25,000—4-5-32.

Block 7

Rack No.

Shelf No.

Serial No. 53

General No.

with

No. B 12th May 1787

1787					
July	29	Estimate for the following [illegible] found	R: 300	"	"
	20	By Bills of Extras			
	"	By Bills of Stores			
	24	By ditto ditto	17[illegible]		
	"	By one Anchor	300	"	"
	"	By one ditto	405	"	"
	"	By Ballance due to me	1499	10	7
		Rupees	10180	8	"

For mas[illegible] [illegible]

humbly prays to

Costs and Charges [illegible]

[illegible]ined

Fort Saint George

6th December 1787

Sworn to before me

Jas. Call

Mayor

R. Spencer

Atty Deft.

C. Fenwick

s as per [illegible]

35 " "

[illegible] mims [illegible] included in the Contract
ng Sa. Rupees 101. 14 .... } 320. 15 "

Sicca R[illegible] 10. " "

To Ballance of Cr. side being Sa. Rupees 1499.
10. 7 Exchange at 346. Sa. Rps. ⅌ % Pagodas } 433. 20 "

1787 Decr. 1st. To Interest on ditto from 20th. July to this day
being 4m. and 11d. at 12 per Ct. per annum } 18. 41. 50

Pagodas

Fort

Errors E

---

with

No B 12th May 1787

1787 July 20 [illegible] found

20 By Bills of Extras .... R: 300 " "

By Bills of Stores ....

24 By ditto ditto .... 17[illegible]

" By One Anchor .... 300 " "

" By One ditto .... 405 " "

By Ballance due to me 1499. 10. 7

[illegible] ditto

Sicca Rupees 10180. 8 "

17[illegible] Decr. 1st By Ballance due .... 45[illegible]

Pagodas 452. 16. 50

C. Fenwick

A true Copy
J. Spencer
Atty Dept

1[illegible] [illegible]ceſs Galley

[illegible]nir to perform a Voy[illegible]ge to Ma[illegible]s, as appeared on a [illegible] taken on Board May the 12th 1787.

A new Rudder with mettle Gudgeons and Pintles

New Sheathing for the Binds to the Copper

New Bower and Top mast Caps

Tot mast Croſs Trees to be Repaired

Deck's and Topsides to be Caulked fore and Aft

New Catt Heads

Fair new Paulls and a Stop Hoop for [illegible]apstan also the Partners to be Repaired.

A New Croſs Peice for the Bitts

One New Cabreſs.

The Knees of the Head to be taken off.

A new Quarter Peice, also the Stern and quarter Gallerys to be Repaired some of the Chain Plates to be Shifted with oth.r trifling Repairs. _

Jn.o Dickson
W. Ayres.
Signed Ray. Taylor
Gilles Avery
Shipwright

I do agree on Behalf of the Nabob of the Carnatic to give 3800 Sicca Rupees for the above wanted Repairs.

Calcutta May 12th 1787.

(Signed) C. Fe[illegible]

A true Copy
J. Spen[illegible]
Atty D[illegible]

No P 12th May 1787. ___

An Estimate for the following Re[illegible] found on Board the Ship [illegible]ceſs Galley ___ [illegible] R: 300 "

The Ship to be Hauled on shore and the Iron [illegible] and Replaced with Metal ones.

A new Rudder Completely filled with Metal Pintles, 4 in No.

New Sheathing from the Binds to the Copper.

Fore and Main Caps new.

Tot mast ditto ditto

D[illegible]ks and T[illegible]psides Caulked for and Aft

New Catt Heads

2 New Paulls and Stop Hoops to Capstand

A new Croſs Peice for the Main Bitts

Partners of the Capstand Repaired

A N[illegible] Caboose

The Knees of the Head taken off

One New Quarter peic

Stern and Quarter Gallerys to be Repaired

4 Chain Plates to be Shifted

Any small Repairs which may appear the Workmanship is not to be Charged.

The above Repairs to be Completed for Sicca Rupees 3800.

Signed Giles Avery

A true Copy
J. Spencer
Atty Deft.

(1763)

C

Sir

Rather to pr[illegible] ceived the Note and am Exceedingly Obliged to you
taken on
A new I assure you Sir at present ts of ag. Assistance to me.

N

I am Sir
Your very Obedient Servant
Signed. Giles Avery

16th June 1787

To C. Fenwick Esquire
the other Side is a receipt

Calcutta June 16th 1787 Partners

Received from Cuthbert Fenwick Esquire the Sum of Sicca Rupees One Thousand Eight Hundred and Seventy one – and Nine Annas on Account.

S. R. 1871 „ 9 „ „

Signed Giles Avery

A true Copy – P. Spencer
Atty Defdt.

D

Calcutta June 18th 1787

Received from C. Fenwick Esquire the Sum of Sicca Rupees One Thousand on Account with him.

S. Rs. 1000 „ „

Signed Giles Avery

Accepted Payable Tuesday
the 18th of June 1787.

Signed – C. Fenwick

A true Copy P. Spencer
Atty Defdt.

1764

E

2

Calcutta July 7th 1787

C. Fenwick Esqr.
Bought of Giles Avery

One Anchor per Agreement	S. R. 300 „ „ „

E. E. Contents Received

Signed Giles Avery

A true Copy – P. Spencer
Atty Defdt.

