Stephen Circuit Series II

Appeals against Magistrate's Court decisions

Vol No 5

APPEAL

25,000—4-5-32.

Block 7

Rack No.

Shelf No.

Serial No. 5

General No.

107

163

To George Dawson Esqr. Jr. Council of Fort St. George.

In the Court of Appeals

Between John Harrison of London in the Kingdom of England Esqr. by his Attorney Alexander Wynch of Fort St. George Esqr. by his Attornies John Maxwell Stone of Fort St. George Esqr and William Wynch of the same place Complainant and George Smith of Fort St. George Esqr. Defendant

Filed in my Office 25 Sept. 1775 Chas. Oakeley Clk

The Humble Petition of the said John Harrison by his Attorney Alexander Wynch by his Attornies John Maxwell Stone and William Wynch

Sheweth

That this Appellant by his said Attornies did on the Tenth Day of August One Thousand Seven Hundred and Seventy two Exhibit a Bill of Complaint in the Honorable the Mayors Court against the said Defendant therein Setting forth that he the said Defendant was Justly and truly

John Clough having given the Necessary Directions to the said George Smith for that purpose this Appellant in his said Bill did further Set forth that the said Rawson Hart Boddam and John Clough in their Letter Acknowledge to have the Amount of the Money lying by them and had taken an Opportunity that then Offered and which was to them Convenient of remitting the Ballance to the said George Smith and that they made no Doubt but that he the said George Smith would punctually Comply with it this Appellant did further Set forth that on Receipt of the said Letter by the said Alexander Wynch he the said Alexander Wynch did some time in the Month of December One Thousand Seven Hundred and Sixty Eight Apply to the said George Smith for Payment of this Appellants Demand pursuant to the said Letter of Advice, who Acquainted this Appellants said Attorney that he the said George Smith had Received Orders from the said Rawson Hart Boddam and John Clough to pay off this Appellants said Ballance of accounts which he promised to do as soon as he had Disposed of the Cargo of the Ship Royal George Consigned to him by the said Rawson Hart Boddam and John Clough a part of which was to make Good the Demand of this Appellant. This Appellant did further Set forth that on his said Attornies Applying for payment of Interest to the Day this appellants Demand was to be Discharged he the said George Smith informed him in writing (a Copy of which marked C. this appellant did Annex unto his said Bill) of the Impropriety of his Allowing Interest without the Orders of the said Rawson Hart Boddam and John Clough, and also in the said Letter

Letter further informed this Appellants said Attorney that a Fund was allotted by the said Boddam and Clough for the Discharge of this Appellants Debt out of the Amount of the Royal George's Cargo which was Sold to the President and Council of Fort St. George and for which a Bond or some other writing was given by them, an Assignment of so much thereof as Amounted to the then Demand of this Appellant, he the said George Smith therein Offered to this Appellants Attorney the said Alexander Wynch who refused Accepting of such Assignments as thinking himself not at Liberty to Admit of such a Credit on Account of this Appellant This Appellant did further Set forth that the said George Smith had since Received from the said President and Council the Amount of the Royal George's Cargo and that this Appellant had by his said Attorney and his Substitute or Substitutes Requested payment from the said George Smith but that he the said George Smith Obstinately and wilfully refused to give this Appellant any manner of Satisfaction touching the Premises all tho' this Appellant Charged and which the said George Smith well knew that the said Sum of Bombay Rupees Forty One Thousand Six hundred and Twenty Six and Sixty Six Pice or Pagodas Thirteen Thousand Eight Hundred and nine Forty One fanams and Forty Cash did come to his Hands and that such aforementioned Sum so coming into his Hands Ought to have been Appropriated to no other Use Intent or purpose than for the purposes intended and Directed by the said Rawson Hart Boddam and John Clough in their Letter Dated the thirteenth Day

Day of September in the Year of our Lord One thousand Seven hundred and Sixty Eight Whereas this appellant charged that the said George Smith had applyed the said Money to some other Use and purpose which is Contrary to Equity and good Conscience, the said George Smith pretending that he was no further Responsible to this appellant after the Tender made of the Assignment of the Aforementioned President and Councils Bond or Certificate for the Amount Purchase of the Royal George's Cargo to this Appellants Attorney the said Alexander Wynch wherias this appellant setforth that the said George Smith at the time of the sale of the said Ship's Cargoe to the President and Council as aforesaid Ought to have sold and which the said George Smith did Sell for ready money as this appellant had been informed and Verily did believe and that same time after the said George Smith did Accept of the Aforementioned Bond or Certificate payable on Demand part whereof was Offered by the said George Smith to be Assigned over to this Appellants said Attorney in Discharge of the Ballance of Accounts made by the said Rawson Hart Boddam and John Clough and Accepted to be paid by the said George Smith This Appellant in his said Bill did further Charge that the said George Smith having Accepted of this Appellants Demand by his said Attorney the said Alexander Wynch he ought to have kept the Amount of the said Ballance in his Hands when paid by the President and Council as the Right of Property was in this Appellant and not in Rawson Hart Boddam and John Clough to whom the said George Smith pretended the

Amount

Amount Purchase of the Royal George's Cargoe reverted or so much of it as was set apart by them on Account of this Appellants Demand and that he the said George Smith had Actually Accounted with the said Rawson Hart Boddam and John Clough for the same which Opinion and Transaction this Appellant Charged to be Erroneous and Unjust because the said George Smith became to all Intents and purposes a Trustee for the Fund which was a special One Sett apart by the said Messrs Rawson Hart Boddam and John Clough and under such Denomination by means of his Acceptance to Pay he became Responsible to this Appellants or his Attornies and therefore that his the said George Smiths Appropriating this Money to any other purpose than that of paying this Appellants Demand was at his Peril this being the Substance of the Bill of Complaints the appellant prayed that the Dependant might be Decreed to pay unto this Appellant the Principal Sum of Forty One Thousand Six hundred and Twenty Six Rupees and Sixty Six Piece with all such Interest as then was or might hereafter become Due thereon also all Costs of suit

To which said Bill of Complaint the said George Smith did on the Thirteenth Day of October in the Year of Our Lord One Thousand Seven hundred and Seventy Two put in an Answer therein denying to stand Indebted unto this Appellant either in the Sum of Thirteen Thousand Eight hundred and nine Pagodas Forty One Fanams and Forty Cash either in Exchange for Bombay Rupees Forty one Thousand Six hundred and Twenty Six and Sixty Six Pice as Set forth and Stated in this appellants

said

said Bill he the said Defendant Saying that that he never had any Dealing or Negociation with this Appellant nor could the Account Current which this Appellant Annexed to his said Bill or the Circumstances Set forth by this Appellant in Relation thereto as he the Defendant Conceived be taken or Considered as any Proof that he the Defendant was Indebted unto this Appellant either in the Sum Sued for or in any Sum whatever Saying that they only shewed that the Estate of John Spencer of Bombay was Indebted unto this Appellant the Ballance Specifyed in the said Account Current which he the said Defendant did not deny but averred that it was to the said Estate and to the Executors of the Will of the said John Spencer that this Appellant could with Propriety and Ought to have Recourse and in Proof of which he the Defendant did Set forth that he might have referred to the Representation of the Case as given by this Appellant if he had found it proper to Set forth the whole of the matter Relative to this affair and not have Omitted such Circumstances as might Possibly have appeared to him of too much Consequence to him the Defendant to be Specifyed — The said Defendant in his said Answer then proceed to give a Narrative of the Transaction which as this appellant is humbly of Opinion is no Consequence to the Merits of this Cause he Omits making any Remark thereon — The said Defendant in his said Answer further begs leave to refer the said Court to the Confession made by this appellant in his said Bill of Complaint that he did refuse the Assignment Tendered to him by the said Defendant without giving any other

Reason

Reason for such his Refusal but his not thinking himself at Liberty to Admit of such Credit a Declaration which Defendant said he would not pretend to Elucidate but that he the said Attorney of this appellant did not allege any Insecurity or Insufficiency in the Mode of payment Offered to him by the said Defendant other than that which had before taken Notice of the Difficulty of Remitting the Money to England a Circumstance no way regarding him the said Defendant and the Defendant did Acknowledge that he did Receive the payment of the Bond Obligation or Certificate Granted to him by the President and Council for the Royal George's Cargoe both Principal and Interest which this Appellant's said Attorney would have Received above two Years ago if he had accepted of the Tender of those Bonds made to him by him the said Defendant and the said Defendant humbly Apprehended that the Use and Purpose to which he did Apply the said Money was by no means Contrary to Equity and good Conscience and he also hoped that it would appear to the said Court that he the Defendant was very excusable if he did not think himself responsible to this Appellant for the said Money or any part thereof after the Tender which he made him of the Assignment aforesaid was Rejected by this Appellant's said Attorney Seeing that it was very evident from every Subsequent Circumstance that such was the Clear and Established Opinion of this Appellant's Attorney himself the said Defendant in his said Answer did further Set forth in Regard to the Assertions of this

appellants

appellant that he the Defendant at the time of the Sale of the Royal Georges Cargoe Ought to have made such Sale and did make such Sale for ready Money as this Appellant Alledged he had been informed and did verely believe that it was Sufficient for him the Defendant to say as he had already said that this appellant had been ill informed &c. This said Defendant did further in his said answer absolutely deny his being or having been a Trustee for this Appellant, neither this appellant or any other Person for him having made him the Defendant a Tender of any Trust nor that was any such Trust Special or General ever Accepted of by him the Defendant Essential and absolutely Necessary to the Constitution of a Trust the Defendant therefore did aver that the Trust if any there was did abide and Still remain with this Appellants Attorney the said Alexander Wynch, who as a Trustee or Attorney for this appellant did take upon him to refuse the Offer of the best Security which (in Default of Money) could be Tendered to him, and which it could not be supposed that he could ever have any Doubt would in due time have produced the money Due to this appellant with Interest thereon, The said Defendant in his said Answer did further Conceive that this Appellants said Attorney the said Alexander Wynch did by such Refusal not only Relinquish any Right this Appellant might Otherwise had to have the said Property appropriated to the payment of this appellants said Demand but did also thereby together with the other steps which he the said Alexander Wynch as a Representative and Acting for and on Account of this appellant

appellant took for the Recovery of the said Debt then Due to this appellant take upon himself either Solely or as acting for this appellant the Risque of recovering the said Debt out of whatever other Property belonging to the Estate of the said John Spencer he could find and did by no means confine the Recovery of the said Debt out of the Property alloted for that purpose and so Tendered and Rejected as by mentioned, but did on the Contrary totally disclaim the same and thereby did himself of his own free Will and Accord give Occasion to the said Defendants said Constituents to Consider the whole Amount of the Royal Georges Cargoe as entirely Subject to such Orders as they might think proper to give Concerning the Debt Owing by the said Company to them being Originally on their Behalf and the whole Amount thereof by such Refusal on the part of this appellants Attorney being made payable to them or for their Account and which the said Defendant said was evident from the proh Orders which they gave to him the said Defendant Concerning the said Debt that they the said Defendants said Constituents did by no means consider any part of the said Debt as a Special Fund Set apart for this appellant only, or which the said Defendant was not Still Answerable for to them Since this Appellants said Attorney did so as aforesaid Reject the said Offer and Seek for payment by other means and out of other property the said Defendant said he could not therefore forbear Remarking to the said Court the apparent Absurdity and Inconsistency of this appellants Charge alledging that he the said Defendant became

became this Appellants Trustee for the said Money when his this appellants Attorney (as acting for and on account of this appellant and whose Actions must therefore as the Defendant conceived be binding on this appellant at least as far as Regarded the said Defendant) was the very person who prevented the said property being appropriated to that purpose — To which said Answer this appellant did on the Seventh Day of March one Thousand Seven hundred and Seventy four put in a Replication Setting forth that Notwithstanding what the Defendant had Set forth to the Contrary that he the said Defendant ought to be Responsible unto this Appellant for the Ballance of the said account Current Annexed to this appellants Bill of Complaint for the Reasons therein given and and more especially so as the said Defendant took upon himself the Trust Reposed in him by Rawson Hart Boddam and John Clough the Managers of the Estate of John Spencer of Bombay Esqr. who had in the Hands and possession of the said Defendant the produce of the Sales or Security for the payment thereof of the Cargoe Shipped by them on Board the Royal George out of which produce they appropreated a part as a Special Fund to Answer the purpose of Discharging this Appellants Ballance of Accounts which the said Defendant ought to have done on Receipt of the Cash Arising on the Bond given by the President and Council of Fort St. George as a Security for the Amount Purchase of the said Ships Cargoe, as it was Agreable to the Orders and Directions of the said Rawson Hart Boddam and John Clough in their Letter of the Second Day

Day of October One Thousand Seven hundred and Sixty Eight to the said Defendant and therefore there could be no necessity for the Defendant to have Recourse back to the said Rawson Hart Boddam and John Clough for the Payment of this aforementioned Ballance as there was a Sufficient Fund in the Hands of the said Defendant for that purpose was too Evident by the Correspondence carried on by the said Defendant and Alexander Wynch beforementioned the attorney of this Appellant who could not accept of any other or further Security for the payment of this appellants Ballance of Accounts than the actual Discharge thereof in Cash This Appellant in his said Replication did further Set forth that the State of the Case as Expressed in the Bill of Complaint by his said attorney and his Substitutes was consistent with the Subject matter on which the Dispute arose but as the Defendant had thought proper to state the Case his own way and in which there appeared more matter than ever came to the Knowledge of this Appellant and his Representatives he this appellant would endeavour to Answer the same as far as in him lay This Appellant did then Set forth that he being about to Depart from Bombay for England he did leave in his Hands of Rawson Hart Boddam and John Clough as his Attornies the Bond of John Spencer aforementioned for the better Securing the payment thereof out of the Assetts of the said John Spencers Estate and Supposing the said Rawson Hart Boddam and John Clough were actually so in Possession he this Appellant being therein

