended Bill of Complaint this Respondent did on or about the sixteenth day of August in the said Year One thousand seven hundred and sixty Eight put in his Answer, wherein he absolutely denied to be indebted to the Appellant in the sum of One thousand six hundred and twelve Pagodas and four fanams of which he hoped the said Honble the Mayor's Court would be convinced by the narrative he Set forth, the purport of which is as follows, That on or about the fifteenth day of the said Month of October One thousand seven hundered and sixty seven this Respondent did Sell unto the Appellant forty Cuerce of Salt which was then near or at Trivatore at Twenty Pagodas ℔ Cuerce which the Appellant was to receive on his Passage to Bengal for which place he was to Sail and did Sail soon afterwards, but before he Sailed, that is to say on the twenty third day of the said Month of October this Respondent being informed that the Appellant did not Intend receiving the said Salt notwithstanding the said Bargain and that this Respondent had given Orders to one Venga Chitty, the person from whom this Respondent had purchased it and in whose Custody it then was, to deliver it to the Appellant, this Respondent did in Consiguence thereof Write to the Appellant and Acquaint him that his this Respondent's Concooply had Informed him the Appellant refused to take the Mutts which had been provided on Accounts of the said Salt, And that the Appellant could not take the Salt and desired to know whether the Concooply had told him right or not and telling him the Salt was ready to be Delivered to him as he know and that this Respondent could not by any means think of Running off the Bargain they had made for it, And as this Respondent was in want of Money should be glad if he could pay for it before his Departure as it might be sometime before this Respondent might be able to Sell and receive the Money for the Appellant's Benjamin left with this Respondent to Dispose of, or to that Effect, in pursuance whereof the Appellant came to this Respondent's House, and said it was very true that he could not take the Salt &c and upon Representing to him the Inconvenience that it would be to this Respondent for the said Bargain not to be fulfilled and the Loss that he was likely to Sustain on the said Salt on account

Account of the Monsoons being expected to Set in soon or to that purport the Appellant gave this Respondent a Note of hand for Eight hundred Pagodas being the Amount of the said Salt, to be paid out of the Amount of the said Benjamin, at the same time both Verbally and by Writing desiring this Respondent to take care of the said Salt as far as in his Power and dispose of it if possible on his the Appellants Account, and did also, in Order further and as fully as possible to Empower and Authorize this Respondent to do the best he could and what he thought proper, gave this Respondent a Letter of Attorney all bearing date the said Twenty third day of October and the said Written request and power of Attorney are now before this Honble Court, the Note having been delivered up since on Settling Accounts about the Amount purchase of the said Salt and the said Benjamin &c. That this Respondent did in pursuance of the Appellants said request and of the power and Authority vested in him use his Endeavours to Sell the said Salt for and on Accounts of the Appellant but to no purpose as the Season was so far advanced and people provided with what Salt they then wanted, and fearing as the Monsoons were coming on and there being no Convenieny of securing it from the Weather that all or a great part of it might melt or be Washed away with the Rains this Respondent thought it most prudent and for the benefit of the Appellant to Agree with the person from whom he bought it and in whose Custody it shall was to Deliver this Respondent the same Quantity of Salt as soon after the Monsoons as possible, and the said Venga Chitty did accordingly enter into an Agreement with this Respondent to Deliver the same Quantity of Salt on or before the twenty eighth day of February then next ensuing in Default of which to pay the Value of the Salt with

with Twelve P Cent for feit on Demand which said Agreement was reduced into Writing &c and is now before this Honble Court, that at or about the expiration of the time for the delivery of the said Salt as aforesaid this Respondent could have Sold it for fourteen Pagodas P Quince, which, notwithstanding the Price at which the Appellant had brought it, was, as far as this Respondent understood or believed or was able to Judge a very good Price Considering the Season of the Year, But this Respondent expecting a Vessill arriving here about or soon after that time, he intended taking the said Salt for the said Vessill at that price, instead of selling it to any body else and notwithstanding this Respondent could afterwards have bought Salt cheaper, he thought himself in consience bound to Allow the Appellant that Price, but the said Vessill not arriving so soon as this Respondent Expected and it not being Convenient for him to receive the said Salt from the said Venga Chitty on that account and the said Venga Chitty alledging that he could not keep the said Salt or be Answerable for the Delivery of that Quantity afterwards at that place or to that Effect but that he would deliver the same quantity at the Armogum, and this Respondent being sensible or apprehending that he could not oblige the said Venga Chitty to keep the said Salt at Innaton or Deliver it at any time afterwards, and indeed that it would be unreasonible to Expect it as the time for delivering the same was expired &c he this Respondent agreed to receive that Quantity of Salt at the Armogum. That the said Vessill not arriving at Madrass according to this Respondents expectation the said Salt still remained in the hands Custody or Possession of the said Venga Chitty and some time about the latter End of April One thousand seven hundred and Sixty Eight One Mr Lawrence then Second Officer of the said Ship Royal Admiral applyed to this Respon-

dent

Respondent among other things Inquired how the Appellants said Salt had turned out or what was become of it, And this Respondent in answer thereto, to the best of his Recollection, told him that he had Sold it for fourteen Pagodas ℔ Ounce; That on or about the first day of May then next the Appellant applyed to this Respondent and among other things and the Conversation which they had this Respondent told him that he had Sold the said Salt at fourteen Pagodas ℔ Ounce, at the same time Explaining to him what he meant by it, that as he could have Sold it for that Price he would allow him that as he had kept it for a Dyfell which he had expected would arrive as beforementioned, with which the Appellant appearing to this Respondent not to be well satisfied, this Respondent did immediately, in Order to give the Appellant all the Satisfaction in his power, tell him that if he did not approve of that Price he might have the Salt, or to that Effect, to which the Appellant agreed, but whether from the Conversation which they had just before that about the accident which had happened the Royal Admiral at Sea, or what else this Respondent could not Say, but believes it was that, for this Respondent was Sorry for it, he did not at that time think of acquainting the Appellant with the Agreements that he had made about the said Salt as aforesaid, But in the Evening of the fifth day of the said Month of May the Appellant came to this Respondents House when this Respondent acquainted him with the particulars of the said Agreements and why the said Salt was to be received at the Armogan and also of a great deal of Salt having been Washed away with the then late Rains, with which the Appellant seemed Satisfied and Agreed to receive the said Salt at the Armogan but desired to have it as soon as possible as he said he had Sold it to Mr Shallon, or to that Effect, and this Respondent did immediately, in the Appellants presence

Order

Order his Dubash to Write a Letter to the Salt Merchant the said Venga Chitty in his own Language that he might perfectly understand it, and Inform him of the Appellants arrival and to keep the said Salt in readiness immediately to be delivered to the Appellant, That in the Morning of the Sixth day of the said Month of May the Appellant came again to this Respondents House and told this Respondent that he should be glad to have the Salt in two or three days, and this Respondent told him he knew he had ordered his Dubash the Evening before to Write a Letter to the Salt Merchant who was gone to the Armogan and he expected his Answer in two or three days and that he would then give the Appellant an Order to receive it at the Armogan, to which the Appellant agreed, but only desired he might have it as soon as possible, that in the forenoon of the seventh day of the said Month of May, to this Respondents great Surprize, the Appellant wrote to this Respondent that he had occasionally to go to Tivatore and begged this Respondent would let him know what time positively he could deliver the Salt which he bought of him in October last (meaning October One thousand Seven hundred and sixty seven) But this Respondent imagining that what he said about the Salt that he purchased in October must be a Mistake and that from the Circumstances beforementioned he could not Mean that, this Respondent in Answer thereto Wrote the Appellant that he did not want to keep him out of the Salt a Moment and that he only waited for the Saltmans Answer to give him an Order to receive it at the Armogan to that Effect, both which Letters or Notes are now before this Honble Court, To which Answer, Instead of the Appellants being satisfied as this Respondent conceives he ought to have been for the reasons beforementioned

on the

on the said seventh day of May replied that he had disposd of the Salt and came under a Penalty in Case of non performance and Insisted on the delivery of the Salt &c. to which this Respondent did on the said seventh day of May Explain to the Appellant again in a great Measure the Nature or purport of the said Agreements which he made about the said Salt and for what reason it was to be delivered at the Armogon &c. To which the Appellant on the eighth day of the said Month of May Wrote that he was Surprizd this Respondent should alledge the Salt should be delivered at the Armogon. that this Respondents Agreement with him was to deliver it at Trwatore, which he insisted upon as he had Contracted to deliver it there: and mentioned Damages &c. To which this Respondent on the said eighth day of may in Answer or Reply thereto did again Explain to him the nature of the said Agreements and how the Matter with regard to the said Salt stood, and expressd his astonishment at the Appellants behaviour And that if he did not chuse either to receive it at the Armogon or take the fourteen Pagodas p Cuvee for it this Respondent resigned his Attorneyship and he might get it from the Man with whom this Respondent made the Agreements for it was not in this Respondents Power to deliver it at Cateveck or Trwatore, and as to the Damages he talkd of this Respondent had nothing to do with them, and since he behaved in that manner, when this Respondent told him the naked Truth, he was Sorry that he did not insist on the Appellants taking the Salt at first according to his Agreement &c. which said Letters are before this Honble Court, that after this Respondent had Wrote the said Letter and before he had sent it to the Appellant the said Venga Chitty having received the Letter which this Respondents Dubash Wrote him by his Orders as aforesaid he came to Madrass and told this Respondent that by the Vast late Rains he had lost fifty Cuvee

of

of Salt at the Armogon, out of which he Intended have delivered the said forty Cuvee, but he would deliver it at Ramapatam, to this Respondent on receiving the said Information desired the said Venga Chitty to go to the Appellant with this Respondents Dubash by whom he sent the last mentioned Letter, and Acquaint the Appellant with the particulars of the said Affair about the said Salt being washed away &c. which, as this Respondent has since been informed and also as appears by the Depositions on the part of this Respondent, he said and offered to deliver the said forty Cuvee of Salt to the Appellant or his Order at Ramapatnam, but the Appellant refused to receive it, alledging he wanted the same Salt be brought from this Respondent, however in Order further to explain the matter to the Appellant and to shew him how ready and willing this Respondent was to do every thing on his power to settle this Affair, And to give the Appellant all the satisfaction he could with propriety & Justice, this Respondent wrote him the Letter of the ninth day of the said Month of May now before this Honble Court, to which he begs leave to refer. that on the twentieth day of the said Month of May - the Appellants Account particulars, Account Sales of his Benjamin and his Account Current being ready, in which the Amount of the said Salt, with Interest thereon from the first of March, the time that this Respondent proposed to take the said Salt for the Vessell that he expected as aforesaid, to the tenth March, the time that this Respondent received the Amount Sales of the said Benjamin, was Included - this Respondent Wrote the Letter of the twentieth day of the said Month of May now before this Honble Court - And to which this Respondent begs Leave to refer, and humbly hopes by that, and the other

Letters

Letters and what otherwise appears in the said Cause this Honble Court will be convinced of the pains this Respondent took to satisfy the Appellant and do him Justice and also to prevent the trouble and Expence with the Appellant had Occasioned by his Obstinacy and Indirect Behaviour and proceedings in this affair notwithstanding the Appellants allegations to the Contrary. this Respondent did also further in his said Answer setforth that this Respondent did on the twenty first day of the said month of May send the said Letter account particulars, Account Sales, Account Current, and the Ballance of it. being four hundred and forty two Pagodas four fanm and twenty eight Cash, to the Appellant, with an Intimation that the same should be paid to him. And the said matters finally settled, and the Appellant received the said Letter but declined receiving the said Account and Ballance, alledging he was Indisposed, but that he will come and Settle Accounts with this Respondant when he was well. That in the morning of the twenty third day of the said month of May the Appellant came to this Respondents House when this Respondent did, at the Appellants request, produce all his said Accounts and desired him to settle them. to all which he agreed. Except the Cadjs for the Salt as aforesaid and the rest of the Accounts have since been settled. This Respondent in the Course of his more immediately answering the Appellants said amended Bill setforth the Sale of the said Salt to be on the fifteenth and not the twenty third day of October as setforth by the Appellant, the Improprety of his allegation about this Respondents insisting on an Obligation for the Amount Purchase of the said Salt, That the reason which the Appellant in his said Bill gives why he did not receive the said Salt, as he ought to have done, that is. the Setting in of the northerly Monsoons, was the very reason why he

he ought to have Complyed with his said Contract and receive the said Salt, and why this Respondent did afterwards make the said Agreement with the said Venga Chitty about the Delivery of it the latter end of February as aforesaid, that he did, as the Appellant says he promised, do the best he could about the said Salt, as is particularly setforth, that he did not know what the Appellant might be informed about the said Salt or of the quantity he had, but doubted not but that he should be able to prove in due time that the whole forty Quarce was ready to be delivered to the Appellant and that twenty six Quarce of it was actually at the Sea side ready to be put on Board, and the remainder of it so near that it would have been at the Sea Side before the said twenty Six Quarce could have been put on Board, that he denies that he either returned or offered to return either Twenty Six Quarce or any part of the said Salt on the said Venga Chitty's hands or has received upon or had either fifty Pagodas or any other Sum paid him by the said Venga Chitty on any such Account as the Appellant alledges and saith it is very improbable that should be the Case as the whole forty Quarce was ready to be delivered as aforesaid; That it is very improbable he should tell the said Mr Daniel Lawrence the Appellant might have the Salt he had purchased from this Respondent as aforesaid for the reasons before particularly setforth, but as no body was present at that Conversation he leaves the Decision of that matter to the Letter wrote by the said Mr Lawrence and his Deposition, in which he is not so positive about the matter as the Appellant setsforth, nor does he mention the Salt Purchased of this Respondent, and it is very improbable it should be so understood either by the

the said Daniel Lawrence or the Appellant, as it would have been Impossible to have kept that Salt at or near Tovalore during the Monsoons, of which the Appellant could not be Ignorant notwithstanding he pretends so to be. That to confute the Appellants assertions as to the Contract he mentions being made in Consequence of the Message sent by the said Daniel Lawrence and by this Respondents negligence in not Delivering the said Salt he has incurred the said Penalty &c this Respondent begs leave to refer what is before Setforth of the Conversation that this Respondent and the Appellant had in the evening of the fifth, And the morning of the sixth day of the said Month of may, when this Respondent acquainted him with the whole of the said Transactions about the said Salt &c, And this being before he made the said Agreement or Contract he could not be Ignorant of it, and by other Circumstances the Appellant knew the said Salt was not at Tovalore, notwithstanding which he pretends he made a Contract for the Salt he Purchased of this Respondent at thirty Pagodas p Quarce with a penalty of four hundered Pagodas in Case of non performance within the time limited for the Delivery of the which time of Course Expired without Delivery, as there was no Salt to deliver, on which account there was an appearance of a Penalty being forfeited, at least sufficient to colour the Commencement of an Action against the Appellant and the Confession of the forfeiture in order to Obtain a Decree to Colour the present Action, on which the Appellant either suffered or procured a Bill of Complaint to be filed against him in the said Honble Mayor's Court for the said Penalty, appeared on the first Summons Confessed the Debt, and had his original Bill