F

The Success Galley and Owners	Dr.
To an Anchor wt. 15 cwt at 25 pieces	375 „ „ „
Stocking ditto	30 „ „ „
	S. R. 405 „ „ „

E. E. Calcutta July 20th 1787: Received Payment
Signed G. Avery

A true Copy – P. Spencer
atty Defdt.

G

Received form Captain Fenwick a Check on the General Bank for Sicca Rupees Eight Hundred and twenty four, and a Draft on Messrs. Turnbull and Co. for Sicca Rupees One Thousand Six Hundred and Ninety One, Amounting to Sicca Rupees One Thousand Six hundred and Ninety five in part Payment for Repairs done the Ship Success Gally –

24th July 1787.

Signed – Giles Avery

A true Copy P. Spencer
atty Defdt.

H

Calcutta July 30th 1787

Received from Chas. Fenwick Esqr. by the Hands of Mr. William Leslie the Sum of Sicca Rupees three hundred and Eighty five on Acct.

S. Rs. 385 " "

Signed } Jno. Martin for
G. Avery

A true Copy

P. Spencer
atty Deft.

Filed 11th Decr. 1787

To the Honble the Mayor's
Court at Madraspatnam

Humbly Complaining Sheweth unto this Honorable Court your Orator Cuthbert Fenwick late Commander of the Ship Success Galley, that Giles Avery stands justly and truely indebted unto your Orator in the full and just Sum of Four Hundred and Fifty two Pagodas Sixteen fanams and Fifty Cash current Money of Madras making in sterling Money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of One Hundred and Eighty Pounds Eighteen Shillings and Sixpence or thereabouts as does more particularly and at large appear by the Copy of an Account Current hereunto Annexed for the Inspection of this Honble Court and which your Orator prays may be admitted as part

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Filed the 25th

part of this his Bill of Complaint the Original being in the possession of your Orator's Attorney and ready to be produced before this Honble Court when required — And your Orator further sheweth unto this Honble Court that he hath frequently and in an amicable manner requested payment of the said Sum of Four Hundred and Fifty two Pagodas Sixteen fanams and Fifty Cash from the said Giles Avery.

But now so it is may it Please this Honble Court that the said Giles Avery Obstinately and wilfully refuse to pay the same or to give your Orator any manner of Satisfaction touching the premises your Orator therefore prays a general Relief such as to this Honble Court shall appear agreeable to Equity and good Conscience To the End therefore that the said Giles Avery may upon his Corporal Oath full true Direct and perfect Answer make to all and Singular the Matters and things herein before set forth and alledged as fully truely and effectually to all Intents and purposes as if the same were here again repeated and particularly interrogated and that he may be decreed to pay unto your Orator the afore said Sum of Four Hundred and Fifty two Pagodas Sixteen fanams and Fifty Cash together with all such Interest as now is or shall hereafter become due thereupon and also all Costs of this Suit

May it Please this Honble Court to Cause the said Giles Avery to be Summoned and required by the Sheriff of Fort St. George Town of Madraspatnam and the Districts thereof personally to be and appear before this Honble Court at a certain time and Place to be by this Honble Court prefixed and Appointed then and there to Answer this your Orator's Bill of Complaint and further to stand to and abide by such Order and Decree therein as to this Honble

1767

Dr. — Giles Avery in account Current with Cuthbert Fenwick — Cr.

1787 July	20th	To amount of Money paid you as ⅌. your separate Receipts	5656.	9.	"
		To One Anchor charged and paid for never received	405.	"	"
		To Nonperformance of that part of your Contract of new spiating the ship from the Copper to the Bends	1266.	"	"
		To Nonperformance of making Cat Head according to promise	400.	"	"
		To Charges in your Extra Bill for articles mentioned in the Contract	2072.	"	"
		To Deficiency of Top Mast Capsas ⅌ Contract	25.	"	"
		To Mizen Cap	35.	"	"
		To Black Smiths Bill included in the Contract expecting Sa R. 101. 14.	320.	15.	"
		Sa Rupees	10180.	8.	"
		To Balance of Cr side being Sa Rupees 1499. 10. 7. Exchange at 346 Sa Rupees ⅌ % Pagodas	433.	20.	"
1787 Decr.	1.	To Interest on Do. from 20th July to this Day being 4Mo. & 11ds at 12 ⅌ Cent ⅌ annum	18.	41.	50.
		Pagodas	452.	16.	50.

1787 July	20th	By your Contract	3800.	"	"
	20th	By Bills of Extras	2895.	13.	"
		By Bills of Stores	1106.	2.	5.
	24th	By do. Do.	173.	14.	"
		By One Anchor	300.	"	"
		By One Do.	405.	"	"
		By Balance due to me	1499.	10.	7.
		Sa Rupees	10180.	8.	"
1787 Decr.	1st	By Balance due	452.	16.	50.
		Pagodas	452.	16.	50.

Fort St. George December 1st. 1787.
Errors Excepted ⅌.
(Signed) C. Fenwick

A true Copy
P. Spencer
atty Cross Compt.

1768

Filed the 25th March 1788:

The Replication of Giles Avery of Fort William in the Province of Bengal Ship Carpenter by his attorney Charles Baker of Fort Saint George Esquire Complainant and Cuthbert Fenwick late Commander of the ship Success Galley Defendant.

