Hist Remonstrances VI

Appeals against Mayor's Court decisions

Vol 4.

Appeals

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Block	7
Rack No.	
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Serial No.	4
General No.	

108

486

To the Honorable Alexander Wynch Esqr
President and Governor of Fort St. George & Council

In the Court of Appeals

Between Philip Pittonan Captain
of Engineers in the Service of the Honble United
Company of Merchants of England
Trading to the East Indies and
Pitcairn Buchanan Surgeon of the Nassau
East Indiaman

The Humble Petition of Appeal of the said
Philip Pittman

Sheweth

That the abovesaid Philip Pittman did on
Filed in my Office
or about the Twelveth Day of January which was in the Year
of our Lord One thousand Seven hundred and Seventy three
Exhibit a Bill of Complaint in the Honble the Mayors Court
at Madraspatnam Against the abovenamed Pitcairn
Buchanan for the Sum of Fifteen Pagodas Current Money
of Madras for House Rent. To which said Bill of
Complaint the said Pitcairn Buchanan did on the Twenty
Seventh Day of the said Month of January One thousand
Seven hundred and Seventy three put in an Answer thereby
denying

denying) to be Indebted unto your Petitioner either in the said Sum of Fiefteen Pagodas for House Rent or in any other Sum or Sums of money on any other Account whatsoever, The said Pitcairn Buchanan doth further in his said Answer Say that your Petitioner in his said Bill of Complaint — hath not Set forth in what manner He the said Pitcairn Buchanan became Indebted for House Rent neither hath he Set forth the time when he Rented his House to the said Pitcairn Buchanan and at what rate p Month, which the said Pitcairn Buchanan pretends he ought to have done in Order that he the said Pitcairn Buchanan might know the Particulars of the Cause of Action for which he was Sued in the said — Honorable Court and that he might have thereunto give a proper and Sufficient Answer for which Ommissions and Neglect, as the said Pitcairn Buchanan is Pleased to Stile them, he Says he would have Demurred had he time to have done so But as the said Ship Nassau was then Expected to Sail in a few Days from this place for England he was thereby — Deprived that benefit, He therefore begged Leave to relate the Transactions that had Occurred relative to a House which the said Pitcairn Buchanan Acknowledges his said Dubash or Broker named Waaratoor Nellanah had Rented for the said Pitcairn Buchanan on his Arrival at this Place from England, and which House the said Pitcairn Buchanan Says he is Informed doth belong to your Petitioner clearly shewing, as your Petitioner conceives, that the said Pitcairn Buchanan Notwithstanding his pretended Ignorance of

Transactions so Set forth by the said Pitcairn Buchanan — in his said Answer are as follows, that is to Say, That the — said Warratoor Nellanah at the request of the said — Pitcairn Buchanan, having Rented a House at the Rate of thirty Pagodas p Month in a Street Commonly called — Andersons Street He the said Pitcairn Buchanan on or — about the Fifth day of September last did send to the said House Sundry Merchandize and House hold Furniture which were the property of the said Pitcairn Buchanan and did Likewise On or about the said Fifth day of September last Commence to Dwell therein and Continued so to do untill on or about the Nineteenth day of the said Month of September when the said Ship Nassau being ready to Sail from this Place for Bengal and the said Pitcairn Buchanan not being able at that time to dispose of all the Goods he — brought with him from England and which were Lodged in the said House he desired the said Warratoor Nellanah not to Deliver up the Keys of the said House untill the Month the said House was taken for was up which would — have been On or about the fifth day of October following, — And further to let the said Goods remain therein untill the Expiration of the said time Or untill they were Sold or Otherwise disposed of And for that purpose the said Pitcairn Buchanan did leave in the Hands of the said Warratoor Nellanah the Sum of Thirty Pagodas in

Return to this Place in the said Ship Nassau from Bengal the said Warratoor Nellanah Informed him that the Day after He the said Pitcairn Buchanan Went on Board the said Ship Nassau in Order to proceed for Bengal which was on or about the Twentieth Day of the said Month of September your Petitioner sent his Peons to the said Warratoor Nellanah's Connicoply. And took from him the Keys of the said House Notwithstanding he had — Represented that the said Pitcairn Buchanans Goods were Lodged therein And that he was Ordered Not to give up the Keys before the Expiration of the said Month but your Petitioner Justing upon his taking away the said Goods Immediately from the said House the said Connicoply at the Particular Instance of your Petitioner did therefore Place and paid to your Petitioner the Sum of Fifteen Pagodas being for Fifteen days Rent of the said House commencing the said Fifth Day of September and — Ending the said Twentieth day of the said Month of September following and that the said Warratoor Nellanah did further Inform the said Pitcairn Buchanan that your Petitioner Immediately after he was Possessed of the

Answer of the said Pitcairn Buchanan your Petitioner did on the Second Day of March in the said year One thousand Seven Hundred and Seventy three put in a Replication, thereby still maintaining that the said Pitcairn Buchanan doth stand Justly and truly Indebted unto your Petitioner in the said full and Just Sum of Fifteen Pagodas As Setforth in the said Bill of Complaint Notwithstanding What the said Pitcairn Buchanan Sets forth to the contrary in his said Answer. In Reply to what the said Pitcairn Buchanan in his said Answer Alledges that your Petitioner hath not Setforth in what manner He the said Pitcairn Buchanan became Indebted to your Petitioner for House Rent and that he hath not Setforth the time he Rented your Petitioners House and at what Rate of Month in Order that the said Pitcairn Buchanan might know the Particulars of the Cause of Action &c. your Petitioner in his said Replication said that all those Asertions are mere matter of Evasion as the said Pitcairn Buchanan was and is well Acquainted with those matters as appears by his said Answer. — And Indeed the said Pitcairn Buchanan having

whole Rent, and Added that there was One Box belonging to One of the Gentlemen in the said House, your Petitioner considering this as an Attempt to Over reach him, and being contrary to Custom and the Information given the said Conicoply or Dubash as beforementioned he the said Pitcairn Buchanan told the said Conicoply or Dubash that he would not Permit him to keep Possession of the said House and Ordered him to bring the Keys, offering at the same time to give a Godown to keep the Box in which was said to be left— your Petitioner did further in his said Replication beg leave to— Remark that its Notorious that many of the Black People who hire Houses for Sea faring Gentlemen take all Opportunities of Stripping Houses of Locks Bolts Keys hing's and Shelves to the great Detriments and Loss of the Proprietors or Land lords, And Particularly the House in Question was Robbed of most of those Articles, For this Reason your Petitioner Peremptorily Demanded the Keys of the said House as he Supposes any other Land Lord would have done, offering at the same time a Godown to keep the said Box in as before mentioned, which your Petitioner Conceives was all that could be reasonably Expected from your Petitioner after the Departure of the Tenants, your Petitioner did further Say that as the said Dubash or Conicoply persisted in denying that he had Received more than fifteen Pagodas on Account of

of the Rent of the said House, and that he would pay no more your Petitioner Complained to John Whitehill Esqr. one of his Majestys Justices of the Peace, And the said Conicoply or Dubash still persisted in denying that he had Received any more than fifteen Pagodas And said he had Represented to the Gentlemen meaning of Course the person who had Ordered him to take the said House, that it was an Established Custom to pay Rent for One— month when a House is taken for that Term altho' the Tennant remain in it but a few Days, But did not say any thing about any goods being left by the said — Pitcairn Buchanan, The said Mr. Whitehill on this was persuated that the said Dubash or Conicoply had not Received more Money on Account of the Rent of the said House and advised your Petitioner to Apply to the Person or Persons for whom the said House was taken on the return of the said ship Nassau from— Bengal, That after the return of the said Ship Nassau your Petitioner Seeing the Second Mate of her, One of the Gentlemen who had lived in the said House, He the said Pitcairn Buchanan Acquaint him of the aforegoing Circumstances and requested Payment of the remaining Fifteen Pagodas, To which he Replied that the said House was taken for himself and One or two more Gentlemen by the said Pitcairn Buchanan who lived with them whilst on Shore that the said

Pitcairn

Pitcairn Buchanan had Settled all Accounts with his Mess Mates, and that his the said Second Mates Dividend was paid to the said Pitcairn Buchanan But that he would Speak to him the said Pitcairn Buchanan, and desire him to pay your Petitioner what was due Several Days Elapsing and your Petitioner having Received no Satisfaction on Account of the said Rent he Wrote a Note to the said Pitcairn Buchanan making his Demand and Expressing his Surprize at the Treatment he had Received in having what was his due with held from him On which he Received the following Answer

Sir

I Just now Recd your Extraordinary Chit Demanding 15 Pagodas which you say I owe you for House Rent, So far from having taken a House from you I never Saw you or even heard your Name mentioned till within these two Days - my Dubash took me a House in the Black Town for which I Satisfyed him, if you have any Demands I should think they ought to fall upon him, I am Sorry you have had so much Trouble & am

Sunday Morn.

To Capt. Pittman

Sir

your most Obed. Servt

Pitcairn Buchanan

The Original where of is Ready to be produced for the Inspection of this Honble Court when required, your Petitioner did further Say that on Receipt of the said Answer he wrote a Second time to the said Pitcairn Buchanan Explaining fully the Custom respecting letting Houses as above Represented the Damage his House had Sustained, and Repeated his Demand hoping the said Pitcairn Buchanan would be Convinced of the Justness there of and have Settled this Affair Instead of which your Petitioner received the following Answer

Sir

I never Supposed you Capable of Exacting more than your due, I only Supposed "you applied to the Wrong Person, Had you thought "proper to be a little more Explicit and polite in "your former Chit you would have Saved yourself "the Trouble of a Second - I have an Account Current "with my Dubash which is as Present on Board the Nassau, I shall send for it by the first Opportunity & shall then (when I received it) Satisfy your Question - I dont recollect any

Dispute

"Dispute with my Dubash about House Rent, if he —
"Demanded 30 Pagodàs it was paid, if he Demanded only
"15 he Certainly had no more, but if this is even the truth
"still your Demands must fall upon him, for I am
"Determined to pay no more than I have already done
"unless the Law compells me. I am Sir

Your humble Servant
"Pitcairn Buchanan

Sunday Morn.g

"To Capt.n Pittman"

The Original whereof is ready to be produced for the Inspection of this Honorable Court when required your Petitioner did further in his said Replication say that finding the said Pitcairn Buchanan would not give him your Petitioner any Satisfaction on Account of his said Just Demand he was under — the Necessity of having Recourse to this Honble Court for Redress, But previous thereto desired his Attorney to make a Demand of the said Pitcairn Buchanan and to Acquaint him with his Intentions to prosecute him if his said Demand was not complyed with, which his said Attorney did, and received an Answer from the said Defendant Equally Vague and Litigious as these to your Petitioner herein beforementioned, So that your Petitioner was under an absolute — necessity of taking this method to Recover his Legal

Legal Right, with Regard to the Goods which the said Pitcairn Buchanan Alledges he left in the said House your Petitioner begs leave to Observe that it appears to him very Inconsistent that the said — Pitcairn Buchanan, who had brought goods from Europe to be Disposed of at all or any of the markets or Places in India to which the said Ship might go or at which She might touch, should leave many or any Goods of almost any Value whatever at — Madras when both the said Ship and the said — Pitcairn Buchanan were going to Bengall where — he might have an Opportunity of Disposing of them and Investing the Proceeds thereof in Goods for the Europe Market, your Petitioner did therefore pray that the said Pitcairn Buchanan might Set forth a full true and Particular Account of the Goods he so left, if any he did leave and their Apertments, Quantity Quality and Value and that the same may be Verified by the Oath or Oaths of some — Indifferent Person or Persons In Order that the said Honble Court might be Enabled to Judge of the propriety or Impropriety of the said Pitcairn — Buchanans Allegations Relative thereto your Pet.r further said that it's very Immaterial to the said