Bill of Complaint ready to file against this Respondent the same day, and the Next day afterwards filed his amended Bill, and all merely to recover the amount of his said unjust Demand from this Respondent, which this Respondent conceives was; together with his other Proceedings, unjust illegal and Unwarrantable, and Contrary both to Law and Equity, for if this Respondent has been an Aggressor about the said Salt (the Contrary of which he hopes plainly appears) the Appellant would not, as this Respondent conceives, have been entitled to any thing more than the Salt or the Amount back for it by making forfeiture of the original Contract for it, for otherwise he might as well have made an Agreement for it at one hundered Pagodas p Quarce with a Penalty of One thousand Pagodas or any other Sum and pretend to demand it from this Respondent so that the said Contract cannot in the least affect this Respondent or his Transactions about the said Salt, nor can he, as he conceives be Answerable for anything more to the Appellant than the Amount of the said Salt at fourteen Pagodas p Quarce, which he was, and still is ready and willing to pay to the Appellant, for as to this Respondent offering to the Appellant it is not to be supposed, nor would it be reasonable to Expect, that the said Venga Chitty can keep it till the Decision of the matters in question in this Cause, or that he even kept it till now.

To which said Answer the Appellant did on the twenty seventh day of September One thousand seven hundred and sixty eight put in a Replication thereby endeavouring, tho very Evasively, to Confirm his said Amended Bill and, if possible, to refute what this Respondent had Setforth in his said Answer. But this Respondent absolutely denies that the Appellant did therein setforth the matters of fact as they really were, as Setforth in his said

Petition

Petition of Appeal, on the Contrary this Respondent saith the same are therein Unfairly and Unjustly Stated and Set forth as will appear on Reference had to this Respondents said Answer, the Depositions of the Witnesses examined on this Affair, and also this Respondents Rejoinder which he put in the Eighth day of November then next following, to which this Respondent craves Reference, and which is supported not only by the Evidence produced on the part of this Respondent, but also some of those produced on the part of the Appellant.

Upon these proceedings Issue was Joined and Witnesses Examined on both sides, those on the part of the Appellant by no means supporting his, the Appellants, Charge against, and Demand on this Respondent, as Alledged in the said Petition of Appeal, but those on the part of this Respondent entirely refuting every Material Allegation and Assertion of the Appellant, and also confirming this Respondents Alligations by way of defence, and plainly demonstrating that the Appellants Assertions and Demand are unjust and without any Legal or Equitable foundation whatsoever in which light this Respondent humbly hopes these matters will appear to this Honble Court notwithstanding what is by Appellant Set forth to the Contrary in the said Petition of Appeal, for as to what he alledges of the deficiency of the Quantity of Salt &c. was that not confuted by the Evidence, it could not have no weight in the present action, as it seems to be foreign to it, the nature and the foundation of the Action Considered, Besides this Respondent is Offers to pay the Appellant the same Price for the whole Quantity that he could have Sold it at or Deliver him the Salt according to the Agreement this Respondent had made about it, of which it is proved he fully informed the Appellant before the time he pretends to have made the said Contract &c. does, as this Respondent conceives, entirely overthrow any thing

thing that can possibly be Alledged as to any Deficiency &c. for supposing this Respondent had actually Sold it to any person for the Price he mentions and which he offered him for it, for the reasons he particularly gives, the Appellant would have been obliged to abide thereby, as he is by every other of this Respondents Transactions about it, which have been in pursuance of the power and Authority vested in him by the Appellant, and according to the best of his Judgment, and what he would have done had the Case been his own, a power of acting would otherwise be useless and liable to be set a side by the person who gives it at his will and pleasure, and what the Appellant alledges of the advanced Price, that was long after the Matter of the Price was fixed by this Respondents determining to take it at the price he could have sold it as beforementioned, which was the same to the Appellant as if Sold to any other person, besides that Matter of the Price advancing was a Matter which neither this Respondent nor he believes any body else could foresee Consequently not guard against, for it was so Uncommon that Salt generally from February or March falls in Price instead of advancing, as has been and is the Case this Year, and as is a general and known maxim it was for that reason this Respondent fixed the Price at that time, And further the Occasion of the Advance of the Price afterwards and about the time of the Appellants arrival was owing to an act of Providence, as the Appellant well knows which no person could know or foresee, and that was the very heavy Rains that fell about the time which was more like a northerly than a Southerly Monsoon, and which Washed away a great Quantity of Salt both at and about Madrass and at other Places, as appears in this Cause, so that Salt became very Scarce and of Course dear, This Respondent therefore Submits to this Honble Court how far it is possible for him this Respondent to be Answerable for things of this Nature, or for any thing more than his real Transactions about the

said

said Salt, which are fully before this Honble Court. And which this Respondent humbly hopes will meet with this Honble Courts Approbation— But to proceed, Exhibits were delivered into Court both by the Appellant and this Respondent. Publication passed and the Cause set down for hearing, And it coming on to be heard on the Eighteenth day of July Last, and it appearing to the said Honble the Mayors Court that this Respondent had full power from the Appellant to Dispose of the Salt as he should Judge proper, And that the Appellant before he made the Contract with Moorgapah Pruapah and Andapah was Informed by this Respondent that the Salt was to be Delivered at the Aringoin, And to which the Appellant assented. The said Court did therefore think fit to Order and Decree and did accordingly Order and Decree that the Appellants Bill should stand Dismissed with Costs, As more fully and at large appear by the said Decree now before this Honble Court.

By which Decree this Respondent Conceives the Appellant is not in the least aggrieved nor had any Cause or reason whatsoever to Appeal to this Honble Court thereof And this Respondent cannot forbear expressing his Surprize at the reason the Appellant gives why he is Aggrieved and for Appealing Viz.t of no place being mentioned by this Respondent where the said Salt was to be delivered &c.a as this is an Assertion in Contradiction of very full and Circumstantial Evidence to the Contrary, that is the Evidence of Geralds Gonsalves, this Respondents Servant and Nunapah his Dubash, whose Evidence this Respondent assures this Honble Court is Just and true notwithstanding the Vile Attempt of the Appellant to Induce this Honble Court to believe otherwise, this Respondent would not himself in

in his Answer have Sworn to the truth of what they Confirm, had it not been so. And this Insinuation of the Appellants is, as this Respondent Conceives, such as merits the Notice of this Honble Court, particularly as this Respondent looks upon his Answer and other Depositions to be a Corroboration of each other, and the Depositions of Venga Chitty about the Letter which both those Witnesses depose this Respondent directed his said Dubash to Write, and which he says he did Write, is another plain Information of the truth thereof, And as to what the Appellant mentions of the Situation that he and the Respondent were in, and of the said Geralds Gonsalves being in another Room &c.a this Respondent saith that was this Honble Court to See the Hall, which is Small, this Honble Court would not, upon their being acquainted that they Sat near the Door of the Office or Room in which the said Geralds Gonsalves was, which is also Small, be in the least Surprized that he overheard what passed. Nor is it in the least Extraordinary, as the Appellant Alledges, that he should be Attentive to a Conversation of that Sort as he was particularly acquainted with this whole Affair about the Salt, as appears by several Circumstances in his Deposition. This Respondent Submits to this Honble Court whether there is the least Appearance of Reason for such an Aspersion. This Respondent also denies that those two were the material Witnesses for this Respondent, as the Appellant Alledges. On the Contrary he saith that most of the Witnesses Examined on his part as well as some of those examined on the part of the Appellant, are so material as they do to all Intents and purposes refute every Material Assertion and Charge of the Appellant and Confirm this Respondents Defence, and with regard to what the Appellant sets forth about his directing Nellanah his Dubash to

Attend

Attend on this Respondent and give him his Assistance about the Disposal of the said Salt, and advising this Respondent to dispose of it when Salt before a good Price, and of the Quantity Nellanah says he found &c. this Respondent saith, that it does not by the Nellanahs Deposition appear that the Appellant gave her any such directions about the said Salt, for he says the Appellant Informed him he had bought the said Salt and desired him to provide some Baskits and get a Conoply to go down to Pirvatore that he accordingly got them ready but the Appellant Said nothing telling him any thing further concerning the said Salt. Which entirely Contradicts what the Appellant has Set forth on that Head And as to what Nellanah says of the Quantity he found this Respondent can by no means Admit his Evidence in that Respect to stand in Competition with the Deposition of Armogon, the person who provided it and had it carried to that Place, and that of Venga Chitty, the person from whom this Respondent bought it and whose Business it was to sell it right, who Deposes very fully and clearly as to that Matter, and who must know better the Quantity than Nellanah, as he only Just Saw it in the Boat and guessed at it, and as to what he Says of the Advice Nellanah gave this Respondent to Sell it at the Price it was on his second Application to this Respondent, Saith that was after he had made the Contract about it with the said Venga Chitty for the like Quantity to be Delivered the latter End of February, as Appears by Nellanahs Deposition, who Says "this Respondent told him he had done the Appellant a piece of Service in making the said Contract &c. which he really thought he had done. So that at any rate that advice, if it was good, came too late. But this Respondent does not Admit it good at that Season, for it

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is well known that there was no Selling the whole Quantity together by way of Cargo as there was no Vessell here at that time to take it, & that was the proper Method of Disposing of such a Quantity, for the Salt might bear a greater Price than the Appellant had given for it, it was only by Retail by a measure or some trifle at a time, in which way it is possible a few Ounce might have been Sold in the Course of some weeks but this Respondent would in that Case have been Risquing the greatest part of it, and might, or any thing he knew, have lost a great deal of it by that means, he therefore still thinks he did the Appellant a piece of Service about it, And assures this Honble Court he acted according to the best of his Judgment about it and what was by many People who knew and heard of it approved of as a very advisable Method at such a Season of the Year, But at any rate that matter was put out of the Question by what passed Subsequent to as before and in the Proceedings is particularly set forth. This Respondent Saith that he can by no means admit that he told the said Nellanah he had no power from the Appellant to Dispose of the said Salt, as he does not think from the nature of the Case that he could possibly tell him any such thing or mean so, and it is Inconsistent to Imagine that he did not tell him so, as he had full power to Dispose of it as he might think proper, this Respondent therefore Supposes that Assertion of the said Nellanah must have been a Mistake, and that he might have misunderstood this Respondent in that respect. This Respondent would further beg leave to observe as a Corroborating proof of the Appellants knowing the said Salt was not at Pirvatore and therefore that his Plea of Ignorance and Demand is Unjust that it appears by the Deposition of the said Nellanah on the part of this Respondent that the Appellant upon his return to Madras desired Nellanah to make Inquiry about the said Salt and sent People

for

for that purpose. by whose Information it Appeard that the Salt which had been brought to Trivatore Beach for the Appellant had been disposed of to the Inhabetants and that there was no Salt there, so that the Appellant could not make any Contract about the said Salt which could Affect this Respondent, but must himself abide by the Consequences of such his Unadvisable Conduct, and what the Appellant Saith of the Supplication from what is Set forth in the Deposition of the Daniel Lawrence cannot by any means stand in Competition with such full proofs to the Contrary as before Set forth. and it is a very Vague Plea for the Appellant to Assert that of the Fifty Ource of Salt was lost at the Armogon out of which the said Tinga Chitty proposed delivering the forty Ource to the Appellant, all the Salt must have been lost at other places, perhaps part of the Salt at Ramapatnam and Ristnapatam &c. might be lost also. but that is no Reason that all the Salt at those places should be lost. this Respondent absolutely denies that he meant to Impose on the Appellant. On the Contrary he hopes it will clearly appear in this whole affair used his Endeavours not only to do the Appellant all the Justice he could but also Settle it amicably and that the Appellant has been the Sole Cause of every disagreeable Circumstance that has attend this Busineſs. in which light this Respondent humbly hopes it will Appear to this Honble Court.

