High Courts Series VI

Appeals against Mayor's Court decisions

Vol. 3.

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APR case

Block 7

Rack No.

Shelf No.

Serial No. 3

General No.

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To the Honorable Josias Dupre Esqr
President and Governor &c. Council of Fort St George

In the Court of Appeals.

Between Maria de Monte of Madras
Inhabitant and Coja Agavally Alias Agavally
Sature of the same place Merchant —
The Humble Petition of Appeal of the said Coja
Agavally Alias Agavally Sature —

Sheweth

That the said Maria de Monte did on or about the fifteenth
Day of January in the Present year of Our Lord One thousand Seven
hundred and Seventy One Exhibit a Bill of Complaint in the
Honorable the Mayors Court at Madraspatnam thereby Setting forth
That Sometime before the Seige of Fort St George by Monsieur Lally which
was in the year of Our Lord One thousand Seven hundred and fifty
Nine She was Posessed of a Piece of Ground with a Dwelling house
thereon Situated at the Maratta Town in Chepporthorah Lane of
which She Pretends She Annexed a Copy of a Certificate to her said
Bill That about three Months before the said Seige many of the
Houses then Situated at and about the Maratta Town Near the
Hospital were beat down and Destroyed by Order of the Governor
and Council at that time Presiding at Madras and among which
Number of Houses beaten Down was the said Maria de Montes House
After which She with the other People whose Houses were beaten Down were
Ordered by the said Governor and Council to give up their former Grounds
and in Lieu thereof to take an Equal parcel of Ground by the Bridge-

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Hedge which Ground She nor any of the former Inhabitants of the Maratta Town were ever put in Posession of the reason whereof was as She Supposes the Near Approach of the French Army at that time Mar-ching towards Madrass and that the Governor and Council could not then either attend to the same nor fulfill the purposes which they might then of Employing the said Grounds That the said Ground was not then ever since has been Employed by them or for their Service that as She was that time Distressed and a widow She was Obliged to work for her Liv-lihood and could not Afford to rebuild her House so that her Ground remained Open and unEmployed and That She went to Trichinapee a Servant to Mrs. Wood and on her return from thence was Surprized find her said Ground in the Posession of a Black Merchant and on her making a Demand on him for the same and producing the said Certificate he gave her no Satisfaction touching the Premises and in few Days afterwards She was Informed that he had Sold the said Ground unto your Petitioner who She pretends unlawfully holds himself Posessed of the same And praying that your Petitioner may be Decreed to deliver up and reign unto her the said Ground To which said Bill of Complaint your Petitioner put in an Answer thereby Add-ting that there were several of the Inhabitants of Madrass Dispossessed their Grounds in the Maratta Town at or about the time and on the Occasion Setforth in the said Bill and the said Maria de Monte may for any thing he knows be Among that Number But if that was the case it Appears by her said Bill of Complaint that both She and others were Ordered to give their former Grounds and in Lieu thereof to take equal Parcel of Ground by the Bound Hedge So that both She and others who were so Ordered and did in Conformity thereto give up their Houses and Ground and whose Houses were beaten Down and their Ground Possessed by or on behalf of the Honorable English East India Company on Account of the

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the Approach of the French Army as the said Maria de Monte Setforth were entirely Divested of any property in or right of Claim to the Houses and Ground so given up and were only in Lieu thereof Intitled to an Equal parcel of Ground by the Bound Hedge those being the Terms on which She Alledges both She and others gave up their Grounds And as your Petitioner Supposes and has great reason to believe both the said Maria de Monte and others who did so give up their respective Grounds might have had other Grounds in Lieu thereof, or may still if they will make a proper Application for it, the fault lays with her and others who have Neglected making such Application which is rather a reason why they are not Intitled to their former Ground than that they are Intitled thereto Consequently the said Maria de Montes present Claim, even if the Ground Possessed by and belonging to your Petitioner was ever her property is to all Intents and purposes Unjust and Illegal as She could not from the time She gave up the same, as aforesaid, have any Right or Title thereto for the reasons in the said Answer and in her own Bill of Complaint Setforth, And with regard to what the said Maria de Monte in her said Bill Setforth of her being Distressed and a widow and being Obliged to work for her Livelyhood and that She could not Afford to build her House &c. your Petitioner in Answer thereto said that those matters do by no means shew that She has or can have Any right to your Petitioners Ground, And as to her being poor, if so She is that is not the Case with her only, But with several others who have Built Huts and Small Houses on the Grounds Allotted them in Lieu of those they were Dispossessed of According to their several and respective Circumstances, and which the said Maria de Monte might and no Doubt would have found ways and means to have done ha

She been Intitled to the said Ground as it need not have cost her more than Seven or Eight Pagodas or thereabouts And if She had really been Intitled to the Piece of Ground She now unjustly claims its Surprising She remained Satisfyed about Eleven years without making any claim. And as to its having bear Once given by Mr Call to his writer, Andrew Peter and of his having been taken away from him again by the said Mr Call and given to the said Maria de Monte as She Setforth your Petitioner knows nothing of these matters, but has been Informed the said Andrew Peter never was in Posession of the said Piece of Ground the property of your Petitioner He is also of Opinion that She might either have Sold or Let the said Piece of Ground had She really been Intitled to it But both that and her going to Trichinopoly are meer matters of Evasion and do by no means shew that She has any right or Title to the said Piece of Ground, That in Order to Demonstrate how and in what manner your Petitioner became Posesed of the said Piece of Ground which the said Maria de Monte so unjustly lays claim to And at the same time prove your Petitioner Title thereto and consequently as it is really your Petitioners property that it cannot be the property of the said Maria de Monte your Petitioner Did in his said Answer Setforth, that among the several Inhabitants who were Dispossessed of their Grounds at the Maratta Town by Order of the Governor and Council of Fort St George on the Approach of the French Army about the time in the said Bill of Complaint Setforth was One Coja Graca late of Madras Armenian Merchant Deceased, and who was Dispossessed of both a House and Ground at the said Maratta Town in Shembu Dosses Street, which House and Ground were of much more Value than that of your Petitioner, and in Lieu of his the said Coja Graca said former Ground of which he was so Dispossessed the Governor and Council of Madras put him in Posession of the said piece of Ground

to

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To which the said Maria de Monte now unjustly lays Claim which said Ground is Situated near the Armenian Street, And upon the said Coja Graca Applying to the Committee of Works for the Honorable English East India Company who were Appointed to Distribute Ground to the Inhabitants who had been Dispossessed of their property for the purpose of Forming an Esplanade before the North Front of Fort St George on Account of the French Army for a Lawfull Posesion of the said piece of Ground and a Legal Title thereto, they the Committee of Works Considering the Justness and Equity thereof did grant him a Certificate bearing date the Tenth day of January which was in the Year of Our Lord One thousand Seven hundred and Sixty Seven, A Copy of which marked A is Annexed to your Petitioners said Answer The Original whereof your Petitioner Delivered in to the said Honorable the Mayors Court which will be Layed before this Honorable Court And to which your Petitioner craves leave to refer your Petitioner did further in his said Answer Setforth that by virtue of the said Certificate (which is in the Nature of an Absolute Conveyance) so Granted to the said Coja Graca by the said Committee of Works He the said Coja Graca did become Legally Intitled to the said Piece of Ground, And he did during his Lifetime Occupy Posess and Enjoy the same without any Molestations from either the said Company or any body else, The same being Considered, as it really was the Sole and entire property of him the said Coja Graca, He the said Coja Graca Paying the said Company's Quit Rent and the Scavengers Duty for the same And since the decease of the said Coja Graca his widow Tachey Geerach Alias Tachey Graca who Administred to his Estate Held Posesed and Enjoyed the same in like manner untill the twenty Ninth Day of May One thousand Seven hundred and Seventy that She Sold the said Piece of Ground unto One Salado Poley Chitty for the sum of One hundred and fifty Pagodas, On which Day She the said Tachey Geerach Alias Tachey Graca did in Consideration of that Sum to her in hand paid by the said Salado Poley Chitty Bargain and Sell the said Piece of Ground unto the said Saladoo Poley Chitty To hold the same with all the Appurtenances then to the

same

same belonging unto him his Heirs and Assigns for ever As will more fully and at large Appear by a Copy of a Chioultry Bill of Sale of the said Piece of Ground Marked B Annexed to your Petitioners said Answer The Original whereof your Petitioner Delivered unto the said Honorable the Mayors Court which will be Layed before this Honorable Court And to which your Petitioner craves Reference your Petitioner did in his said Answer further Setforth that by Vertue of the said Chioultry Bill of Sale so made and Executed by the said Tachey Geracki alias Graca widow and Administratrix of the said Coja Graca deceased he the said Salado Poley Chitty became Justly and Lawfully Possessed of and Intitled to the said Piece of Ground and the same being his Sole and entire property he the said Salado Poley Chetty did on the same Day that is to Say on the said Twenty Ninth Day of May One thousand Seven hundred and Seventy Sell the said Piece of Ground unto your Petitioner And did also on the same Day for the Consideration therein mentioned by an Instrument or Chioultry Bill of Sale thereof duly Executed Attested Signed by two Justices and Regis -tred in the Chioultry Court Bargain and Sell the said Piece of Ground unto your Petitioner To hold the same and every part thereof with all the Appurtenances thereunto belonging unto your Petitioner his Heirs and Assigns for ever As will more fully and at Large Appear by a Copy of the said Bill of Sale marked C Annexed to your Petitioners said Answer The Original where of your Petitioner Delivered unto the said Honorable the Mayors Court which will be Layed before this Honorable Court And to which your Petitioner craves Reference your Petitioner did further in his said Answer Setforth that he having so as aforesaid Purchased the said Piece of Ground and the same having been Legally Conveyed to him in manner therein and also herein before mentioned the said Piece of Ground is to all Intents and purposes the Sole and entire property of your Petitioner and Conse- -quently the said Maria de Monte cannot have the least Right Title Interest Claim or Demand whatsoever therein or thereto or to any part thereof her said Action is therefore unjust and Illegal and

and for which your Petitioner hambly hoped the said Honorable the Mayors Court would have been Pleased, as he hopes this Honorable Court will be Pleased to Tax her with Exemplary Costs for such her Endeavours to deprive your Petitioner of his Just and Lawfull property upon so weak a foundation as that on which She has Commenced her said Action Against your Petitioner, and Particularly as She was previous thereto made Acquainted that the said Ground was and is your Petitioners property as in the said Answer mentioned your Petitioner did further in his said Answer Setforth that Since he was Justly and Lawfully Possessed of the said Piece of Ground as aforesaid, he your Petitioner Ordered the wall of his other Ground Adjoining thereto to be carried on so as to Inclose the said Piece of Ground to which the said Maria de Monte so Unjustly lays Claim with an Intent to Build a House thereon. But to his great Astonishment the said Maria de Monte about Nine or Ten Months before the time of your Petitioners putting in his said Answer laid Claim thereto pretending it was her property And notwithstanding your Petitioner made her Acquainted with the said Grant thereof to the said Coja Graca the Sale thereof by his widow and Administratrix to the said Salado Poley Chitty and the Sale thereof by the said Salado Poley Chitty to your Petitioner, and used his Endeavours to convince her that the same was not her property but the property of your Petitioner, as Indeed She must be Sensible was the Case, yet it was to no purpose, for She per- -sisted in her Unjust Claim of the said Ground whereupon your Petitioner told her that he would, to Satisfy her that the said Ground was his property and not hers, have it Determined by a Justice of the Peace, which your Petitioner thought, Equitable as well as Advisable, upon Considering the low Circumstances of the said Maria de Monte, and how unable he thought She was to bear the Costs of a Law Suit, tho it seems he was mistaken as to her Circumstances as well as Disposition, as he thought She would certainly be Satisfyed with the Determination of a Justices of the Peace, which would not be Attended with any Expence, To which proposal of Reference and Determination the said Maria de Monte Agreed your Petitioner did therefore Apply to Richard Brichenden Esquire, and Acquainted the

The said Mr. Brichenden with the Circumstances Relative to the said Piece of Ground, And the said Mr. Brichenden sent for the said Maria de Monte, the Town Conicoply and One Irshapah, The said Honorable Companys Malabar Master Brick Layer, and enquired very particularly into this Affair and the said Mr. Brichenden finding the said Ground was really the property of your Petitioner he Acquainted the said Maria de Monte therewith, and Ordered that your Petitioner should Possess it peaceably and quietly, And the said Mr. Brichenden said the said Maria de Monte ought to have the like parcel of Ground at the Bound Hedge, as Ordered by the said Governor and Council, and took the Certificate which She produced and gave it to the Town Conicoply to carry to the Committee of Works that She might have a Piece of Ground granted near the Bound Hedge Accordingly That Notwithstanding the Pains which the said Mr. Brichenden had taken to Inspect into the said Affair, and that he had so Legally and Equitably Determined the matter in Dispute of the said Piece of Ground to be the Sole and entire property of your Petitioner, as Aforesaid, yet She was not Satisfyed therewith, But made another Complaint to Warren Hastings Esqr. This Gentleman also sent for your Petitioners and enquired into the matter of her Complaint and upon your Petitioners Informing the said Mr. Hastings of the whole particulars relating to the said Piece of Ground and of the said Matter having already been determined by the said Mr. Brichenden He the said Mr. Hastings was also convinced that the said Piece of Ground was your Petitioners property, Of which he the said Mr. Hastings Acquainted the said Maria de Monte, and Confirmed the said Mr. Brichendens Determination with regard thereto, That Notwithstanding the said Legal and Equitable Determination of the said Mr. Hastings and Mr. Brichenden relative to the said Piece of Ground yet the said Maria de Monte was not Satisfyed therewith But Commenced this unjust and Illegal Action Against your Petitioner your Petitioner did also in his said Answer

Absolutely deny that the said Maria de Monte did ever either Amicably or otherwise Shew a Title to the said Ground to your Petitioner Nor could She do so as She has no right or Title thereto, the same being the property of your Petitioner, as before mentioned, As will more fully and at large Appear on Reference to the said Answer and the Copies of your Petitioners said Title Deeds thereunto Annexed, As also to the Original Title Deeds produced by your Petetioner as before mentioned, To which said Answer the said Maria de Monte put in a Replication, thereby denying the Justness of your Petitioners Claim to the said Piece of Ground, and Endeavouring tho to no purpose to Establish her Right thereto And being well Convinced of the Truth of what your Petitioner hath Setforth in his said Answer relative to the Applications to the said Justices of the Peace, and of their Legal and Equitable Determinations with regard to the said Piece of Ground So unjustly Claimed by the said Maria de Monte, All She Says with regard thereto is that the Law is Open and ready to help all who are wronged either by Violence or Oppression, and that it is not the Province of Justices of Peace to Determine Contests of property between Individuals To which said Replication your Petitioner put in a Reyoinder thereby Denying that the said Maria de Monte has any Right or Title whatsoever to the said Piece of Ground, so unjustly Claimed by her and Confirming his said Answer and Title to the said Piece of Ground and particularly Setting forth That the said Maria de Monte cannot have any Claim on your Petitioner for or on an Account of the Ground which She so Bartered or gave up for other Ground Even if the Ground belonging to your Petitioner and which She now unjustley Claims, was the same She so gave up, and that for the following Cogent Reasons, as well as others in the said Reyoinder and in his said Answer Setforth In the first Place your Petitioner Conceives that by the said Maria de Montes giving up her Ground in the way and for the Consideration Setforth in her said Bill of Complaint She Divested herself of any Right or Title to the Ground She so gave up, In the Second Place, Supposing such giving up of her Ground should not be Deemed Legal or such as ought

Ought to Divest her of her right thereto either on Account of the way in which it was given up or the Conditions not being fulfilled, which your Petitioner did by no means Admit, yet your Petitioner not having taken or Divested her of her said Ground cannot be Answerable to her either for the said Ground or any failure in the fulfilling the Terms on which the said Ground was given up, As he would in that Case, be Answering for the Actions of others, and fulfilling the Terms and Conditions made by others, which Do by no means Concern him, Consequently your Petitioner Conceives She has no Right of Claim or to make any Demand whatsoever on your Petitioner But that her Claim, if any She has, Should be on those to whom She gave up her said Ground and who made the said Terms with her or their Successors, who will, your Petitioner Doubts not, do her all the Justice She is Intitled, to And. in the third Place your Petitioner Conceives he is Justly Intitled to the Ground Claimed by the said Maria de Monte as the same was Granted by the Committee of Works Appointed to Distribute Ground to the Inhabitants who were Dispossessed of their Ground as before Setforth, to the said Coja Gracas before mentioned, which said Ground was Sold by the said Coja Gracas vidow and Administratrix to the said Salado Poley Chitty, and by him Sold to your Petitioner, as before mentioned, and as Appears by the said Grant and Bills of Sale or Title Deeds &c. And in Rejoinder to what the said Maria de Monte Setforth about the Laws being Open and ready to help all who are wronged either by Violence or Oppression, and that it is not the Province of a Justice of Peace to Determine Contests of property between Individuals your Petitioner said, In the first Place he hath neither wronged the said Maria de Monte either by Violence or Oppression or otherwise, And in the Second Place, that perhapes may not be the Immediate Province of a Justice of the Peace to Determine matters of property between Individuals, Or that perhapes might not be the Cause of their Institution, which your Petitioner Submitted to the Judgement of the said Honorable the Mayors Court, as he now does to this Honorable Court whether it is so or not, yet it is well known that it has long been a Custom in Madras, which from the Nature of the Place and People Inhabiting

Inhabiting the same or residing thereon Differs much from Great Brittain, to decide both Matters of right and property between the Natives of this Place or where or are Concerned, and it having been found Extremely usefull, by Saving both time and Expences to such Inhabitants or Individuals which must be the Necessary Consequences of Litigations in a Court of Record, the Justices Continues to this Day to Determine matters of that Nature when Applyed to for that purpose, And when both parties Agree to Apply to a Justice of the Peace for that purpose Your Petitioner Conceives the Determination of such Justice is and Ought to be as binding as a Reference of such matters would be to Indifferent persons by way of Arbitration, whose Awards or Determinations are always Esteemed good and Valid and binding by Law, and in this Case the Ground in Question has been Determined by two Justices of the Peace to be your Petitioners property, Once by an Application by Consent of both the said Maria de Monte and your Petitioner, And another time by a Complaint being made by the said Maria de Monte for Justice, as before and in your Petitioners said Answer Setforth. How far these Applications and Determinations are and ought to be binding your Petitioner Submitted to the said Honourable the Mayors Court as he now does to this Honorable Court As will morefully and at large Appear by the said Rejoinder to which your Petitioner craves reference Upon these Proceedings Issue was Joined Rules for witness granted Publication passed a Certificate produced as an Exhibit on the part of the said Maria de Monte and the said Certificate of the Committee of Works and two Bills of Sale or the said three Title deeds produced on the part of your Petitioner and the said Cause was Setdown to be heard and coming on to be heard on Tuesday the twenty fourth day of September last the said Honorable the Mayors Court did Order and Decree that your Petitioner should put the said Maria de Monte in Possession of the said Ground and pay all Costs of the said Suit giving as a reason for making such Decree that it Appeared to the said Court that the said Maria de Monte has brought Sufficient Proof of the Justness of her Claim to the said Ground As will morefully and at large Appear by the said Decree, which comes here with for the Inspection of this Honorable Court From which said Decree your Petitioner doth Appeal to this Honorable

Court

Court, As he thinks himself particularly Aggrieved thereby, for the reasons herein before and in his said Answer and Rejoinder Setforth, And further your Petitioner Conceives the Certificate which the said Maria de Monte produces, which is her only proof, can be of no Validity Or by any means Shew that She is Intitled to the Ground She claims, Even of its the same Ground of which She Alledges She was Once Possessed, As She has so Particularly Setforth in her said Bill of Complaint that She gave it up abatime of Necessity in Lieu of another Piece of Ground at the Bound Hedge, This Condition She herself States in the Commencement of her Action, So that there can be no Stronger proof of the Terms on which She gave up her said Ground than what She herself so States Your Petitioner therefore Conceives She had no Claim for any thing but the fulfilling of that Condition for which your Petitioner cannot be Answerable he having made No Agreement or Condition with her, She cannot therefore be Intitled to the Ground so Granted and Purchased by your Petitioner as before mentioned, And further Your Petitioner Conceives the Ground belonging to Your Petitioner and which the said Maria de Monte Claims does not Appear to be the same Ground which was formerly Possessed by her, as She Setforth, for your Petitioner has Neither Achnowledged it to be such, Nor has She proved that it is so, what rights or Title therefore could She have thereto, even if it was not so as aforesaid Your Petitioners property And your Petitioner Conceives her laying no Claim to it for so many Years, and suffering the said Coja Graca and his Widow to Occupy Possess and Enjoy it for so long a time unmolested and your Petitioner for Sometime are sufficient to Demonstrate that her Claim is Ill founded Besides it would be a great Hardship on your Petitioner to be Divested of his said Ground so Legally Purchased by him and for which he not only paid the sum specifyed in the said Bill of Sale or Conveyance thereof to him but also laid out a Considerable Sum of Money in and about it All which matters and things Your Petitioner Submits to the Judgement of this Honorable Court, And humbly Prays that the said Decree of the said Honorable the Mayors Court may be Reversed and Setaside, and the said Maria de Montes said Bill of Complaint be Dismissed with Exemplary Costs for her Litigiousness, and that

That your Petitioners Right and Title to the said Piece of Ground so unjustly claimed by her may be Established, so that your Petitioner may Occupy Possess and Enjoy the same as his Lawfull property and unmolested your Petitioner does also pray such further and other General relief in the Premises as to this Honorable Court shall seem meet ——

Mayors Court at Madrasapatnam } { Tuesday the 24th Day of September Anno Domini 1771 –

Present

John Holland Esquire Mayor
Thomas Powney — Edward Stracey
Francis Fourdan — George Smith and
John Mc Pherson — Aldermen –

Between Maria Demonte of Madras Inhabitant Complainanant and Coja Agavally 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 a Copy of a Certificate Annexed The Defendants Answer with Copies of a Certificate and two Bills of Sale Annexed The Replication The Rejoinder One Exhibits on the part of the Complainant Three 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 the Complainant has brought Sufficient Proof of the Justness of her Claim to the Ground in Dispute This Court doth therefore think fit to Order and

Decree

Decree and doth Accordingly Order and Decree that the Defendant shall put the Complainant in Possession of the said Ground and that the Defendant shall pay all Costs of this Suit ~

Pr Cur
J Wl Stone
Register

To the Honble Josias Dupre Esqr
President and Governor &a Council of Fort St George

In the Court of Appeals.

The Answer of Maria De Monte of Madras Widow Respondent to the Petition of Appeal of Coja Augavally Appellant

This Respondent does Admit that on or about the fifteenth Day of January in this Present year of Our Lord One thousand Seven hundred and Seventy One She did Exhibit a Bill of Complaint in the Honorable the Mayors Court at Madraspatnam and that She did therein Setforth, that before the Seige of Fort Saint George by Monsieur Lally which was in the year of Our Lord One thousand Seven hundred and fifty Nine She was possessed of a piece of Ground and a House therein, Sittuated in the Maratta Town, in Cheppoo therah Lane and as a proof that the said piece of Ground was and is Still her property she did to her said Bill of Complaint Annex a Certificate Testified by two of the Justices of the Peace and properly Registered by the Register of the Choultry Court that the said House was by Order of the then Governor and Council beat Down and the Ground, laid open in Order to form Certain plans and Operations which were thought Necessary to be made or taken on Account of the Approach of the French Army towards Fort Saint George that the Respondent with many others whose Houses were beate Down in Manner as the Respondents and the Ground on which they stood laid open as aforesaid, were Ordered to take Equal Parcells of Ground Near the Boundhedge which said Ground neither She nor any of the said Inhabitants of Maratta Town whose Houses were so beat Down by the Aforesaid Order of the then Governor and Council for the Aforesaid purposes (were ever put in possession of the same and which this Respondent Conceives was on Account of the Near Approach of the French Army Towards Fort Saint George and that the then Governor and Council could neither

Attend.

Attend to the same nor fulfill the purposes which they might than have of Employing the said Grounds for that the said Grounds were not then or ever Since made use of or Employed by them or for their Service, And further that this Respondent being at that time Distressed and a poor Widow She could not afford to Rebuild her House in like Manner or Many had Done on the Ground they were so Dispossed of as aforesaid, after the said Seige of Fort Saint George by Monsieur Lally this Respondents Ground Accordingly laid unoccupied untill the same was given by Mr Call Engineer to his writer Andrew Peter of which Circumstance this Respondent being informed, She went to Mr Hines her former Master and requested that he would Speak to Mr Call which he Accordingly Did, and the said Mr Call did thereupon, Order the said Andrew Peter to Relinquish the said Ground, whereupon this Respondent again became Possessed of her Ground, but her Circumstances not yet permitting her to build on the same She was forced by her Necessities to go as a Servant to Mrs Wood who was going to Trichinopoly where She Stayed in that Capacity some years, that on her return from thence She was Surprised to find her said Ground in the Possession of a Black Merchant, who on her laying Claim to the said Ground as her property, and Shewing him the Aforesaid Certificate he gave her no Satisfaction, touching the Premises, some time after which She was informed that he had Sold the same unto the Appellant who did then and does most unlawfully and unjustly hold possession of the same And which said Piece of Ground this Respondent did pray in her said Bill of Complaint that the said Appellant might be Decreed to Deliver up and Resign unto this Respondent and to which said Bill of Complaint of this Respondent the said Appellant did put in his Answer Endeavaring to Sett aside this Respondents aforesaid just Claim to the said piece of Ground by alledging that as this Respondent was Once Dispossed of her said Ground by Order of the then Governor and Council on Account of the Approach of the French Army that She was Accordingly Dispossed &c. and unto which said Answer of the Appellants this Respondent did put in a Replication Setting forth and Maintaining that the said piece of Ground which She layed

Layed claim to was justly and truley her property as Appeared by the Certificate which she produced in behalf and support of her said Claim and that the Appellant Did unlawfully and Unjustly withold her from the same and further Settingforth that She by being Dispossessed of her said piece of Ground by the then Governor and Council in Manner Settforth as above did not, nor could not, in any Sense Set aside her Right to the same for it is will known that Governments when the publick Safety is at State for the preservation of the same Often go beyand those lemits of power by which they Act in times of Security and which cannot be construed as Oppresive as every Individual in such Cases rather regards the Common Cause than his Own private property and Interests and which may be the just light in which the then Governor and Council did possess themselves of this Respondents Ground not with any View or intention to Deprive her of the same but as this Respondent Does now and did at that time regard the same to make use of the said piece of Ground for Certain purposes on Account of the Approach of the French Army Towards Fort Saint George but that the said Governor and Council at the time that they did so Possess themselves of the same piece of Ground belonging to this Respondent not having then or ever Since made use of the same this Respondent has Certainly the most just and Lawfull Claim to it and if the Appellant did buy or possess himself of the same under Awrong little, it is no other Concern to this Respondent but that the said Appellant does now unlawfully hold her from her true and lawfull property which cannot be Setaside by any Arguments or things asserted by the Appellant Concerning the said Ground having been granted by the Committee of Works unto Coja Graca and of its having been by them confirmed the property of the future Successors or of the Appellant himself this Respondent having a prior and of Course a preferrable Right to any who have so possessed thierselves of her property During her absence it is their Concern to Settle their Error Among them

themselves, And this Reg

Court of Appeals at Madraspatnam } ss

Wednesday the 25th November 1772.

Between Agavally of Madras Merchant Appellant and Maria Demonte of the same place Inhabitant Respondent —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 24th day of September Anno Domini 1771 and upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Argume-nts 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 Costs in both Courts —

To Cur

To the Honorable Josias Dupre Esqr.
Presidend and Governor &a. Cuncil of Fort St George

In the Court of Appeals

Between David Alcock of Bondarmalanca Merchant by his Attorney James Taylor of Fort St George Merchant and Andrew Majendie of the same place Merchant —

The humble Petition and Appeal of the said David Alcock by his said Attorney —

Sheweth

That your Petitioner Did by his said Attorney on or about the Sixteenth Day of October which was in the year of Our Lord One thousand Seven hundred and Seventy Exhibit a Bill of Complaint in the Honorable the Mayors Court at Madraspatnam Against the said Andrew Majendie thereby Setting forth that Charles Ingram Late of Culcatta in the Kingdom of Bengal Merchant Deceased was in his Lifetime and at the time of his Decease Indebted unto your Petitioner And the Estate of the said Charles Ingram Doth still stand Justly and truely Indebted unto

your —

your Petitioner in the full and Just Sum of Two thousand Five hundred and thirty Two Pagodas Eleven fanams and Seventy Eight Cash as Appears by an Account Annexed to the said Bill of Complaint and which your Petitioner Prayed might be Admitted as part thereof your Petitioner Did further in his said Bill of Complaint Setforth That the said Debt Arose by a Cargo being Provided by your Petitioner for the Ship Pembroke — Commanded by Captain David More of which Ship the said Charles Ingram was in his Lifetime an Owner of One Quarter Part and also for Sundry other Disbursements made by your Petitioner for and on Account of the said Ship your Petitioner Did also Setforth that he had been Informed and had Great

Great

Great Reason to Believe that the said Andrew Majendie hath in his hands Custody or Power Sundry Bonds Notes Bills Sum or Sums of Money upon the Ballance of Accounts and otherwise and Securities for Money Belonging to and Part of the Estate of the said Charles Ingram or whereof or wherein the Estate of the said Charles Ingram is Interested or that some part parcel or proportion thereof is Due Owing or Belonging to the said Estate. That your Petitioner had also been Informed and believes that all or part of such Bonds Notes Bills money Securities for Money or such part parcel or proportion thereof as is or are so Due Owing or Belonging to the said Estate of the said Charles Ingram Did Actually arise from and is or are the proceeds of Sales of Goods Freight and other things made and Received on Accounts of the Concern or Share which the said Charles Ingram held in or was Owner of in his Life time of and in the said Ship Pembroke and your Petitioner did in and by his said Bill of Complaint Pray that the said Andrew Majendie might Set forth or full true and Par-ticular Account of all such Bonds Notes Bills Sum and Sums of Money and Securities for Money and whether all or some and what part thereof Did not Actually arise from and is or are the Proceeds of Sales of Goods belonging to or which came on the said Ship Pembroke or Freight for Goods which came on her or Freight for the said Ship herself And what part Proportion or Share the said Charles Ingram had held or was Owner of in the said Ship Pembroke And that the said Andrew Majendie might be Decreed to pay unto your Petitioner all such Sum or Sums of Money as he has so in his hands Custody or Power belonging to the Estate of the said Charles Ingram beforementioned on Account of your Petitioners said Just Demand, And in Case the same should not be Sufficient to Satisfy and Pay your Petitioners said Demand that the said Andrew Majendie might be Decreed to Deliver over unto your Petitioner all or such of the said Bonds Notes Bills or other Security or Securities for Money as he has in his hands Custody or

Great

Power

Power belonging to and part of the Estate of the said Charles Ingram or such part thereof as might Appear Necessary to Satisfy the whole of your Petitioners said Demand with all such Interest as their was or should thereafter become Due therein And in case it should Appear that the said Charles Ingram had only a Share or Proportion in any such Bonds Notes or Securities for Money that such Share or Proportion thereof might in case of Deficiency of other Property be Delivered over and Paid to your Petitioner as aforesaid And that the said Andrew Majendie might also be Decreed to Pay all Costs of this Suit as more fully and at Large Appear on Reference to the said Bill of Complaint To which said Bill of Complaint the said Andrew Majendie Did on or about the fifth Day of March Last put in an Answer thereby Setting forth that he Doth Believe the Estate of the said Charles Ingram is Indebted unto your Petitioner in the Sum of Two thousand Five hundred and Thirty Two Pagodas Eleven fanams and Seventy Eight Cash and that the said Debt Did Arise in the manner Specified in the said Bill of Complaint that is to Say, By a Cargo being Provided by your Petitioner for the said Ship Pembroke &c. and that the said Charles Ingram Deceased was in his Lifetime a One Quarter Part owner of the said Ship The said Andrew Majendie Did further in his said Answer Setforth that he as being the Acting Owner for the said Ship Pembroke hath in his Possession a Ballance of Eight hundred and Eighty Nine Pagodas Twenty Six fanams and Sixty Nine Cash Due to the Owners of the said Ship Pembroke as Appears by an Account Annexed to his said Answer and which he Prayed might be Admitted as part thereof That he hath Moreover in his Possession the two following Bonds Viz^t One Bond from Mr. William Taylor Dated at Bombay the Seventh of July One thousand Seven hundred and Seventy for the Sum of Twenty Two thousand Five hundred and Fifty Bombay

Rupees Three Annas and Eight One Pice, And an Arbitration Bond from the said William Taylor given the Eleventh Day of July One thousand Seven hundred and Seventy for Three hundred and Ninety One Bombay Rupees and Five Pice Both of which Bonds are to Run at the Rate of Nine ₰ Cent ₰ Annum, which Bonds he said he would Produce before the said Court when Required, The said Andrew Majendie Did further in his said Answer Setforth That the said Ballance of Cash together with the Amount of the Two Bonds before Specified are the Produce of the Sale of the beforementioned Cargo Provided by your Petitioner and of Freight for Goods brought on the said Ship Pembroke, And that the Estate of the said Charles Ingram is Intitled to a One Quarter Part of the Amount of the said Ballance of Eight hundred and Eighty Nine Pagodas Twenty Six fanams and Sixty Nine Cash, as Likewise to a One Quarter Part of the Amount of the Two Bonds before mentioned when the said Bonds are Discharged, That the Reason why the said Andrew Majendie was Unwilling to comply with the Demands of your Petitioner on the Estate of the said Charles Ingram was because the said Ship Pembroke in which the said Deceased Did in his Lifetime hold a One Quarter Part or Share was much Indebted unto the said David More the Commander of her for his Pay and Privelege the Amount whereof the said Andrew Majendie was unable to ascertain Altho' he was well Assured that the Sum Due by the Ship on that Account Considerably Exceeds the said Ballance which he has in his Possession and which he Did not Esteem himself Authorized to Part with for that the said Charles Ingram Deceased Died Die Insolvent &c. As will Morefully and at Large Appear on Reference to the said Answer To which said Answer your Petitioner put in a Replication Setting forth that as your Petitioners said Demand Arose by a Cargo being Provided by Petitioner for the said Ship Pembroke and also for Sundry Disbursements

Disbursments made by your Petitioner for and on Account of the said Ship, as Setsforth in the said Bill of Complaint, and as the said Andrew Majendie Achnowledges in his said Answer and as the said Charles Ingram was in his Life time One Quarter Owner of the said Ship, and as the Money and Bonds Setforth in the said Answer are the Produce of the Sale of the said Cargo so Provided for the said Ship Pembroke by your Petitioner &c. as before Setforth, and that the Estate of the said Charles Ingram is Intitled to One Quarter Part of the said Amount of the said Money and Bonds your Petitioner humbly conceived, as he still does, that such Quarter of the Amount of the said Money and Bonds or so much thereof as will be Sufficient to Satisfy your Petitioners said Just Demand Ought to be Applyed in Satisfaction thereof Notwithstanding what the said Andrew Majendie in his said Answer Setsforth of the said Ship Pembroke being Indebted unto the said David More and of the said Charles Ingram's having Died Insolvent &c. To which matters your Petitioner is an entire Stranger, as the said Matters are not as your Petitioner conceives by any means Sufficient to Bar or Exclude your Petitioner from having his said Just Demand Satisfyed out of the Proceeds of the Very Articles in which it was Invested, and which was so Invested Previous to both the said Circumstances which the said Andrew Majendie mentions as Reasons why he was Unwilling to Comply with your Petetioners said Just Demand, and if that had not been the Case that the same was so Invested Previous thereto your Petitioner was and is of Opinion that he has an undoubted Right to have his said Demand Satisfyed Out of the Proceeds of the Property on Account of which his said Demand Arose, Exclusive of the Right he conceives he has to have the same Paid out of the said Charles Ingrams Estate in General. To which Replication the said Andrew Majendie put in a General Rejoinder, Issue was Joined Rules for Witness Passed an Attested Copy of a Letter from the said Andrew Majendie and your

your Petitioners said Attorney to Messrs. Andrew Ramsay and David Fell at Bombay about the said Bonds &c. was Produced on the part of your Petitioner Confirming the said Andrew Majendies Achnowledgement of the Justness of your Petitioners said Demand and the Circumstances Attending the same And the said Cause was Set Down for hearing And the same coming on to be heard on Tuesday the Twenty Ninth Day of October Last, the said Court were Pleased to Order and Decree that your Petitioners said Bill should stand Dismissed with Costs, And that merely Because your Petitioner had founded his Demand against the Estate of the said Charles Ingram Deceased, and no One Appearing on the Part of the said Estate to Allow of or to Contest the same and the Court were of Opinion that the Achnowledgments of the said Andrew Majendie, with Respect to the Justness of the said Debt and the manner in which the same Arose were not Sufficient for them to give a Decree in favor of your Petitioner. As will more fully and at Large Appear on Reference to the said Decree which comes herewith for the Inspection of this Honorable Court. By which said Decree your Petitioner thinks himself Particularly Aggrieved and Doth therefore Appeal therefrom to this Honorable Court, For as his Demand arose by a Cargo being Provided by your Petitioner for the said Ship Pembroke &c. and as the Money and Bonds in the hands of the said Andrew Majendie are the Produce of that very Cargo and the Earnings of the said Ship on which your Petitioners Property was Laid out to Serve and Assist the Owners of the said Ship, and as the said Charles Ingrams Estate on which your Petitioners Present Demand is for his Proportion of the money so Invested by your Petitioner is Intitled to a One Quarter of the Money and Bonds in the hands of the said Andrew Majendie your Petitioner thinks himself Justly Intitled to have his said Demand paid out of such property whether any One Appears on the part of the said Estate of the said Charles Ingram or not for

a your Petitioner Conceives no One Appearing on the part of the said Estate can be no good Reason why your Petitioner should not have his said Just Demand paid out of the said Estate and particularly out of the Proceeds of the Cargo and Earnings of the Ship in and on Acc-ount of which a your Petetioners property was so as aforesaid Invested Besides your Petetioner Conceives that the Achnowledgments of the said Andrew Majendie on Oath in his said Answer with Regard to the Justness of your Petetioners said Demand and the Way in which it Arose are very Different from the Achnowledgements of a Person who in all Probability might not Really know whether your Petetioners said Demand was Just or not, For the said Andrew Majendie Does so Assert the said matters from a thorough knowledge and Conviction that the said Matters are Really so as he was not only a Part Owner of the said Ship but also the Acting Owner who Transacted and Managed the Affairs and Business Relative to her and thereby became well Acquainted with every Account and Concern that Related to her, and has himself Paid your Petetioner his Proportion of the Provision of the said Cargo and Expences And as such much more Likely to know whether the said Demand was Just or not than almost anay Representative of the said Charles Ingram could be But Exclusive of all this your Petitioner Conceives he has not only a Right to have his said Just Demand Paid out of the Estate of the said Charles Ingram let it be where or in whose hands it may But he has also a Right by Law to have his said Demand Paid out of the Proceeds of the said Cargo &c. in the hands of the said Andrew Majendie as the same is the very Partnership Concern in which your Petitioners Money was Invested, and its a fixed Maxim

That

That Partnership Debts must first be Paid out of the Partnership Estate or Concern and Particularly so in Cases of Bankruptcy or Insolvency which the said Andrew Majendie mentions — For all which Cogent Reasons your Petitioner Doth Appeal to this Honorable Court from the said Decree of the said Honorable the Mayors Court And humbly Prays that the said Decree may be Reversed and Setaside And that the One Quarter Share or Proper-tion of the said Money and Bonds in the hands of the said Andrew — Majendie to which the Estate of the said Charles Ingram is Intitled, Or so much thereof as is or may be Sufficient to Discharge the Principal and Interest of your Petitioners said Demand, together with the Costs of this Suit may be Appropriated to that Purpose, and your Petitioner Doth also Pray such farther and other General Relief in the Premises as to this Honorable Court Shall seem Meet

John Sykes
Att.y for the Appellt.