Pitcairn

Pitcairn Buchanan what your Petitioner did with his said House after he the said Pitcairn Buchanan had Quitted it tho' your Petitioner certainly Let it Again if he could, it Sometimes happens that a House may be Let Immediately on it's being Quitted, And at other times Not, But remains untenant for Sometime, a Land Lord Runs that Risque and is therefore of Course Intitled to take every Just — Advantage which Custom and the Nature of the Case Requires Or will Admit of your Petitioner did further in his said Replication Say that he — humbly hoped it would clearly Appear by what is therein and herein before Setforth that your Pet.r Demand is Just and Legal and that the said — Pitcairn Buchanans Allegations in his said Answer Aswell as his behaviour in this Affair previous to the Commencement of this Action are Unjust and — such as merit the Particular Attention of this — Honorable Court, As will more fully and at Large Appear on Reference to the said Replication, — To which said Replication the said Pitcairn Buchanan did on the Twenty Sixth Day of April in the said Year One thousand Seven Hundred and Seventy three put in a Rejoinder, thereby Endeavouring to Confirm his said Answer, But Instead thereof he

he does in Effect in some parts, and in others actually contradict it, for he does in his said Rejoinder deny to have Rented a House from your Petitioner — Consequently he says he is an entire Stranger to the Charge of Fifteen Pagodas for House Rent and really Ignorant of the Way in which he became so Indebted to your Petitioner, whereas the said — Pitcairn Buchanan does in his said Answer Setforth many Particulars relative to the said Demand & House Rent which at the same time that he pretends to be Ignorant of them both in his said Answer and Rejoinder he does in his said Answer as aforesaid — beg leave to relate to the said Honble Court the — Transactions that have Occurred relative to a House which he Says his the said Pitcairn Buchanans Dubash or Broker Named Warratoor Nellanah had Rented for the Use of him the said — Pitcairn Buchanan on his Arrival at this Place from England, and which House the said — Pitcairn Buchanan Says he was Informed — belonged to your Petitioner which does clearly — Indicate, In the first Place, that the said House was taken for and on Account of him the said Pitcairn Buchanan, And therefore that he the said Pitcairn Buchanan was a Principal in the

the said affair and of Course Answerable to your Pet.r for the Rent of the said House, And in the Second — Place that he was not Ignorant of the said matters as he pretends, But on the contrary that he well knew the said House belonged to your Petitioner, and — therefore that he was Answerable to your Petitioner for the Rent of it And Notwithstanding the said — Pitcairn Buchanan does so as aforesaid Acknowledge that the said House was taken for and in his — Account and that his said Dubash was only a Broker in the said affair yet he does further in his said Answer Assert that your Petitioner ought to have brought his Action against the said Conicoply or Dubash who took the said House for and on Account of him the said Pitcairn Buchanan, which appears glaringly Absurd and Inconsistent, for why should your Petitioner have Commenced an Action against the said Dubash or Conicoply who took the said House for and on Account of the said Pitcairn Buchanan when the said Dubash or Conicoply in doing so only Acted as Agent or Broker the said Pitcairn Buchanan he the said Pitcairn Buchanan being the Principal and of Course Answerable for the Rent of the said House and that the said House was takin for the said Pitcairn Buchanan he does Acknowledge in other parts

parts of his said Rejoinder, The said Pitcairn Buchanan does further in his said Rejoinder Say that if your Petitioner did Expect a Months Rent he certainly ought to have waited untill he was legally Intitled thereto, And not have Compelled the said Pitcairn Buchanans Servant to deliver up the Keys of the said House, with regard to which Asertion your Pet.r begs leave to Observe that he did Wait for the said Rent untill he was Legally Intitled to it, for he was so Intitled to it both by the Custom of the Place as proved in this Cause, and also by what he told the said Dubash or Conicoply who hired the said House for and on Account of the said Pitcairn Buchanan as aforesaid, upon the said Pitcairn Buchanans — quitting the said House, which he of Course must have done on his Departure from this Place to Bengal on the said Ship Nassau Notwithstanding the Evasive reasons which the said Pitcairn Buchanan gives for his said Dubash or Conicoply keeping it for the rest of the Month after the said Pitcairn Buchanan had himself Actually quitted the said House and also left Madras and gone to Bengal Surely by the said Custom and the Terms on which the said House was let as aforesaid your Petitioner was Justly Intitled to the Posesion of the said House

and

and to the said Months Rent. It never being the —
Intent of your Petitioner that the said House should
continue the Posession of the said Pitcairn Buchanans
Servants after the said Pitcairn Buchanan, for whom
the said House was taken, had Actually quitted it
and left this Place, And with regard to what the said
Pitcairn Buchanan Says of your Petitioners Compelling
the said Pitcairn Buchanans Servants to Deliver up
the Key of the said House, your Petitioner begs leave
to Observe that he did not Compell them so to do —
But did as he Conceives he had an Undoubted right
to do Demand the Keys of his House when the —
Tenant had quitted it not chusing that his said
House should be left to the Management of People
who was never meant to have any thing more to do
with it than to Receive the Keys of it for and on
Account of the said Pitcairn Buchanan as aforesaid
The said Dubash or Conicoply not being considered
as Tenants or the Occupiers of the said House — The
said Pitcairn Buchanan doth further in his said
Rejoinder Setforth that he left Lodged in the said
House and under the care of the said Warratoor
Nellanah his Dubash a Chest containing Six —
Dozen Bottles of Cherry Brandy, a Chest containing
Six Dozen Bottles of Porter, Four Boxes of heese,
Fifty

Fifty Empty Bottles, an Empty Cask, one Couch,
Two Tables and six Chairs, and that he also left in
the hands of his said Dubash One thousand Pags
to be laid out in Piece Goods for the Europe Markets
with regard to which your Petitioner begs leave to
Observe that he was and is an entire Stranger to any
such matters, they never having been Communicated
to him, and further the Account of the things so —
mentioned in the said Answer to have been left differ
from the Account of them in the Depositions on the
part of the said Pitcairn Buchanan as your Petitioner
will point out in the Course of this his Petition of —
Appeal, Nor were the said Pitcairn Buchanans
leaving any thing in the said House a reason, as
your Petitioner Conceives, why the said House should
be Detained by and kept in the Posession of a Dubash
or a Conicoply after being quited by the real —
Tenant as aforesaid when the Intent was Agreeable to
the Custom of this Place that the whole months Rent
should become due and payable to the Tenant quitting
it during any part of the Month your Petitioner —
further Sheweth that upon the aforegoing proceedings
Issue was Joined in the said Cause, Witnesses were
Examined, Publication passed, And the said —

Cause

Cause was Set down for hearing And coming on to be
heard by the said Honble the Mayors Court on the
Twenty Sixth Day of April last 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 Double
Costs of Suit, without giveing any further reason
for Taxing your Petitioner with Double Costs of
Suit than that it appeared to the said Court that
your Petitioner has not produced Sufficient Evidence
to Support the Justness of his Demand As will more
fully and at large Appear on Reference to the said
Decree which comes herewith for the Inspection of
this Honble Court

From which said Decree your Petitioner
doth Appeal to this Honble Court he Conceives the same
is Erroneous and that he is Aggrieved thereby
Because Instead of the said Pitcairn Buchanan
being Decreed to pay unto your Petitioner the
Sum Sued for with Interest and Costs of Suit
As prayed for by your Petitioner his your Petrs
said Bill is Dismissed with Double Costs of
Suit, As if your Petitioners Demand was not
only Unjust but his Action Litigious, The
contrary

contrary whereof your Petitioner humbly hopes will
appear to this Honble Court, not only from the Tener
of the Proceedings in this Cause as before Recited
But also what is Proved in this Cause on the part
of your Petitioner the said proofs clearly shewing
In the first Place, the Custom of this Place to be
as Represented by your Petitioner in the Proceedings
in this Cause, In the Second Place, That your
Petitioners Demand and Action are Agreeable and
Conformable thereto, In the third Place, that the
said Pitcairn Buchanan was not Ignorant of
the said Custom, but that he well knew it having
been Acquainted therewith by the Person who took
the said House for him and on his Account, In the
fourth Place, that no Intimation was given to
your Petitioner of the things being left in the said
House by or on Account of the said Pitcairn Buchanan
as he Alledges or that he the said Pitcairn Buchanan
had left any money to be laid out in Piece Goods
for the Europe market to be Asorted in the said
House as he Alledges, tho if he did do so that's a
matter which cannot Affect your Petitioners
Right to the Possession of the said House when
Vacated by the Tenant as aforesaid, and Agreeable
to the true Intent and meaning of your Petitioner
in letting the said House as aforesaid, which the
said

said Pitcairn Buchanan well knew, and must therefore of Course have taken it under and subject to those Conditions And therefore fifthly that your Petitioner said Demand is Just, the said Pitcairn Buchanan being liable to pay the same as aforesaid. To shew this matters in a clearer light to this Honorable Court your Petitioner begs leave to Refer to the Depositions in this Cause. The first of which is Vencatachellum, who after mentioning the Renting the said House, to the said Pitcairn Buchanans Departure, and your Petitioners Demanding the said Rent and Keys of the said House &c Says that the said Pitcairn Buchanans Conicopoly said there was a Box belonging to his said master in the said House, But did not mention the Contents of it or that it contained things of a considerable Value, or required any Particular care as a thing of much Consiquence, nor did the said Conicopoly Say the said Pitcairn Buchanan had left any other thing or things besides the said Box in the said House That your Petitioner Offered to let the said Conicopoly kept the said Box in the House where he the your Petitioner lived at that time. That the said Conicopoly made no Particular Answer to that but went away. That the said Conicopoly did not say the said Pitcairn Buchanan had left any Money with him to be laid out in Piece Goods for the Europe markets or that the said Pitcairn Buchanan had Ordered him to Examine or assort any Goods in the said House. This Deposition clearly shews that your Petitioner was entirely Ignorant of what said Pitcairn Buchanan Alledges as reasons for the said House being kept on his Account the rest of the month, and Surely it ought not have been so kept after the Departure of the Tenant for the Sake of a Box, which does not Appear to be a thing of any considerable Value, and which your Petitioner Offered Room for in his own House. The next Deposition is that of John Whitehill Esq. One of His Majestys Justices of the Peace &c. who mentions a Complains being made to him by your Petitioner of the Nonpayment of the said Rent on a Supposition of the whole Months Rent being left by the said Pitcairn with the said Dubash or Conicopoly who took the said House for and on Account of him the said Pitcairn Buchanan as aforesaid. The said Deponent Mr Whitehill Says he did tell the said Conicopoly that it was Customary for

for a Tenant to Pay a whole months Rent for a House tho such Tenant Occupied the said House only part of a Month— And that the said Conicopoly did say that he had represented the said Custom to the — Persons for whom the said House was taken— Here your Petitioner begs leave to Remark that the said Custom not only clearly Appears, but that the Person who had taken the said House for and on Account of the said Pitcairn Buchanan and others, tho the said Pitcairn Buchanan was the Manager and Principal in the said Affair, did Actually Acquaint them with the said Custom, So that the said Pitcairn Buchanan could not be Ignorant of such Custom and therefore Answerable Accordingly. That being the Condition on which the said House was taken and which is Agreeable to your Petitioners said Demand and Action— the said Mr. Whitehill further in his said Deposition Says that According to the best of his Remembrance and belief the said Conicopoly did Say that the Person that had Rented the said House had left a Chest in it, But what it contained he does not — recollect his mentioning— That the said Conicopoly did not Say the said Pitcairn Buchanan had left any money with him to be laid out in Piece Goods for the Europe market neither did he Say that any piece Goods were to be Examined or Assorted in

in the said House— therefore those Assertions by and on behalf of the said Pitcairn Buchanan are mere matters of Evasion— Mr. James West in his Deposition Says That it is Customary with him, and as he believes in General for Tenants to pay the whole Months Rent for the first month of their taking any House whether they Occupy the said House or not / And which he the said Deponent has himself been Obliged to pay / And whether they Leave Madras or not which Custom is — Confirmed by the Deposition of Samuel Troutbeck who Says further that he has been Used to Let out Houses at Rent &c. So that the Custom is clearly Established and is Agreable to your Petitioners manner of letting the said House and his said Demand and Action, And in Order to Shew to this Honble Court what things are in the Depositions on the part of the said Pitcairn Buchanan said to have been left in the said House and how they differ from the Account of them in the said Rejoinder your Petitioner begs leave to refer to the Deposition of Comrapah Examined on the part of the said Pitcairn Buchanan, who Says he — applyed to your Petitioner for the Renting of the said House the Account of the things the said Comrapah Says were so left were some Bottles a Pickle