All which matters and things this Respondent Submits to the Judgement of this Honble Court that the said Decree is a fair Just and Equitable Decree, and this Honble Court will not find any Cause to Alter but will be pleased to Confirm the same, and this Respondent most humbly prays that the said Petition of Appeal may be dismissed with Costs, and also such further and other Relief in the Premises as to this Honble Court shall seem meet.

John Sykes
Attorney Respondent

Court of Appeals
at
Madraspatnam

Friday the 25th day of August 1769

Between John Rosing Mariner at present residing at Madras Appellant and John Sykes of Fort St. George Gentleman Respondent.

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 18th day of July Anno Domini 1769 and upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand confirmed and that the Appellants Petition be hence dismissed with Additional Costs in this Court

J. Parr

To the Honble Chas Bourchier Esqr
President and Governor &c Council of Fort St George

Filed in my Office
the 14 day of Octob 1769
W M Goodlad Clerk of Appls

The humble Petition and Appeal
of Amatoon Cachatoor of Madras
Merchant Appellant

Sheweth

That the Complainant Johannes Benedictus did on the thirteenth day of June in this present year of our Lord One thousand seven hundred and sixty nine, Exhibit a Bill of Complaint in the Honble the Mayors Court, thereby setting forth, that your Petitioner is indebted to him the said Complt the Sum of One thousand Five hundred and Thirty seven Pagodas Twenty seven fanams and sixty one Cash and to which said Bill of Complaint, the said Complainant annexed an Account Current, and prayd, the same might be admitted as part of his said Bill of Complaints. And your Petitioner Answered the said Bill of Complaint on the first day of August in this present year one thousand Seven hundred and sixty nine in the manner following, that your Petitioner is Indebted to several other People as well as to the said Complainant, and that your Petitioner conceived, as their Demands are on the same footing with that of the said Complainants, the said Complainants could not be paid in preference to your Petitioners other Creditors and Especially as the said other Creditors had granted your Petitioner time to pay them, and given your Petitioner a Letter of Licence, and that all your Petitioners Effects were Mortgaged to his Creditors, and that your Petitioner further conceived, although the said Complainant did not Set his hand to the said Letter of Licence yet by his acceptance of one thousand Pagodas, as a Dividend it implied a Tacit consent to the same. And your Petitioner did further set forth in his said Answer, that the said Complainant was and is well acquainted with the unforeseen accident that has happened to your Petitioner, by his being obliged to receive again the Ship, which your Petitioner had Sold to Mr Robert Dowsell for thirty thousand Pagodas, and the Losses your Petitioner have sustained by the bad Sales of the Ships and Cargoes; as also, that your Petitioners Insolency cannot be imputed to any extravagancy or Knavery, but to those inevitable misfortunes as before mentioned. And therefore your Petitioner prayd, the said Complainants Bill might be dismissed, as being litigious and vexatious. And (vide after) your Petitioner had answered the said Complainants said Bill as now related. The same came to be heard the third day of this present month of October before the said the Honble the Mayors Court, But though the matters did appear to be as aforesaid, yet the said the Honble the Mayors Court were pleased "to order and Decree "that ... the Petitioner should pay unto the said Complainant the "aforesaid sum of one thousand five hundred and thirty seven "Pagodas twenty seven fanams and sixty one Cash, together with such "Interest as now is, or shall hereafter become due thereon until full "payment is made, also all Costs of Suit" as will more fully and at large appear by the said Decree of the said Honble the Mayors Court, by which Decree your Petitioner with great submission, conceives himself aggrieved. For the following reasons, that as your Petitioner is indebted to several other people as well as to the said Complainant, and as their Demands are on the same footing with that of the said Complainants, the said Complainant with submission, ought not in Equity to be paid in preference to them, especially, as your Petitioner have mortgaged all his Effects to his Creditors, and desired them to Sell them, and make such Dividends amongst all his

his Creditors as are just and Equitable, and further, as the said Complainant hath accepted of a Dividend of one thousand Pagodas, which your Petitioner conceives implies a Tacit consent to the Letter of Licence, and is a sufficient inducement for the said Complainant to act with the other Creditors, as he is unsensible that your Petitioner's Insolency happined by unavoidable accidents and not through Extravagancy or Knavery. — Therefore, your Petitioner Appeals from the said Decree of the said the Honble the Mayors Court, and humbly prays that the said Decree of the said the Honble the Mayors Court may be reversed and setaside, and that the said Complainant may be Ordered and Directed by This Honble Court to give your Petitioner the same time as the said other Creditors have done, which is until the arrival of Pigue Ships, as also, that your Petitioner may stand discharged from all Costs of Suit had in either This Honble Court, or the Mayor's Court, with such further and General relief touching the premises as to This Honble Court shall seem meet. —

Will.m Cannell
Attorney for the Appellant

Mayor's Court at Madraspatnam } Tuesday the 3 day of October Anno Domini 1769

Present

Edward Stracy Esquire Mayor
Peter Marsette — Reynold Adams
Arthur Cuthbert — Charles Smith &
Francis Sourdan — Aldermen

P.M. Mayors Court

Between Joannes Benedictus of Fort St. George Merchant Complainant and Anatoon Cachatoor of the same place Merchant Defendant —

This Cause coming on to be heard and Debated this day in the Presence of the Attorneys on both sides on Reading the Complainants Bill with an Account Current annexed, The Defendants Answer, On hearing the pleadings made use of by the Attorneys and on due Consideration had thereon, Appearing to the Court that the Defendant hath not denied the Justness of the Complainants Demand, 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 One thousand five hundered and thirty seven Pagodas twenty seven fanams and sixty one Cash / Pago.s 1537.27.61 / together with such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit. —

Wm. P. M. Stone —
Regr. —

In the Court of Appeals

To the Honble Chas Bourchier Esqr.
President and Governor &c. Council of Fort St. George

Filed in my Office
the 10th day of Novr. 1769
W.M Goodlad Clerk of Appls

The Answer of Joannes Benedictus of Madras Merchant Respondent to the Petition of Appeal of Anatoon Cachatoor

Catchatoor of the same place Appellant.

This Respondent Saith that he Admits, he did about the time mentioned in the said Petition of Appeal Exhibit a Bill of Complaint in the Honble the Mayor's Court agt the Petitioner thereby Setting forth that the Petitioner stood Indebted unto this Respondent in the full and Just Sum of One thousand Five hundred and thirty seven Pagodas Twenty Seven fanams and sixty One cash Current Money of Madraſs and that this Respondent did to the said Bill of Compliant Annex an Account Current the Ballance of which was the said Sum for which the said Action was Commenced. And which this Respondent prayed might be Admitted as part of his said Bill of Compliant.

To which said Bill the Appellant did about the time Setforth in the said Petition of Appeal, put in his Answer thereby Setting forth that he was Indebted to several other People besides this Respondent and he Conceived this Respondent could not be paid in preference to the other Creditors as he alledged their Debts on the same footing with his and especially as they had all Consented (Excepting this Respondent) to grant him time to pay them as he had Mortgaged all his Effects to his Creditors and altho this Respondt had not Set his hand to the Letter of Licence the Petitioner presumed by his Acceptance of One Thousand Pagodas as a Dividend was as binding as if he had Set his hand to the same. And the Petitioner did also in his said Answer Setforth several things about his Misfortunes &c which does not by any means concern this Respondents said Demand. And this Respondent being Conscious that what the Petitioner so Setforth in his said Answer as as to a Dividend &c was meer matter of Evasion and only intended to prolong the time and Postpone the payment of this Respondents said Just Demand he this Respondent did not think it necessary to reply to his said Answer. The Cause was therefore Set down to be heard on Bill and Answer, and the same coming on to be heard on the third day of October in the present Year of Our Sovereign Lord One thousand seven hundered and Sixty nine. And it Appearing to the said Honble the Mayor's Court that the Petitr had not denied the Justness of this Respondents said Demand the said Court did therefor think fit to Order and Decree and did accordingly Order and Decree that the Petitioner should pay unto this Respondent the full and Just Sum of One thousand Five hundered and thirty Seven Pagodas Twenty seven fanams & sixty seven Cash together with such Interest as there was or should thereafter become due thereon untill full payment is made also all Costs of the said Suit. As will more fully and at large appear by the said Decree now before this Honble Court.

By which Decree this Respondent conceives the Appellant is not in the least Aggrieved nor had any Just cause or reason whatsoever to Appeal therefrom to this Honble Court, and this Respondent conceives the reason he gives for Appealing are Weak and Evasive and can by no means Availhim, as other Peoples demands being on the same footing with that of this Respondent (if so they are) and his having Mortgaged his Effects to his Effects to his other Creditors is no reason why this Respondents Demand should not be paid, and particularly so as the Petitr himself Acknowledges this Respondent did not come into any

Composition

Composition with them nor Sign the Letter of Licence Consiquently cannot be bound thereby. And as to what Appellant Alledges of this Respondents having accepted of a Dividend of One thousand Pagodas this Respondent Admits he received that Sum in part for which he has given the Petitioner Credit in the Account annexed to his said Bill of Complaint but denies to have received the same as a Dividend, nor can it be so termed as this Respondent, for certain reasons which are not necessary to trouble this Honble Court with, refused to Agree to the Composition and further this Sum of One thousand Pagodas was so paid in part before any Dividend was made or the said matter of Composition settled, it cannot therefore, as this Respondent conceives, by any means Imply a Tacit consent to the Letter of Licence, as the Appellant Sets forth in his said Petition of Appeal. And this Respondent begs leave to Observe that the Petitioner is very Sensible of the Justness and propriety of his said Demand and of the said Decree as well as the Unjustness of his Defence, and it is well known that he contested the said Matter and Appeal'd to this Honble Court merely to prolong time and Evade the payment of this Respondent's Demand as before mentioned.

All which Matters and things this Respondent Submits to the Judgment of this Honble Court, and hopes it will clearly appear to this Honble Court that the said Decree is a fair Just and Equitable Decree, And that this Honble Court will not find any Cause to alter but will be pleased to Confirm the same, And this Respondent most humbly prays that the said Petition may be dismissed with Costs and also such further and other Relief in the Premises as to this Honble Court shall seem meet.

John Sykes
Attorney for the Respondent

13

Court of Appeals
at
Madraspatnam

Wednesday the 24th October 1770

Between Aratoon Cachatoor of Fort St. George Merchant Appellant and Joannes Benedictes of the same place 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 Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 3 day of October Anno Domini 1769 and upon due Consideration had of the Matters therein severally contained and of the Readings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand confirmed and that the Appellant Petition be hence dismissed with Additional Costs in this Court

Errs

In the Court of Appeals

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

Filed in my Office
the 12th day of Decemr. 1769
H. Goodlad Clerk of Appeals

Sheweth

Between Laurencio Patterson Widow and Administratrix of John Patterson late of Madrass Inhabitant deceased and John Debonaire of Fort St. George and Balla Kistnah of Madrass Merchants Attornies to Mahomed Mafos Cawn late of Madrass

The humble Petition of Appeal of the said Laurencio Patterson

That your Petitioner's said deceased dicciased Husband John Patterson did in his Lifetime on or about the Fifth day of April which was in the Year of Our Lord One thousand Seven hundred and sixty Eight Exhibit a Bill of Complaint in the Honble the Mayor's Court against the above named John Debonaire and Balla Kistnah as Attornies to the said Mohomed Mafos Cawn thereby Setting forth that the said John Debonaire and Balla Kistnah as Attornies as aforesaid stood Indebted unto the said John Patterson in the full and Just Sum of Two thousand

One

One hundred and Ninety two Pagodas Current Money of Madrass as would more fully and at large appear by a Copy of an Obligation an Account Current and Transfer thereunto Annexed which was assigned over to him by Roya Budsing of Madrass Merchant and which he prayed might be Admitted as part of his said Bill of Complaint. and the said John Patterson did in the said Bill of Complaint Charge that the said John Debonaire and Balla Kistnah or one of them had received more of the Ballances or Cash mentioned in the said Obligation to be received from Pegu and from Junkseylon than was sufficient to discharge the Principal and Interest of the said Obligation and that they had no right to Apply the same to any other purpose than that of Discharging the Principal and Interest of the said Obligation as he saith they Allidge they have done and therefore if they have applyed the same to any other purposes they are still as much liable to Discharge the said Obligation as if the said Money had not been so Applyed. and the said John Debonair did also further Charge that the said John Debonaire and Balla Kistnah have Sundry other Effects of different Sorts in their hands or Under their Direction care or Management belonging to the said Mahomed Mafos Cawn which is another reason why they Ought to Discharge the Principal and Interest of the said Obligation. And the said John Patterson did in and by the said Bill of Complaint pray that the said John Debonaire and Balla Kistnah might Set forth a full true and Particular Account of all the Money Goods or Effects of what nature or kind soever which they or either of them have received from Pegu and Junkseylon on Account of the said Mahomed Mafos Cawn since the Date of the said Obligation and what is become of the same and for what reason such Money Goods or Effects or the

produce

produce thereof was not applyed in Discharge of the Principal and Interest of the said Obligation. And that they might also Set forth a full true and Particular Account of all the other Money Houses Goods Effects of what nature or kinds soever which they or either of them have under his or their Care Management or Direction which belongs to the said Mahomed Mafos Cawn, that they might be Decreed to pay unto the said John Patterson the said Sum of Two thousand One hundred and Ninety two Pagodas with all such Interest as then was or should thereafter become due thereon also all Costs of the said Suit