Mayors Court at Madraspatnam } { Tuesday the 29th day of October Anno Domini 1771

Present

John Hollond Esqr. Mayor

Edward Stracey — George Smith &

John Mc. Pherson — Aldermen.

Between David Alcock of Bandar=malanka Merchant by his Attorney James Taylor of Fort St. George Merchant Complainant and Andrew Majindie also of the same place Merchant Defen=dant

This Cause coming on to be Heard and debated this day in the presence of the Attornies on both sides on Reading the Complainant Bill with an Account Current annexed The defendants Answer with an Account Current annexed. The Replication The Rejoinder. One Exhibit on the part of the Complainant On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon The Complai=nant having founded his demand Against the Estate of Charles Ingram deceased and no one Appearing on the part of the said Estate to Allow of or to Contest the same and the Court being of Opinion that the Acknowle=dgements of the Defendant with Respect to the justness of the Debt and the manner in which it arose are not Sufficient for them to give a Decree in favour of the Complainant This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Complainants Bill stand dismissed with Costs — Ut Cur

To the Honble Josias Dupre Esqr.

President and Governor &a. Council of Fort St George

In the Court of Appeals

The Answer of Andrew Majindie of Madras Merchant to the Petition of Appeal of David Alcock by his Attorney James Taylor

This Respondent does admit that the Appellant did on or about the Sixteenth day of October which was in the Year of Our Lord One thousand Seven hundred and Seventy by his said Attorney file a Bill of Complaint Against this Respondent in the Honorable the Mayors Court of Madras=patnam therein Setting forth that Charles Ingram late of Calcutta in the Kingdom of Bengall Merchant deceased was in his Lifetime and at the time of his decease Indebted unto the Appellant and that the Estate of the said Charles Ingram doth still stand justly and truely indebted unto him the said Appellant in the full and just Sum of Two Thousand five hundred and thirty two pagodas Eleven fanams and Seventy eight Cash as Appeared by an Account Current Annexed to the said Bill of Complaint, wherein the said Appellant did further setforth that the said Debt arose by a Cargo being provided by the Appellant for the ship Pembroke David More Commander, of which Ship the said Charles Ingram was in his Lifetime an Owner of a one Quarter part

and

And also for Sundry other disbursements made by the Appellant for and on Account of the said Ship, The said Appellant the said Appellant did also Set forth that he had been informed and had great Reason to believe that this Respondent had in his hands Custody or power Sundry Bonds Notes, Bills Sum or Sums of Money upon the Ballance of Accounts and otherwise and Securities for Money belonging to and part of the Estate of the said Charles Ingram deceased or whereof or wherein the Estate of the said Charles Ingram was interested, or that Some part or proportion thereof was due, Owing, or belonging to the said Estate, And that the said Appellant had been also informed and believed that all or part of Such Bonds, Notes Money, Securities for Money or Such part parcell or proportion thereof as was or were so due Owing or belonging to the said Estate of the said Charles Ingram did actually arise from and are or were the proceed of Sales of Goods freight and other thinge made and received on Account of the concern or Share which the said Charles Ingram held in or was Owner of in his life time of and in the said Ship Pembroke and the said Appellant did further in and by his said Bill of Complaint pray that this Respondent might Set forth a full true and particular Account of all such Bonds Notes Bills, Sum or Sums of Money and Securities for Money and whether all or Some and what part did not Actually arise from and are or were the proceeds of Sales of Goods belonging to or which came on the said Ship Pembroke or freight for Goods which came on her or freight for the said Ship herself and what part proportion or those the said Charles Ingram held therein or was Owner of in the said Ship Pembroke, and that this Respondent might

Might be Decreed to pay unto the Appellant all such Sum or Sums of Money as he had so in his hands Custody or Power belonging to the Estate of the said Charles Ingram deceased on Account of the Appellants said demand, and in case the Same should not be Sufficient to Satisfy and pay his said Demand that this Respondent might be decreed to deliver over unto the said Appellant all or such of the said Bonds Notes Bills or other Securitys for Money as he had in his hands, Custody or Power belonging to and part of the Estate of the said Charles Ingram or such part thereof as might Appear Necessary to Satisfy the whole of the said Appellants Demand wherein with all such Interests as there was or Should hereafter become due thereon and in Case it Should Appear that the said Charles Ingram had only a share or proportion in any such Bonds Bills. Notes or Securities for Money that such share or Proportion thereof might in Case of defficiency of other property be delivered Over and paid to the said Appellant, and further that this Respondent might be decreed to pay all Costs of this Suit And unto which said Bill of Complaint this Respondent did put in an Answer, therein Setting forth that he did believe the Estate of the said Charles Ingram deceased was Indebted unto the Appellant in the Sum of Two thousand five hundred and thirty Two pagodas eleven Fanams and Seventy eight Cash and that the said debt did arise in the Manner Specified in the said Bill of Complaint that is to Say By Large being provided by the said Appellant for the said Ship pembroke &c. and that the said Charles Ingram deceased was in his Life time a One quarter part Owner of the said Ship and that this Respondent as being the Acting Owner for the said Ship Pembroke had in his posession a Ballance of Eight hundred and eighty nine Pagodas twenty Six fanams and Sixty Nine Cash due to the Owners of the said Ship Pembroke as appeared

Appeared by an Account Current Annexed to this Respondents said Answer and that he had likewise in his possession the two following Bonds Viz. One Bond from Mr. William Taylor dated at Bombay the Seventh of July One thousand Seven hundred and Seventy for the Sum of Twenty Two thousand five hundred and fifty Bombay Rupees three Annas and eighty one pice, and an Arbitration Bond from the said Mr. William Taylor given the eleventh day of July One thousand Seven hundred and Seventy for three hundred and Ninety One Bombay Rupees and five pice, both of which were to run at the Rate of Nine per cent ⅌ Annum &c. &c. and unto which said Answer of this Respondent the Appellant did put in a Replication and unto which this Respondent did put in a General Rejoinder Issue was Joined Rules of the Examination of Witnesses passed and publication passed and one Exhibit on the part of the Appellant produced and the said cause was Setdown for hearing and the Same coming on to be heard on Tuesday the Ninth Day of October last the said Court were pleased to order Order and Decree that the Appellants said Bill should Stand Dismissed with Costs Alledging for Reason thereto that the Appellant had founded his demand Against the Estate of the said Charles Ingram deceased and no one Appearing on the part of the Estate of the said Charles Ingram to Allow of or contest the same and that the Court were of Opinion that the Acknowledgements of this Respondent with Respect to the Justness of the said demand and the Manner in which the Same arose were not Sufficient for them to give a Decree in favor of the Appellant and which said Decree this Respondent humbly Conceives to be just and prays that this Honble Court will be pleased to confirm the Same and that the Appellants said

Bill of Complaint may be Dismissed with Costs—

H. Dupuy
Att-y for the Respondent

Wednesday the 25th November 1771

Court of Appeals
at
Madraspatnam } ff

Between David Alcock of Fort St George Merchant Appellant and Andrew Majendie also of the same place Merchant Respondent—

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court to gether with the Decree of the said Court given in this Cause on Tuesday the 29th day of October Anno Domini 1771 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 Costs in both Courts—

⅌ Curr

To the Honble Josias Dupre Esqr
President and Governor &c. Council of Fort St George

The humble Petition and Appeal of
Salvador Da Graca late one of the
Mariners belonging to the Ship Savage
John Attenborough Commander

Sheweth

That your Petitioner on or about the Eleventh day of September which was in the year of Our Lord One Thousand Seven hundred and Seventy did Prefer a Bill of Complaint in the Honble the Mayors Court Against the Respondent John Attenborough for the Sum of Fifty Two Pagodas and Ten Fanams Current Money of Madraſs being for the Balance of Wages due to your Petitioner as one of the Mariners belonging to the said Ship Savage as will more fully and at large Appear by the said Bill of Complaint and the Account Current thereunto Annexed To which said Bill of Complaint the said Respondent did on or about the Ninth day of October in the Aforesaid year One Thousand Seven Hundred and Seventy put in his Answer and therein Admitted of the Validity of the Account Current Annexed to this Appellants said Bill of Complaint but Alledged that this Appellant hath Forfeited the Wages due to him by not proceeding in the said Ship Savage from the Port of Madraſs to Surat for that this Appellant did agree with him the said Respondent to go as one of the Mariners of the said Ship Savage from the Port of Surat to any other Port or Ports and until her arrival back to Surat To which Answer this Appellant did put in a Replication and therein maintained all the matters and things set forth and Stated in his said Bill of Complaint and the Account Current thereunto Annexed to be true in such Manner and from as therein and thereby is set forth and Alledged and further Replied that he absolutely Never did make the Prementioned Pretended Agreement with the said Respondent for that he was hired only as a Monthly Servant at the Pay of Twelve Arcot Rupees per Month during the Time that he continued as a Mariner of the said Ship Savage and furthermore this Appellant in his said Replication Replied that an Agreement or Covenants entered into by the Master and Mariners without Particularly mentioning the port or ports the Vessel was to go to would be Deemed both by Law and Equity to be Invalid and of no Effect as thereby the Mariners would be left without Remedy and that Covenants by Law ought to Bind both parties to perform but as this Appellant did not enter into any Agreement whatsoever he Insisted that the Wages due to him could not be forfeited To which Replication the said Respondent did put in a Rejoonder and therein Averred that all the Matters and things Alledged and set forth by him the said Respondent in his said Answer were true in such Manner as therein is Alledged and Expressed and further introduced many other Matters which this Appellant with Submission conceives is Quite Foreign from the Subject and can by no means cause a Forfeiture of this Appellants Demand for the Amount of which he hath Honestly Served as a Mariner on Board the said Ship Savage This Appellant further saith that after the Prementioned Proceedings Issue was Joined and Rules for to Examine Witnesses and Publication Passed and the Cause set down for hearing

hearing and after having gone through all the Necessary Process the same came on to be heard and Debated before the Honble the Mayors Court on Tuesday the Tenth day of December last when, Notwithstanding that this Appell-ant did make oath to the Justness of his Demand and in his Replica-tion absolutely denied to have ever made the Agreement mentioned by the said Respondent and for its support no proof whatsoever was Produced and Altho by an Act made in the Second Year of the Reign of his late Majesty King George the Second it is Enacted and Particularly Expres-sed that no Seaman shall fail in any Action or process for Recovery of Wages unless he had entered into a Written Contract with the Master to perform a certain Voyage Particularly to be Expressed and afterwards had deserted the Vessel before its Completion and which Contract the Master is directed to produce into Court; Yet the said Honble the Mayors Court Ordered and Decreed that as it Appears to them by the Proce-dings that this Appellant left the Ship before the Voyage in which he Engaged was Compleated and that he thereby forfeited the Wages said for they therefore thought fit to Order and Decree that this Appellants Bill (them Complainants) shall stand Dismissed with Costs, as will More fully and at large Appear by said Decree of the Honble the Mayors Court hereunto Annexed for the Inspection of this Honble Court, and to which this Appellant, humbly prays a Reference By which Decree this Appellant most humbly Conceives he has Apparent Damage for if the Master Sails on a Voyage and Neglects Acting Agreeable to the Established Laws of his Country it is a hard case for the Mariners to Suffer by such Neglect, and Moreover as this Appellant did never Agree to go with the said Respondent on any Particular

Voyage

Voyage he Consequently could not forfeit the Wages due to him This Appellant further saith that he was Confined in the Town Goal for debt at the time he Commenced his said Action Against the said Respondent and Remained therefore several days Afterwards, and if this Appellant had Deserted or Absented himself from his Ship contrary to Agreement the said Respondent ought to have made an Application to one of his Majesties Justices of the Peace who upon proof thereof would have Appre-hended This Appellant and Oblige him to fulfill his Agreement, and the said Act made in the Second year of the Reign of his late Majesty King George the Second, do give his Majesties Justices of the Peace full Authority so to do, but on the Contrary it Appears by the Depo-sition of Pascoal De Rozario that the said Respondent was Refrac-tory and made many Evasive Excuses when sent for by George Stratton Esqr. one of his Majesties Justices of the Peace on a Complaint made to him by the said Pascoal De Rozario for Forcibly sending this Appellant together with Ignacio Pereira and John Peter Talton on Board the said Ship Savage &c. and this Appellant with Submission Conceives that if the said Respondent had the least Colour or Pretence for Retaining this Appellant he had a fair Opportunity of prooving the same before a Person fully Authorised to give him Redress but by the said Respondents Neglecting, nay, Absolutely Refusing to do so it is a Tacit Acknowledgement that there was no Agreement depending between him and this Appellant and therefore with Submission to this Honble Court he thinks himself both by Law and Equity Justly entitled to his Wages due from the said Respondent as aforesaid for all which Reasons This Appellant doth Appeal from the said Order or Decree of the Honble the Mayors Court for this Appellants Bill to stand Dismis-sed.

Dismissed with Costs ~

your Petitioner therefore most humbly Prays that the said Defendant / now Respondent / may be Appointed a Short Day to Answer all and Singular the Premises before this Honble Court and that the said Order or Decree may be reversed and set aside as also that the said Defen-dant / now Respondent / may be Decreed to pay unto this Appellants the full and Just Sum of Fifty Two Pagodas and Ten Fanams with all such Interest is now is or shall hereafter become due thereon until full payment is made also the Costs of Suit in both Courts and be granted such further and General Relief in the premises as to this Honble Court Shall Seem Meet ~

And your Petitioner Shall Ever Pray ~

Dan.l Shaw
Att.y for the Appellant

Mayors Court at Madraspatnam } Tuesday the 10th Day December ~ Anno Domini 1771 ~

Present

John Hollond Esquire Mayor
Thomas Powney — Francis Sourdan
George Smith — John Mc Pherson and
John Sullivan — Aldermen ~

Between Salvador da Graca at present in Madras Mariner Complainant and John Attenborough also at present in Madras Mariner 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 Replication The Rejoinder The Interro-gatories and Depositions on the part of the Defendant On hearing the plea-dings made use of by the Attornies and on Due Consideration had thereon. It Appearing to the Court from the proceedings that the Complainant left the Ship before the Voyage in which he Engaged was compleated and that he thereby forfeited the Wages now sued for 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 ~

Per Cur

To the Honorable Josias Dupre Esq.r
President and Governor &.a Council of Fort St George

In the Court of Appeals

The Answer of John Attenborough Mariner and Commander of the Ship Savage to the Petition of Appeal of Salvador da Graca Late Helms-man of the said Ship ~

This Respondent Saith that he Admits that the Appellant did at or about the time mentioned in the said Petition of Appeal Exhibit a Bill of Complaint in the Honorable the Mayors Court Against this Respondent for the Sum of Fifty Two Pagodas and Ten Fanams Current Money of Madras which he Alledged tho very unjustly that this Respon-dent was Indebted to him on the Ballance of an Account of wages Annexed to the said Bill ~ To which said Bill of Complaint this Respondent Put in an Answer But Instead of Admitting of the validity

of

of the Account Annexed to the Appellants said Bill as the Appellant Asserts he did in his said Answer Absolutely deny to be Indebted unto the Appellant either in the Sum Sued for or any other Sum or Sums of Money whatsoever On the Contrary that the Appellant stood Indebted unto him this Respondent in the Sum of Nineteen Pagodas and forty One fanams being the Ballance of the Account Annexed to the said Answer which this Respondent Prayed the Appellant Might be Decreed to pay to this Respondent with all such Interest as then was or should thereafter become due thereon Also all Costs of this Suit. This Respon-dent did further in his said Answer Setforth that the Appellant having in December One thousand Seven hundred and Sixty Eight Shipped himself with this Respondent at Surat as a Helmsman of the said Ship Savage to go the Voyage from Surat to any Ports or Places to which the said Ship might go and back again to Surat he this Respondent did advance him four months Impress or Wages as is Customary Amoun-ting to forty Eight Rupees and at Madras Twenty One Rupees as Charged in the said Account Annexed to this Respondents said Answer and Corroborated by the Credits of those Identical Sums in the Account Annexed to the Appellants said Bill— That the said Appellant having so Shipped himself to go the said Voyage this Respondent Conceived as he still does he is not Either by Law or Custo-gement with this Respondent which would not have been untill Entitled to his Wages untill he has fulfilled his Agreement or Enga-the said Ship Savages Arrival at Surat if he had Continued on her But more Particularly so as the Appellant has Quitted the said Ship Savage without this Respondents Leave and gone on Board some other Ship whereby the Appellant forfeited all the right that he might otherwise have had to his Wages had he proceeded on the Voyage in the said Ship Savage untill the same was finished by her Arrival at Surat as afore-said And as he has so forfeited his right thereto he is become Indebted to this Respondent for the Money he Advanced him on Account of the said Voyage as before mentioned Instead of this Respondent being Indebted to him for his Wages in the Unjust manner the Appellant Charges and pretends and for which he has so unjustly Prosecuted this Respondent. This Respondent did further in his said Answer beg leave to Recommend to the Attention of the said Honorable the Mayors Court as he now does to this Honorable Court the Appellants having on the Eleventh Day of September which was in the year of Our Lord One thousand Seven hundred and Seventy Swore to the Justness of his Pretended Demand and that he believed this Respondent was about to Depart from the Jurisdiction of the said Honorable the Mayors Court in Order to Obtain a Warrant of Arrest to Arrest this Respondents Person whereby this Respondent would Actually have been Arrested had he not given Bail, when so far from this Respondents departing the Jurisdiction of the said Honorable Court As should have been the Case to have Authorized the Appellants Unjust Illegal and unwarrantable proceedings Against him he this Respondent was still at the time of Making the said Answer within the said Jurisdiction that is to Say on the Ninth Day of October in the said year One thousand Seven hundred and Seventy— This Respon-dent did further Setforth that if a Commander of a Ship is liable to be Arrested and detained in any Port or Place to which a Ship goes or at which She touches During her Voyage by the Mariners and People who—

who are or ought to Conduct and Navigate her and Ought to be Aiding and Assisting as much as in their power towards her Safely and the speedy Conclusion of her Voyage Aproceeding of this Sort might be of very Dangerous Consequence both to the Commander of the Ship the Owners Freighters Insurers Respondentia Senders and others Concerned therein Matters of this Nature having as this Respondent Conceives from the Laws and Regulations in Affairs of this Sort Appeared to the Legislature in this Light Laws and Regulations have been Wisely made to Prevent such bad and Dangerous Consequences which this Respondent humbly hoped and Doubted not would be Enforced both in this Case and in every One of the like Nature. And that this Respondent would meet with the Redress to which the said Honorable the Mayors Court might think him Intitled which he has done, and humbly hopes the same will be Confirmed by this Honorable Court To which said Answer the Appellant put in a Replication thereby Endeavouring tho' very Evasively to Confirm his said Bill and Pretending that he Shipped himself with this Respondent at Surat as a Monthly Servant and in the Capacity of a Helmsman. And also Pretending it is Customary in India to Advance the Mariners before the Departure of a Vessell a Sum of Money in Proportion to the time it may take up in the Passage or Voyage from Port to Port he therefore Received the Advance of forty Eight Rupees, which is four months Wages that he never made any Agreement to go the said Voyage &c. And that he was by a Precept Issued out of the said Honorable the Mayors Court Arrested on Board of the said Ship Savage by the Sheriff at the Suit of Pascoal de Rozaries and was in the Custody of the Sheriff when he Commenced his Action Against this Respondent. To which said Replication this Respondent put in a Rejoinder

Rejoinder thereby Confirming his said Answer and Refuting the several Matters and things Setforth in the said Replication And this Respondent did therein Absolutely deny that the Appellant did Ship himself with this Respondent as a Monthly Servant and that its Inconsistent that a Helmsman who is always Shipped for the Voyage should to Colour his Unjustifiable quitting the Ship in the Manner Setforth in this Defendants said Answer Attempt to put himself on the Footing of a Monthly Servant And what proves Clearly that he was not Shiped as a Monthly Servant but for the Voyage as is Customary is his having Received from this Respondent four Months Advance Now this could not be either an Advance or pay for One Month or two Months for a Monthly Servant can at all times by Custom Quit his Service in India by giving a Months Notice of his Intentions so to do it would therefore be Absurd for four Months Wages to be Advanced to a Servant that may Quit his Service in One Month but this Notice the Appellant did not give tho if he had it would have been to no purpose This Respondent did also deny that it is the Custom to Advance Mariners in India before the Departure of the Vessell from the Place where they are Shipped a Sum of Money in Proportion to the time it may take up in the Passage or Voyage from Port to Port as the Appellant Setsforth On the Contrary it is Customary to Advance them four Months Pay As this Respondent did in this Case upon the Strength of their going the Voyage and by way of Enabling them to Provide themselves with Necessaries for the Voyage And as a proof that that is the Case it is well known that a Ship or Vessell is but very Seldom four Months on her Passage from Port to Port in India And very often not One Month or half a Month And if it was really the Intent of the Master and Mariner that the Mariner should leave the Ship or Vessell at the first Port She may go to the

master

Master would certainly Never Advance the Mariner four Months Pay but its Evident this cannot be the case in Generail Nor could it be so in this Particular One. That with regard to the Agreement which the Appellant made use of as to a Commander of a Vessell going from Port to Port and never returning to the Place where the Supposed Voyage was to End that is too general and Evasive an Agreement to hold good in this Case And this Respondent believes there are but very few if any Instances of that being the Case But so far from that the Appellant well knew this Respondent had no such Intention but that his Intentions but that his Intentions at the time the Appellant so unjustly Prosecuted this Respondent were to go to Bombay and from thence to Surat. And as the Appellant had Proceaded so far on the Voyage thereto certainly could be no Excuse for his and the other Helmsmans who have also Prosecuted this Respondent Quitting and leaving her in Distress at the time when they Supposed this Respondent would Sail in two or three Days as the said Ship Savage was ready as they say in their Replications to Sail This was an Unjustifiable Proceeding and that Instead of taking any method to Distress either the said Ship or this Respondent as Commander it was their Indispensable Business and Duty to have used their Utmost Endeavours and been Aiding and Assisting as much as in their Power towards the Speeding and Safe Conclusion of the said Voyage as before mentioned In which Case they would not only have been entitled to have Retained the Wages already Advanced them by this Respondent but also to have had the Remainder of their wages at the End of the Voyage which this Respondent Proposed Paying them. Nor can what the Appellant seems so much to hinge upon as a Plea to Evade the real

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Intention of his being Shiped on Board the said Ship Savage which is that of a written Agreement and Covenants &c. by any means Justify his the Appellants Conduct as before and in the this Respondents said Answer and Rejoinder Setforth and Indeed is only meer Matter of Evasion. And with regard to what the Appellant Setforth in his said Replication about his being Arrested on Board the said Ship Savage &c. in Order to Colour his Quitting the said Ship in the Unjustifiable way he did this Respondent Rejoined that it was for the Amount of Impress Money taken by the Appellant to go on Board another Ship that he was so Arrested for on the Appellants Receiving the said Impress Money the said Pascoal de Rozario became Security for the Appellant to the Person from whom he took the said Impress Money and as a Colour for the Appellants Quitting the said Ship Savage to go on Board the Ship or vessell for which he was so Impressed the Person who Impressed him and to which the said Pascoal de Rozario became Answerable either for the Appellants going on Board the said Ship or Vessell or for the Impress money in case the Appellants did not do so Called upon the said Pascoal De Rozario to fulfill his Engagement whereupon he the said Pascoal De. Rozario Exhibited a Bill of Complaint in the said Honorable the Mayors Court Against the said Appellant and Obtained a Warrant of Arrest Against him In consequence of which he was Arrested on Board the said Ship Savage brought a Shore put in Prison for a few Days Commenced his unjust Action Against this Respondent and was soon after that Released and went on the said Ship or Vessell for which he was so Impressed as before mentioned. This being the way in which the Appellant was Arrested on Board the said Ship Savage as he

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Mentions in his said Replication this Respondent Submits to this Honora-
-ble Court whether the same Instead of being an Extenuation of the Appel-
-lants Aggression and Unjustifiable Conduct and Proceedings is not an
Addition to it and renders his Conduct and Action more Illegal and
unwarrantable This Respondent did also in his said Rejoinder Main
-tain the Justness and Propriety of what he has in his said Answer Setfor-
-th^a before Recited about a Commanders being Arrested by the Mariners and
Saith it is a Dangerous Proceedings and much Discountenanced by Law
for wise and Just reasons which are very Apparent As will more fully
and at large Appear on Reference to the said Answer and Rejoinder

Upon these Proceedings Issue was Joined Rules for
Witnesses Passed the said Pascoal De Rozario was Examined on all Points
on the part of this Respondent Regarding the Appellants Receiving
Impress to go on Board Another Ship and the Nature of the Arrest or
Board the said Ship Savage &c. Publication Passed and the said Same
Cause was Setdown for hearing and coming on to be heard and Debated by and
before the said Honorable the Mayors Court on Tuesday the Tenth Day of
December last And it Appearing to the said Court from the Proceedings that
the Appellant left the said Ship before the Voyage in which he Engaged was
compleated and that he thereby forfeited the Wages he has Sued for the said Court
did therefore think fit to Order and Decree and did Accordingly Order and
Decree that the Appellants said Bill should stand Dismissed with Costs
As will more fully and at large Appear on Reference to the said Decree now
before this Honorable Court

From which Decree this Respondent Conceives the Appellant had
no Just Cause or Reasons whatsoever to Appeal to this Honorable Court,
as this Respondent Conceives he has neither Apparent Damage as he Sets
-forth in his said Petition of Appeal, Nor is he in the least Aggrieved thereby
And with Regard to what the Appellant Setsforth in his said Petition
of Appeal that he had made Oath to the Justness of his Debt, and also deny
-ing that he ever made the Agreement mentioned by this Respondent,
he this Respondent Saith that in the first Place the Appellants making Oath
to the Justness of his Demand can be of no Validity, As it clearly Appears by
what is by this Respondent Setforth on Oath in his said Answer, and
Confirmed by the Deposition of the said Pascoal De Rozario, that the
Appellant did Desert the said Ship, and that too when he was Informed
where the said Voyage was to End Exclusive of his having been hired for that
Purpose by which he did to all Intents and Purposes forfeit all the right
that he might otherwise have had to his Wages had the Proceeded on the said
Voyage, And having so forfeited his Wages his making Oath that his said
Demand was Just in Order to Procure this Respondent to be Arrested,
was Illegal and Rendered the Appellant liable to such Prosecutions
and Penalties as the Law Inflicts in those Cases And that the Appellant
did Agree to go the said Voyage clearly Appears by this Respondents said
Answer on Oath, Against which no Proof whatever has been produced wherein
this Respondents has Positively Declared that the Appellant did Ship
himself with this Respondent at Surat as a Helmsman of the said Ship
Savage to go the Voyage from Surat to any Ports or Places to which the said
Ship

Ship might go and back again to Surat, and that he this Respondent did thereupon Advance him four Months Impress or wages, as is customary This was certainly an Agreement and such a One as the Law Esteems Binding on the Parties Otherwise why was it made why did both Par-ties Agree thereto, and why did this Respondent give and why did the Appellant Accept of an Earnest, not only to bind the said Bar-gain but also to Provide himself with Necessaries for the said Voyage and why did this Respondent make him a further Advance for the same Purpose when he thought the Nature of the Case and Voyage Required it - It certainly could not After these Matters were Agreed on and done and that too According to the Common Custom of India Be Supposed that the Appellant was at Liberty to quit the said Ship before the End of the Voyage, and not only Leave her in Distress, as he and the other Helmsman did, But also take the most Effectual method for the Detention, and perhapes Loss of the said Ship and the Injury or perhapes Ruin of every person Concerned therein, which was that of Prosecuting this Respondent as her Commander and under whose care and management both She and her Cargo were, and not only Prosecu-ting Him but Procuring a warrant of Arrest in Order to Arrest and Imprison this Respondent, which must have been the Case both at the Suit of the Appellant and the other Helmsmen who entered the like Process Against this Respondent and who have also Appealed to this Honorable Court. had not this Respondent been fortunate Enough to procure Bail, The Hardship and Illegality of these Proceedings will this Respondent

Doubts not clearly Appear to this Honorable Court And that the Plea made use of by the Appellant of written Agreements in Order to Colour such his unjustifiable Proceedings cannot nor ought by any means to Avail him - And with regard to what the Appellant Setforth of the Act made in the Second Year of the Reign of his late Majesty King George the Second, That no Seaman shall fail in any Action or process for wages unless he had Entered into a written Contract with the Master to perform a certain Voyage Particularly to be Expressed And afterwards had deserted this Vessell before its Completion - This Respondent Saith that what the Appellant hath so Setforth is by no means the real Tenor of the said Act nor a Just Extract therefrom - For the words of the said Act in that respect are and where it shall be Necessary that the Contract in writeing shall be pro-duced in Court no Obligation shall be on any Seaman to produce the same, but the Master or Owner of the Ship, And no Seaman Shall fail in any Action process for Recovery of Wages for want of such Contract being Pro-duced Clearly Supposing and Implying, as this Respondent Con-ceives that the Seaman has performed the Voyage and that having done so he is Intitled to his wages, and shall not fail in his Action for such wages for want of the Contract not being produced, As the Contract is Supposed to be Delivered to the Master when Executed and to remain in his hands But that is not the Case here - For in the first place tho there is no written Contract there was Earnest given to bind the Appellant to his Agreement with this Respondent to go the Voyage before and in this Respondents to go the Voyage before and in this Respondents said Answer Specify'd

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specifyed In the Second place this was done According to the Custom in those Cases in India The Natives of this Country being entirely Unacquainted with such Contracts In the Third place the said Act clearly Speaks of Voyages from England beyond the Seas, whereas the Voyage it was Intended the said Ship Savage should make, and which she has made was from Port to Port in this part of the World. In the fourth Place tho' the said Act directs Written Agreements in case of a Ship bound beyond the Seas, and Says if any such Master shall carry out any Mariner Except his Apprentice, upon any Voyage beyond the Seas without first Entering into such an Agreement, and he and they Signing the same, he shall forfeit five Pounds for every such Mariner to the use of Greenwhich Hospital, yet it clearly Appears that a Master of a Ship may carry a Mariner without a Written Agreement, and that all he forfeits in such a Case is the said Penalty The said Act does not Say that the Mariner in such a Case shall not be Obliged to go the Voyage for which he Shipped himself, or that he ought not to do so. And In the fifth Place the Appellant did Actually in this Case Desert the said Ship Savage, and took the like Impress or Earnest from the master of another Ship as he had taken from this Respondent, without any written Agreement According to Custom, and that at a time when he was told by this Respondent that he was bound to Surat, where he would pay him his full Wages, as appears by the Deposition of the said Pascoal De Rozario

De Rozario and the Appellant having so Deserted the said Ship he did by the Mariner Law forfeit his Wages - For it is said If a Mariner be hired and he Deserts the Service before the Voyage Ended, by the Law Marine he loses his Wages - And further Mariners after having Unladen the Ship if they Demand their wages and there be any Intention of their Departure, the Master may Detain a Reasonable Proportion of the same till they bring back the Ship, or give Caution to Serve out the whole Voyage - The Appellant and the other Helmsmen, who are very Material People as to the Manage-ment and Conducting a Ship in the Navigable Part, cannot therefore certainly, After Deserting the said Ship in the manner they did, be Intitled to their wages - For was that the case it might be an Exceeding bad Precident and attended with the Utmost bad Consequence to every One Concerned in, Or who had any Concern on Board any Ship or Vessell, as the Mariners might not only Desert a Ship themselves, but leave her in the Utmost Distress by Pro-secuting the Master in the Unjust manner the Appellant and the other Helmsman, whose Suits are now before this Honorable Court have done - In Answer to what the Appellant Sets forth in his said Petition of Appeal about the Authority given to a Justice by the said Act, and of a Complaint having been made to George Stratton Esqr. by this Respondent Saith those Matters do by no means Concern the Matters in Question in this Cause - For the Simple Matters is whether the Appellant, from such his unjustifiable Deserting the said Ship Savage, and Shipping himself to go on Board another Ship Or vessell and his Conduct as before and in

in this Respondents said Answer and Rejoinder Setforth, did or did not forfeit his Wages—

All which matters and things this Respondent Submits to the Judgement of this Honorable Court, And humbly hopes it will clearly Appear to this Honorable Court that the said Decree is a fair Just and Equitable Decree, and that this Honorable 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 in both Courts, And for the Appellant's Litigiousness in Prosecuting this Respondents so Unjustly After his Behaviours as before Setforth, And Persisting therein by Appealing to this Honorable Court, that the said Appellant may be Taxed with Double or Treble Costs as this Honorable Court shall think fit And this Respondent does Lastly Pray such further and other General Relief in the Premises as to this Honorable Court shall Seem meet—

John Sykes
Att.y for the Respondent

Wednesday the 25th November 1772

Court of Appeals at Madraspatnam } ff

Between Salvador da Graca at present in Madras Mariner Appellant and John Attenborough also at present in Madras Mariner 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 10th day of December Anno Domini 1771 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 Costs in both Courts

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To the Honble Josias Dupre Esqr &c.

President and Governor &c. Council of Fort St George

The humble Petition and Appeal of Ignacio Pereira late one of the Mariners belonging to the Ship Savage John Attenborough Commander

Sheweth

That your Petitioner on or about the Eleventh day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy did Prefer a Bill of Complaint in the Honble the Mayors Court against the Respondent John Attenborough for the Sum of Forty Three Pagodas and fefteen Fanams, Current Money of Madras, being for the Balance of Wages due to your Petitioner as one of the Mariners belonging to the said Ship Savage as will more fully and at Large Appear by the said Bill of Complaint and the Account Current thereunto Annexed, To which said Bill of Complaint, the said Respondent did on or about the Ninth day of October in the Aforesaid Year, One Thousand Seven hundred and Seventy, put in his Answer, and therein Admitted of the Validity of the Account Current Annexed to this Appellants said Bill of Complaint, but Alledged, that this Appellant hath Forfeited the Wages due to him, but not proceeding on the said Ship Savage from the Port of Madras to Surat, for that this Appellant did Agree with him the said Respondent, to go as one of the Mariners of the said Ship Savage, from the Port of Surat to any other Port or Ports and until her Arrival back to Surat, To which Answer this Appellant did put in a Replication, and therein maintained all the matters and things set forth and Stated in his said Bill of Complaint and the Account Current thereunto Annexed to be true, in such manner and form as therein and thereby is set forth and Alledged, and further Replied, that he absolutely never did make the Prementioned Pretended Agreement with the said Respondent, for that he was hired only as a Monthly Servant at the Pay of Twelve Arcot Rupees per Month, during the Time that he continued as a Mariner of the said Ship Savage, and furthermore this Appellant in his said Replication Replied, that an Agreement, or Covenants entered into by the Master and Mariners, without particularly mentioning the Port or Ports the Vessel was to go to, would be Deemed both by Law and Equity to be Invalid and of no Effect, as thereby the Mariners would be Left without Remedy, and that Covenants, by Law ought to Bind both parties to perform, but as this Appellant did not enter into any Agreement whatsoever he Insisted that the Wages due to him could not be forfeited, To which Replication the said Respondent did put in a Rejoinder and therein Averred that all the matters and things alledged and Set forth by him the said Respondent in his said Answer were true, in such manner, as therein is Alledged and Expressed, and further introduced many other Matters, which this Appellant with Submission Conceives, is Quite Foreign from the Subject, and can by no Means

Means, cause a Forfeiture of this Appellants Demand, for the Amount of which he hath Honestly Served as a Mariner on Board the said Ship Savage, - This Appellant further saith, that after the Prementioned Proceedings, Issue was Joined and Rules for to Examine Witnesses and Publication Passed, and the Cause setdown for hearing, and after having gone through all the Necessary Process the same came on to be Heard and Debated before this Honble the Mayors Court, on Tuesday the Tenth day of December last, when, notwithstanding that this Appellant did make oath to the Justness of his Demand, and in his Replication absolutely denied to have ever made the Agreement mentioned by the said Respondent, and for its support no proof whatsoever was Produced; and altho by an Act made in the Second Year of the Reign of his late Majesty King George the Second, it is Enacted and Particularly Expres. that no Seaman shall fail in any Action or Process for Recovery of Wages unless he had entered into a Written Contract with the Master to perform a certain Voyage, Particularly to be Expressed, and afterwards had deserted the Vessel before its Completion, and which Contract the Master is directed to produce into Court, yet the said Hoble, the Mayors Court, Ordered and Decreed, That as it appears to them from the Proceedings, that this Appellant left the Ship before the Voyage in which he engaged was Compleated and that he thereby forfeited the wages sued for, they therefore thought fit to Order and Decree that this Appellants Bill, then Complainant, shall stand Dismissed.