This Repliant saving unto himself all and all manner of Advantage of Exception to the manifold Insufficiencies of the said answer for Replication thereunto saith that he positively denies that he owes or is indebted to the said Defendt. in the sum of Four hundred and Fifty two Pagodas Sixteen fanams and fifty Cash or in any such Sum or any sum of Mony whatsoever and this Repliant saith he admits the said Defendant called upon three Persons to Survey the said Ship & Success Galley jointly with him and this Repliant and after the Survey was made thereof such paper as setforth by the Defendant and marked with the Letter **A** was signed and this Repliant admits He did enter into such written Contract or agreement with the said Defendant as setforth by him the said Defendant and marked with the Letter **B** and in Consequence and pursuance of such his contract he did repair the said Ship in a good Staunch and workmanlike manner agreeable to the Survey that had been so made That he never neglected to perform any part of the Contract or in any manner whatsoever departed from it and Doth aver that he shall be able to fully prove the same by the Evidence of the most respectable Persons and therefore Humbly insists that the said Defendant has no Right nor is he intitled to he hath done by the Account Current annexed to the said Answer with a Sum of Sicca Rupees one thousand two hundred and Sixty Six for non performance of part of the said Contract in not new Sheathing the Ship from the Copper to the Bends or of a further Sum of Sicca Rupees Four hundred for Non performance of making a Cat Head the same having been duly made and positively denies that he has in any Extra Bill for Articles mentioned in the Contract charged the said Defendant with the sum of Sicca Rupees two Thousand and Seventy two or that there was any difficiency of Topmasts Caps to the amount of twenty five Sicca Rupees or a Mizen Cap of Thirty five Sicca Rupees or that the Blacksmiths Bills to the amount of Sicca Rupees three Hundred and twenty and fifteen annas charged were included in the Contract that if he the said Defendant had conceived that this Repliant had no performed his Contract it was very easy for him to have compelled him so to have done or recovered Damages for a Non performance thereof by bringing an Action in the Supreme Court of Judicatore in Calcutta B but that in truth and in fact the said Defendant never objected that the said Contract was not fully compleatly performed and Agreeable to the Terms or at any time even suggested that there was any breach thereof in any instance although he had full length of time so to have done untill he was about to sail when as this Repliant supposes as a pretended justification for his Conduct in not paying this Repliant he got the said officers of the Ship so send up a protest to Calcutta as alluded to in his the said Defendants answer

Answer to this Repliant positively saith there was no reason or just foundation for his so doing as he will fully prove That this Repliant is advised and verily belives that it was quite optional in him whether he chose in his Affidavit annexed to his Bill to state or allude to the Contract that the Practice of all Courts of Justice where the English Law prevails Is to swear to the Debt generally which this Repliant did and at the trial of the Cause to prove the Person Indebted and the Consideration of the Debt and this Repliant Hath no doubt he will be able prove to the Satisfaction of this Honble Court the whole of his Case This Repliant further saith that so far from any Objection being made relative to this Repliant not having fulfilled his contract That the Defendant after the said Repairs were done employed this Repliant to furnish the Stores and do all the further necessary Repairs that the said Ship wanted and which were not included in the said survey and of Course not in the Contract so as aforesaid entered into by this Repliant the particulars of which work done and materials found appear by the Schedule annexed to the this Repliants Bill of Complaint and this Repliant hath also annexed a true Copy of his account to this his Replication the truth and justice of which he will be able to Prove That in the said account he has given Credit for the Sum of One Thousand Eight Hundred and Seventy one Rupees nine annas and One Thousand. agreeable to the Receipts mentioned in the said Defendants answer and Marked C & D That with Receipt to the anchors this Repliant says he is astonished at the said Defendant in charging him this Repliant with the Sum of Sicca Rupees four hundred and five for an Anchor not delivered with to which this Repliant saith the truth and the fact and which he is able to prove is That Repliant never delivered but one anchor to the said Defendant that the said Anchor was worth as per Weight four hundred and five Sicca Rupees but as the said Defendant had given this Repliant the Repairing of the Ship he this Repliant let the said Defendant at his Request have the same at and for the price of Sum Sicca Rupees three hundred which was the only Sum he Received for the same and for which the bill and Receipt marked Letter **E** was given by this Repliant That a few days after he had received the said Sum The said Defendant Requested this Repliant to send him a Receipt for the Sum of four hundred and five Sicca Rupees the real worth of the Anchor in Order that he the said Defendant might shew the same to the said Nabob and charge him that Sum for the said Anchor and that accordingly he this Repliant did send the said Receipt Marked /**F**/ and dated July twentieth one thousand seven hundred and Eighty seven in addition to his former Receipt Marked /**E**/ and this Repliant in making up the said Account did gave Credit for the said Sum of Sicca Rupees four hundred and five as per the Account Annexed all which this Repliant is also able to prove — That with regard to the Receipt (G) refered to by the said Defendant in his said Answer this Repliant saith he only Received the Sum of Sicca Rupees One Thousand Six hundred and fifteen in stead of the sum of Sicca Rupees One thousand Six hundred and ninety five as Charged by the said Receipt upon the face of which there appears to be a mistake The Draft upon the General Bank was for Sicca Rupees Eight hundred and twenty four and the Draft of Messrs. Turnbull and Co. as appears from the draft itself for Sicca Rupees Seven hundred and ninety