To which said Bill of Complaint the said John Debonaire and Balla Kistnah Appeard but before any further or other Proceedings were had in the said Cause the said John Patterson departed this Life by reason whereof the said Suit abated and Letters of Administration of his Estate and Effects were granted to your Petitioner by the said the Honble the Mayors Court by virtue whereof your Petitioner became Intitled to have the said Suit revived against the said John Debonaire and Balla Kistnah and your Petitioner Exhibited a Bill of Reviver in the said Honble the Mayors Court praying that the said Suit might be Revived against the said John Debonaire and Balla Kistnah and be in the same plight and Condition that it was in at the time of the Decease of the said John Patterson And the same was Revived accordingly

To which said Bills the said John Debonaire and Balla Kistnah put in seperate Answers the said Balla Kistnah Setting forth that he doth not Stand Indebted in any other manner or Shape than is Set forth in the Obligation Annexed to the said Original Bill of Complaint wherewith he would have Complyed had he received any part of the said Ballance

Ballance from Punkeylsan but the same never came to hand as he said could be made Appear and that he had been informed by the said John Debonaire that the Sum of four hundred and Twenty five Pagodas and eleven Fanams had been received as the Amount Sales Wax and Elephants Teeth received from Pegu the particulars of which would be more fully explained in the said John Debonaire's Answer who had the Management of this Affair And that he Conceived he was not obliged to give any other or further Account of the said Mohomed Mafos Cawns affairs than what is relative to the said Writing annexed to the said Original Bill of Complaint, the said John Debonaire in his Answer Set forth that he was not indebted to the Estate of the said John Patterson or to the said John Patterson in his Lifetime by Virtue of the P^d Transfer otherwise than according to the tenor of the said Obligation which was Conditional as therein expressed and that the Ballances therein mentioned had not come to his hands only Four hundred and Twenty five Pagodas and eleven Fanams as the Amount proceeds of some Wax and the Elephants Teeth received from Pegu and that he had never received nor any one for him any part of the Ballance outstanding at Punkeylsan belonging to the said Mahomed Mafos Cawn, that he did offer to Advance and pay unto the said Transferee Roya Budsing the said Sum of four hundred and twenty five Pagodas and eleven fanams in part of the principal Sum of One thousand Eight hundred Pagodas Set forth in the said Obligation and even offered to make it up six Hundred Pagodas which the said Roya Budsing refused to accept and that he paid off in

part

part the Respondentia that was taken upon the said Vessell which went to Junkceylaan for the said Ballances that She returned from Junkceylaan without receiving any Goods &c on Account of the said Ballances as they were not able to Recover the same, that he did not think himself obliged to pay out of his Pocket the Amount of the said Demand but Admits had he been in Possession of Effects that came from Pegu or Junkceylaan the propriety of the said Mahomed Mafos Cawn he should have thought himself obliged to be responsible for the same and would have paid it, that he did not think himself obliged to discover and Set forth to the said Honble the Mayor & Court the Affairs of the said Mahomed Mafos Cawn other than what regards the Tenor of the said Obligation

To which said Answers your Petitr put in a Replication thereby Conforming the said Demand and Bill of Complaint and setting forth that she was much Surprized the said John Debonaire and Balla Kistnah should Allledge they have received nor anyone for them any part of the said Ballances from Junkceylaan and that the said Vessell returned from thence without them or Goods &c on Account of them as Sundry Goods Wares and Merchandizes and other things were put on Board the said Vessell or some other Vessell at Junkceylaan on Account of and as returns for the whole or part of Ballances due to the said Mahomed Mafos Cawn at that place and that the said Vessell arrived at Madrass Safe either with the said returns on Board or other Goods &c for which those Goods Ware and other Articles put on Board and other Articles put on Board the said Vessell at Junkceylaan were Bartered at some other place or with the Amount Sales of which the Goods &c which the said Vessell brought to Madrass were purchased and that the same were delivered to and received by the said John Debonaire and Balla Kistnah or one of them or to some other person or persons on their or one of their Accounts or by their or one of their Order and were by them or one of them or some such other person or persons as aforesaid Sold or Disposed of to different persons for Considerable Sums of Money Amounting in the whole to much more than the Amount of your Petitioners said Demand on the said John Debonaire and Balla Kistnah so that they are for those reasons to all Intents and purposes liable to Discharge the said Demand and which they ought to have as and as soon as they were in Cash to do it according to the Tenor of the said Obligation, That She absolutely denies that the said John Debonaire did ever offer to pay unto the said Raya Budsing the said Sum of Four hundred and Twenty five Pagodas eleven fanams or Six hundred Pagodas only as he Set forth in his said Answer. But Saith that he offered to pay unto the Transferrer the Sum of Seven hundred Pagodas on Account of the Amount of the said Obligation. But that was after the said Vessell had arrived with the said returns from Junkceylaan and before the said John Debonaire had received the said Wax and Elephants Teeth or the Amounts of them so that what the said John Debonaire offered to pay could not be the Amount proceeds of Wax and Elephants Teeth received from Pegu, as he Alledges, but part of the Amount proceeds of the returns from Junkceylaan, that upon the Transferrers declining to Accept of the said Seven hundred Pagodas as it was so Inconsiderable a part of the Amount of the said Obligation and as he or the said Balla Kistnah had received the

above

above returns from Junkeyloan and Insisting upon the whole Amou
of the said Obligation the said John Debonaire offerd to pay him the
whole Amount of it if the Transferrer would allow Twenty per Cent
Discount upon it But which the Transferrer did also decline as he
had no right to give up any part of his said Demand. And your
Petitioner Submitted to the said Honble the Mayor's Court
as she does to this Honble Court, whether it is probable that the
said John Debonaire would have made either of the above Offe
if he had not received sufficient of the said Ballances to have
enabled him to do it your Petitioner did further Set forth that the
said John Debonaire and Balla Kistnah had no right to
apply the said Sum of Four hundered and Twenty five Pago
and eleven fanams to any other use than that of discharging the
Obligation that
the Application of it to the use mentioned
the said John Debonaire in his said Answer was unjustifiab
and he and the said Balla Kistnah are as much Answerab
Petitioner for it as if they had never so applyed it. That upon
soon after the said John Debonaire making the said Transfe
Roya Budsing the above offer of paying him Seven hundred Pag
on Account or the whole at Twenty per Cent Discount and refusing
to pay it on any other Condetions the said Roya Budsing wrote
to the said Mahomed Mafos Cawn about the said Ballances
and Offers and the said John Debonaire and Balla Kistnah
delaying the payment of the said Money &c. and the said
Mahomed Mafos Cawn returned for Answer that he had Wrote
to the Defendant John Debonaire to pay the Transferrer
that he would dispose of the said Vessell and pay him and did
also send the Transferrer a Copy of a Letter which he said he had
wrote

Wrote to the Defendant John Debonaire wherein he did not seem
in the least to Confine the payment of the Money then due to the Trans-
ferrer out of the said Ballances from Pegu and Junkeyloan
only being Sensible that whether those Ballances were or were not
received the said Money ought to be paid, for he directs the said
John Debonaire to do his Endeavours and get that Money and
pay it and mentions a particular Debt out of which he might
pay it or else if he should not receive the said Debt to dispose of
his Vessell and pay the Amount of it to Transferrer as will more
fully and at large appear by Translates of the said Letters
Annexed to the said Replication marked A and B and which
your Petitioner prayed might be admitted as part thereof.
the Original Letter to the Transferrer and the Copy of that to the said
John Debonaire were produced to the said the Honble the Mayors
Court, that the said John Debonaire and Balla Kistnah dis
afterwards put off the payment of the said Money to the Transferrer
from time to time alledging they would sell the said Vessell and
pay the said Demand but they failed thereun alledging the Money
they had received was expended and offered to Mortgage the said
Mahomed Mafos Cawns House &c. to the Transferrer as a
Security for the Amount of the said Obligation and that they would
Sell the said Effects as soon as the Troubles in the Country
were over or they had Orders to do it But this the Transferrer
declined as they had received the said returns from Junkey-
loan and as the said Mahomed Mafos Cawn had ordered him
to be paid out of the Amount of the said Vessell as aforesaid

on

in Case of a deficiency of the said Ballances &c. your Petitioner therefore Submitted to the Honble the Mayors Court and also Submits to this Honble Court, whether the said John Debonaire and Balla Kistnah ought not for the above reasons to have Discovered the propriety of the said Mahomed Mafos Cawn at Madrass or on the or either of their Care or Management, And whether in Case it should appear that the said John Debonaire and Balla Kistnah or one of them have not received sufficient of the said Ballances or Amount from Pegu and Junkeylean to discharge your Petitioners said Demand (which your Petitioner does not does by no means Admit) that the Amount of the said Vessell and the said Mahomed Mafos Cawns other Effects should not be applyed in Discharge thereof

To which Replication the said John Debonaire and Balla Kistnah put in a general Rejoinder and Issue was joined and Witnesses examined both on the part of your Petitioner and the said John Debonaire and Balla Kistnah Exhibits were produced on the part of your Petr and Publication being passed, And the Cause being Set down for hearing and coming on to be heard on the Twenty eighth day of November in the present year of our Lord one Thousand Seven hundred and sixty nine and it appearing to the Honble the Mayors Court from the Evidence produced that the said John Debonaire and Balla Kistnah have received no more than the Sum of four hundred and Twenty five Pagodas eleven fanams out of the said Ballances and which they were ready to pay before the Commencement of the said Suit The said Court did therefore

think fit to Order and Decree and did accordingly Order and Decree that the said John Debonaire and Balla Kistnah should pay unto your Petitioner the said Sum of four hundred and Twenty five Pagodas and eleven fanams together with such Interest as then was or should thereafter become due thereon till full payment be made and that your Petitioner should pay all Costs of the said Suit, as will more fully and at large Appear by the said Decree which comes herewith for the Inspection of this Honble Court

From which said Decree your Petrs doth Appeal to this Honble Court as she conceives the same is very Erroneous and that she is aggrieved thereby for the reasons herein before and in the said Proceedings particularly Set forth, and further your Petitioner Conceives it does by no means appear by the Evidence produced that the said John Debonaire and Balla Kistnah have received no more than the said Sum of Four hundred and twenty five Pagodas and eleven fanams as Set forth in the said Decree unless the Evidence on the part of the said John Debonaire and Balla Kistnah is deemed Valid and that on the part of your Petitioner not so, for the Depositions of Valid. Mahomed and Venkatchellum, the only Witnesses produced on the part of the said John Debonaire and Balla Kistnah, are refuted by the Witnesses on the part of your Petitioner in the first place Pur Mahomed Says that both the Vessell Goods and Merchandize which arrived at Madrass in One thousand Seven hundred and Sixty Six were the property of Mahomed Mafos Cawn and were delivered to the said John Debonaire and Balla Kistnah as his Attorneys, that he Commanded the Vessell to Junkeylean and tho' he delivered

up

up the Command of her to the said Valid Mahomed Yet he went in her the rest of the Voyage under him, that Tin was put on Board the said Vessell at Punkeylaan and carried to Quidah where the said Valid Mahomed disposed or Bartered Goods for Wax Butly Nutt and Rice, that the value of what was brought here he Judges to be at the Market price about fifteen or Sixteen hundred Pagodas and that he heard from several people the said Vessell was Sold for One thousand Six hundred Pagodas, now this Witness does not say a Word about which Valid Mahomed mentions or the Outstanding Debts not having received or the Vessell being obliged to leave Punkeylaan in a hurry &c. as Valid Mahomed Deposes, and if all these things had been so he must have known it and would of Course have mentioned them, On the Contrary there does not seem to have been the least Obstacle in their way by the Tenor of his Deposition, and it is much more natural to Imagine that was the Case than that the said Valid Mahomed took up the Money at Respondentia at Quidah and that he brought the said Goods with it on his own Account, as he Alledges. For if the said Goods had been his property why were they on their Arreval at Madrass Entered in the Honble Company's Books as the said Mahomed Mafos Cawns property as Appears they were by the Certificate of Mr. Wynch then Sea Customs produced as an Exhibit on this Cause and why were they delivered to the said John Debonaire and Balla Kistnah as Attornies to Mahomed Mafos Cawn, as it appears they were both by the said Pir Mahomed Deposition and that of Moolyal Ega, who Confirms their being the Mahomed Mafos Cawns property and Estimates them according to the Market price to have been Worth about One thousand Seven hundred Pagodas and odd. And further the said Valid Mahomed Says the said Vessell went back to Punkeylaan about the