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a Pickle Case and some Brandy belonging to him the said Pitcairn Buchanan and some Chairs and Tables belonging to some Malabar People of whom the said Pitcairn Buchanan had Rented them \$ month.- A very pretty Plea Indeed for keeping your Petitioners House in the hands of black People after the Departure of the Tenant, and differs — much from the said Account of the things in the Rejoinder. And with regard to the Chairs and Tables hired of the Malabar People they should have been returned to the Owners your Petitioners House was not Surely to be kept on that Account — The said Deponent does further mention the Sum of One thousand Pagodas being left in the hands of the said Dubash Warratoor Nellanah by the said Pitcairn Buchanan to be laid out in Piece Goods for the Europe market, but says nothing of any Order for Assorting them in the said House as mentioned by the said Pitcairn Buchanan so that your Petitioner was Ignorant of the said — matters, tho' your Petitioner can by no means admit that those matters were any Cause or reason Why the said House should be kept by and under the care of Black People after the Departure of the Tennant contrary to the Intent of your Petitioner in letting the said House and of the Argument relative thereto, and also the Custom with regard to

to letting or Renting Houses in Madras — your Petitioner begs leave to Observe further that the said Pitcairn Buchanan in his Second Letter to your Petitioner before mentioned does not deny the — Justness of your Petitioners said Demand but — Admits it in the following Words Vizt 'I never supposed 'you capable of Exacting more than you due, I only Supposed to the wrong Person' clearly Admitting that your Petitioners Demand was and is Just, But that he your Petitioner should have made it on the — said Nellanah, therefore that seemed to be the only Point in dispute, And with regard to that your — Petitioner begs leave to remark that by the said — Pitcairn Buchanan Admitting that the said House was taken for him the said Pitcairn Buchanan — he the said Pitcairn Buchanan was certainly the Principal in the said Affair and therefore Answerable to your Petitioner for the said Rent, the said — Nellanah being only a Broker in the said — Business and was not of Course liable to pay more than he was Ordered or had money of the said Pitcairn Buchanans for that purpose, And the money left with the said Nellanah for that — purpose appears to have been only Fifteen Pagodas, therefore the remaining Fifteen Pagodas for — which this Present Action was Commenced the said Pitcairn Buchanan was liable to pay —

agreable

agreable to the Custom in thise Cases as before Recits and proved— For all which reasons your Petitioner cannot forbear thinking himself much Aggrieved by the said Decree of the said Mayor's Court in not only Dismissing his said Bill, but Taxing your Petitioner with Double Costs Instead of Decreeing the said Pitcairn Buchanan to Pay the Sum Sued for with Costs— In which light your Petitioner humbly hopes these matters will Appear to this Honble Court—

All which matters and things your Petr Submits to the Judgment of this Honble Court And humbly prays that the said Decree may be Reversed and Set a Side, And that the said Pitcairn Buchanan may be Decreed to pay unto your Petitioner the Sum by your Petitioner Sued for as before mentioned with Interest and Costs of Suit, And your Petitioner does also pray such further and other General Relief in all and Singular the Premises as to this Honble Court shall seem Meet—

Filed in my Office

Mayor's Court at Madraspatnam } Tuesday the 26th Day of April Anno Domini 1774

Present

George Savage Esquire Mayor
George Smith— and John Renton
Aldermen

Between Philip Pittman Captain of Engineers in the Service of the Honble United Company of Merchants of England Trading to the East Indies at Present at Fort St George Complainant and Pitcairn Buchanan at Present at Fort St George Surgeon of the Nassau East Indiaman now at Anchor in Madras Road Defendant—

This Cause Coming unto be heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill, The Defendants Answer, The Replication, The Amended Rejoinder, The Interrogatories and Depositions on the part of the Complainant The Interrogatories and Depositions on the part of

the

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 not Produced Sufficient Evidence to Support the Justness of his Demand This Court doth therefore think fit to Order and Decree, and doth Accordingly Order and Decree that the Complainants Bill do stand Dismissed with Double Costs of Suit

Hon^r James Taylor Esq^r

To the Hon^ble Alexander Wynch Esquire President and Governor of Fort Saint George &c^a and Council

The Answer of Pitcairn Buchanan, Surgeon of the Nassau East Indiaman Respondent, to the Petition of Appeal of Philip Pittman Captain of Engineer in the Service of the Hon^ble United Company of Merchants of England Trading to the East Indies, Appellant

This Respondent Admits, that the said Appellant did on or about the Twelfth day of January which was in the year One Thousand Seven hundred and Seventy Three File a Bill of Complaint, in the Hon^ble the Mayors Court at Madraspatnam, against this Respondent, therein Setting forth, that he this Respondent was Indebted unto him, the said Appellant in the Sum of Fifteen Pagodas, Current Money of Madras, for House Rent, and moreover praying that this Respondent might be Decreed to pay unto him the said Appellant the Aforesaid Sum of Fifteen Pagodas with all such Interest as then were or should thereafter become due thereon And also all Costs of Suit— To which said Bill of Complaint this Respondent did on or about the Twenty Seventh day of the said Month of January, in the said Year

One

One Thousand Seven hundred and Seventy Three, put in an Answer therein denying to Stand Indebted unto the said Appellant / then Complaint / either in the said Sum of Fifteen Pagodas, for House Rent, or in any other Sum or Sums of Money or on any other — Account whatsoever — And this Respondent did — further in his said Answer, say that the said — Appellant in his said Bill of Complaint had not setforth in what manner he, this Respondent, became Indebted for House Rent which he the said Appellant, ought to have done neither had he setforth the Time when he Rented his House to this Respondent and at what Rate per Month which he, the said Appellant ought Likewise to have in Order, that this Respondent migh have known the particulars of the Cause — of Action for which he was Sued in the said Mayors Court and that he might have thereunto given a proper and Sufficient Answer for which Omissions and Neglect this Respondent would have Demurred had he time to have done so, but as the said Ship Nassaue was Expected to Sail in a few days — from this place to England, this Respondent was thereby deprived that Benfit he therefore Beged leave to Relate to the said Mayors Court the Transactions that had Occured Relative to — the House which this Respondent's Dubash or — Booker Named Warratooe Nellanah had — Rented for the use of this Respondent, on his

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Arrival at this Place from England and which — House this Respondent was Informed did belong to the said Appellant from which Circumstances this Respondent Conceived it would Clearly Appear to the said Mayor's Court that he was not Indebted unto the said Appellant on Account of House Rent or on any other Account whatsoever, and this — Respondent did Accordingly setforth in his said Answer to the said Mayors Court, that the said Warratoor Nellanah, at the Request of this Respondent, having Rented a House, at the Rate of Thirty — Pagodas ℔ Month, in a Street Commonly Called Anderson's Street / but which Denomination is Erronious as it Afterwards Appeared that the House this Respondent's said Dubash had Rented was Commonly Called Crook's House, Situated at the Corner of Serimsours Street in Maratta Town and which said Mistake this Respondent humbly prays leave to Rectify / the, this Respondent, on or about, the Fifth day of September, which — was in the year One Thousand Seven Hundred and Seventy Two, did send to the said House, Sundry Merchandize and House — hold — Furniture which were the property of this Respondent and did likewise, on or about the said Fifth day of September Commence to — dwell therein and Continued so to do untill

on,

on, or about the Nineteenth day of the said Month of September, when the said Ship Nassau being Ready to Sail from the Place for Bengal and this Respondent not being able at that time to dispose of all the Goods he Brought with him from England, and which were Lodged in the said House, he desired the said Warratoor — Nellanah not to deliver the Keys of the said House untill the Month the House was taken for was up, / which would have been on, or about the Fifth day of October following) / and — further to let the said Goods Remain therein until the Expiration of the said Time or until they were Sold or otherwise disposed of and for that purpose this Respondent did leave in the Hands of the said Warratoor Nellanah the Sum of Thirty Pagodas, in Order to Pay the Rent of the said House at the Expiration of the said Month — That on this Respondent's return to this place, in the said Ship Nassau from Bengal, the said Warratoor Nellanah had Informed him that the day after he this Respondent, — went on Board the said Ship Nassau, in Order to Proceed to Bengal, which was on or about the Twentieth day of the said Month of September, the said Appellant sent his Peons to the said Warratoor Nellanah's Conicoply and took from

from him the Keys of the said House, Notwithstanding he had Represented that this Respondents Goods were Lodged therein, and that he was ordered not to give up the Keys before the Expiration of the said Month, but that the said Appellant — Insisting upon his taking away the said Goods immediately from the said House the said — Conicoply at the particular Instance of — the said Appellant, did therefore remove this — Defendants said Goods to another place and — paid the said Appellant the Sum of Fifteen — Pagodas, being for Fifteen days Rent of the said House Commencing the said Fifth day of September and ending the said Twentieth — day of the said Month of September following, and that the said Warratoor Nellanah did — further Inform this Respondent, that the said Appellant had, immediately after he was — Possessid with the Keys of the said House, Rented the same to one Captain Scott the Commander of a Country Vessel at the said Rate of Thirty — Pagodas P Month — And this Respondent did — further in his said Answer Say, that from the Aforementioned Real Circumstances of the Case it manifestly Appeared that the Proceedings of the said Appellant was very Unwarrantable,

that

that he had been fully Paid for whatsoever House Rent might have been due to him and that this Respondent was Wrongfully Sued in the said Mayors Court by the said Appellant, as will more fully and at large Appear on a Refrance to the said Answer— To which said Answer of this Respondents the said Appellant did, on or about the Seconday of March in the said year One Thousand Seven Hundred and Seventy Three, put in a Replication therein, amongst other things still Insisting that this Respondent is Indebted unto him the said Appellant, in the said Sum of Fifteen Pagodas in the manner as setforth in his said Bill of Complaint and does further in his said Replication say, by way of Reply to what this Respondent in his said Answer had alledged— "that the said "Appellant had not setforth in what manner "he this Respondent, became Indebted unto the "said Appellant for House Rent and that he had "not setforth the time he Rented his House to "this Respondent and at what Rate per Month "in Order that he this Respondent might have "known the Particulars of the Cause of Action" "that all those Asertions were mere matters of Evasion as this Respondent was well acquainted with

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with those matters as Appears by this Respondents said Answer— that this Respondent having Rented the said Appellants said House and the Charge of Fifteen Pagodas being for House Rent this Respondent could not Possibly be Ignorant of the way in which he became so Indebted to the said Appellant nor the time or Rate p Month or the Cause of Action— and the said Appellant does further in his said Replication Pretend to say, by way of Information to the said Mayors Court of the Justness of his Demand and Action &c. That on or about the Fifth day of September in the said year One Thousand Seven hundred and Seventy Three, a Conicoply, or Dubash came unto the House of the said Appellant and Asked him for the Keys of a House Commonly Called Crook's House Situated at the Corner of Swinsour's Street in the Maratta Town / and not Anderson's Street as setforth by this Respondent in his said Answer / which he was Desired to Hire by some of the Officers of the Nassau That the said Appellant thereupon Informed the said Person that the Rent of the said House, was Thirty Pagodas a Month and that he Informed him also of the Custom Respecting Letting or Renting Houses by the Month / that is to say / the Tenant Pays one Months Rent tho' the Term of his Residing in a House be of ever so short Daration tho' if a Tenant Remains a Certain Number of days above One Month he in that case only prays one Months Rent and the Surplus he pays in Proportion, that After the said Appellant had so as Aforesaid Explained the said Matters to the said Dubash or Conicoply he Carried away the Keys of the said House and that this Respondent, or the Persons for whom he had taken the said House Immediately took Possession of it that one or two days after the said Ship Nassau Sailed for Bengal, which was on or about the Nineteenth or Twentieth day of September last the said Appellant not Receiving the Keys of the said House, which, the said Appellant Pretends was Vacant by the departure of the Tenants or Persons for whom it had been

taken

taken as beforementioned he the said Appellant sent his Peon in Quest of the said Conicoply or Dubash who had taken the said House who in Consequence thereof Came unto him and the said Appellant demanded of him the Reason why he did not Pay the Rent of the said House and Return the Keys, when the Gentleman for whom the said House was taken and who had lieved in the said House went away that on which the said Dubash or Conicoply made a Tender of Fifteen Pagodas for the Rent of the said House which he the said Appellant — Refused and Asked the said Dubash or Conicoply if that was the whole sum left with him for the Rent of the said House and he said it was but that if he, the said Appellant, would Permit him to keep the said House until the Expiration of the Month he would Pay the whole Rent, and Added that there was one Box belonging to one of the Gentlemen in the said House — That he the said Appellant Considering this as an Appempt to Over — Reach him, and being Contrary to Custom and the — Information given the said Conicoply or Dubash as beforementioned he the said Appellant, told the said Conicoply or Dubash that he would not Permit him to keep Posession of the said House and Ordered him to bring the Keys Offering at the same — time to Give a Godown to keep the Box in which was said to be left — in the said Appellant does further in his said Replication Remark that its Notorious that many of the Black People — who hire Houses for Sea faring Gentlemen take all Opportunities of Stripping Houses of Locks, Bolts, Keys, Hinges and Shelves to the Great Detriment and Loss of the Proprietors or Landlords and that Particularly the House in Question was Robbed of most of those Articles for which Reasons the said Appellant Pretends he Peremptorily Demanded the Keys of the said House as he Supposes any other Landlord would have done and that he