Makes a Difference of Seventy Six Rupees over Charged in the said ceipt against this Repliant That this Repliant is advised is the peculiar province of Courts of Equity to relieve against raud or mistake and where it appears from proof self Evident That a party has not Received so much as he may have given Receipts for Equity will not suffer such Receipts to be conclusive against him and therefore this Repliant submits he is not to be charged with the Money for which the Receipt /**G**/ purports to be given but with the Sum actually Received and all Submits he is not to be charged with the two Receipts /**E** and **F**/ having never Received but one Sum on Account of the Anchor and also Submits that the the said Defendant did take away Receipts for the whole Amount of this Repliants demands yet that not having paid this Repliant the full amount he the said Defendant is not to be discharged at the he has the said Receipts That if the said Defendant or his attorney had carefully Perused the affidavit of this Repliant they would have found the falsity of what the Defendant has Sworn in Reply there to where he says "There is a difference of Sicca Rupees Six hundred and fifty seven between the amount of the Receipts in the hand writing of the said Repliant and setforth by the Defendant and the Sum Admitted to be received by this Repliant in his Affidavit For this Repliant saith that altho' the amount of the said Receipts is five thousand six hundred and fifty Rupees Nine annas as stated by Defendant / Yet the amount for which this Repliant gave Credit to the said Defendant was five thousand three hundred and Eighty four Rupees Nine Annas as by reference to the said Affidavit clearly Appears first by Crediting him

for four Thousand Nine hundred and Ninety Nine
Annas and afterwards with the Sum of three hun
ty five Rupees received after the said Defendan d which he
which said Sum of three Hundred and Eight anchor to the
is the very Sum for which the Receipt Exhibi per Weight
ced by the said Defendant was given And therefore Defendant
not be but an appearent difference of Sicca Rupees Two Replicant
and Seventy One between the amount of the said Receipt was
the Sum Acknowledged to be received against which the ll and
Sum of Sicca Rupees three Hundred Receipt **E** charged a few
said Defendant in his account against this Replicant at Repu
Replicant insists to be sett off which makes a Sum of
Nine Rupees more than the said Receipts to amount to whe
being added to the Sum of Seventy Six Overcharged in said
Receipt (G) is Sicca Rupees One hundred and five the very
difference between the two Receipts (**E** and **F**) and which
this Replicant had agreed to loose on account of the Anchor
having given Credit for the sum of Sicca Rupees four hundred
and five as before setforth All which matters and things
he will ever justify maintain and prove as this Honble
Court shall award and Prays as in and by his said bill
he already Prayed

Chas. Baker
Atty for the Replicant

B

ptain Fenwick in Account

	Rs	as	p
To Repair done for the Success Galley as per Survey Agreement	3850	"	"
To Do. not included in the Survey or Agreement	2893	13	"
To Stores not included in the Contract	1106	2	5
To Do.	173	14	"
Anchor	405	"	"
Repairs of Boat	31	13	"
	8412	10	5
	5384	9	"
	3028	1	5
Cash paid Messrs. Hamilton and Forbs for proceedings against Captain Fenwick	243	4	"
Balle. due	3271	5	5

1787			Rs	as	p
June	16	By Cash	1871	9	"
	18	By Do. Received	1000	"	"
	20	By Do. Do.	405	"	"
July	24	By Do. Do. as pr Drafts Do.	791	"	"
		By Do. Do. as Br. Old Copper Do.	100	"	"
		By Do. Do. per the hands of Mr. William Liste	385	"	"
			5384	9	"

Chas. Baker
atty for Giles Avery

A true Copy

Chas. Baker
atty for Replicant

of
was
tract
had
nore
have
Onesele
from
part of

Filed 25th March 1788

The Croſs Ans ences nine
Avery by his Attorney C and Eigh
Madras to the Croſs P Calcutta
of Cuthbert Fenwick Rupees
place Croſs Complain nces te could

This Croſs Defendant by hi
now and at all times hereafter saving and reservin h mad
self all and all manner of Benefit and advantage of hi
to the many Untruths Errors Incertainties Insuffic ts an
Imperfections in the said Croſs Bill of Complaint said
for Answer thereunto or unto somuch thereof a by th
Defendant is Advised doth Materially Concern this
Answer unto he this Croſs Defendant Answereth twenty
that he poſitively denies that he was or is indebt the the
said Croſs Complainant in the Sum of Four Hund four
fifty two Pagodas Sixteen fanams and fifty Cash or in
Sum of Money whatsoever That he admits the said Croſ
Complainant having called upon Three People to take a
of the said Ship the Succeſs Galley together with this Croſ
Defendant that after such Survey was made such Paper a
exhibited by the said Croſs Complainant with his Answer
to the Original Bill of Complaint Marked A was sig
This Croſs Defendant admits that he did enter into su
written Agreement or Contract with the said Croſs Comp
nant as setforth and Annexed to the said Croſs Comp
Answer to the Bill filed by this Croſs Defendant B