Dismissed with Costs, as will more fully and at large Appear by the said Decree of the Honble the Mayors Court hereunto Annexed for the Inspection of this Honble Court, and to which this Appellant humbly prays a Reference By which Decree this Appellant most humbly Conceives he has Apparent Damage, for if the Master Sails on a Voyage and Neglects Acting Agreeable to the Established Laws of his Country, it is a hard case for the Mariners to Suffer by such Neglect, and moreover as this Appellant did never Agree to go with the said Respondent on any particular Voyage he Consequently could not forfeit the Wages due to him, This Appellant further saith, that he was Confined in the Town Goal for debt at the time he Commenced his said Action Against the said Respondent, and Remained there for several days afterwards, and if this Appellant had Deserted or Absented himself from his Ship, contrary to Agreement, the said Respondent ought to have made an Application to one of his Majesties Justices of the Peace, who upon proof thereof, would have Apprehended this Appellant, and oblige him to fulfill his Agreement; and the said Act made in the Second year of the Reign of his late Majesty King George the Second, do give his Majesties Justices of the Peace, full Authority so to do, but on the Contrary it Clearly Appears by Deposition of Pascoal De Rozario, that the said Respondent was Refractory and made many evasive Excuses when sent for, by George Stratton Esqr. one of his Majesties Justices of the Peace, on a Complainant made to him by the said Pascoal De Rozario, for Forcibly sending this Appellant, together with Salvador Da Graca and John Peter Falton on Board the said Ship Savage &c. and this Appellant with Submission Conceives that

of the said Respondent had the least Colour or Pretence for Retaining this Appel-
-lant, he had a fair Opportunity of prooving the same before a Person fully
Authorised to give him Redress, but by the said Respondents Neglecting,
nay absolutely Refusing to do so, it is a Tacit Acknowledgement that
there was no Agreement depending between him and this Appellant
and therefore with Submission to this Honble Court, he thinks himself both
by Law and Equity Justly entitled to his Wages due from the said
Respondent, as aforesaid, for all which Reasons this Appellant doth
Appeal from the said Order or Decree of the Honble the Mayors Court,
for this Appellants Bill to stand Dismissed with Costs—

Your Petitioner therefore most humbly Prays,
that the said Defendant (now Respondent) may be Appointed a Short
Day to Answer, all and Singular the Premises before this Honble Court;
and that the said Order or Decree may be reversed and setaside, as also,
that the said Defendant (now Respondent) may be Decreed to pay unto
this Appellant the full and Just Sum of, Forty Three Pagodas and
Fifteen Fanams, with all such Interest is now is or shall hereafter
become due thereon until full payment is made, also the Costs of Suit in
both Courts, and be Granted such further and General Relief in the pre
-mises, as to this Honble Court shall Seem meet—

and your Petitioner Shall
Ever Pray—

Danl. Shaw
Attorney Appll.
for the

Mayors Court at
Madraspatnam

Tuesday the 10th Day of December—
Anno Domini 1771—

Present

John Hollond Esquire Mayor
Thomas Bonney — Frances Sourdan
George Smith — John Mc Pherson and
John Sullivan — Aldermen—

Between Ignacio Pereira at present in
Madras Mariner Complainant and
John Attenborough also at present in —
Madras, Mariner 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 Interro-
-gatories 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 Proceedings that the
Complainant left the Ship before the Voyage in which he engaged was
compleated and that he thereby forfeited the wages now sued for,
This Court doth therefore think fit to Order and Decree, and doth accor
-dingly Order and Decree that the Complainants Bill shall—

stand

Stand Dismissed with Costs

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To the Honorable Josias Dupre Esqr
President and Governor &c. Council of Fort St George.

In the Court of Appeals

The Answer of John Attenborough
Mariner and Commander of the Ship Savage
to the Petition of Appeal of Ignacio Pereira
late Helmsman of the said Ship —

This Respondent Saith that he Admits that the Appellant did about the time mentioned in the said Petetion of Appeal Exhebit a Bill of Complaint in the Honorable the Mayors Court against this Respondent for the Sum of Forty three Pagodas and Fifteen Fams Current Money of Madras, which he Alledged, tho very unjustly, that this Respondent was Indebted to him on the Ballance of an Account of wages Annexed to the said Bill — To which said Bill of Complaint this Respondent put in an Answer, But Instead of admitting of the Validity of the Account Annexed to the Appellants said Bill, as the Appellant Alleges, he did in his said Answer absolutely deny to be Indebted unto the Appellant either in the Sum Sued for or any other Sum or Sums of Money whatsoever, On the contrary that the Appellant stood Indebted unto him this Respondent in the Sum

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of Twenty Eight Pagodas Twenty five Fanams and Forty Cash, being the Ballance of the Account Annexed to the said Answer, who this Respondent prayed the Appellant might be Decreed to pay to this with all such Interest as then was or should thereafter become due thereon also all Costs of this Suit. This Respondent did further in his said Answer Setforth that the Appellant having in December One thousand Seven hundred and Sixty Eight Shipped himself with this Respondent at Surat as a Helmsman of the said Ship Savage to go the Voyage from Surat to any Ports or places to which the said Ship might go, and back again to Surat, he this Respondent did Advance him four months Impress or wages, as is Customary, Amounting to Forty Eight Rupees, at Bata -via Twenty four Rupees, and at Madras Twenty Eight Rupees, as Charged in the said Account Annexed to this Respondents said Answer, and Corroborated by the Credits of those Identical Sums in the Account Annexed to the Appellants said Bill — That the said Appellant having so Shipped himself to go the said Voyage this Respondent Accepted, as he Still does, he is not either by Law or Custom Entitled to his wages untill he has fulfilled his Agreement or Engagement with this Respondent, which would not have been untill the said Ship Savages Arrival at Surat, if he had Continued in her, But more particularly so as the Appellant has Quitted the said Ship Savage without this Respondents leave, and gone on Board Some other Ship, whereby the Appellant forfeited all the right that he might otherwise have had to his wages that he proceeded on the voyage in the said Ship Savage untill the same was finished by —

by her Arrival at Surat as aforesaid, And as he has so forfeited his right thereto he is become Indebted to this Respondent for the Money he advanced him on Account of the said Voyage as before mentioned Instead, of this Respondent being Indebted to him for his wages in the unjust manner the Appellant Charges and pretends, and for which he has so unjustly prosecuted this Respondent did further in his said Answer beg leave to Recommend to the Attention of the said Honorable the Mayors Court, as he now does to this Honorable Court, the Appellant having on the Eleventh Day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy Swore to the Justness of his pretended Demand and that he believed this Respondent was about to Depart from the Jurisdiction of the said Honorable the Mayors Court in Order to Obtain a Warrant of Arrest, to Arrest this Respondent's person, whereby this Respondent would actually have been Arrested had he not given Bail, when so far from this Respondents Departing the Jurisdiction of the said Honorable Court, as should have been the Case to have Authorized the Appellant's unjust, Illegal and unwarrantable proceedings Against him he this Respondent was still, at the time of making the said Answer within the said Jurisdiction, that is to Say, on the Ninth Day of October in the said year One thousand Seven hundred and Seventy This Respondent did further Setforth that if a Commander of a Ship is Liable to be Arrested and detained in any Port or Place to which a Ship goes or at which She touches During her voyage by the Mariners and

People who are or ought to Conduct and Navigate her, And ought to be Aiding and Assisting as much as in their power towards her Safety and the Speedy Conclusion of her Voyage, a proceeding of this Sort might be of very Dangerous Consequence both to the Commander of the Ship, the Owners, Freighters Ingurers, Respondentia Senders and others Concerned therein, Matters of this Nature having, as this Respondent Conceives from the Laws and regulations in affairs of this Sort, Appeared to the Legislature in this Light Laws And regulations have been wisely made to prevent such bad And Dangerous Consequences, which this Respondent humbly hoped and Debated not would be Enforced both in this Case and in every One of the like Nature, And that this Respondent would meet with the Redress to which the said Honorable the Mayors Court might think him Intitled, which he has done, And humbly hopes the same will be Confirmed by this Honorable Court To which said Answer the appellant put in a Replication, thereby Endeavouring, tho very Evasively to Confirm his said Bill, and pretending that he Shipped himself with this Respondent at Surat as a monthly Servant and in the Capacity of a Helmsman, and also pretending it is Customary in India to Advance the Mariners before the Departure of a Vessell a Sum of Money in proportion to the time it may take up in the Passage or Voyage from Port to Port, the therefore received the Advance of Forty Eight Rupees, which is four months wages

Wages, that he never made any Agreement to go the said Voyage &c. And that he was by a Precept Issued out of the said Honorable the Mayors Court Arrested on Board of the said Ship Savage by the Sheriff at the Suit of Pascoal De Rozario, and was in the Custody of the Sheriff when he Commenced his Action Against this Respondent, To which said Replication this Respondent put in a Rejoinder, thereby Confirming his said Answer, And refuting the several Matters And things Setforth in the said Replication, and this Respondent did therein Absolutely deny that the Appellant did Ship himself with this Respondent as a Monthly Servant, and that its Inconsistent that a Helmsman, who is always Shiped for the Voyage, should so Colour his, unjustifiable quitting the Ship in the manner Setforth in this Respondents said Answer, Attempt to put himself on the Footing of a Monthly Servant, And what proves Clearly that he was not Shiped as a Monthly Servant but for the Voyage, as is Customary, is his having received from this Respondent four months Advance — now this could not be either an Advance or pay for One month two months, for a Monthly Servant can at all times by Custom Quit his Service in India by giving a Months Notice of his Intentions so to do, it would therefore be Absured for Four Months wages to be advanced to a Servant that may Quit his Service in One Month, but this Notice the Appellant did not give, tho if he had it would have been to no purpose — This Respondent did also deny that it is the Custom to Advance Mariners in

in India before the Departure of the Vessell from the place where they are Shipped a Sum of Money in Proportion to the time it may take up in the Passage or Voyage from Port to Port, as the Appellant Setsforth, On the Contrary it is Customary to Advance them four Months pay, as this Respondent did in this Case, upon the Strength of their going the Voyage And by way of Enabling them to Provide themselves with Necessaries for the Voyage, and as a proof that is the Case it is well known that a Ship or Vessell is but very Seldom four Months on her Passage from Port to Port in India, And very often not One Month or half a Month, And if it was really the Intent of the Master and Mariner that the Mariner should leave the Ship or Vessell at the first Port She may go to the Master would Certainly never Advance the Mariners four Months pay, but its Evident this Cannot be the Case in General, Nor could it be so in this Particular One, that with regard to the Agreement which the Appellant useds as to a Commander of a Vessell going from Port to Port and never returning to the place where the Supposed Voyage was to End, that is too General and Evasive an Agreement to hold good in this Case, And this Respondent believes there are but very few if any Instances of that being the Case, But so far from that the Appellant well knew this Respondent had no such Intention, but that his Intentions at the time the Appellant so unjustly prosecuted this Respondent were to go to Bombay and from thence to Surat, and as the Appellant had proceeded so far on the

the voyage there certainly could be no Excuse for his And the other Helms
-man who have also prosecuted this Respondent. Quitting the said Ship
And leaving her in Distress at the time when they Supposed this Respon
-dent would Sail in two or three Days, as the said Ship Savage was ready,
as they say in their Replications, to Sail This was an unjustifiable pro
-ceeding, and that Instead of taking any Method to Distress either
the said Ship or this Respondent as Commander it was their Indispen
-sable Business and Duty to have used their utmost Endeavours
and been Aiding and Assisting as much as in their power to wards the
Speedy and safe Conclusion of the said Voyage, as before mentioned, In
which Case they would not only have been entitled to have Retained the
Wages already Advanced them by this Respondent, but also to have had
the Remainder of their Wages at the End of the voyage, which this
Respondent proposed Paying them — nor can what the Appellant
seems so much to hinge upon as a Plea to Evade the real Intention of his
being Shiped on Board the said Ship Savage, which is that of a Written
Agreement and Covenants &c. by any means Justify his the Appell
-ants Conduct as before and in his this Respondents said Answer And
Rejoinder Set forth, and Indeed is only meer matter of Evasion. And with
regard to what the Appellant Set forth in his said Replication about
his being Arrested on Board the said Ship Savage &c. in Order to

Colour

Colour his Quitting the said Ship in the unjustifyable way he did, this Respondent
Rejoined, that it was for the Amount of Impress Money Received by the
Appellant to go on Board another Ship that he was so Arrested for on the Appel
-lants receiving the said Impress money the said Pascoal De Rozario become
Security for the Appellant to the person from whom he took the said Impress
Money, and as a Colour for the Appellants Quitting the said Ship Savage
to go on Board the Ship or Vessell for which he was Impressed the person
who Impressed him, And to whom the said Pascoal De Rozario
become Answerable, either for the Appellants going on Board the said
Ship or Vessell, or for the Impress Money in Case the Appellant did
not do so, Called upon the said Pascoal De Rozario to fulfill his
Engagement: whereupon he the said Pascoal De Rozario Exhibited
a Bill of Complaint in the said Honorable the Mayors Court
against the said Appellant, and Obtained a Warrant of Arrest
against him, In Consequence of which he was Arrested on Board
the said Ship Savage, brought ashore, put in Prison for a few Days,
Commenced his unjust Action Against this Respondent, And was soon
after that Released, And went in the said Ship or Vessell for which
he was so Impressed as before mentioned. This being the way in which
the Appellant was Arrested on Board the said Ship Savage, as he
mentions in his said Replication, this Respondent Submits to this
Honorable Court whether the same, Instead of being an Extenuation of

the.

The Appellants Aggression and Unjustifiable Conduct And proceedings is not an Addition to it, and renders his Conduct And Action more Illegal and Unwarrantable, This Respondent did also in his said Rejoinder maintain the Justness And Propriety of what he has in his said Answer Setforth as before Recited about a Commanders being Arrested by the Mariners, And Saith it is a Dangerous proceeding and much Discountenanced by Law for wise and Just reasons which are very Apparent, As will morefully and at large Appear on Reference to the said Answer and Rejoinder —

Upon these Proceedings Issue was Joined Rules for witnesses passed, the said Pascoal De Rozario was Examined as a witness on the part of this Respondent regarding the Appellants receiving Impress to go on Board another Ship And the Nature of the Arrest on Board the said Ship Savage &c. Publication Passed, And the said Cause was set down for hearing, And coming on to be heard and Debated by and before the said Honorable the Mayors Court on Tuesday the Tenth Day of December last, and it Appearing to the said Court from the Proceedings, that the Appellant left the said Ship before the voyage in which he Engaged was compleated And that he thereby forfeited the wages he has Sued for, the said Court did therefore think fit to Order and Decree and did Accordingly Order and Decree that the Appellants said Bill should Stand Dismissed with Costs, as will

more fully And at large Appear on Reference to the said Decree now before this Honorable Court —

From which Decree this Respondent Conceives the Appellant had no Just Cause or reasons whatsoever to Appeal to this Honorable Court, as this Respondent Conceives he has Neither Apparent Damage, as he Setsforth in his said Petition of Appeal. Nor is he in the least Aggrieved thereby, And with regard to what the Appellant Setsforth in his said Petition of Appeal that he had made Oath to the Justness of his Debt and also denying that he ever made the Agreement mentioned by this Respondent, he this Respondent Saith, that in the first Place the Appellants making Oath to the Justness of his Demand can be of no Validity as it Clearly Appears by what is by this Respondent Setforth on Oath in his said Answer, and Confirmed by the Deposition of the said Pascoal De Rozario that the Appellant did Desert the said Ship, And that too when he was Informed where the said Voyage was to End, Exclusive of his having been hired for that purpose, by which he did to all Intents and purposes forfeit all the right that he might otherwise have had to his Wages had he proceeded on the said Voyage, And having so forfeited his Wages his Making Oath that his said Demand was Just in Order to procure this Respondent to be Arrested was Illegal and rendered the Appellant liable to such prosecutions And Penalties as the Law Inflicts in those Cases, And that the Appellant did Agree to go the said Voyage clearly Appears by

By this Respondents said Answer on Oath, Against which no proof whatso-
-ever has been produced, wherein this Respondent has positively Decla-
-red that the Appellant did Ship himself with this Respondent at
Surat as a Helmsman of the said Ship Savage to go the Voyage from
Surat to any Ports or places to which the said Ship might go, and back
again to Surat, and that he this Respondent did thereupon Advance him
four Months Impress or wages as is Customary. This was certainly an
Agreement. And such a One as the Laws Esteems binding on the parties,
Otherwise why was it made why did both parties Agree thereto and why
did this Respondent give, And why did the Appellant Accept of an
Earnest not only to bind the said Bargain, but also to Provide himself
with Necessaries for the said Voyage, And why did this Respondent
make him further Advances for the same purpose when he thought
the Nature of the Case and Voyage required it. It certainly could
not After these matters were Agreed on and done, And that too
Accordingly to the Common Custom of India, be Supposed that the
Appellant was to Liberty to quit the said Ship before the End of
the Voyage, and not Only Leave her in Distress, As he And the other
Helmsman did, But also take the most Effectual method for the
Detention, And perhaps Loss of the said Ship, And the Injury or
perhaps Ruin of every person Concerned therein, which was that
of Prosecuting this Respondent as her Commander, And under

whose

Whose care and Management both She And her Cargo were, And not only
Prosequting him but Procuring a warrant of Arrest in Order to Arrest
And Imprison this Respondent, which must have been the Case both at
the Suit of the Appellant and the other Helmsman who Entered the
like Process Against this Respondent, And who have also Appealed
to this Honorable Court, had not this Respondent been Fortunate
Enough to procure Bail the Hardship and Illegality of these Proce
-dings will this Respondent Doubts not, clearly Appear to this Honor
-able Court. And that the Plea made use of by the Appellant of Written
Agreements, in Order to Colour such his unjustifiable Proceedings, cannot
nor ought by any means to Avail him And with regard to what the
Appellant Setsforth of the Act made in the Second year of the Reign
of his Late Majesty King George the Second That no Seaman shall
fail in any Action or process for wages unless he had Entered in to a
Written Contract with the Master to Perform a Certain Voyage Partic
-ularly to be Expressed And afterwards had Deserted this Vessel
before its Completion. This Respondent Saith that what the Appellant
hath so Setforth is by no means the real Tenor of the said Act or a just Extract
therefrom. For the words of the said Act in that respect Are, And where
it shall be Necessary that the Contract in Writing shall be Produced
in Court no Obligations shall be on any Seaman to Produce the same,
but the Master or Owner of the Ship. And no Seaman shall fail in any

action

Action or Process for Recovery of wages for want of such Contract being Pro-
duced, Clearly Supposing And Implieying, As this Respondent conceives
that the Seaman has performed the Voyage And that having done so he is
Intitled to his wages And Shall not fail in his Action for such wages for
want of the Contract not being Produced, As the Contract is Supposed to be
Delivered to the Master when Executed And to remain in his hands, But
that is not the Case here. For in the first Place tho there is no written Con-
tract, there was Earnest given to bind the Appellant to his Agreement
with this Respondent to go the voyage before And in this Respondents
said Answer Specifyed, In the Second Place this was done According to the
Custom in these Cases in India, The Natives of this Country being Entirely
unacquainted with such Contracts. In the third Place the said act
clearly Speaks of Voyages from England beyond the Seas, whereas
the voyage it was Intended the said Ship Savage should make, And
which She has made, was from Port to Port in this Part of the world,
In the fourth place tho the said Act directs written Agreements in case
of a Ship bound beyond the Seas, and Says if any such Master shall
carry out any Mariner Except his Apprentice upon any Voyage beyond
the Seas without first Entering into such an Agreement, And he and
they Signing the same he shall forfeit Five Pounds for every such Mari-
ner to the use of Greenwich Hospital yet it clearly Appears that a Master
of a Ship may carry a Mariner without a written Agreement, and that
all he forfeits in such a Case is the said Penalty. The said Act does not

Say.

Say that the Mariner in such a Case shall not be Obliged to go the Voyage for
which he Shipped himself, or that he ought not to do so. And In the fifth place
the Appellant did Actually in the Case Desert the said Ship Savage, And
took the like Impress or Earnest from the Master of another Ship as he
had taken from this Respondent without any Written Agreement
According to Custom. And that at time when he was told by this Respondent
that he was bound to Surat, when he would Pay him his full wages, As
Appears by the Deposition of the said Pascoal De Rozario, And the
Appellant having so Deserted the said Ship he did by the Marine
Laws forfeit his wages. For it is said If a Mariner be hired And he
Deserts the Service before the voyage Ended, by the Laws Marine he
loses his wages. And further, Mariners After having unladen the
Ship, if they Demand their wages And there be any Intention of their
Departure, the Master may detain a reasonable Proportion of the same
till they bring back the Ship or give Caution to Serve out the whole voyage
The Appellant and the other Helmsmen, who are very Material
People as to the Management and Conducting a Ship in the Navig-
able Part, cannot therefore certainly After Deserting the said Ship
in the Manner they did be Intitled to their wages, For was that the
Case it might be an Exceeding bad President, And Attended with
the utmost bad Consequence to every One Concerned in, Or who

had.

had any Concern on Board any Ship or Vessell, As the Mariners might not only Desert a Ship themselves, but leave her in the utmost Distress by Prosecuting the Master in the unjust Manner the Appellant and the other Helmsman whose Suits are now before this Honorable Court, have done. In Answer to what the Appellant Setforth in his said Petition of Appeal about the Authority given to a Justice by the said Act. And of a Complaint having been made to George Stratton Esqr. &ca. this Respondent Saith those Matters do by no Means Concern the Matters in Question in this Cause, For the Simple Matters is whether the Appellant, from such his unjustifiable deserting the said Ship Savage, And Shipping himself to go on Board another Ship or Vessell, And his Conduct as before and in this Respondents said Answer And Rejoinder Setforth, did or did not forfeit his wages.

All which matters and things this Respondent Submits to the Judgement of this Honorable Court, And humbly hopes it will clearly Appear to this Honorable Court that the said Decree is a fair Just And Equitable Decree, And that this Honorable 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 in both Courts, And for the Appellants Setigiousness in Prosecuting this Respondent so unjustly, After his Behaviour as before Setforth. And persisting therein by Appealing to this Honorable Court, that the said Appellant may be Taxed with Double or Treble Costs as this Honorable Court Shall think fit, And this Respondent does Lastly Pray such further And other General relief in the Premises as to this Honorable Court Shall seem Meet.

John Sykes
Atty. for the Respondent

Thursday the 26th November 1772

Court of Appeals at Madraspatnam } ⅌

Between Ignacio Pereira at present in Madras Mariner Appellant and John Attenborough also at present in Madras Mariner 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 10th day of December Anno Domini 1771 and upon 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 Costs in both Courts.

⅌ Cur

To the Honble Josias Dupre Esqr.
President and Governor &c. Council of Fort St George

The humble Petition and Appeal of
John Peter Talton late one of the Mariners
belonging to the Ship Savage, John Atten
borough Commander —

Sheweth That your Petitioner, on or about the Eleventh day of Sep.
tember which was in the year of Our Lord, One thousand Seven Hundred
and Seventy, did Prefer a Bill of Complaint in the Honble the Mayors
Court, against the Respondent, John Attenborough, for the Sum of
Twenty Four Pagodas and Twelve Fanams, Current Money of
Madras, being for the Balance of Wages due to your Petitioner as
one of the Mariners belonging to the said Ship Savage, as will more
fully and at large Appear by the said Bill of Complaint and the
Account Current thereunto Annexed. To which said Bill of Complaint
the said Respondent did on or about the Ninth day of October in the
aforesaid year, One Thousand Seven Hundred and Seventy put in
his Answer, and therein Admitted of the Validity of the Account Current
Annexed to this Appellants said Bill of Complaint, but Alledged
that this Appellant hath Forfeited the Wages due to him by not
proceeding in the said Ship Savage, from the Port of Madras to Surat
for that this Appellant did Agree with him the said Respondent,
to

to go as one of the Mariners of the said Ship Savage, from the Port of ~~Madras~~ to Surat
to any other Port or Ports and until her Arrival back to Surat. To-
which Answer this Appellant did put in a Replication, and therein
maintained all the Matters and things set forth and Stated in his said
Bill of Complaint and the Account Current thereunto Annexed to be
true, in such Manner and form as therein And thereby is set forth and
Alledged, and further Replied, that he absolutely never did make the
Prementioned Pretended Agreement with the said Respondent, for that
he was hired only as a Monthly Servant at the Pay of Twelve Arcot
Rupees per month during the Time that he continued as a Mariner
of the said Ship Savage, and furthermore this Appellant in his said
Replication Replied, that an Agreement or Covenant entered into by
the Master and Mariners, without Particularly mentioning the Port
or Ports the Vessell was to go to would be Deemed both by Law and
Equity to be Invalid and of no Effect, as thereby the Mariners would be
Left without Remedy, and that Covenant by Law ought to Bind both
parties to Perform, but as this Appellant did not enter into any Agree-
ment whatsoever he Insisted that the Wages due to him could not be
forfeited. To which Replication the said Respondent did put in a
Rejoinder and therein Averred that all the Matters and things Alledged
and Setforth by him the said Respondent in his said Answer were true
in such manner, as therein is Alledged and Expressed and further

Introduced

Introduced many other Matters, which this Appellant with Submiss-ion Conceives, is Quite Foreign from the Subject and can by no means cause a Forfeiture of this Appellants Demand, for the Amounts of which he hath Honestly Served as a Mariner on Board the said Ship Savage, This Appellant further saith that after the Prementioned Proceedings Issue was Joined and Rules for to Examine Witnesses and Publica-tion Passed and the Cause set down for hearing, after having gone through all the Necessary Process, the same came on to be heard and Debated before the Honble the Mayors Court on Tuesday the Tenth day of December last, when, Notwithstanding that this Appellant and make oath to the Justness of his Demand and in his Replication absolutely denied to have ever made the Agreement mentioned by the said Respondent and for-asmuch support no proof whatsoever was Produced, and Altho by an Act made in the Second Year of the Reign of his late Majesty King George the Second, it is Enacted and Particularly Expressed, that no Seaman shall fail in any Action or Process for Recovery of Wages unless he had entered into a Written Contract with the Master to perform a Certain Voyage, Particularly to be Expressed, and afterwards had deserted the Vessell before its Completion, and which Contract the Master is directed to produce into Court, yet the said Honble the Mayors Court, Ordered and Decreed, That as it appears to them from the Proceedings, that this Appellant left the Ship before the Voyage in which he engaged was Compleated and that he thereby forfeited the

Wages

Wages sued for, they therefore thought fit to Order and Decree that this Appel-lants Bill, their Complaint, shall stand Dismissed with Costs, as will more fully and at large Appear by the said Decree of the Honble the Mayors Court hereunto Annexed for the Inspection of this Honble Court, and to which this Appellant humbly prays a Reference By which Decree this Appellant most humbly Conceives he has apparent Dam-age, for if the Master Sails on a Voyage and Neglects Acting Agreeable to the Established Laws of his Country, it is a hard Case for the Mariners to Suffer by such Neglect, and moreover, as this Appellant did never Agree to go with the said Respondent on any Particular Voyage he Consequently could not forfeit the Wages due to him, This Appellant further saith that he was Confined in the Town Goal for debt at the time he Commenced his said Action against the said Respondent, and Remained there for-several days afterwards, and if this Appellant had Deserted or Absented himself from his Ship contrary to Agreement the said Respondent ought to have made an Application to one of his Majesties Justices of the Peace, who upon proof thereof would have Apprehended this Appellant and oblige him to fulfill his Agreements, and the said Act made in the Second Year of the Reign of his late Majesty King George the Second, do give his Majesties Justices of the Peace, full Authority so to do, but on the-Contrary it Clearly appears by the Deposition of Pascoal De Rozario, that the said Respondent was Refractory and made many evasive Excuses

when

Excuses when sent for by George Stratton Esqr. one of his Majesties
Justices of the Peace on a Complaint made to him by the said Pascoal
De Rozario for Forcibly sending this Appellant together with Ignacio
Pereira and Salvador Da Graca ~~and John Peter Talton~~ on Board the said Ship Savage &c.
And this Appellant with Submission Conceives, that if the said Respon-
-dent had the least Colour or Pretence for Retaining this Appellant,
he had a fair Opportunity of prooving the same before a Person fully
Authorised to give him Redress, but by the said Respondents Neglecting
may absolutely Refusing to do so, it is a Tacit Acknowledgement that
there was no Agreement depending between him and this Appellant
and therefore with Submission to this Honble Court, he thinks himself
both by Law and Equity Justly entitled to his Wages due from the said
Respondent as aforesaid. for all which Reasons this Appellant doth Appeal
from the said Order or Decree of the Honble the Mayors Court for this Appel
-lants Bill to stand Dismissed with Costs~

Your Petitioner therefore most humbly Prays that the said
Defendant/ now Respondent/ may be Appointed a Short Day to Answer
all and Singular the Premises before this Honble Court and that the said
Order or Decree may be reversed and set aside as also that the said Defendant
now Respondent/ may be Decreed to pay unto this Appellant the full
and Just sum of Twenty Four Pagodas and Twelve Fanams with all
such Interest is now is or shall hereafter become due thereon until full
Payment is made also the Costs of Suit in both Courts and be granted such
-further and General Relief in the Premises as to this Honble Court shall
seem

seem meet—
and your Petitioner shall Ever Pray—

Mayors Court at Madraspatnam } { Tuesday the 10th Day of December Anno Domini 1771—

Present—

John Holland Esquire Mayor
Thomas Powney — Francis Gourdan
George Smith — John Mc Pherson and
John Sullivan — Aldermen —

Between John Peter Talton at present in Madras Mariner Complainant and John Attenborough also at present in Madras Mariner 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 Defendant On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon It Appearing to the Court from the Proceedings that the Complainant left the Ship before the Voyage in which he engaged was Compleated and that he thereby forfeited the Wages now sued for This Court doth therefore think

think fit to Order and Decree and doth Accordingly Order and Decree that the Complainants Bill shall stand Dismissed with Costs—

&c Cur

To the Honble Josias Dupre Esqr.
President and Governor &c. Council of Fort St George

In the Court of Appeals

The Answer of John Attenborough Mariner and Commander of the Ship Savage to the Petition of Appeal of John Peter Talton late Helmsman of the said Ship—

This Respondent Saith that he Admits that the Appellant Did ator about the time mentioned in the said Petition of Appeal Exhibit a Bill of Complaint in the Honorable the Mayors Court Against this Respondent for the Sum of Twenty four Pagodas and Twelve fanams Current Money of Madras. which he Alledges tho very unjustly that this Respondent was Indebted to him on the Ballance of an Account of wages Annexed to the said Bill— To which said Bill of Compl.-aint this Respondent put in an Answer But Instead of Admitting of the Validity of the Account Annexed to the Appellants said Bill, as the Appellant Asserts he did in his said Answer Absolutely deny to be Indebted unto the Appel.-lant either in the Sum Sued for or any other Sum or Sums of Money whatesoever on the Contrary that the Appellant stood Indebted unto him this Respondent in the Sum of Thirty Pagodas and Twenty five fanams being the Ballance of the

The Account Annexed to the said Answer, which this Respondent Prayed the Appellant might be Decreed to pay to this Respondent with all such Interest as then was or should thereafter become due thereon, also all Costs of this Suit This Respon.-dent did further in his said Answer Set forth that the Appellant having in May One thousand Seven hundred and Sixty Nine Shipped himself with this Respondent at Madras as a Helmsman of the said Ship Savage to go the Voyage from Madras to any Port or Ports to which the said Ship might go untill her Arrival at Surat he this Respondent did Advance him four Months Impress or Wages as is Custo.-mary Amounting to forty Eight Rupees That he did at Batavia Advance him Twenty four Rupees and at Madras Thirty five Rupees as Charged in the said Account Annexed to this Respondents said Answer and Corroborated by the Credits of those Identical Sums in the Account Annexed to the Appellants said Bill— That the said Appellant having so Shipped himself to go the said Voyage this Respondent Conceived, as he Still does he is not either by Law or Custom Entit.-led to his wages untill he has fulfilled his Agreement or Engagement with this Respondent which would not have been untill the said Ship Savages— Arrival at Surat if he had Continued in her But more Particularly so as the Appellant Quitted the said Ship Savage without this Respondents Leave and went on Board some other Ship whereby the Appellant forfeited all the right that he might otherwise have had to his wages had he Proceeded on the voyage in the said Ship Savage Untill the same was finished by her Arrival at Surat as aforesaid. And as he has so forfeited his right thereto he is become Indebted to this Respondent for the Money he Advanced him on Account of the

said

said Voyage as before mentioned Instead as this Respondent being Indebted to him for his wages in the Unjust manner the Appellant Charges and Pretends and for which he has so unjustly Prosecuted this Respondent. This Respondent did further in his said Answer beg leave to Recommend to the Attention of the said Honorable the Mayors Court as he now does to this Honorable Court the Appellants having on the Eleventh Day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy Swore to the Justness of his Pretended Demand and that he believed this Respondent was about to Depart from the Juris-diction of the said Honorable the Mayors Court in Order to Obtain a Warrant of Arrest to Arrest this Respondents Person, whereby this Respondent would Be Actually have been Arrested had he not given Bail, when so far from this Respondents Departing the Jurisdiction of the said Honorable Court, As should have been the case to have Authorized the Appellant to Unjust Illegal and Unwarrantable Proceedings against him, he this Respondent was still at the time of making the said Answer within the said Jurisdiction, That is to Say, on the Ninth Day of October in the said Year One thousand Seven hundred and Seventy This Respondent did further Setforth that if a Commander of a Ship is liable to be Arrested and Detained in any Port or Place to which a Ship goes or at which She touches During her Voyage by the Mariners and People who are or Ought to Conduct and Navigate her and ought to be Aiding and Assisting as much as in their Power towards her Safely and the speedy Conclusion of her Voyage Aproceeding of this Sort might be of very Dangerous Consequence both to the Commander of the Ship, the Owners, Freighters, Insurers, Respondentia Lenders and others Concerned therein, Matters of this Nature having, as this Respondent Conceives from the Laws and Regulations in Affairs of this

Sort

Sort Appeared to the Legislature in this Light Laws and Regulations have been wisely made to Prevent such bad and Dangerous Consequences which this Respondent humbly hoped and Doubted not would be Enforced both in this Case and in every One of the like Nature And that this Respondent would meet with the Redress to which the said Honorable the Mayors Court might think him Intitled, which he has done, And humbly hopes the same will be Confirmed by this Honorable Court. To which said Answer the Appellant put in a Replication Thereby Endeavouring Tho very Evasively to Confirm his said Bill, And pretending that he Shipped himself with this Respondent at Madras as a Monthly Servant and in the Capacity of a Helmsman And also Pretending it is Customary in India to Advance the Mariners before the Departure of a Vessell a Sum of Money in Proportion to the time it may take up in the Passage or Voyage from Port to Port he therefore Received the Advance of forty Eight Rupees, which is four Months wages, That he never made any Agreement to go the said Voyage &c. And that he was by a Precept Issued out of the said Honorable the Mayors Court Arrested on Board of the said Ship Savage by the Sheriff at the Suit of Pascoal De Rozario And was in the Custody of the Sheriff when he commenced his Action Against this Respondent. To which said Replication this Respondent put in a Rejoinder, thereby Confirming his said Answer and Refuting the several Matters and things Setforth in the said Replication, And this Respondent did therein absolutely deny that the Appellant did Ship himself with this Respondent as a Monthly Servant And that its Inconsistent that a Helmsman, who is always Shiped for the Voyage, should to Colour his unjustifiable quitting the Ship in the manner Setforth in this Respondents said Answer, Attempt to put himself on the Footing of a Monthly Servant, And

rebut

what proves clearly that he was not Shipped as a Monthly Servant, but for the Voyage as is Customary is his having Received from this Respondent four Months Advance, now this could not be either an Advance or pay for One Month or two Months, for a Monthly Servant can at all times by Custom Quit his Service in India by giving a Months Notice of his Intentions so to do, it would therefore be Absurd for Four Months wages to be Advanced to a Servant that may Quit his Service in One Months, but this Notice the Appellant did not give, tho if he had it would have been to no Purpose - This Respondent did also deny that it is Customary to Advance Mariners in India before the Departure of the Vessell from the Place where they are Shipped a Sum of Money in Proportion to the time it may take up in the Passage or Voyage from Port to Port, as the Appellant Setforth, On the Contrary it is Customary to Advance them four Months pay as this Respondent did in this Case, upon the Strength of their going the Voyage, and by way of Enabling them to Provide themselves with Necessaries for the Voyage, and as a proof that, That is the Case it is well known that a Ship or Vessell is but very Seldom four Months on her Passage from Port to Port in India, and very often not One Month or half a Month And if it was Really the Intent of the Master and Mariner that the Mariner should leave the Ship or Vessell at the first Port She may go to the Master would certainly never Advance the Mariner four Months pay, But its Evident this cannot be the Case in General nor could it be soin in this Particular One - That with Regard to the Agreement which the Appellant made use of As to a Commander of a Vessell going from Port to Port and never returning to the Place where the Supposed Voyage was to End, that is too General and

evasive

evasive an Agreement to hold good in this Case And this Respondent believes there are but very few if any Instances of that being the Case, But so far from that the Appellant well knows this Respondent had no such Intention, but that his Intentions at the time the Appellant so unjustly Prosecuted this Respondent were to go to Bombay and from thence to Surat, And as the Appellant had Proceeded so far on the Voyage there certainly could be no Excuse for his and the other Helmsman, who have also Prosecuted this Respondent Quitting the said Ship and leaving her in Distress at the time when they Supposed this Respondent would Sail in two or three Days, as the said Ship Savage was ready, as they say in their Replications to Sail, This was an unjustifiable Proceeding and that Instead of taking any method to Distress either the said Ship or this Respondent as Commander it was their Indispensable Business and Duty to have used their utmost Endeavours and been Aiding and Assisting as much as in their Power towards the Speedy and Safe Conclusion of the said Voyage as before mentioned, In which Case they would not only have been entitled to have Retained the wages already Advanced them by this Respondent but also to have had the Remainder of their wages at the End of the Voyage which this Respondent Proposed Paying them - nor can what the Appellant Seems so much to hinge upon as a Place to Evade the real Intention of his being Shipped on Board the said Ship Savage, which is that of a written Agreement and Covenants &c. by any means Justify his the Appellants Conduct as before and in this Respondents said Answer and Respinder Setforth, and Indeed is only meer matter of Evasion - And

with

with Regard to what the Appellant Setforth in his said Replication about his being Arrested on Board the said Ship Savage &c. in Order to Colour his quitting the said Ship in the unjustifiable way he did, this Respondent Rejoined that it was for the Amount of Impress money taken by the Appellant to go on Board Another Ship that he was so Arrested, for on the Appellants Receiving the said Impress Money the said Pascoal De Rozario became Security for the Appellants to the Person from whom he took the said Impress Money and as a Colour for the Appellants Quitting the said Ship Savage to go on Board the Ship or Vessell for which he was so Impressed, the Person who Impressed him and to whom the said Pascoal De Rozario became Answerable, either for the Appellants going on Board the said Ship or Vessell or for the Impress Money in case the Appellant did not do so, Called upon the said Pascal De Rozario to fulfill his Engagement whereupon he the said Pascoal De Rozario Exhibited a Bill of Complaint in the said Honorable the Mayors Court against the said Appellant and Obtained a warrait of Arrest Against him, In Consequence of which he was Arrested on Board the said Ship Savage, brought a Shore put in Prison for a few Days, Commenced his unjust Action against this Respondent, and was soon after that Released and went on the said Ship or Vessell for which he was so Impressed as before mentioned This being the way in which the Appellant was Arrested on board the said Ship Savgave, as he mentions in his said Replication, This Respondent Submits to this Honorable Court whether the same Instead of being an Extenuation of the Appellants Aggression and unjustifiable Conduct and