Offered

Offered at the same time a Godown to keep the said Box in as beforementioned which said Appellant Conceives was all that could be reasonably Expected from him after the Departure of the — Tenants — and the said Appellant does further in his said — Replication Remark that its Notorious that many of the Black People who hire Houses for Sea faring Gentlemen take all Opportunities of Stripping Houses of Locks, Bolts, Keys Hinges and Shelves to the Great Detriment and Loss of the Proprietors or Landlords and — that Particularly the House in Question was Robbed of most of those Articles for which Reason, the said Appellant Pretends, he — Peremptorily Demanded the Keys of the said House as he Supposes any other Landlord would have done and that he Offered at the same time a Godown to keep the said Box in as beforementioned, which the said Appellant Conceives was all that could be reasonably Expected from him after the Departure of the Tenants — and the said Appellant does further in his said Replication say, that as the said Dubash or Conicoply Persisted in denying that he had Received more than Fifteen Pagodas on Account of the Rent of the said House and that he would Pay no more the said Appellant Complained to John Whitehill Esq. one of his Majesties — Justices of the Peace And the said Conicoply or Dubash still Persisting in denying that he had Received any more than — Fifteen Pagodas and said he had Represented to the Gentleman, meaning of Course the Person who had Ordered him to take the said House, that it was an Established Custom to Pay Rent for one Month when a House is taken for that Term altho the Tenant Remain in it but a few days but did not say any thing about any Goods being left by this Respondent — That the said Mr Whitehill on this was Persuaded that the said Dubash or Conicoply had not Received more Money on Account of the Rent of the said House and Advised the said Appellant

to

to Apply to the Person or Persons for whom the said House was taken on the Return of the said Ship Nassau from Bengal — That after the Return of the said Ship Nassau the said Appellant seeing the Second Mate of her, one of the Gentlemen who had lived in the said House he, the said Appellant, Acquainted him of the Aforegoing Circumstances and Requested Payment of the Remaining Fifteen Pagodas to which he Replied, that the said House was taken for himself and one or Two more Gentlemen by this Respondent who lived with them while on Shore, that this Respondent had Settled all Accounts with his Mess Mates and that his, the said Second Mate's dividend was paid to this Respondent but that he would Speak to him, this Respondent and desire him to Pay the said Appellant what was due — That Several days Elapsing and he, the said Appellant, having Received no Satisfaction on Account of the said Rent he wrote a Note to this Respondent making his Demand and Expressing his Surprize at the Treatment he had Received in having what, as the said Appellant says, his due with held from him on which he Received an Answer / a Copy of which said Answer is — Inserted in the said Appellants Replication and likewise in his said Petition of Appeal to which this Respondent humbly Refers / — and the said Appellant does further in his said Replication say, that on Receipt of the said Answer he wrote a Second time to this Respondent Explaining / as he the said Appellant Pretends / fully the Custom Respecting Letting Houses as before Represented, the damages his House had Sustained and Repeated his Demand hoping this Respondent would be Convinced of the Justness thereof and have Settled the affair Instead of which he the said Appellant Received another Answer / a Copy of which said Answer is likewise

Inserted

Inserted in the said Appellant's Replication and in his said Petition of Appeal to which this Respondent further humbly Refers / — and the said Appellant does further in his said Replication say, that finding this Respondent would not give him, the said Appellant as he Pretends any Satisfaction on Account of his said Just Demand he was under the Necessity of having Recourse to the said Mayor's Court for Redress but Previous thereto desired his Attorney to make a Demand of this Respondent and to Acquaint him with his Intentions to Prosecute him if his said Demand was not Complied with which his said Attorney did and that he — Received an Answer from this Respondent Equally Vague and — Litigious as those to the said Appellant therein beforementioned so that he the said Appellant was under an Absolute Necessity of Commencing an Action to Recover, as he Pretends his Legal Right — That with Regard to the Goods which this Respondent Alledges he left in the said House he, the said Appellant, begs — leaves to Observe that it Appears to him very Inconsistent that this Respondent who had brought Goods from Europe to be disposed of at all or any of the Markets or Places in India to which the said Ship might go or at which she might touch — should leave many or any Goods of almost any Value whatever at Madras when both the said Ship and this Respondent was going to Bengal when he might have an Opportunity of — disposing of and Investing the Proceeds thereof in Goods for the Europe Market — the said Appellant did therefore pray — that this Respondent might setforth a full, true and Particular Account of the Goods he so left if any he did leave and their Assortments Quantity, Quality and Value and that the — same may be Verified by the Oath or Oaths of some Indifferent Person or Persons in Order that the said Mayor's Court might

be

be Enabled to Judge of the Propriety or Impropriety of this
Respondents Allegations Relative thereto— That its very
Immeterial to this Respondent what he the said Appellant
did with his said House after he this Respondent had
Quitted it tho the said Appellant Certainly Let it again
if he could— That it some times happen that a House may
be let Immediately on its being Quitted and at other times
not, but Remains Untenanted for some time— That a
Landlord Runs that Risque and is therefore of Course
Entitled to take every Just Advantage which Custom and
the Nature of the Case Requires or will Admit of— and the said
Appellant does further in his said Replication say that he
humbly hoped it would as he pretends Clearly Appear by what
was therein before setforth that his the said Appellants
Demand is Just and Legal and that this Respondents
Allegations in his said Answer as well as in his Behaveour in
the Affair Previous to the Commencement of the said Action
are Unjust and such as merit the Particular Attention of
the said Mayors Court— Towhich said Replication this
Respondent did on, or about, the Twenty Sixth day of April
in the said year One thousand Seven Hundred and Seventy
three put in a Rejoinder therein Maintaining the matters
and things setforth and Alledged by this Respondent in his said
Answer to be true and Certain in such manner as therein is
Alledged and Expressed and that the said Replication of the
said Appellant is Uncertain and Insufficient in the Law to be
Rejoined unto for divers defects and Imperfections therein
Contained and again denied to Stand Indebted unto the said
Appellant either in the said Sum of Fifteen Pagodas for
House

House Rent or any other Sum or Sums of Money or on any other
Account whatever and this Respondent did further in his said
Rejoinder say, that the said Appellant in his said Bill of
Complaint ought to have setforth in what manner he this Respondent
became Indebted for House Rent and likewise the time when this
Respondent Rented the said Appellants House and at what
Rate per Month in Order that this Respondent might have
known the Particulars of the Cause of Action for which he
was Sued in the said Mayors Court and that he might have
thereunto given a proper and Sufficient Answer and this
Respondent did further Insist that the Aforesaid Assertion
were not matters of Evasion as the said Appellant was pleased
to term it in his said Replication but on the Contrary they
were very Essential matters and absolutely Necessary to have
been setforth in the said Bill of Complaint, for which
Omission and Neglect this Respondent would Certainty
have Demurred had he time to have done so as is Already setforth
by this Respondent in his said Answer and he this Respondent
again denied to have Rented a House from the said Appellant
and Consequently was an Entire Stranger to the Charge of
Fifteen Pagodas for House Rent and really Ignorant of the
way in which, as the said Appellant Pretends, he became so
Indebted unto him— And this Respondent did further
in his said Rejoinder say that it Evidently Appeared by the
said Appellants Narrative in his said Replication of the
Transactions Relative to the Renting of the House in
Question that the same was Rented to a Conicoply or Dubash
and not to this Respondent who it seems was made Acquainted
with the Custom Respecting Letting or Renting Houses
by

by the Month wherefore the said Appellant ought to have brought his Action against the said Conicoply or Dubash for a Default of Payment, if any and not against this Respondent who never Entered into any Agrument with the said Appellant Relative to the Renting of the said House and this Respondent did further say, that it Appeared from the Expreſs words of the Pretended Agreement mentioned in the said Replication, that the same was Calculated and devised merely to Answer the said Appellants purpose as in the Present Case, by his Inferring that the Tenant was to Pay one Months Rent tho the Term of his Residing in a House be of ever so short a Duration that it was Immaterial whether a Tenant does Absolutely, Reside in a House he Rents, nor can his not Residing therein Entitle the Landlord to a Months Rent, which the said Appellant endeavours to infer from his making use of the Word Residing for it is at the Option of the Tenant to Reside or dwell in the House he Rents or even to Reside or Remain in the Town or Place where the House is Situated Provided he fulfells his part of the Agreement that is to Pay the Landlord his Rent when it becomes due otherwise, the Landlord has it in his Power to Sue the Tenant and Oust him from his Poſſeſsion— And this Respondent did further in his said Replication say, that he was Credibly Informed, it is the Usual Custom at this Place Relative Letting or Renting of House by the Month, that the Tennant who Rents a House shall take it for one Month Certain and if he keeps Poſſeſsion of the House Longer to Pay in Proportion, that in this Light he this Respondent understood the House in Question was taken by his said Dabash or Broker Named Warratoor Nellanah, wherefore, he had an Undoubted Right to keep Poſſeſsion of the Keys until the end

end of the Month the said House was taken for and if the said Appellant did Expect a Months Rent he Certainly ought not to have Compelled this Respondents Servant to deliver up the Keys of the said House in the Manner as setforth by this Respondent in his said Answer And this Respondent did in his said Rejoinder admit of Writing the Two Letters Inserted in the said Replication which said Letters Plainly demonstrated the the Impropriety of the said Appellants Demand and the Illegallity of his Action against this Respondent and did further say that in Order to Remove the Appearance of Inconsistancey Relative to the Goods being Lodged in the said House in Question, on this Respondents departure from Madras to Bengal and which the said Appellant so Particularly Observes in his Replication he, this Respondent, in Requiescence to the said Appellants Prayer begged leave to setforth, that on his said departure he left Lodged in the said House and Under the Case of the said Warratoor Nellanah, this Respondents Dubash a Chest Containing Six Dozens Bottles of Cherry Brandy a Chest Containing Six Dozens Bottles of Porter, Fours Boxes of Cheese Fifty Empty Bottles, an Empty Cask one Couch, Two Tables and six Chairs and furthermore this Respondent left in the Hands of his said Dubash — the Sum of One Thousand Pagodas in Order to be laid out in Piece Goods for the Europe Markets and the said Goods where by the desire of this Respondent to be Examined and Aſsorted in the said House it being very Convenient for that Purpose and which this Respondent verily Believed his said Dubash would have done before the Expiration of the Month the said

House

House was taken for had he been Permitted by the said Appellant to keep Posesion of the same for and on Account of this Respondent which matters this Respondent would Verify in due time by Evedences on Oath and that from the Prementioned Real Circumstances of the Case it must Evidently Appear to the said Mayors Court that the said Appellant had no Cause of Action against the Respondent and that the Action Commenced by the said Appellant against this Respondent was Unjustifiable and Illegal — and this Respondent did lastly in his said Rejoinder say, that in Rejoinder to any other matter or thing setforth or Alledged by the said Appellant in his said Replication and to which this Respondent had not fully and Particularly Rejoined the same is very immeterial, Evasive, Imperfect and Insufficient. for this Respondent to make any further or the Rejoinder thereunto as will more fully and at large Appear by a Reference to the said Rejoinder — And this Respondent further saith that after the Prementioned Proceedings Issue was Joined Witnesses were Examined, both on the Part of the said Appellant and this Respondent, Publication Passed the said Cause was set Down for hearing and on Tuesday the Twenty Sixth day of April last the said Cause came on to be Heard and Debated before the said Mayors Court when it Appearing to the said Court that the said Appellant had not Produced Sufficient Evedence to Support the Justness of his Demand the said Court did think fit to Order and Decree and did Accordingly Order and Decree the said Appellants Bill to be Dismissed with Double Costs of Suit —

Which said Decree of the said Mayors Court

this Respondent with Submission to this Honble Court Conceives to Equitable, Because the Action Commenced by the said Appellant this Respondent in the said Mayors Court was in itself not only Foundation but likewise Illegal Litigious and Vexatious for in plaice it Appears by the Depesition of Comrapah and which is Co the Depesition of Moorgeyapah, Two Witnesses Examined on the this Respondent, that on the same day of the departure of this Re for Bengal the said Appellant did send a Peon in his Service Comrapah and Moorgeyapah / who had Served as Conciopleis to thes for the Key of the said House in Question, that they had told the sa to inform the said Appellant that haveng many things belonging this Respondent in the said House they could not give up the said till the End of the Month / seeing this Respondent had only five days in the said House / unless his said Master the said Appel had Occupied the said House — That the said Peon went back Master and Returned to them and told them that his Master, said Appellant, had Agreed that they should Pay only Fifteen Da Rent of the said House on which Condition and on which Account the Comrapah and Moorgeyapah did deliver up to the said Peon the Key of the House to be Carried to his Master Aforesaid — That the day after the Comrapah and Moorgeyapah went to the said Appellant to Pay him Fifteen Pagodas, being the Amount of the Rent of the said House for the Aforesaid Fifteen days but which the said Appellant Refused to Accept of at that time and Afterwards Complained to John Whitehill Esqr the then Justice of the Month who having heard the said Matter said that the said Appellant had better Receive the Fifteen