B and in pursuance of which this Croſs Defendant did repair the said Ship the Succeſs in a good Substantial and workman like manner And that every Particular of the said Agreement was attended to and in no one respect was the same Violated or departed from as he this Croſs Defendant doubts not he shall be able to prove to this Honble Court and therefore saith and humbly insists that the said Croſs Complainant hath no grounds to Charge this Croſs Defendant in the manner he hath done in and by the Account Current Annexed to his Croſs Bill of Complaint to wit with a Sum of Sicca Rupees One thousand Two hundred and Sixty Six for non performance of that part of the aforesaid Contract which relates to new Sheathing the said Ship Succeſs Galley from the Copper to the Bends nor with a further Sum of Sicca Rupees four hundred for not making a Cat head the same having been duly made and poſitively and pointedly denies having Charged in any Extra Bill for Articls mentioned in the Contract Amounting to Sicca Rupees Two thousand and Seventy two or that there was any Deficiency of Top Masts Capes to the amount of Twenty five Sicca Rupees or a Mizen Cap of thirty five Sicca Rupees or that the Sum of Three hundred and Twenty Sicca Rupees fifteen Annas as part of the Black Smiths Bills was included or ever meant or intended so to be in the said Contract This Croſs Defendant saith that if he this Croſs Defendant had been so deficient in the performance of his Contract it is the more extraordinary that the said Croſs Complainant Should not have discovered the same before and have taken Measures to Compele the Croſs Defendant to have Compleated it but so far from that the said Croſs Complainant never Objected the said Contract being unfurnished or incompleat B Suggested any Disaprobation relative to the same until he was about to Sail when at this Croſs Defendant Supposes he prevailed upon his Officers to send up the Protest adverted to in the answer of the said Croſs Complainant to this Croſs Defendant Original Bill of Complaint The absurdity and futility of which this Croſs Defendant saith will appear to this Honble Court upon the perusal of four Chits to whereof are written to this Croſs Defendant by the Croſs Complainant a few days previous to the Croſs Complainants Departure from Calcutta the last of which is written upon the back of and in Answer to a Letter from this Croſs Defendant requesting Payment of all his Bills as well relating to his Extra Charges as on Account of the said Contract as by Copies of the said Letters hereunto Annexed Marked A. B C and D will fully appear and which this Croſs Defendant prays may be taken as part of this his Answer the originals being in his aforesaid attorney's Poſseſsion and ready to be Produced when called for this Croſs Defendant therefore hopes that the repeated Promises of Payment made by the said Croſs Complainant to this Croſs Defendant of his Money and without any Objection or demur whatsoever made to the said Croſs Defendants Bills will be sufficient equally to do away the Pretended Demand set up by the Croſs Complainant in and by his Croſs Bill and also to establish the justneſs of the Demand for Payment whereof this Croſs Defendant was compelled to file his original Bill against the said Croſs Complainant This Croſs Defendant by his said attorney further answering saith he is at a loſs now sufficiently to expreſs his astonishment at the said Croſs Complainants charging him

for

for an Anchor as paid for and never received as he Could not have conceived it Poſsible for the particular Circumstance relating there to have been out of the Recollection of the said Croſs Complainant This Croſs Defendant saith that true it is that only one Anchor was ever delivered the Value whereof was according to the weight four hundred and five Sicca Rupees but in Consideration of the said Croſs Complainant having given this Croſs Defendant the Job of repairing the said Ship the Succeſs he this Croſs Defendant only Charged the Sum of three hundred Sicca Rupees being the Price the said Anchor Stood him in and for which the Bill and Receipt Annexed to the said Croſs Complainant Answer to this Croſs Defendant Originall Bill of Complaint Marked with the Letter E was given by this Croſs Defendant That Shortly after he had received the said Sum he the said Croſs Complainant requested this Croſs Defendant to makeout and send him a Bill and Receipt for the Sum of Sicca Rupees Four Hundred and five the real Value of the anchor in Order that the said Croſs Complainant might Shew the same to the Nabob of Arcot and so enable him to Charge the said Nabob with that Sum which this Croſs Defendant conceives of the real Price and worth of the said anchor and it being his Intention to benefit the said Croſs Defendant only by relinquishing his own Profit thereon Did not hesitate to do a Copy of which Bill and Receipt is the Exhibit F annexed to the said Croſs Complainants Orginal Answer and the return now made this Croſs Defendant by the said Croſs Complainant is an attempt to Charge him with the Sum of four hundred and Five Sicca Rupees which he Pretends was for a Second

Anchor designed and intended to be but never delivered and on the same Pretence the said Cross Complainant by including the two Receipts for three Hundred Sicca Rupees and four hundred and five Sicca Rupees although they both relate to one and the same Anchor in the Manner above setforth hath Charged this Cross Defendant with the Sum of Five thousand Six hundred and fift Six Sicca Rupees Nine Annas for Money Paid as he calls it u his this Cross Defendants Receipts whereas the fact is that our Cross Defendant hath only received the Sum of Five thousand three hundred and Eighty four Sicca Rupees Nine Annas as will Appear by a Copy of his account Current Annexed to his Replication filed in the Original Suit commenced by this Cross Defendant against the said Cross Complainant which said Replication and Account Current this Cross Defendant prays may be taken as part of this his Cross Answer and that he may be allowed every Benefit thereof.

All which Matters and things this Cross Defendant is ready and willing to verify maintain and Prove as this Honble Court shall direct and humbly prays to be hence Dismissed with his Reasonable Costs and Charges in this behalf most Wrongfully Sustained.