Proceedings

Proceedings is not an Addition to it and Renders his Conduct and Action more Illegal and unwarrantable — This Respondent did also in his said Rejoinder Maintain the Justness and Propriety of what he has in his said Answer Setforth, as before Recited, about a Commanders being Arrested by the Mariners and Saith it is a Dangerous proceeding and much Discountenanced by Sage forwise and Just Reasons which are very Apparent, as will more fully and at Large Appear on Reference to the said Answer and Rejoinder —

Upon these Proceedings Issue was Joined, Rules for witnesses Passed, the said Pascoal De Rozario was Examined as a witness on the part of this Respondent Regarding the Appellants Receiving Impress to go on Board Another Ship and the Nature of the Arrest on Board the said Ship Savage &c. Publication Passed and the said Cause was set down for hearing and coming on to be heard and Debated by and before the said Honorable the Mayors Court On Tuesday the Tenth Day of December last, And it Appearing to the said Court from the Proceedings that the Appellant left the said Ship before the Voyage in which he Engaged was compleated and that he thereby forfeited the wages he has Sued for the said Court did therefore think fit to Order and Decree and did Accordingly Order and Decree that the Appellants said Bill should stand Dismissed with Costs, As will more fully and at Large Appear on Reference to the said Decree from before this Honorable Court —

From which Decree this Respondents Conceives the Appellant had no Just Cause or Reason whatsoever to Appeal to this Honorable Court, As this Respondent Conceives he has Neither Apparent Damage, as he Setforth in his said Petition of Appeal, Nor is he

he in the least Aggreived thereby - And with Regard to what the Appellant Setsforth in his said Petition of Appeal that he had made Oath to the Justness of his Debt and also Denying that he ever made the Agreement mentioned by this Respondent he this Respondent Saith that in the first Place the Appellant making Oath to the Justness of his Demand can be of no Validity As it clearly Appears by what is by this Respondent Setforth on Oath in his said Answer, and confirmed by the Deposition of the said Pascoal De Rozario, that the Appellant did Desert the said Ship and that too when he was Informed where the said Voyage was to End, Exclusive of his having been hired for that Purpose, by which he did to all Intents and Purposes forfeit all the Right that he might otherwise have had to his wages had he proceeded on the said Voyage, And having so forfeited his wages his making Oath that his said Demand was Just in Order to Procure this Respondent to be Arrested was Illegal, and rendered the Appellant liable to such Prosecutions and Penalties as the Law Inflicts in those Cases - And that the Appellant did Agree to go the said Voyage clearly Appears by this Respondents said Answer on Oath, Against which no proof whatever has been Produced, wherein this Respondent has Positively Declared that the Appellant did Ship himself with this Respondent at Madras as a Helmsman of the said Ship Savage to go the Voyage from Madras to any Ports or Places to which the said Ship might go untill her Arrival at Surat and that he this Respondent did thereupon Advance him four Months Impress or wages as is Customary, This was certainly an Agreement, and such a One as the Law Esteems binding on the Parties, Otherwise why was it made why did both Parties Agree thereto, and why why did this Respondent give, and why did the Appellant Accept of an Earnest, not only to bind the said Bargain but also to Provide himself with Necessaries for the said Voyage And why did this Respondent make him further Advances for the Same Purpose when he thought the Nature of the Case and Voyage Required it - It certainly could not After these Matters were Agreed on and done, and that too According to the Common Custom of India, be Supposed that the Appellant was at Liberty to quit the said Ship before the End of the Voyage, and not only leave her in Distress as he and the other Helmsman did, But also take the most Effectual Method for the Detention, and Perhaps Loss of the said Ship and the Injury or perhaps Ruin of every Person Concerned therein, which was that of Prosecuting this Respondent as her Commander, and under whose care and Management both She and her Cargo were, and not only Prosequiting Him but Procuring a warrant of Arrest in Order to Arrest and Imprison this Respondent, which must have been the Case both at the Suit of the Appellant and the other Helmsman, who Entered the like Process Against this Respondent, and who have also Appealed to this Honorable Court, had not this Respondent been fortunate Enough Procure Bail The Hardship and Illegality of these Proceedings will, this Respondent Doubts not, clearly Appear to this Honorable Court, and that the Pleamade use of by the Appellant of written Agreements, in Order to Colour such his unjustifiable Proceedings, cannot nor ought by any means to Avail him And with regard to what the Appellants Setsforth of the Act made in the Second year of the Reign of his late Majesty King George the Second That no Seaman shall fail in any Action or process for Wages unless he had Entered into a Written Contract with the Master to Perform a Certain Voyage Particularly to-

why

to be Expressed And afterwards had deserted this Vessell before its Completion, This Respondent Saith that what the Appellant hath so Setforth is by no means the real Tenor of the said Act or a Just Extract therefrom For the words of the said Act in that respect Are And where it shall be Necessary that the Contract in writting shall be Produced in Court no Obligation shall be on any Seaman to produce the same, but the Master or Owner of the Ship, And no Seaman shall fail in any Action or Process for Recovery of wages for want of such Contract being Produced, clearly Supposing and Implaying, As this Respondent Conceives, that the Seaman has performed the Voyage, And that having Done so he is Intitled to his wages, and shall not fail in his Action for such wages for want of the Contract not being produced As the Contract is Supposed to be Delivered to the Master when Executed and to remain in his hands, But that is not the Case here - For in the first Place, tho there is no written Contract, there was Earnest given to bind the Appellant to his Agreement with this Respondent to go the Voyage before and in this Respondents said Answer Specifyed, In the Second place this was done According to the Custom in this Cases in India, The Natives of this Country being entirely unacquainted with such Contracts, In the Third Place the said Act clearly Speaks of Voyage from England beyond the Seas, whereas the Voyage it was Intended the said Ship Savage should make, and which She has made was from Port to Port in this part of the world, In the fourth Place tho the said Act Directs written Agreements in case of a Ship bound beyand the Seas and Says if any such Master shall carry out any Mariner, Except his Apprentice, upon any Voyage beyond the Seas without first Entering into such an Agreement and he and they Signing the same he shall

forfeit

forfeit five Pounds for every such mariner to the use of Greenwich Hospital, yet it clearly Appears that a Master of a Ship may carry a Mariner without a written Agreement, and that all he forfeits in such a case is the said Penalty The said Act does not Say that the Mariner in such a case shall not be Obliged to go the Voyage for which he Shiped himself, or that he ought not to do so, And In the fifth Place the Appellant did Actually in this case Desert the said Ship Savage and took the like Impress or Earnest from the Master of another Ship as he had taken from this Respondent without any written Agreement According to Custom, and that at a time when he was told by this Respondent that he was bound to Surat where he would pay him his full wages, As Appears by the Deposition of the said Pascoal De Rozario, And the Appellant having so Deserted the said Ship he did by the Mariner Law forfeit his wages, For it is said If a Mariner be hired, and he Deserts the Service before the Voyage be Ended, by the Law Marine he loses his wages. And further Mariners after having unloaded the Ship if they Demand their wages and there be any Intention of their Departure the Master may detain a Reasonable Proportion of the same till they bring back the Ship or give Caution to Serve out the whole Voyage, The Appellant and the other Helmsmen who are very material People as to the Management and Conducting a Ship in the Navigable part, cannot therefore certainly After Deserting the said Ship in the Manner they did, be Intitled to their wages, For was that the Case it might be an Exceeding bad President, and Attended with the utmost bad Consequence to every One Concerned in, Or who had any Concern on Board any Ship or Vessell, as the Mariners might not only Desert a Ship themselves but leave her in the utmost Distress by Prosecuting

the

The Master in the Unjust Manner the Appellant and the other Helmsman whose Suits are now before this Honorable Court have done An Answer to what the Appellant Setsforth in his said Petition of Appeal about the Authority given to a Justice by the said Act, and of a Complaint having been made to George Stratton Esqr. Jr. this Respondent Saith those matters do by no means Concern the Matters in Question in this Cause For the Simple Matter is whether the Appellant from such his unjustifiable Deserting the said Ship Savage and Shipping himself to go on Board another Ship or Vessell, and his conduct as before and in this Respondents said Answer and Rejoinder Setforth, did or did not forfeit his wages or

All which matters and things this Respondent Submits to the Judgement of this Honorable Court, and humbly hopes it will clearly appear to this Honorable Court that the said Decree is a fair Just and Equitable Decree, And that this Honorable 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 in both Courts, And for the Appellants Seligiousness in Prosecuting this Respondent so unjustly after his behaviour as before Setforth, and Persisting therein by Appealing to this Honorable Court, that the said Appellant may be Taxed with Double or Treble Costs, As this Honorable Court shall think fit, And this Respondent does Lastly Pray such further and other General Relief in the Premises as to this Honorable Court shall seemmeet,

Jno. Sykes
Attorney for the Respondent

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Thursday the 26th November 1772

Court of Appeals
at
Madraspatnam } ss

Between John Peter Talton at present in Madras Mariner Appellant
and John Attenborough also at present in Madras Mariner Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 5th day of December Anno Domini 1771 and upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Decree of the Honble the Mayors Court given in this Cause be reversed and Setaside and that the Respondent do pay all Costs in both Courts

Vacat

To the Honble Josias Dupre Esqr President
and Governor &c Council of Fort St George

The Humble Petition and Appeal of George
Barns, late one of the Mariners belonging to the
Ship Savage, John Attenborough, Commander

Sheweth

That your Petitioner, on or about the Eleventh day of
September, which was in the Year of Our Lord One Thousand Seven hundred
& Seventy, did Prefer a Bill of Complaint, in the Honble the Mayors Court,
against the Respondent, John Attenborough, for the Sum of Twenty Pagodas
and Twenty One Fanams Current Money of Madras, being for the Balance
of Wages due to your Petitioner as one of the Mariners belonging to the
said Ship Savage, as will more fully and at large Appear by the said
Bill of Complaint and the Account Current thereunto Annexed To which
said Bill of Complaint, the said Respondent did on or about the
Ninth day of October in the Afore said Year, One thousand Seven hundred
and Seventy four in his Answer, and therein Admitted of the Validity
of the Account Current, Annexed to this Appellants said Bill of
Complaint, but Alledged that this Appellant hath Forfeited the
Wages due to him by not proceeding in the said Ship Savage, from
the Port of Madras to Surat, for that this Appellant did Agree with
him the said Respondent to go as one of the Mariners of the said Ship
Savage, from the Port of Madras to any other Port or Ports and until
her Arrival at Surat, To which Answer this Appellant did put in a
Replication, and therein maintained all the matters and things set
forth & Stated in his said Bill of Complaint and the Account Current
thereunto Annexed to be true, in such manner and form as therein and
thereby is set forth and Alledged, and further Replied, that he ab-
solutely never did make the Pretentioned Pretended Agreement
with the said Respondent for that he was hired only as a Monthly
Servant at the Pay of Twelve Arcot Rupees per month, during the
Time that he continued as a Mariner of the said Ship Savage, &
furthermore this Appellant in his said Replication Replied, that

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an Agreement, or Covenants entered into by the Master and Mariners without particularly mentioning the Port or Ports the Vessel was to go to would be deemed both by Law and Equity to be Invalid & of no Effect, as there by the Mariners would be Left without Remedy and that Covenants by Law ought to bind both parties to Perform but as this Appellant did not enter into any Agreement whatsoever, he Insisted that the Wages due to him could not be forfeited. To which Replication the said Respondent did put in a Rejoinder and therein Averred that all the matters and things alledged and set forth by him the said Respondent in his said Answer were true, in such manner as therein is Alledged and Expressed, and further introduced many other Matters which this Appellant with Submission Conceives is Quite Foreign from the Subject and can by no means cause a Forfeiture of this Appellants Demand, for the Amount of which he hath Honestly Served as a Mariner on Board the said Ship Savage. This Appellant further saith that after the Abovementioned Proceedings Issue was Joined and Rules for to Examine Witnesses and Publication Passed and the Cause set down for hearing, and after having gone through all the Necessary Process, the same came on to be Heard and Debated before the Honble the Mayors Court, on Tuesday the Tenth day of December Last, when Notwithstanding that this Appellant did make oath to the Justness of this Demand and in his Replication absolutely denied to have ever Made the Agreement mentioned by the said Respondent and for its support no Proof whatsoever was Produced, and Altho' by an Act made in the Second Year of the Reign of his late Majesty King George the Second it is Enacted and Particularly Expressed that no Seaman shall fail in any Action or Process for Recovery of Wages unless he had entered in to Written Contract with the Master to perform a Certain Voyage Particularly to be Expressed, and afterwards had deserted the Vessel before its Completion, and which Contract the Master is directed to produce in to

Court

Court. Yet, the said Honble the Mayors Court, Ordered and Decreed That as it appears to them from the Proceedings that this Appellant left the Ship before the Voyage in which he ingaged was Compleated and that he thereby forfeited the Wages sued for, they therefore thought fit to Order & Decree, that this Appellants Bill (then Complainant) shall stand Dismissed with Costs, as will more fully and at Large appear by the said Decree of the Honble the Mayors Court here unto Annexed for the Inspection of this Honble Court, and to which this Appellant humbly Prays a Reference By which Decree this Appellant most Humbly Conceives he has apparent Damage, for if the Master Sails on a Voyage & Neglects Acting Agreeable to the Established Laws of this Country it is a hard Case for the Mariners to Suffer by such Neglect, and moreover, as this Appellant did never Agree to go with the said Respondent on any Particular Voyage he Consequently could not forfeit the Wages due to him. This Appellant further saith that had he Deserted or Absented himself from his Ship contrary to Agreement the said Respondent ought to have made an Application to one of his Majesties Justices of the Peace, who upon Proof there of would have apprehended this Appellant and oblige him to fulfill his Agreement, and the said Act made in the Second Year of the Reign of his late Majesty King George the Second, do give his Majesties Justices of the Peace full Authority so to do, but by the said Respondents Neglecting to do so, it is a Tacit Acknowledgment that there was no Agreement depending between him and this Appellant, and therefore with Submission to this Honble Court he thinks himself both by Law and Equity Justly entitled to his Wages due from the said Respondent, as aforesaid, for all which Reasons, this Appellant doth Appeal from the said Order or Decree of The Honble the Mayors Court for this Appellants Bill to stand Dismissed with Costs.

Your Petitioner therefore most humbly Prays that the said Defendant (now Respondent) may be Appointed a Short Day to

Answer

Answer, all and Singular the Premises before this Honble Court and that the said Order or decree may be reversed and set a side, as also that the said Defendant (now Respondents) may be Decreed to pay unto this Appellant the full and Just Sum of Twenty Pagodas and Twenty One Fanams with all such Interest as now is or shall hereafter become due thereon untill full payment is made also the Costs of Suit in both Courts, and be granted such further and General Relief in the Premises as to this Honble Court Shall seem Meet

And your Petitioner Shall every Pray

Danl Shaw^t
Attorney for the Appellant

Mayors Court at Madraspatnam } { Tuesday the 10th Day of December Anno Domini 1771.

Present

John Hollond Esquire Mayor

Thomas Powney — Francis Jourdan
George Smith — John Mc Pherson and
John Sullivan — Aldermen

Mayors Court

Between George Barns at Present in Madras Mariner Complainant and John Attenborough also at Present in Madras Mariner 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, On Hearing the Pleadings Made Use of by the Attornies, & on due Consideration had thereon, It appearing to the Court from the Proceedings that the Complainant left the Ship before the Voyage in which he engaged was Compleated, and that he thereby forfeited the Wages now

now sued for This Court doth therefore think fit to Order and Decree and doth Accordingly Order & Decree, that the Complainants Bill shall stand Dismissed with Costs

Y Cur

To the Honble Josias Du Pre Esqr
President and Governour &c^a Council of Fort^t George
In the Court of Appeals

The Answer of John Attenborough Mariner and Commander of the Ship Savage to the Petition of Appeal of George Barns late Helmsman of the said Ship

This Respondent Saith that he Admits that the Appellant did at or about the time mentioned in the said Petition of Appeal Exhibit a Bill of Complaint in the Honble the Mayors Court against this Respondent for the Sum of Twenty Pagodas and Twenty One Fanams Current Money of Madras, which he Alledged, tho' very Unjustly, that this Respondent was Indebted to him on the Balance an Account of Wages Annexed to the said Bill — To which said Bill of Complaint this Respondent put in an Answer, But Instead of Admitting of the Validity of the Account Annexed to the Appellants said Bill as the Appellant Asserts, he did in his said Answer Absolutely deny to be Indebted unto the Appellant either in the Sum sued for or any other Sum or Sums of Money whatsoever On the Contrary that the Appellant Stood Indebted unto him this Respondent in the Sum of Thirty One Pagodas Six Fanams and Twenty Cash, being the Ballance of the Account Annexed to the said Answer which this Respondent prayed the Appellant might be Decreed to pay to this Respondent with all such Interest as then was or should thereafter become Due thereon, also all Costs of the Suit

This

This Respondent did further in his said Answer Setforth that the Appellant having in May One thousand Seven hundred and Sixty nine Shipped himself with this Respondent at Madras as a Helmsman of the said Ship Savage to go the voyage from Madras to any Ports or Places to which the said Ship might go untill her Arrival at Surat he this Respondent did Advance him four Months Imprest or Wages as is Customary, Amounting to Forty Eight Rupees, That he did at Batavia Advance him at one time Twenty four Rupees, and another time Two Rupees, and at Madras Thirty five Rupees as Charged in the said Account Annexed to this Respondents said Answer, and Corroboraated by the Credits of those Identical Sums in the Account Annexed to the Appellants said Bill Except the said Sum of Two Rupees That the said Appellant having so Shipped himself to go the said Voyage this Respondent Conceived as he Still does, he is not Either by Law or Custom entitled to his Wages untill he has fulfilled his Agreement with this Respondent, which would not have been Untill the said Ship Savages Arrival at Surat if he had Continued in her But more Particularly so as the Appellant Quitted the said Ship Savage Without this Respondents Leave and went on Board some other Ship Whereby the Appellant forfeited all the right that he might otherwise have had to his Wages had he proceeded on the Voyage in the said Ship Savage Untill the same was finished by her Arrival at Surat as aforesaid And as he has so forfeited his right there to he is become Indebted to this Respondent for the Money he was Advanced him on Account of the said Voyage as before mentioned Instead of this Respondent being Indebted to him for his Wages in the Unjust manner the Appellant Charges and pretends, and for which he has so Unjustly prosecuted this Respondent This Respondent did further in his said Answer beg leave to Recommend to the Attention of the said Honble the Mayors Court, As he now does to this Honble Court, the Appellant having on the Eleventh Day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy Swore to the Justness of his pretended Demand, and that he believed this Respondent was about to Depart from the Jurisdiction of the said Honble the Mayors Court, in Order to Obtain a Warrant of Arrest to Arrest this Respondents person Whereby this Respondent would Actually have been Arrested had he not given Bail when so far from this Respondents Departing the Jurisdiction of the said Honble Court as should have been the Case to have Authorized the Appellants Unjust Illegal & Unwarrantable Proceedings against him, he this Respondent was Still

Still at the time of making the said Answer with in the said Jurisdiction that is to Say, on the Ninth Day of October in the said year One thousand Seven hundred and Seventy – This Respondent did further Setforth that if a Commanders of a Ship is Liable to be Arrested and Detained in any Port or Place to which a Ship goes or at which She touches during her Voyage by the Mariners and People who are on ought to Conduct and Navigate her, and ought to be Aiding and Assisting as much as in their power towards her Safety and the Speedy Conclusion of her Voyage, a proceeding of this Sort might be of very Dangerous Consequence both to the Commander of the Ship, the Owners Freighters, Insurers, Respondentia Lenders, and others Concerned therein, Matters of this nature having as this Respondent Conceives from the Laws and Regulations in affairs of this Sort Appeared to the Legislature in this Light Laws Regulations have been Wisely made to Prevent such bad Dangerous Consequences, which this Respondent humbly hoped and doubted not would be Enforced both in this Case and in every One of the like Nature, And that this Respondent would meet with the Redress to which the said Honble the Mayors Court might think him Intitled, which he has done, and humbly hopes the same will be Conformed by this Honble Court To which said Answer the Appellant put in a Replication, thereby Endeavouring, tho very Evasively, to Confirm his said Bill, and pretending that he Shipped himself with this Respondent at Madras as a Monthly Servant and in the Capacity of a Helmsman, And also pretending it is Customary in India to Advance the Mariners before the Departure of a Vessell a Sum of Money in Proportion to the time it may take up in a Passage or Voyage from Port to Port &c. he therefore received the Advance of Forty Eight Rupies, which is for Months Wages, that he never made any Agreement to go the said Voyage &c. To which said Replication this Respondent put in a Rejoinder, thereby Confirming his said Answer and refuting the Several Matters and things Setforth in the said Replication, And this Respondent did therein Absolutely deny that the Appellant did Ship himself with this Respondent as a Monthly Servant, And that it is Inconsistent that a Helmsman, who is always Shipped for the Voyage, should, to Colour his Unjustifiable Quitting the Ship in the Manner Setforth in his Respondents said Answer, Attempt to put himself on the Footing of a Monthly Servant, and what proves Clearly that he was not Shipped as a Monthly Servant, but for the Voyage as is Customary, is his having received from this

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Damage, as he Setforth in his said Petition of Appeal, Nor is he in the least Aggrived thereby, And with regard to what the Appellant Setforth in his said Petition of Appeal that he had made Oath to the Justness of his Debt and also denying that he ever made the Agreement mentioned by this Respondent, he this Respondent Saith that, in the first place the Appellants making Oath to the Justness of his Demand can be of no Valedity, As it Clerly Appears by what is by this Respondent Setforth on Oath in his said Answer - That the Appellant did desert the said Ship, and that too when he was Informed where the said Voyage was to End Exclusive of his having been hired for that purpose, by which he did to all Intents and Purposes forfeit all the right that he might have had to his Wages had he proceeded on the said Voyage, And having so forfeited his Wages his making Oath that his said Demand is Just in Order to procure this Respondent to be Arrested was Illegal and rendered the Appellant Liable to such prosecutions and Penalties as the Law Inflects in those Case - And that the Appellant did Agree to go the said Voyage clearly Appears by this Respondents said Answer on Oath against which no proof whatever has been produced, Wherein this Respondent has positively Declared that the Appellant did Ship himself with this Respondent at Madras as a Helmsman of the said Ship Savage to go the Voyage from Madras to any Ports or places to which the said Ship might go untill her Arrival at Surat, and that he this Respondent did thereupon Advance him four Months Imprest or Wages, as is Customary - This was certainly an Agreement and such a One as the Law Esteems binding on the Parties, Otherwise why was it made Why did both parties Agree there to and why did this Respondent give, and why did the Appellant Accept of an Earnest not only to bind the said Bargain but also to provide himself with Necessaries for the said Voyage And why did this Respondent make him a further Advances for the same purpose when he thought the Nature of the Case and Voyage required it It certainly could not After these Matters were Agreed on and done and that too According to the Common Custom of India, be Supposed that the Appellant was at Liberty to Quit the said Ship before the End of the Voyage, and not only leave her in Distress, As he and the other Helmsmen did But also take the most Effectual Method for the Detention and Perhaps Loss of the said Ship and the Injury or perhaps Ruin of every person Concerned therein, Which was that of Prosecuting this Respondent as her Commander and under whose care and Management both She and her Cargo were, and not only Prosecuting him but procuring a Warrant of Arrest in Order to Arrest and Imprison the

this Respondent which must have been the Case both at the Suit of the Appellant and the other Helmsmen, who Entered the like Process Against this Respondent, and who have also Appealed to this Honble Court had not this Respondent been fortunate Enough to Procure Bail - The Hardship and Illegality of those Proceedings will this Respondent Doubts not clearly Appear to this Honble Court, And that the Plea made Use of by the Appellant of Written Agreements in Order to Colour such his Unjustifiable proceedings cannot nor ought by any means to Avail him - And with regard to what the Appellant Sets forth of the Act made in the Second Year of the Reign of his late Majesty King George the Second "That no Seaman shall fail in any Action or Process for Wages he had Entered in to a Written Contract with the Master to perform a Certain Voyage particularly to be Expressed, And Afterwards had Deserted this Usefull before it is Completion, This Respondent Saith that what the Appellant hath so Setforth is by no means the real Tenor of the said Act or a Just Extract there from, For the Words of the said Act in that respect are And where it shall be Necessary that the Contract in Writing shall be produced in Court no Obligation shall be on any Seaman to produce the same, but the Master or Owners of the Ship, And no Seaman shall fail in any Action or process for Recovery of Wages for want of such Contract being produced - Clearly Supposing and Implying, As this Respondent Conceives, that the Seaman his performed the Voyage, and that having done so he is Intitled to his Wages and shall not fail in his Action for such Wages for want of the Contract not being produced, As the Contract is Supposed to be Delivered to the Master when Executed and to Remain in his hands, But that is not the Case here - For in the first place tho' there is no Written Contract there was Earnest given to bind the Appellant to his Agreement with this Respondent to go the Voyage before and in this Respondents said Answer Specified In the Second place this was done According to the Custom in these Cases in India, The Natives of this Country being entirely Unacquainted with such Contracts In the Third place the said Act clearly Speaks of Voyages from England beyond the Seas, Where as the Voyage it was Intended the said Ship Savage should make, and which She has made was from Port to Port in this part of the World, In the fourth place tho' the said Act Direct Written Agreements in Case of a Ship bound beyond

beyond the Seas, and Says if any such Master shall carry out any Mariner Except his Apprentice, upon any Voyage beyond the Seas without first Entering in to such an Agreement and he and they Signing the same he shall forfeit five Pounds for every such Mariner to the Use of Greenwich Hospital, Yet it Clearly Appears that a Master of a Ship may carry a Mariner Without a Written Agreement, and that all he forfeits in such a Case is the said Penalty - The said Act does not Say that the Mariner in such a Case shall not be Obliged to go the Voyage for which he Shiped himself, or that he ought not to do so, And In the fifth place the Appellant did Actually in this Case Desert the said Ship Savage, and took the like Imprest or Earnest from the Master of another Ship as he had taken from this Respondent without any Written Agreement, According to Custom, and that at a time when he was told by this Respondent that he was bound to Surat, where he would pay him his full Wages And the Appellant having so Deserted the said Ship he did by the Marine Law forfeit his Wages, For it is said If a Mariner be hired and he Deserts the Service before the Voyage be Ended by the Law Marine he loses his Wages And further Mariners after having Unloaded the Ship if they Demand their Wages, and there be any Intention of their departure the Master may detain a reasonable proportion of the same till they bring back the Ship or give Caution to Serve out the Voyage - The Appellant and the other Helmsmen (who are very Material People as to the Management and Conducting a Ship in the Navigable part) cannot therefore certainly After Deserting the said Ship in the Manner they did be Intitled to their Wages, For was that the Case it might be an Exceeding bad President and Attended with the Utmost bad Consequence to every One Concerned in Or who had any Concern on Board any Ship or Vessell, As the Mariners might not only Desert a Ship themselves but leave her in the Utmost Distress by Prosecuting the Master in the Unjust manner the Appellant & the other Helmsmen, whose Suits are now before this Honble Court, have done In Answer to what the Appellant Setforth in his said Petition of Appeal about the Authority given to a Justice by the said Act, and of a Complaint having been made to George Stratton Esqr &c. this Respondent Saith those Matters do by no means Concern the Matters in Question in his Cause For the Scruple Matter is whether the Appellant from such his Unjust & Illegal deserting

deserting the said Ship Savage and Shipping himself to go on Board another Ship or Vessell And his Conduct as before and in this Respondents said Answer and Rejoinder Setforth did or did not forfeit his Wages

All which Matters and things this Respondent Submits to the Judgment of this Honble Court, And humbly 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 of Appeal may be Dismissed with Costs in both Courts, And for the Appellants Litigiousness in Prosecuting this Respondent so Unjustly, After his Behaviour as before Setforth, And persisting there in by Appealling to this Honble Court, that the said Appellant may be Taxed with Double or Treble Costs As this Honble Court shall think fit, And this Respondent does Lastly pray such further and other General Relief in the Premises as to this Honble Court shall seem meet

John Sykes

Att.y for the Respondent

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

In the Court of Appeals

Between Henry Lawson of Madras Inhabitant
and Poncalanarnapah of the Same Place Merchant

The Humble Petition and Appeal of the said
Henry Lawson.

Sheweth That your Petitioner Did on or about the Thirtieth
day of January which was in the year of Our Lord One Thousand Seven
Hundred and Twenty Exhibit a Bill of Complaint in the Honble the
Mayors Court at Madraspatnam against the said Poncalanarnapah
thereby Setting forth that the said Poncalanarnapah stands Indebted
unto your Petitioner in the full and just Sum of Two hundred and
Eighty Nine Pagodas Eleven fanams and Sixty Cash Current Money
of Madras As more fully and at large Appears by a Translate of an
Obligation on Account of which the said Debt arose, an Account
Current and Transfer there of from Morgelly Narnapah of Madras
Inhabitant to your Petitioner there unto Annexed And which your
Petitioner Prayed might be Admitted as Part of said Bill of
Complaint. To which said Bill of Complaint the said Poncala-
Narnapah was Summond to Appear and did Appear and gave
Bail for his Appearance to Answer the Issue or final determina-
tion of the said Suit And the said Poncalanarnapah being
Well Satisfyed that the Merits or Matters in Question in this
Cause Should be Determined Upon the Action Commenced by
your Petitioner as before mentioned in the Way in which your
Petitioner had so Commenced it did also Consent to Answer the
same Upon the Merits, in Order to bring the real Matters
in Question in a Legal and Equitable Way before, and to be
Determined by the said Court, Without making any Objection

as

as to the Way in which your Petitioner Commenced the said Action either by Plea Demurrer or in any other Way whatever, And the said Poncalanarnapah having so as afore said Consented to Answer your Petitioners said Bill of Complaint he did on or about the First Day of May in the said Year One thousand Seven hundred and Seventy put in an Answer there to thereby Objecting to the Justness of your Petitioners said Demand &c. But not making the least Objection to the Propriety or Legality of the Way in which your Petitioners said Action was Commenced As will more fully and at large Appear on Reference there to To which said Answer your Petitioner put in a Replication thereby Refuting the Matters and things Set forth in the said Answer and Confirming his, your Petitioners said Just Demand As will fully and at large Appear on Reference there to, To which said Replication the said Poncalanarnapah put in a General Rejoinder, which he afterwards Amended, thereby Endeavouring to Confirm his said Answer, and refute the Matters and things Set forth in the said Replication, tho to no purpose — Upon these Proceedings Issue was Joined, and witnesses Examined on both sides, those on the part of your Petitioner Proving the Justness of your Petitioners said Demand, Publication Passed, the said Cause was Set down for hearing and Coming on to be heard on Tuesday the Nineteenth Day of November last the said Court did Order and Decree that your Petitioners said Bill of Complaint should stand Dismissed with Costs, giving as a Reason for making such a Decree that it Appeared to the said Court that the Note of Hand on which the said Suit is founded is not Regularly Assigned over by Letter of Attorney to enable your Petitioner to bring his Action in the Name of the Transferrer, As will more fully and at large Appear on Reference to the said Decree which comes here with for the Inspection of this Honble Court — By Which said Decree your Petitioner thinks himself Particularly Aggrived and Doth therefore Appeal to this Honble Court therefrom, As he Conceives by the said Poncalanarnapah not having made the least Objection to the propriety or legality of the Way in which the said Action was Commenced Or any manner of Objection that could Authorize such a Decree, the same is Particularly Injurious to your

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Petitioner, Nor ought the propriety or Legality of the Commencement of the said Action as your Petitioner Conceives, to have been any part of the Consideration of the said Court as it was not part of the Proceedings in the said Cause, consequently did not come before the said Court, Whereas it Appears by the said Decree that the same hath been the whole Consideration of the said Court and the said Court Instead of Determining on the Merits or Matters in Question in the said Cause which did come before them, have only Determined on a Matter which did not come before them, to the great Detriment of your Petitioner who is thereby not only deprived of the benefit of Recovering his said Just demand or at least of a Just and Legal Trial whether his demand is Just or not To which he thinks himself Justly Intitled by the English Laws, But your Petitioner is by the said decree Loaded With very heavy Costs, no part of which he can ever Recover, Nor have any Relief in the Premises but by the Aid and Assistance of this Honble Court in Reversing the said Decree and either decreeing that the Principal of your Petitioners said Just demand shall be paid him by the said Poncalanarnapah with the Interest due and to become due thereon, together with both the Costs of the said Suit and of this your Petitioners Application to this Honorable Court, Or else that the said decree be Reversed and the said Poncalanarnapah Decreed to pay the Costs of this Application to this Honble Court for Redress and that the real Merits or Matters in Question in this Cause may be Tried heard and determined — And with regard to the Reason which the said Court have given for making such Decree your Petitioner begs leave to Observe that if the Obligatory Writing on which the said Action is Commenced is considered as a Note of hand as the said Court have considered it, that your Petitioner had a Legal right to Commence and maintain An Action thereon in his own Name, not only as having become his Sole and intire property by Vertue of the Transfer there of Annexed to the said Bill of Complaint, But also as Actions on Notes are by Law Maintainable in the Name of the Persons to whom they are Indorsed or Assigned, For all which cogent Reasons your Pet.r doth Appeal to this Honble Court from the said Decree of the said Honble the Mayors Court, And humbly Prays that the said Decree

may be

may be Reversed and Set aside and that the said Poncala narnapah may either be decreed to Pay the Principal of your Petitioners said Just Demand with the Interest Due and to become Due thereon together with both the Costs of the said Suit And of this your Petitioners Application to this Honble Court, Or else that the said Poncala narnapah may be Decreed to pay the Costs of this Application to this Honble Court for Redress and that the real Merits or Matters in Question in the said Cause may be Tried heard and Determined as before mentioned, And your Petitioner doth also pray such further and other General Relief in the Premises as to this Honble Court shall seem Meet ~

Mayors Court at Madraspatnam } { Tuesday the 19th Day of November Anno Domini 1711 ~

Present

John Hollond Esqure Mayor

Thomas Pomney — George Smith

John Mc Pherson — & John Sullivan

Aldermen

Between Henry Lawson of Madras Inhabitant Complainant and Poncala-narnapah of the same place 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 a Translate of an Obligation an Account Current, and Transfer there of annexed The Defendants Answer, with an Account Current annexed The Replication, The Rejoinder, the Interrogatories and ~ depositions on the part of the Complainant with a Cadjan Writing annexed 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, It appearing to the Court that the Note of Hand on which the Suit is founded is not Regularly Assigned Over by Letter of Attorney, to enable the Complainant to bring his Action in the Name of the Transferrer. 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 ~

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

In the Court of Appeals

The Answer of Poncala narnapah of Madras Merchant Respondent to the Petition of Appeal of Henry Lawson of the same place Inhabitant Appellant ~

This Respondent Saith that he does Admit that the Appellant did on or About the Thirteenth day of January which was in the year of Our Lord One thousand Seven hundred and Seventy Exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam Against this Respondent therein Setting forth that this Respondent Stood Indebted unto the Appellant in the full and Just sum of Two hundred and Eighty Nine Pagodas Eleven fanams and Sixty Cash Current Money of Madras and for Explanation and Support of the Appellants said Demand he did annex a Translate of an Obligation on Account of which the said Debt Arose also an Account Current and Transfer there of from Mogelly Narnayal of Madras Inhabitant unto the said Appellant and this Respondent does Admit that the Appellant did pray the same might be Admitted as part of his said Bill of Complaint, To which said Bill of Complaint this Respondent put in an Answer therein denying to be Indebted either to the Complainant (now Appellant) or to the Transferrer in any sum

sum or sums of Money what soever But on the Contrary this Respondent did Insist and Still does Insist that the said Transferrer was and is now Indebted unto him in the sum of One hundred and Eighty Pagodas Nineteen Fanams and Fifty Two Cash, And in Order to Explain & Support the Justness of his said Answer he did Annex an Account Current there to which does Contain Several Transactions which had passed between this Respondent and the said Moogelly Narrapah the Transferrer To which said Answer and Account Current this Respondent most humbly prays leave to refer this Honble Court unto This Respondent did Also in his said Answer Insist that both the Transferrer and himself Submitted the present Matters in Dispute to Arbitration and which is not as yet determined by the Arbitrators, And which this Respondent with humble Submission Conceives does Invalidate the said Transfer — To which said Answer the said Appellant put in a Replication and therein Endeavored to Refute the Several Matters and things Set forth by this Respondent in his said Answer and to Confirm his said Bill of Complaint, To which said Bill of Complaint this Respondent put in a Rejoinder and therein Maintained his said Answer and the Account Current thereunto Annexed to be true and perfect and in a very particular manner Set forth and Insisted that the Assignment of the said Debt from Moogelly Narrapah to the Appellant was Illegal This Respondent does Admit that upon these proceedings Issue and Witnesses Examined on both Sides those on the part of this Respondent maintaining and proving the Justness of his said Answer and the Account Current thereunto Annexed Publication passed and the said Cause was set down for hearing and came on to be heard on Tuesday the Nineteenth day of November last past the said Honble the Mayors Court did upon due Consideration had to the Legality of the Action decree that the Appellants said Bill of Complaint should Stand dismiss with Costs of Suit This Respondent with humble Submission to this Honble Court doth Conceive that the said Decree of the said Honble the Mayors Court is Just and founded on the Equitable Principles of Law Because if an

action is brought

Action is brought Contrary to such principles the Honble Court in whom such Action is brought will of Course Correct the Impropriety and Illegality of such Action, Altho the Defendant may not have taken Special Notice of it in the proceedings and Still without Annulling or destroying the reality of the Claim which One Individual may have upon on Other, And therefore this Respondent prays that this Honble Court will be pleased to Confirm the the said decree of the Honble the Mayors Court and dismiss the Appellants Petition with Exemplary Costs and Damages the same being as this Respondent Conceives Litigious and Vexatious and to Grant unto this Respondent such Other and further Relief in the Premises as to this Honble Court Shall seem Meet