Pagodas

To the Honble Alexander Wynch Esqr.
President and Governor &c. Council in Fort St. George

In the Court of Appeals

Between Baugel Cotah Bassoapah Chitty by his Attorney David Haliburton Complaint against Casava Rajah Defendant

The Petition of the said Casava Rajah

Sheweth

That the said Baugel Cotah Bassoapah Chitty by his said Attorney David Haliburton did some time on or Filed in my office about the twenth day of May in this present year of Our Lord One thousand Seven hundred and Seventy four exhibit a Bill of Complaint in the Honble the Mayors Court of Madraspatnam pretending that your Petitioner as Duan or Agent of Bomrauze Polygar was indebted unto him the said Complainant in the Sum of Sixteen Thousand and Seven hundred Pagodas and five fanams Current Money of Madras which the said Complainant further Setforth did more fully and at large appear by the Translate of a Bond or Obligation in the Gentoo Language annexed unto his said Bill of Complaint granted by One Annaw Sawmy late Duan or Agent of the said Bomrauze unto the said Complainant the Amount of which said Bond

Bond or Obligation the said Complainant Doth setforth your Petitioner as Duan or Agent of the aforesaid Bomrauze had Repeatedly promised to pay unto him the Complainant, the Complainant hath also in his said Bill of Complaint annexed an Account Current and an Assignment of the said Bond and a Power of Attorney, and did further Represent thereon that he had frequently Requested Payment from your Petitioner as Duan or Agent of the aforesaid Bomrauze of the said Sum of Sixteen Thousand and Seven Hundred Pagodas and five fanams and that your Petitioner had Refused to pay the same the said Complainant did therefore pray all general Relief such as to the said Court should appear agreeable to Equity and good Conscience To the End that your Petitioner might upon his Corporal Oath a full true direct and perfect answer make to all and Singular the Matters and things in his said Bill of Complaint as here before Setforth &c. And that your Petitioner might be Decreed to pay unto the said Complainant the aforesaid Sum of Sixteen Thousand and Seven Hundred Pagodas and five fanams together with all such Interest as then was or should thereafter become due thereon also all Costs of the said Suit. And the said Complainant did further pray that your Petitioner might be Summoned &c. and your Petitioner doth further Setforth that at the filing of the said Bill of Complaint in the days of Adjournment before George Savage Esqr. Mayor the Complainants said Attorney taking Oath to the justness of his Demand and that he had Reason to believe your Petitioner would Abscond from the Jurisdiction of the said Court upon Summons being issued against him a Summons Returnable immediately

immediately and Warrant of Arrest did issue, by Virtue Whereof Your Petitioner was made a Prisoner in the Custoday of the Sheriff of Madraspatnam and remained a Prisoner untill he had entered Bail to the Suit of the said Complainant by his said Attorney. And your Petitioner further begs to Sett forth that being sinsible of the unjustness of the Complainants said demand and that the Complainant had no legal Cause of Action against your Petitioner and being advised that the Bill of Complaint of the said Complainant did not contain any sufficient Matter Whereupon the said Honble the Mayors Court could ground a Decree Your Petitioner did accordingly on the twenty third day of May enter a Demurrer unto the said Bill of Complaint alledging by protestation not confessing or acknowledging all or any of the Matters and things in and by the said Bill setforth and complained of to be true in Manner and from as the same were therein and thereby setforth, said that he was advised that there was no Matter or thing in the said Bill contained good and sufficient in Law to call your Petitioner in question in the said Honble Court for the same but that there was good Cause of Demurrer thereunto and therefore your Petr did Demurr thereunto and for Cause of Demurrer your Petr alledged that it appeared by the Complainants own shewing in and by the said Bill that the said Complainant by his said Attorney had not any Equity or Title whereupon the said Honble Court could ground a Decree against your Petitioner because it did not appear that your Petitioner was any wise a party or was interested in the Receipt of the Money Acknowledged in the said Bond unto the said Bill of Complaint annexed or in any part thereof, nor

was

was there any Condition in the said Bond contained whereby your Petitioner can be bound or which can or ought to make him a party therein nor did the Complainant sett forth any Valuable consideration given unto your Petitioner Whereupon your Petitioner in Law became Responsible for the discharge of the said Bond And for further Cause of Demurrer unto the said Bill of Complaint of the said Complainant by his said Attorney your Petitioner saith that the Assignment and Power of Attorney upon which the said Action is founded is insufficient in the Law to warrant the said Action because it doth not appear in the said Assignment that your Petr is indebted unto him the Complainant or that he hath any legal right or cause of Action against your Petitioner either from the Sum therein Mentioned or in any other Sum or Sums of Money whatsoever therefore the Power of Attorney from the Complainant his said Attorney is deffective for the Complainant could not impower his said Attorney to do what he was not himself by Law Authorized to do and it doth not appear in the said Assignment upon what Title Claim or Demand of any denomination or upon what Consideration the Complainant is Authorized or impowered to Appoint the said Attorney to Ask demand or Sue for the Sum in the said Assignment Setforth wherefore and for divers other and imperfections in the said Bill appearing your Petitioner doth in Law thereunto, and did humbly demand the judgement of the said Honble Court whether he should be compelled to put in any further or other Answer to the said Bill, and humbly prayed to be thence dismissed with his reasonable Costs in this

behalf

behalf most wrongfully Sustained Unto which said Demurrer of your Petitioner the said Complainant did file a Joinder on the thirteenth day of May last past setting forth that notwithstanding any thing alledged by your Petitioner in his said Demurrer his said Bill of Complaint against your Petitioner ought not to be quashed &c. And for further joinder unto the said Demurrer the said Complainant did insist that your Petitioner was to all Intents and purposes as much a party in the affair in question as if had given the Bond under his own hand writing at the same time the Complaint adds in his said Joinder that the Bond was not given by your Petitioner yet he pretends your Petitioner had repeatedly promised to pay the same, without alledging that there was any written or other legal Agreement thereof or any consideration whereupon your Petr had or could in Law become bound for the Payment or discharge of the said Bond, notwithstanding which deffeuency and irregularity which plainly discover the unjustness of the Complainants said demand the Complainant saith he doth humbly insist full ground of Action doth lie against your Petitioner upon the said promise pleaded.

The said Complainant doth further add by way of Joinder unto that part of your Petitioners Demurrer wherein your Petitioner saith that the said Complainant hath not Setforth any Valuable consideration given unto or received by your Petitioner whereupon your Petitioner had in Law become responsible for the discharge of the said Bond, that a Valuable Consideration had been paid by the Complainant unto Annaw Sawmy your Petitioners predecessor

predecessor in Office, which circumstances the Complainant doth most inconsistently and unreasonably assert doth alone wen without a Promise Oblige your Petitioner according to the Establish Law of his Cast to be Answerable not Only for the Amount of the Bond in question but for any other Debt contracted officially on Account of the Rajah his Master the said Complainant doth also in his said Joinder insist that the Assignment and Power of Attorney upon which the said Action is founded are no ways deffective as your Petitioner doth alledge the same to be in his said Demurrer and doth further assert that the same is regularly brought agreable to the Established Practice of the said Court and is sufficient in Law to ground an action against your Petitioner, the said Complainant doth next proceed in a most extraordinary and unprecedented Manner to Shew the Right of Ground for his aforesaid illegal Action by annexing the Translation of a Letter from one Bopa Rajah Casawah Rajah to Bauher Cottah Bussapah Chitty dated in the Month of May in the year of Our Lord One thousand Seven hundred and fifty Nine as follows.. I received your Letter and know the Contents thereof and also what you Mention in the said Letter Regarding the Money you desired to get ready as soon as possible and your Order to pay One hundred Pagodas to Soobah Jascar and acquainting me that one Amarapah Chitty seized and troubled in my Masters Pettah, Sooganah Chittys family I have given an order

order to pray to Sorbah Jascar One Hundred Pagodas and also I have ordered the Monygar and Amarapath Chitty not to Meddle with the said Sorgariah Chittys family for the future they will Never Molest him you wrote me great deal about the Money- Now have taken Challam Pollam and kept a force there and have Secured the Village Matavallum and Districts thereof and remain here soon after I Return to Pollam shall prepare the Money and send it down to you — I can delay no longer Remitting your Money One day more or less will get your Money &c And your Petitioner doth further Sett forth that your Petitioners Demurrer to the Complainants said Bill of Complaint and the Complainants aforesaid — Joinder to the said Demurrer Whereupon the aforesaid thirtieth day of May sett down and ordered by the said Hon^ble the Mayors Court to come on to be arguied and determined on the Seventh day of June following. And the same coming on to be heard accordingly on the aforesaid day your Petitioners Attorney did move that previous to the Court determining the Merits of the pleas in his said Demurrer Sett forth, the Court would be pleased to take in to their Consideration the Letter introduced by the Complainant in his Joinder aforesaid, being of Opinion it Ought to be expunged, as containing New Matter, not warranted by the Bill, and did further add that the Court could not take Cognizance of the said Letter, as having any connection or Relation to the said Bill — Because it is presumed in Law that every Complainant in his Application for Relief of a Court does not fail to — declare every Title he is possessed of and every Reason he can invent to Support it, to convince the Court of the justness of

of his Claim to Obtain the sought Relief, but it is Necessary that he who seeks equity should be entitled to equity, therefore if a — Complainant founds his Action upon a Title not warranted by Law he can Obtain no Relief at Law, which is an instance rarely to be met with for Complainants generally inlarge their Titles and Demands beyond what they are upon Tryal enabled to support, it Seldom happens a Complainant lessens his Title or Omits any Matter which can possibly increase it But when a Complainants finds his Title is not Sufficient in Law to Obtain the relief he has sought from it and that a Demurrer is entered to his Bill for the want of Good or Sufficient Matter in Law to call the Defendant in question nothing is more contradictory and — inconsistent with the from as well as the Matter of Law than any addition or amendment made by the Complainant — to his Title in his Joinder to the Defendants Demurrer as the Complainant has done in his Joinder to your Petitioners Demurrer for the Complainant has founded his Cause of Action against your Petitioner upon a promise he pretends your Petitioner has Made to discharge the said Bond, without alledged — that the said promise was made in writing or when or upon what consideration, in his Joinder he endeavors to supply these Deffects by annexing a Copy of a Letter wherein he pretends your Petitioner has promised to pay the said Bond, your Petitioner conceives it almost Unnecessary to Observe the — insufficiency of this Attempt to charge the Cause of Action as well as the weakness of its foundation your Petitioners Attorney did further Sett forth that if the said Letter had been inserted in the Complainants Bill, he still Conceives there would have been a just Cause of Demurrer to it as

the

the said Letter does not appear to have been written by your Petitioner or that the Money promised to be paid is any part of the Bond in question or has any Relation with it. It may be the Sum of One Pagoda or the Sum of Twenty Lacks or a Sum long since discharged, to which your Petitioner might also have pleaded the Statute of Limitations enacted in the twenty first Year of the Reign of James the first Chapter the Sixteenth whereby all personal Actions of Debt Actions upon the Case &c are barred except brought within Six Years after the Cause of Action and whereas the said Letter is said to be dated in May One Thousand Seven hundred and fifty Nine which is upwards of fifteen years, for which and Sundry other Reasons your Petitioners Attorney Moved that the said Letter might be expunged But the said Honble the Mayors Court taking the same unto consideration were of Opinion that the said recited Letter in the Joinder ought not to be expunged as it is only a Confirmation of the Matters contained in the Complainants Bill of Complaint the Court did then proceed to take into Consideration the Several pleas made use of by your Petitioner in his said Demurrer in order to quash the Complainants Bill, and having duely considering the same were of Opinion that they were insufficient to bar the said Action, and did Order that your Petitioners Demurrer be thrown out with Costs, and that your Petitioner as by the said Order of the said Court may appear, which comes herewith — should be put upon his Answer — By which said Order of the said Honble the Mayors Court your Petitioner conceives he is greatly agrieved Because he conceives the said Action brought against him by the Complainant by this said Attorney is not