begining

beginning of the Year One thousand Seven hundred and sixty Seven whereas it appears both by the said Mr. Wynches Certificate and the said Depositions Pir Mahomed and Moolyal Ega that She arrived here in March One thousand Seven hundred and Sixty Six, So that your Petitioner Conceives the Deposition of the said Valid Mahomed is to all Intents and purposes refuted as well as that of Venkatachellum Examined on the part of the said John Debonaire and Balla Kistnah and therefore that it plainly Appears and must follow of Course that what came on the said Vessell was the Proceids of the said Ballances and ought to have been and still ought to be Apply'd in Discharge of your Petitioners said Demand, your Petitioner begs leave further to Observe that the said Vessell, as before Set forth and proved, arrived here from Punkeylaan in March One thousand Seven hundred and Sixty six and by the John Debonaires Account annexed to his Answer the proceeds of Wax was not received till the twenty Sixth of July following and the Elephants Teeth till July One thousand Seven hundred Sixty Seven, so that it plainly Appears the offers the said John Debonaire made the Transferrer of seven hundred Pagodas on Account, or the whole at Twenty p Cent Desaccount must have been the proceeds from Punkeylaan and not of the said Wax, Elephants Teeth, and further the said John Debonaire and Balla Kistnah have not produced the least proof of the Offers he the said John Debonaire Alledges he made, but your Petitioner hath proved that his Offers were such as Set forth in her said Replication and not as the said John Debonaire Sets forth in his said Answer and still the said Honble the Mayors Court has not taken the least notice of these Circumstances tho' the same is such an entire refutation of what the said John Debonaire and Balla Kistnah have Set forth

and

and attempted to prove and Confirms your Petitioners Allega-
tions, which however your Petitioner hopes will not Escape the
Notice of this Honble Court. And your Petitioner further Saith
that the Losses which the Vady Venkoo mentions the Purchase of
for two hundered and thirty three pagodas and half could not, had
the Amount of what was Sold been Outstanding, have been put
upon that footing as they were not Sold at Punkey but
brought and Sold at Madras to Vady Venkoo as before mentioned
your Petitioner Conceives the Amount Sales of that Article should
at any rate have been paid on Account of her said Demand even
had the rest not been Recovered, but the same having been Recovered
and brought here as before mentioned the whole Amount of your
Petitioners said Demand should have been paid, For your
Petitioner conceives it plainly appears that the Bottle Jin Waa
and Goods were the said Mahomed Mafos Cawns property
and the proceeds of the said Ballances from Punkey Cain and
that the said John Debonaire and Balla Kistnah should give
an Account of the Sales of them, which together with the Sales of
what came from Pegu may be nearly if not quite sufficient or
more than sufficient to Discharge your Petitioners said Demand
But in case the same should not be sufficient the proceeds of the
said Mahomed Mafos Cawns Vessell should be applyed to
make up that Deficiency, the said John Debonaire and Balla Kistnah
being so liable to do both by their own promise, as Appears by the
Depositions of Dashnemoll and Venkatachellum and also their
Constituent the said Mahomed Mafos Cawns Instructions, Not-
withstanding which the said Honble the Mayors Court have passed
over that matter of the Vessell without giveing any reason why they
have done so. Your Petitioner also conceives the said Mahomed
Mafos

Mafos Cawns other Effects are liable for the Payment of your Petitioners
said Demand incase of a Deficiency of the said Ballances and the
Amount proceeds of the said Vessell, the said John Debonaire and
Balla Kistnah not only having made them so by their Offers to
Mortgage &c as appears by the Depositions of Baboo and Sheshiah,
but they being so in reality, the said Obligation being only a Collateral
Security for this Debt and not meant to Discharge or free the said
Mahomed Mafos Cawn from it, so that he is still Answerable
for it as if no such Obligation had been given, and consequently his
Effects, for had the Outstanding Debts or Ballances mentioned in
the said Obligation never been received that would have been no
reason why your Petitioners Debt should not have been paid, the
said John Debonaire and Balla Kistnah should have therefore
Sue discovered the said Mahomed Mafos Cawns Effects according
to the Charge and prayer in the said original Bill of Complaint
and are still liable so to do in case of a Deficiency of the said other
property this matter the said Decree does not take any notice of.

And your Petitioner lastly begs Leave to Observe
the hardship of the whole Costs of the said Suit being by the said
Decree thrown on your Petitioner and merely because the said John
Debonaire alledges he was ready to pay the Sum Decreed before the
Commencement of this Suit, whereas it does by no means Appear
that he either offered to pay that or the Six hundered Pagodas only
but Seven hundered Pagodas or the whole at Twenty per Cent Dis-
count as before mentioned, which your Petitioner Conceives should
by no means be looked on in the light of a tender of what was actually
received and thereby bear your Petitioners Title to Costs of Suit,
But rather an offer of part of what had actually been received
and should have been paid, for the Transferrer was by no means

obliged

obliged to receive that small part of the Debt then due to him when it so clearly appeared both by what Goods had actually come from Punkayloan and the said offers, that the said John Debonaire or both he and the said Balla Kistnah had received sufficient to pay the whole of it.—

For all which reasons your Petitioner conceives the said Decree is Erroneous and that She is Aggrieved thereby, and your Petitioner most humbly prays that the said Decree may be reversed and Set aside and that the said John Debonaire and Balla Kistnah may be Decreed to Pay unto your Petitioner the Amount of her said Demand with all such Interest as now is or shall hereafter become due thereon and also all Costs of the Suit, and your Petitioner prays such further and other relief as to this Honble Court shall seem meet.—

John Sykes
Attorney for the Petitioner.—

Mayors Court
at Madraspatnam } Tuesday the 23d day of November
Anno Domini 1769

Present

Edward Stracey Esquire Mayor.
Reynold Adams and Charles Smith
Aldermen

Between Lavinia Patterson
Administratrix to the Estate and
Effects of John Patterson deceased

Complainant and John Debonaire and
Balla Kistnah of Fort St. George
Merchants Defendants.—

This Cause coming to be heard and debated this day in the presence of the Attornies on both sides, on Reading the Complainants Bill with a Copy of an Obligation an Account Current and Transfer thereof Annexed, the Defendants two seperate Answers, with an Account Current annexed, the Replication with Translates of two Letters annexed, the Rejoinder, the Interrogatories and Depositions on the part of the Complainant Four Exhibits on the part of the Complainant, the Interrogatories and Depositions on the part of the Defendant on hearing the pleadings made use of by the Attornies and on due Consideration had thereon, it appearing to the Court from the Evidence produced that the Defendants have received no more than the Sum of Four hundred and twenty five Pagodas and Eleven fanams out of the Ballance due to Mafos Caron at Pegu and Punkayloan, and which they were ready to pay before the Commencement of this Suit — This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Defendants shall pay unto the Complainant the said Sum of Four hundred and Twenty five Pagodas and Eleven Fanams / Pag.ᵃˢ 425.11. / together with such Interest as now is or shall hereafter become due thereon untill full payment is made; & that the Complainant shall pay all Costs of this Suit.—

Hen.ʸ J.ᵒ M.ᵒ Stone
Regr.

Laurentia Patterson. Widow and Administratrix of John Paterson deceased. late of Madras Inhabitant. Appellant: John Debonaire of St. ffs. George and Balla Kistnah of Madras Merchants. Attornies of Mahomed Mafos Cawn Respondents.

The Humble Answer of John Debonaire and Balla Kistnah Respondents. to the Petition and Appeal of Laurentia Patterson. Widow and Administratrix of John Paterson deceased. Appellant. against a Decree made in the Honble the Mayors Court at Madraspatnam.

This Respondents say. that on or about the fifth day of July. which was in the Year of our Lord one thousand seven hundred and sixty five. they gave their obligation to the Transferrer Roya Budsing in the following manner. "Be it known. that We the underwritten as Attornies to Nabob "Mahomed Mafos Cawn. do agree to pay unto Roya Budsing "the Sum of eighteen hundred Pagodas. as We shall receive the "Ballance from Pegu and Punkeylon which is due all this "time to Nabob Mahomed Mafos Cawn. or as far as such Bal- "lances will furnish us with Cash. whereof We have signed this "Agreement. Madras the 5th July 1765.

Translate (Signed) John Debonaire
Balla Kistnah

And these Respondents do deny. that they are indebted to the Estate of the said John Patterson in the sum sued for. but say they are only indebted to the said Estate the sum of four hundred and twenty five Pagodas. and eleven fanams. and

and that no more hath been recovered or received of the out standing Ballances at Pegu and Punkeylcan. and not one single fanam from the latter place hath been recovered or received by them. And which said sum of Four hundred and twenty five Pagodas. and eleven fanams hath been Tendered by these Respondents to the said Roya Budsing the Transferrer and refused by him. And these Respondents further say. that they conceive with submission. this Bond entirely depends on the payment of the said Out standing Ballances due to Mahomed Mafos Cawn at Pegu and Punkeylcan. and until such Ballances are recovered or received the said Bond is not in force: and consequently the Transferrer or Complainant cannot be paid more than hath been recovered or received by this Respondents of the said outstanding Ballances at Pegu and Punkeylcan. Whereupon the Appellant exhibited her Bill in the Honble the Mayors Court: To which Bill these Respondents put in separate Answers. and to which Answers the Appellant replied unto: and to the Appellants Replication these Respondents put in their General Rejoinder. denying the things alledged in the said Replication. and averred and maintained. all the matters and things set forth in their said Answers to be true and certain. as therein is alledged and expressed. And Witnesses were examened: and upon the eight and Twentieth day of November last. in the Year of Our Lord one thousand seven hundred and sixty nine. the Cause came to be heard in the said Court. and it was by the said Court decreed. that these Respondents should pay the said Appellant the said Sum of four hundred and twenty five Pagodas and eleven fanams. together with the Interest as then was. or should thereafter become due thereon: untill full payment was made. and that the said Appellant

Appellant should pay all Costs of the said Suit. And these Respondents further say, that the said Decree from which the said Appellant hath appealed, is with submission, just and Equitable, and well warranted by the Rules of equity; and these Respondents therefore hope this Honble Court will find no Cause to alter, but will confirm and enforce the same. And these Respondents humbly pray, that the said Petition of Appeal, which doth not truly nor fully State the fact, as it appears by the Bond and proofs, may may be Dismissed with exemplary Costs

Will.m Crannell
Attorney for the Respondents

Wednesday the 24th October 1770

Court of Appeals
at
Madraspatnam

Vs

Between Lorencia Patterson Administratrix to the Estate and Effects of John Patterson deceased Appellant & John Debonaire and Balla Kistnah of Fort St.t George Merchants Respondents

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 28th day of November Anno Domini 1769 and upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand confirmed and that the Appellants Petition behence dismissed with Additional Costs in this Court

Per Cur

To the Honble Josias Du Pre Esqr
President and Governor of Fort St. George & Council

Filed in my Office
the 9th day of April 1770
Wm Goodlad Clerk of Appts

Between Victor Superior of the
Capuchin Missionaries of Madrass &
Suncoo Piddah Vencataramah of
Madrass Merchant

The humble Petition of Appeal of the said Suncoo
Piddah Vencataramah.

Sheweth

That the said Victor did on or about the Eighth day of March in the Year of our Lord One thousand seven hundred and Sixty nine unjustly file a Bill of Complaint in the Honble the Mayors Court against your Petitioner, therein setting forth that your Petitioner stood indebted unto the said Victor in the Sum of Six Thousand nine hundred and fifty two Pagodas thirty seven fanams and sixty one Cash as appeard by an Account Current annexed to his said Bill of Complaint, and said to have arose on your Petitioners three Mortgage Obligations. One bearing date the twenty sixth day of March another bearing date the ninth day of the same Month which was in the Year of Our Lord one Thousand seven hundred and sixty two and the third bearing date the twentieth day of April which was in the Year of our Lord one thousand seven hundred and sixty three To which Bill, your Petitioner delivered into Court his Answer upon Oath, therein Justly denying to be indebted unto the said Victor in the Sum sued for but your Petitioner doth therein acknowledge to be

indebted

indebted unto one Tho Severina in a Sum of Money due On the said
Obligations and your Petitioner prayed that the Honble the Mayors
Court would demand of the said Victor by what right and Authority
he had so demanded of your Petitioner the Sum sued for and Set forth
in his said Bill as it did not appear to your Petitioner that the said
Victor had any legal power to sue for the same and more especially
so as he does not in his said Bill of Complaint, set forth whether he
is heir, Executor or Administrator to the said Tho Severanahs
Estate, To which Answer the said Victor replyed evasively, and did
not set forth any sufficient Authority that had been delighted to him
by the said Tho Severina deceased. to which Replication your
Petitioner delivered into Court his Rejoinder, wherein he again
justly denies the Replication to be sufficient to support the said
Victors claim on your Petitioner, and your Petitioner very justly
confirms his right to demand a better and more perfect Authority
for the said Victors demand upon him before he can with propriety
and safety to himself comply with any part of his the said Victors
Demand, and your Petitioner in his said Rejoinder further
takes notice that the said Victor has charged your Petitioner
with Compound Interest in the Account which is annexed unto
the said Bill of Complaint, which your Petitioner has objected to
upon a presumption that the Compound Interest is not legal
nor ever allowed in any Court Governed by or Subject to the Laws
of England. And upon these proceedings issue was Joined and
and Witnesses examined on both parties but Victor cannot bring
proofs to Support his demand. Loobea and Ramadoo in their
Apositions on the part of your Petitioner saith that they went to
Victor by order of your Petitioner who asked what right he had for

to

to demand of your Petitioner any Money that he had no Authority by Law to demand to which the said Victor told them they had no Right to ask such a thing the said Victors demand was upon Interest upon Interest which your Petitioner could not by any means Comply with. Your Petitioner therefore most humbly prays this Honble Court will be pleased to take the whole of the Proceedings together with this humble Petitioner into their usual Consideration. and further humbly craves leave to lay before this Honble Court of Appeals some Observations relative to your Petitioners Appeal, first he begs leave to observe that the said Victor has commenced his Action without any Legal Authority for doing so, and in support of his said Action argues a Custom amongst the Inferiour Bodies of minor Societies as Superior to the Laws by whom they are Governed. and further the Fund established by the Capuchin Missionaries at Madras is only by permission and of Course Subject to the established Laws of England; and any Custom or Regulations made amongst themselves can only serve to govern them in their Capacity; and ought not take place of the Laws by whom they are; or ought to be governed. Therefore your Petitioner humbly hopes that it will appear that Victor had no right nor Authority to demand the Sum aforementioned without a Legal one and more Especially Interest upon Interest. therefore your Petitioner humbly Submits the whole of the aforesaid matters and things to the impartial Judgement of this Honble Court and most humbly prays that the said Decree of the Honble the Mayors Court may be reversed and Set aside and that the said Bill of Complaint may be Dismissed with all Costs of Suit and also such further and other relief as to this Honble Court shall seem meet.