England

England did Empower the said Alexander Wynch to
Receive the same out of their Hands in order that the same
might be more Speedily Remitted to Europe for which
purpose he this appellant did in writing Direct the said
Rawson Hart Boddam and John Clough so to do, as this
appellant Alledged, appeared by a Letter of the said Rawson
Hart Boddam and John Clough Addressed to the said
Alexander Wynch Under Date the Thirteeth of September
One Thousand Seven hundred and Sixty Eight wherein
they Acknowledged to have Received this Appellants
Directions Respecting the payment of the Ballance
due to this appellant, and that in compliance therewith they had thrown into the Hands of the said
Defendant a Sufficient Sum of Money to have Discharged
this Debt due to this appellant which plainly proved
that the said Rawson Hart Boddam and John Clough
had Actually Carried the amount of the said Ballance
to the Credit of this appellant and Debited the Estate of the
said John Spencer Deceased or how could they so readily
have Transferred the property in their Hands to the said
Defendant for the Use of this Appellant Unless they had
Really closed the Account of this appellant with the
Estate of the said John Spencer deceased for which
Reason this appellant was humbly of Opinion that he
had nothing to do with the Estate of the said John Spencer
and more Especially so as the said Rawson Hart Boddam
and John Clough were Empowered to Receive the
amount of Mr. Spencers Bond for and on Account of
this Appellant which they Absolutely did Receive
and

and Credited it as so Received and of Course Responsible to
this Appellant and this appellant Alledged Appeared from
their own writing in the Letter before premised in this
appellants said Replication wherein they said after
Reciting the Amount of the Bond and the Date of the time
the Interest was to cease at "and to Discharge which
"Amount we have had Money laying by Us for some time
"past but as this Opportunity Offers of Doing it so Conveniently
"for both parties we have given the necessary Directions to
"Mr. Smith" meaning the Defendant "and which we Doubt not
"he will punctually Comply with" with Submission to the
said Court this Appellant said he Apprehend the said
Rawson Hart Boddam and John Clough became the
Principals for the Amount of the said Bond of John Spencer
so by them received and therefore were to all Intents and
purposes the Debtors of this appellant and in such Light
did they consider themselves or otherwise they would not
so readily have complyed with this Appellants Orders
and Directions, and what this appellant alledged more
particularly Pointed out this as a real matter of Fact
was the said Rawson Hart Boddam and John Clough
writing to this appellants Attorney the said Alexander
Wynch and advising him of their having Money laying
by them for to Discharge this Appellants Debt but as it Suited
their Convinciency they had thrown into the Hands of
the said Defendant a Sum of Money Sufficient to Discharge
the Debt of this appellant and that upon this Defendants
Attorneys application to the Defendant George Smith and
giving him the necessary Discharge he the said Defendant
would

would make the same good to him the said Alexander Wynch
This Appellant in his said Replication did further say he
humbly apprehended that no Stronger Proof in the Law or
Equity could be required to Shew that his Demand on the Estate
of the said John Spencer was Discharged and that the same
was Received by Rawson Hart Boddam and John Clough for
the Use of this appellant to whom they became Responsible
agreeable to the Intentions of this Appellant as he had left
the Bond of the said John Spencer in their Hands with
Instructions to procure the payment thereof which the
appellant alledged they should immediately have done
on the first Money they got in belonging to the Estate of
the Deceased John Spencer and which this Appellant
said they certainly must have done as they acknow-
ledged to have had belonging to the said Estate
lying by them Sufficient to Discharge this
Appellants Demand and therefore that it plainly
appeared they only waited for an opportunity of remit-
ting the said Demand pursuant to the Orders they had
received from this Appellant or his Attorney the said
Alexander Wynch This Appellant did further
alledge that from what he had advanced he hoped it
would appear to the said Court that the said Rawson
Hart Boddam and John Clough Stood in the nature
of Trustees for the said Demand on the Estate of the
said John Spencer deceased and that this Appel-
lant had nothing to do with the Estate at any Rate as
the said Rawson Hart Boddam and John Clough were
actually entrusted by this Appellant with the
management

management of the said Bond and being so entrusted it was Supposed
they as being his Representatives did carry the Amount of the said
Bond to the Debit of the said John Spencer's Estate which induced
them to make a particular Assignment and Provision of their
own property in the Hands of the said George Smith the Defen-
dant which they would not have done had they not been
Conscious of having Settled the Amount of the said Bond with
the Estate of the said John Spencer — The said Appellant did
further Set forth having proceeded so far to Shew to the said
Court the first part of the Transaction Relating to the Trust
Reposed by him this Appellant in the said Rawson Hart
Boddam and John Clough wherby they became immedi-
ately Responsible to this Appellant he did proceed further to
Shew the propriety of the Dependants Conduct relative to the
Acceptance of the Assignment made to him by the said
Messrs Rawson Hart Boddam and John Clough wherein
this Appellant hoped to prove to the Satisfaction of the
said Court that the said Dependant was at the time he
Received the Orders of the said Rawson Hart Boddam and
John Clough became the Trustee for this Special Trust
created and made by them towards Discharging the said
appellants Demand — This appellant did further Set forth
that immediately or soon after the Receipt of this Appellants
Letter from England, the said Rawson Hart Boddam and
John Clough did write unto the said Alexander Wynch
this Appellants Attorney and acquainted him of this
appellants Instructions and that they would Comply
therewith, they having directed the Dependant to Discharge
the Demand of this Appellant as they had thrown a Sum

Z

of Money into his Hands Sufficient for that purpose This appellant did further Set forth that his said Attorney the said Alexander Wynch did apply to the said Defendant pursuant to the advice of the said Rawson Hart Boddam and John Clough who in Answer thereto did Acquaint this appellants said attorney that he would pay the same provided the said attorney would Accept of an Asignment of the Bond given by the President and Council aforementioned and which was the property of the said Rawson Hart Boddam and John Clough as the owners of the said Ship Royal George and her Cargo as Appeared by the Letter marked C which this Appellant annexed to his Bill of Complaint in Reply to which this appellants said attorney wrote to the Defendant in manner and Form as Set forth by the Defendant in the Copy of the Letter Marked A annexed to his Answer which this Appellant was humbly of Opinion was consistent with the Nature of the Subject matter as the said Alexander Wynch had no Authority from this appellant to accept of a Security when his Instructions were to receive a Specifick Discharge of his Debt unless he had done it at his own Risque, as the taking of any Asignment of a Bond or Certificate from the Defendant for the Demant of this appellant would have been Repugnant to the Orders and Directions of this Appellant whose directions were to have the Cash remitted by the said Alexander Wynch without Delay This appellant did further Set forth that it did not Appear from the Reply of the said Alexander Wynch made to the Defendant that he

he Acquitted the said Defendant of his Acceptance or from the Trust reposed in him by the said Rawson Hart Boddam and John Clough for the Use of this Appellant for it appeared by the words of the said Letter that the said Alexander Wynch held the said Defendant Responsible to this appellant for he said "it will "be inconvinient to Captain Harrison meaning the "Repliants affairs the not having the Money paid soon "I shall therefore be Obliged to You if you will tell me in "what time You may be able to doit that I may write to "those Gentlemen by the Pembroke for Leave to draw on "them should it be any Considerable time first" This appellant further said that it appeared beyond a Doubt that the said Defendant was become a Truste for the payment of the said Ballance of this Appellants said Account Current and as the said Rawson Hart Boddam and John Clough had Left a Fund lying in the Hands of the Defendant, it was the Business of the Defendant to have kept the same in his Hands untill the Right of Property was determined if there should be any Dispute about it because the Amount of such Fund in his Hands was in Lieu of Cash Received by them from the Estate of the said John Spencer at Bombay and which was received for and on Account of this Appellant and therefor the Trust was vested with the Defendant on his Receiving the Instructions from Rawson Hart Boddam and Clough for the Use of this Appellant and for no other Persons Use whatsoever and whatever Impedements there might be in prolonging the payment of the President and

Councils

Councils Bond or Certificate Yet it was optional in this Appellant to have Resorted to any Person or place Untill his Demand was finally closed nor could the Trust reposed by the said Rawson Hart Boddam and John Clough in the Defendant be Discharged till the party or Parties for whom the Triust was so Created was or were finally Satisfyed, and therefore it was the Business of the Defendant to have seen the party Claiming under his Trust fully discharged before he returned the Cash to the Order of Rawson Hart Boddam and John Clough, for as he the Defendant had Accepted of the Trust he became Answerable for the produce of such Funds as were appropriated by his Constituents for the use of this Appellant and could not without a manifold piece of Injustice Transfer the Property to any other Person notwithstanding the Directions he received from the said Rawson Hart Boddam to that purport who had no Right as this Appellant alledged to send any such Directions to the Defendant after the Special Orders that the said Rawson Hart Boddam Signed by himself and the said John Clough had given him in writing under Date the Second October One Thousand Seven hundred and Sixty Eight an Extract of which as given by the Defendant to the said Alexander Wynch This Appellant in his said Replication Set forth as follows

"For your Guidance We now enclose you a statement of
"Captain Harrisons account with the late Mr. Spencer
"and as we have had large Sums lying by us to discharge
"this Demand when called on, We cannot think it
"Reasonable that the Estate should pay any Interest for

"for a further time than what we have allowed in the Account
"Current now enclosed You — This Appellant did further
Set forth that the said Rawson Hart Boddam and John Clough having thereby created a Fund Towards the payment of this Appellants Demand, any Orders from the said Rawson Hart Boddam to Transfer to the Executrix of John Clough the whole Amount of the Bond given by the President and Council for the Cargoe of the Ship Royal George was Absurd and inconsistent for as he in Conjunction with the said John Clough as the Executors of the said John Spencer had discharged the Demand of this Appellant by paying themselves as the Attornies of this Appellant no Orders of the said Rawson Hart Boddam could be put in Execution Respecting the Transfer to be made to the Executrix of the said John Clough or at least the Defendant in Prudence ought not to have made any other Transfer than so much of the Bond before mentioned as appeared to be the property of the Owners of the Royal George after deducting the Fund that was Created for the Use of this Appellant as the Defendant in Equity might and ought to have retained the same Untill this Appellant was fully Satisfyed — This Appellant further Set forth that in Answer to the said Reply his said Attorney Alexander Wynch did receive a Letter addressed to him from the Defendant under the same Date as his Reply and to the purport as Set forth by the Defendant in his Answer Marked B to this Appellants Bill of Complaint from which Answer this Appellant said

said it plainly Appeared that the Defendant thought himself Responsible to this Appellant and that he Certainly would have made it good out of the proceeds of the said Cargo of the Royal George had the President and Council paid off their Bond and altho' there was a Doubt when the said Bond would be Discharged Yet the Defendant said "that the present Scarcity of Money here a Circumstance "well known to the said Alexander Wynch prevented "his saying with Certainty when the said Defendant "should be able to pay the said Alexander Wynch on "account of those Gentlemen (meaning the said Rawson "Hart Boddam and John Clough) he the said Defendant "saying" that he would endeavour to pay off the said "Demand of this appellant as Speedily as he could "consulting the Advantage and Interest of the said "Rawson Hart Boddam and John Clough in such "payment because from the great want of Money they "must be partial and such as the said Alexander "Wynch was pleased to say he would Accept of." meaning thereby that such payments as the said George Smith the Defendant should receive from the President and Council that he the said Alexander Wynch would Acquiesce in receiving the proportionable Distribution of such payment, that is to say, in proportion as the Owners of the said Cargoe on the Ship Royal George and this appellant bore in the property of the proceeds of the said Cargoe a Portion of which proceeds was allotted and Set apart as a Special Fund for the payment of this appellants

Demand

Demand and thereupon such Sums of Money as the Defendant received from the President and Council on Account of their said Bond given to the Owners of the Ship Royal George for their Cargoe a Proportion of such payments should have been detained by the said Defendant for the purpose of fulfilling the Trust that was created by his Constituents This appellant did also further Set forth that the Defendant had Acknowledged in his Answer "that being desirous of facilitating "the payment of this Appellants demand as directed by "the said Rawson Hart Boddam and John Clough to be paid "to the said Alexander Wynch he the said Defendant "did Resolve to Acquiesce to take a Bond Obligation or "Certificate for the whole Sum of Twenty two Thousand "Eight Hundred and Forty two Pagodas Thirty One Fanams "and Thirty Six Cash due from the President and "Council to the said Rawson Hart Boddam and John "Clough and to Satisfy this Appellants Attorney the "said Alexander Wynch he did Address the said "Alexander Wynch in writing and offered him "an Assignment of so much of the said Bond or "Certificate as Amounted to the Sum of this appellants "Demand by which he intended to fulfill the "Orders of his Constituents the said Rawson Hart Boddam "and John Clough and which he thought the said "Alexander Wynch would by no means refuse as "he was a Member of the Board who Offered such Bond "or Certificate to the Defendant in Satisfaction for a Sum so "much larger due by the said Presidents and Council to "his said Constituents and that the said Alexander Wynch

having

"having so refused to accept of the Defendants Offer he had
"thereby freed and Discharged the said Defendant from
"all Obligation which he was under to discharge the
"Sums Ordered to be paid to this Appellants Attorneys
"beforementioned and having so refused he the said Alexander
"Wynch did take upon himself further means for the recovery of
"this Appellants Debt. In Reply thereto this appellant did
beg Leave to repute the above Plea by Setting forth a few
Agruments in Support of his said Attorney the said
Alexander Wynches proceedings that as the Defendant
had Directions from his Constituents the said Rawson
Hart Boddam and John Clough who were the attornies
of this appellant to pay this appellants Attorney the
amount Ballance of the account Current with the
Estate of the said John Spencer which was Settled by the
said Rawson Hart Boddam and John Clough as appeared
by their Names Signed to the said Account Current to
pay the said Account they acknowledge they had
Certain Sums of Money lying by them for that purpose
but as it was not Convenient to them to pay it to the Order of
the said Alexander Wynch they had directed the
Defendant to pay it to him as they had Money laying in
the Hands of the said Defendant Sufficient to Discharge
it they not Acquainting the said Alexander Wynch
that he was to be paid out of the Produce of the said
Ships Cargoe nor had he the least Intimation of
it untill informed by the Defendant himself who
offered an Assignment of Part of the said Company
Bond or Certificate which he would not accept of
but

but insisted on the Cash as a Speedy Remittance was Required by
this appellant and which the Defendant promised to pay as
soon as he Received it" Recommending the times to the said
Alexander Wynch Respecting the Scarcity of Cash" This
appellant did further Set forth that it was natural enough
for the said Alexander Wynch to draw Bills on the said
Rawson Hart Boddam and John Clough for the Amount
Ballance of this appellants account as he found an
Impediment in procuring the immediate Satisfaction
of this Appellants Demand and Untill those Bills of
Exchange were Discharged the Defendant could not be
acquitted of his Trust as it is a maxim in Law and Equity
that a Just Creditor may Seek his Relief wherever he can
find it and the parties concerned therein must be all
responsible as the Law will not allow an injured Creditor
to be without it and altho a Duplicity may be made use
of in the Carrying on of a Transaction Equity will unravel
such unaccountable mode of negociation as will
compell the injured to have Relief and Leave the
parties to Seek their Remedy Among themselves This
appellant did further Say that the Defendant was by
no means Discharged from his said Trust nor did
his said Attorney the said Alexander Wynch ever
mean to do so by the said Alexander Wynch drawing
Bills of Exchange upon the said Rawson Hart Boddam
and John Clough more particularly so as they never
thought proper to answer such Bill or to take any notice
of his address which the said Defendant was Sufficiently
apprized of as the said Alexander Wynch consulted with
the

the Defendant on the Merits of the Case by whose advice he drew Bills of Exchange but not with any Intention to Discharge the said Defendant Unless they were punctually paid This appellant did further Set forth that his said Attorney the said Alexander Wynch applyed to the said Rawson Hart Boddam and John Clough in writing Several times about this business but to no purpose as he Received no Answer to any of his Letters or got any manner of Satisfaction Concerning this Appellants Demand— This Appellant did further Set forth that it was a Considerable time after the said Defendant had wrote to the said Rawson Hart Boddam that he received Orders from the said Rawson Hart Boddam to Transfer the Bond for the Cargoe of the Royal George to the Order of Mr. Clough as mentioned in the Defendants Answer for this Appellant said that the said Alexander Wynch did on the Eighth Day of June in the Year of our Lord One Thousand Seven hundred and Sixty nine write from Masulipatam to the to the said George Smith the Defendant as he the Defendant did Set forth in the Copy of a Letter annexed to his Answer Marked C enquiring of him if he the Defendant had received any Order regarding the payment of this appellants Money from Mr. Rawson Hart Boddam as he the said Alexander Wynch had received no Answer to any of his Letters wrote to him upon the Subject— and this appellant did further say that the