Thursday 26th November 1772

Court of Appeals
Madraspatnam

Between Henry Lawson of Madras Inhabitant Appellant and Poncala narrapah of the same place Merchant Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the decree of the said Court given in this Cause on Tusday the 19th day of November Anno Domini 1771 and upon due Consideration 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 Dismist with Costs in both Courts

By the Court

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

Between Durago &c. Inhabitants of Tondewoor Appellants, and Morgan Williams by his Attorney James Hodges Respondent

The Humble Petition of the Appellant

Sheweth

That on the Seventh day of January in this present year One thousand Seven hundred and Seventy Two the Respondent Morgan Williams by his Attorney James Hodges filed a Bill of Complaint in the Honble the Mayors Court Against Vadee a Washerman of Tondewoor Aforesaid for the sum of Three Hundred and Seventy Pagodas and four Fanams Arrising upon a Mortgage Obligation of the third of September One thousand Seven hundred and Sixty four given by the said Vadey unto the said Respondent

And your Petitioners further Shew unto this Honble Court that the said Vadey did in the said Obligation Mortgage and make Over unto the said Respondent One House and Two Gardens Situated at the said Village of Tondewoor and in the said Obligation declares that he had lost the Bill of Sale or Title deed of the said Premises binding himself to procure and grant the Respondent a Certificate there of from the Justices of Madras

The Usual Rules having Issued for the said Vadey to Answer the said Bill, which as he Neglected doing a Decree passed on the fourth day of February in the said Year One thousand Seven hundred and Seventy Two in favor of the Respondent and the Usual time of Fourteen Days allowed by the Mayors Court for Satisfying of Decrees being elapsed, and the said Vaydey not having discharged the same or any part there of a Warrant of Execution issued on the eighteenth day of the said Month of February directed to the Sheriff to Seize and dispose of the Effects of the Aforesaid Vaydey, and by Virtue of which said Warrant of Execution the Sheriff Seized and Sold a House & three Pieces of Grounds at the said Village of Tondewoor Aforesaid

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the House Only the Property of the said Vaydey, the Grounds being the property of your Petitioners ~

Your Petitioners have therefore on the Twenty third of April in the said Year One thousand Seven hundred and Seventy Two Claimed the said Grounds by Petition to the said Mayors Court as your Petitioners property from time immemorial praying to be put in the Quiet and peaceable Possession thereof and that the Respondents might be Ordered to pay the Costs Attending the Seizure and Sale of the said Grounds ~

To which said Petition the Respondent did on the Twelve the day of May last past in his Answer wherein he saith that the said Vaydey by way of Securing to the said Respondent the payment of the Principal Sum of Two Hundred and fifty Pagodas Advanced or Lent unto him together with the Interest thereon Mortgaged a House and Two Gardens and that he the said Vaydey and One Peddoo the Brother and Trecarmmy the Cousin of the said Vaydey did Also on the Tenth day of September in the Year One thousand Seven hundred and Sixty four Mortgage unto the said Respondent an Other Garden belonging unto the said Vaydey Situated near the said Two Other Gardens as a further Security for the Payment of the said Principal and Interest and that he the Respondent Conceived that the Sheriff had an indoubted Right to Seize and Sell the Mortgaged Premises as he was Credibly informed and veribly belived the said Mortgaged Premises were the property of the said Vaydey, who with his Ancestors enjoyed the same from time immemorial &c ~

Issue being joined and Witnesses examined the Depositions of of the Washers themselves and on the part of the Respondent set forth that the disputed Grounds were given to Vaydeys family by the Honble Company and two of the said Washers Named Treppilly and Ramanjeloo produced as Witnesses on the part of your Petitioners prove that your Petitioners are the Lawfull Proprietors and Inheritors of the said Village for Several Generations, The Depositions of the Washers all Agree that the disputed Grounds were Allotted to Vaydeys Ancestors by the Honble Company excepting Treppilly and Ramanjeloo who Set forth that the disputed Grounds were not Allotted to them by the Honble Company upon any Certain Conditions, but because there was good Water there for Washing the Companys Cloth ~

the

The Depositions of Connoor Sarravan Moodelly Gorgapetta Marrain Moodelly Cottoor Mootiapah Moodelly Ernavoor Maurrapah Tondiwoor Alehy Polay & Veeragoo Moodelly all Agree that the said Village of Moodely Tondiwoor doth belong to your Petitioners and that your Petitioners are the Lawfull Proprietors and Inheritors of the said Village that your Petitioners Right derived to to your Petitioners from your Petitioners Ancestors who have been in Possession of the said Village for Several Generations and who were the first Cultivaters of the Grounds at the said Village, and to your Petitioners Alone the said Lands were Granted by the Prince of the Country while it was a Wild and desolate Spot of Ground ~

The Depositions of the Several Witnesses in General do moreover Agree and prove that it is the Custom all Over the Country for the proprietors and Inheritors of Villaged Lands to Allot certain parcells of the said Lands to Menal Servants Amongst whom are the Washers and that the said pro-prietors and Inheritors do Allot them the said Grounds only to build upon, but that by such Allotment the said Lands do not in the Least become the property of those to whom they are so Alloted Neither have the said Allottees any Right or Title to dispose of Mortgage and make Over the said Lands or any part of them to any Person or Persons whatever ~

Your Petitioners further Shew that on the fifteenth day of September Last past the said Matter in disputed came on to be Determined before the Honble the Mayors Court when the said Court were pleased to Order the disputed Premises in favour of the Respondent Morgan William by his Attorney James Hodges which said Order is hereunto Annexed, from which Order your Petitioners humbly Appeal to this Honble Court as your Petitioners Conceive they are Agrieved thereby — For your Petitioners humbly Shew that by the Terms and Conditions express in the Mortgage Obligation Annexed to the Respondents Bill of Complaint he the Aforesaid Vaydey therein did Land to have lost the Bill of Sale of the Mortgaged Premises in the Seige of Madras binding himself to procure and grant the Respondent a Certifi-cate of the same from the Justices of Madras, but which he the said Vaydey Omitted doing which evidently Appears that he the said Vaydey had no right or Title to the said disputed Grounds, For had he any as he the said Vaydey pretended he might have easily procured a Certifi-cate of the said Ground or at least proved that he had a Bill of Sale there of, and that the same was Actually Lost in the Seize of Madras and your Pets. forth pray leave to Observe that had And your Petitioners as proprietors and Inheritors of the said Village

Village of Tondevoor Allotted any Certain Grounds or Lands belonging to the said Village to Vadey or Other Washers of the Town of Madras=patnam Neither the said Vaydey nor the said Washers could have thereby any just Right to dispose of Mortgage or make Over the said Lands or any part of them to the Respondent or to any Other Person or Persons Whatever Because the said Lands by such Allot=ment can by no Means become the property of the said Vaydey ~

And your Petitioners further pray leave to Observe that supposing the said Grounds have been Allotted to the said Vaydeys Ancestors by the Honble Company yet they were Allotted to them for no Other Reason that because there was good Water there for Washing the Companys Investment and which your Petitioners dare not to Oppose; Still by the Common and Established Custom Among the Natives in the Country the said Vaydey can by no Means be Authorized to dispose of such Allotted Lands. For it will with Submission to this Honble Court not only entirely deprive your Petitioners of the whole of their Right as Inheritors of the said Village but will in a Short Space of time totally deprive the Company from Washing their Investment &c. and so be and Stand as a Precedent or Means for Others to whom Grounds are Allotted by the Company to Mortgage and Dispose of them to whom they think fit thus with no Other Right or Title nor even a Deed from the Committe of their Works to produce than because the Company Out of Humanity Allotted them Grounds to Build upon.

To Deter which and to prevent Other disputes of the like Nature as this which may Occur at the said Village, and at the different Villages of Fort St. George Town of Madraspatnam and its Districts especially as the Respondents Plea being entirely Confuted by his Own Evidences there certainly wants no greater Support to its Verasity. your Petitioners therefore think themselves Greatly Agrieved by being Dispossessed of Grounds at the said Village of Tondevoor and of which it is proved that your Petitioners Alone are the lawfull Proprietors and Inheritors, Yet the same is entirely Omitted in the said Order of the Mayors Court given in this Matter and for your Petitioners to pay all Costs by which Means the said Order has left your Petitioners remedeless ~

Your Petitioners therefore humbly Appeal from the said Order to this Honble Court of Appeals and most humbly pray that the Respondent may be Appointed a Short day to Answer all and Singular the Premises before this Honble Court and that the said Order may be reversed and set a side and that your Petitioner may have such Other and further Relief in the Premises as to this Honble Court shall seem Meet ~

Gideon Firth
Attorney for the Petitioners

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15 day of September Anno Domini 1772

Present

George Smith Esquire Mayor
Edward Stracey — John Hollond
John Mc Pherson — John Sullivan &
Archdale Palmer — Aldermen —
James Hodges
Morgan Williams by his Attorney

Vers

Vaydey Petition of Veeragoo &c. Inhabitants of Tondevoor Read Answer of the Respondent Morgan Williams by his Attorney James Hodges with a Translate of a Mortgage Obligation Annexed Read, Interrogatories on the part of the Petitioners Read, mine depositions taken thereunto &c. Interrogatories on the part of the Respondent Read, Their depositions taken thereunto Read

The Matter In dispute between the Petitioners Veeragoo &c. Inhabitants of Tondevoor and the Respondent Morgan Williams by his Attorney James Hodges Coming on to be Determined this day, on Reading the Petitioners Petition, the Respondent Answer with a Translate of a Mortgage Obligation Annexed The Interrogatories and depositions on the part of Petitioners, The Interrogatories and depositions on the part of the Respondents, On hearing the Pleadings and Arguments made

made Use of by the Attornies and on due Consideration had thereon,
This Court doth think fit to Order and, doth Accordingly Order,
that the Petitioners Petition do Stand Dismissed with Costs—

Pr Cur

James Taylor
regr

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

In the Court of Appeals

The Answer of Morgan Williams by his Attorney James Hodges Respondent to the Petition of Appeal of Veragoo &c. Inhabitants of Tondavoor Appellants—

This Respondent Saith he Admits that he this Respondent did at or about the time mentioned in the said Petition of Appeal File Bill of Complaint in the Honble the Mayors Court Against One Vaydey for the Sum of Three hundred and twenty Pagodas and four fanams Arising upon his the said Vaydeys Mortgage to this Respondent of the Premises in the said Mortgage Specifyed bearing date the Third day of September One thousand Seven hundred and Sixty four But this Respondent Absolutely denies that the House and Gardens thereby Mortgaged as Afore said are Situated at the said Village of Tondavoor or Tondacour As set forth in the said Petition of Appeal This Respondent further Saith that the said Honble the Mayors Court were Pleased on the fourteenth day of February in the said year One thousand Seven hundred and Seventy two to decree the said Vaydey to pay unto this Respondent the said Sum of three hundred Seventy Pagodas and four fanams with all the Interest due and to become due thereon, together with Costs of Suit, and the said Vaydey not paying the same Agreeable thereto or to the time Allowed for that purpose, which is fourteen days, the said Honble the Mayors Court were Pleased to Grant a Warrant of Execution to Seize and Dispose of the Effects or property of the said Vaydey in or towards Satisfaction of the said decree, By Vertue Where of the Sheriff, to whom the said Warrant was directed, did Seize and Dispose of the House And two Gardens or Pieces of Ground so Mortgaged, Also Another Garden or piece of Ground Mortgaged since by Way of Collateral Security for the Payment of the said Principal and Interest, a Translate whereof is Annexed to this Respondents Answer to the Petitioners Petition to the said Honble the Mayors Court herein after mentioned this Respondent Admits that the said Petitioners did at the time mentioned in the said Petition of Appeal Exhibit a Petition to the said Honble the Mayors Court

Court Claiming the said Grounds Alledging the same had bun their Property and their Ancestors from time Immemorial Pretending the said Waydey had only resided on the said Ground during the Pleasure of the said Petitioners they the said Petitioners having as they there in alledge Granted the the same on Consideration of its being convenient for Washing the Honble English East India Companys Cloth, And Paying that they might be put in Possession of the said Ground, and that the Costs &c Occasioned by the said Seizure and Sale might be Awarded to the said Petitioners— To Which said Petition this Respondent did at or about the time in the said Petition of Appeal Mentioned put in his Answer thereby Setting forth the Nature of the said Mortgage from the said Waydey to this Respondent, the said other Mortgage as a further Security for the Payment of the said Principal and Interest, that the Exhibited a Bill of Compliant in the said Honble the Mayors Court against the said Waydey for the Recovery of the said debt, That he Obtained a Decree for the same, and Warrant of Execution, by Virtue of Which the Sheriff Seized and Sold the said Mortgaged Premises, which this Respondent Conceived, as he still does, he had an Undoubted right to do, as this Respondent has been Credibly Informed and did, and does verily believe the said Mortgaged Premises were the Property of the said Waydey Which he the said Waydey and his Ancestors have Possessed and Enjoyed time Immemorial Without any Interruption or Claim by or from any Person or Persons whatever, And this Respondent did also Setforth that he he had been Informed and belived that the said Waydey and his said Ancestor have been at a Considerable Expence in Improving the said Gardens or Ground And that some or one of them did Actually Erector Build the said House And further that both he the said Waydey and his Ancestors did from time to time let two of the said Gardens at Rent (Meaning the Cocoanut and Palmira Trees therein) to some of the said Inhabitants of Tondaour or Tondavoor, and Received Rent for the same for many years, And that the said two Gardens (that is to say the Cocoanuts and Palmiras therein) are at this present time Let to some of the said Inhabitants in like manner— This Respondent did further in his said Answer Absolutely deny that the said Mortgaged Premises or any of them or any part or parcel there of are the Property of the said Petitioners or any of them. On the Contrary that the same are

are the property of the said Waydey as afore said Discovered to him as Heir at Law to his Deceased Father, who, as Well as the said Waydeys Grand father, did Possess and Enjoy the same a many years, He the said Waydey had therefore an Undoubted right to Mortgage the same to this Respondent in manner before mentioned, And this Respondent had an Undoubted right to have the same Sold on Account of his said Demand, This Respondent did therefore in his said Answer Pray that the Sheriff might be Ordered to Pay the Proceeds or Neat Amount of the said Sale of the said Mortgaged Premises Unto this Respondent on Account of his said Just Demand, and that the said Petition might be dismissed with Costs, And that the Charges damages and Expences Occasioned by the said Petition might be Awarded to this Respondent, As will more fully and at large Appear on Reference to the said Answer—

UPON these Proceedings Issue was Joined, and Witnesses Examined on both sides, the Witnesses on the part of the Petitioners by no means Supporting the Petitioners Claim to the Gardens or Grounds in Question, on the Contrary some of them clearly prove that the Petitioners have no right there to, and the Witnesses on the part of this Respondent Confirms the same, and Demonstrates the said Waydeys right there to, Consequently he had a Right to Mortgage them, and this Respondent thereby Intitled to have the same Sold for the Satisfaction of the said debt, And of Course that the Petitioners said Claim is Illegal, In which Light this Respondent humbly hopes these matters will Appear to this Honble Court, Notwithstanding what the Appellants Setforth to the contray in the said Petition of Appeal—

This Respondent further Saith that After the Witnesses had been so as aforesaid Examined Publication passed And the said Matters in dispute was Set down for hearing, And the same coming on to be heard on the fifteenth day of September last before the said Honble the Mayors Court, the said Court did think fit to Order, and did Accordingly Order that the Petitioners said Petition should stand Dismissed with Costs, As will more fully and at large Appear by the said Order now before this Honble Court—

FROM which Order this Respondent Conceives the Appellants had

had no Just Cause or Reason Whatever to Appeal to this Honble Court As this Respondent Conceives they are not in the least Aggrieved there by Notwithstanding their Allegations with regard there to For the Question is not whether the said Vaydey had or had not a Right or Title to the said Gardens or Grounds in Question, As the Petitioners would Infer by taking Notice of what is Expressed in the said Mortgage Relative to the Bill of Sale of the said Grounds— But the Question was before the Mayors Court. And now before this Honble Court is, Whether the Petitioners have or have not a Right or Title there to For if they have not their Claim is Illegal of Course whether the same were the property of the said Vaydey or not And this Respondent Conceives the Petitioners have by no means proved the same to be their property, for the purport of their Proof is relative to the Village of Tondaoor or Tondavour, to the Lands or Grounds in Question, which do not Appear to be any part of the said Village— And this Respondent would beg leave to Remark further With Regard to the Dispositions on the part of the Petitioners. And first with regard to the Deposition of Connoor Sarravan Moodely He Says the Ancestors of the said Petitioners have been in Possession of the said Village for Several Generations, who are the first Cultivators of the said Village Grounds, and to whom the said Land was Granted by the Prince of the Country while it was only a Wild and Waste Spot, Now its clear this Witness cannot know what has been done for several Generations but by hear Say, and therefore cannot know these Matters, But Supposing what he Says to be true it does no means shew that the Premises in Question belong to the Petitioners as he does not Say they are part of the said Village of which he seems to have such Exclusive knowledge, On the Contrary he Says he does not know of any Person or Persons Having Allotted any Ground or Lands at the said Village of Tondavor or Tondavoor to the defendant Meaning the said Vaydey (in the said Cause &c. Washers for any purpose Whatever. The Deposition of Gorhapatta Narrain Moodely is nearly to the same purport with this Addition that he does not know neither has

has he heard or been Informed of the said Vaydeys having Mortgaged or made over to this Respondent any part or parcells of the said Allotted Lands, Alluding to Lands Allotted to the Washers, Cottoor Mooteapah Moodely Says he does know of Persons having Allotted Some Grounds and Lands at the said Village of Tondaour or Tondavoor to some Washers of this Town of Madraspatinam, But that he does not know of their having given any to the said Vaydey, And that he does not know of the said Vadeys having Mortgaged or made Over unto this Respondent any part or parcell of the said Allotted Lands Ernawoor Marriapah Moodely in his Disposition Speaks of the Petitioners Ancestors having been in Possession of the said Village for Several Generations &c But that he doth not know of any Person or persons having Allotted any Grounds or Lands at the said Village to the said Vaydey &c Washers for any purpose Whatever, Nor does he know Neither has he heard or been Informed of the said Vaydys having Mortgaged & Made over to this Respondent any part of the said Allotted Lands. Tondevoor Atchy Polay in his Deposition Says he has heard from his Father that the Petitioners had been in Possession of the said Village for Several Generations Now this is Impossible. He Says further that he has heard of Persons having Allotted Grounds at the said Village of Tondaour or Tondavoor to some defendants Washers of this Town of Madraspatinam, their Forefathers, But does not Say by whom or that they are the Lands in Question, and the Depositions of the other Witnesses shew they are not. Viergo Moodely in his Deposition Says he has always heard that the Petitioners Right to the said Village was derived to them from their Forefathers, Who have had Possession of it for several Generations, But he does not know of any Person or Persons having Allotted any Grounds or Lands at the said Village to the said Vaydey &c Washers for any purpose or on any Terms or Conditions Whatever, Nor of the said Vadys having Mortgaged and made over to this Respondent any part or Parcell of any Lands belonging to the said Village. Tripelly in his Deposition Says the Petitioners are Lawful Proprietors and Inheritors of the said Village, But does not know how they became Intitled there to. But that they did not Allott any Grounds or Lands of the said Village to the said Vaydey &c. Washers for any purpose Whatever. That the Honble Company

did

did Allott some certain Grounds to the said Deponent the said Vaydey &c Washers their Ancestors, that he thinks by such Allottment he the said deponent the said Vaydey &c Washers have either and all of them a Right and Title to dispose of, Mortgage and make over the said Allotted Grounds or any part there of to any Person or Persons and he thinks so because he has known of Such Allotted Grounds having been Disposed of before, without any hindrance or dispute &c This Respondent begs leave to Observe to this Honble Court that he Conceives it clearly Appears by this Deposition, which is on the part of the Petitioners, that the Petitioners did not Allott any part of the said Village. Which they Alledge is their property, to the said Vaydey, and that he had a right to dispose of the Premises in Question either by Mortgage or Otherwise. Ramanjeloo in his Deposition on the part of the Petitioners Confirms very Particularly the said Vaydeys right to Despose of the Premises in Question, and that they are by no Means the property of the Petitioners. Royah Pillys Deposition is a General Evidence as to a particular Custom which is foreign to, and therefore cannot Affect the Present Case. This Respondent having gone thro' the Evidence on the part of the Petitioners, and shewn, as he hopes, that Instead of their proving that the Premises in Question being the property of the Petitioners and being part of the said Village, which they pretend is their property, that they shew the said Premises are not the Property of the said Petitioners, Nor any part of the said Village, But on the Contrary that they were the property of the said Vadey before the said Sale by the Sheriff And therefore ought to be Appropriated to the purpose of Discharging the said Mortgage to this Respondent. To Confirm this still more this Respondent begs leave to Refer to the Depositions of the Witnesses Examined on his part. And first Mastree Conacayah, Head Washerman of the said Village, Which the Petrs Claim as their property, Says that According to his Opinion the said pieces of Ground in Question between the said Petitioners and this Respondent are the Property of the said Vaydey because they were given to his Family by the said Honble Company. And because he has heard and does believe that the Father of the said Vaydey

Possessed

Possessed and Enjoyed the said Pieces of Ground for many years, And that Ever Since his Death, which is above fifteen years, the said Deponant knows that the said Pieces of Ground have been Possessed and Enjoyed by the said Vaydey, That he has never heard that the said Vaydeys Father was ever Interrupted or Molested on Account of his having Possessed the said Grounds. And he knows that the said Vaydey has never been Interrupted or Molested on Account there of by any Person in any Respect. That the said Pieces of Ground were never, to the best of the said Deponents knowledge Remembrance and Belief the Property of Veeragoor any other of the Inhabitants of of Tondaour or Tondavoor, That he does know the said Vadey did let out at Rent to Toddy People, Whether of Madras or Tondavoor the Cocoanut and Palmira Trees, and that he never was Interrupted or Molested therein. Which said Deposition of the said Mastree Conacayah is Confirmed by the Depositions of eight other Witnesses, and in part by a Ninth Viz! Villashaw, which this Respondent Conceives does clearly demonstrate the said Vaydeys right and Title to the Premises in Question, and that the said Claim of the Petitioners is Illegal and Unjust. With Regard to the Observation in the said Petition of Appeal that Supposing the said Grounds have been Allotted to the said Vaydeys Ancestors by the Honble Company Yet they were Allotted to them for no other reason than because there was good Water there for Washing the Companys Investment. This Respondent Saith that this Confession of the Petitioners is an Absolute Contradiction of their own Allegations in their said Petition to the said Honble the Mayors Court, Wherein they say they themselves granted the said Premises in Consideration of its being convenient for Washing the Companys Cloth. And with Regard to their Assertion that they Dare not Oppose the Washing of the Companys Investment there, this Respond Saith they had no Right to Oppose it the said Grounds not being their property, As before mentioned, Nor can the Petitioners be deprived of a Right they never had. And as to their Observation of the Companys being Deprived of Washing their Investment &c this Respondent Saith that Matter is Quite foreign to the Nature of the Present Case, and the Petitioners Claim, for the said Companys having or not having a Place to Wash their Cloth cannot in the least Support the Petitioners Unjust Claim of the Premises

in

in Question Nor can the Matter of a Precident for others, to whom Ground are Allotted by the Company, to Mortgage and Dispose there of at all Avail the Petitioners. these Matters are not only foreign to the Nature of the Present Case, But are Matters which Concern the said Company and not the Petitioners and which the Petitioners had no right Whatever to Introduce in their said Petition of Appeal This Respondent Absolutely denies that his Plea is Confuted by his own Evidences, As the Petitioners Unjustly Setforth, On the Contrary this Respondent Saith that his this Respondents Plea is Supported not only by his own Evidences, but also by the Evidence on the part of the Petitioners as before mentioned.

All Which Matters and things this Respon= =dent Submits to the Judgment of this Honble Court and humbly hopes it will clearly Appear to this Honble Court that the said Order made by the said Honble the Mayors Court as aforesaid is a fair Just Legal and Equitable Order And this Respondent also hopes that this Honble Court will not find any Cause to Alter the same. But that they will be Pleased to Confirm it, And this Respondent most humbly Prays that the said Petition of Appeal may be Dismissed with Costs. This Respondent also Prays such further and other Relief in the Premises as to this Honble Court Shall seem Meet

John Sykes
Att.y for the Respondent

Thursday the 26 November 1712

Court of Appeals at Madraspatnam

Between Vcaragoo &c. Inhabitants of Tondavoor Appellants and Morgan Williams by his Attorney James Hodges 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 Mayor Court together with an Extract from the Minutes of the said Court given in this Cause on Tuesday the 13 day of September Anno Dominie 1712 and upon due Consideration had of the Matters therein severally con= =tained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Extract from the Minutes of the said Court given in this Cause do stand confirmed and that the Appellants Petition be hence dismissed with Costs in both Courts

A Cur

(a true Copy)

To the Honorable Josias Du Pre Esq.r
President Governor &.a Council of Fort.t St George

The Humble Petition and Appeal of Francois Xavier Legou of Pondicherry Merchant, by his Attorney Daniel Shaw of Madras, Inhabitant

Sheweth

That this Appellant did Exhibit his Amended Bill of Complaint in the Honorable the Mayors Court, on or about the fifteenth day of January, which was in the Year of Our Lord, One thousand Seven hundred and Seventy One, Against the Respondent Shewashedambara Pully then Original defendant, thereby Setting forth, that the said Respondent did for and in Consideration of the Sum of Six thousand, Five hundred Rupees Borrowed of this Appellant, at Pondicherry aforesaid, on or about the Seventh day of April, which was in the Year of Our Lord, One thousand, Seven hundred and fifty Eight, Execute and Deliver unto this Appellant, a paper Writing Obligatory in the Mallabar Language, whereby he the said Respondent Promised to pay unto the Appellant on the Twenty Second day of the said Month of April, the afore said Sum of Six thousand Five hundred Rupees, together with such Interest as shall become due thereon, and this Appellant further Setforth, in the said Bill of Complaint, that the said Respondent did pay, on or about the Second day of July which was in the Year of Our Lord, One thousand Seven hundred and Fifty Nine the Sum of Four hundred and Eighty Rupees, in part of the said Paper Writing, and that after Debiting the said Respondent, with the Amount of the said Paper Writing, and the Interest due thereon, and Giving Credit for the said Sum of Four hundred and Eighty Rupees, and the Interest thereon, the Ballance doth Amount to the Sum of Fifteen thousand Two hundred and Ninety two Rupees, which, at the Exchange of Three hundred and Thirty One Pondicherry Rupees, for every Hundred Pagodas, doth Amount to the Sum of Four thousand, Six hundred and Nineteen Pagodas and thirty three Fanams, as will more fully and at large appear on a Reference to the said Bill of Complaint with a Translate of the said Writing Obligatory and an Account Current thereunto Annexed, &

this

this Appellant in his said Bill of Complaint prayed that the said Respondent then Original Defendant might be Ordered and Decreed to pay unto this Appellant, the aforesaid Sum of Four thousand, Six hundred and Nineteen Pagodas, and thirty three fanams, together with Interest thereon, and also all Costs of Suit which in the purport of this Appellants said Bill of Complaint. To which said Bill of Complaint, the said Respondent did on or about the Twenty Sixth day of February, in the aforesaid year One thousand Seven hundred and Seventy One, part in an Answer and therein denied to have Received of this Appellant the said Sum of Six thousand and Five hundred Rupees, or any other Sum or Sums of Money whatsoever, or from any person or persons whatsoever on Account of the said Writing Obligatory and the said Respondent, further Setsforth in his said Answer that he did not at any time or times give any such Writing Obligatory and if any such there be, it is fraudulent and Consequently must be Forged and denies to have paid this appellant or any other person or persons whatsoever, the said Sum of Four hundred and Eight Pondicherry Rupees, at the time setforth by this Appellant in his said Bill of Complaint or at any other time or times whatsoever on Account of the said Writing Obligatory, and the said Respondent, on the said Twenty Sixth day of February in the aforesaid year One thousand, Seven hundred and Seventy One, did Exhibit a Cross Bill of Complaint in the Mayors Court against this Appellant, Purporting the same matter as in the said Answer and further, therein prayed the said Court to Decree Appellant to deliver up the said Writing Obligatory, and also to pay all Costs of both the Original and Cross Suits with Damages, which are the purport of the said Respondents Answer and Cross Bill of Complaint, To which Answer and Cross Bill of Complaint, this Appellant, then Original Complainant and Cross Defendant, did put in a Replication and an Answer and therein Inserted that the Matters and things setforth in his said Bill of Complaint were true and Relievable by the Honble the Mayors Court, and that the said Writing Obligatorys not Forged nor obtained by Fraud but that the the said Appellant will in time prove the Validity there of and the Justness of his Prementioned Demand. To which Replication and Answer the said Respondent, then Original Defendant and Cross Complainant, did put in a Rejoinder and a Replication therein avering that all the

Matters

Matters and things alledged and setforth by him the said
Respondent, in his said Answer Cross Bill Rejoinder and Replic
were true as are therein Alledged and setforth and that the said Replication
cation and Answer of this Appellants were Imperfect and Insuff
cient in the Law to be Rejoined and Replied unto, by him the said
Respondent, for many Divers manefest Imperfections and
Incertainties therein Contained, and further Insisted that the
said Writing Obligatory was not Valid and that the same must
be Forged or Procured by Fraud To which Replication this
Appellant (then Cross Defendant) did put in a General Rejoinder
therein avering that all the Matters and things Alledged and
Setforth by him the said Respondent in his said Rejoinder
were true as therein Alledged and setforth, and that the said
Replication was Imperfect and Insufficient in the Law to
to be Rejoined unto, by him this appellant, for many Divers
Manifest Imperfections therein Contained. And after the
aforegoing Proceedings Issue was Joined and Rules for Witne
and Publication Passed and the said Causes were setdown
for hearing and having gone through all the Necessary Ones
the same came on to be heard on Tuesday the Seventeenth day of
this Instant March But Notwithstanding this Appellant
did Produce Incontrovertible Witnesses to Prove the Justness
of his demand and the Validity of the said Writing Obligatory Namely
Iyen Permaul Cora Chitty and Mootoo Cumarappah Chitty,
who Positively Deposeth that they were Present at the time
and saw the said Respondent Signed his Name thereto who
then and there Acknowledge the same to be his Act and deed
and likewise the said Iyen Perroumaul Cora Chitty together
with this Appellants Peon, named Cengala Peddey Naiah
have further Positively Deposeth that they did Receive of
and from the said Respondent the Sum of Four hundred
and Eighty Rupees anpart Payment of the said Writing
obligatory, and the said Respondent hath not produced
even a Presumptive much more a Positive Proof to support
his False and Malicious Allegations setforth as the
whole

whole of his Proceedings, yet the said Honble the Mayors Court did Order
and Decree that the Bill of this Appellants (then Original Complainant)
shall Stand Dismissed, and that this Appellant shall pay all Costs of both the
Original and Cross Suits, as will more fully and at large appear, by the said
Decree of the Honorable the Mayors Court hereunto Annexed for the
Inspection of this Honorable Court, and to which this Appellant most
humbly prays a Reference, by which said Decree, this Appellant most
humbly Conceive, that he hath Apparent damage for this Appellant
doth, with Submission to this Honorable Court, Insist, that the Respondent
ought to have been Decreed to pay, unto this Appellant, the afore said
Sum of Four Thousand Six hundred and Nineteen Pagodas, and Thirty
Three Fanams, together with all such Interest as now is or shall
hereafter become due thereon untill full payment is made, and also Treble
Costs, of both the Original and Cross Suits, on Account of this the said
Respondents Litigious and Malevolent Behaviour and Conduct, in
Continuing the Original and Commencing a Cross Suit against this
Appellant, more Especially as it evidently appears, by the aforegoing
Proceedings that the said Respondent hath used the Greatest
Chicanery he was Master of to Perplex and Confuse the Suit Commenced
against him by this Appellant and thereby endeavouring to Pervert
the Administration of Justice, in granting this Appellant the Relief
prayed for by him, in his said Original Bill of Complaint. For
which Reason, this Appellant doth appeal from the said Order &
Decree and the Proceedings had in the Honble the Mayors Court and
most humbly prays that the said Original Defendant and Cross
Complaindant (now Respondent) may be Appointed a Short day
to Answer all and Singular the premises before this Honorable Court
and that the said Order or Decree may be reversed, and set aside, as
also that the said Original Defendant and Cross Complainant,
now Respondent may be Ordered & Decreed, to pay unto this Appellant
the afore said Sum of Four thousand Six hundred and Nineteen
Pagodas and thirty three Fanams, with all such Interest as now
is or shall hereafter become due thereon, and also Treble Costs of
both the Original and Cross Suits, together with the Costs of this
Honble Court, with such further and General Relief therein as to
this Honble Court shall Seem Meet

Dan.l Shaw
Attorney for the Petitioner

Mayors Court at Madraspatnam } Tuesday the 17th day of March Anno Domini 1772

Present

George Smith Esquire Mayor.