Chas. Baker
Atty for the Cross Defendant

Sworn before me
this 25th day of March
1788

Jas. Call
Senr. Alderman

Chas. Baker
Atty for Giles Avery

A

To Captn. Lisle
Dr. Sir

Send me a Receipt for the Two hundred sent from the Success for the Snow Sophia and a Receipt for the Cash Advanced Yesterday I wish you will off for I am told they Intend to move for an Execution against Ship and Cargo to Morrow on account of Douglas it will be Night before they can do it If they meet with no Impediments

Gs. C Fenwick

Tell avery he shall have his money on Tuesday morning

22 July Sunday 10 OClock

A true Copy

Chas. Baker
Atty for Cross Defendant

B

Mr. Avery Send your Circar now as I have just received some Cash lett him Bring a Receipt for One Thousand Sicca Rupees and Send him again to Morrow with a Receipt for the rest Pray send a Caulker on Board to Caulk the Ports in between Decks

Gs. C Fenwick

1 One Clock

Received 24th July 1787

A true Copy

Chas. Baker
Atty for Cross Defendant

C

Sir

My Sircar Informs me that you have Ordered my Bills to be paid at two oClock When my Sircar came / yours told him he could not be paid to day I hope you will be Good Enough to Give him further Orders as Every person to Whom I am Indebted a Rupee is tearing me to Pieces & I know Not ... sed What to do, for through your Promising me I have prom others

I am Sir

Your most Obdt. Servt.

24th July 1787

Giles Avery

A true Copy

Chas. Baker

Atty for Cross Defendant

Dr Sir

D

Mr Lisle who is now with me will Bring Your Money

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A true Copy

Chas. Baker

Atty for Cross Defend.t

Filed the 6th May 1788:

The Rejoinder of Cuthbert Fenwick late Commander of the Ship Success Galley Defendant to the Replication of Giles Avery of Fort William in the Province of Bengal Carpenter by his attorney Charles Baker of Fort Saint George Esquire Complainant

This Defendant now and at all times hereafter Saving and Reserving to himself all and all Manner of Benefit and Advantage of Exception to the Many Uncertainties and Insufficiencies of the said Replication for a Rejoinder thereunto saith that this Defendants answer is true certain and Sufficient in the Law to be replied unto and says and insists as in and by his said answer he has Already said and doth and will aver and Maintain all and every the thing and things therein contained to be true and Certain as in such Manner as the same is and are therein contained and Alledged and that the Replication of the Complainant is very uncertain in the Law to be rejoined unto by this Defendant for divers defects and imperfections therein contained and this Defendant for further Rejoinder saith

That he does absolutely deny that he is indebted to the said Complainant in the Sum of Star Pagodas Nine Hundred and Ninety seven and Twenty Seven fanams or in any Other Sum or Sums of Money whatsoever — and this Defendant does insist that on the Contrary the said Complainant Stand justly and truely indebted to this Defendant in the full and just Sum of Star Pagodas Four Hundred and fifty two Sixteen fanams and fifty Cash as will fully and at large Appear by this Defendants Answer and the Account Current thereunto Annexed as well as by the Croſs Bill filed by this Defendant in this Cause to which the Defendant prays leave to Refer — and this Defendant for further Rejoinder says and insists. —

That the Survey of the said Ship the Succeſs Galley being now Admitted by the Complainant tho not Noticed in his Original Bill of Complaint as well as the Contract made by him to this Defendant to put her in Complete Repair for the Price or Sum of Sicca Rupees Three Thousand and Eight hundred — The whole Matter in Dispute and which is Submitted to this Honble Court is whether the said Complainant did perform his Contract equally to the terms and Intention thereof or not and whether he was not Charged this Defendant with Many different Articles to a very large amount which were Meant and intended to be included in the Repairs undertaken to be Supplied by such Contract — and this Defendant doth again say and insist that the Complainant did not perform his Contract Agreeably to the Terms and Intention thereof — and that he has charged this Defendant with many different Articles to a Very large Amount which were Meant and intended to be included in the Repairs undertaken to be supplied by such Contract and this Defendant for further Rejoinder says and insists that he will in due time fully prove to the Satisfaction of this Honble Court by the Evidence of Several

different People equally as respectable as any the Complainant can produce — That the Complainant did not perform that part of his Contract which expreſsly Stipulates that the said Ship the Succeſs Galley Should be New Sheathed from her Copper to her Bends and that such deficiency is fairly and reasonably worth and May be justly and equitably Valued at the sum of Sicca Rupees One Thousand two Hundred and Sixty Six as Stated in the Account Current Annexed to this Defendants Answer and this Defendant also insists — that the said Contract Stated that a New Cat Head as well as Top Mast and Mizen Caps were to be Made and provided for the said Ship by the Complainant with the Complainant did not perform and that thereby there arose another Deficiency to be made good and Accounted for by the Complainant to this Defendant of the Sum of Sicca Rupees Four Hundred for such Cat Heads Sicca Rupees Twenty five for a Top Mast Cap and Thirty five Rupees for a Mizen Cap being the Value of such Articles respectively contracted to be provided and not provided by the Complainant and which said Several Sums of Sicca Rupees Four Hundred Twenty five annas and Thirty five Pice Must be made good and Accounted for by the Complainant to this Defendant and this Defendant for further Rejoinder says and insists that the said Complainant has Absolutely Charged this Defendant with the Sum of Sicca Rupees Two Thousand and Seventy two Articles Mentioned in the Contract and to be included therein and Three Hundred and Twenty Sicca Rupees and fifteen Annas for Black smiths work which Should also be included in the Contract and which said two Several Sums of Money of Two Thousand and Seventy two Sicca Rupees and Three Hundred and fifty Sicca Rupees and fifteen Annas must also be both Accounted for by the said Complainant to this Defendant and the same being carried to the Debit of the said Account Current there remains justly due and Owing from the Complainant to this Defendant the Sum of One Thousand four Hundred and Ninety Nine Sicca Rupees ten Annas and Seven Pice as is Stated in the Defendants Answer and the Account thereunto Annexed and at the Current Exchange and with the Interest added to it Amounted at the date of the said Account to the sum of Star Pagodas Four Hundred and fifty two Sixteen fanams and fifty Cash Current Money of Madras which with the Interest thereon this Defendant insists is justly due and Owing from the Complainant to this Defendant — and this Defendant for further Rejoinder says that he Admits that had he been of the same litigious and vexatious Disposition as the Complainant he might have brought an Action Against the Defendant in the Supreme Court of Judicature at Calcutta and no doubt would have recovered Considerable Damages for the non Performance of the Contract by the Complainant but tho he is ready to Admit his Disinclination to Law yet he can by no Means allow that such his Natural pacific Disposition should be Made a Handle to do away his Natural Rights when he is reluctantly forced into a Litigation by the litigious Spirit of Another — and this Defend^t.