Phillip Reefer
Attorney for the Petitioner

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Mayors Court at Madraspatnam } Tuesday the 27th day of March Anno Domini 1770

Present

Francis Sourdan Esquire Mayor
John Debonaire Thomas Downey
Reynold Adams & Alexr Davidson
Aldermen

Between Victor Superior of the Capuchin Missionaries of Madras Complainant. and Suncoo Peddah Venktaramah of Madras Merchant Defendant.

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides on reading the Complainants Bill with an Account Current annexed, The Defendants Answer, The Replication, The Rejoinder, The Interrogatories and Deposition on the part of the Complainant, with three Obligations annexed, The Interrogatories and Depositions on the part of the Defendant, On hearing the pleadings made use of the Attornies and on due Considerations had thereon, It Appearing to the Court that the Complainant has produced sufficient proof of the justness of his Demand — This Court doth think fit, to Order and Decree, and doth accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and just

Sum

Sum of Six thousand, nine hundred and Fifty two Pagodas
thirty Seven fanams and sixty one Cash / Pag.ᵃ 6952. 37 61 /
together with such Interest as now is or shall hereafter become due
thereon untill full payment is made, also all Costs of this Suit
And as it appears to this Court that the Defendant had not the
least foundation to Litigate this Suit, and that it was only done
to delay the Payment; It is further Ordered and Decreed that
the Defendant shall be taxed with double Costs of this Suit
to be paid to the Complainant.

Hur: D.ᵒ M.ᵒ Stone
Regᵗʳ

To the Honble Josias Du Pre Esqr
President and Governour of Fort St. George &c. Council
In the Court of Appeals

The Answer of Victor Superior
of the Capuchin Missionaries of Madras
Respondent to the Petition of Appeal
of Suncoo Liddah Vencatarainah of the
same place Merchant Appellant.

This Respondent saith that he Admits that he did at
or about the time mentioned in the said Petition of Appeal File
a Bill of Complaint in the Honble the Mayors Court against
the Appellant wherein he did Set forth, and that very Justly,
that

that the Appellant stood endebted unto this Respondent in the full
and Just Sum of six thousand nine hundred and fifty two Pagᵒˢ
thirty seven fanams and sixty one Cash current Money of Madras
as would more fully and at large appear by an Account current
which this Respondent annexed to his said Bill of Complaint
and which he prayed might be admitted as part thereof this
Respondent did also further in his said Bill of Complaint Set-
forth that Fre Severino did in his Lifetime as Superior or head
of the said Capuchin Missionaries, Advance and Lend unto
the said Appellant the several and respective Sums of Money
charged in the said Account Current on the Mortgage Obliga-
tions therein also mentiond which Money belonged to the Fund
or Stock of the said Missionaries, and that this Respondent
had since the decease of the said Fre Severino Succeeded to the
Superiority of the said Missionaries and thereby became Entit-
led to the Care and Management of the Missionaries belonging
to them according to the established Custom among them. And
this Respondent did in and by his said Bill of Complaint pray that
the Appellant might be decreed to pay unto him this Respondent the
said Sum of six Thousand nine hundred and fifty two Pagodas
Thirty seven fanams and sixty one Cash with all such Interest
as then was or should thereafter become due thereon also all Costs of
Suit.

To which Bill of Complaint the put in an Answer
thereby denying, tho very unjustly, to be endebted unto this Respondent
in the said Sum of Six thousand nine hundred and Fifty two Pagᵒˢ
thirty seven fanams and sixty one Cash or in any other Sum or
Sums of Money but acknowledging to be endebted unto Fre Severino
deceased

deceasd in a sum of Money, tho he doest not mention the Sum, and
telling forth that as this Respondent had not shewn any proof for his
Demand on the Appellant he the Appellant therefore begd that the
said Honble the Mayor's Court would Demand of this Respondent
to produce unto the said Court what right or Authority he had to
Demand the same without being an Executor or Administrator to the
said Frei Severino deceasd. And Quoting the Paragraph Setforth
in this Respondents having since the decease of the said Frei Severin
Succeeded to the Superiority of the said Missionaries and thereby
become entitled to the Care and Management of the Monies belong
ing to them according to the Established Custom among them, and the
Appellant therefore begd leave to lay before the said Court the Cir-
cumstances in his said Answer abovementioned, and then says
whether he the Appellant should pay unto this Respondent the Sum
sued for without a legal Authority.

To which strange and incoherent Answer this Respondent
put in a Replication, thereby setting forth that the Appellant does
stand indebted unto him this Respondent as Superior of the Capu-
chin Missionaries as aforesaid in the Sum sued for, notwithstan
ing the Appellant so strenuously and evasively denies in his sai
Answer, That the Appellant seemd to have mistaken the time of
shewing or producing proof as that time was not then come but the
Respondent doubted not but he should be able to Support his
Claim to the sum sued for by proof to the Satisfaction of the said
Court, and as to what the Appellant says in his said Answer
this Respondents Authority he said that he had in his said
Bill of Complaint Setforth in what Way and by Vertue of
Auth

(21)

Authority he made the said Demand, the truth of which the Appellant
well knew, notwithstanding to Evade the payment of this Respondents
said Just Demand, he pleaded Ignorance of the same, but in Order
to set this matter forth in a clearer light to the said Honble the Mayors
Court and to Convence the said Court of the justness of this Respondents
said Demand and of the unjustness of the Appellants assertions with
regard thereto this Respondent in his said Replication Setforth that
the Money due from the Appellant and for which he this Respondent Com-
menced the said Action belongs to the Fund or Stock of the Roman Catholick
Church at Madras, and the said Fund or Stock of Money is and always
since that Body of People have been permitted to Reside here, which is near
One hundred and thirty Years, been managed by the Priest or Head of
the said People that succeeded to the Vicarage of the said Church and the
regular Clergy among them not being allowed to Possess any thing
in particular are not permitted to Dispose of any thing by Will nor in
deed can they as they dont Possess any thing in their Seperate right but
as Trustees for the whole Body of them, there has therefore never been
nor could there be any Disposition made of the Money belonging
to the said Stock or Fund by the Priest or Head of the said Church
or People who had the Care or Management thereof Consequently there
could be no executor, nor has it ever been Customary nor was it or is it
at all necessary or proper that any person should Administer to the
Estate of such person so Entrusted with the Care and Management
of the said Monies on Account thereof for the reasons beforementioned
and as any person so to do that could only affect the Private property
or Estate of such person so Entrusted in case he was allowed to Pos-
sess or had any; nor has this ever been looked upon Necessary or ever
mentioned by any person whatsoever in all the Transactions

that

that have been had about the said Money, besides the said Church or body of People have several Sums of Money belonging to different Charitable Funds in the Honble Company's Cash the Interest of which has from time to time been regularly paid to the Priest or Head of the said People that succeeded him who died. The Appellant has also paid Interest on the different Sums lent him by the said Frei Severino as aforesaid in like manner according to the said Account annexed to the said Bill of Complaint, for the said Frei Severino being immediately succeed by Frei Bernardo deceased the said Appellant did on his the said Frei Severino's decease pay the Interest of the said Money so lent him to the said Frei Severino, which was in the Year of our Lord One thousand Seven hundred and sixty Eight according to the said Account when the said Frei Bernardo died whom this Respondent Succeeded in the said Superiority, This the Appellant did without making any Difficulty or Objection to the right by which the said Frei Bernardo demanded it. The Appellant also promised this Respondent for the space of a whole Year that he would pay him the Principal and Interest then due on the said Bonds and on his not fulfilling his said Promises and this Respondent being very pressing with him for the Payment he offered further Security to be added to the pleadings already in this Respondent's Possession as Security for the said Money and to Renew or give a fresh Bond in this Respondent's name for the same but finding this Respondent Insisted on the Discharge of the said Bonds entirely the Appellant pretends to Dispute this Respondents right to the said Demand with no other View whatsoever but that of Evading the Payment thereof. This Respondent did also

in

on his said Replication Setforth that he Conceived the Appellant's paying the Interest of the said Money to the said Frei Bernardo on his Succession to the said Superiority and his promises of Payment to this Respondent is a plain Acknowledgment of the Justness of the said Assertions and this Respondents said Demand and also renders the Appellant to all Intents and purposes liable to the Payment of the said Money to this Respondent even had he not been otherwise so. This Respondent therefore Submits to the Judgment of this Honble Court with what propriety the said Appellant has in his said Petn of Appeal alledged that he this Respondent replied to the said Answer wasively and did not Setforth any sufficient Authority that had been Delegated to him by the said Frei Severino deceasd, when this Respondent Conceives his said Replication is very full and Special and that his Authority for making the said Demand is fully and Clearly Stated.

To which said Replication the said Appellant put in a Rejoinder whereby he pretends, tho' not justly, as he alledges in his said Petition of Appeal, but very unjustly, that this Respondent has no right in Law to make any Demand on the Appellant and that by Inspecting into the Account Current annexed to this Respondents said Bill of Complaint he perceives that this Respondent has Charged Interest upon Interest, but the Appellant in his said Rejoinder neither denies what this Respondent has so Justly and truly Setforth in his said Replication as before mentioned, nor does he say any thing about it, will knowing the Truth thereof but Rejoins in the Evasive manner before mentioned.

Upon these Proceedings issue was Joined and Witnesses Examined on both Sides, those on the part of this

this Respondent Clearly proving the nature, propriety and Justness of his this Respondents Demand, and the Custom which has been time out of Mind among the Capuchin Mysemanes settled in this place of their Stock or Fund being managed by the Superiour or head of that Body of People from which this Respondent derives his right to the Money by the Appellant borrowed from their Superiour or head of the said body of People and which was part of their Stock or Fund and which this Respondent, as Trustee or Agent for that body, now Demands from the Appellant. The said Witnesses also prove many Applications to this Respondent and others on his Account by the Appellant and others on his behalf for further time for payment of the said Money with repeated promises of payment of it as well as offers of Mortgageing his Pardon &c., as a further Security for the said Money very fully and particularly and to which this Respondent begs leave to refer this Honble Court in full Confidence that it will clearly appear to this Honble Court that this Respondent has fully supported his Allegations in the Proceedings in this Cause and his Right to the Care and Management of the Monies belonging to the said body of people and of Course to the Money due by the Appellant which is part of it as before mentioned. The Witnesses on the part of the Appellant proves nothing to the purpose but this Respondent Submits the propriety of them to the Judgment of this Honble Court. This Respondent further saith that the said Witnesses being Examined, Publication passed in this Cause, and the same was Set down for hearing, and coming on to be heard on the Twenty seventh day of March last and it appearing to the said Honble the Mayors Court that this Respondent had produced sufficient proof of the Justness of his

his Demand the said Court thought fit to Order and Decree that the Appellant should pay unto this Respondent the full & Just Sum of Six thousand nine hundred and fifty two Pagodas thirty seven fanams and sixty one Cash being the Sum sued for, together with such Interest as then was or should thereafter become due thereon also all Costs of the said Suit, And as it appeared to the said Honble the Mayors Court that the Appellant had not the least foundation to litigate the said Suit and that it was only done to delay the Payment It was further Ordered and Decreed that the Appellant should be taxed with double Costs of Suit to be paid to this Respondent, as will more fully and at large Appear by the said Decree now before this Honble Court. From which said Decree this Respondent Conceives the Appellant had no just Cause or reason whatsoever to Appeal to this Honble Court as this Respondent Conceives the Appellant is not the least aggrieved by it and it is very Extraordinary that he should Appeal from it without even Alledging that such a Decree was made but this Respondent apprehends the same cannot avail him, for as to what the Appellant alledges about this Respondent having Commenced his Action without any legal Authority and mentioning a Custom among private Bodies of Men or Societies as Superior to the Laws by whom they are Governed &c. This Respondent saith that all those matters are alledged by Way of Evasion and as a Colour for his Appeal as this Respondent presumes the Authority Set forth in the Proceedings in this Cause and which he has fully supported by Evidence, which is now before this Honble Court was a sufficient Authority to Intitle him to the Money