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the said Alexander Wynch did on the Thirteenth September following in the same Year write from Masulipatam to the said Defendant desiring him to forward an enclosed Letter to the said Rawson Hart Boddam and at the same time Acquainting the said Defendant that he had received no answer from the said Rawson Hart Boddam and desiring the Defendant to Acquaint him if he had received any order about the Money he the said Defendant was to pay to him the said Alexander Wynch on Account of this appellant with Submission to the said Court this appellant did say that he was humbly of Opinion that from what had been Set forth in the said two Letters it did not appear that the said Alexander Wynch had relinquished this appellants Demand on the said Defendant but on the Contrary it appeared very Evident that he held the said Defendant Responsible to him on account of this appellant and it was further evident from what followed that the said Defendant was apprehensive of the said Alexander Wynch holding him so Responsible as he well knew he was in Equity bound to this appellant This Appellant did further Set forth that the Behaviour of the said Rawson Hart Boddam was very Extraordinary in not answering the Several Letters of the said Alexander Wynch whereby the said Alexander Wynch had no Recourse to any other person than to the Defendant tacitly Confessing that the said Alexander Wynch ought to hold the said Defendant Responsible as he the said

said Rawson Hart Boddam and John Clough had provided a Fund for that purpose and which they Deposited in the Hands of the said Defendant who this Appellant said was to all Intents and purposes accountable to this Appellant for whatever Sums he had Received on Account of the Special Fund by them so created — This Appellant did further say in Reply to so much of the Letter received from Rawson Hart Boddam under Date the Twelfth of November one Thousand Seven hundred and Sixty nine and which Letter the Defendant pleaded as an Order for Transferring the Bond of the President and Council given by them as before Set forth, that the Orders inserted in that Letter could not deprive this appellant of his Right to so much of the said Bond as was Set apart for the payment of this said Ballance of Accounts because the said Rawson Hart Boddam had no such Right in himself nor had the Executrix of the said John Clough any Power or Authority vested in her to Assent to such an Order being given to the Defendant for this appellant said that as the said Rawson Hart Boddam and John Clough had been in Possession of the Cash to Defray the Demands of the appellant as they themselves Confessed they became Responsible to this appellant in their own persons and therefore they deeming themselves so took upon them the Mode of payment that best Suited their Interest which Induced them to Assign a Share of their Concern in the

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the said Cargoe being their own property and altho the said Alexander Wynch did refuse to Accept of a Share or part of the said Bond given by the President and Council aforesaid yet the said Repliant had a Right to a proportion of the proceeds Received on Account of the said Cargoe as it was the Intention of the said Rawson Hart Boddam and John Clough that this Appellant should be paid out of the same it being a Fund allotted for that purpose and could not be Disposed of to any other Use whatever notwithstanding the said Alexander Wynch refused to Accept of a part of the said Bond as his refusal did not Acquit the said Defendant from paying him a Proportion of the Money he might from time to time receive on the said Account — neither could the said Alexander Wynch Acquit the said Defendant as the Bond was in the nature of a Security for the payment of the proceeds of the said Cargoe and this appellant did further say that the said Boddam and Clough hav^d possessed themselves of this Appellant's Cash at Bombay and converted it to their own Use, they thought it their indispensible Duty to remit the Amount to the said Alexander Wynch which this appellant said did plainly prove the Estate of the said John Clough to be intirely out of the Question it then becoming a Business between the said Boddam and Clough on Behalf of themselves as the Attornies of this appellant and Alexander Wynch the Representative of this appellant and that they having created a Fund in the Hands of the said Defendant the matter then lay between the said Defendant and the said Alexander

Wynch

Wynch for and account of this appellant without whose Consent the said Defendant could not pay away any part of the said Fund as the Right of the said Boddam and Clough thereto was Sunk with the Execution &c.

This appellant in another part of his said Replication did observe that the above Circumstances of this appellants Case Distinguished it from any Supposed Case in Favor of the Defendant in which a person may Order Simply his Agent to carry a certain property in his Custody to the Account of a third person which third person has no Directions to apply nor Authority given him to Demand it and therefore the party whose directed may before Tender made or any thing done by his Agent Revoke his Order and Change the Account and Assignment This appellant did further Observe that the Defendant ought in Prudence to himself to have Suspended his Obidience to the Orders of Rawson Hart Boddams Second Instructions to pay the Specifick proceeds of the said Cargoe to the Executrix of the said John Clough who was the Representative of the person who Joined with Rawson Hart Boddam in the Origenal Order and Assignment to pay the proceeds to the said Alexander Wynch for the Account of this appellant but the Defendant Obeyed a Second Order from a Single Constituent Contrary to the first Order of two Constituents &c.

This Appellant in another part of his Replication did think it necessary to set forth the Cause of

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of his This Appellants Debt, because the Defendant and the said Rawson Hart Boddam had blended the Several Circumstances together to make it appear as if this Appellant was to have Recourse to the Executors of the said John Spencer when they as his Attornies received it of themselves as Executors and Transmitted it to the said Alexander Wynch by means of the said Cargoe, and that as the said Defendant had Acknowledged the Receipt of the said Boddam and Cloughs Instructions Concerning the payment of this Appellants Debt it needed no further Proof, but whether he promised to pay the Debt out of the Sales of the said Cargoe This Appellant further said he could not Answer for, as the said Alexander Wynch was not then in India and therefore was Ignorant of any such person as John Brichton being Supercargoe until the said Defendant made mention of it in his Answer Consequently Supposed that the Defendant told it, but that it was very immaterial who sold it so that the Specifick Amount of the Sales was for the moving &c. with Regard to the Refusal of this appellants attorney to accept of the Tender of the Bonds made mention of by the Defendant in his Answer this Appellant did Reply that he knew of no necessity there was to Acquaint the Defendant with the reasons of this appellants said Attorneys Refusal, but that the reason was obvious the Tender made by the Defendant of the said Bond could not be Accepted as a Satisfaction for this appellants Demand because it could not be known when the said Bond would be paid and the Refusal of the Tender did not discharge the

the Defendant from the payment of the produce of the Cargoe
&c. That as this appellant wanted his Money to be remitted
to England the said Alexander Wynch imagined the
Acceptance of the said Bond would retard such remittance
That as the said Defendant acknowledged in his answer
to have Received the Amount of the said Bond for the
purchase of the said Cargoe this appellant doubted
not but that the said Defendant would be obliged to
make good the said Ballance due to this appellant
Notwithstanding the said refusal, as it appeared
that the said Tender was the mere Act and Deed of him the
the Defendant Contrary to the Intent and meaning of his
Constituents Instructions which were that this appellant
should be paid out of the Proceeds of the said Cargoe &c. and
further that it did not Appear in any part of the
Correspondence carried on by the said Boddam and Clough
or Boddam only that the said Bond was ever thought of by
them or him as the said Boddam by his long Silence
Seemed to have left the Matter entirely to the said
Defendant thereby implying that any payments made
by the President and Council on Account of the said Bond
Should go towards the payment of this appellants Debt from
all which this appellant did infer that the said Defendant
became to all Intents and purposes a Trustee for this
appellant and that the Tender and acceptance of the
Defendant is as binding on him to pay the said money
out of the said produce as the acceptance of a Bill of Exchang
&c. and whether the said Alexander Wynch did or did
not accept of the Assignment tendered by the said Defendant
this

this appellant did insist was a matter that did not come
before the said Court that the said Alexander Wynch had no
right to accept of any other Security than the Defendant
himself who had in his possession the Bond which was
a Security for the payment of the said Ships Cargoe and
this appellant did not want any other Security more
particularly as the Bonds of the President and Council
were from the great Scarcity of Money Selling at a Discount
of five P Cent and which said Refusal this appellant did
insist his said Attorneys was Justifyed in making for the
Reasons before Set forth - This appellant did further say
that the said Alexander Wynch did not nor could not
Relinquish the Right this appellant had to the proceeds of
the said Cargoe by the said Refusal nor did the Steps he
took in endeavouring to procure the property of this
appellant invalidate the Directions of the said Boddam
and Clough or the Defendants Acceptance but on the
Contrary it Appeared that the said Alexander Wynch
from the long Silence of the said Boddam and the Evasion
of the Defendant thought himself and this appellant
greatly injured which induced him to Seek for Redress
wherever he could find it - This appellant did further
Set forth that the said Boddam and Clough having taken
the necessary Steps to Secure to themselves this appellants
property and Lodged the same as a Special Trust in the
Hands of the Defendant this appellant Consequently
could have nothing to do with them the said Boddam
and Clough as Executors of the said John Spencer but with
the Defendant or in themselves in their private Capacity

of

of all persons whether principals or Agents Factors or attornies being Responsible the Law not being confined to persons in Seeking Relief &c.ª

To which said Replication the Defendant did on the Twenty Sixth of September One thousand Seven hundred and Seventy four put in a Rejoinder therein making Use of the same vague and Inconsistent Arguments as those contained in his Answer and on the Twelvth Day of this present Month of September the same came on to be heard and determined when this said Mayor's Court were pleased to Order and Decree that this appellants Bill should stand Dismissed with Costs as appears by the Decree of the said Honble Court hereunto annext from which Decree of the said Honble Court This appellant does appeal to this Honorable Court of Appeals, because it appears that Messrs. Boddam and Clough had Received Orders from the appellant to pay the Appellants attorney the above said Alexander Wynch the said Sum of Bombay Rupees Forty one Thousand Six hundred and Twenty Six and Sixty Six Piece and that they in Consequence of such Orders did not only advised the said Alexander Wynch as attorney aforesaid but gave Orders for the Defendant to pay the Amount of the Ballance of Account they had enclosed him and which Account and Order the Defendant did also furnish the said Alexander Wynch and did apprize him of the Fund Set apart for the Discharge of this Ballance, this Order was Accepted and undertook to to be paid by the Defendant with a Confession of Assets so much is admitted by the Defendant in his Answer This appellant further Says it appears that the Defendant had Opened a negociation with the said Alexander Wynch on the Thirteith September One Thousand Seven hundred and Sixty Eight and to have Suggested his Own mode of payment as well as to have declared that the particular fund out of many other Funds remaining in his Hands Allotted by Boddam and Clough was the Amount of part of the Cargoe of the Royal George, The Order to Alexander Wynch from Messrs. Boddam and Clough appears to have been General without Specifying any particular fund for the Order was for Cash for so many Rupees to be paid out of a Sufficient Sum their property in the Hands of the said Defendant It appears that the Defendant was Debtor to Messrs. Boddam and Clough on other accounts, and that he was directed by them to Receive the value of the Royal Georges Cargoe, the Appellant further says that the Order as Signified to Alexander Wynch from Messrs. Boddam and Clough was Simply for Lawfull money and the payment from a Special fund to have been made by some other limitted Order to the Defendant and that the fund was Transferred and Assigned over for a Special Use and to remain with the Defendant for the use of the Appellant of this order for payment Reciprocal notices were given by and to all parties concerned, therefore it appears that the Cargoe and Bond for the value Ordered were Vested in the Defendant by the Orders of his two principals for a Sole Use to

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be Satisfyed in due time and manner, which this Appellant considers as bending him the Defendant to a Specefick performance, first as an Acceptor of an Order to carry Value to Account and an undertaker to pay, Secondly as a Holder of a Deposit for this Appellant until the same should become Cash Ordered to be paid, thirdly as a Trustee of that Fund Constituted by the two Owners thereof who de[illegible] themselves by such Order of all Right Title and Intent to the same by Assigning and Transferring the said Fund in the Defendants Hands to the Account of this appellant in whom the Value of the said Fund became a vested Interest, fourthly as an Assignance for benefit of this appellant until released under an Absolute Discharg by the appellant of the Fund assigned and Debt once Constituted, which Debt this Appellant says remains in the Court One Iota and never Satisfied to this time, fifthly as a confession of Assets in his the said Defendants Hands It Appears that the said Alexander Wynch rejected no tender of the Cash arising from the Fund when for the coming, this appellant Admits that the said Alexander Wynch did reject the tender of the Bonds because the Order of Messrs Boddam and Clough Signified to Alexander Wynch and the Defendant was for Cash and Bonds not being Tender of legal Currency that the Bond was proposed only for the private Advantage of the Defendant and the said Messrs Boddam and Clough. this Appellant further observes to this Honorable Court that when the Defendant received the Cash he Conveyed it away by a Secrete

Secrete order of Rawson Hart Boddam to the Representative of one of the Original Assignies John Clough and in fact to the benefit of Rawson Hart Boddam himself relieving himself thereby from a Debt to the partnership This appellant further Says the said Alexander Wynchs application to Rawson Hart Boddam began about Interest which the Defendant pretended Rawson Hart Boddam had not given him any order about, and this appellant further says it was after the Tender the Special Fund was resigned away by Rawson Hart Boddam the said Alexander Wynch being then at Masulipatam, received notice from the Defendant of the Chang of the Fund This Appellant further Saith it Appears the Bills drawn were not in favor of any third party but in favor of the Defendant himself the Acceptance by Rawson Hart Boddam being warranted by the Defendant himself which he the said Defendant forgot and neglects as a favor for his own advantage to give himself a fresh Credit as Debtor to Rawson Hart Boddam and to Secure himself from his inadvertency in paying to the Order of Rawson Hart Boddam to the injury of this appellant which he the Defendant will know upon reflection that he was to be responsible for. This appellant further says that the letters of the said Alexander Wynch to Rawson Hart Boddam were Unanswered and the Bills returned unaccepted in Consequence of such non Acceptance every thing remained as before, that is to Say the Debt from the Defendant to this appellants Account remained untransferred and the person of the Debtor remained unchanged and nothing would have discharged the said Defendant but by drawing

drawing on this Appellants Account upon Rawson Hart Boddam
in favor of a third person and the said Rawson Hart Boddams
acceptance and payment in Consequence, from all which it
follows, with Submission to this Honble Court, that neither the
person nor Security was Changed by any Act of the said
Alexander Wynch done in time Subsequent to the Acts of the
Dependant and Rawson Hart Boddam in withdrawing the
Cash Assigned after which period this Appellant saith it
is Clear, that neither the said Dependant nor Rawson
Hart Boddam can in Law or Equity derive any advantage
from their own Wrong and the Fund being gone he the said
Alexander Wynch on Account of this Appellant was no
longer confined in his remedy and application he was then
at Liberty to Sick it from every body he thought proper without
releasing any party by the Operation of any such after act,
unless payment was Obtained by him from some body.
This Appellant further Says that it does not appear that
the said Alexander Wynch was privy or concenting
Actualy or Virtually to the application of the said Mr
Clough, and this appellant further Says, that it is to be
observed that it is after the Order of such fresh Assignment
by Rawson Hart Boddam dated Twelvth November One
thousand Seven hundred and Sixty nine that the said
Alexander Wynch in prejues his Surprize at Rawson
Hart Boddam Silence and also tells the Dependant that the
Company had Opened a Remittance and therefore wrote to
the said Rawson Hart Boddam, to make the remittance but
received no answer from him. The appellant further
saith that the said Alexander Wynch reminded the
Dependant

Dependant of the Cargoe once intended to pay this appellant
and that the Alteration of the Fund would be the highest
Injustice to the Appellant. This Appellant further says
that it appears evident from the Letter I annexed to the Depen-
-dants Answer that the said Alexander Wynch at the time
he drew upon Rawson Hart Boddam doubted of the
Operation but never released the Dependant who drew
at his instance upon his the said Dependant Assuring him
of the said Rawson Hart Boddams Acceptance. The
said appellant further Say that it is in Evidence
that the said Alexander Wynch never Changed
the Security this Appellant Charges that the said
Rawson Hart Boddam and the Dependant were
the persons who did it without the Assent of the
said Alexander Wynch and for their own advan-
-tage. This appellant further Saith that it appears
from the Letter H annexed to the Dependants answer
that the Dependant had Assets of the said Rawson Hart
Boddam besides the Single Bond reassigned to Mr Clough
he the said Dependant being also Debtor to the said Rawson
Hart Boddam for the Ship Carnatic. The said appellant further
Says that the said Dependant warranted to the said Alexander
Wynch that he might depend upon the said Rawson Hart
Boddams Accepting the Bills to be drawn upon him, is in
Law, as this Appellant is Advised, a promise to pay, and as
the said Bills were to be Drawn in the Dependants favor, and
the thanks he received from the said Rawson Hart Boddam
for his management therein, Appear to have been a Concerted
Scheme to impose on this appellant said Attorney. This

Appellant

appellant further saith that the Tender of the Companys Bond so made to the said Alexander Wynch was never offered as a deposit or on Account but it was offered as an Actual payment in discharge of the Sum limitted in the Order thereby creating a new Debt This Appellant further Saith that the Tender of the Bond, not being Legal Currency had no Operation to bind the said Alexander Wynch by his refusal of it, and to discharge the said Defendant, but this appellant insists that the Tender, had on the Contrary an Operation to bind the said Defendant, for no Act of his would more effectually denote his Acceptance of the Order to pay Bombay Rupees Forty one Thousand Six hundred and Twenty Six and Sixty Six Pice than by his tendering some thing Valuable in lieu thereof This appellant further Says that the principal Argument made Use of by the Defendant in his Answer, is, that the said Bond was a legal and Sufficient tender and the refusal thereof was a refusal of all payment and a discharge entirely of the Grss Sum due, not considering this Appellant saith, that the produce, of that Bond so tendered was the property of this appellant This appellant further Says that it Appears from the said Messrs. Boddam and Cloughs direction to the Defendant in the Extract dated Twenty Second December One thousand Seven hundred and Sixty Eight not to allow any Interest further than from the time of the account Current under date Thirty first August One thousand Seven hundred and Sixty Eight which proves that their Order was for Money to be paid and not any Bond to be Delivered. This appellant further Saith that it appears from the

the propposition made by the Defendants of the Twenty Sixth December One thousand Seven hundred and Sixty Eight that he thought himself responsible for the Ballance of the Account Current by him Accepted, but not the growing Intent, without the Orders of the said Rawson Hart Boddam and John Clough as ff. Letter C Annexed to the Bill of this appellants Complaint by which Letter it appears The said Defendant did Actually Accept to pay the Ballance and in default thereof an Action on the Case for breach of promise will lay in a Court of Lawand responsible in a Court of Equity as a Trustee pursuant to his own Declaration, This Appellant lastly says as a further reason for appealing from the said Decree of the said Honorable the Mayors Court that he is Advised that in a Case of a Trust of a Specifical Value or of a Debt once duly constituted in a person and Acknowledged by him, that person cannot by the Law of merchants or Common Law or in General Substantial and Superior Equity which controuls them both, be discharged at any time and by any other means than by a release in form by a party having proper and especial power to bind his principal, in a matter that may prove prejudecial to the principal and for a valuable consideration received or than by another person paying the Debt for the Debtor or by another person Accepting and being Accepted to stand in his place so to pay but that no change of right of things or person is Operated untill there is such mutual Acceptance perfected

This Appellant therefore humbly Prays this Honble Court that the said Defendant may be appointed

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a Short day to Answer this Appellant's Petition of appeal and that the Decree of the said Honble Court may be reversed and Set a Side and that the prayer of this Appellant Contained in his said Bill of Complaint may be inforced and such other Relief as to this Honble Court shall seem meet

And Your Petitioner shall Ever pray &c.