for

for further Rejoinder says that it is unfair as well as unjust and highly reflecting upon the good Name of innocent and honest Men to intimate as the Complainant does that either he this Defendant could have procured his Officers, or that they could be so void of Integrity as to comply with such an improper Requisition as to have drawn up and Attested the Protest from the improper Motives Suggested by the Complainant and this Defendant insists that such Suggestions are Absolutely untrue and without the Smallest Foundation whatever, and that they had no Other Motive for so doing but the Manifest Deficiencies in the repairs of the said Ship — and the Defendant for further Rejoinder says that he can by no Means allow it was quite Optional in him in so solemn a Proceeding as an Application to this Honble Court for Redress to State only a part of his Story instead of the whole this Defendant has ever had that Reverence for this Honble Court as to suppose it to be the duty of every Suitor to State fully and candidly every particular of the Case in which he seeks Relief and the Contract for repairing the Ship was so Material a part of the transaction between the Complainant and Defendant that he cannot think it ought to have been omitted but at any rate it may be said that if it is Optional the Complainant has made use of that Option and wished to Suppress the Contract as no doubt he knew it would make very much Against him — and this Defendant for further Rejoinder says that the Plea of the Complainant that the Defendant Ordered Other Stores from him and that therefore the Complainant Must have performed his Contract which is a Strange vague and uncertain way of proving he did for it is not said that this Defendant had then examined into such Repairs and the fact really was that he had not – and this Defendant for further Rejoinder says that Notwithstanding any thing by the Complainant alledged to the Contrary and his Pretence that he did not receive the Amount of both the Receipts for the Sums of Three Hundred Sicca Rupees and Four Hundred and five Sicca Rupees for two Anchors but that of Three Hundred Sicca Rupees only Yet this Defendant says and insists that he certainly did receive both the said Sums and as he never received but one Anchor he is warranted in debiting his Account with the Amount of one of them which he has done in the Account Current to this Defendants Answer – and this Defendant for further Rejoinder says and insists that he by no Means admits that there was any difference Mistake in the Amount of the Receipt Marked G. being the Sum of Sicca Rupees One Thousand Six Hundred and Ninety five and the Sum of Money paid and whatever may be Alledged by the Complainant of the Interference of Courts of Equity in such cases Yet this Defendant Says that such Receipts so given by the said Complainant upon receiving the said Money and so long acquiesed in and Confirmed by Subsequent Receipts Must be final and Conclusive and Absolutely for the Complainant even if there had been a Mistake of Seventy five Sicca Rupees of the Relief he prays – and this Defendant denies any Intention of Making use of Any Receipt whatever but such as he has Actually paid the Amount for and his Answer and Cross Bill has shewn the Complainants

Complainants wishes to insinuate the Contrary – and this Defendant for further Rejoinder says and insists that notwithstanding any thing Alledged by the Complainant to the Contrary that there is palpably and Manifestly a difference of Sicca Rupees Six Hundred and fifty Seven between the Sum given Credit for by the Complainant in his Affidavit and the Sum actually received & that therefore such Affidavit is erronious – and lastly this Defendant says and insists that as he has clearly evinced that instead of this Defendant being indebted to the Complainant he is indebted to this Defendant in a Considerable sum of Money – his taking out a Warrant of Arrest Against this Defendants Person and Commencing a Suit against him at Calcutta and also a Suit in the Court of Admiralty there, to detain his Ship at the time when this Defendant was about to depart in hopes no doubt that the Defendant Might be induced to pay him the sum Claimed rather than be detained – is a Most cruel and wanton Instance of the litigious Disposition of the Complainant and can be only equalled by the Complainants present Attempt to Charge him with the Amount of these two unrightious Suits and his arresting him here for the Amount the same were instituted for a debt that did not exist and no Proceedings were ever had upon them. –

All which matters and things this Defendant is ready and willing to verify Maintain and prove as this Hon^ble Court shall Direct and humbly prays as in and by his said Answer he hath already prayed. –

Cha^s. Inglis
Att^y for the Def^dt.