not founded upon Sufficient Matter in Law to Call your Petitioner before the said Honble the Mayors Court the same and that his of Opinion is very unreasonable to compell your Petitioner to Answer in Law to Matters not warranted or supported by the Law And that Nothing can be more insistent than the Reasons urged by the Complainant in his Joinder in Saport of his said Bill of Complaint Sitting forth that altho the Bond in question was not given under the hand of your Petitioner he your Petitioner is as much a party thereto as if it had been because the Complainant pretends your Petitioner has frequently promised to pay the said Bond without alledging why or wherefore or when the said promise was made, or upon what Consideration, which circumstances are Regarded so Requisite in Law to found an Action upon the promise of payment of the Debt of another that an Action upon a promise will not lie without the particular assertion of them which Matters are fully explained in Jacobs Law Dictionary under the word Assumpsit which is explained to be taken for a Voluntary promise it comprehends any Verbal promise made upon Consideration again when an Assumsit or promise is the ground of Action it must be precisely sett forth and in every Action of Assumsit there Ought to be a Consideration, a promise and breach of promise And also in the said Book under the Title of Action upon Case, it expressly lays down that the Consideration in the ground of the common Action upon the Case and that no Action on the Case lieth against a man for a promise,

where

where there is no consideration why he should Make the promisse together with many other instances given of the Necessity in Law to Sett forth the time when a promisse was made by reasons of the Statute of Limitations which restrets the time an Action upon the Case, Account Debt upon Lending or contract without Specialty can be brought from the term of the Commencement or Cause of Action to Six Years. And Whereas no Mention is made in the said Bill of Complaint when such pretended promisse was made, which is an evident mark of the Defect and insufficiency of the said Action, and that it is not properly founded in Law to call your Petitioner in Question and that your Petitioner would expose himself to the greatest disadvantage and injustice by Answering thereto, as from the want of the precise time being Stated it is entirely out of the power of your Petitioner controvert the said plea by evidence, and is a great invitation to the Complainant Suborn witnesses to prove the said promise according to any time he might think convenient- And your Petitioner is further deprived of the Benefit of Statute of Limitations which he might have pleaded in Bar to the said Action in Case the said Promise had not been alledged to have been made within the time allowed thereby for the bringing of Actions as aforesaid But by the insufficiency of the said Bill respecting the said Matters, your Petitioner is not at liberty to Make Use of those benefits and advantage which are allowed him by Law he therefore conceives it would be a great injury to him to Answer in Law to an Action which is not founded upon Law

Your

Your Petitioner is also of Opinion that the said Action is deffective because the Complainant hath not founded his his said Action upon any legal or other Consideration why the said Pretended promise was Made, which is not only Necessary but also indispensable in Cases of the present nature as well as in all other kinds of Agreements whatsoever for in all Agreements the ties must be Resyprocal.—

And your Petitioner conceives that Nothing can be More Weak or ill founded than the Argument Made use of by the Complainant, that your Petitioner is Accountable for the Amount of the Debt in question as well as for any other Debt Offically contracted by the Rajah his Master this is Overthrowing not only the established Law of the land but all the Laws of of Civil Society whatever Servants would cease to be such if they were Responsible for the Actions of thier Maters. The Factor for his Constituent, the Agent for his Employer. But the contrast is the Rule of Law, The Master acting by his Servant, is accountable for the Actions of his Servant, as well as the Act of a Factor is the Act of Constituent and the same in Respect of an Agent towards his Employer when Acting by their Authority. But the Argument of the Complainant does not come under these Consideration, the Sum pretended to be borrowed by the said Bomrauze from the said Complainant does not appear to have been borrowed by the Means of your Petitioner or that your Petitioner Received or paid any part of the said Money or that your Petitioner was Agent or Duan to the said Bomrauze at the time the said sum is pretended to have been borrowed, this is Making him

accountable

Accountable for the Actions of Annaw Sawmy the Servant of Bomrauze and of a Date so long since past as the Year One Thousand Seven Hundred and fifty eight your Petitioner is sensible then is no Law to Support a Charge altogether so inconsistent with Reason Law or Equity and humbly hopes this Honble Court will be of the same Opinion. your Petr does further beg to Observe in Respect of the Asegnment and power of Attorney annexed unto the said Bill and whereupon the said Bill is founded are defective and insufficient in Matter as well as in form of Law and do not convey any legal Authority from the Complainant to his said Attorney to ask demand and Sue for the aforesaid Bond in his Name. Firstly because in the said Asegnment the Complainant doth declare that Annaw Sawmy Duan or Agent of Bomrauze became indebted unto him for the Amount of the Bond therein Named, And that for a Valuable Consideration he has Asegned and Settover the same unto his said Attorney Hrs And for the said Consideration that he hath Made constituted and appointed the said David Halsburton Hrs his true and Lawfull Attorney irrevocable for him and in his Name Hrs but for the Sole and proper Use and benifet of the said David Haliburton Hrs to ask demand and Receive of Casava Rajah the present Duan or Agent of the aforesaid Bomrauze his Heirs Executors and Administrators the Money due to become due on the said Bond and on Non payment thereof he the said David Haliburton Hrs to Sue for and Recover the same and on payment thereof to deliver up and cancell the said Bond Hrs

your

Your Petitioner begs to Observe that the invalidety and irregularity of the said Asegnment and power of Attorney are wedent and striching, the Asegnment being of a Sum of Money said to be due upon the said Bond from One Anna Sawmy and the power of Attorney is to Ask demand and Receive the Amount of the said Bond from your Petitioner without cause or Reason Asegned, why the said power is given to his said Attorney or by what way or Means or in what Manner and how the Complainant became possessed of any legall or other authority to convey or grant such power to his said Attorney, the said Bond and the Amount thereof are Asegned unto the said David Haliburton as having been given and due from Anna Sawmy And the Power of Attorney as to Sue your Petitioner for the Amount of the said Bond — your Petitioner conceives that such irregularity cannot be allowed to proceed from Oversight or inconsideration, but seems rather to be a contrivance to Vex and distress your Petitioner by calling him before the said Honble Court for Matters almost too apparantly causeless and unjust to need explanation, a just Cause of Action carries an appearance of Right in itself, without being heightned or coloured by Form of Law, But an Action of the importance of the present one appearing before a Court of Judicature Void of futher Matter or Form of Law, unsupported by Reason or Justice, your Petitioner conceives can by no Means stand the impartial disquisition of Law and humbly hopes by the proceedings in the said Action it well appear to this Honble Court that the same is not warranted by Law or Equity that your Petitioner has been greatly injured by the said Complainant by his said

Attorney.

Attorney entering the said prosecution against your Petitioner For all which Causes and Reasons your Petitioner doth humbly Appeal from the Order of the said Honble the Mayors Court and begs to refer the same to the consideration of this Honble Court and Prays that the order of the said Honble the Mayors Court which orders that your Petitioners said Demurrer should be thrownout of the said Court to be Reversed and doth humbly demand the Judgement of this Honble Court whether your Petitioner shall be compelled to put in any other or further Answer to the said Bill and doth humbly pray to be hence and from the said Honble the Mayors Court dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained and doth further and other General Relief as to this Honble Court in the premises shall seem Meet

Henry Dupuy

Attorney for the Appellant

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Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 7th Day of June Anno Domini 1774.

Present

Mr. Thomas Powney Senior Alderman

James Hodges and Andrew Mayendie

Aldermen

Baugel Cottah Bussoapah Chitty by his Attorney David Haliburton

Vers

Casava Rajah

Bill Read
Demurrer Read
Joinder Read

The Demurrer and Joinder Coming on to be Argued and Determined this Day in the Presence of the Attorneys on both Sides on Reading the Complainants Bill— The Defendants Demurrer The Joinder— The Attorney for the Defendant moves that Previous to the Courts taking into Consideration the Pleas made use of by the Defendant in his Demurrer, That they will take into their Consideration the Letter Recited by the Complainant in his Joinder, as he Conceives the same ought to be Expunged, it Containing new matter not Warranted by the Bill—

The

The Opposite Attorney Objects to the same being expunged, as the purport of the Letter Recited in the Complainants Jounder is only a Confermation of the Many Promises Asserted by the Complainant in his Bill of Complaint to have been made by the Defendant, of the payment of the Money now Sued for.

The Court having taken the same into Consideration are of Opinion, that the said Letter Recited in the Jounder ought not to be expunged as it is only a Confermation of the Matter Contained in the Complainants Bill of Complaint— The Court then proceed to take into Consideration the several Pleas made use of by the Defendant in his Demurrer, in order to quash the Complainants Bill, and have Duly Considered the same, are of Opinion, that they are insufficient to Bar the Present Action— This Court doth therefore think fit to Order and doth Accordingly Order that the Defendants Demurrer be thrown out with Costs, and that the Defendant be put upon his Answer.

A true Extract

James Taylor Regr.

To the Honble Alexander Wynch Esqr.
President and Governor &c. Council of Fort St. George

In the Court of Appeals

Between Baugal Cotah Bussoapah Chetty by his Attorney David Halburton Complainant Against Casava Raja Defendant

The Answer of the said Baugal Cotah Bussoapah Chetty

This Respondent Answering saith that he Admitted by his said Attorney David Haliburton some time on or about the twelfth Day of May in this present Year of Our Lord One thousand Seven Hundred and Seventy four exhibited a Bill of Complaint in the Honorable the Mayors Court of Madrasspatnam against the Appellant Casava Raja not pretending but Asserting that the said Appellant as Duan or Agent of Bomrauze was Indebted unto this Respondent pursuant to his promise in the full and just Sum of Sixteen thousand and Seven Hundred Pagodas and five fanams Current Money of Madras and which this Respondent did sett forth did more fully and at large Appear by the Translate of a Bond or Obligation in the Gentoo Language Annexed unto this Respondents said Bill of Complaint granted by One Annaw Sawmy late Duan or Agent of the said Bomrauze unto this Respondent and the Amount of which said Bond or Obligation this Respondent did further Sett forth that the Appellant as Duan or Agent of the Aforesaid Bomrauze had repeatedly promised to pay unto this Respondent this Respondent did

also

also unto his said Bill of Complaint Annexed an Account Current and an Assignment of the said Bond and a Power of Attorney and did further represent therein that he this Respondent had frequently requested Payment from the Appellant as Duan or Agent of the aforesaid Bonrrawze of the said Sum of Sixteen Thousand and Seven Hundred Pagodas and five fanams and that the Appellant had refused to pay the same, and this Respondent doth further Admit that at the filing of the said Bill of Complaint — between the Days of Adjournment before George Savage Esq. this Respondents said Attorney did take Oath to the Justness of his Demand and that he had Reason to believe the Appellant would depart from the Jurisdiction of the said Court upon a Summons being issued Against him, and that thereupon a Summons returnable immediately and a Warrant of Arrest did issue, by Virtue whereof the said Appellant or Petitioner was made a Prisoner in the Custody of the Sheriff of — Madrasspatnam and remained a Prisoner untill he entered Bail to the Suit of this Respondent by his said Attorney — And this Respondent further Admits that the said — Appellant did on the Twenty third Day of May enter a Demurrer unto this Respondents said Bill of Complaint therein setting forth that he was Advised there was no Matter or Thing in the said Bill Contained good and sufficient in Law to call him the said Appellant in Question in the said Honble Court for the same, but that there was good Cause of Demurrer thereunto, and therefore the said — Appellant did demur thereunto, and for Cause of Demurrer he the said Appellant Alledged that is Appeared by this — Respondents Own shewing in and by the said Bill that this Respondent by his said Attorney had not any Equity or Title whereupon the said Honble Court could ground a Decree Against him the Appellant, Notwithstanding the said Appellants promise of payment because it did not Appear that he the Appellant was any wise a Party or was Interested in the Receipt of the Money Acknowledged in the said Bond unto the said Bill of Complaint Annexed or in any part thereof, Nor was there any Condition in the said Bond Contained whereby he the said Appellant could be bound or which would or Ought to make him a Party therein, nor that this Respondent had sett forth any Valuable Consideration given unto the Appellant whereupon the Appellant in — Law became responsible for the Discharge of the said Bond — And further the said Appellant in his said Demurrer sett forth — that the Assignment and Power of Attorney upon which the said Action of this Respondent is founded is insufficient in the Law to — Warrant the said Action because it doth not Appear in the said Assignment that the Appellant was indebted unto this Respondent or that he hath any legal Right or Cause of Action Against the Appellant either for the Sum therein mentioned or in any — Sum or Sums of Money whatsoever, and that therefore the — Power of Attorney from this Respondent unto his said Attorney is defective, for that this Respondent could not empower his said Attorney to do what he was not himself by Law — Authorized to do and that it doth not Appear in the said Assignment upon what Title Claim or Demand of any — Denomination or upon what Consideration this Respondent — was Authorized or empowerd to Appoint his said Attorney to Ask Demand or use for the Sum in the said Assignment

sett forth

sett forth wherefore and for divers Other Errors and Imperfections in the said Bill Appearing unto him the said Appellant he the said Appellant did demur thereunto and did Demand the Judgement of the said Honble Court whether he should be compelled to put in any further or Other Answer to this Respondents said Bill and further prayed to be thence dismissed with reasonable Costs and unto which said Demurrer this Respondent Admits he did put in a Joinder on the Thirteenth Day of May last therein Setting forth that notwithstanding any Thing Alledged by him the said Appellant in his said Demurrer his this Respondents said Bill of Complaint Ought not to be quashed &c and for further Joinder unto the said Demurrer this Respondent did insist that he the Appellant was to all Intents and Purposes as much a Party in the Affair in Question as if he had given the Bond under his Own Hand Writing altho the Bond was not given by him the said Appellant for further Joinder sett forth that the Appellant had repeatedly promised to pay the Amount of the said Bond which promise this Respondent humbly insists was and is still binding on him the said Appellant as the Duan or Agent of the said Bomrauze pursuant to his promise, Notwithstanding any Thing he the Appellant may sett forth to the Contrary in his said Petition, and which with Submission to this Honble Court this Respondent saith was and is still full Ground for Action Against the Appellant.