Charles Bromley } Att.ys for the
Gideon Firth } Appellant

Mayors Court at Madraspatnam } Tuesday the 12th Day of September Anno Domini 1775

Present

George Moubray Esquire Mayor
Reynold Adams George Savage
John Renton John Turing
Andrew Majendie James Call
Chas. Edw.d Jones and John Douglas
Aldermen

Between John Harrison of London in the Kingdom of England Esq.r by his attorney Alexander Wynch of Masulipatam Esq.r by his attorneys John Maxwell Stone and William Wynch of Fort St. George Merchants Complainant and George Smith of the same place Merchant Defendant

This Cause coming on to be Heard and Debated This Day in the presence of the Attorneys on both Sides on Reading the Complainants Bill with Copies of an Account Current and Two Letters annexed The Defendants Answer with Copies of thirteen Letters &c.a annexed The Amended Replication The Amended Rejoinder On Hearing the Pleadings made Use of by the Attornies and on Due Consideration had thereon This Court doth think fit to Order and Decree and Doth Accordingly Order and

and Decree that the Complainants Bill do stand dismissed with Costs

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James Taylor

To George Stratton Esqr. &c. Council of Fort St George

In the Court of Appeals

Between John Harrison of Londonen the Kingdom of England Esqr. by his attorney Alexander Wynch Esqr. by his attornies John Maxwell Stone and William Wynch Esqrs. Appellant and George Smith of Fort St. George Esqr Respondent

The Humble Petition of the abovenamed George Smith

Sheweth That the abovenamed John Harrison did by his said attornies on the Twenty fifth day of September last Exhibit a Petition of Appeal in this Honorable Court from a Decree of The Honorable the Mayors Court at Madraspatnam in the said Cause bearing Date the Twelveth day of the said Month of September of which Your Petitioner was Served with a Copy on the Twenty Sixth day of October last with a Notice that this Honorable Court were pleased to allow him Your Petitioner until the Tenth day of this present month of November to put in an Answer thereto which time Your Petitioner begs leave to Represent unto this Honorable Court he findeth too little as the said Petition of appeal is very long and the matters Contained therein and in this Cause very Special which Requires to be more Specially answered than he can do in the Short time this Honorable Court have been pleased to allow him for that purpose. Your Petitioner doth therefore humbly hope this Honorable Court will be Pleased to grant him

him a further time of Ten days to put in his said Answer, which Your Petitioner also humbly hopes this Honorable Court will think the more reasonable to grant as Your Petitioner begs leave to Represent unto this Honorable Court that Considering the matters in the said Cause being of so Special a nature he Your Petitioner did of his own free will and accord Grant unto the abovenamed Petitioner by his said attornies Twenty months, or thereabouts to Reply to his Answer in the said Honorable the Mayor's Court. Your Petitioner does therefore most humbly pray that this Honorable Court will be pleased to Grant unto Your Petitioner the said further time of Ten days besides the said time already granted to put in his said Answer, and Your Petitioner as in duty bound

Shall Ever Pray &c.

John Sykes

Atty for the Pet.r

To the Honorable the Court of Appeals at Madraspatnam

The Answer of George Smith of Fort St. George Esqr Respondent to the Petition of Appeal of John Harrison of London in the Kingdom of England Esqr by his attorney Alexander Wynch of Fort St. George Esqr by his attornies John Maxwell Stone Esqr and William Wynch of the same place appellant.

Filed in my Office 20th November 1752 Chas. Oakeley Clk

This Respondent saith he admits the said appellant by his said attornies at or about the time in the said Petition of appeal mentioned Exhibit a Bill of Complaint in the Honorable the Mayor's Court at Madraspatnam against this Respondent for the Sum of Thirteen thousand Eight hundred and nine Pagodas Forty one fanams and Forty Cash or in sterling money of Great Britain at the rate of eight Shillings for every Pagoda the sum of Five thousand Two hundred and thirty Six Pounds being in Exchange for Forty one thousand Six hundred and Twenty Six Bombay Rupees and Sixty Six Pice the Amount Ballance of an Account Current Remitted by Rawson Hart Boddam and John Clough of Bombay Merchants Executors of John Spencer late of the same place Esquire deceased unto this Respondent and which was given by him unto the said appellant's said attorney Alexander Wynch, a Copy whereof the said appellant said he annexed to his said Bill of Complaint The said appellant did also in his said Bill of Complaint Set forth several

other

other matters thereby Endeavouring if possible to Shew to the said Honorable Court that this Respondent was responsible to him the said appellant for the said Sum, which this Respondent humbly Conceives is clearly refuted by the Proceedings in the said Cause on the part of this Respondent Agreeable to the Decree of the said Honorable the Mayor's Court now before this Honorable Court

To which said Bill of Complaint this Respondent did at or about the time in the said Petition of Appeal mentioned put in an answer therein denying to stand Indebted unto the said appellant either in the Sum of Thirteen thousand Eight hundred and nine Pagodas Forty one fanams and forty Cash either in Exchange for Forty one thousand Six hundred and Twenty Six Bombay Rupees and Sixty Six Pice as set forth and States in the said Bill of Complaint and the account thereunto annexed or otherwise or in any other Sum of money whatsoever, he this Respondent never having had any dealing or negotiation with the said appellant nor can the account Current which the said appellant annexed to his said Bill or the Circumstances set forth by the said appellant in relation thereto, as this Respondent Conceived be taken or considered as any proof that this Respondent is Indebted unto the said appellant either in the sum sued for or in any sum whatever Seeing that they only Shew that the Estate of John Spencer of Bombay was Indebted unto the said appellant

appellant the Ballance Specifyed in the said Account Current which this Respondent did not deny, But averred that it was to the said Estate and to the Executors of the Will of the said John Spencer that the said appellant could with propriety and ought to have recourse, and in proof of this he this Respondent, as he humbly apprehended might have referred to the Representation of the Case as given by the said appellant himself if he had found it proper to set forth the whole of the matter relative to this affair and not have omitted such Circumstances as might possibly have appeared to him of too much Consequence to this Respondent to be specifyed and which therefore this Respondent requested the leave of the said Honorable the Mayor's Court to narrate truly and more Particularly than he the said appellant had done, which said Narrative this Respondent Conceives to be of great Consequence to the merits of this Cause Notwithstanding the said appellant's allegations to the contrary, he this Respondent does therefore beg leave to set forth the same in this his Answer to the said Petition of appeal, at the same time craving leave to refer to the Letter mentioned in his said Answer and of which Copies are annexed thereto. This Respondent upon his Oath said that some time in the month of December One thousand Seven hundred and Sixty eight he did receive directions from Rawson Hart Boddam and John Clough of Bombay to make good to the appellant's attorney Alexander Wynch the Sum of Forty one

thousand

thousand Six hundred and Twenty Six Bombay Rupees and Sixty Six Reis on the account of the appellant John Harrison as a Debt due from the Estate of John Spencer of Bombay to the said appellant but the said Rawson Hart Boddam and John Clough did not send any money or Bills of Exchange to enable this Respondent immediatily to discharge the said Debt but directed him this Respondent to Demand and receive from the President and Council of Fort St. George the sum of Twenty two thousand eight hundred and Forty two Pagodas Thirty One fanams and thirty Six Cash the amount of a Cargo of Goods which sometime in the month of June or July One thousand Seven hundred and Sixty eight John Crichton Supercargo of their Ship the Royal George did sell to the President and Council aforesaid for their Account which sales were made conditioned to be paid by Bills of Exchange on the President and Council of Calcutta or Fort William in Bengal and not for ready money, as is maniously Set forth in the appellants said Bill of Complaint and this Respondent in Order to fulfil the Directions which he had received from the said Rawson Hart Boddam and John Clough did soon thereafter apply to the President and Council aforesaid of which Council the appellants said attorney the said Alexander Wynch was then a sitting member for the Bills on the Presidency of Calcutta according to the Condition of Sale for the Royal George's Cargo with an Intention to negotiate the same to raise money to pay the appellants said attorney the said

said Alexander Wynch the Sum which the said Rawson Hart Boddam and John Clough had Directed, but the President and Council aforesaid thought proper to refuse a Compliance with the said Conditions of Sale there this Respondent not having Authority nor thinking it Expedient to inforce a performance of their agreement by a legal Prosecution did apply for the Payment of the Debt of Twenty two thousand Eight hundred and Forty two Pagodas Thirty One fanams and thirty Six Cash due from the President and Council aforesaid to the said Rawson Hart Boddam and John Clough requesting that they might pay him in money or Bills of Exchange on the Court of Directors in England, which ever was most convenient to the Company's Affairs, that he might by one means or other be enabled to fulfill the Directions of his said Constituents in Paying the aforesaid Sum of Forty One thousand Six hundred and Twenty Six Bombay Rupees and sixty Six Reis to the appellants said Attorney the said Alexander Wynch. but to both or either of these modes of Payment they the President and Council aforesaid thought proper to refuse any compliance for Reasons which this Respondent would not take upon him to set forth to the said Honorable Court but left it to the appellants said attorney the said Alexander Wynch so to do if he thought proper as they must necessarily be well known to him, he being then a Residing member of the Board of Council to which this Respondents application was made This Respondent thought it sufficient to say on this Subject that instead of the President and Council aforesaid making him any Payment in money or Bills they did

did Offer to this Respondent a Bond Obligation or Certificate to be granted by them on the part of the India Company for the amount of the Cargo which had been Sold to them by the said John Crichton as aforesaid which tho' Contrary to the Conditions of Sale, Yet this Respondent being Desirous to facilitate the Payment of the Sum Directed by the said Rawson Hart Boddam and John Clough to be paid to the appellants said attorney the said Alexander Wynch he this Respondent did resolve to acquiese to take a Bond obligation or Certificate for the whole Sum of Twenty two thousand Eight hundred and forty two Pagodas thirty one Fanams and thirty Six Cash due from the President and Council to the said Rawson Hart Boddam and John Clough which Sum amounted nearly to double the appellants Demand, and to Satisfy the appellants said Attorney the said Alexander Wynch, he this Respondent did address to him the said Alexander Wynch the Letter a Copy of which Marked C is annexed to the said appellants Bill of Complaint, making him the said Alexander Wynch an offer of a Bond Obligation or Certificate of the President and Council on behalf of the Company for the Sum of Forty one thousand Six hundred and Twenty Six Bombay Rupees and Sixty Six Reas on account of the said Rawson Hart Boddam and John Clough, thereby intending absolutely to fulfill the Orders of this said Constituents as far as he could with safety to himself and to them, this appearing to him this Respondent to be a mode of Satisfaction which the Attorney of the said appellant the said Alexander

Wynch

2.

Wynch either in Regard to the Interest of his Constituent the Appellant, or from Public considerations and due regard to the Credit of the said India Company his Employers could by no means justly refuse, he the said Alexander Wynch as a member of the Council having offered such Bond obligation or Certificate to this Respondent In Satisfaction for a Sum so much larger due by the said Company to him this Respondents Constituents the said Rawson Hart Boddam and John Clough or if having so Refused that he the appellants said attorney the said Alexander Wynch could not then but be Sensible that he did in Effect discharge this Respondent from all obligation which he could be under to discharge the Sum ordered by the said Rawson Hart Boddam and John Clough to be paid to him as before mentioned and did thereby take upon himself the said Alexander Wynch any further or other means which might appear to him more Expedient for the Recovery thereof as it plainly appears by his the said Alexander Wynch's Letter of which a Copy or marked A annexed to this Respondents said Answer was is Intention to do by Intimating to this Respondent that he would Charge Interest on the Debt due to the appellant untill he would find other means of Payment which means he himself of his own free will and motion, Declared to this Respondent was the drawing Bills himself upon the said Rawson Hart Boddam and John Clough for the Sum sued for by the appellant with Interest, thereby taking the whole Transaction and every Consequence which might

attend

attend it out of the Hands of this Respondent and charging himself on Account of the appellant with the future management and Recovery of the said Debt, as will not only appear from this Respondents Letter to the said Alexander Wynch, of which a Copy marked B. is annexed to this Respondents said Answer, but also by every Subsequent Step taken for the Recovery of this claim or Debt, that he this Respondent left him the said Alexander Wynch at Liberty so to do, and this being the Case this Respondent could not but think himself Answerable to the said Rawson Hart Boddam and John Clough his Constituents Solely for the whole Amount of the Cargo due from the said President and Council on Account of the said Company to them, and to follow all such future Orders as he should receive from them for the Disposal of the money so owing to them from the said President and Council on behalf of the said Company upon the Bond obligation or Certificate which this Respondent had resolved to take for the whole of their said Demand, and this Respondent did accordingly acquaint his Constituents with what had passed between him and the appellants said Attorney the said Alexander Wynch relative to the appellants said Demand, and of the offer of the President and Council to grant a Bond obligation or Certificate for the whole Sum due to them, This Respondent further Saith that the Appellants said Attorney the said Alexander Wynch after he had refused to accept of an Assignment of the Bond of the said Company for the appellants said Demand did address himself Immediately or very Soon afterwards to the said Executors of the said John Spencer by Letter which he put into the hands of this Respondent to be forwarded by him, and which said Letter this Respondent did forward with his own, and in the Answer which this Respondent did receive from the said Rawson Hart Boddam, the other Executor John Clough being then dead, to his own Letter, he the said Rawson Hart Boddam expresly told this Respondent that he approved of the whole of this Transaction as managed by this Respondent, and returns him this Respondent his thanks for his Conduct therein, but makes no mention of the said Debt due to the appellant, doubtless considering that the fresh application which he had then actually received from the appellants said Attorney the said Alexander Wynch had relieved this Respondent from any further Demand on that behalf but on the Contrary he the said Rawson Hart Boddam desires this Respondent to use means with the President and Council of Fort St George for remitting the whole Amount of the Royal Georges Cargo to him at Bombay This Respondent did also in his said Answer set forth that it might not be Immaterial to this Respondent to intimate to the said Honorable Court that the appellants said Attorney the said Alexander Wynch did continue to Reside at this Place until some time in April One thousand Seven hundred and Sixty nine without making any other or further Demand on this Respondent or making any offer or proposal to him to accept a Bond of the Company which was still in his power to take in Satisfaction