Thomas Powney — Edward Stracey

Archdale Palmer — and George Savage

Aldermen —

Between Francis Xavier Legou of Pondicherry Merchant by his Attorney Daniel Shaw of Madras Inhabitant Complainant and Shwashedambara Pilly of Carringorry Inhabitant but now at Madras Defendant —

Et E Contra

These Causes coming on to be heard and Debated this day in the Presence of the Attornies on both sides On Reading the Complainants Bill, with an Account Current, and a Translate of a Paper Writing from the Mallabar Language Annexed, the Defendants Answer the Cross Complainants Bill, the Replication, the Cross Defendants Answer, the Rejoinder, the Cross Complainants Replication, the Cross Defendants Rejoinder, the Interrogatories and Depositions on the part of the Original Complainant, and Cross Defendant, with a Note or Writing Obligatory in the French Language, as Also An Obligatory Writing in the Malabar Language Annexed, the Interrogatories and Depositions on the part of the Original Defendant, and Cross Complainant — On hearring the Readings Made Use of by the Attornies, and on due Consideration had thereon, It Appearing to the Court from the Proceedings, that the Original Complainant has Not produced Sufficient Evidence to prove the Validity of the Bond upon which he Now Sues

This Court doth therefore think fit to Order and Decree, and doth Accordingly Order and decree, that the Original Complainants Bill be dismissed, and that the Original Complainant do pay the Costs of both Suits —

Per Cur

James Taylor

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To the Honorable Josias Dupre Esqr
President and Goverour &c. Council of
Fort St. George

The Answer of Shwaashadambra Pully
Respondent to the Petition of Appeal of
Francois Xavier Legou Appellant —

This Respondent admits that the Appellant did Exhibit his amended Bill of Complaint in the Honorable the Mayors Court on or about the Fifteenth Day of January which was in the year of Our Lord One Thousand Seven Hundred and Seventy One against this Respondent thereby setting forth that this Respondent did for and in Consideration of the Sum of Six thousand Five Hundred Rupees Borrowed of the Appellant at Pondicherry aforesaid on or about the Seventh day of April which was in the Year of our Lord One thousand Seven Hundred and Fifty Eight execute and deliver unto him the Appellant a Paper Writing Obligatory in the Malabar Language wherein this Respondent promised to pay unto the Appellant on the Twenty Secondday of the said Month of April the afore said Sum of Six Thousand Five Hundred Rupees together with such Interest as should become due thereon, and that the said Appellant further setsforth in the said Bill of Complaint that this Respondent did pay on or about the second day of July which was in the Year of our Lord One Thousand Seven Hundred & Sefty Nine the Sum of Four Hundred and Eighty Rupees in part of the said Paper Writing and the Interest due thereon and that after debeting this Respondent with Amount of the said Paper Writing and the Interest due thereon the Ballance doth Amount to the Sum of Fifteen Thousand Two hundred and Ninety two Rupees which at the Exchange of Three Hundred and thirty One Pondicherry Rupees for every Hundred Pagodas doth amount to the Sum of Four Thousand Six hundred and Nineteen Pagodas and Thirty three Fanams, and that the said Appellant in his said Bill of Complaint prayed that this Respondent might be decreed to pay unto the said Appellant the Afore said Sum with all Costs of Suit — To which said Bill of Complaint this Respondent put in his Answer whereby he denies to be indebted to the Appellant in any Sum of Money whatsoever and further setforth in his said Answer that he did not at any Time or Times give any such Writing Obligatory and if any such there be that it is fraudulently Obtained and of Course that it must be forged and denis to have paid the Appellant or any other Person or Persons whatsoever the said Sum of Four Hundred and Eighty Pondicherry Rupees at the Time setforth by the Appellant in his said Bill of Complaint or at any other Time or Times whatsoever on Account of the said Writing Obligatory or any othorwise and this Respondent did on the Twenty Sixth day of February in the aforesaid year One thousand Seven Hundred and Seventy One Exhibit a Cross Bill of Complaint purporting the same Matter as was contained in his Answer and therein praying that the Appellant might be decreed to deliver up unto this Respondent the said forged paper Writing and to pay all Costs of both the Original and Cross Suits — This Respondent thinks it needless to trouble this Honble Court with a Detail of the Proceedings to which he begs leave to refer as also the Depositions and to observe that the Honble the Mayors Court fully sensible of the Justness of his Cause were pleased to dismiss the Appellants Bill with Costs which decree this Respondent hopes 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 other Relief as to this Honble Court shall seem Meet — To which said Cross Bill the Appellant did put in a Replication and an Answer of the same Purport with his Bill of Complaint to which this Respondent did Reply and Rejoin insisting that the said Writing Obligatory was not given by this Respondent but that it was aforged one — to which Replication the Appellant did Rejoin and alledging the same Matters as were contained in this former Proceedings this Respondent begs leave to observe to this Honble Court that the whole of the Matters contained in the afore mentioned Papers are but mere Assertions on either side and can have little Weight with this Honble Court but the Depositions of the Witnesses in this Cause will fully and clearly prove that the aforesaid Paper writing was forged or

fraudulently

fraudulently Obtained and that the whole Transaction is iniquitous in Order the more fully to evince the same this Respondent begs the Attention of the Honble Court to the Deposition of the following Witnesses—

Eyemperumall Corah Setty Deposeth that he was present on the Seventh day of April in the year One Thousand Seven Hundred and Fifty Eight when the Complainant Lent the Defendant the Sum of Six Thousand Five Hundred Pondicherry Rupees and that he (the Deponent) was present when the Defendant gave unto the Complainant his Bond or Writing obligatory for the same that he doth well know that the paper Writing produced to him at the Time of his Examination is the same Original Bond or writing Obligatory given by the Defendant to the Complainant for the Money advanced or Lent as aforesaid and that the Defendant did subscribe his Name there to in the Presence of this Deponent and several others, but whether of the two Witnesses therein Mentioned this Deponent does not now recollect. Mootoo Virapah Setty Deposes the same the above Evidence and that he drew out the Bond or Writing Obligatory Vencaty Rayah whose Name is inserted as a Witness to the Paper or Writing Obligatory Deposeth that the said Paper was not wrote or signed in his Presence neither was he sign as a Witness there to Narsinga Rayah Deposeth that he did not subscribe as a Witness to the Paper Writing, and that he is utterly ignorant of the Transaction—

Collambaram Shedambara Palley— Deposeth that he is well acquainted with the Hand Writing of the Defendant having served him in the Capacity of Account- ant for the Space of Twenty five Years but that after carefully viewing and Examining the Note or Writing Obligatory now shewn him at the Time of his Examination he is fully persuaded and can confidently affirm that the Signature there to annexed is not the Hand Writing of the Defendant—

Addy Verago Moodeliar Deposeth that he was present at Chilumbrum when Eyem Permal Corah Setty a Witness in this Cause and his Brother Trivangalum asked Shaudramuddy the Amuldar of Chilumbrum some time before his Decease for the Payment of a Sum of Money due to an European at Pondicherry and which he told him the said Chaudramudda had borrowed thro the Means of him Trivangalum and his Brother Eyem Permall Chora Chitty that Shaudramudda Answered that as soon as Mr. Mera a Gentleman who was come from Pondicherry to be paid some Arrears of Rent due from him Shaudramudda should be returned with his Amuldar Churapah Moodeliar who had accompanied him he would pay the Sum which the said Trivangalum then Demanded of him — that at that Time Shewashadambara Pully the Defendant in this Cause was Sub Amuldar under the said Chandramudda— that before the said Mons. Mera and Churapah Moodeliar Departed Shundramudda fell sick and Eyem Permall Chorah Chitty came to Chillumbrum that soon after his Arrival Shaudramudda died and Churapah Moodleir succeded to his Amuldarship that the abovementioned Eyem Permall Corah Chitty fearing lest Chandramudda being dead he should be Answerable to the European at Pondicherry requested of the Deponent to Speak to the said Churapah Moodlier and desire him to pay Chandramuddas abovementioned debt out of the Country Revenues and to put it to Chandramuddas account as if Expended by him as Amuldar — and that the said Eyem Permall Chorah Chitty at the same time told this Deponent that he had asked Shewashadambara Pulley the Defendant in this Cause to put it in to the Account in the same Manner he was now wanting Churapah Moodeliar to do but

that

that the said Shivashdambara Pulley had refused to do it
Mardayiah Moodeliar and Corrimar Sawmey
Moodeliar Depose that they were setting under a Payald
in Pondicherry and over heard Eyern Permall Chorah Setty
and Mootoo Verapen Setty concert the Scheme of the Forgery

This Respondent begs leave to observe to this
Honorable Court that the Appellant in his Amended Replication
affirms that the Persons whose Names are subscribed as
Witnesses to the Writing Obligatory were Present at the Execution
there of whereas it evidently appears to the Contrary by all
their Depositions on Oath except that of Mootoo Verapen Setty
and Eyern Permall Corah Setty who in his Deposition says
that the amount of the Writing Obligatory was paid to the
Respondent Addy Verage another Witness positively Depose
that the said Eyern Permall declared to him that the Money
was due from Sandramudda the Deceased Renter which the said
Eyern Permall Cora Setty wanted this Respondent to pay
which he refused This Respondent begs leave further to remark
that the Appellant asserts in his Cross Answer that the Money
was not paid by him to this Respondent but that it was lent by
Eyern Permall Chorah Chitty on his (the Appellants) Account
to Chandramudda the Annuldar of Chilumbrum Part of which
he the said Chandramudda Discharged and that for the
Remaining Ballance this Respondent gave the aforementioned
Note or Writing Obligatory which is fully confuted by the said
Eyern Permall Chorah Chitty who Declars that the Money
was Actually paid to this Respondent in his Presence and
in the Presence of several others — Such Contradictions Are too
Obvious to escape the Attention of this Honble Court the Honble
the Mayors Court being fully convinced of the Justness of
this Respondents Cause were pleased to grant a Decree in
his Favor and to dismiss the Appellants Bill with Costs
which Decree this Respondent hopes this Honorable Court
will

will find no 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 other
Relief as to this Honorable Court shall seem Meet.

Geddow Fleith
Attorney for Respondent

Friday the 4th 27 November 1772

Court of Appeals at Madraspatnam } ffs

Between Francis Xavier Legou of Pondicherry Merchant by his Attorny Daniel Shaw of Madras Inhabitant Appellant and Sewaseedumbarah Pillah of Coringoly Inhabitant but now at Madras 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 17th day of March Anno Domini 1772 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 with this Addition that the Appellant shall deliver to the Respondent the Note or Writing Obligatory sued for in the said Respondents Cross Bill of Complaint preferred in the said Honble the Mayors Court, and that the Appellants Petition be hence dismissed with Costs in both Courts.

Ffur

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

In the Court of Appeals.

Between James West of Fort St. George Merchant And Louis Monnerown of Pondicherry Merchant but at Present in Madras.

The Humble Petition of Appeal of the said James West

Sheweth

That the above said James West did on or about the fifteenth Day of October which was in the year of Our Lord One thousand Seven hundred and Seventy One Exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam Against the Abovenamed Louis Monneron for the Sum of Nine thousand and fifty three Pagodas Current Money of Madras being the Ballance of an Account, which Account is Annexed to the said Bill of Complaint your Petitioner did further in his said Bill of Complaint set forth that having bought Eight hundred Candy of Salt Petre of the said Louis Monneron, and the said Louis Monneron having a further Quantity of Nine hundred Candy of Salt Petre, he the said Louis Monneron Wrote your Petitioner a Letter from Pondicherry, Offering your Petitioner the Sale of the said Nine hundred Candies of Salt Petre at the same Price of the said Eight hundred Candies, which was Forty Rupees p Candy, only abating Five p Cent the purport of the said Louis Monnerons said Letter to your Petitioner is as follows, that is to Say.—

To James West Esqr. Pond 26th August 1771 at Fort St. George

Mr. Stevenson is this Instant Arrived here upon a Danes Vessell, he has Delivered to me your Letter and Consequently I shall begin To morrow to deliver the Salt Petre this Operation.

terminated

termined I will send you Mr. Stevensons Receipt. I have about Nine hundred Candies, which I shall Deliver to you at the same Price five ℔% Excepted, to which I consent to lose, the Quality ought to be the same, and there was no Difference in the Purchase I made, I have paid the Totality at the Price of Fortyeight Rupees ℔ Candie — The Danes Vessell can take the whole Quantity if you foresee to find it sell to South part, Else you can Load it for Madrass, where I have the Councils Permission to sell it —

Signed

Louis Monneroron

Which said Letter is Admitted by the said Louis Monnerorons Answer to the said Bill of Complaint — your Petitioner did further in his said Bill of Complaint Setforth that he did Accept of the said proposal of the said Louis Monneroron for the Sale of the said Nine hundred Candys of Salt Petre and did thereby Conclude the Bargain for the same, which your Petitioner so did and Signifyed the same to the said Louis Monneroron by Letter Dated the Thirtyeth Day of the said Month of August Directed to the said Louis Monneron at Pondicherry, which said Letter is to the following purport that is to Say. —

To Louis Monneroron Esqr.

Sir

I am now to Acquaint you that I shall in Consequence of your last Letter to me, look upon the whole of the Salt Petre as my property, But shall not Ship the Nine hundred Candy on Board the Danes Ship with the eight hundred Candy you are Delivering for my Account to Mr. Stevenson, I must beg you will take great care of the said Nine hundred Candy untill my Direction and People can be with you to Receive it, which shall be in as Short a time as possible the Amount of the money for the last Quantity shall be paid with Great Exactness to your Order —

As I am now the Owner of all the Salt Petre

Petre and must be Accountable to you for the Money, be Pleased to tell me if any more of that Article comes to your Settlement, Or if there be any more for Sale, as it will be better to buy all than apart, in Order to Prevent One Quantity hurting the Sale of the other When Mr. Stevenson has Received the eight hundred Candy send me his Receipt, and tell me with all Speed if you have Godorons to keep my other Nine hundred Candy in till my People can be with you, and if I am to pay any Monthly Expence for the Godorons —

Signed

James West

Which said Letter is Admitted by the said Louis Monnerorons Answer to the said Bill of Complaint — your Petitioner did further in his said Bill of Complaint Setforth that having so as aforesaid Agreed to the Proposal of the said Louis Monneron for the Sale and Purchase of the said Nine hundred Candies of Salt Petre, and thereby Concluded a Bargain for the same, as before mentioned, he did from that time look upon the same as his your Petitioners property, and did in Consequence thereof Promise Owners of Ships to send it at Freight to a Market Where he had great reason to believe it would have Sold Considerably better than the said Eight hundred Candies were Sold and the Price your Petitioner has Charged in the said Account Annexed to the said Bill of Complaint — That your Petitioner did in pursuance of the said Purchase of the said Nine hundred Candies of Salt Petre send people to Pondicherry to Receive the said Salt Petre for and on Account of your Petitioner, and Wrote a Letter to the said Louis Monneron bearing date the Ninth September One thousand Seven hundred and Seventy One desiring him to deliver the same to the said People Accordingly, which he refused doing, by which means, the Season being far Advanced and the Monsoons being Expected to Set in very soon your Petitioner was not only deprived of the benefit of sending the said Salt Petre to the Market before Alluded to, and at which he has great reason to believe it would have Sold to a Considerable Profit As before mentioned, But he had at the time of Exhibiting the said Bill of Complaint been at considerable Expences in sending People to Pondicherry to receive it and he might still sustain considerable

considerable Damages by being made Answerable for the Freight of the said Vessells on which he had Engaged to Ship it, and other things On Account of which Damages your Petitioner Protested Against the said Louis Monneron in due from of Law. that as a further reason Why the said Louis Monneron ought to pay unto your Petitioner the Amount of the said Nine hundred Candy of Salt Petre at the Price Charged in the Account Annexed to your Petitioners said Bill of Complaint. your Petitioner Set forth he had been Informed the the said Louis Monneron has Sold either all or part of the said Salt Petre to some other Person or persons since the Sale of it to your Petitioner, to which your Petitioner was Apprehensive he the said Louis Monneroon was Induced by a greater Price having been Offered than that at which your Petitioner had Purchased it as before Set forth. That the said Louis Monneron having Refused to give your Petitioner any manner of Satisfaction touching the Premises your Petitioner prayed a General Relief therein such as to the said Honorable the Mayors Court should Appear Agreeable to Equity and good Conscience, And that the said Louis Monneron might be Decreed to pay unto your Petitioner the afore said Sum of three thousand and fifty three Pagodas with all such Interest as then was or should there after become due thereon, also all Costs of the said Suit As will more fully and at large appear on Reference to the said Bill of Complaint- To which said Bill of Complaints the said Louis Monneron did on the Tenth Day of December last put in an Amended Answer (the Original Answer by him put in before having been by the said Honorable the Mayors Court Ordered to be Amended) thereby denying to be Indebted unto your Petitioner in the said Sum of three thousand and fifty three Pagodas or in any other Sum or Sums of Money Whatsoever, On the Contrary Alledging that your Petitioner was Indebted Unto him the said Louis Monneron in the full and Just Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty fore Cash, As he Alledges will Appear by an Account which he Annexes to his said Answer for Seven hundred and Ninety eight Candies and thirty Nine Pounds of Salt Petre, Charges thereon Interest for the same, and Charges of a Protest the said Louis Monneron does further in his said Answer, Notwithstanding he does as afore said Deny Generally

your

your Petitioners said Demand, Admit that he the said Louis Monneron did Make the said Offer of Sale of the said further Quantity of Nine hundred Candy of Salt Petre, and that your Petitioner did Agree there to, and does Actually Annex to his said Answer Copies of his the said Louis Monnerons said Letter making the said Offer of Sale, and of your Petitioners said Answer there to, Accepting of the same, and Concluding the said Bargain, As before mentioned, thereby Confessing that the same was a Bargain, and of Course that both parties should abide thereby Viz. the said Louis Monneron by Delivering the said Nine hundred Candy of Salt Petre to your Petitioner or his order, and your Petitioner Paying for the same In Which light your Petitioner humbly hopes the said Matters will Appear to this Honorable Court- your Petitioner further Sheweth that Notwithstanding the said Bargain for the said nine hundred Candy of Salt Petre was so as Aforesaid Concluded, Yet the said Louis Monneron in his said Answer Alledges that the Contents of your Petitioners said Letter Accepting of his the said Louis Monnerons Offers of Sale greatly surprized him, but as he was Determined to Sell the same for Ready Money only, as being at that time in great want there of &c in a Letter bearing Date the thirty first Day of the said Month of August in the said year One thousand Seven hundred and Seventy One he did Reply that the said Quantity of Salt Petre should be the Property of your Petitioner, but on Consideration that he do Immediately send the Sum of Nine thousand Seven hundred and Seventy two Pagodas, being the Amount of the said Nine hundred Candies of Salt Petre, a Copy of which Letter the said Louis Monneroon Annexes to his said Answer- he further in his said Answer Mentions your Petitioner not Complying with his said Demand, sending him a Bond for the said Nine thousand Seven hundred and Seventy two Pag.s payable in a Month, his Returning it and Declining your Petitioners Offer, Alledges a Demand Without Paying the Money is Adjudged Void, that the Tender of Sale did Dissolve, and he was at full Liberty to Dispose of his Property to any other Person, the said Louis Monneroon Acknowledges he

he did receive your Petitioners said Letter of the Ninth September One thousand Seven hundred and Seventy One, but declined the Delivery — that he drew a Bill of Exchange for the said Seven hundred and Ninety eight Candies and thirty nine Pounds of Salt Petre on your Petitioner Which your Petitioner refused to Accept and pay, Alledging (as he says) many Frivilous and Evasive Excuses, Wherefore the said Bill was Protested by a Notary Publick, that he was Obliged to pay the same, and came from Pondicherry to Madras in Order to make a Personal demand from your Petitioner for the said Amount of the said Bill, that your Petitioner Wrote a Letter to him of the Eleventh October One thousand Seven hundred and Seventy One, Acknoledging to be Indebted unto him in the Sum of Six thousand and two hundred Pagodas and eighteen fanams which Sum your Petitioner Offered to Pay if the said Louis Monneron could Sign a Receipt for the same, Notwithstanding which your Petitioner did prefer his said Bill of Complaint in the said Honble the Mayors Court Against him, in Consequence of which he was Arrested and hath Protested &c the said Louis Monneron did also on the said fifth Day of November One thousand Seven hundred and Seventy One Exhibit a Cross Bill of Complaint Against your Petitioner for the said Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty two Cash, therein mentioning the said Bill of Complaint — Exhibited by your Petitioner his being Arrested Protesting &c — To Which said Answer of the said Louis Monneron your Petitioner did on the Seventh Day of April in the Present year One — thousand Seven hundred and Seventy two put in a Replication thereby still Maintaining that the said Louis Monneroon doth stand Justly and truly Indebted unto your Petitioner in the said Sum of three thousand and fifty three Pagodas on the Account Setforth in your Petitioners said Bill of Complaint and the Account thereunto Annexed your Petitioner did also therein Absolutely deny to be Indebted unto the said Louis Monneroon in the Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty two Cash, As is Unjustly Setforth and Stated in the said Answer and the Account thereunto

Annexed your Petitioner did further Say that he Conceived, As he still does, that it must clearly Appear by the said Louis Monneroons Offer to your Petitioner of the said nine hundred Candies of Salt Petre both as Setforth in your Petitioners said Bill of Complaint and also in the said — Louis Monneroons said Answer, that the same was a fair and full Offer of Sale, and it could not be Supposed, Nor is there the least Cause of Pretence for Inferring that any thing was or could be meant more than an Offer of Sale on the same Terms that the said Quantity of Salt Petre bought by your Petitioner of the said Louis Monneron previous there to was bought, as before mentioned, Save and Except the Abatement of five p Cent Particularly Specifyed in the said Offer of Sale, Which Offer your Petitioner did fully Accept of and which Conditions your Petitioner did fully Agree to in his said Letter of the thirtieth Day of August last, in Answer to the said Louis Monneroons said offer in his said Letter from Pondicherry of the Twenty sixth Day of the said Month of August, And having so Accepted of and Agreed to the said Offer and Terms of Sale of the said Salt Petre the same did of Course Constitute and become a Legal Bargain, and your Petitioner had an Undoubted right to Consider the said Salt Petre as his property and to desire the same might be taken care of Untill he could send proper People to See it Weighed and to Receive it for and on Account of your Petitioner, which could not be done Instantly on Account of the Distance between Pondicherry and Madras or Fort St George and the time this Article would take up Weighing Delivering and Receiving the said Louis Monneroon had not therefore any right to be Astonished at the Contents of your Petrs said Letter As your Petitioner had fully Agreed to the said Louis Monneroons said Offers of Sale, and both the said Louis Monneron and your Petitioner did become bound thereby and

and to the performance there of And in Default of such performance they did Respectively become liable to a Legal Prosecution to Oblige them to Comply therewith, this being the Case the Matter of Ready Money Which the said Louis Monneron Mentions and his pretence of the said Abatement of five ℔Cent being made on Account there of is meer Matter of Evasion Which would your Petitioner Doubted not, and still hopes will be Considered as a Matter Subsequent to the said Bargain and by which the said Bargain cannot nor ought to be Affected your Petitioner did also beg leave to Observe the Absurdity of such the said Louis Monnerons After proposition or Reply to your Petitioners said Acceptance of the Terms Offered and Conclusion of the said Bargain Viz.t that it should be on the Conditions of your Petitioners Immediately sending to the said Louis Monneron Nine thousand Seven hundred and Seventy two Pagodas, being the Whole Amount or Rather More than the Amount of the said Salt Petre, Now its Observable that the said Louis Monneron could not, in the Strictest Sense, have either a Legal or Equitable Claim to the Payment of the Amount of the said Salt Petre Untill the same was Delivered, which could not possibly have been Immediately on Account of the distance and Weighing &c as before mentioned Nevertheless your Petitioner, in Order to Convince the said Louis Monneron that his Intentions were really to Abide by the said Bargain and also of the Confidence that he placed in the said Louis Monnerons Intentions as to the said Bargain on his part, and that he would Deliver the said Salt Petre to your Petitioners Orders Agreeable there to, did send the said Louis Monneron a Bond for the said Amount payable in a Month, that being about the time that he Supposed the said Salt Petre would be intirely Weighed and Delivered, the Delivery of the said former Quantity of Salt Petre bought by your Petitioner of the said Louis Monneron as before mentioned, having taken up that time or thereabouts.

This

This your Petitioner did Without any Value in hand or Received, and that for the Reason before mentioned, Notwithstanding Which the said Louis Monneron did Return the said Bond to your Petitioner, But that can by no means Invalidate the said Bargain, Which then stood as it did before, and the said Louis Monneron and your Petitioner were Equally Answerable and Accountable to each other as your Petitioner had not sent the said Bond, Or as if the said Louis Monneron had not Returned it that is, the said Louis Monneron was Accountable to your Petitioner for the delivery of the said Salt Petre and your Petitioner was Accountable to the said Louis Monneron for the Amount Purchase of it, and each of them liable to a Prosecution in Case of Non performance of their Respective pasts of the said Bargain this being clearly the Case, and the said Louis Monneron having Refused to Deliver the said Salt Petre to your Petitioners Order, as Set forth in your Petitioners said Bill of Complaint Notwithstanding your Petitioner was at a Considerable Expence about it, the said Louis Monneron ded to all Intents and purposes, As your Pet.r Conceives, become Answerable and liable to pay unto your Petitioner the Market Price at Madras for the said Salt Petre as Charged in the Account Annexed to your Petitioners said Bill of Complaint Therefore What the said Louis Monneron in his said Answer Sets forth of a demand Without paying the Money being Adjudged Void &c is Meer matter of Evasion and by no Means Applicable to the present Case, For what demand had the said Louis Monneron a Right to make before he had delivered the said Salt Petre your Petitioner did also deny that he hath been Guilty of any Defaults As he had no Right to pay for the said Salt Petre before it was Received either by him or on his Account therefore the said Bargain did not Dissolve as the said Louis Monneron Unjustly Sets forth in his said Answer, Nor was the said Louis Monneron at Liberty to Dispose of the said Salt Petre to any other person Upon any other Condition than that of becoming Answerable to your Petitioner for

the

the Amount of What your Petitioner could have sold it for,
which he has done your Petitioner did also deny that his said
Action is either Illegal or Unjust, and he hoped it would so
Appear to the said Honorable Court, And he also hopes it will
Appear to this Honorable Court in a Different Light Even
by the said Louis Monnerons own State of the case, for it Appears
by the said Louis Monnerons said Answer that he never did
deliver the said Salt Petre to your Petitioner, he the said Louis
Monneron is Consequently Answerable, as before Set forth, your
Petitioner did in his said Replication Admit that he said
Louis Monneron did Draw on him your Petitioner for the Amount
of the said first Quantity of Salt Petre bought of the said Louis
Monneron, and that the same was tendered to your Petitioner for
Acceptance and payment, and that he did Refuse to Accept and
pay the same, but your Petitioner denied that he Alledged many
or any Frivolous and Evasive Excuses As the said Louis Monner
Unjustly Sets forth in his said Answer, On the Contrary your
Petitioner did so Refuse to Accept and pay the same for the
following Reasons, the purport of which was Inserted in the
Protest of the said Bill, that is to say Because he had boug
One thousand Seven hundred Candies of Salt Petre of the sa
Louis Monneron, and the Amount of the said Draft being on
for a part of the said Salt Petre, and the said Louis Monneron
Refusing to deliver to your Petitioner or his People (who we
there at Pondicherry to Receive it the Remaining Quantity
of Salt Petre) being that now in Question) your Petitioner d
not think himself Obliged to Accept or pay the Amount of
the said Draft Untill he had Either Recived the Whole Quan
of the said Salt Petre or Untill he was thoroughly Satisfyed
that the said Louis Monneron Would Deliver him the same,
And Particularly so as by the said Louis Monnerons not Deliv
your Petitioner the Remaining Quantity of the said Salt
Petre your Petitioner Would Suffer or Sustain Considerable
Damages But if the said Louis Monneron would then
deliver the Remaining Quantity of the said Salt Petre
Immediately he

Immediately he would Immediately after such Delivery pay not
only the Amount of the said Bill or Draft, but also the Whole
Amount of the said Salt Petre Which Circumstances do as your
Petitioner Conceives, clearly demonstrate that all your Petitioner
Wanted was the said Louis Monnerons Compliance with the
said Bargain proceeding from his own Offers as aforesaid and
that your Petitioners Non Acceptance and payment of the
said Draft for the Quantity of Salt Petre he had Received was
intirely Owing to the said Louis Monnerons not Delivering
him the Remaining Salt Petre Agreable to the said Bargain,
And your Petitioner did Again in his said Replication, As
he had done in his said Protest, and As he now does, Declare
that he was and is Ready and Willing to pay unto the said
Louis Monneron the Amount of the Salt Petre, by him Received
on the said Louis Monnerons paying him the Amount of his
Present demand, Which the said Louis Monneron has rendered
himself liable to pay by such his Conduct in Refusing to
deliver unto your Petitioner the said Salt Petre as before
mentioned, On Account of which, and all Losses Costs Charges
Damages Interest of Money and Expences Whatever which your Pet.r
either had Suffered Sustained born paid or been put unto Or which
he should or might Suffer Sustain bear pay or be put unto on Account
of the said Louis Monneron not fulfilling his said Contract Agreement
or Bargain by Delivering the said Salt Petre your Petitioner did on
the Seventeenth day September in the said year One thousand
Seven hundred and Seventy One Protest Against the said Louis
Monneron in due from of Law Which Protest was Delivered in
to the said Honorable the Mayors Court, your Petitioner did further
in his said Replication Admit that he did Write to the said Louis
Monneron a Letter of the Eleventh October One thousand Seven
hundred and Seventy One to the purport of the Writing of Annexed
to the said Answer, which he so did and Stated the Whole —
Accounts Relative to all the said Salt Petre in hopes that the
said

said Louis Monneron Would have Settled the said Matters Without any Litigation As your Petitioner was Ready and Willing and did offer to pay him the said Louis Monneron What was the Ballance of the Whole Accounts of both the said Quantities of Sall Petre bought by your Petitioner of the said Louis Monnerown as before mentioned which Ballance the said Louis Monneron not only Declined — Accepting, but by his Letter in Answer to your Petitioners said Offer threatened to prosecute your Petitioner for the Amount of the said first Quantity of Sall Petre, for which he had Drawn the said Bill, Without giving your Petitioner the least Satisfaction for or on Account of the said Nine hundred Candies of Sall Petre so Sold and bought as before Mentioned, As if the said Louis — Monneron had not Sold and your Petitioner bought the same, your Petitioner did therefore think it Advisable to prosecute the said Louis Monneron for the Ballance due to him on Account of the said Nine hundred Candies of Sall Petre, as he has done, and fearing the said Louis Monneron would After Commencing the Prosecution with which he threatened your Petitioner as beforementioned, Depart the Jurisdiction of the said Honorable the Mayors Court and Return to Pondicherry, Which is his Place of Residence, your Petitioner Also thought it Advisable to Obtain a Warrant of Arrest, in Order to Oblige the said Louis Monneron to give Bail to Answer the Consequence of his said Action, which was only a piece of Justice to which he thought himself and humbly hopes this Honorable Court will think him Justly Intitled, Since the said Louis Monneron would not Vouchsafe him Justice Without — The said Louis Monnerons Protest Which he mentions cannot therefore be of any Validity, and your Petitioner did also beg leave to remark that in the said Protest to which the said Louis Monneron has Sworn, he says he Sold the said Eight hundred Candies of Sall Petre at Forty eight Rupees ℔ Candy Whereas the Real Price, and as Charged by the said Louis Monneron and Setforth in his said Answer, was only Forty Rupees ℔ Candy, and in Order further to Shew the pains your Petitioner took to Settle and Adjust the Matters in Question Without a Litigation your Petitioner in his said Replication Setforth that he did on the Tenth day of September last Write a Letter to the said Louis Monneron, Explaining the Nature of the said Matters, and Endeavouring to Convince the said Louis Monneron that he was Justly Intitled to have the said Bargain for the said Nine hundred Candies of Sall Petre fulfilled &c Which said Letter is to the following purport, that is to say, —

To Louis Monnerown Esq.r

Madras 16 Sept.r 1771

Sir I this Moment Received your Letter of the 9th Instant in which you Returned my Bond for Pagodas Nine thousand Seven hundred and Seventy two, being the Amount of the Remains of Sall Petre, you say you beg leave to decline my Offers, as you say your want of money is very Urgent — This peice of Conduct Appears to me so very extraordinary and Unaccountable that I am Entirely at a loss what to say to it

In your Letter of the Twenty Sixth August you Made me an Offer of the Remaining Nine hundred Candies of Sall Petre in the following Expreſs Terms, I have about Nine hundred Candy which I shall Deliver to you at the same price five ℔% excepted, to which I consent to Loose the Quality Ought to be the same and there was no difference in the Purchase I made, I have paid the totality at the Price of Fortyeight Rupees ℔ Candy — the Danes Vessell can take the whole Quantity if you foresee to find it Sell to the South part, Else you can Load it for Madras where I have the Councils Permission

Permission to Sell it.

This Offer of yours has been Accepted by me, by my Letter of thirtieth August, Wherein I Acquaint you that in Consequence of your Letter to me of Twenty sixth I looked upon the whole of the Sall Petre as my property, but shall not Ship the Nine hundred Candy on Board the Danes Ship with the eight hundred you are delivering for my Account to Mr. Stevenson- I must beg you will take care of the said Nine hundred Candy Untill my Direction and People can be with you to Receive it, which shall in as Short time as Possible, the Amount of Money for the last Quantity shall be paid with great Exactness to your Order- These are the plain proposals, Terms and Agreement of the Sale and the Purchase of the Nine hundred Candy of Sall Petre, and which I consider as a firm and Binding Bargain, and am in Consequence determined to a bide myself and keep you to terms of the Agreement. Neither your Proposals nor my Offers say that the Whole or any part of the Money is to be paid before the Receipt of the Goods and it would be Absurd to Suppose that when no such Engagement Subsists that the Money is due before the Sall Petre is delivered. I have Dispatched my People, who will be with you in two or three days to Receive the Sall Petre, and you may depend upon having the Amount paid so soon as I know the Exact Quantity Sall Petre Received-

After Reflection and due Consideration of all Circumstances I flatter myself you will be thoroughly convenced of the Propriety and Legality of my Claim of Property in the Sall Petre which you have Sold to me, I do therefore hope and Expect that the same good Understanding and Friendship which has hither to Subsisted between Us will be preserved and Continued And that the Business in Question will be Settled upon Mutual and the Original terms of Agreement &c.

Signed

James West

Which said Letter was produced before the said Honorable the Mayors Court your Petitioner did in his said Replication further Set forth that he humbly hoped by what is in the said Replication and in your Petitioner said Bill of Complaint Set forth it

woulde

would plainly and clearly Appear that the said Louis Monneron should and ought to have delivered the said Nine hundred Candies of Sall Petre to your Petitioner, and as he Refused to do so that he is liable to the Payment of your Petitioners said Just Demand, As will more fully and at large Appear on Reference to the said Replication. And To the said Cross Bill of Complaint Exhibited by the said Louis Monneron Against your Petitioner, he your Petitioner did on the said Seventh day of April last deliver in an Answer thereby denying to be Indebted unto the said Louis Monneron in the Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty two Cash, As is Unjustly Set forth in the said Cross Bill of Complaint your Petitioner did however Admit that he Purchased of the said Louis Monneron and did Receive the Quantity of Sall Petre Charged in the Account Annexed to the said Louis Monnerons said Answer to your Petitioners said Bill of Complaint Amounting to the Sum of Nine thousand two hundred and fifty four Pags and which your Petitioner would have paid if the said Louis Monneron would have delivered to your Petitioner the further Quantity of Nine hundred Candy of Sall Petre Sold by him the said Louis Monneron to your Petitioner As before mentioned, But as the said Louis Monneron Refused so to do your Petitioner did by no means think himself Obliged to pay for the part of the said Sall Petre Received Untill the said Louis Monneron had either delivered to your Petr the Remaining Quantity or the said Nine hundred Candies of Sall Petre, Or untill your Petitioner was thoroughly Satisfyed that that the said Louis Monneron would deliver him the same But if the said Louis Monneron would have delivered the said Remaining Quantity of the said Sall Petre Agreeable to the said Bargain for the same your Petitioner would Immediately after such delivery have paid not only for the said first Quantity of Sall Petre But also the Whole Amount of the said Sall Petre, of which the said Louis Monneron was Acquainted, which Circumstances do as your Petitioner Conceives, clearly demonstrate that all your Petitioner Wanted was the said Louis Monneron Compliance

with

with his said Bargain, and that your Petitioners non payment of the Amount of the Salt Petre he had Received was entirely Owing to the said Louis Monneron not Delivering the Remainder or the said further Quantity of the said Salt Petre Agreeable to his said Bargain - And your Petitioner did in his said Answer Again declare that he was still Ready and Willing to pay the Amount of the Salt Petre by him Received on the said Louis Monneron paying him the Amount of his Present Demand or that for which he Exhibited his said Original Bill of Complaint, being the Sum of three thousand and fifty three Pagodas and Interest, Which he Conceived, and still does the said Louis Monneron is Liable to pay to your Petitioner on the Account and for the Reasons setforth in the said Proceedings on the part of your Petitioner, On Account of Which Matters your Petitioners did Protest as before Setforth - your Petitioner doth further in his said Answer Admit his Writing the said Letter of the Eleventh Day of October One thousand Seven hundred and Seventy One, which he so did for the Reasons therein and herein before Setforth, your Petitioner does also Setforth What was done in Consequence there of, and for what reasons, to the purport also herein before Setforth - your Pet.r did also Setforth that he humbly hoped by what is therein & in your Petitioners said other proceedings Setforth it would plainly and clearly Appear that the said Louis Monneron should and ought to have delivered the said Nine hundred Candies of Salt Petre to your Petitioner & as he Refused so to do, that he is Liable to the payment of your Petitioners said Just Demand for the same and therefore that your Petitioner is not Indebted to him in the Sum Sued for, But in the Ballance of the said Accounts only, which he having tendered or Offered to pay to the said Louis Monneron, as before mentioned, your Petitioner did in his said Answer plead the same in Bar of Interest on the Amount of the Salt Petre received by your Petitioner as before mentioned. As will more fully and at Large Appear on Reference to your Pet.rs said Answer - To which said Replication and Answer the said

Louis

Louis Monneron did put in a General Rejoinder and Replication, and your Petitioner did put in a General Rejoinder to the said Replication Issue was Joined, One Witness Examined on the part of your Pet.rs Exhibits produced Publication passed, and the said Cause and Cross Cause were Set down for hearing and coming on to be heard by the said Honorable the Mayors Court on the Twentieth Day of October in the present Year of Our Lord One thousand Seven hundred and Seventy two, the said Court did think fit to Order and Decree and did Accordingly Order and Decree that your Pet.rs said Bill of Complaint should stand Dismissed with Treble Costs to be paid to the said Louis Monneron, And it was further Ordered and Decreed that your Petitioner should pay unto the said Louis Monneron the full and Just Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty two Cash, together with such Interest and there was or should thereafter become due thereon Untill full payment is made And that your Petitioner do pay unto the said Louis Monneron Treble Costs of the said Suit, As will more fully and at large Appear on Reference to the said Decree which comes here with for the Inspection of this Honorable Court

From Which said Decree your Petitioner doth Appeal to this Honorable Court, As he Conceives the same is Erroneous & that he is Aggrieved thereby - the first Place Because Instead of the said Louis Monneron being Decreed to pay unto your Pet.r the Sum by your Petitioner Sued for and which he Conceives by the Non Delivery of the Nine hundred Candies of Salt Petre before mentioned, he became liable to pay unto your Petitioner with Interest and Costs, your Petitioners said Bill is Dismissed with Treble Costs - And in the second Place Because your Petitioner is thereby Decreed to pay unto the said Louis Monneron the Amount of the said Seven hundred and Ninety eight Candies and thirty Nine Pounds with Interest and Treble Costs of Suit, Without having any Redress whatever for or on Account of the said Nine hundred Candies of Salt Petre so Sold and Bought and delivered

as

as before Setforth Notwithstanding your Petitioner, not only on Account of the said Non delivery on the part of the said Louis Monneron by his said Action Claimed the difference between the Amount Purchase of the said Salt Petre and the Market Price of Salt Petre at Madras at that time, Agreeable to the Charge in the Account Annexed to your Petitioners said Bill of Complaint, your Petitioner Conceiveng that the fairest Mothod of Stating Settling and — Assessing the damages he has Sustained by the said Non Delivery of the said Salt Petre, But your Petitioner did also in and by his said Bill of Complaint pray a General Relief in the said Premises, So that in Case your Petitioner was not or is not Intitled to the Sum for which he Commenced his said Action (which he does by no means Admit, but still Conceives he is Intitled there to) yet your Petitioner Conceives he is still Intitled to the delivery of the said Salt Petre, or to some Redress damages or Satisfaction on Account of the said Non delivery there of. If so, and which your Petitioner Conceives to be Clearly the Case, He your Petitioner is at aloss to Conceive the Cause, not only of his said Bill being Dismiss, but also Taxed with treble Costs Surely your Petitioner having been Injured with regard to the said Non Delivery of the said Salt Petre According to the said Bargan cannot be the Cause of it — that could be no fault of your Petitioner, Nor should he Suffer by it. Surely it cannot be because your Petitioner Endeavoured to Convince the said Louis Monneron of his Error in the said Affair and to Accomo-date the said Matters Without any Prosecution Whatever, Even After the said Louis Monneron had Refused to deliver the said Salt Petre, Nor can your Petitioner Conceive that it could be on Account of his Offer of the said Bond, As it was no Devia-tion from the said Bargain Whatever your Petitioner did not Say he would not Abide by the said Bargain, On the Con-trary in your Petitioners Letter of the Tenth September One thousand Seven hundred and Seventy One herein before Setforth, Notwithstanding the Offer of the said Bond, your Petitioner tells the said Louis Monneron he may depend Upon having the Amount

paid

paid so soon as your Petitioner knew the Exact Quantity of Salt Petre Received — Could the said Louis Monneron in Equity desire more the Matter of the Bond was an Offer to be Accepted or Rejected by the said Louis Monneron as he thought proper, but could not, Affect the said Bargain — for upon the said Louis Monnerons Returning the said Bond your Petitioner Wrote him he would pay him for the said Salt Petre When Received, Or when he knew how much was Received, And its Observable your Petitioner had a great Right to mention, when he knew how much he had received Because tho he had before Purchased of the Louis Monneron the said eight hundred Candy, there was only Seven hundred and Ninety eight Candies and thirty Nine Pounds delivered Which Quantity it turned out when Weighed Instead of Eight hundred Candy. Yet your Petitioner Never thought of Calling the said Louis Monneron to an Account for the Remainder, But your Petitioner could not for that Reason be quite certain — Whether the Exact Quantity of Nine hundred Candy might be Delivered or Whether there might be some deficiency, as in the said former Quantity, your Petitioner begs leave to Observe further that there's a great difference between Good being Sold where both the parties are on the Spot and where they are at a distance as in this Case, the said Louis Monneron being at Pondicherry and your Petitioner at Fort St. George, In Consideration Where of it was Necessa-ry that time should be Allowed for your Petitioner to send and receive the said Salt Petre, and the said Louis Monneron in his said Letter making the said tender of Sale Says "The Danes Vessell can take the whole Quantity if you foresee to find it sell to the South part, Else you can Load it for Madras — Clearly leaving it in the Option of your Petitioner either to Load it on the Vessell then at Pondicherry taking in the said former Quantity of Salt Petre, Or to Load it for madras for which purpose he must Provide a Vessell and of Course time must be Allowed for that purpose — In Answer to and in your Petitioners Letter Accepting of this Offer of Sale, leaving the Shipping of the said Nine hundred Candies of Salt Petre in the Option of your Petitioner as before mentioned your Petitioner tells the said Louis Monneron that he shall not Ship the

said

the said Nine hundred Candies of Salt Petre on Board the Danes Ship Clearly Indicating that a time must be Allowed to Provide Another Ship Agreeable to the power Vested in him by the said Louis Monneruns offer of Sale, And to Shew to this Honble Court that the same was not only a Bargain But that the said Louis Monneron knew it so to be, and Considered it in that light, your Petitioner begs leave to Refer to the Deposition of Mr. Charles Bromley in this Cause and Cross Cause Wherein he Says the said Louis Monneron said He had Contracted to deliver your Petitioner a further Quantity of Salt Petre, And that he the said Louis Monneron with held the delivery of it on Account of the Non payment of the said first Quantity of Salt Petre your Petitioner would beg leave to Observe further that he Conceives it must clearly Appear that this was fair Bargain, Admitted to be such by the said Louis Monnerons said Answer, by this Admitting the Written Offer of Sale and Acceptance, and his Confession to or before the said Mr. Charles Bromley, and the tender of the said Bond could not by any Means Alter it for the Reasons before Mentioned - Could not the said Louis Monneron have Prosecuted your Petitioner for the Non performence of his said Bargain if he had Refused to Comply therewith, your Petitioner is clearly of Opinion he Could, and that he would have done so had the Price of that Article fallen Whereby the said Louis Monneron might have been a Sufferer if your Petitioner had not Agreed to and Complyed with the said Bargain on his part - Why then had not your Petitioner a right to Demand the performence of the said Bargain on the part of the said Louis Monneron If the said Bargain was binding on One party it was soon both parties, therefore the said Louis Monneron was Answerable to your Petitioner as before Mentioned - for If the Bargain was good before the tender of the said Bond, it was Equally so After such tender and Refusal, as it was left in the same State it was in when the said tender was made, the Nature of it was by no means Altered by the said tender - it was clearly a good and Legal Bargain, Reduced into Writing, therefore Binding - the said Louis Monneron Offers, your Petitioners Accepts, and the Bargain is thereby Concluded, It Cannot then Surely be in the Power of the said Louis Monneron, the Person who Made the said Offer of Sale, to Deviate therefrom on your Petitioners Acceptance of his Offer - for should any Person be Allowed to do so there would be no certainly in any Bargain Which might be very Detrimental in Commerce and Attended with very disagreeable Consequences - had your Petitioner after the said Bond was Returned Refused to Comply with the said Bargain your Petitioner Conceives it would have been in the Option of the said Louis Monneron either to have Compelled a Compliance on the part of your Petitioner, or to have declined the said Bargain as he thought proper, But so far from your Petitioners Refusing to Comply therewith he tells the said Louis Monneron that he would pay the Amount of the said Salt Petre as soon as he knew the Exact Quantity Received as before Mentioned - more than this could not be Asked with any Degree of Justice or propriety - At least your Petitioner Conceives he could not be Answerable for more - And with Regard to the Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty two Cash which your Petitioner is Decreed to pay unto the said Louis Monneron with Interest and treble Costs of Suit as before mentioned, your Petitioner begs leave to Observe that he thinks himself Aggrived therein for the Reasons herein before Setforth, for your Petitioner humbly hopes it will clearly Appear to this Honble Court to have been the said Louis Monnerons own own fault that the said Sum Was not Paid, which is certainly would have been if the said Louis Monneron would have Complyed with the said Bargain by the delivery of the said Nine hundred Candies of Salt Petre to your Petitioner as before Mentioned, and the said Sum Would also have been paid and Settled in Account if the said Louis Monneron would have Settled the same, As it clearly Appears by your Petitioners said Letter of the Eleventh of October One thousand Seven hundred

hundred and Seventy One that your Petitioner was ready and Willing and did Offer to pay unto the said Louis Monneron the full and whole Ballance of the said Accounts of which the said Principal Sum so decreed to be paid as before mentioned, was part and for which the said Louis Monneron had due Credit on the said Statement, your Petitioner is therefore much Surprized that he should not only be Decreed to pay the said Principal Sum to the said Louis Monneron without any thing being Decreed in favour of your Petitioner relative to the said Nine hundred Candies of Salt Petre, But also that he should be decreed to pay Interest and treble Costs of Suit, When it was the said Louis Monnerons own fault that the said Matters were not Settled long Ago as before Setforth —

All Which Matters and things your Petitioner Submits to the Judgment of this Honble Court and humbly prays that the said Decree may be Reversed and Set Aside, that the said Louis Monneron may be decreed to pay unto your Petitioner the Sum by your Petitioner Sued for as before mentioned with Interest and Costs of Suit, Or that this Honble Court will be Pleased to make such other decree in favour of your Petitioner Relative to the said Nine hundred Candies of Salt Petre As to this Honble Court shall Appear Legal Just and Equitable, And your Petr. does also pray such further and other General Reliefs in all and Singular the Premises As to this Honble Court shall seem Meet —

John Sykes
Attorney for the Apt

Mayors Court at Madraspatnam } Tuesday the 20 Day of October Anno Domini 1772.