And this Respondent further saith that he Admits to have further sett forth in his said Joinder that a Valuable Consideration had been paid by him this Respondent unto Annaw Sawmy the Appellants Predecessor in Office and which this Respondent says was a Sufficient Consideration even without a Promise from the Appellant to Oblige the Appellant (According) to the Established Law or Custom of his Cast) to be Answerable not only for the Amount of the Bond in Question but for any Other Debt contracted Officially on Account of the Rajah his Master, and this Respondent in his said Joinder further sett forth and insist that the Assignment and Power of Attorney upon which his said Action is grounded are no ways defective as the Appellant doth Alledge in his said Demurrer and doth further Assert that the same is regularly brought Agreeable to the Established Practice of the said Court and sufficient in Law to ground an Action Against the said Appellant. and this Respondent doth further Admit to have inserted in his said Joinder the Letter quoted by the Appellant in his said Petition but not in the Unprecedented manner Sett forth by the said Appellant, for this Respondent saith that the said Letter so inserted is pertinent to the matter in Question and very essential in Order to shew that this Respondent had very just Grounds for his present Action Against the Appellant, for this Respondent saith Notwithstanding the Assertions the Appellants Attorney made Use of to the Contrary (on the Seventh Day of June last when the said Demurrer and Joinder came on to be Argued) that the said Letter was Absolutely Necessary to be inserted in the said Joinder (containing) One of the many Promises of Payment made by the said Appellant unto this Respondent and therefore Ought by no Means to be expunged it being warranted by this Respondents Bill of Complaint and that the same is no new matter whatsoever but Absolutely Necessary to Support his Bill of Complaint— In Answer to that Part of the Appellants Petition

Petition wherein he says "that the Complainant has founded his
"Cause of Action Against him the Petitioner upon a Promise he
"pretends the Petitioner has made to discharge the said Bond
"without Alledging that the said Promise was made in writing
"or when or upon what Consideration" this Respondent says that in
his this Respondents Bill of Complaint he Alledges that the
Appellant had repeatedly promised to pay the Amount of the said
Bond unto this Respondent and with which he was charged in this
Bill, and which this Respondent said he would prove in due Time
to the Satisfaction of the Honble the Mayor Court and is ever
ready so to do by the evidence of Creditable Witnesses, this Respondent
further saith that Nothing can shew the litigious Disposition
of the Appellant more than his unwarrantably Demurring
to this Respondents Bill of Complaint, for he the Appellant
Ought to have put in a Plea in Abatement to the Action and
not a Demurrer which is only to the Bill for some error or
slip therein, because had the Appellant Equity on his side he
would have proceeded to Answer but it plainly Appears by his
Litigious Method of Acting that he is afraid of the Proofs
which this Respondent means to bring in support of his
just Demand an him the Appellant, and this Respondent
further saith that Nothing can be more fair and Equitable
and more Agreable to Law than the said Declaration of
this Respondent. And this Respondent further saith that
the Promise which this Respondent Charges the Appellant to
have made Alludes to the Payment of the individual Bond on
which this Respondent founds his Action, and with Respect to
what the Appellant sets forth that no Consideration whatever
has

has been paid by the Respondent unto the Appellant this
Respondent saith that the Consideration of Sixteen Thousand Seven
Hundred Pagodas and Three fanams has been paid by this
Respondent unto Annaw Sawmy the Appellants Predecessor on
Account of the said Bomrauze his Master and which the
Appellant fully understood to be sufficiently binding on him
to pay the Amount of the said Bond Otherwise he the said
Appellant would never have been so Weak as to promise Payment
of the same, and this Respondent further saith that the Honble
the Mayors Court being fully convinced of the Rights of Action
Against the Appellant were pleased to Dismiss the Appellants
Demurrer with Costs which Order this Respondent humbly hopes
this Honble Court will see no Cause to Alter but that they will
confirm the same with Costs in both Courts to be paid by the
Appellant because whether or no the Appellant wer recieved any
Consideration from the Respondent is nothing to the purpose he
as Agent or Duan for the said Bomrauze did Actually promise
the payment of his said Masters Bond given by his former
Agent or Duan Annaw Sawmy and therefore is as much bound
as if he had himself given, it consiquently no Cause of Demurrer
Arises but the Matter must be Determined by Evidence and
this Respondent begs Leave to Observe that previous to the
Appellants filing his said Petition of Appeal this Respondent
for sundry good Causes to him Appearing did on the
fourteenth June last pray leave of the Honble the Mayors
Court to file an Amended Bill of Complaint against
the Appellant which the said Court were pleased to
Admit and this Respondent did in Consideration of

such

such Amendment tender unto the Appellants Attorney all the Costs which had Accrued on this Respondents Original Bill of Complaint and the Appellants Demurrer Agreable to the Rule laid down in the Practice of the Court of Chancery but which the Appellant thought proper to refuse and which refusal this Respondent doth Plead in Bar to any future Claim he the Appellant may make on this Respondent for the same. The Respondent further says that the Appellant has inserted in his Petition of Appeal a Number of quotations from sweral Law Books and thereby blends Demurrers Pleas Answers &c. that it is impossible to know which of them to Answer and therefore inconsistent and Absurd for the Respondent to make any Answer unto

Gideon Firth.

Attorney for the Respondent.

To the Honble Alexander Wynch Esqr.
President and Governor &c. Council at Fort St. George

In the Court of Appeals

Between Baugel Cottah Busoopah Chitty by his Attorney David Haleburton Complainant against Casava Rajah Defendant

The Humble Petition of Casavah Rajah

Sheweth

That the said Baugel Cottah Busoopah Chitty by his Attorney David Haliburton did some time on or about the twelth day of May in this present Year of Our Lord One Thousand Seven hundred and Seventy four exhibit a Bill of Complaint against your Petitioner in the Honble the Mayors Court of Madraspatnam Pretending therein that your Petitioner as Duan or Agent of Bomrauze Polygar was indebted unto him the said Complainant in the Sum of Sixteen Thousand and Seven Hundred Pagodas and five fanams Current Money of Madras which the said Complainant further Setforth did more fully and at large appear by the Translation of a Bond or Obligation in the Gentoo Language Annexed unto his said Bill of Complaint granted by One Annaw=Swamy late Duan or Agent of the said Bomrauze unto the said Complainant the Amount of which said Bond or Obligation the said Complainant doth setforth your Petitioner as Duan or Agent of the aforesaid Bomrauze had

had repeatedly promised to pay unto him the Complainant &c.
Unto which said Bill of Complaint of the said Complainant by
his said Attorney your Petitioner did on the twenty third day
of the said Month of May enter a Demurrer alledging that there
was no Matter or thing in the said Bill contained good and
suffecient in Law to call your Petitioner in Question before the
said Honble Court for the same, but that there was good cause of
Demurrer thereunto and therefore your Petitioner did Demurr
thereunto and for Cause of Demurrer your Petitioner alledged
that it appeared by the Complainants own shewing in and by
his said Bill that the said Complainant by his said Attorney
had not any Equity or Title whereupon the said Honble Court
could ground a Decree against your Petitioner and did further
expose his Reasons and the Causes of Demurrer and prayed the
judgement of the said Honble Court whether he should be
compelled to put in any further or other Answer to the said
Bill and humbly prayed to be thence dismissed &c. Unto
which said Demurrer of your Petitioner the said Complainant
did file a Joinder on the thirtieth day of the said Month of
of May setting forth that Notwithstanding any thing
alledged by your Petitioner in his said Demurrer his
said Bill of Complaint against your Petitioner ought not
to be quashed &c. And your Petitioner doth further setforth
that your Petitioners demurrer to the Complainants said
Bill of Complaint and the Complainants aforesaid Joinder
to the said Demurrer were upon the aforesaid thirtieth day
of

of May setdown and ordered by the said Honble the Mayors
Court to come on to be Argued and be determined on the Seventh
day of June following and the same coming on to be heard
accordingly on the aforesaid day the said Honble Court did order
that your Petitioner said Demurrer to the said Bill of Complaint
be thrown out with Costs and that your Petitioner should be put
upon his Answer from which said Order your Petitioner did
lodge an Appeal to this Honble Court within the time prescribed
by the Charter for Appealing as by the said Appeal and the
proceedings in the Honble the Mayors Court now before this
Honble Court may appear.

And your Petitioner does further Observe that after the
Dismission of his said Demurrer in the Honble the Mayors
Court on the Seventh day of June as aforesaid the said
Complainant did on the fourteenth day of the said Month of
June without Notice previously given unto your Petitioner
or unto his said Attorney move by his Attorney for leave to
Amend his said Bill of Complaint Whereunto your Petitioners
Attorney did Object as having no previous Notice of the said
Amendment and that the Complainant could not amend his
Bill without first paying the Costs for the Charges of the
former Bill And as the dismission of your Petitioners said
Demurrer was by an Order of the said Honble the Mayors Court
he conceived your Petitioner had right to take the Benefit
allowed by the Charter of Appealing to this Honble Court
from the Order of the said Mayors Court and which your
Petitioner intending doing within the time prescribed
And your Petitioners said Attorney did also Object to the

Admission

Admisson of the said Amended Bill because it was only a
Repetition or Copy of the Original Bill and contained the same
Matters whereto your Petitioner had already demurred to in the
Original Bill, Yet the said Honble the Mayors Court having
taken the same into Consideration were of Opinion that the
Complainant ought to be allowed to Amend his Bill upon
Payment of full Costs, and did accordingly Order that the said
Amended Bill be Received. By which said Order your
Petitioner humbly conceives he is greatly agrieved and doth
Appeal therefrom unto this Honble Court Firstly because
he is of Opinion the said Amendment of the said Bill to
be very irregular and Seems contrived to detain your
Petitioner in the said Honble the Mayors Court to the
prejudice of his private Business and the loss of his
Liberty as your Petitioner having been Made a prisoner upon
the Oath of the Complainants said Attorney untill he had
given Bail to his said illegal Action, he still remains
under the Restrictions of a Prisoner and may at any time be
returned a prisoner by his Bail unto the Sheriff. Which
circumstances cannot fail to lessen and weaken his Credit
in the Opinion of the World and consequently highly prejudicial
and injurious your Petitioner has already Setforth in this his
Petition of Appeal, the unjustness and illegality of the
Complainants Original Bill of Complaint to which he has
demurred, But more particularly in his Petition of Appeal
from the Order of the Honble the Mayors Court in Respect

of

of the dismission of his said Demurrer, That the said Bill
of Complaint does not contain any Matter or thing good and
Sufficient in Law to call your Petitioner in question in the
said Honble Court and hath further as he humbly hopes clearly
and amply satisfied this Honble Court therein of the total
irregularity and inconsistency of the said Action brought by the
said Complainant and that the same is void of Matter or from
of Law.