satisfaction for the Debt of his Constituent, and that sometime
after his the said Appellants said attorney the said Alexander
Wynch's Arrival at Masulipatam he did address the Letter to
this Respondent of which a Copy marked C. is annexed to this
Respondents said Answer by which Letter it appears that he
had himself wrote to the said Rawson Hart Boddam, and
having received no Answer from him he desires to know from
this Respondent if he had received any, to which this
Respondent doubtless Answered him, all this he did not keep a
Copy of such Answer, that he had not received any Order from the
said Rawson Hart Boddam concerning the appellants said
Demand, and sometime after, that is to say, in September one
thousand Seven hundred and Sixty nine the said attorney of
the appellant did send up a Letter from Masulipatam
addressed to the said Rawson Hart Boddam to be forwarded
by this Respondent accompanied with a Letter to this
Respondent himself, of which a Copy marked D. is annexed
to this Respondents said Answer, wherein he Expresses his Surprize
that he had not received Answer to the Letters he had wrote to the
said Rawson Hart Boddam in December one thousand Seven
hundred and Sixty eight, nor to those he had since wrote to him,
and desired to know whether the said Rawson Hart Boddam
said any thing further to this Respondent about the money
which This Respondent had before been desired to make
good. To which this Respondent must doubtless have given
the said Alexander Wynch the same Answer as he did to his
Letter C. or the same Effect, and this Respondent further saith
that in December one thousand Seven hundred and Sixty nine
he received Orders from the said Rawson Hart Boddam, acting
owner of the Ship Royal George to Transfer the whole of the said
Bond which had been granted by the President and Council
of Fort St. George on behalf of the said Company for the
Amount of that Ships Cargo being Twenty two thousand
eight hundred and Forty two Pagodas Thirty one Fanams
and Thirty Six Cash to Mrs. Mary Clough the Executrix
and Heir of the other owner John Clough deceased as will
appear by the Letter of the said Rawson Hart Boddam
of which a Copy marked E. is annexed to this Respondents
said Answer, which Orders this Respondent accordingly
Complied with, not having the least Conception that
he was under any kind of Tye or Obligation to the
appellant or to his said Attorney, or that he could
avoid a Compliance with the Express Orders of his
Constituent for the disposal of the money of himself and
Partner in the Royal George Cargo due to them by the said
President and Council for the said Company, nor can this
Respondent Suppose that the said Attorney of the appel-
lant himself did or could consider him this Respondent
to be under any Engagement whatever which ought to prevent
his compliance with the orders of his this Respondents
Constituent, as will evidently appear from the appellants
said Attorneys Letter of the Twelveth day of April one
thousand Seven hundred and Seventy of which a Copy
marked F. is annexed to this Respondents said Answer, where-
in he the appellants said attorney informs this Respondent
that he has never heard from the said Rawson Hart Boadam
since December one thousand Seven hundred and Sixty
eight, and says that the amount of the Cargo sold the
Company

Company two Years before was once intended by the said Rawson Hart Boddam and John Clough to pay off the Debt of the appellant, and desiring to know whether this Respondent had Received any directions to Settle the accounts with him out of the money which he Supposes this Respondent must have Received from the said Company with their other Creditors, and further Acquainting this Respondent that he had himself wrote to the said Rawson Hart Boddam desiring him to remit home the appellants Ballance if he could do't by Bills on the Company, To Confirm this still further this Respondent beged leave to annex a Copy of the Letter of the Said Attorney of the appellant himself attested by the said Rawson Hart Boddam marked C. addressed to the said Rawson Hart Boddam, wherein he the said Alexander Wynch Expressly desires the said Rawson Hart Boddam to remit the appellants money to England before the departure of the first Ship after the receipt of his said Letter, and gives him particular Directions to whom the Bills for the said money should be made payable and desiring him to send a Copy of the appellants accounts to him the appellants said attorney, and further this Respondent did answer the said appellants said attorney's said Letter marked F. above referred to, as will appear by a Copy of his said Answer marked H. annexed to this Respondents said Answer, informing him that he had in almost all his letters to the said Rawson Hart Boddam mentioned the Debt to the appellant, but that he had received no answer on that head, and further acquainting him that the Royal Georges Cargo Sold to the Company, out of which he

he was once desired to pay the appellants said attorney had been made over to the said Mrs Mary Clough and was to be Remitted on her account to Europe, and that he had received a part of the money from the said Company and was soon to receive the whole, but could not apply any part of it to the Discharge of the appellants said Debt after the orders which he had received to dispose of the money otherwise, advising him the said Alexander Wynch at the same time to draw Bills on the said Rawson Hart Boddam for the same, which if they were accepted, as this Respondent had not Doubt but they would, he this Respondent declared himself Ready to pay their amount to the appellants said attorney, and the appellants said attorney did accordingly draw Bills on the said Rawson Hart Boddam in favor of this Respondent for the Sum of Forty eight Thousand and one Bombay Rupies One anna and ninety eight Pice, as will appear by his Letter to this Respondent under date the third May one Thousand Seven hundred and Seventy of which a Copy marked I is annexed to this Respondents said Answer, as also by a Copy of his Letter of the same date to the said Rawson Hart Boddam attested by him the said Rawson Hart Boddam which is annexed to this Respondents said Answer marked K. wherein he complains of not hearing from the said Rawson Hart Boddam about the appellants money for so long a time and all this he therein acknowledges that he was informed by this Respondent that the money due from the said Company for

company for the Royal George's Cargo had been assigned to Mrs Mary Clough, Yet he says that he himself has made up the appellant's account to that time, and advises the said Rawson Hart Boddam of his having drawn a Bill for the same on him in favor of this Respondent, who also beged leave to remark to the said Honorable Court that it appears from the said letter of the appellant's said attorney, that the appellant or his Agents in England had constituted another attorney besides the said Alexander Wynch, to wit, Captain Nathaniel Smith of the Camden to recover this Debt of the Executors of the said John Spencer Deceased at Bombay and upon a Supposition that the Bills he the said Alexander Wynch had then drawn on the said Rawson Hart Boddam would be Accepted he allows the said Rawson Hart Boddam to redraw on him for whatever Sum he the said Rawson Hart Boddam might have paid to the said Nathaniel Smith, which this Respondent humbly conceives to be still a further confirmation that the said attorney of the appellant did consider this transaction as taken entirely out of the hands of this Respondent and that the Recovery of the said Debt rested between himself and the Executors of the said John Spencer Deceased, for if he had not considered the said matter in that Light, after this Respondent had expresly acquainted him the appellant's said attorney in his above mentioned letter marked I I. that he had received one third part of the money from the Company for which the President and Council of Fort St George had given a Bond as beforementioned and that the whole Principal and Interest was to be paid off in a few days, would he not have desired this Respondent to allot so much of the said money as the appellant's Demand amounted to for the Payment of that Debt, and if this Respondent had refused so to do, would he not have thought it requisite to have Protested against this Respondent or to have attached the money on his hands instead of taking another and a different Course which doubtless must have appeared to him just and Equitable / to Recover the appellant's money directly from the Executors of the said John Spencer by Bills as aforesaid? and altho the Bills so drawn by the appellant's said attorney Alexander Wynch on the said Rawson Hart Boddam were returned Unaccepted Yet this Respondent did further Inform the said Honorable Court that the appellant's said attorney as it appears by his Letter to this Respondent under date the fourth September One thousand Seven hundred and Seventy a Copy of which marked I. is annexed to this Respondent's said Answer, that he was still satisfyed to pursue further means for the Recovery of this Debt directly from the Surviving Executors of the said John Spencer pointed out to him by the said Rawson Hart Boddam, and Expresly says that he will make a regular Demand on Mrs Boddam and Stockhouse, the then Surviving Executors of the said John Spencer, for the money due to the appellant from the Estate of the said John Spencer, and to remit the said money to England, or if that could not be done to pay it to the attorney of this Respondent at Bombay for Bills upon him this Respondent. In which Letter he also takes

Occasion

occasion to complain of the said Rawson Hart Boddam for the delays used by him in this matter, it no where appearing that he did complain or thought himself intituled to complain of this Respondent on that account, and that he the said attorney of the said appellant did accordingly make his Demand on the said Surviving Executors does appear by an attested Copy of the Letter which he addressed to the said Executors under date the Fourth September One thousand Seven hundred and Seventy marked M. annexed to this Respondents said Answer, in which Letter he the said Alexander Wynch acquaints the said Executors that this Respondent had offered him Bonds of the said Company in Discharge of the appellants said Debt, but that he had rejected them, not making any Objection to their Sufficiency but giving as his reason for his refusal of the Payment of the appellants Debt in that manner, that the President and Council would not grant Bills of Exchange on England for their Amount a Circumstance which this Respondent humbly conceives ought in no Respect to affect him this Respondent or his Constituents, nor Indeed the Estate of the said John Spencer, as it does not appear that either of these Partys were or could be considered under any Obligation to remit this money to England after it was paid, and in the said Letter to the said Surviving Executors he the appellants said attorney the said Alexander Wynch tells them that if they have not wherewithal to satisfy this Debt nor likely to receive it on Mr. Spencers account that they should make up the account and refer the Payment of it

it to the Executors of the said John Spencer in England. From all which Circumstances this Respondent humbly hoped the said Honorable Court would think proper and be pleased to Consider him this Respondent entirely acquitted of any Obligation to be answerable to the appellant or any other Person for this Debt or any part thereof In Regard to the Circumstances of the Rise of the appellants Debt and the steps taken by him for the Establishment thereof with which the appellants said Attorney has thought proper to Swell his said Bill of Complaint this Respondent humbly Conceives it all together foreign to him to make any Answer unto or to deny the truth of, further than as before Set forth and also hereinafter mentioned, and this Respondent, as he had already Set forth, did allow that he did acknowledge to have received directions from the said Rawson Hart Boddam and John Clough to make good the debt due to the appellant by the means which he had already narrated, and does also acknowledge that the appellants said attorney the said Alexander Wynch did once apply to him for Payment of the same but he absolutely denies that he did promise so to do as soon as he had disposed of the Cargo of the Royal George which the appellant says was Consigned to him, the said Cargo not having been consigned to this Respondent but to the said John Crichton supercargo of the said Ship and Cargo belonging to the said Rawson Hart Boddam and John Clough as before mentioned, who had long before disposed of the said Cargo to the President and Council of this place, who purchased the same on account of

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the said Company, nor can the appellant shew any Promise of Payment made to him by this Respondent or any other means or mode of making good the appellants said Demand, other than what is mentioned in the two letters of this Respondent, one of which the appellant has annexed to his said Bill of Complaint, in which letter he offers to the appellants said attorney an assignment of Company's Bonds to the amount of the Debt now sued for, and which this Respondent would have given had the appellants said attorney thought proper to accept the same, and which may further appear from the Answer marked B. which this Respondent makes to the refusal of the said Bond by the appellants said attorney which he has already mentioned and annexed to this his Answer, and in Relation to the matter of Interest Stated by the appellant it is only a circumstance which would have been Consequential of a Payment if that had taken place, and therefore as this Respondent humbly Conceives to be paid no further regard to.

This Respondent doth further in his said answer beg leave to request the attention of the said Honorable Court to the Confession made by the appellants said attorney the said Alexander Wynch in the said Bill of Complaint that he did refuse the assignment tendered to him by this Respondent without giving any other reason for such his refusal but his not thinking himself at Liberty to admit of such credit on account of the appellants Declaration which this Respondent will not pretend to Elucidate but he the said appellants said attorney the said Alexander Wynch does not allledge any Insecurity or Insufficiency in the mode of Payment offered to him by this Respondent, nor does any reasons for such his refusal appear in the Correspondance between the appellants said attorney and this Respondent other than that which is above taken Notice of "The Difficulty of remitting the money to England" a circumstance no way regarding this Respondent, and this Respondent does Acknowledge that he did receive the Payment of the Bond obligation or Certificate granted to him by the President and Council for the Royal George's Cargo both Principal and Interest which the said attorney of the appellant himself would have received above two Years ago if he had Accepted of the tender of the said Bond made to him by this Respondent.

And this Respondent humbly apprehends that the use and purpose to which he did apply the said money was by no means contrary to Equity and good Conscience, and he also hoped it would appear to the said Honorable Court that he this Respondent was and is very Excusable if he did not think himself responsible to the appellant for the said money or any part thereof after the tender which he made him of the Assignment aforesaid was rejected by the appellants said attorney during that it is very Evident from every Subsequent Circumstance that such was the Clear and Established Opinion of the appellants said attorney himself and In Regard to the assertions of the appellants that this Respondent at the time of the sale of the Royal George's Cargo ought to have made such sale, and did make such

such sale for ready money as the appellant alleges he has been informed and does verily believe, it was Sufficient for this Respondent to say, as he had already said, that the appellant had been ill Informed in these Particulars, and that therefore the appellant would not or ought not any longer to maintain or believe them, the same being without any manner of foundation, as will appear by what is therein before Set forth, This Respondent absolutely denied his being or having been a Trustee for the appellant, neither the appellant or any Person for him having ever made this Respondent a tender of any Trust, nor was any such trust special or General ever Accepted of by this Respondent, Essential and absolutely necessary to the Constitution of a trust. This Respondent does therefore aver the Trust, if any there was, did abide and still remains with the appellants said attorney the said Alexander Wynch, who as Trustee or attorney for the appellant did take upon him to refuse the offer of the best Security which in default of money could be tendered to him, and which it cannot be supposed that he could Ever have any Doubt could in due time have produced the money due to the appellant with Interest thereon. This Respondent did further Conceive that the appellants said attorney the said Alexander Wynch did by such refusal not only relinquish any right that the appellant might otherwise have had to have the said property appropriated to the Payment of the appellants said Demand, But did also, thereby together with the other Steps which he the said Alexander Wynch as Representative of and as acting for and on Account of

of the appellant took for the Recovery of the said Debt then due to the appellant take upon himself either Solely or as acting for the appellant the resque of Recovering the said Debt out of whatever other property belonging to the said Estate of the said John Spencer he could find, and did by no means Confine the Recovery of the said Debt out of the property once allotted for that purpose and so tendered and rejected as before mentioned, But did on the Contrary totally Disclaim the same, and thereby did himself, of his own free will and Accord, give Occasion to this Respondents said Constituents to consider the whole Amount of the Royal Georges Cargo as entirely Subject to such Orders as they might think proper to give concerning the Debt owing by the said Company to them being Originally upon their behalf and the whole amount thereof, by such refusal on the Part of the appellants said attorney, being made payable to them or for their account, and which it is also Evident from the fresh Orders which they gave to this Respondent concerning this Debt, that they this Respondents said Constituents, did by no means consider any part of this Debt as a Special fund Set apart for the appellant only or which this Respondent was not Still answerable for to them, Since the appellants said attorney did so as aforesaid Reject the said offer and Seek for Payment by other means and out of other property. This Respondent could not therefore forbear remarking to the said Honorable Court the apparent absurdity and