Present

George Smith Esquire Mayor
Edward Stracey — John Mc Pherson
John Sullivan — Archdale Palmer
& George Savage — Aldermen —

Between James West of Fort St. George Merchant Complainant, and Louis Monneron of Pondicherry Merchant but at present at Madras Defendant —
Et Contra

This Causes 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 Cross Complainants Bill, the Replication the Cross Defendants Answer, the Rejoinder, the Cross Complainants Replication, the Cross Defendants Rejoinder, the Interrogatories & Deposition on the part of the Original Complainant, three Exhibits on the part of the Original Complainant, Six Exhibits on the part of the Original Defendant, On hearing the Pleadings made use of by the Attornies, and on due Consideration had thereon This Court doth think fit to Order, and decree, and doth Accordingly Order, and decree that the Original Complainants Bill shall stand Dismissed with Treble Costs to be paid to the Original defendant — And it is further Ordered, and Decreed that the Cross defendant shall pay unto the Cross Complainant, the full and just Sum of Nine thousand three Hundred, and fifty Pagodas, Nineteen fanams, and thirty two Cash (Pagodas 9350.19.32.) together with such Interest as now is or shall hereafter become due thereon Untill full payment is

is made, And that the Cross Defendant do pay unto the Cross Complainant Treble Costs of this Suit —

Fleur

James Taylor
Regr —

To the Honorable Josias Dupre Esqr
President and Governor &c. Council of Fort St George

The Answer of Louis Monneron of Pondichery Merchant, Respondent to the Petition of Appeal of James West of Fort St George Merchant, — Appellant. —

This Respondent Admits, that the said Appellant did File a Bill of Complaint, in the Honorable the Mayors Court at Madraspatnam, on or about the Eleventh day of October, which was in the year of Our Lord One Thousand Seven Hundred and Seventy One against him, this Respondent, for the Sum of Three Thousand and Fifty three Pagodas, Current Money of Madras being the Balance of an Account Current Annexed to the said Bill of — Complaint, and further Admits that the said Appellant did set forth in his said Bill of Complaint the Matters and things mentioned by him in his said Petition — To which Bill of Complaint this Respondent did, on or About the Tenth day of December, in the said Year One Thousand Seven Hundred and Seventy One, put in an Amended Answer, and therein Denied to be Indebted unto the said Appellant, then Complainant in the Sum of Three Thousand and Fifty three Pagodas, as is unjustly set forth and Stated in the said Appellants said Bill of Complaint and the Account Current there unto Annexed, nor in any other Sum or Sums of Money Whatsoever, but on the Contrary, that the said Appellant doth stand Justly and truly Indebted unto him this Respondent, then Defendant, in the full and Just Sum of Nine Thousand three Hundred and Fifty Pagodas, Nineteen Fanams and Thirty Two Cash, as will more fully and at large Appear by an Account — Current Annexed to the said Answer, and which this Respondent Prayed might be Admitted as part of his said Answer, and in Order to demonstrate the Illegality of the said Appellants —

Demand

Demand, this Respondent did Set forth in his said Answer, that in the Begining of the Month of August in the said Year One Thousand Seven Hundred and Seventy One, he, this Respondent did sell unto the said Appellant Seven Hundred and Ninety Eight Candies and thirty Nine Pounds of Salt Petre Amounting in the whole to the Sum of Nine Thousand Two Hundred and Fifty Four Pagodas, as will fully and at large Appear by the said Account Current Annexed to this Res= =pondents said Answer, and that having a further Quantity of Nine hundred Candies for Sale, he, this Respondent, on the Twenty Sixth day of the said Month of August and in the said Year, One Thousand Seven Hundred and Seventy One, did Write a Letter to the said Appellant Acquainting him therewith and Offered furthermore to Sell the same at the Rate of Five ℔ Cent less than the former Quantity was sold, at as will more fully and at large Appear by a Copy of the said Letter, Marked Number One, Annexed to the said Answer, and to which this Respondent most humbly Refers, that to the said Letter, this Respondent did Receive, from the said Appellant, an Answer, bearing date the Thirtieth day of the said Month of August in the said Year One Thousand Seven Hundred and Seventy One and that the Contents of the said Letter Greatly Surprised this Respondent, for the said Appellant therein Pretends to Claim the Salt Petre as his Property, without its either being delivered to him or Paid for, as will more fully and at large Appear by a Copy of the said Letter Marked Number Two, Annexed to the said Answer and to which this — Respondent most humbly Refers, but that as this Respondent was determined to Sell the said Salt Petre for Ready Money only, as being at that time in Great want there of and for which Reason the Prementioned a Baterment was intended to be Allowed on Prompt Payment, he this Respondent, in a Letter, bearing date the Thirty First day of the said Month of August in the said Year One — Thousand Seven Hundred and Seventy One, did Reply, that the said Quantity of Salt Petre shall be the Property of him the said Appellant but on Condition that he do immediately send the Sum of

of Nine Thousand Seven hundred and Seventy Two Pagodas being the — Amount of the said Nine hundred Candies of Salt Petre, as will more fully and at large Appear by a Copy of the said Letter Marked Number three Annexed to the said Answer, and to which this Respondent most humbly Refers — This Respondent did further set forth in his said Answer, that Instead of the said Appellant Acquiesceing with the Demand made of immediate Payment, he, on the first day of September in the said year One Thousand Seven hundred and Seventy One, wrote a Letter to this Respondent and therein Enclosed a Bond Signed by him the said Appellant, for the Afore said Sum of Nine Thousand Seven — hundred and Seventy Two Pagodas, Payable in One Month after date, as will more fully and at large Appear by a Copy of the said Letter, Marked Number Four, Annexed to the said Answer and to which this Respondent most humbly Refers, but that, as the time Limited in the said Bond would by no means Answer this Respondents Purpose, more Especially as the abatement of Five ℔ Cent was allowed in Expectation of — Receiving Ready Money, he this Respondent, in a Letter to the said Appellant, bearring date the Ninth day of the said Month of Sept.r in the said Year One Thousand Seven hundred and Seventy One, did Return the said Bond and Declined the said Appellants offer, as his this Respondents want of Money was very Urgent, as will more fully and at large Appear by a Copy of the said Letter, Marked Number Five Annexed to the said Answer and to which this — Respondent most humbly Refers — This Respondent in his said Answer did further set forth, that as a Demand without Paying the Money is Adjudged, not only by Law but also by the Custom of Merchants to be void, and that, as the said Appellant hath been guilty of a Default by not paying the Money Demanded of him for the said Nine hundred Candies of Salt Petre, that the Tender of Sale doth of Course Dissolve and this Respondent left at full Liberty to dispose of his Property to any other Person, and that from the Afore going Genuine Narrative this Respondent did humbly Conceive, it will Clearly Appear that the said Appellant had

Commenced

Commenced a very Illegal and Unjust Action and that this — Respondent is Indisputably entitled to the Amount of the Salt Petre Delivered to Captain Stevenson, on Account of the said — Appellant, and also all Costs and Charges attending the Non Payment there of by the said Complainant— this Respondent did further set forth and Assert in his said Answer, that a Bargain was not Concluded between them and the said Appellant for the said Nine hundred Candies of Salt Petre, on the Contrary, that he this Respondent doth Insist he had a Just Right to decline the Offer made by the said Appellant in his Prementioned Letter of the Fifth day of September, in the said Year One thousand Seven hundred and Seventy One, for that Instead of the said Appellants Complying with the Tenor of his, this Respondents demand, being Ready Money, he therein Enclosed a Bond for the Amount of the Nine hundred Candies of Salt Petre Payable in One Month after date, That altho he, this Respondent, did Receive a Letter from the said Appellant, bearing date the Ninth day of September last, desiring the delivery of the said Nine hundred Candies of Salt Petre to his Dubash, yet, as the Receipt of the said Letter was sometime after this Respondent had declined the Acceptance of the before mentioned Bond and as the said Appellant did not send the Money Required he therefore Refused to deliver the same to the said Appellants Order— this Respondent did further set forth and Assert in his said Answer, that he had Purchased of the President and Council of Pondicherry about Two thousand Candies of Salt Petre that One thousand One Hundred Candies of the said Salt Petre was disposed of, in the Manner as set forth in the said Answer, and that the Remaining Nine hundred Candies were Lodged in the Store Houses at Pondicherry and that no part or parts of the said Nine Hundred Candies of Salt Petre were Sold by him this Respondent since the Tender of that Quantity

Quantity for Sale to the said Appellant and that at the time he made the said Tender of Sale to the said Appellant there was not any other Quantity of Salt Petre for Sale at — Pondicherry Excepting the said Nine hundred Candies for that such other Quantities as were then Remaining at Pondicherry the same were Pre Engaged and Remaind there until Proper Vessels Could be Procured to Shipp it off this Respondent did further set forth in his said Answer, that Pursuant to his Letter of the thirty first day of August in the said year One thousand Seven hundred and Seventy One, wherein he Mentioned that he would draw on the said Appellant in favor of Monsieur Law de Lawriston for the Amount of the said Seven Hundred and Ninety Eight Candies and thirty Nine Pounds of Salt Petre, and which the said Appellant in his Letter of the Fifth day of September following did Promise to Pay agreeable to the before mentioned Draft, he this Respondent did therefore draw a Bill of Exchange on the said Appellant in favor of the said Monsieur Law de Lawriston Payable the Tenth day of the said Month of Sept.r for the said Sum of Nine thousand Two Hundred and Fifty Four Pag.s which Bill was Endorsed over by the said Monsieur Law de Lawriston to Coja Nazar Coja Maul Merchant at Madras, and that M.r John Sykes Notary Publick, at the Request of the said Coja Nazar Coja Maul did Tender the said Bill to the said Appellant and Demanded Acceptance and Payment of him for its Contents, who Refused to Accept and Pay the Amount there of Alledging many Frivelous & Evasive Excuses wherefore the said Notary did Protest the same for Non Acceptance and Payment, and that the said Bill was — Returned Protested to him, this Respondent, at Pondicherry who was thereby Obliged to Repay the Amount, Interest and Charges Attending thereon and further more Suffered Considerably by Trade and in his Established Character as a Merchant for the Non Payment of the said Bill by the said Appellant— this Respondent did further set forth in his said Answer, that on Account of the Non Payment of the said Bill and the Reasons Alledged by the said Appellant appearing very Extraordinary and Unaccountable, he, this Respondent, did

therefore

therefore come from Pondicherry to Madras, in Order to make a Personal
Demand from the said Complainant for the Payment of the Amount
due to him, this Respondent and the Charges Attending the said Bills
being Protested and that Accordingly he, this Respondent, did Demand
from the said Appellant an immediate Payment of the Same, who on
the Eleventh day of October in the said year One thousand Seven
hundred and Seventy One, did write a Letter and therein Acknowledge
to be Indebted unto him this Respondent in the Sum of Six Thousand Two
hundred Pagodas and Eighteen Fanams, which Sum the said Appell
ant offered to Pay if this Respondent would Sign a Receipt for the
same, as will more fully and at large Appear by a Copy of the said
Letter, Marked Number Six, Annexed to the said Answer and to which
this Respondent most humbly Refers and that Notwithstanding the
said Appellant had in his said Letter Acknowledged to be Indebted
unto him this Respondent, in the said Sum of Six Thousand Two
hundred Pagodas and Eighteen Fanams, yet that to his, this
Respondents, Great Astonishment and Surprize the said Appell
on the said Eleventh day of October, in the said year One thousand
Seven hundred and Seventy One, did Prefer his said Bill of Comp
against this Respondent for the Sum of Three Thousand and Fifty
three Pagodas and by making Oath to his Demand and that he had
Reason to believe this Respondent would depart from the Jurisdict
of the said Mayors Court a Summons Returnable Immediately &
a Warrant of Arrest did Issue thereon by Virtue where of the Sheri
did Arrest and Attach the Body of him, this Respondent, who must
have Remained in a Long and disagreeable Confinement until the
determination of the said Suit had not Charles Smith Esqr. of
Fort St. George aforesaid Generously become Special Bail for the Perso
of this Respondent, and that on Account of the Illegal and Unwarra
-ble Proceedings and Behaviour of the said Appellant he this
Respondent, did, on the Seventeenth day of the said Month of Oct
in the said year One thousand Seven hundred and Seventy One
Protest in due from of Law against the said Appellant for all
Costs, Charges

Costs, Charges Damages and Expences which this Respondent hath
Suffered Sustained, Born, Paid or been put unto, or which he shall or may
Suffer, Sustain Bear Pay or be put unto by Reason there of, either on
Account of the said Appellants Intentions to Arrest and Imprison
this Respondents Person, or which he would have done had not the
aforesaid Charles Smith Esqr become Special Bail — And this
Respondent did also on the said fifth day of November in the said
year One thousand Seven hundred and Seventy One Exhibit a Cross
Bill of Complaint against the said Appellant, then Cross Defen=
=dant, for the said Sum of Nine thousand three hundred and
Fifty Pagodas Nineteen Fanams and Thirty Two Cash, being the
Amount of the said Seven hundred and Ninety Eight Candies and
Thirty Nine Pounds of Salt Petre Sold and delivered to the said
Appellant, as beforementioned together with the Interest due
thereon and Costs of a Protest, as will more fully and at large
Appear on a Reference to the Account Current Annexed to this
Respondents said Answer, and this Respondent did further set forth in
his said Cross Bill that Notwithstanding the said Appellant was Justly
Indebted unto him, this Respondent, then Cross Complainant, in the
said Sum of Nine Thousand three hundred and Fifty Pagodas Nineteen
Fanams and thirty Two Cash, yet, that he on the said Eleventh day of
October in the said year One thousand Seven hundred and Seventy One,
did Prefer his said Original Bill of Complaint against this Respondent
for the Sum of three thousand and Fifty three Pagodas, and having
made Oath to his Demand and that he had Reason to believe this
Respondent would depart from the Jurisdiction of the said Mayors Court,
a Summons Returnable immediately and a Warrant of Arrest did
Issue thereon by Virtue Where of he, this Respondent, was Arrested &
must have Remained in a Long and disagreeable Confinement until
the determination of the said Unjust Suit had not the said Charles
Smith Esqr become Special Bail for the Person of this Respondent &
that an Account of the Illegal and Unwarrantable Proceedings and
Behaviour of the said Appellant he this Respondent did Protest in
due from of Law for all Costs, Charges Damages and Expences

Accrued

Accrued thereby in the Manner and from as before Related in this Respondents said Answer - That he this Respondent had frequently and in a friendly Manner Requested the Payment of the said Sum of Nine Thousand three Hundred and Fifty Pagodas Nineteen Fanams & thirty Two Cash and furthermore an Ample Reperation for all the damages that have Already Accrued for or by Reason of his the said Appellants, Fore mentioned Illegal and Unwarrantable Procedings and Behaviour, that the said Appellant Obstinately and Wilfully Refused to Pay the same nor would he make him this Respondent, any manner of Satisfaction touching the Aforementioned Premises and therefore Prayed a General Relief and that he the said Appellant, may be Decreed to Pay unto him, this Respondent, the aforesaid Sum of Nine Thousand three Hundred and Fifty Pagodas Nineteen Fanams and thirty Two Cash, also all Costs of both the Original and Crofs Suits and that the said Appellant may be further more decreed to Pay unto him, this Respondent, full and Ample damages for all Lofses Costs, Charges & Expences which he this Respondent hath or shall Sustain, Bear, Pay or be put unto by Reason of the beforementioned detention and Seizure of his this Respondents, Person, or such the said Appellants Attempt so to do, or on any other Account whatsoever To which said Answer of this Respondents the said Appellant did, on or about the Seventh day of April in this Present year of Our Lord One Thousand Seven hundred and Seventy Two put in a Replication thereto Pretending to Maintain, that this Respondent is Indebted unto him, the said Appellant, in the said Sum of three Thousand and Fifty three Pagodas, as is set forth by him in his said Bill of Complaint and the Account Current thereunto Annexed, and the said Appellant in his said Replication doth Likewise deny to stand Indebted unto this Respondent in the said Sum of Nine Thousand three hundred and Fifty Pagodas Nineteen Fanams and thirty Two Cash, as is set forth and Stated in this Respondents said Answer and the Account Current thereunto Annexed, and the said Appellant did further set forth in his said Replication the Matters and things Mentioned by him in his said Petition, And to the said Crofs Bill of Complaint the said Appellant did, on or about the

the said Seventh day of April in this Present year of Our Lord One Thousand Seven hundred and Seventy Two, put in an Answer and thereto Denied to be Indebted unto him this Respondent, in the said Sum of Nine Thousand three hundred and Fifty Pagodas Nineteen Fanams and thirty Two Cash, but nevertheless Admits that he had Purchased and did Receive from him, this Respondent the Quantity of Salt Petre Charged in the Account Current Annexed to this Respondents said Answer, Amounting to the Sum of Nine Thousand Two hundred and Fifty Four Pagodas & that he, the said Appellant, would have paid the said Sum of he this Respondent, would have delivered unto him the said Quantity of Nine hundred Candies of Salt Petre, which the said Appellant Pretends were sold to him by this Respondent, but which this Respondent doth Absolutely deny, and that as this Respond had Refused so to do he, the said Appellant did not think himself obliged to Pay for the Part of the said Salt Petre Received by him untill this Respondent had either delivered to him, the said Appellant, the said Quantity of Nine hundred Candies of Salt Petre, or untill he, the said Appellant was thoroughly Satisfied that this Respondent would deliver him the same and that if this Respondent would deliver him the said Nine hundred Candies of Salt Petre, he the said Appellant, would immediately after such delivery have Paid both the former Quantity of Salt Petre and the Nine hundred Candies in Question, and the said Appellant did further set forth in his said Answer the Matters and things Mentioned by him in his said Petition To which said Replication and Answer this Respondent did put in a General Rejoinder and Replication and to the said Replication the said Appellant did put in a General Rejoinder after which Issue was Joined, Rules to Examine Witnesses were Granted, one Witness was Examined in the Part of the said Appellant, Publication Passed, the said Cause and Crofs Cause were set down for Hearing And on Tuesday the Twentieth day of October in this Present year of Our Lord One Thousand Seven hundred and Seventy Two, the said Causes Came on to be heard and determined by the said Honble the Mayors Court And it Appearing

to

to them from the Prementioned Proceedings that a Bargain had not been Concluded by this Respondent and the said Appellant for the said Nine hundred Candies of Salt Petre, but on the Contrary, that this Respondent had an Undoubted Right to decline the Tender of the said Quantity of Salt Petre for Sale as the said Appellant did not Comply with his this Respondents demand, being Ready Money, they the said Court were therefore to Order and Decree and did Accordingly Order and Decree that the said Appellants Original Bill of Complaint shall stand dismissed with Troble Costs of Suit, to be paid to this Respondent, & that the said Appellant shall pay unto this Respondent the full and just Sum of Nine thousand three hundred and fifty Pagodas, Nineteen Fanams and thirty Two Cash, together with such Interest as now is or shall hereafter become due thereon Until full Payment is made, and that he the said Appellant do Pay unto this Respondent Troble Costs of the said Cross Suit as will more fully and at large Appear by the said Decree of the said Mayors Court hereunto Annexed for the Inspection of this Honble Court and to which this Respondent most humbly Refers —

For all which Reasons this Respondent, Prays that the Decree of the Honble the Mayors Court, may stand Good, and be Comfirmed, by this Honble Court and that the said Appellant may be Obliged to Pay Treble Costs of Suit in both Courts, and this Respondent be Granted such other Relief in the premises as to this Honble Court shall Seem Necessary —

Dannl. Shaw } all ordr. for the Respondent
Giddon Firth }

Saturday the 28th November 1772

Court of Appeals at Madraspatnam } Ss

Between James West of Fortt. George Merchant Appellant and Louis Monneron of Pondicherry Merchant but at Present in Madras 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 Honorable the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 20th day of October Anno Domini 1772 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 so much of the Decree of the Honble the Mayors Court as is here in after expressed be confirmed, that is to say that the Appellants Original Bill shall stand dismissed and that the Appellant shall pay unto the Respondent the full and Just Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty two Cash (Pags. 9350, 19..32.) together with such Interest as now is or shall hereafter become due thereon untill full Payment be made - and with respect to the Costs this Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Appellant shall pay unto the Respondent Single Costs upon the Original Bill of Complaint preferred in the Honble the Mayors Court, and treble Costs upon the Cross Suit prefered in the said Court this Court doth further Order & Decree that the Appellants Petition dismissed with Costs —

Cur

To the Kings most Excellent Majesty in Council

Between James West of Fort St. George Merchant And Louis Monnerown of Pondichery Merchant

The Humble Petition and Appeal of the said James West

Most Humbly Sheweth

That the above said James West did on or about the Fifteenth day of October which was in the year of Our Lord One thousand Seven hundred and Seventy One Exhibit a Bill of Complaint in the Honorable the Mayors Court at Madraspatnam Against the aboversamed Louis Monnerown for the sum of Three thousand and fifty three Pagodas Current Money of Madras, being the Ballance of an Account, which Account is Annexed to the said Bill of Complaint your Petitioner did further in his said Bill of Complaint Setforth that having bought Eight hundred Candy of Salt Petre of the said Louis Monnerown and the said Louis Monnerown having, afurther Quantity of Nine hundred Candy of Salt Petre he the said Louis Monnerown wrote your Petitioner a Letter from Pondicherry Offering your Petitioner the Sale of the said Nine hundred Candys of Salt Petre at the same Price of the said Eight hundred Candies, which was Forty Rupees ₰ Candy only abating Five ₰Ct. the purport of the said Louis Monnerowns said Letter to your Petitioner is as follows that is to say

to

To James West Esqr. Pond 26th August 1771.
at Fort St. George

Mr. Stevenson is this Instant Arrived here upon a Danis Vessell, he has Delivered to me your Letter and Consequently I shall begin Tomorrow to Deliver the Salt Petre this Operation terminied I will send you Mr. Stevensons Receipt I have about Nine hundred Candies which I shall deliver to you at the same Price five fo Excepted, to which I consent to lose, the Quality ought to be the same and there was no Difference in the Purchase I made I have paid the Totality at the Price of 48 Rupees p Candy the Danes Vessell can take the whole Quantity if you foresee to find it Sell to South part Else you can Load it for Madrass where I have the Councils permission to Sell it.

Signed
Louis Monnerovon

Which said Letter is Admitted by the said Louis Monnerovons Answer to the said Bill of Complaint your Petitioner did further in his said Bill of Complaint Setforth that he did Accept of the said proposal of the said Louis Monnerovon for the Sale of the said Nine hundred Candys of Salt Petre and did thereby Conclude the Bargain for the same which your Petitioner so did and Signifyed the same to the said Louis Monnerovon by Letter Dated the Thirteith day of the said Month of August directed to the said Louis Monnerovon at Pondicherry, which said Letter is to the following Purport, that is to say ~

To Luis Monnerovon Esqr.

Sir

I am now to Acquaint you that I shall in Consequence of your Last Letter to me look upon the whole of the Salt Petre as my property But shall not Ship the Nine hundred Candy on Board the Danis Ship with the Eight hundred Candy you are delivering for my Account to Mr. Stevenson, I must beg you will take great care of the said Nine hundred Candy untill my Direction and People can be with you to Receive it which shall be in as Short a time as possible, The amount of the Money for the last Quantity shall be paid with great Exactness to your Order ~

As I am now the Owner of all the Salt Petre and must be Accountable to you for the Money be pleased to tell me if any more of that Article comes to your Settlement, or if there be any more for Sale, as it will be better to buy all than apart, in Order to prevent one Quantity hurting the Sale of the other when Mr. Stevenson has Received the Eight hundred Candy send me his Receipt, and tell me with all speed if you have Godowns to keep my other Nine hundred Candy in till my People can be with you, and if I am to pay any Monthly Expence for the Godowns ~

Signed
James West

Which said Letter is Admitted by the said Louis Monnerovons Answer to the said Bill of Complaint your Petitioner did further in his said Bill of Complaint Setforth that having so as aforesaid Agreed to the said proposal of the said Louis Monnirovon for the Sale and Purchase of the said Nine hundred Candies of Salt Petre, and thereby Concluded a Bargain for the same, as beforementioned, he did from that time look upon the same as his your Petitioners property, and did in ~ Consequence there of Promise Owners of Ships to send it at Freight to a Market where he had great reason to believe it would have Sold Considerably better than the said Eight hundred Candies were Sold, and the Price your Petitioner has Charged in the said Account ~ Annexed to the said Bill of Complaint that your Petitioner did in

in Pursuance of the said Purchase of the said Nine hundred Candies of Salt Petre send People to Pondicherry to receive the said Salt Petre for and on Account of your Petitioner, and wrote a Letter to the said Louis Monnerown bearing Date the Ninth September One thousand Seven hundred and Seventy One, desireing him to Deliver the same to the said People ~ Accordingly, which he refused doing, by which means the Season being far Advanced, and the Monsoons being Expected to Set in very soon, your Petitioner was not only Deprived of the benefit of sending the said Salt Petre to the Market before Alluded to and at which he has great ~ reason to believe it would have Sold to a considerable Profit as beforementioned But he had at the time of Exhibiting the said Bill of Complaint, been at considerable Expences in sending People to Pondicherry to receive it, and he your Petitioner might still Sustain Considerable Damages by being made Answerable for the Freight of the said Vessells on which he had Engaged to Ship it, and other things on Account of which Damages your Petitioner Protested Against the said Louis Monnerown in due form of Law That as aforesaid reason why the said Louis Monnerown ought to Pay unto your Petitioner the Amount of the said Nine hundred Candies of Salt Petre at the Price Charged in the Account Annexed to your Pet.r said Bill of Complaint, your Petitioner setforth he had been Informed the said Louis Monnerown has Sold either all or part of the said Salt Petre to some other Person or Persons since the Sale of it to your Petitioner, to which your Petitioner was apprehensive he the said Louis Monnerown was Induced by a Greater Price having been Offered than that at which your Petitioner had Purchased it, as before Setforth That the said Louis Monnerown having ~ refused to give your Petitioner any manner of Satisfaction ~ Touching the Premises your Petitioner Prayed a General relief therein such as to the said Honble the Mayors Court should appear Agreeable to Equity And good Conscience, And that the said Louis Monnerown might be Decreed to Pay unto your Pet.r

Petitioner the aforesaid Sum of three thousand and fifty three Pagodas with all such Interest as then was or should thereafter become Due thereon, also all Costs of this Suit, as will more fully and at large Appear on Reference to the said Bill of Complaint To which said Bill of Complaint the said Louis Monnerown did on the Tenth Day of December last put in an Amended Answer (the Original Answer by him put in before having been by the said Honble the Mayors Court Ordered to be Amended) thereby denying to be Indebted unto your Petitioner in the said Sum of three thousand and fifty three Pagodas or in any other ~ Sum or Sums of Money whatsoever, on the Contrary Alledging that your Petitioner was Indebted unto him the said Louis Monnerown in the full and Just Sum of Nine thousand three hundred and fifty Pagodas Nineteen fanams and thirty four Cash As he Alledges will appear by an an Account which he Annexes to his said Answer for Seven hundred and Ninety eight Candies and thirty Nine Pounds of Salt Petre Charges thereon Interest for the same, and Charges of a Protest the said Louis Monnerown does further in his said Answer, Notwithstanding he does as afore said deny Generally your Petitioners said demand, Admit that he the said Louis Monnerown did make the said Offer of Sale of the said further Quantity of Nine hundred Candies of Salt Petre, and that your Petitioner did Agree there to, and does Actually Annex to his said Answer Copies of this the said Louis Monnerowns said Letter making the said Offer of Sale, and of your Petitioners said Answer there to, Accepting of the same, and Concluding the said Bargain, as beforementioned, thereby Confessing that the same was a Bargain and of Course that both parties should abide thereby Viz.t the said Louis Monnerown by delivering the said Nine hundred Candies of Salt Petre to your Petitioner or his Order and

your

your Petitioner paying for the same — In which light your Petr. humbly hopes the said Matters will Appear to your Most — Excellent Majesty your Petitioner further most humbly Sheweth that Notwithstanding the said Bargain for the said Nine hundred Candy of Salt Petre was so as afore said Concluded, yet the said Louis Monnerovon in his said Answer Alledges that the Contents of your Petitioners said Letter Accepting of his the said Louis Monnerovons Offers of Sale Greatly Surprized him, but as he was Determined to Sell the same for Ready Money only, as being at that time in great want there of &c. in a Letter bearring date the thirty first day of the said Month of August in the said year One thousand Seven hundred and Seventy One he did Reply that the said Quantity of Salt Petre should be the Property of your Petitioner but on Condition that he do Immediately send the Sum of Nine thousand Seven hundred and Seventy two Pagodas being the Amount of the said Nine hundred Candies of Salt Petre, a Copy of which Letter the said Louis Monnerovon Annexes to his said Answer — The said Louis Monnerovon further in his said Answer Mentions your Petitioner not Complying with his said Demand, Sending him a Bond for the said Nine thousand Seven hundred and Seventy two Pagodas payable in a Month, his Returning it and Declining your Petitioners Offer, Alledges a Demand without paying the Money is Adjudged Void, that the tender of Sale did dissolve, and he was at full Liberty to Dispose of his property to any other person, the said Louis Monnerovon Acknowledge he did Receive your Petitioners said Letter of the Ninth September One thousand Seven hundred and Seventy One, but Declined the Delivery, that he Drew a Bill of Exchange for the said Seven hundred and Ninety eight Candies and thirty nine Pounds of Salt Petre on your Petitioner Which your Petitioner Refused to Accept and pay Alledging (as he Says) many Frivilous and Evasive excuses Wherefore the said Bill of Exchange was Protested by a Notary Publick, that he was Obliged to Pay the same and came from Pondicherry to Madras in Order to make a Personal Demand from your Petitioner for the said Amount of the said Bill — that your Petitioner wrote a Letter to him of the Eleventh October One thousand Seven hundred and Seventy One Acknowledging to be Indebted unto him in the Sum of Six thousand and Two hundred Pagodas and eighteen fanams Which your Petr. Offered to Pay if the said Louis Monnerovon would Sign a Receipt for the same, Notwithstanding which your Petitioner did prefer his said Bill of Complaint in the said Honble the Mayors Court Against him, In Consequence of which he was Arrested, and hath Protested &c. the said Louis Monnerovon did also on the said Fifth Day of November One thousand Seven hundred and Seventy One Exhibit a Cross Bill of Complaint Against your Petitioner for the said Sum of Nine thousand three hundred and fifty Pagodas nineteen fanams and thirty two Cash, therein mentioning the said Bill of Complaint Exhibited by your Petitioner his being Arrested, protesting &c. To which said Answer of the said Louis Monnerovon your Petitioner did on the Seventh Day of April in the Present year of our Lord One thousand Seven hundred and Seventy two put in a Replication, thereby still Maintaining that the said Louis Monnerovon doth stand Justly and truly Indebted unto your Petitioner in the said Sum of three thousand and fifty three Pagodas on the Account Set forth in your Petitioners said Bill of Complaint and the Account there unto Annexed your Petitioner did also therein Absolutely deny to be Indebted unto the said Louis Monnerovon in the Sum of Nine thousand three hundred and fifty Pagodas nineteen fanams and thirty two Cash, As is

(as)

is Unjustly Setforth and Stated in the said Answer and the Account thereunto Annexed your Petitioner did further in his said Replication say that he Conceived as he still does, that it must Clearly Appear by the said Louis Monnerowns Offer to your Petitioner of the said Nine hundred Candies of Salt Petre both as setforth in your Petitioners said Bill of Complaint and also in the said Louis Monnerowns said Answer, that the same was a fair and full Offer of Sale, and it could not be Supposed, nor is there the least Cause of pretence for Inferring that any thing was or could be meant more than an Offer of Sale on the same terms that the said Quantity of Salt Petre bought by your Petitioner of the said Louis Monnerown previous there to was bought as before mentioned Save and Except the Abatement of Five \% Cent Particularly Specified in the said Offer of Sale — Which Offer your Petitioner did fully Accept of, and which Conditions your Petitioner did fully Agree to in his said Letter of the thirteenth Day of August last in Answer to the said Louis Monnerowns said Offer in said Letter from Pondichery of the Twenty sixth Day of the said Month of August And having so Accepted of and Agreed to the said Offer and Terms of Sale of the said Salt Petre the same did of Course Constitute and become a legal Bargain, and your Petitioner had an Undoubted Right to Consider the said Salt Petre as his property, and to desire the same might be taken care of Untill he could send proper People to Sett Weighed and to Receive it for and on Account of your Petitioner — Which could not be done Instantly on Account of the Distance between Pondicherry and Madras or Fort St. George and the time this Article would take up Weighing Delivering and receiving This said Louis Monnerown had not therefore any Right to be Astonished at the Contents of your Petitioners said Letter, as your Petitioner had fully Agreed to the said Louis Monnerowns said Offer