Yet Notwithstanding your Petitioner has been called
before the said Honble Court upon an Action so ill founded
and illegal, and whereto your Petitioner has demurred And
Notwithstanding your Petitioners said Demurrer was dismissed
by the Order of the said Court your Petitioner finds himself
returned in the same desagreable and distressing Situation
he was in before all these proceedings to entricate himself from
by Appealing to this Honble Court from the Order of the said
Mayors Court where your Petitioners Demurrer was dismissed
for by the admission of the said Honble the Mayors Court
of the said Amended Bill, your Petitioner is under the
Necessity of renouncing to his appeal to this Honble Court
from the said Order which privilidge is allowed and granted
by his Majesties Charter from whence the said Mayors Court
doth also derive its Powers or Submit to the injustice of
being brought again before the said Mayors Court for a
Charge he has already declared illegal by his said Demurrer.
For your Petitioner begs to Observe that the said Bill of
Complaint which the Complainant has introduced with
the Title of an amended Bill, is but a Copy of the
Orginal

Original Bill and doth contain the self same and identical Causes of Demurrer whereto your Petitioner hath already demurred your Petitioner therefore, if he had renounced to his said appeal respecting the Order of the Mayors Court in Regard to the Original Bill, would have done so still with a Resolution to demurr to the said Amended Bill, which your Petitioner does conceive would by no Means have been Regular, for as the Amended Bill contains the same Causes of those whereto your your Petitioner has demurred in the Original Bill which said Demurrer has been dismissed by the said Mayors Court, your Petitioner by not Appealing from the said Order or dismission the said Demurrer would admit of the said Order to be just as the same would stand Recorded as a precendent after the expiration of the time limited by the Charter for Appealing and might be pleaded against the Receiving of such Demurrer to the said amended Bill, as containing Matter of Demurrer upon which the Judgement of the Court had already been had and given in the same cause, and whereby your Petitioners Demurrer had been dismissed, For your Petitioners demurrer to the said Amended Bill would contain the same Objections as his Demurrer to the Original Bill, the Amended Bill containing the same causes of Demurrer as the Original Bill of which it is a Copy From which Matters your Petitioner conceives that the Admission of the said Amended Bill is highly irregular as the said Mayors Court thereby conferm their Judgement upon your Petitioners Demurrer to the Original Bill by

establishing

establishing the said Bill and the Matters therein to be sufficient in Law, for as the Amended Bill is but a Copy of the Original Bill, the Admission of it your Petitioner with Submission conceives is passing a Second Judgement upon the same Matter to the detriment of your Petitioner who is thereby deprived of the benefit of Appealing to this Hon^ble Court from the Order of the said Mayors Court respecting his demurrer to the Original Bill or otherwise as your Petitioner has already remarked to admit of the said Order to be just by renouncing to appeal from it.

Your Petitioner therefore conceives that the said Amended Bill cannot be regarded as such it containing the same Matters and Causes of Demurrer whereunto your Petitioner has demurred in the Original Bill, but more especially the said Amendment is irregular in the present Case as your Petitioner has appealed from the Order of the Mayors Court respecting the dismission of your Petitioners said Demurrer to the Original Bill of which the said Amended Bill is a Copy the Complainant therefore filing a fresh Bill under the Title of an Amended Bill is seeking to Establish his said unjust Action in the Mayors Court and an Attempt to deprive your Petitioner of the benefit of redressing himself by Appealing to this Hon^ble Court.

your Petitioners doth therefore most humbly prays that this Hon^ble Court will be pleased to Reverse the Order of the said Mayors Court of the fourteenth of this Month respecting the Admission of the said Amended Bill

as

as the same contains Matters of the same Nature which has already been Objected and Demurred to in the Original Bill, and which said Matters and Demurred thereto by your Petitioner are now before this Honble Court by way of Appeal from the Order or Judgement of the Mayors Court thereon And doth further pray that the said Amended Bill may be dismissed with Costs in this Court and also in the Mayors Court and doth further pray such further and other General Relief in the Premises as to this Honble Court shall Seem Meet.

Henry Dupuy

Attyd for the Petitioner

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 14th Daay of June Anno Domini 1774.

Present

George Savage Esquire Mayor

Thomas Powney & John Turing

Aldermen

Baugal Cottah Bapsopah Chitty by his Attorney David Haliburton

vers

Casavah Rajah

The Attorney for the Complainant prays leave to Amend his Bill upon payment of full Costs To which the Opposite Attorney objects— As the Defendant has Demurred to the Complainant's Bill of Complaint, That such Demurrer has been over-ruled by this Honble Court and that his Client intends to lodge an Appeal therefrom to the Honble Court of Appeals within the time prescribed by the Charter The Court having taken the same into Consideration are of Opinion that the Complainant ought to be allowed to Amend his Bill upon payment of full Costs Ordered that the Amended Bill be received.

A true Extract

James Taylor Regr

To the Honble Alexander Wynch Esqr
President and Governor &c Council of Fort St George

Between Baugel Cottah Bussoapah Chitty by his Attorney David Haliburton Complainant against Casavah Rajah Defendt

The Answer of the said Baugel Cottah Bussoapah Chitty

This Respondent Admits that he did by his said Attorney David Haliburton some time on or About the twelfth day of May in this present year of Our Lord One Thousand Seven hundred and Twenty four exhibit a Bill of Complaint Against the said Petitioner in the Honble the Mayors Court Alledging that the said Petitioner as Duan or Agent of Bomrauze Polygar was indebted unto him the said Complainant in the Sum of Sixteen Thousand Seven Hundred Pagodas and five fanams Current Money of Madras which this Respondent did further Setforth did more fully and at large Appear by the Translation of a Bond or Obligation in the Gentoo Language annexed unto his said Bill of Complaint granted by one Annaw Saivmy late Duan or Agent of the said Bomrauze unto this Respondent the Consumt of which said Bond or Obligation this Respondent doth Setforth the said Petitioner as Agent or Duan of the Aforesaid Bomrauze had repeatedly promised to pay unto this Respondent &c unto which said Bill of Complaint this Respondent Admits the said Petitioner did on the Twenty third Day of the said Month of

Filed in my Office

of May enter a Demurrer Alledging that there was no Matter or thing in the said Bill contained good and Sufficient in the Law to call the said Petitioner in Question before the said Honble Court for the same but that there was good Cause of Demurrer thereunto and for Cause of Demurrer the said Petr Obliged that it Appeared by this Respondents own shewing in and by his said Bill that this Respondent by his said Attorney had not any Equity or Title whereupon the said Honble Court could ground a Decree Against the said Petitioner and prayed the Judgement of the said Court whether he should be Compelled to put in any further or Other Answer to the said Bill &c to which said Demurrer this Respondent did on the thirtieth Day of the said Month of May file a Joinder setting forth that Notwithstanding any thing Alledged by the said Petitioner in his said Demurrer his said Bill of Complaint Against the Petitioner Ought not to be quashed &c and this Respondent Admits that the Petitioners Demurrer and this Respondents Joinder came in to be Argued on the Seventh Day of June when the said Honble Court were pleased to Order the said Petitioners Demurrer to the said Bill of Complaint to be thrown Out with Costs and that the said Petitioner should be put upon his Answer from which Order the said Petitioner did lodge an Appeal in this Honble Court — And this Respondent does further Admit that after the Dismission of the Petitioners said Demurrer in the Honble the Mayors Court on the Seventh Day of June as aforesaid, he this Respondent for divers good Reasons to him Appearing did by his Attorney move the said Honble the Mayors Court for Leave to Amend his

Bill

Bill of Complaint (having by his said Attorney prisiously tendered the Costs Arising on the Original Bill Demurrer and Joinder unto the Petitioniers Attorney who refused to Accept the same) to which the Petitioners Attorney did Object Alledging he had no previous Notice of the said Amendment and that this Respondent could not Amend his Bill without first paying Costs for the Charges of the former Bill and that as the Dismission of the Petitioners Demurrer was by an Order of the Hon^ble the Mayors Court he the said Petitioner conceived he had a Right to take the Benefit Allowed by the Charter of Appealing to this Hon^ble Court from the Order of the Mayors Court and which the said Petitioner said he intended doing within the Time prescribed The Petitioner did also Object to the Admission of the said Amended Bill Alledging that it was only a Repetition or Copy of the Original Bill and contained the same Matters whereto the Petitioner had Already demurred in the Original Bill - But the Hon^ble the Mayors Court being fully convinced that there was a Material Alteration in the said Amended Bill altho the Cause or Ground of Action was the same as that contained in the Original Bill were pleased to Admit the same - And this Respondent cannot help expressing his Surprize at the Assertion of the Petitioner where he says that he is of Opinion that the said Amendment is very irregular &c^a for this Respondent begs Leave to refer this Hon^ble Court to the fourth Chapter of Harrisons Chancery Practice Page 249 for full Confutation of such

rash

rash Assertion of the Petitioner whereon it is laid down as the Law of the said Court of Chancery that if any Oversight in a Bill is discovered which requires an Amendment before Answer the — Plaintiff may upon Motion or Petition either Amend or Dismiss his Bill, but if the Defendant has Appeared and taken a Copy of the Bill the Bill cannot be dismissed without Payment of Costs to be taxed - and After an Appearance if before Answer the Plaintiff may also upon the like Application Amend without Costs Amending the Defendants Copy and this is no more than an Order of Course And in the same Chapter and Page it is further laid down "that if a Demurrer is put in upon a Slip or Mistake or Otherwise in the Bill the Plaintiff may immediately after the Demurrer is filed Obtain an Order on paying the Defendants Clerk Twenty Shillings Costs to amend his Bill - But if the — Defendant Obtains an Order for Arguing his Demurrer the Plaintiff must also pay the Charge of Obtaining such Order and also the Twenty Shillings Costs before he can Amend his Bill" by which it plainly Appears that a Complainants has an undoubted Right to Amend his Bill of Complaint upon Payment of the Costs — which the Defendant may have been put to an Account of such Amendment, and it further Appears that even after the Defendant has put in his Answer the Complainant may if he sees Cause — Amend his Bill of Complaint, as is fully sett forth in the said fourth Chapter and 249 Page of the said Chancery Practice — wherein it is said "But if the Plaintiff wants to Amend his Bill after the Defendant hath put in his Answer and he — requires an Answer to the Amendments he must by his — Counsell either move the Court or Petition to Amend the same

on

"on Payment of Twenty Shillings Costs to the Defendant which he
"must take care to pay before he proceeds Otherwise he will be
guilty of Irregularity &c. all which evidently proves the Right
a Defendant has to Amend his Bill of Complaint, and this
Respondent begs Leave to Acquaint this Honble Court that before
he filed his Amended Bill of Complaint he did by his Attorney
tender the Amount of the Costs the Defendant had been put to
unto the Defendants Attorney who refused to receive the same,
this Respondent doth therefore plead the same in Bar to any
future Demand of the said Defendant for the Payment of such
Costs, and this Respondent in further Support of his Right to the
said Amendment begs Leave to refer this Honble Court to the Eighth
Chapter of the said Practice of Chancery Page 374. 375. which says
"That if the Defendant put in a Demurrer which is Apprehended
will hold good it is the best way for the Complainant if he has
a Mind to drop Proceedings to move and Obtain an Order to
"Dismiss his Bill with Costs to be taxed by a Master which
"Costs being paid to the Defendant there is an End of the Suit,
"but no Plaintiff can dismiss his Bill on Payment of Costs to be
"taxed But if the Plaintiff has Equity on his side and intends
"to proceed he may Apply to the Court either by Motion or Petition
"to Amend his Bill of Complaint on Payment of Twenty Shillings
"Costs &c." and lastly this Respondent begs Leave to refer this
Honble Court to the first Chapter of the said Practice of
Chancery Page 49 wherein it says "that Plaintiff brought his
"Bill Against Defendant for an Account of Proffits &c. and
"After Defendant had fully Answered Plaintiff Amended his
"Bill three several Times &c. from all which this Respondent

humbly

humbly presumes that not the least Shadow of a Doubt can remain
of the Right this Respondent had to Amend his said Bill of
Complaint, and this Respondent therefore humbly prays that the said
Order of the Honble the Mayors Court respecting the Admission of
this Respondents Amended Bill of Complaint may stand
conformed and that the Petitioner may be Ordered to pay all
Costs of Suit.

Gideon Firth

Attt. for the Respondent

Court of Appeals at Madraspatnam } Wednesday 2d November 1774.

Between Cashvah Rajah Appellant and
Baugle Cottah Bajsopah Chetty by his Attorney
David Haliburton Respondent.

This Cause coming on to be heard and debated this day before the Attorneys on both Sides upon hearing the Petition of Appeal and answer, the Several Exhibits of the Honble the Mayors Court together with an Extract from the Minutes of the said Court on Tuesday the 7th day of June Anno Domini 1774. and upon due Consideration had of the Matters therein severaly contained, and of the Pleadings and Arguments used by the Attorneys on both Sides — it appearing to the Court that the Bill of Complaint brought in to the Honble the Mayors Court is vague and insufficient in Law to put the Defendant upon his Answer thereto, This Court doth think fit to order and Decree and doth accordingly order and Decree that the Order of the Honble the Mayors Court contained the said Extract, be reversed and set aside, that the Demurrer be admitted, and that the Bill of Complaint be dismissed, with all Costs of this Suit in both Courts. The said Bill of Complaint being Dismissed as aforesaid the Order for the Amendment — thereof is thereby set aside and annulled.

Ct Cur