Inconsistency

Inconsistency of the appellants alledging that this Respon-
-dent became his the appellants Trustee for the said money,
when his the appellants said attorney as acting for and on
account of the appellant, and whose actions must therefore,
as this Respondent Conceives, be binding on the appellant
at least as far as regards this Respondent, was the very
Person who prevented the said property being appropria-
-ted to that purpose which matter this Respondent Sub-
-mited to the Judgment of the said Honorable Court, not
Doubting but they would appear to the said Honorable
Court in the Strange absurd and Inconsistant light
in which they did to this Respondent who cannot for-
bear Considering himself very unjustly and Illegally
Prosecuted by the appellant without any Just Cause or
reason whatever, On which Account this Respondent
humbly hoped the said Honorable Court would be pleased
to Tax the appellant with the Exemplary Costs, and
in Answer to the Several Questions which the
appellant had thought proper to put to this Respon-
-dent he this Respondent answered and said that he
had no further knowledge of the appellants Demand
than what he had already therein before Specified and
said that he had already therein acknowledged the
Receipt of the orders sent to him by the said Rawson
Hart Boddam and John Clough to make good the said
Debtor Ballance to the appellants said attorney, That
he had also further Set forth that such Payment was
Directed to be made out of the proceeds of the Royal Georges
Cargo due by the said Company, which might have been set
a

a part as a Special fund for that purpose had the appellants
said attorney thought proper to accept of the assignation
offered to him of the said Companys Bonds for the amount
of the appellants Demand, but which was not so Set apart
by reason of the appellants said attorneys refusal thereof
as before mentioned, which this Respondent humbly
apprehended was a very Sufficient reason why he had
not paid the appellants Demand and also why the
appellant had no Just Demand on this Respondent,
and this Respondent further answering said that the
Account Current annexed to the appellants Bill is
virtually but not literally a copy of the Account Current
Transmitted to him by the said Rawson Hart Boddam
and John Clough, and also that the Copy of the Letter
annexed to the appellants said Bill marked C, and the
Extract from the said Rawson Hart Boddam and
John Cloughs Letter to this Respondent he admits
and as to the letter B annexed to the appellants said
Bill this Respondent did not know that it is an authen-
-tic Copy but admitted that it might be so for any thing
he knew to the contrary. And this Respondent further
beged leave to acquaint the said Honorable Court that
he had within those few days, and since the appellants
said Bill of Complaint had been Exhibited in the
said Honorable the Mayors Court received a letter
from Mr. Robert Blachford of Bombay who having
charge the Settlement of the Estate of the said John
Spencer deceased, acquainting him that the
said Estate would be more than Sufficient to
pay

pay all the Bond Debts thereof with Interest, and that there was reason to believe that the Book Debts of the said Estate would also be paid, a Copy of which Letter of the said Robert Blachford marked N. for the Satisfaction of the said Honorable the Mayors Court and of the appellants attorney Alexander Wynch this Respondent annexed to his said Answer and this Respondent further beged leave to intimate to the said Honorable Court that he had made known to the appellants said attorney the said Alexander Wynch the Contents of the said Letter from the said Robert Blachford by sending him a Copy thereof, Submitting it to the Judgment of the said Alexander Wynch whether this Information from the Person who had the best opportunity of being acquainted with the Situation of the Estate of the said John Spencer should not determine him the said Alexander Wynch as the appellants attorney, to withdraw the Present Suit, Saying that he the said appellants said Attorney could not have any Doubt but that the Demand of the appellant will be fully Satisfyed from the Estate of the said John Spencer which alone has ever been and still is answerable for the same and not this Respondent To which said answer the said appellant did at or about the time in the said Petition of appeal mentioned put in a Replication thereby Endeavouring, tho to no purpose, to Confirm his said Demand, tho he does in some parts thereof Contradict this said Bill of Complaint, and Setting forth a Number of things relative to a pretended Trust, which this Respondent humbly Insists never Existed, the Voluminous matter so by the said appellant

appellant Set forth being intirely Repugnant to the nature of the Case and the matter in Question in this Cause, as this Respondent humbly hopes will clearly appear to this Honorable Court Notwithstanding any thing by the said appellant alledged to the Contrary

To which said long and Laboured Replication this Respondent did at or about the time in the said Petition of appeal mentioned put in a Rejoinder, But this Respondent absolutely denies that he does therein make use of any vague and Inconsistent arguments, as the said appellant unjustly Asserts on the contrary he humbly Insists that the arguments therein made use of are intirely consistent with the nature of the Case and the matter in Question in this Cause, and such as do clearly refute the Several matters and things by the said appellant Set forth and alledged both in his said Bill and Replication, as this Respondent humbly hopes and Doubts not will appear to this Honorable Court on Reference thereto

Upon these Proceedings Issue was Joined, The said Cause was Set down for hearing, and coming on to be heard and Determined by and before the said Honorable the Mayors Court on Tuesday the Twelveth day of the month of September last the said Court did think fit to order and Decree and did Accordingly Order and Decree that the said appellants said Bill should stand Dismissed with Costs As will more fully and at large appear by the said Decree now before this Honorable Court

From which said Decree this Respondent Conceives the said

said appellant had no Just cause or reason whatever to appeal to this Honorable Court, as he this Respondent conceives the said appellant is not in the least aggrieved thereby notwithstanding his allegations with regard thereto, and the reasons he gives in his said Petition of appeal why he does appeal from the said Decree, which reasons this Respondent considers as weak Evasive and foreign to the case as now before this Honorable Court, and such as do by no means shew that he the said appellant is aggrieved by the said Decree, or that this Respondent is answerable or accountable to him for the Sum Sued for or any part thereof, and in order to shew the same in a clearer light to this Honorable Court this Respondent craves leave more Particularly to answer the said Petition of appeal or such parts thereof as may appear most material for him to make any further answer than to that which he has already done, and in answer thereunto saith, that he this Respondent never did Promise to pay the appellants' Demand out of the Proceeds of the Royal George's Cargo when received, he did 'tis true offer the appellants said attorney a Company's Bond for a part of the proceeds of that Ship's Cargo being the only property of the said Rawson Hart Boddam and John Clough his this Respondent's Constituents, which he this Respondent either at that time or afterwards could assign for the Payment of this Debt, but the appellants said attorney rejected the tender made to him of such Bond and in Lieu thereof adopted other measures for the Recovery of the said appellants said Debt without so much as hinting to this Respondent that he did it Conditionally or

or that he Expected this Respondent to be answerable for the said Debt out of the Proceeds of the Royal George's Cargo, on the Contrary by his the said appellants said attorney's Conduct in this affair he did totally Disclaim the same, and thereby leave this Respondent not only at Liberty to Comply with, but absolutely laid him this Respondent under the necessity of Complying with the Orders of his this Respondent Constituents, whose orders or the order of the Survivor of them regarding the same this Respondent, as their agent was obliged to Comply with, as he did as before and in the said Proceedings mentioned, This Respondent admits, as he has done in the Proceedings, that he did receive the amount proceeds of the Royal George's Cargo sold to the Company but in pursuance of Subsequent Orders received from his Constituents Rawson Hart Boddam the Surviving owner of that Ship and her Cargo, as per Letter E annexed to this Respondent's said Answer, he this Respondent paid the same to Mrs Mary Clough, the wife, Executrix and Heiress of the other owner John Clough deceased, as he Conceives he was obliged to do as before mentioned, if so how became this Respondent The Trustee of the said appellant or who made him so and if he is so where is the Deed expressive of such Trust executed by the Person creating the said Trust the Trustee and the Person for whose use such Trust was intended and whose Acquiescence to the acceptance of which by this Respondent was absolutely and essentially necessary to its very formation, no such Trust is affirmed ever to have had any Existence, but to supply the place of a Legal and necessary an Instrument for the creation of a

Trust

Trust, the said appellant pretends it is a virtual, an Implied Trust, how that can be when there is no real one, and when the said Appellant's said attorney did so as aforesaid disclaim what the said appellant calls a virtual and Implied Trust this Respondent leaves to be explained by the said appellant who advances it and Submits it to the Judgment of this Honorable Court. This Respondent being at the same time conscious that a British Subject will not by a British Court of Judicature be Stripped of his property only by the assertion of such an unmeaning word and distinction as is a virtual Trust Right and wrong are not matters of Logic, they are the most, if not the only essential circumstances of the world, They are that which every thing else refers to, They are that which Stamp an Eternal mark and difference on all things, which no Imagination cannot cancel or erase, nor will the Law, which is Right reason founded on the nature of things admit of vague Imagenary and meta-physical distinctions but only of real actions and Deeds

The said appellant in his said Petition of appeal sets forth, that Rawson Hart Boddam and John Clough as Executors of John Spencer did discharge the debt of the said appellant, and as the attorneys of him the said appellant did receive the same This the Respondent does not deny, but if so, as the said appellant himself does represent, The said Rawson Hart Boddam and the Estate of the said John Clough are responsible to the said Appellant and not this Respondent, who humbly thinks that by the said appellant's own confession of his debt from the Estate of John

John Spencer being discharged has cancelled this Original Bill of Compliant against this Respondent, the same being founded on his, the said appellant's claim on the Estate of the said John Spencer, which he now declares to stand discharged and Received by his own attorneys, who must in Course in that Case be answerable to the said appellant as having received the same, and not this Respondent, who only acted as their agent as to the amount of the Royal George's cargo, and in Course was Subject to their Orders. This Respondent by way of further answer to the said Petition of Appeal begs this Honorable Court will be pleased to take notice of the contradiction made use of by the said appellant, who in one part of his Petition of Appeal avers to the receipt of the money due from the said Mr. Spencer's Estate, and in another part only supposes the same to be received by Messrs. Boddam and Clough, and draws such Contradictory Inferences from his Supposition as he thinks may best Suit his purpose, with regard to what the said appellant pretends as to the Letter A of which a copy is annexed to this Respondent's said Answer this Respondent will not take upon him to define the meaning or Sense which the said appellant's attorney affixed to his own words, but refers this Honorable Court to the words themselves which he hopes they will not construe in the same Sense, nor think they fix any Degree of Responsibility on this Respondent who humbly conceives their meaning will operate to his this Respondent's Release. The appellant's attorney having thereby declared his Intention of drawing on Rawson Hart Boddam and John Clough should it be any considerable time before this

this Respondent could pay him any money on their account
and this Respondent in answer to the appellants said
attorneys said Letter did not say whenor at what period he
would pay him any money on Account of the said Gentlemen
thereby leaving him the said appellants said attorney at
full liberty of pulfilling his Intentions of drawing on them
the said Rawson Hart Boddam and John Clough
whenesoever he pleased, This Respondent being at the
same time cautious not to say or write anything which
might convey an Idea that he did not Intend
Complying with the Orders he had received whenin
his power so to do, provided the said appellants said
attorney should tell him he Expected him so to do, and
provided also that he did not receive any orders to the
Contrary from his said Constituents, This Respondent
doth absolutely deny that he ever did promise to pay the
said appellant or his said attorney out of the proceeds of
the Royal George's Cargo when received or as he receive
it, as the said appellant unjustly sets forth, and begs leave
to refer this Honorable Court to the words of his Letter as
quoted by the said appellant which are "That he would
endeavour to pay off the Demands of the said appellant
as speedily as he could consulting the advantage and
Interest of his Constituents in such payment or payments
"This Respondent is at a loss to know by what Construction
of Law or Equity an Endeavour or an Intent to pay can
or ought to be construed a promise to pay and particularly
when that Endeavour or Intent is not even Claimed, But
other mode of Satisfaction Sought Besides at any rate the
Endeavour

Endeavour or Intent is liable to numberless accidents which
might frustrate this Endeavour and Intention, whereas
a promise to pay is an absolute Engagement to do so on
the Party promising for a Promisary note is as binding on
the Promisor as a Bond or any other Instrument, and here
this Respondent craves the attention of this Honorable Court
that he this Respondent in his said Letter qualifies his
Simple Endeavour to pay with the Condition of such
being for the Interest and advantage of his this
Respondents Constituents, which the Subsequent
orders which he this Respondent received from
the Surviving and acting owner of the Royal George plainly
Evinces not to have been for his this Respondents said
Constituents advantage and Interest that such payment
should be effected by this Respondent to the said
appellant, he the said Surviving and acting owner this
Respondents Constituent having directed his money
to be paid to a third Person, and this Honorable Court will
be pleased to observe with what Caution this Respondent
has wrote to the said appellants said attorney, for in one
Letter he this Respondent refuses to pay the Interest
claimed by the said appellants said attorney from the
adjustment of his the said appellants account with the
said John Spencers Estate to the day on which the same
was claimed by the said appellants attorney, because
he had no orders to do so from his Constituents, and in
his second Letter he this Respondent makes the advantage
and Interest of his Constituents the Condition of his paying
any money to the said appellants said attorney, from all
which

which this Respondent humbly hopes it will appear to this Honorable Court that he this Respondent never considered himself as responsible to the said appellant or his said attorney for any Sum of money whatever but to his this Respondent's Constituents only, whose Mercantile agent this Respondent was and in which Capacity alone he acted, and as such was bound to Observe such Orders relative to the Disposition of their property as his Constituents from time to time might Judge proper to give him this Respodent. This Respondent begs leave further to observe that the said appellant contradicts himself, for in one part of his said Petition of appeal he says he applyed to the said Rawson Hart Boddam and John Clough several times about this Business But that he received no answer to any of his Letters &c. whereas in another part of his said Petition of appeal he acknowledges to have received an answer from the said Rawson Hart Boddam to the Letter which the said appellant's attorney wrote to him advising him of his having drawn Bills on him for the said appellant's Ballance in favor of this Respondent. This Respondent begs leave to Observe further that If the said appellant's attorney had Considered him this Respondent as responsible to the said appellant or to him the said attorney on the said appellant's account for the Sum now claimed of him where was the necessity of asking him this Respondent if he had Received any orders from the said Rawson Hart Boddam concerning the Payment of this money. This Respondent Conceives and humbly Insists to the said appellant's said attorney by this Requisition destroys the very Idea of a Trust said by him to be vested and created in this Respondent, but which both this Respondent does absolutely deny, nor can the application of the said appellant's said attorney to this Respondent to know from him whether the said Mr. Boddam had given him orders for the payment of the said appellant's money be ever admitted either as a confession of Responsability to him in this Respondent or that the said appellant's said attorney did himself consider This Respondent Responsible for the same on the contrary this Respondent humbly hopes it will clearly appear to this Honorable Court that the requisition of the said appellant's attorney for information from this Respondent relative to the said appellant's Debt is a plain confession on the part of the said appellant's attorney, and in Course on behalf of the said appellant that he did not regard this Respondent in any respect responsible to the said appellant for the Sum now claimed of him or any part thereof, for if the said appellant's said attorney had so Considered this Respondent he would doubtless have told him so, but which he never did before he filed his said Bill of Complaint against him in the Honorable the Mayor's Court, it therefore clearly appears that such the said appellant's Assertions relative to a pretended Trust, and that the said appellant's said attorney Considered this Respondent as Answerable for the amount of the said Demand is Void of Truth, as this Respondent doubts not will clearly appear to this Honorable Court from

from the circumstances of the case, as it is from those circumstances the truth must appear, and not from assertions contrary thereto. In Answer to the said appellant's assertion that this Respondent could not pay away any part of the said Royal George's Cargo or such part thereof as the said appellant unjustly claims without the Consent of the said appellant or his said Attorney This Respondent absolutely denies that such Consent was at all necessary under the real circumstances of the case as before and in this Respondent's said Answer and Rejoinder Set forth, But If the Consent or Assent of the appellant's said attorney was necessary to this Respondent before he could pay away any part of the money, the Proceeds of the Royal George's Cargo or such part thereof as the said appellant Claims as aforesaid, this Respondent Conceives his Assent equally necessary to the appropriating the said part of the produce of the said Cargo for the payment of the said appellant's Demand, but so far from his the said appellant's said attorney giving his consenting to the assignation of such part of the said produce as aforesaid for the said appellant's use, he actually rejected the offer made to him of such assignation. This Respondent did then and therefore consider himself at full Liberty to dispose of this money in Conformity to the Orders of his Constituents, as appears by his this Respondent's Conduction the said affair. In Answer to the said appellant's assertion that this Respondent ought in prudence to himself to have suspended his obedience to the orders of the said