Offers of Sale and both the said Louis Monnerown and your Petitioner did become bound thereby, and to the Performance there of And in Default of such Performance they did Respectively become liable to a Legal Prosecution to Oblige them to Comply there with, This being the Case the matter of Ready Money which the said Louis Monnerown mentions, and his pretence of the said Abatement of Five \% Cent being made on Account there of, is meer matter of Evasion which would your Petitioner Doubted not and still hopes will be Considered as a matter Subsequent to the said Bargain and by which the said Bargain cannot nor ought to be affected — your Petitioner did also beg leave to Observe the Absurdity of such the said Louis Monnerowns After Proposition or Reply to your Petitioners said Acceptance of the Terms Offered and Conclusion of the said Bargain Viz.t that it should be on the Conditions of your Petitioners Immediately sending to the said Louis Monnerowns Nine thousand Seven hundred and Seventy two Pagodas, being the whole Amount or rather more than the Amount of the said Salt Petre, now its Observable that the said Louis Monnerown could not, in the Strictest Sense have Either a Legal or Equitable Claim to the Payment of the Amount of the said Salt Petre Untill the same was Delivered, Which could not possibly have been Immediately on Account of the Distance and Weighing \&c as before mentioned. Never the less your Petitioner in Order to Convince the said Louis Monnerown that his Intentions were really to abide by the said Bargain and also the Confidence that he placed in the said Louis Monnerowns Intentions as to the said Bargain on his part and that he would Deliver the said Salt Petre your Petitioners Order Agreeable there to, did send the

the said Louis Monnierovon a Bond for the said Amount payable in a Month that being about the time he Supposed the said Salt Petre would be intirely Weighed and Delivered the Delivery of the said former Quantity of Salt Petre bought by your Petitioner of the said Louis Monnierovon, as before mentioned having taken up that time or there abouts — This your Petitioner did without any Value in hand or Received and that for the Reasons before mentioned notwithstanding which the said Louis Monnierovon did Return the said Bond to your Petitioner, but that can by no means Invalidate the said Bargain which then stood as it did before, and the said Louis Monnierovon and your Petitioner were Equally Answerable and Accountable to Each other as your Petitioner had not sent the said Bond, Or as if the said Louis Monnierovon had not Returned it, that is, the said Louis Monnierovons was Accountable to your Petitioner for the Delivery of the said Salt Petre, and your Petitioner was Accountable to the said Louis Monnierovon for the Amount Purchase of it and Each of them liable to a Prosecution in Case of non performance of their Respective parts of the said Bargain — this being clearly the Case, and the said Louis Monnierovon having — Refused to Deliver the said Salt Petre to your Petitioners Order, as Set forth in your Petitioners said Bill of Complaint notwithstanding your Petitioner was at a Considerable Expence about it the said Louis Monnierovon did to all Intents and purposes, As your Petitioner Conceives become Answerable and liable to pay unto your Petitioner the market Price at Madras for the said Salt Petre as Charged in the Account Annexed to your Petitioners said Bill of Complaint Therefore what the said Louis Monnierovon in his said Answer Setsforth of a Demand Without paying the money being Adjudged Void &c is meer matter of of Evasion, and by no means Appreciable to the present Case, For what Demand had the said Louis Monnierovon a right to make before he had Delivered the said Salt Petre your Petitioner ded also in his said

said Replication deny that he had been Guilty of any Default As he had no right to Pay for the Salt Petre before it was Received Either by him or on his Account, therefore the said Bargain did not Dispolve As the said Louis Monnierovon Unjustly sets forth in his said Answer nor was the said Louis Monnierovon at Liberty to Dispose of the said Salt Petre to any other person upon any other Condition than that of becoming Answerable to your Petitioner for the Amount of what your Petitioner could have Sold it for which he has done your Petitioner did also in his said Replication Deny that his said Action is Either — Illegal or Unjust and he hoped it would so Appear to the said — Honble the Mayors Court And he hopes it will Appear to —

Your most Excellent Majesty in a Different light

Even by the said Louis Monnierons own State of the Case, for it Appears by the said Louis Monnierons said Answer that he never did Deliver the said Salt Petre to your Petitioner The said Louis — Petitioner did in his said Replication Admit that the said — Louis Monnierovon did Draw on him your Petitioner for the Amount of the said first Quantity of Salt Petre bought of him the said Louis Monnierovon and that the same was tendered to your Petr for Acceptance and Payment, and that he did Refuse to Accept and Pay the same, but your Petitioner denied that he Alledged many or any frivolous and Evasive Excuses, as the the said — Louis Monnierovon Unjustly Setsforth in his said Answer, On the Contrary your Petitioner did so refuse to Accept and Pay the same for the following Reasons, the purport of which were Inserted in the Protest of the said Bill, that is to say Because he your Petitioner had bought One thousand and Seven hundred Candies of Salt Petre of the said Louis Monnierovon, and the

amount

Amount of the said Draft being only for a part of the said Salt Petre and the said Louis Monnerown Refusing to Deliver to your Petitioner or his People (who were then at Pondicherry to receive it the Remaining Quantity of Salt Petre) being that now in Question) your Petitioner did not think himself Obliged to Accept or pay the Amount of the said Draft Untill he had either Received the whole Quantity of the said Salt Petre or Untill he was thoroughly Satisfyed that the said Louis Monnerown would Deliver him the same. And Particularly so as by the said Louis Monnerowns not Delivering your Petitioner the remaining Quantity of the said Salt Petre your Petitioner would Suffer or Sustain Considerable Damages. But if the said Louis Monnerown would then Deliver the remaining Quantity of the said Salt Petre Immediately he, your Petitioner, would — Immediately after such Delivery pay not only the Amount of the said Bill or draft But also the whole Amount of the said Salt Petre — Which Circumstances do as your Petitioner Conceives clearly — Demonstrate that all your Petitioner wanted was the said Louis Monnerowns Compliance with the said Bargain Proceeding from his own Offers as afore said, and that your Petitioners nonacceptance and Payment of the said Draft for the Quantity of Salt Petre he had Received was intirely owing to the said Louis Monnerowns not delivering him the Remaining Salt Petre Agreable to the said Bargain. And your Petitioner did Again in his said Replication as he had done in his said Protest and as he has done since, and now does Declare that he was And is ready and willing to pay unto the said Louis Monnerown the Amount of the Salt Petre by him Received on the said Louis Monnerowns paying him the Amount of his Present Demand, Which the said Louis — Monnerown has, as your Petitioner humbly Conceives Rendered himself

himself liable to Pay by such his Conduct in refusing to Deliver unto your Petitioner the said Salt Petre as before mentioned, on Account of which and all Ropes Costs Charges Damages Interest of money and Expences Whatever which your Petitioner Either had Suffered Sustained borne paid or been put Unto Or which he should or might Suffer Sustain bear pay or be put unto on Account of the said Louis Monnerown not fulfilling his said Contract Agreement or Bargain by Delivering the said Salt Petre your Petitioner did on the Seventeenth Day of September in the said year One thousand Seven hundred and Seventy One Protest Against the said Louis Monnerown in due Form of Law, which said Protest was Exhibited in the said Honble the Mayors Court — your Petitioner did further in his said Replication Admit that he did Write to the said Louis Monnerown a Letter of the Eleventh October One thousand Seven hundred and Seventy One to the purport of the Writeng N°6. Annexed to the said Answer, which he so did and Stated the whole Accounts relative to all the said Salt Petre, in hopes that the said Louis Monnerown Would have Settled the said matters Without any Litigation, as your Petitioner was ready and willing and did Offer to pay him the said Louis Monnerown What was the Ballance of the whole Accounts of both the said Quantities of Salt Petre bought by your Petitioner of the said Louis Monnerown as before mentioned, which Ballance the said Louis Monnerown not only Declined Accepting, but by his Letter in Answer to your Petitioners said Offer thereat end to Prosecute your Petitioner for the Amount of the said First Quantity of Salt Petre for which he had Drawn the said Bill, without giving your

Pet.r

Petitioner the least Satisfaction for on Account of the said Nine hundred Candies of Salt Petre so Sold and bought as before mentioned As if the the said Louis Monnerown had not Sold and your Petitioner bought the same your Petitioner did therefore think it Advisable to Prosecute the said Louis Monnerown for the Ballance due to him on Account of the said nine hundred Candies of Salt Petre, as he has done, and fearing the said Louis Monnerown Would, after Commencing the Prosecution with which he threatend your Petitioner, as before mentioned Depart the Jurisdiction of the said Honble the Mayors Court and Return to Pondicherry, which is his Place of Residence, your Petitioner also thought it Advisable to Obtain a Warrant of Arrest in Order to Oblige the said Louis Monnerown to give Bail to Answer the Consequence of his your Petitioners said Action, which was only a piece of Justice to Which he thought himself, and which he humbly hopes Your most Excellent Majesty will think him Justly Intitled since the said Louis Monnerown would not render him Justice without the said Louis Monnerowns Protest which he mentions cannot therefore, be of any Validity And your Petitioner did also beg leave to Remark that in the said Protest, to which the said Louis Monnerown has Sworn, he says he sold the said eight hundred Candies of Salt Petre at Forty eight Rupees ℔ Candy Where as the Real Price, and as Charged by the said Louis Monnerown and Setforth in his said Answer was only Forty Rupees ℔ Candy. And in Order further to Shew the pains your Petitioner took to Settle and Adjust the Matters in Question without Litigation your Petitioner in his said Replication Setforth that he did on the Tenth Day of September in the said year One thousand Seven hundred and Seventy One write a Letter to the said

said Louis Monnerown Explaining the Nature of the said matter, and Endeavouring to Convince the said Louis Monnerown that he was Justly Intitled to have the said Bargain for the said Nine hundred Candies of Salt Petre Fulfilled &c Which said Letter is to the Following purport, that is to Say,

Madras 10th Sept.r 1771

To Louis Monnerown Esq.r

Sir I this moment Received your Letter of the 9th Instant in which you Returned my Bond for Pagodas 9772 being the Amount of the Remains of Salt Petre you say you beg leave to Decline my Offers, as you Say your want of money is very Urgent this piece of Conduct Appears to me so very Extraordinary and Unaccountable that I am intirely at a loss what to say to it In your Letter of the 26th August you made me an Offer of the remaining 900 Candies of Salt Petre in the following Expreſs Terms— I have about 900 Candy which I shall Deliver to you at the same price five % Excepted, to which I consent to loose, the Quality ought to be the same, and there was no difference in the Purchase I made, I have paid the totality at the Price of 48 Rupees ℔ Candy the Danis Vessell can take the whole Quantity if you foresee to find it Sell to the south part Else you can load it for Madras Where I have the Councils Permission to Sell it.

This Offer of yours has been Accepted by me by my Letter of 30th August Where in I Acquant you that in Consequence of your Letter to me of 26th I looked upon the whole of the Salt Petre as my property, but shall not Ship the 900 Candy

Candy on Board the Danes Ship with the Eight hundred you are Delivering for my Account to Mr Stiverson, I must beg you will take care of the said 900 Candy Untill my direction and people can be with you to Receive it which shall be in as Short a time possible — the Amount of money for the last Quantity shall be paid with great Exactness to your Order. Thise are the plain Proposals, Terms and Agreement of the Sale and the Purchase of the Nine hundred Candy of Salt Petre, and which I consider as a firm and binding Bargain and am in Consequence Determined to abide myself, and keep you to Terms of the Agreement Wither your Proposals nor my Offers say that the whole or any part of the money is to be paid before the Receipt of the Goods, and it would be Absurd to Suppose that when no such Engagement Subsists that the money is due before the Salt Petre is Delivered I have dispatched my People, who will be with you in two or three Days to Receive the Salt Petre, and you depend upon having the Amount paid as soon as I know the Exact Quantity of Salt Petre Received —

After Reflection and due consideration of all Circumstances I flater myself you will be thoroughly Convinced of the propriety and Legality of my Claim of Property in the Salt Petre which you have Sold to me, I do therefore hope and Expect that the same good Understanding and Friendship Which has hither to Subsisted between Us will be preserved and Continued And that the Business in Question will be Settled upon Mutual and the Original Terms of Agreement &c —

(Signed)

James West

Which said Letter was Exhibited in the said Honble the Mayors Court your Petitioner did in his said Replication further Set forth that he humbly hoped by what is in the said Replication and in your Petitioners said Bill of Complaint Set forth it would Plainly and clearly Appear that the said Louis Monnerown should and ought to have Delivered the

the said nine hundred Candies of Salt Petre to your Petitioner, and as he refused to do so that he is liable to the Payment of your Petitioners said Just Demand, As will more fully and at large Appear on Reference to the said Replication, or the Attested Copy there of which comes here with for the Inspection of your most Excellent Majesty And

To the said Cross Bill of Complaint Exhibited by the said Louis Monnerown Against your Petitioner, he, your Petitioner did on the said Seventh day of April last Deliver in an Answer, thereby Denying to be Indebted unto the said Louis Monnerown in the Sum of Nine thousand three hundred and fifty Pagodas Nineteen Fanams and thirty two Cash, as is Unjustly Set forth in the said Cross Bill of Complaint — your Petitioner did however in the said Answer Admit that he — Purchased of the said Louis Monnerown and did Receive the Quantity of Salt Petre Charged in the Account Annexed to the said Louis Monnerowns said Answer to your Petitioners said Bill of Complaint Amounting to the Sum of Nine thousand Two hundred and fifty Four Pagodas, and which your Petitioner would have paid if the said Louis Monnerown would have delivered to your Petitioner the further Quantity of Nine hundred Candy of Salt Petre Sold by him the said Louis Monnerown to your Petitioner as before mention but as the said Louis Monnerown Refused so to do your Petitioner did by no means think himself Obliged to pay for the part of the Salt Petre received untill the said Louis Monnerown had either Delivered to your Petitioner the remaining Quantity or the said Nine — hundred Candies of Salt Petre, or untill your Petitioner was — thoroughly Satisfyed that the said Louis Monnerown would Deliver him the same, But if the said Louis Monnerown would have — Delivered the said remaining Quantity of the said Salt Petre, — Agreeable to the said Bargain for the same, your Petitioner would

I.

Immediately after such Delivery have paid not only for the said first Quantity of Salt Petre, But also the whole Amount of the said Salt Petre, of which the said Louis Monnerown was Acquainted which Circumstances ds, as your Petitioner Conceives clearly Demonstrate that all your Petitioner wanted was the said Louis Monnerowns Compliance with his said Bargain and that your Petitioners nonpayment of the Amount of Salt Petre he had Received was entirely owing the said Louis Monnerown not Delivering the Remainder or the said further Quantity of the said Salt Petre Agreable to his said Bargain. And your Petitioner did in his said Answer Again declare that he was still Ready & willing to Pay the Amount of the Salt Petre by him Received on the said Louis Monnerown paying him the Amount of his Present Demand, or that for which he Exhibited his said Original Bill of Complaint being the Sum of three thousand and fifty three Pagodas and Interest, Which he Conceived, as he still does, the said Louis Monnerown was and is liable to pay to your Petitioner on the Account and for the reasons Setforth in the said Proceedings on the part of your Petitioner, On Account of which matters your Petitioner did Protest as before Setforth your Petitioner did further in his said Answer Admit his Writing the said Letter of the Eleventh day of October One thousand Seven hundred and Seventy One, which he so did for the reasons therein and herein before Setforth your Petitioner did further in his said Answer Setforth what was done in Consequence there of, and for what reasons, to the purport also herein before setforth — your — Petitioner did also in his said Answer Setforth that he humbly hoped by what is there in and in your Petitioners said other proceeding Setforth it would Plainly and clearly Appear that the said Louis Monnerown should and ought to have Delivered the said Nine hundred

hundred Candies of Salt Petre to your Petitioner And as he Refused so to do that he is Liable to the payment of your Petitioners said Just Demand for the same, and therefore that your Petitioner is not Indebted to him in the Sum Said for But in the Ballance of the said Account only, which he having tendered or Offered to pay to the said Louis Monnerown as beforementioned, your Petitioner did in his said Answer Plead the same in Bar of Interest on the Amount of the Salt Petre Received by your Petitioner As before mentioned, As will more fully and at large Appear on Reference to your Petitioners said Answer or the Attested Copy there of which comes herewith for the Inspection of your most Excellent Majesty

To which said Replication and Answer the said Louis Monnerown did put in a General Rejoinder and Replication, And your Petitioner did put in a General Rejoinder to the said Replication Issue was Joined, Rules for Witnesses passed, One Witness was Examined on the part of your Petitioner, Exhibits produced — Publication passed, And the said Cause and Cross Cause were were Set down for hearing and coming on to be heard by & before the said Honble the Mayors Court on the Seventh Day of October in the Present year of Our Lord One thousand Seven hundred and Seventy two the said Court did think fit to Order and Decree And did Accordingly Order and Decree that your Petitioners said Bill of Complaint should stand Dismissed with Treble Costs to be paid to the said Louis Monnerown And the said Court did further Order and Decree that your Petr. should pay unto the said Louis Monnerown the full and Just Sum of Nine thousand three hundred and fifty Pagodas Nineteen Fanams and thirty two Cash together with such Interest as then was or should thereafter become due thereon Untill full Payment is made And that your Petitioner do pay unto the said Louis — Monnerown

Monnierown Treble Costs of the said Suit As will more fully and
large Appear on Reference to the said Decree or the Attested Copy
of which comes here with for the Inspection of your most
Excellent Majesty

From Which said Decree of the said
Honble the Mayors Court your Petitioner did on the Second day
November last Appeal to the Honble the President and
Governour of Fort St. George & Council thereby Stating the Sum
matters and things Setforth in the several Proceedings in the
Cause in the said Honble the Mayor Court to the purport here
before Related and also Setting forth that your Petitioner Conceived
the said Decree is Erroneous And that your Petitioner is Aggrieved
thereby In the first Place Because Instead of the said Louis
Monnierown being Decreed to pay unto your Petitioner the Sum by
your Petitioner Sued for and which he Conceived as he still does
before mentioned he became liable to pay unto your Petitioner
with Interest and Costs, your Petitioners said Bill is Dismissed
with treble Costs, And in the Second Place Because your Pet.
is thereby Decreed to Pay unto the said Louis Monnierown the
Amount of the said Seven hundred and Ninety eight Candies
& thirty nine Pounds of Salt Petre with Interest and treble
Costs of Suit, without having any Redress Whatever for or on
Account of the said Nine hundred Candies of Salt Petre so Sold
and bought, and Undelivered as before Setforth Notwithstanding
your Petitioner not only on Account of the said Non Delivery on
the part of the said Louis Monnierown by his action Claimed the
Difference between the Amount Purchase of the said Salt
Petre

Petre and the market Price of Salt Petre at Madras at that time
Agreable to the Charge in Account Annexed to your Petitioners said
Bill of Complaint your Petitioner Conceiving that the fairest
method of Stating and Settleing and Assessing the Damages
he has Sustained by the said Non Delivery of the said Salt Petre, But your
Petitioner did also in his said Bill Complaint Pray a General Relief in
the said Premises, so that in Case your Petitioner was not Intitled or is
not Intitled to the Sum for which he Commenced his said Action which
he does by no means Admit, but still Conceives he is Intitled there to yet
your Petitioner Conceives he is still Intitled to the Delivery of the said
Salt Petre or to some Redress Damages or Satisfaction on Account of the Non
Delivery there of If so, and much your Petitioner Conceives to be clearly
the Case the your Petitioner, is at a loss to Conceive the Cause not only of his
said Bill being Dismissed, but Also of your Petitioner being Taxed with
Treble Costs Surely your Petitioners having been Injured with regard to the
said Non Delivery of the said Salt Petre According to the said Bargain
cannot be the Cause of it That could be no fault of your Petitioner, nor
should he Suffer by it Surely it cannot be Because your Petitioner
Endeavoured to Convince the said Louis Monnierown of his Error in the said
Affair, and to Accomodate the said matters without any Prosecution
Whatever Even after the said Louis Monnierown had Refused to Deliver
the said Salt Petre. Nor can your Petitioner Conceive that it could
be on Account of his Offer of the said Bond, As it was no Deviation from the
said Bargain Whatever your Petitioner did not say he would not Abide the
said Bargain On the Contrary in your Petitioners Letter of the Tenth
September One thousand Seven hundred and Seventy One in the Proceedings
in this Cause and here in before Setforth Notwithstanding the Offer of the
said Bond your Petitioner tells the said Louis Monnierown he may depend
upon having the Amount paid so soon as your Pet.r knew the Exact Quantity
of Salt Petre Received — Could the said Louis Monnierown in Equity
desire

desire more. The matter of the Bond was an Offer to be Accepted or Rejected by the said Louis Monnerown as he thought proper But could not Affect the said Bargain For upon the said Louis Monnerown Returning the said Bond your Petitioner wrote him he would pay him for the said Salt Petre when Received or when he know how much was Received as before mentioned And its Observable your Pet.r had a great Right to mention, when he know how much he had received — Because tho he had before Purchased of the said Louis Monnerown the said eight hundred Candy there was only Seven hundred and Ninety eight Candies and thirty nine Pounds Delivered, which Quantity the said first Salt Petre turned out when Weighed Instead of eight hundred Candy — Yet your Petitioner never thought of Calling the said Louis Monnerown to an Account for the Remainder But your Petitioner could not for that reason be quite certain Whether the Exact Quantity of nine hundred Candy might be Delivered or Whether there might be some Deficiency, as in the said former Quantity, your Petitioner did also in his said Petition of Appeal to the said President or Governour & Council of Fort.t St.t George beg leave to Observe further that theres a great Difference between Goods being Sold Where both the parties are on the Spot and where they are at a Distance, as in this Case the said Louis Monnerown being at Pondicherry and your Petitioner at Fort.t St.t George In Consideration where of it was Necessary that time should be Allowed for your Pet.r to send & Receive the said Salt Petre, And the said Louis Monnerown in his said Letter making the said tender of Sale says, the Danis Vessell can take the whole Quantity if you foresee to find it Sell to the South part, Else you can Load it for Madras, Clearly leaving it in the Option of your Petitioner Either to Load it on the Vessell then at Pondicherry taking in the said former Quantity of Salt Petre or to

to Load it for Madras, for which purpose your Petitioner must Provide a Vessell and of Cours time must be Allowed for that purpose, In Answer to and in your Petitioners Letter Accepting of this Offer of Sale leaving the Shipping of the said Nine hundred Candy of Salt Petre in the Option of your Petitioner as before mentioned, your Petitioner tells the said Louis Monnerown that he shall not Ship the said nine hundred Candies of Salt Petre on Board the Danis Ship Clearly Indicating that time must be Allowed to Provide another Ship Agreable to the Power Vested in him by the said Louis Monnerown Offer of Sale, And to shew to the said Honble the Court of appeals at Fort.t St.t George that the same was not only a Bargain But the said Louis Monnerown knew it so to be and Considered it in that light your Pet.r did and does beg leave to refer to the Disposition of Mr.r Charles Bromly in this Cause and Cross Cause, Wherein he says the said Louis Monnerown said he had Contracted to Deliver your Petitioner A further Quantity of Salt Petre, And that he the said Louis Monnerown with held the Delivery of it on Account the non payoment of the said first Quantity of Salt Petre, your Petitioner did in his said Petition of Appeal beg leave to Observe further that he Conceives it must clearly Appear that this was a fair Bargain, Admitted to be such by the said Louis Monnerowns said Answer by his Admitting the Written Offer of Sale and Acceptance & his Confession to or before the said Mr.r Charles Bromly, and the tender of the said Bond could not by any means Alter it for the reasons herein before mentioned, Could not the said Louis Monnerown have Prosecuted your Petitioner for the nonperformance of his said Bargain if he had refused to Comply — there with your Petitioner was and is clearly of Opinion he could, and that he would have done so had the Price of that Article fallen whereby the said Louis Monnerown might have been a Sufferer in your Pet.rs had not Agreed to and Comply with the said Bargain on his part,

why

Why then had not your Petitioner a right to demand the performance of the said Bargain on the part of the said Louis Monneroun If the said Bargain was binding on One part it was soon both parties Therefore the said Louis Monneroun was Answerable to your Petitioner as before mentioned, For if the said Bargain was good before the tender of the said Bond it was Equally so after such tender and refusal As it was left in the same State it was in when the said tender was made The Nature of it was by no means Altered by the said tender It was clearly a good & Legal Bargain, Reduced in to writing therefore Binding The said Louis Monneroun Offers your Petitioner Accepts and the Bargain is thereby Concluded, It cannot then Surely bein the Power of the said Louis Monneroun, the person who made the said Offer of Sale, to Diviate there from on your Petitioners Acceptance of his Offer, For should any person be Allowed to do so there would be no certainty in any Bargain which might be very Detrimental in Commerce, and Attended with very Disagreable Consequences- Had your Petitioner After the said Bond was Returned, refused to Comply with the said Bargain your Petitioner Conceives it would have been in the Option of the said Louis Monneroun Either to have Compelled a Compliance on the part of your Petitioner, or to have Declined the said Bargain as he thought proper, But so far from your Petitioners Refusing to Comply there with he tells the said Louis Monneroun that he would pay the Amount of the said Salt Petre as soon as he knew the Exact Quantity Received as before mentioned more than this could not be Asked with any Degree of Justice or Propriety, At least your Petitioner Conceives he could not be Answerable for more- And with regard to the Sum of nine thousand three hundred and fifty Pagodas Nineteen fanams and

and thirty two Cash which your Petitioner is by the said Decree of the said Honble the Mayors Court Decreed to Pay unto the said Louis Monneroun with Interest and treble Costs of Suit, As before mentioned, your Petitioner, in his said Petition of Appeal to the said President Council of Fort.th George, beged leave to Observe that he thought himself as he still does think himself, Aggrieved thereon for the reasons herein before Setforth, for your Petitioner humbly hoped it Would clearly Appear to the said Honble Court of Appeals that it was the said Louis Monnerouns own fault that the said Sum was not paid, Which it certainly would have been if the said Louis Monneroun would have Complyed with the said Bargain by the Delivery of the said Nine hundred Candies of Salt Petre to your Petitioner, as before mentioned, and the said Sum would also have been paid and Settled in Account if the said Louis Monneroun Would have Settled the same, as it clearly Appears by your Petitioners said Letter of the Eleventh of October One Thousand Seven hundred and Seventy One that your Petr was ready and Willing and did Offer to pay unto the said Louis Monneron the Full and whole Ballance of the said Accounts, of which the said Principal Sum, so Decreed to be paid as before mentioned was part, And for which the said Louis Monneroun had due Credit in the said Statement your Petitioner is therefore much Surprized that he should not only be Decreed to pay the said Principal Sum of the said Louis Monneroun, with out any thing being Decreed in favour of your Petitioner Relative to the said Nine hundred Candies of Salt Petre, But also that he, your Petitioner, should be Decreed to pay Interest and treble Costs of Suit, When it was the said Louis Monnerouns own fault the said Matters were not Settled long ago, as before Setforth

Your Petitioner did also in his said Petition of Appeal to the said Honble the Court of Appeals ab

at Fort.d George pray that the said Decree of the said Honble the Mayors Court might be Reversed and Set aside that the said Louis Monneroron might be decreed to Pay unto your Pet.rs the Sum by your Petitioner Sued for, as before mentioned, with Interest and Costs of Suit. Or that the said Honble the Court of Appeals would be Pleased to make such Other Decree in favour of your Petitioner Relative to the said Nine hundred Candies of Salt Petre as to the said Honble the Court of Appeals should Appear Legal Just and Equitable, And your Petitioner did also pray such further and other General Relief in all and Singular the said Premises As to the said Honble Court of Appeals should seemmeet, As will more fully and at large Appear on Reference to the said Petition of Appeal, or the Attested Copy there of which comes here with for the Inspection of your most Excellent Majesty To this Appeal the said Louis Monneroron did on the Twenty fourth Day of November last put in his Answer And the said Appeal was Ordered to be heard And came on to be heard before the said Honble the President and Council at Fort.d George the Twentyeith Day of the said Month of November, When the said Court of Appeals thought fit to Order and Decree and did Accordingly Order and Decree that so much of the said Decree of the said Honble the Mayors Court As is there in and herein after Expressed be Confirmed, that is to say, that your Petitioners said Original Bill should stand Dismissed, and that your Petitioner should pay unto the said Louis Monneroron the Sum & Just Sum of Nine thousand three hundred and fifty Pagodas Nineteen Fanams and thirty two Cash together with such Interest as there was or should thereafter become due there on Untill full payment be made And with respect to the Costs, the said Court of Appeals did think fit to Order and Decree and did Accordingly order

Order and Decree that your Petitioner should pay unto the said Louis Monneroron Single Costs upon the Orginal Bill of Complaint preferred in the said Honble the Mayors Court and treble Costs upon the Cross Suit preferred in the said Court, And the said Court did further Order & Decree that your Petitioners said Petition of Appeal be thence Dismissed with Costs, As will more fully and at large Appear on Reference to the said Decree of the said Court of Appeals, or the Attested Copy there of Which comes here with for the Inspection of your most Excellent Majesty

From which said Decree of the said Honble the Mayors Court of the Twenth Day of October last, And the said Decree of the said Honble the Court of Appeals at Fort.d George dated the said Twenty eight day of November last your Petitioner doth most humbly Appeal to your most Excellent Majesty in Council As your Petitioner Conceives the said Decree are verry Erronious, And that your Petitioner is Aggrieved thereby, on the Account and for the reasons herein before, and in the said Proceedings in this Cause & Cross Cause Set forth And further tho your Petitioner is by the said Decree of the said Court of Appeals Relieved of Double Costs in the said Original Suit yet his your Petitioners said Bill of Complaint is Dismissed with Single Costs of Suit & your Petitioner is Taxed with Costs of the said Appeal to the said President and Council and Decreed to Pay the Amount of the said first Quantity of Salt Petre with Interest and treble Costs of Suit, Without having any Relief Whatever As to the Nine hundred Candys of Salt Petre so sold by the said Louis Monneroun to

to your Petitioner as before mentioned, Which your Petitioner Conceives is a Great hard Ship on him, and was he to Comply there with he would Sustain very considerable Damages, not only by the loss of the real Damages Sustained by your Petitioner, by the said Louis Monnerown Non performance of his said Bargain with your Pet.r but also by being Taxed with Costs in manner before mentioned which will Amount to a Considerable Sum, Which your Pet.r Conceives he ought not by any means to bear pay or Sustain, As he your Petitioner was by no means the Aggressor in this matters, But that he is Actually the person Aggrived in manner on the Account, and for the Reasons before mentioned, For if it is Considered that the said Louis Monnerown Sold the said Nine hundred Candies of Salt Petre to your Petitioner Why Instead of your Petitioner having any Redrys on Account of the said Louis Monnerown not Delivering the said Salt Petre Agreeable to the said Bargain should your Petitioners said Bill be Dismissed with Costs and your Petitioner be Taxed with treble Costs of the Cross Suit, and the Costs of the said Appeal to the said President and Council of Fort.t St. George and that the matter of the said nine hundred Candies of Salt Petre was a Bargain your Petitioner Conceives does Clearly Appear by the very Tenor of the said Offer of Sale of the said nine hundred Candies of Salt Petre by the said Louis Monnerown to your Petitioner, and your Petitioners Acceptance there of as before Setforth the Subsequent Matters your Petitioner Conceives has Nothing to do with the Bargain soas Aforesaid Concluded, much less could such Subsequent Matters Annull the said Bargain, And as further Reasons Why your Petitioner is of Opinion the same should be Considered as a good and ferm Bargain, and

binding

binding on the said Louis Monnerown, as well as your Petitioner he begs leave to Observe, In the first Place, that the said Bargain for the said nine hundred Candies of Salt Petre was made in the same Way in which the said first Bargain for the said eight hundred Candies of Salt Petre was made which the said Louis Monnerown considered as a ferm and binding Bargain, & did not therefore he sctate to Comply there with what Reason therefore could your Petitioner have to Suppose the said Louis Monnerown would he sctate to Comply with the said Second or further Bargain for the same kind of Commodity and upon the said Louis Monnerowns own Terms & proposals or why should he not be Obliged to Comply there with, since he Refused to do so Amicably Or pay unto your Petitioner such Damages As he your Petitioner, has Sustained by reason of such the said Louis Monnerowns Refusal to Comply there with And in the Second Place, this was such an Agreement Contract or Bargain as Directed by the Statute of Frauds, Viz.t was Reduced in to Writing and Signed by both parties both the Offer and Acceptance being in writing and Signed by the party making and the party Accepting the same, what further Could be Necessary to bind the said Bargain so Legally and Equitable made your Petitioner also Conceives the Offer of the said Bond Could not more than any thing Else, which paxed Subsequent to the said Bargain, Dispolve or Affect the said Bargain, the said Louis Monnerown might Accept or Reject it as he thought proper, And Indeed it was an Offer he the said Louis Monnerown had no right to have made, and it was placing a great Confidence in the said Louis Monnerown to give him a Bond for near

four

Four thousand Pounds Without any Value in hand or any part of the said Salt Petre Delivered, and that merely on the Strength of the said Contract Agreement or Bargain, and the Faith of the said Louis Monnierowns good Intentions to Deliver the said Salt Petre Agreeable there to And its Observable that the said former Quantity of Salt Petre which was above One hundred Candy less than the latter Quantity, had taken up in the Management Weighing Delivering Receiving &c about the time Specefyed the said latter Quantity would take up at least the same time And as a further reason Why it should do so, Pondicherry where the said Salt Petre then was is about One hundred Miles from Madras, and it was left in your Petitioners Option Whether he would Ship it on the Ship then taking in the said former Quantity of Salt Petre, or on any other Vessell, And your Petitioner having the said Matter of Shipping so in his Option, Chose the Latter he was therefore Intitled to time to Provide and send a Vessell and other things Necessary for the Transacting and Conducting this large Concern with propriety, and so as that it might turn to Account, That being of Course your Petitioners View in the said Purchase, what Other View could he have or could the said Louis Monnierown think he had And further, this was a Business Which requered time and Attention, being not only a large Concern in point of Money, But also As to Quantity and Quality, for nine hundred Candies is Four hundred and fifty thousand Pound English

English Weight And Salt Petre Without great Care & Attention, Will Dissolve Spoil and become Useless, And in order to Demonstrate that your Petitioner Neither did Deviate or had any Intention to deviate from the said Bargain Either by the Offer of the said Bond or otherwise, your Petitioner craves leave to Observe that upon the said Louis Monnierowns returning the said Bond your Petitioner Wrote him he would pay the Amount of the said last Quantity of Salt Petre as soon as he knew the Exact Quantity Delivered Nothing could as your Petitioner Conceives, be more Fair Legal Just and Equitable – It was no part of their Agreement or of the said Bargain that so large a Sum or any part of it should be paid before the said Salt Petre was Delivered, the said Louis Monnierown had not therefore as your Petitioner Apprehends, the least Right to demand it your Petitioner craves leave to Observe further that it being clear from the Nature of the Case in Every Respect that the said Bargain was good and binding and the said Louis Monnierown Refusing to Comply there with your Petitioner Conceives he is Intitled to some Redress, If not what he has said for, to Somethingelse, And its Observable that your Petitioner in his said Original Bill of Complaint Prays a General Relief in the Premises, As he does in the said Appeal to the said President and Council and as he now does so that he Humbly hopes he shall have some Satisfaction for or on Account of the said Louis Monnierowns Unjustifiable Conduct

Conduct in the Matters in Question your Petitioner doth Crave leave to Observe further with regard to the Amount of the said first Quantity of Salt Petre, that he humble hopes it will clearly Appear that the said Louis Monnerown was himself the Cause of the said Amount not being paid, by refusing to Deliver the Second Quantity for with submission Who Would pay a French man, who resides out of the Jurisdiction of the English Courts, so large a Sum of money when he refuses to Comply with a Bargain of so much Consequence, made in pursuance of his own Offers and proposable Had your Petitioner paid the said Louis Monnerown the said Amount of the said former Quantity of Salt Petre he could have had no Redress whatever for or on Account of the said latter Bargain, the said Louis Monnerown knew this, and would have Remained at Pondicherry It was the Money for the said first Quantity of Salt Petre that brought the said Louis Monnerown to Madras Within the Jurisdiction of the said Honble the Mayors Court your Petitioner begs leave to Observe further that he Conceives the following Questions Naturally Arise on the Aforegoing Matter, that is to say As to the said Original Suit Whether the said Louis Monnerowns said Offer of Sale of the said Nine hundred Candies of Salt Petre and your Petitioners said Acceptance, both being in Writing, and Signed by your Petitioner and the said Louis Monnerown respectively, did or did not Constitute a Bargain, And if it did Whether your Petitioner is or is not Intitled to some & what redress in Consequence of the said Louis Monnerowns Refusal to Comply there with, Instead of his said Original Bill being Dismissed with Costs, And with regard to the said Costs of Suit, Whether the said Louis Monnerown was or was not the Cause of the Money for the said first Quantity of Salt Petre not being paid And if he was Why your Petr. should be Taxed with Treble Costs of Suit. And also Whether the said tender Which your Petitioner made to the said Louis Monnerown on the said Eleventh Day of October One thousand Seven hundred and Seventy One Which was previous to the Commencement of Either of the said Suits Should or should not Bar the said Louis Monnerowns Charge and Demand of Interest on the Amount of the said first Quantity of Salt Petre as well as the Costs of Suit.

All Which matters and things your Petr. Submits to your most Excellent Majesty in Council and most humbly Prays that your most Excellent Majesty in Council Will be Pleased to Reverse the said Decree of the said Honble the Mayors Court at Madraspatnam, and also the said Decree of the said Honble the Court of Appeals at Madraspatnam, that the said Louis Monnerown may be Decreed to pay unto your Petitioner the said Sum of three thous. of fifty three Pagodas with all the Interest due and which shall or may become due thereon untill full payment is made, also all Costs of the said Suits, or that your most Excellent Majesty in Council Will be Pleased to make such other Decree in favour of your Petitioner relative to the said

Nine hundred Candys of Salt Petre as also relative to the said
Interest and Costs of and on Account of the said Amount of the said
first Quantity of Salt Petre And the Suit for the same, As may
Appear Legal Just and Equitable your Petitioner doth Also Pray
such further and General Relief in all & singular the said
Premises As to your most Excellent Majesty in
Council shall seem Meet

Filed in my Office
at Fort St. George
26 day of Dec. 1772

John Sykes
Att.y for the Appellant