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he Demands from the Appellant and to Commence his Action against him for non payment, besides exclusive of that right this Respondent Conceives the Appealants repeated promises of payment and the negociations Set forth in the said Proceedings and proved by the Witnesses produced on the part of this Respondent does to all Intents and purposes render the Appellant liable both in Law and Equity to the payment of the present Demand to this Respondent as much as if it had been a Debt Contracted immidiately by the Appellant to this Respondent. And with regard what the Appellant says of Custom this Respondent saith that he is Credibly informed and verily believes nothing is more regarded by the English Laws than Custom as that in many Cases is a Law and that by which both Judge and Jury Determine matters and particularly Ancient Customs or such as have been so time out of Mind or not within the Memory of man and that is Considered as one of the great Rights of a British Subject and that being also the Case as to the Custom among the Body of People to whom the Money due by the Appellant belongs this Respondent humbly hopes this Honble Court will Concur in Opinion with the said Honble the Mayors Court that he this Respondent has sufficently proved his right to the Demand made by him on the Appellant and therefore that the Appellants evasive Arguments cannot avail him. and with regard to what the Appellant alledges as to the Charge of Interest upon Interest this Respondent saith that had the Appellant paid the Interest regularly every Year as he should have done there would have been no Occasion to have Charged Interest upon it as this Respondent could have otherwise employed

Employed it as principal and had Interest upon it, but the Appellant not having paid the Interist Deprived this Respondent of the benefit of employing it and it remaineng on the Appellants hands after it so became due and payable it became Principal and for which the Appellant should of Course pay Interest otherwise the body of People to whom the said Money belongs would be a loser of the Interest they could have had for that Money so retained by the Appellant. And this Respondent humbly hopes that both from the nature of the thing itself and the Statement thereof in the said Account it will Appear to this Honble Court that this Method of Adjustment is fair Just and Equitable and that it would be a hardship and loss if it was otherwise, for when Interest becomes due and is not paid it is no longer Interest but Principal and Interest should be allowed thereon for the reasons beforementioned. All which matters and things this Respondent Submits to the Judgement of this Honble Court and hopes it will be clearly appear to this Honble Court that the said Decree is a fair Just and Equitable Decree and that this Honble Court will not find any Cause to alter but will be pleased to confirm the same. and this Respondent most humbly prays that the said Petition of Appeal may be dismissed with Costs, and for the Appellants Litigeousness is not only Consisting this Respondents right to his said Just Demand after the promises of Payment and other Matters beforementioned but also persisting therein by Appealing to this Honble Court that the said Appellant may be Taxed with double Costs. this Respondent also prays such further and other relief in the Premises as to this Honble Court shall seem meet

John Sykes
Attorney for the Respondent

12K

Wednesday the 24th October 1770

Court of Appeals at Madraspatnam } ss

Between Suncoo Vedda Vencataramah of Madras Merchant Appellant & Victor Superior of the Capuchin Missionaries of Madras Respondent

This cause coming on this day to be heard and debated before this Court by the Attorneys on both sides, upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this cause on Tuesday the 27th day of March Anno Domini 1770 and upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree & doth accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand & confirmed and that the Appellants Petition be hence & dismissed with double Costs in this Court

Per Curr

12J

To the Honble Charles Bourchier Esqr

President and Governor of Fort St George

Filed in my Office
the 2 January 1770.
Tho Goodlad Clerk of Appls

Between Baugel Cotah Bussoapah Chitty of Madras Merchant and Anthony Sadlier of Fort St George Merchant

Sheweth

The humble Petition of Appeal of the said Baugel Cotah Bussoapah Chitty

That the abovesaid Baugel Cotah Bussoapah Chitty did on or about the Eight day of March last equitably file a Bill of Complaint against Anthony Sadlier in the Honble the Mayors Court for the Sum of Nineteen thousand Seven hundred and Sixty Pagodas thirty three fanams and twenty Cash which he is Justly indebted unto your Petitioner being the Balance of an Account Current which Account Current annexed to your Petitioners Bill of Complaint to which Just Bill the said Anthony Sadlier did on or about the eleventh day of April last deliver in his fictious Answer thereto totally denying to be indebted unto your Petitioner in any Sum or Sums of Money whatsoever alledging that your Petitioner was indebted unto him in a Considerable Sum of Money in Account and for the Payment of which he gave two Bonds on the two Rajahs of Ongole to the Amount of Seven thousand One hundered and twenty Pagodas Six fanams and Sixty Cash exclusive of the Interest and that your Petitioner

assigned

assigned them over to him by two written Instruments. To which pretended Answer your Petitioner filed his Replication denying the Justness of the said Answer this your Petitioner agrees to furnish the said Anthony Sadleir with Paddy to the Amount of Two thousand Pagodas which was accordingly complied with but your Petitioner never received the Bond of Two thousand Pagodas back from the said Anthony Sadleir. Your Petitioner Acknowledges to have borrowed the Sum of eleven thousand Pgs upon another Bond on an Advance of Sixteen P Cent premium paid of which said Sum was discharged and never as yet received the Bond or receipt for what was paid to the said Anthony Sadleir and for the Balance your Petitioner delivered to the said Anthony Sadleir two Bonds on the Rajahs of Vongole amounting to Twenty two thousand and sixty four Pagodas Seven fanams and sixty Cash Interest included as also seventeen other Bonds only as a pledge for the Balance due to the said Anthony Sadleir the Amount of one of the said seventeen Bonds was received at Sallipetta by the said Anthony Sadleir from Moradee Bussoah Singapah the Principal and Interest amounting to One thousand two hundred and thirty seven Pagodas twenty one fanams. Your Petitioner acknowledges also to have wrote two Letters to the Rajahs of Vongole desiring them to pay the Amount of their Bonds with Interest thereon to the said Anthony Sadleir but your Petitioner never did Authorize or empower the said Anthony Sadleir to receive the same for his own use, neither did your Petitioner ever Sign or Seal any written Instruments in discharge of his Debt and therefore your Petitioner is astonished to find the said Anthony Sadleir mentioning to have Compromised matters with the Rajahs at Vongole for Ten thousand Pagodas upon Bond without a Legal Authority. Your Petitioner further represents to this Honble Court that he was sent for by Robert Palk Esq. the late Governor to invest the said Anthony Sadleir with a Legal Authority to receive the amount of the said two Bonds on his own proper Account which proposals your Petitioner would by no means comply with nor he hearken to; this acknowledges that when the said Anthony Sadleir was about going to the Northward to have desired him to Recieve the Amount of the said two Bonds on the Rajahs of Vongole together with Interest Amounting to Twenty two thousand and sixty four Pagodas seven fanams and sixty Cash and to pay himself them from the Sum of Two thousand three hundred and thirty seven Pagodas and thirty fanams the Balance that was due and on the remainder the said Anthony Sadleir was allowed to charge Commission but your Petitioner never meant or intended that the said Anthony Sadleir should compromise matters for Ten thousand Pagodas with the said Rajahs of Vongole. Your Petitioner moreover frequently requested of the said Anthony Sadleir to settle Accounts between them which never took any Effect and had your Petitioner assigned and set over the abovementioned Bonds to the said Anthony Sadleir to his own proper use certainly he would never have paid Mr. Richard Fairfield the Debt your Petitioner owed him. To which Replication the said Anthony Sadleir put in his Rejoinder on which he Grounds his Plea of your Petitioners charging an Exhorbitant Interest notwithstanding the said Anthony Sadleir received the same from the Rajahs at Vongole on the two Bonds and consequently had a right to charge the said Anthony Sadleir therewith. — After these

Proceedings

Proceedings Issue was Joined and Witnesses examined on both parties. Your Petitioner hath proved by the Evidence of Oliel Terady that he know that your Petitioner delivered to Anthony Sadlier Bonds on Vongole Sallipat, Arcot and Madras and that the said Anthony Sadlier received the Amount of them in Money and Bonds and paid him in different payments. Your Petitioner also proves by the Evidence of Veravelly Sashyhallum that some Years ago he wrote Letters to the two Rajahs at Vangole by desire of your Petitioner the purport of which were to this Effect that as such a Sum was due from the said Rajahs to the Complainant your Petitioner and as the Complainant was now in Debt to the Defendant Anthony Sadlier the the Complainant now requested that the said Rajahs would pay the full Amount of the said Debt to the Defendant and further in his Deposition proves that the said Anthony Sadlier requires all the Bonds which were due from the said Rajahs to your Petitioner which your Petitioner refused to Comply with but offered to give the said Anthony Sadlier Commission and allow him the Expences of his Journey which is an Evident proof that your Petitioner never did Assign and set over to the said Anthony Sadlier the said two Bonds to his own proper use. Your Petitioner further proves by the Evidence of Timmonah Condappien that he was at the house of Anthony Sadlier when your Petitioner came who heard Anthony Sadlier say that he was going to Vangole the next day and desired your Petitioner to empower or authorize him to settle the Affairs then between them which your Pet.r refused to do and then went away without settling the same which Deposition is another strong Substantial and Evident proof that your Petitioner never empowered the said Anthony Sadlier

Sadlier to Act as he so artfully sets forth in his Proceedings. Your Petitioner by the Evidence of Soobriah Pully proves that your Pet.r did discharge a great part of his Bond due to Anthony Sadlier in eight different payments in ready money and Goods which altogether amounted to about nine thousand six hundered Pagodas after which there remained a Ballance due from your Petitioner to the said Anthony Sadlier principal and Interest of about three Thousand pagodas. Your Petitioner by the Evidence of Ragaway Archara fully proves that when he was a Renter at Carreal he received a Letter from your Petitioner to deliver Paddy to the Amount of two thousand Pagodas which he did to the said Anthony Sadlier's Servant, he also proves that he received a second Letter from your Petitioner wherein it mentioned that he was indebted to the said Anthony Sadlier in the sum of eleven thousand pag.s sixteen P.Cent premium upon which he paid in ready Cash the Sum of One thousand four hundered pagodas or thereabouts and sometime in Consequence of receiving a third Letter from your Petitioner he delivered Paddy, Benjamin, Chaunk Taffeties, Raw Silk and Cash to the Amount of eight thousand two hundered Pagodas over and above what he had delivered two former times all which he believes was an account of the abovementioned Debt and declares that the last all these Payments was in the Month of August One thousand seven hundered and sixty two your Petitioner by the Evidence of Veralla Pullah proves that your Petitioner delivered unto the said Anthony Sadlier nineteen Bonds amounting to the sum of nineteen thousand two hundered and sixty nine Pagodas and eighteen fanams only as a security

for

for the Payment of a Balance of a Debt eleven thousand Pagodas of which the principal part was discharged at Carnicall. Therefore your Petitioner humbly prays that this Honble Court will take the foregoing Circumstances into their serious Consideration and of your Petitioner having been obliged to sue the said Anthony Sadlier by reason of his absolutely refusing to come to any Adjustment of Accounts and more particularly so as the said Anthony Sadlier was about to depart the Jurisdiction of the Honble the Mayors Court. The whole of the said Matters and things your Petitioner most humbly Submits to the Impartial Judgment of this Honble Court and humbly prays that the said Decree of the Honble the Mayors Court may be reversed and set aside and your Petitioners Bill of Complaint to stand good and that the said Anthony Sadlier may be decreed to pay unto your Petitioner the full and just Sum of Fifteen Thousand Seven hundred and thirty Six Pagodas thirty three fanams and twenty Cash together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit also granting your Petitioner such other and further relief as the Premises as to this Honble Court shall seem meet.

Pitt Reeves
Attorney for the Petitioner

Mayors Court at Madraspatnam } Wednesday the 20th day of December Anno Domini 1769

Present

Edward Stracey Esquire Mayor
Peter Marriette — John Debonaire
Thomas Powney — Reynold Adams
Francis Sourdan — & Alexander Davedson
Aldermen

Between Baugel Atah Bajsoapah Chitty of Madras Merchant Complainant and Anthony Sadlier Esquire of Fort St. George Merchant Defendant

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with an Account Current annexed and a Translate of two Obligations with an Account particulars annexed the Defendants Answers with two Notified Copies of Assignments annexed. The Replication. The Rejoinder. The Interrogatories and Depositions on the part of the Complainant The Interrogatories and Depositions on the part of the Defendant with three Assignments and two Affidavits an Obligation and Translate of what is Wrote at the Bottom thereof Marked Letters A B C D and E annexed, Two Exhibits on the part of the Defendant. On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon It appearing to the Court that

that the Complainant has not produced sufficient proofs to support any part of his Demand This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Complainants Bill shall stand Dismissed with Costs.

Recd I. M. Stone
Regr

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

In the Court of Appeals

The Answer of Anthony Sadlier Merchant Respondent to the Petition of Appeal of Bauguel Otah Buffoo-apah Chitty Merchant Appellant.