Rawson

Rawson Hart Boddam's Second Instructions &c. This Respondent denies that he ought to have done so, and saith he acted as agent to messrs. Boddam and Clough owners of the Ship Royal George's Cargo, and not as the Executors of Mr. Spencer nor as the attorneys of the said appellants in neither of which last Capacities did ever this Respondent receive orders from them his said Constituents, he this Respondent, as their Mercantile agent did therefore think himself bound and obliged to follow such orders as he received from the said Mr. Boddam the Surviving Owner of that Ship and Cargo, and from Mrs. Clough the Executrix and Heiress of the other owner deceased, from whom that is to say, from the said Mrs. Clough this Respondent also and at the same time received a Letter and Power of attorney Empowering him to recover and receive the said money from the Company and remit it to England This Respondent had therefore a Sufficient and Legal authority for the Disposal of the proceeds of the said Royal George's Cargo as he did. Notwithstanding the said appellant's allegations to the Contrary, he this Respondent considering himself bound by their last and Subsequent Orders as much as he did by their first Conformable to the known practice of all Merchant Agents whether those of a Public Company such as the East India and Turkey Company &c. or of private and Particular Merchants from which he this Respondent was not at liberty to recede but at his own Peril and Risque, as will appear to this

Honorable

Honorable Court by the Law Merchant, but the said
appellant Endeavours to blend the Executors of Mr Spencer
and the owners of the Royal George together thereby
attempting to mislead this Honorable Court in their Judgment.
This Respondent, with Submission to this Honorable Court
begs leave to Observe that the said appellant does again
attempt to mislead this Honorable Court by Setting forth
that messrs Boddam and Clough did transmit the
Ballance due to the said appellant from Mr Spencers
Estate by means of the Royal Georges Cargo, whereas the Fact
is as is well known to the appellants said attorney, who
has free access to the Company's Books and Records, that
the Royal Georges Cargo was Sold to the Company previous
to the arrival of the appellants said Attorney in India in
the Year one thousand Seven hundred and Sixty eight
and of Course Previous to the receipt of the said appellants
Order to the said Messrs Boddam and Clough to pay
this money to his said attorney Alexander Wynch Esqr
This Respondent further Saith that admitting the tender
made to the said appellants said attorney was the mere
and voluntary Act and Deed of him this Respondent did
not the repusal of that Tender by him the said appellants
said attorney cancel that Tender and will the said
appellant now be permitted to enforce a pretended Trust
on this Respondent which his own attorney would not
accept of when Offered to him. This appears to this
Respondent, and he hopes it will also appear so to
this Honorable Court to be the Law of the said appellant
only. In Answer to the said appellants Assertion that he
wanted

wanted no other Security than the Tender made to him by
this Respondent, this Respondent would be glad to know why
he rejected it: and as to the Discompt which the said
appellants Says the Company's notes or Bonds bore at
the time the said Tender was made to his said attorney
by this Respondent, did his said attorney Demand an
allowance for such discompt: and was it refused to
him? no neither: and did the appellants attorney, as a
member of the Board of Council who offered this Respondent
on the part of his said Constituents a note Bond or
Obligation in the name of The Company for nearly double
the Sum which was due from the Estate of the said
Mr Spencer to the said appellant, offer to this Respondent
for his Constituents any allowance on account of the
discompt which the Company's Bonds at that time bore, no
but he offered the said note Bond or Obligation on account
of the Company to him this Respondent for the use of his
Constituents at par a convincing proof of his and the
Councils belief of the Sufficiency and Validity of the
Company's Bonds and of their being equivalent to the
money owing by the Company to his Constituents,
which they proved in effect to be they having been paid
with Interest, as the said appellant would have been
above five Years ago had his said attorney judged proper
to accept of the offer made to him by this Respondent
of a Company's Bond for the Sum now claimed by him
This Respondent further saith that at the time he
received Instructions from the said Boddam and
Clough to pay to the appellants said attorney the Sum of

Forty

Forty One thousand Six hundred and Sixty Six Rupees and
Sixty Six Reis he this Respondent had no Assets to whatever
in his hands appertaining to the said Boddam and
Clough as he has Set forth in his said Answer. These
Gentlemen believed the President and Council of this place
would pay the amount Sales of the Royal George's Cargo Sold
to them on behalf of the Company to this Respondent on his
Demanding the same of them, which he did do soon after
he received their Directions but the President and Council
of which the Appellants Attorney was a Sitting member
did refuse the payment of the Amount of that Cargo in
money or in Bills of Exchange on Bengal or on England
to this Respondent, who by such refusal had no Assets
or Effects in his hands belonging to the said Boddam and
Clough to pay the said Appellants Demand but the said
President and Council offering to this Respondent a
Company's Bond or Obligation (which implies his not being
possessed thereof) for the Sum due to the Royal George's
owners he did make a Tender of the same Security and
Payment to the said appellant's said Attorney for the
Sum owing to him from the said Mr. Spencer's Estate,
which was offered to him on the part of his Constituents
by the appellant's Attorney as one of the Board of Council,
as well to Satisfy the said appellant's Attorney as to
fulfill, as much as in him lay, the Instructions which
he had received from his Constituents the said Boddam
and Clough. This Respondent further humbly conceives
that whatever Directions or Orders the said Messrs. Boddam
and Clough may have given the said appellant's said
attorney

attorney do not Concern this Respondent, their Orders to him this
Respondent being what he was bound to give attention to This
Respondent would beg leave to Observe further that If such
Orders as the said appellant Sets forth were given to this
Respondent he would be glad to know where they are, as he this
Respondent has never received such, at least he never
received any Orders whatever relative to a Trust. The said
appellant in his said Petition of Appeal Sets forth that
Reciprocal notices of such orders and Assignment were
given to all parties, if so it would have been easy for him the
said appellant to have produced this Notice of such
pretended Trust, if he ever received any, and if he had would
he not have produced them to the said Honorable the
Mayor's Court. In Answer to the said appellant's assertion
that the said Alexander Wynch Esqr. Sheriff of Calcutta
Cashareing from what he Calls the fund when forth
coming this Respondent Saith that no such Tender was
ever made to the said appellant's said attorney by this
Respondent for the reasons Set forth in the Proceedings
in this Cause on the part of this Respondent. This
Respondent further Saith that It is not only false but
ungenerous in the said appellant to advance that this
Respondent did Secretly convey away the money arising
from the Sales of the Royal George's Cargo to a third Person.
This Respondent has ever been a Stranger to Fraud, and
trusts he will ever continue to be so, and that he has been
so in the present Instance Particularly he begs leave to
refer this Honorable Court to his Letter & Memorial to his
said Answer addressed to the appellant's said attorney

Alexander

Alexander Wynch, wherein he informs the said attorney that he had received a third part of that money, and soon expected to receive the remainder of it, but that he could not apply any part thereof towards his Payment after the orders which he had received concerning it. This Respondent Submits to the Judgment of this Honorable Court whether such an open candid and voluntary confession on the part of this Respondent does emply a fraudulent design of secretly conveying away the property of the said appellant, on the contrary the said Confession furnished the appellant's said attorney with the easiest mode of securing the said appellant's money had he conceived this Respondent responsible to the said appellant, for he might have attached in this Respondent's hands the property of this Respondent's Constituents for the use of the said appellant but far from taking this easy and plain measure he the said Alexander Wynch does not so much as desire this Respondent to keep this money for him, nor does he tell him that he considers this Respondent as Responsible for the same in consequence of the tender once made to him of a Company's note or Bond for the Sum due to his Constituent from the Estate of Mr. Spencer or otherwise; which this Respondent humbly hopes this Honorable Court will be pleased to consider as a convincing proof that the said appellant's said attorney did not in any Respect regard or consider this Respondent in any Degree Amineable or Responsible to the said appellant for the Sum now claimed by him or any Sum whatever, and that this Honorable Court will not think him this Respondent Answerable for the neglect of the said appellant's said attorney notwithstanding his Boasted Claim of virtual Trust in this Respondent - with regard to the said appellant's Assertion that the said Alexander Wynch's application to the said Rawson Hart Boddam began about Interest &c. this Respondent begs leave to refer this Honorable Court to the Letter of the said appellant's said attorney annexed to this Respondent's said answer whereby it appears that the said Alexander Wynch's application to the said Rawson Hart Boddam and John Clough was Intended to be, and actually was for the said appellant's said Debt, as also was his application to the said John Spencer Executor. In answer to the said appellant's Assertion about the Bills Drawn by the said Alexander Wynch on Account of the said appellant on Rawson Hart Boddam" that this Respondent requested the same as a favor &c." this Respondent begs leave to refer this Honorable Court to his this Respondent's said Letter H. annexed to his said answer whereby he hopes and Doubts not but the said matter will appear in a different light from what the said appellant has Represented them. The said appellant does further Allege in Support of his said Unjust Claim that this Respondent's said Letter above referred to is tantamount with a Bill of Exchange, but which this Respondent denies, and Observes that had a Bill of Exchange been granted to the said appellant by the said Boddam and Clough on this Respondent for the Sum Sued for, that such Bill of Exchange could have no Operation against this Respondent if not accepted by

by him, The said appellant further asserts that the Bill of Exchange granted by his attorney on the said Rawson Hart Boddam for the Sum owing to the said appellant from the Estate of the said John Spencer was granted on this Respondents Account. For the Refutation of this absurd Assertion this Respondent thinks it sufficient for him to observe that every Person conversant in Business and the nature of Bills of Exchange must know that a Bill of Exchange tho drawn in favor of one Person is always on Account of the Drawer of the said Bills or that of some third Person or Persons and the said appellants said attorney will not nor cannot deny that the Bills which he furnished this Respondent with on the said Rawson Hart Boddam, this payable to this Respondent or his Order were drawn by him for Account of his Constituent the said appellant as well particularly appear from the Letter of the appellants said attorney to the said Mr. Boddam advising him of the said Bills being Drawn on him to this Respondent, he therein desiring the said Mr Boddam to Redraw on him for such part of the said Appellants money as he might have paid to Captain Nathaniel Smithor others in Conformity to the Orders of his Constituent the said appellant This Respondent acknowledges that he did advise the said appellants said attorney to draw Bills on the said Rawson Hart Boddam for the Sum owing to the said appellant, because that Seemed to this Respondent the most certain and Speedy method for the Payment of the said appellant he than imagining, as he now does that the Estate of the said John Spencer or the said Rawson Hart Boddam and not this

Respondent

Respondent was and is responsible to the said appellant for the money now most unjustly claimed of him the Respondent This, and not a collusive design or Intention to defraud the said appellant or a belief of his responsibility was his this Respondents motive for Offering this advice to the appellants said attorney who is now so uncandid as to make use of it as an argument against this Respondent, forgetting that he was at liberty to reject or follow the Opinion of this Respondent as he judged proper, he the said Alexander Wynch, from his Age Experience, Capacity and Knowledge notstanding in need of any advice or Council which this Respondent might offer to him, and also forgetting that by the adoption of this Respondents Opinion he has made it his own, in proof of which this Respondent begs leave to refer this Honorable Court to the said appellants said attorneys letters brought in Evidence in this Cause by this Respondent. This Respondent further Saith he did not warrant the acceptance of the Bills of Exchange given him by the said appellants attorney on the said Rawson Hart Boddam, his Saying that he might depend on their being Accepted was founded on the Opinion which he then entertained of the said Mr Boddams probity that if that Gentleman had money in his hands belonging to the said Mr Spencers Estate, as he wrote to the said appellants attorney that he had, that he would honor and pay the Bills drawn on him on the said appellants account The said appellant admits that if his said attorney had drawn Bills for the money now claimed of this Respondent to a third Person, that act of his said attorney would Release

this

this Respondent from the supposed created Trust. In Answer to which this Respondent begs leave to refer this Honorable Court to the said appellant's said Attorney's Letter to Messrs. Boddam and Stackhouse, the Executors of the said Mr. Spencer's Estate, annexed to this Respondent's said Answer and marked M. where this Honorable Court will be pleased to observe that he the said appellant's Attorney does order those Gentlemen who are third persons to pay the said appellant's money into the Company's Cash on the said appellant's account directing them to whom the Bills for the said money are to be paid, to whom remitted in London concluding with saying that in the Event of their not being able to remit the said appellant's money to England or to pay the same to this Respondent's Attorney at Bombay the said appellant's Attorney desires them, Messrs. Boddam and Stackhouse, to make up the account and order the payment of the money to the Executors of Mr. Spencer in England, thereby relinquishing all manner of Claim on this Respondent. The said appellant in his said Petition of appeal sets forth that it was for this Respondent's advantage not to pay the said money to the said appellant's said Attorney In Answer thereto this Respondent would be glad to know how that appears he this Respondent Declaring that he reaped no advantage whatever there from, not having Charged Commission, and having allowed Interest on the said money while it remained in his hands with regard to the said Appellant's assertion that this Respondent received the thanks of the said Mr. Boddam for his management in advising the said appellant's Attorney to

to Draw the said Bills, this Respondent does absolutely deny the same, and affirms that the thanks and approbation of the said Mr. Boddam for this Respondent's management in his the said Mr. Boddam's affairs were received by this Respondent full Fourteen months before the said Bills were Drawn This Respondent therefore confidently hopes that such false and arrogant assertions will not pass with this Honorable Court as arguments, and this Respondent Lastly saith that he humbly hopes by the Circumstances and facts as now before this Honorable Court it will clearly appear to this Honorable Court that neither the Tender by this Respondent made to the said appellant's said Attorney or any other real Circumstances in this Affair are Sufficient to Constitute this Respondent a Trustee for the said appellant, But that he this Respondent ought only to be Considered as the Attorney or Agents of Messrs. Boddam and Clough, acting under a Revocable authority, and bound to follow such Orders or Instructions as he should from time to time receive from them, and that to them only he was and is Responsible for his Conduct, For to make a Trustee either of Real or Personal property the Legal Interest in the Trust Estate must be Actually Conveyed to and Vested in such Trustee for the particular purposes meant to be Answered thereby, which by the most favorable Rule of Construction that can be put upon the said Transaction and matter was not the Case here, But Supposing that any Interest ever had by any the most favorable Implication of Law been

Vested

vested in this Respondent for the said appellants Benefit this Respondent hopes it will clearly appear to this Honorable Court that the said appellants attorney Alexander Wynch has by his conduct fully Relinquished the same, and that this Respondent in the Suit now Instituted against him by the said appellant is not liable to his Claim upon any Principal either of Law or Equity

All which matters and things this Respondent Submits to the Judgment of this Honorable Court, and humbly hopes it will clearly appear to this Honorable Court that the said Decree of the said Honorable the Mayors Court is a fair Just Legal and Equitable Decree, and that this Honorable Court will not find any Cause to alter the same But will be pleased to Confirm it and this Respondent most humbly Prays that the said Petition of Appeal may be Dismissed with Costs and also such further and other General Relief in all and Singular the Premises as to this Honorable Court shall Seem meet

John Sykes
Atty for the Respondt

Court of Appeals
at
Madraspatnam } ss

Thursday 14th March 1776.

Between John Harrison of London in the Kingdom of England Esqr by his attorney Alexander Wynch of Maslipatam Esqr by his attorneys Johns Maxwell Stone and William Wynch of Fort St George Merchants ..... Appellant
George Smith ..... Respondent

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of appeal and answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 12th day of September Anno Domini 1775 and upon due Consideration had of the matters therein severally Contained and of the pleadings and Arguments used by the attornies on both sides This Court doth think fit to Order and Decree and doth accordingly order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand Confirmed and that the appellants Petition be hence dismissed with Costs in both Courts.