Filed 6th May 1788

The Croſs Replication of Cuthbert Fenwick late Commander of the Ship Succeſs Galley Repliant to the Croſs Answer of Giles Avery of Fort William in the Province of Bengal Carpenter by his Attorney Charles Baker of Fort Saint George Esquire Defendant

This Croſs Repliant now and at all times Saving and Reserving unto himself all and all Manner of Benefit and Advantage of Exception to the Many Evasions Errors Incertainties Insufficiences and Imperfections in the said croſs Answer Contained for Replication thereunto saith and insists that the Croſs Defendant is justly and truely indebted to this Croſs Repliant in the Sum of Four Hundred and fifty two Star Pagodas Sixteen fanams and Sixty Cash as is Stated in the Bill of Complaint and the account Current thereunto Annexed and the Croſs Repliant for further Replication saith that the Croſs Defendant having Omitted the Survey made of the Ship the Succeſs Galley as well as the Contract entered into by the Croſs Defendant to put her in complete Repair for the price or Sum of Sicca Rupees Three Hundred and Eight Hundred the only Matter in dispute between this Croſs Repliant and this Croſs Defendant and which is humbly Submitted to the Investigation and Enquiry of this Honble Court is whether the said Croſs Defendant did really and truely perform his part of the Contract Agreeably to the terms and intention thereof on

on whether he has not evidently failed therein – And Secondly whether he has not Charged this Repliant with Many different Articles to a very large Amount which were Meant and intended to be included in the Repairs provided for by such Contract and this Croſs Repliant says and humbly insists that the Croſs Defendant did not perform his Contract Agreeably to the terms and intentions thereof and further that he has actually charged the Croſs Repliant with Many different Articles to a very large Amount which were Meant and intended to be included in the Repairs undertaken to be Supplied by such Contract – And this Croſs Repliant for further Replication says and insists that he will in due time fully prove to the Satisfaction of this Honble Court by the Evidence of Several different People equally as respectable as any the Croſs Defendant can produce That the Croſs Defendant did not perform that part of his Contract which expreſsly Stipulates that the said Ship the Succeſs Galley Should be New-Sheathed from her Copper to her Bends and that such deficiency is fairly and reasonably worth and May be justly and equitably Valued at the Sum of Sicca Rupees One Thousand two Hundred & Sixty Six as Stated in the Account Current annexed to this Defendants Answer and this Defendant also insists that the said Contract Stated that new Cat Heads as well as Top Mast and Mizen Caps were to be made and provided for the said Ship by the Complainant which the Complainant did not perform and that thereby there arose another Deficiency to be made good and accounted for by the Croſs Defendant to the Croſs Repliant of the Sum of Four Hundred Sicca Rupees for such Cat Heads – Sicca Rupees Twenty five for a Top

Mast Cap and Thirty five Rupees for a Mizen Cap being the Value of such Articles respectively contracted to be provided and not provided by the Croſs Defendant and which said Several Sums of Sicca Rupees Four Hundred Twenty five annas and Thirty five Pice Twenty five Rupees, and Thirty five Rupees, & Must be Made good and Accounted for by the Croſs Defendant to the Croſs Replication and this Croſs Repliant for further Croſs Replication says and insists that the said Croſs Defendant has absolutely charged this Croſs Repliant with the Sum of Sicca Rupees Two Thousand and Seventy two for Articles Mentioned in the Contract and to be included therein and Three Hundred and Twenty Sicca Rupees and fifteen Annas for Black Smiths work which Should also be included in the Contract and which said two Several Sums of Money of Two Thousand and Twenty two Sicca Rupees and Three Hundred and fifty Sicca Rupees and fifteen Annas Must also be both accounted for by the said Croſs Defendant to this Croſs Repliant and the same being carried to the debit of the said Account Current there remains justly due and Owing from the Croſs Defendant to this Croſs Repliant the Sum of One Thousand Four Hundred and Ninety Nine Sicca Rupees Ten annas and Seven Pice as is Stated in the Croſs Defendants Answer and the Account thereunto Annexed and the Current Exchange and with the Interest Added to it amounted at the date of the said Account to the Sum of Star Pagodas Four Hundred and fifty two Sixteen fanams and fifty Cash Current Money of Madras which with the Interest thereon this Croſs Defendant insists is Justly due and Owing from the Croſs Defendant to the Croſs

Repliant

Repliant and this Croſs Repliant for further Replication says that he Admits that had he been of the same litigious and vexatious Desposition as the Croſs Defendant he Might have brought an Action Against the Croſs Defendant in the Supreme Court of Judicature at Calcutta and no doubt would have recovered Considerable Damages for the Performance of the Contract by the Croſs Defendant but tho' he is Ready to Admit his Disinclination to Law Yet he can by no Means allow that such his Nature pacific Disposition should be made a Handle to do away his Natural Right when he is reluctantly forced into a Litigation by the litigious Spirit of Another — And this Croſs Repliant for further Replication Says that it is unfair as well as unjust and highly reflecting upon the good Name of innocent and honest Men to intimate as the Croſs Defendant does that either he this Croſs Repliant could have procured his officer or that they could be so void of Integrity as to Comply with such an improper Requisition as to have drawn up and Attested the Protest from the improper Motives Suggested by the Croſs Defendant and this Croſs Repliant insists that such Suggestions are absolutely untrue and without the Smallest Foundation whatever and that they had no Other Motive for so doing but the Manifest Deficiencies in the repairs of the said Ship and this Croſs Repliant for further Replication saith that Notwithstanding any thing by the Croſs Defendant alledged to the contrary and his pretended plea of not having received the Amount of both the Receipts for the several Sums of three Hundred Rupees, and Four Hundred and five Rupees, for two anchors but only one of them that his to say that of Three Rupees, only yet this Croſs Repliant Says and insists that he

certainty