This Respondent Saith that he Admits that the Appellant did at or about the time mentiond in the said Petition of Appeal File a Bill of Complaint in the Honble the Mayors Court against this Respondent for the sum of nineteen thousand Seven hundered thirty Six Pagodas thirty three fanams and twenty Cash which he Alledged, tho very unjustly, that this Respondent was Indebted to him on the Ballance of Accounts which he annexed thereto, and in Order to obtain a Warrant of Arrest against this Respondent, who was then about to depart for England, altherwith an Intent to prevent this Respondents Departure or to Oblige him to give Bail for Double that

that large Sum, he the Appellant Swore that this Respondent was Indebted to him in the said Sum as has been made to appear since the Determination of the said Suit by the said Honble the Mayors Court altho the same does not appear at the foot of the said Bill of Complaint as is Customary and proper in Order to Ground and Authorize the Issuing of a Warrant of Arrest, however a Warrant of Arrest being granted this Respondent was Arrested and gave Bail, and having prepard and Sworn to his Answer to the said Bill of Complaint before his Departure for England as aforesaid the same was Exhibited in the said Honble Mayors Court at or about the time mentiond in the said Petition of Appeal, wherein this Respondent absolutely denied to stand Indebted unto the Appellant altherein the Sum Sued for or in any other Sum or Sums of Money whatsoever, as he hopd the said Honble the Mayors Court would be convinced by the narrative he Set forth, the purport of which is as follows, that is to Say; that on the ninth day of June which was in the Year of our Lord One thousand Seven hundered and Sixty two the Appellant being Indebted unto this Respondent in a Considerable Sum of Money on the Ballance of Accounts and not being able to pay the same having in his Possession Two Bonds or Obligations, One from Vethiel Veeranah for Muddapilly Ramabedrah Rauze of the Province or Country of Ongole for the Sum of three thousand Pagodas and the Interest and the other from Bethy Storney Vasoulo Bauguel for Muddapeddy Ragapeddy Rauze of the same Country for the Sum of Four Thousand One hundered and Twenty Pagodas Six fanams and Sixty Cash and Interest, the Appellant, in Consideration of his Debt to this Respondent did by two different Instruments

Instruments or Paper Writings bearing date the said ninth day of June One thousand Seven hundred and sixty two Assigning and Set overs to this Respondent the said Bonds or Obligations and the Money thereupon respectively due and Owing and all his Right and Interest of in and to the same and did thereby Empower and Authorize this Respondent Executors Administrators for the Appellant and in his Name and in the Name & Names of his Executors and Administrators, but for the Sole and proper Use and benefit of this Respondent his Executors Administrators and Assigns, to ask Demand and receive the Money due upon the said Bonds respectively as will more fully and at large appear by the said Assignments now before this Honble Court which were procured and produced on behalf of this Respondent instead of the Attested Copies mentioned and inserted in and by his said Answer further Set forth that in Consequence of the said Debt due to him from the Appellant and of the said Assignments he this Respondent did after wards go to the Northward to see if he could recover the Amount of the said Bonds but finding he could not then Recover any Money on Account of them he with much Trouble and Difficulty came to a Compromise with the said Obligors on Account of the said Bonds and Obtained a Bond from them for Ten thousand Pagodas but never Recovered or Received any thing from the Obligors or either of them on Account of the said Bonds but upon their being Dispossessed of the Lands which they held under his said Excellency the Nabob he, the Nabob, at the request and by the Interposition and influence of Robert Palk Esquire, who was

was then Governor gave this Respondent a Bond for the so much of the Amount of the said fresh Bond as Satisfy'd this Respondent for his said Demand on account of the said Bond and in Consequence thereof this Respondent delivered up to the Nabob the said fresh Bond and the said Assignments, which Circumstances this Respondent Conceived and does still conceive do to all Intents and purposes plainly Demandrate that the Charge of Twenty Two thousand and sixty four Pagodas seven fanams and Sixty Cash in the Account annexed to the said Bill of Complaint as Money received by this Respondent on the two Bonds from the Raja of Vengole, is an unjust Charge as this Respondent in the first place receive any thing from the said Rajas or either of them on Account of the said Bonds and in the second place this Respondent did by virtue of the said Assignments become Intitled to the whole Amount of the said Bonds or whatever Sum or Sums of Money he might receive on Account of them so that the Appellant is by no means entitled thereto nor even to an account of it, and that Sum deducted, the Ballance of the said Accounts will be in favor of this Respondent. did further Set forth that both and Every other Transaction between the Appellant and this Respondent was Corroborated and Confirmed by a further Assignment from the Appellant to this Respondent bearing date the second day of August in the said Year One thousand seven hundred and sixty two now before this Honble Court, that this Respondent humbly hopid by what he did as aforesaid Set forth and the said Assignments that it would plainly and clearly appear to the said Honble the

Mayor

Mayors Court. as he humbly hopes it will appear to this Honble Court that the Appellant's said Demand is unjust and such as he had no right to make and therefore that the said Action was Commenced at a time when the Appellant knew this Respondent was about to Embark for Europe, notwithstanding these matters are of a long standing, is unjustifiable and such as he hop'd would not Escape the notice of the said Honble the Mayors Court and he also hopes the same will not Escape the Notice of this Honble Court. And this Respondent did lastly in his said Answer observe the little regard it appeared to him this Respondent that the Appellant must have had to an Oath in Swearing that this Respondent was Indebted to him in so large a Sum when this Respondent Conceiv'd he could not but be Conscious of the unjustness thereof

To which said Answer the Appellant put in a Replication thereby endeavouring to heavily & Evasively to Confirm his said Bill by denying the said Assignments and the said attested Copies thereof referr'd to by this Respondents said Answer and other things by no means to the purpose nor are they or his said Demand at all Corroborated or prov'd by the Evidence produced

To which said Replication this Respondent put in a Rejoinder thereby Confirming his said Answer and refuting to all Intents and purposes what the Appellant did so evasively allledge in his said Replication and pointing out the extraordinary Method the Appellant hath taken to Compose his large and unjust Demand on this Respondent by charging Interest at 3 ₱ Cent ₱ Month as will appear by Reference to the Account particularly delivered in after filing his said Bill of Complaint which is an uncommon and Exorbitant Interest and which this Respondent was and is hereby ready neither the said Honble the Mayors Court would allow, nor would this Honble Court by any means Allow even in case the Appellant hath a right to make any Charge to this Respondent on that Account but particularly as he has no right to make any Charge or Demand what soever on this Respondent on account of the said matters, as will more fully and at large appear by the said Rejoinder to which this Respondent begs leave to Refer Upon these Proceedings Issue was joined Witnesses examined on both sides and Exhibits Produced on the part of this Respondent the Witnesses on the part of the Appellant by no means supporting the Appellants Charges against and Demand on this Respondent but the Witnesses and Exhibits on the part of this Respondent entirely refutes every material Allegation and Assertion of the Appellant and to all Intents and purposes Confirms this Respondents Allegations by way of Defence and plainly Demonstrates that the Appellants Assertions and Demands are unjust and without any legal or equitable foundation whatever, in which light this Respondent humbly hopes these matters will appear to this Honble Court notwithstanding what the Appellant Sets forth to the contrary in the said Petition of Appeal But to proceed. Publication passed in this Cause and the same was Set down for hearing and it coming on to be heard on the Twentieth day of December last and it appearing to the said Honble the Mayors Court that the Appellant had not produced sufficient proof to Support any part of his Demand the said

Court

Court were pleased to Order and Decree that the Appellants Bill should stand Dismissed with Costs, as will more fully and at large Appear by the said Decree now before this Honble Court. From which Decree this Respondent Conceives the Appellant had no Just Cause, or reason whatsoever to Appeal to this Honble Court, as this Respondent Conceives he is not in the least Aggrieved by it, and it is very extraordinary that he should Appeal from it without even Alledging such a Decree was made, but this Respondent Conceives the same cannot Avail him for notwithstanding what the Appellant Sets forth about the said matter in this Affair is the Assignments of the Raja of Ongoles Bonds, and the Charge made by the Appellant in Consequence of those Bonds being Deducted the Balance of the Appellants own Accounts is Considerably in favr of this Respondent as he has Set forth in his said Answer, and the said Assignments being fair full and absolute, in Consideration of the Debt the Appellant owed this Respondent, which he therein Acknowledges, the Charge made on that Account must be deducted out of the said Accounts, what that Debt or Consideration was induced the Appellant to make the Assignments is not, as this Respondent with Submission Conceives, matter of the present Enquiry, there the Appellants attempts to make that Debt or Consideration appear cannot avail him for after a Bond is voluntarily given or a Deed Legally made executed it is neither necessary nor proper to enter into an Enquiry as to the Cause of it or the

Particulars

particulars of which the same was Composed or the way in which the same arose, as all that is Superseded by the Act or the Deed itself Sufficient Cause for entering into such Bond or the Deed is always presumed, Nay it is expressed and cannot be doubted, there would otherwise be no end to Litigations and those Instruments would otherwise be useless nor can or ought purposes uses or Trusts be Suggested that are not Expressed nor the Intents of the parties to any Instrument be otherwise entrusted than according to what appears. This being the Case, and there being no Proviso Condition or Trust whatever in these Assignments they must stand as absolute, Consequently this Respondent cannot be accountable to the Appellant either for any money received or any thing done in Consequence thereof as the Appellant has Insinuated and further those Instruments as well as all Bonds Debts Goods and Merchandize of what nature or kind soever that was then in the Possession of this Respondent belonging to the Appellant being Confirmed by a Subsequent Assignment of the second of August One thousand Seven hundred and Sixty two as before mentioned, must, as this Respondent Conceives put every thing out of Doubt as to the propriety and Legality of the said Assignments and what was thereby Assigned, For a Purchase or an Assignment of a Bond or Debt is as Legal as that of houses Lands Goods or any thing else, & in this Case, there is a plain and fair Sale, and particularly so as this Respondent upon these three Assignments being made Released the Appellant from his said Debt as that had this Respondent never Recovered a Cash in Consequence of this Assignments he could not have demanded any thing from the

the Appellant had hethonfore recovend what the Appellant Alledges he did and Charges him with, he would not, as he Conceives have been Answerable to him for a Cash of it. But it plainly appears that this Respondent never did recover it from what he this Respondent has Setforth and the Vouchers he has produced which Conferms his Assertions withregard to that matter of the Payment to Mrs Fauseld that cannot Affect the present matters in dispute as this Respondent had a right to do what he thought proper with what he received without the Appellants Authority, as he mentions because he had sufficient Authority by the said Assignments, tho this Respondent gives his reasons for it in his said Rejoinder

This Respondent further saith that withregard to the Sundry Articles which Ragavah Archary in his Deposition Saith he delivered to People on his this Respondents account and which he Calls payments and saith that the last of them was in the Month of August One thousand seven hundred and sixty Two, this Respondent begs leave to Observe that every thing relative to that Affair was Included in the said Assignment of the second of August One thousand seven hundred and sixty Two as will appear by the Tenor of it therefore what the said Ragavah Archary saith was delivered was not on any new account but on account of the Assignment of second August and part of the old Debt on Account of which the said Ongole Rajah's Bonds were Assigned over to this Respondent as before and in the said Proceedings is Setforth, For this Respondent Saith that the whole of the Charges which in the said Account annexed to the Appellants said Bill of Complaint appear to be Particular

to the date of the said last Assignment arose from matters depending before that time tho they could not be brought into Account till settled and the Goods disposed of and the Amount of the Bonds received nor could they have been brought into Account at all after they were so as aforesaid Assigned over to this Respondent as they were actually Included in the said Assignment being the produce of the very Bonds Debts Goods and Merchandize mentioned therein and Assigned over thereby, all which matters and things this Respondent Submits to the Judgment of this Honble Court and hopes it will clearly appear to this Honble Court that the said Decree is a just Just and Equitable Decree and that this Honble Court will not find any Cause to alter but will be biased to Confirm the same and that this Respondent most humbly prays that the said Petition of Appeal may be dismissed with Costs & for the Appellants Litigeousness in proceeding this Respondent so unjustly and in the way and at the time he did and persisting therein by Appealing to this Honble Court, that the said Appellant may be Taxed with double Costs. This Respondent also prays such further and other Relief in the Premises as to this Honble Court shall seem meet

John Sykes
Attorney for the Respondent

Thursday the 25th October 1770

Court of Appials
at
Madraspatnam } Js

Between Baugelcotah Basavapah
Chetty of Madrass Merchant Appellant
and Anthony Sadlier of Fort St George
Merchant Respondent

This Cause coming on this day to be heard and debated
before this Court by the Attornies on both sides upon hearing the
Petition of Appeal and Answer and the several Exhibits of the
Honble the Mayors Court together with the Decree of the said
Court given in this Cause on Thursday the 20th day of December
Anno Domini 1769 It doth appear to this Court that the As-
signments made by the Appellant to the Respondent of
two Bonds of the Ongole Rajahs the Amount whereof constitute
part of the Appellants Demand were so made as a means whereby
the Respondent might be enabled to satisfy and Discharge the
Amount of the Debt then due by the Appellant to the Respondent
out of the Moneys which might be recovered from the said Ongole
Rajahs. but that the said Assignments were not so made in
lieu of the Debt so due from the Appellant to the Respondent
since no acquittance of that Debt is proved to have been given
by the Respondent to the Appellant on the Contrary it appears

to this Court that a further Assignment of Bonds and Merchandize
was made by the Appellant to the Respondent on Account of the
said Debt after the date of the said Assignments so made of the
Ongole Rajahs Bonds — It further appears to this Court that the
Sum of Pagodas 8760 part of the amount of the said Ongole
Rajahs Bonds was recovered and received by the Respondent
for which Sum he stands accountable to the Appellant never-
theless it does not appear to this Court to be sufficiently proved
by the Appellant that the Respondent is indebted to him. neither
doth it appear to this Court that the Respondent is not indebted
to the Appellant. This Court doth therefore think proper to Order
and Decree and doth accordingly Order and Decree that so
much of the Decree of the Honble the Mayors Court as orders
decrees or determines the Dismission of the Appellants Suit
do stand confirmed, not meaning hereby to precludge the
Appellant from any lawfull Claim or Demand he may have
on the Respondent for the Sum of 8760 Pags or any part thereof
which if the Appellant can prove to be due to him. it is the meaning
of this Court to leave him to his Remedy by proper Suit — and in
respect to Costs this Court doth think fit to Order and Decree
doth accordingly Order and Decree that each party shall pay
his own Costs in both Courts —

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