Pleur

Between John Harrison of London in the Kingdom of England Esq.r by his attorny Alexander Wynch of masulipatnam Esq.r by his attornies John Macwell Stone and William Wynch of Fort St George on the Coast of Coromandall Merchants Complainant and George Smith of the aforementioned place of Fort St. George Merchant Defendant

Filed 26th March 1778
Chas Oakeley
Clerk of Appr.s

To his Most Excellent Majesty in Council
The Humble Petition of Appeal of the said John Harrison by his said Attorney

Humbly Sheweth

That Your Petitioner by his said attorney did on or about the Eleventh day of August one Thousand Seven Hundred and Twenty two file a Bill of Complaint in the Honorable the Mayors Court at Madraspatanam against the above said George Smith for the Principal Sum of Thirteen Thousand Eight Hundred and nine Pagodas Forty one fanams and Forty Cash or Five Thousand Two Hundred and thirty Six Pounds in Exchange for Bombay Rupees Forty one Thousand Six Hundred and Twenty Six and Sixty Six Peices being the Amount Ballance of an Account Current committed by Rawson Hart Boddam and John Clough of Bombay Merchants who were the Executors of John Spencer late of the same place Esquire unto the said George Smith who forwarded the same to Your Petitioners Attorney the said Alexander Wynch a Copy of which marked A Your Petitioner annext to his said Bill of Complaint Your Petitioner further Sheweth that the said John Spencer in his life Time stood indebted unto Your Petitioner a Considerable Sum of money and the said John Spencer being about to leave Bombay he did appoint the said Rawson Hart Boddam and John Clough his Attornies Your Petitioner further Sheweth that the said John Spencer after his departure from Bombay and bing on his Passage for England departed this life leaving a Will and appointed the said Rawson Hart Boddam and John Clough together with one Nathaniel Stackhouse his Executors for his Affairs in India who proved the said Will and Acted as Executors under the Probate. Your Petitioner further Sheweth that being in India previous to the departure of the said John Spencer for Europe Your Petitioner received orders to return to England but before such his Departure he did appoint the said Rawson Hart Boddam and John Clough his attornies and left in their hands a Bond or Obligation of the said John Spencer for the Amount his Debt to Your Petitioner with Orders to receive the Amount of the said John Spencer. Your Petitioner further Sheweth that being apprized of the Death of the said John Spencer Your Petitioner being then in England he did appoint the above said Alexander Wynch who was then in England and about to take his Departure for India his attorney to

Collect.

Collect in Your Petitioners Concerns in India particularly this
Debt of the said John Spencer which Your Petitioner had
reason to suppose the said Rawson Hart Boddam and John
Clough had as Your Petitioners attorney received from the
said John Spencer or his Constituents the Amount of the
aforementioned Bond and in Order to Enforce the Payment
to the said Alexander Wynch Your Petitioner did wrote
to the said Rawson Hart Boddam and John Clough for
that purpose Your Petitioner further Sheweth that the
said Rawson Hart Boddam and John Clough did on
Receipt of this Letter and on the application of the said
Alexander Wynch write to the said Alexander Wynch
and acquainted him of Your Petitioners Order respecting
the Payment of Your Petitioners Demand on the said
John Spencer and that they the said Rawson Hart
Boddam and John Clough had thrown into the
Hands of the above said George Smith a Sufficient
Sum of Money to discharge Your Petitioners Debt and
which they the said Rawson Hart Boddam and
John Clough said that the said George Smith
would immediately on application made by the
said Alexander Wynch Discharge the same
as they had given him the said George Smith
Orders so to do Your Petitioner further Sheweth that
the said Attornies the said Rawson Hart Boddam
and John Clough did also in their said Letter
to the said Alexander Wynch Acknowledge to have the
money laying by them and have taken an Opportunity that
then Offered and which Suited their Convenience to remit
the Ballance to the said George Smith which they made no
doubt he would punctually Comply with Your Petitioner further
Sheweth that the said Alexander Wynch on Receipt of this
Letter from the said Rawson Hart Boddam and John
Clough applied to the said George Smith for payment
pursuant to the said Letter of advice who informed the said
Alexander Wynch that he the said George Smith had received
Orders from the said Rawson Hart Boddam and John
Clough to pay off the Ballance of Your Petitioners demand
which he promised to do as Set forth in Your Petitioners
Bill of Complaint, but Objected to allow him any more
Interest than what the Account Specified and further
acquainted the said Alexander Wynch that the funds
allotted for payment of Your Petitioners Debt was a Cargo
of Goods and Merchandize by the Ship Royal George and which
had been Sold to the President and Council of Fort St. George
and for which he the said George Smith had received a Bond
or some writing Obligatory from the said President and Council
a part of which he the said George Smith offered to Assign
over to the said Alexander Wynch in payment of Your
Petitioners Demand which the said Alexander Wynch
declined acceptance of Your Petitioner further Sheweth that
since the refusal so made by the said Alexander Wynch
of the Assignment the aforesaid George Smith has received
the Amount of the said writing Obligatory so given by the
said President and Council Your Petitioner further Sheweth
that the said George Smith has paid away the same by the
Directions of the said Rawson Hart Boddam to the order of
Mrs Clough the Executrix of the said John Clough who died
soon

soon after his Directions given jointly with the said Rawson Hart Boddam for the payment of Your Petitioners Debt Your Petitioner remains unsatisfyed in the premises Your Petitioner further Sheweth that he did file his Bill of Complaint as before set forth against the said George Smith by reason of his accepting to pay the said Alexander Wynch pursuant to the Directions of the said Rawson Hart Boddam and John Blough the which the said George Smith ought to have paid whinever the Specifick proceeds of the said Ships Cargo was received to which said Bill of Complaint the said George Smith did on the thirteenth day of October in the Year of our Lord One Thousand Seven Hundred and Seventy Two file his Answer and therein denied to be indebted to Your Petitioner in the sum Sued for & in any other Sum of Money whatsoever Specially reciting the particulars attending this negociation as will more fully appear by a reference to the said Answer Your Petitioner further Sheweth that he by his said Attorney did file a Reply Specially reciting some particulars both as a refutation of the matters alledged by the said George Smith in his said Answer and a support in Defence of Your Petitioners Bill of Complaint as will more fully appear by the said Reply to which the said George Smith Rejoined but no Witnesses being Examined this Cause came on and was heard in the Honorable Mayors Court the Twelfth day of September in the Year of our Lord one Thousand Seven Hundred and Seventy Five who have pleased to pronounce their Determination to the purport set forth in a Copy of the Decree hereunto Annexed from which said Decree of the Honorable the Mayors Court Your Petitioner did on the Twenty fifth Day of September in the Year of our Lord One Thousand Seven Hundred and Seventy five by Petition to the Honorable the President and Council of Fort Saint George as a Court of Appeals pursuant to the Charter Granted to the Honorable United Company of Merchants of England Trading to the East Indies appeal therein Seting forth Your Petitioners Reasons for not abiding by the Determination of the said Honorable the Mayors Court to which Petition of Appeal the said George Smith did on the Twentieth Day of November in the Year of our Lord One Thousand Seven Hundred and Seventy five put in his Answer Your Petitioner further Sheweth that this appeal came on to be heard and was Determined the fourteenth of March in the present Year of our Lord One Thousand Seven hundred and Sixty Six by the said Honorable Court of Appeals who were pleased to Confirm the Decree of the Honorable the Mayors Court as will more fully appear in a Copy of the Decree of the said Honorable Court of Appeals hereunto Annexed from which said Decrees of the said Honorable the Mayors Court and the Honorable Court of appeals Your Petitioner most humbly appeals to Your most Excellent majesty in Council for the Reasons Assigned in Your Petitioners Petition of appeal to the Honorable the President and Council of Fort Saint George as a Court of appeals and further as Your Petitioner hath apparent Damage by his Bill of Complaint being Dismissed without any relief and which is Contrary to all Equity as Your Petitioner is advised Your Petitioner therefore appeals from the said Decrees and proceedings in the said Several Courts to Your Majesty in

Council

Council and most humbly prays that the said Defendant George Smith may be Directed to answer all and Singular the Premisses before Your Majesty in Council and that the said Order and Decree may be reversed and Set a Side and that your Petitioners said Bill may be retained in the said Honorable the Mayors Court and the matters therein prayed Decreed to Your Petitioner or such other Relief as to Your most Excellent Majesty in Council shall seem meet

And Your Petitioner as in Duty bound shall Ever Pray

Chr.s Bromley
Gedeon Firth } Mounies
Appell

Mayors Court

Mayors Court at Madraspatnam — Tuesday the 12th day of Sept.r Anno Dominie 1775

Present

George Moubray Esquire Mayor
Reynold Adams — George Savage
John Renton — John Turing
Ana.s Majendie — James Call
Chas Edw.d Jones Esq.r — John Douglas
Aldermen

Between John Harrison of London in the Kingdom of England Esquire late Commander of his Majestys Ship Yarmouth by his attorney

Alexander Wynch of Masulipatam Esquire by his Attorneys John Maxwell Stone and William Wynch of Fort St. George Merchant Complainants and George Smith also of the same place Merchant Defendant

This Cause coming on to be Heard and Debated this Day in the presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of an Account Current and Two Letters annexed The Defendants Answer with Copies of thirteen Letters &c annexed The Amended Replication The Amended Rejoinder On Hearing the Pleadings made use of by the Attorneys and on Due Consideration had thereon This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Complainants Bill do stand Dismissed with Costs

Ver
James Taylor
Register

Court of Appeals at Madraspatnam } Tuesday the 14th March 1776

Between John Harrison of London in the Kingdom of England Esq.r by his Attorney Alexander Wynch

of Masulipatanam Dy.r by his attornies
John Maxwell Stone and William
Wynch of Fort Saint George
Merchants Appellants and George
Smith Respondent

This Cause coming on this Day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 12th Day of September Anno Domini 1775 and upon the Consideration had of the matters therein severally contained and of the Pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Decree of the Honorable the Mayors Court given in this Cause do Stand confirmed and that the appellants Petition be hence Dismissed with Costs in both Courts

Per
Charles Oakeley
Clerk

To the Honorable the Court of Appeals at
Madraspatnam

Between John Harrison of London in the Kingdom of England Esq.r by his attorney Alexander Wynch of Masulipatam Esq.r by his attorneys John Maxwell Stone and William Wynch of Fort St. George on the Coast of Coromandel Merchants Complainant and George Smith of Fort St. George Merchant Defendant

Filed the 16th April 1776
Ch.s Oakeley
Clk of Appls

The Humble Petition of the said George Smith

Sheweth

That the said John Harrison by his said attorney died on the Twenty Sixth Day of March last Exhibited a Petition in this Honorable Court in the above Cause To His Most Excellent Majesty in Council from a Decree of The Honorable the Mayors Court at Madraspatnam bearing Date the Twelveth Day of September which was in the Year of Our Lord One thousand Seven hundred and Seventy five and also from the Decree of this Honorable Court bearing Date the Fourteenth Day of March in the present Year of Our Lord one thousand Seven hundred and Seventy Six But did not therewith agreable to His said majesty's Charter give Security to pay Interest and the Costs of the said appeal Nor hath the said Complainant Yet given such Security altho' such Security was applyed for and Offered on the part of the said Complainant and the Security so Offered agreed to by Your Petitioner But for want of such Security being actually given Your Petitioner Conceives the said Petition of Appeal to his said Majesty in Council is Insufficient and Invalid Your Petitioner therefore humbly Prays that the said Petition of Appeal To His said Majesty in Council

may be Dismissed with Costs—

John Sykes
a Ty for the Pet.r

In the Court of Appeals

The Answer of John Harrison of London in the Kingdom of England Esq.r by his Attorney Alexander Wynch of Masulipatam Esq.r by his Attornies John Maxwell Stow and William Wynch of Fort St. George Merchants to the Petition of George Smith of Fort St. George Merchant

The said Respondent saith in answer to the above mentioned Petition that such Petition the Respondent humbly Conceives is very improper and immaterial for this Honorable Court of appeals to take into Consideration because the above mentioned Suit is appealed to the King in Council of which notice has been lodged in the Mayors Court of Madraspatnam and Entered upon Recorded there

The said Respondent further Answers and says to such part of the Petition wherein the Petitioner acknowledges that a Security was offered and by him accepted of that such his Assent clearly proves that some good and Sufficient Security was offered and that some mode was to be adopted in the giving of that Security

Filed in my Office
26 April 1776
Chas Oakeley
Clk of Appls

which the Petitioner has omitted to inform this Honorable Court of the which the Respondent humbly begs leave to lay before this Honorable Court the Respondent says that on the Day that notice was given by this Honorable Court of Appeals to the Honorable the Mayors Court of Madraspatnam of the appeal to the King in Council, the Respondents Attorney did upon this notice being read in Court inform Mr. John Sykes the Petitioners Attorney that he offered Francis Sourdan Esq.r as Security to Answer the additional Costs of the Appeal to England if required and if that was not sufficient he offered Mr. William Wynch to be Joined in the Security. of which Mr. John Sykes promised to approve the Petitioner The said Respondent further says that some time after the Petitioner Spoke with the Respondents Attorney under the Seagate of Fort St. George and enquired of him, if it was not usual at the time the Petition to the King in Council was filed to give a Security to answer Interest and Costs to which the Respondents Attorney answered that it was as the parties could agree upon, sometimes it was desired and sometimes left alone, but if the Petitioner thought it necessary he would get Mr. Sourdan to Sign as Security or if that was not sufficient he offered Mr. William Wynch to be joined in the same to which the Petitioner said he was perfectly Satisfied with Mr. Sourdan alone, and further for his part, the parties in the Suit were sufficiently good, but for regularity sake, he would wish the Security was filed, and that the Respondents Attorney would get it done as soon as he could

which

which was promised on the part of the said Respondents attorney and who as soon as he could did wait on Mr. Sourdan but found he was gone to Tanjour which the said Petitioner must know at the time of the filing his Petition thinking thereby to avail himself of the absence of the Person whom he knew would certainly become the Security for the Appealing of the cause as the said Francis Sourdain who is the Special attorny of Alexander Wynch directed the Petition of appeal to his Majesty in Council

The Respondent further says to so much of the Petition wherein the Petitioner says that for want of Security he conceives the said Petition of appeal to his Majesty in Council is Insufficient and Invalid and therefore humbly prays that the said Petition of Appeal to his Majesty in Council may be Dismissed with Costs in Answer thereto the Respondent says that this prayer of the Petition is contrary to Law as has been already adjudged in the High Court of Chancery, for altho there might not be any Reservation of the Subjects right of appeal to the Crown, Yet this Liberty was plainly implied For that such Liberty of appeal lay in all Cases when there was a Tenure of the Crown, that it was the Right of the Subjects to appeal to the Sovereign to redress a wrong done them in any Court of Justice and further if there had been any Desyrs words in the Grant to Extend appeals they had been void, because the Subjects have an Inherient right inseparable from them as Subjects to apply to the Crown for Justice" therefore the officially giving Security to answer the additional Costs of appeals as no Security can be given for Interest by the Respondent he being the Complainant in the Cause nor is he clear that he is under the necessity of giving Bail as the Charter in this particular appears to be in favor of the persons applying for relief in the mayors Court and who have obtained a Decree in their favor and wherein such Decree has been confirmed by the Court of appeals for the Bail to the Action is responsible for no more than the Debt and Costs in both Courts and therefore the Charter has Directed that the Defendant who appeals to England shall give a further Security for the additional Expence attending the appeal and the Interest arising on the Original Sum sued for and the Interest to the filing of the Petition of appeal to his Majesty in Council The Respondent further says that the Petitioner has at any time the liberty of calling upon the Respondent for a Security but the omitting to file such Security does not impeede the filing of the Petition it may retard the hearing, for all which matters and things this Respondent humbly prays that the said Petition may be Dismissed and that the Petitioner be directed to pay all Costs and Charges attending the Premises and that the Respondent be at Liberty to enter at any time for his Security into such Recognizance as this Honorable Court shall direct

Chas. Bromley
Gideon Firth } Mr.s Respondt