High Court Series VI

Appeals against Magrs' Court decisions

Vol 7

R.O. No. 14196

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Block	7
Rack No.	
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Serial No.	7
General No.	1206

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484

To the Honorable the Court of appeals at Madraspatnam

Between Miguel Joannes of
Madras Merchant Compl[ain]ant
and Shake Buddoo of the same
place Inhabitant Defendant

The Humble Petition and appeal of the said Shake
Buddoo

Sheweth

That the abovenamed Miguel Joannes died on or about the Tenth
Filed the 2. December 1776 Day of April which was in the Year of our Lord One thousand Seven
Hundred and Seventy five Exhibit a Bill of Complaint in the Honble
Chas Oakeley Clk the Mayors Court at Madraspatnam for the Sum of One Hundred
and forty Star Pagodas which he the said Miguel Joannes
pretends he advanced and lent to One abdool Cauder late of Madras
Inhabitant Deceased Brother to your Petitioner in his life time in
the Month of August in the Year of our Lord One thousand Seven Hun-
dred and Seventy One upon a mortgage for the Term of three Years and
upon certain Terms and Conditions as Recited in the mortgage Deed
bearing Date the Twenty first day of August in the said Year one
thousand Seven Hundred and Seventy One, a Copy whereof the said
Miguel Joannes Says he annexes to his said Bill of Complaint
and the said Miguel Joannes does also Set forth several other
matters relative to the Affair

In

To which said Bill of Complaint Your Petitioner did on or about the Eleventh Day of July in the said Year One thousand Seven Hundred and Seventy five put in an Answer thereby Seting forth that Your Petitioners Father dyed leaving two Sons named abdull Cauder and Your Petitioner as also one House and Ground Situated at Mootall Pettah in Dollalcaun or Coja Shamiers Street which House having been Destroyed by Tempest and part of the upper materials thereof he the said abdul Cauder did absolutely dispose of and convert it to produce to his own Use and Your Pet.r did some time after purchase materials and Built Two Houses on the same Ground on which the said House stood and a Dispute arose between your Petitioner and the said abdul Cauder which was referred to arbitration and an Award made as therein Particularly Set forth and Your Petitioner did also Set forth that the said action was unjust and Ill founded for the Reasons therein Particularly mentioned To which said answer the said Miguel Joannes put in a Replication and Your Petitioner put in a General Rejoinder

Upon these Proceedings Issue was Joined, Rules for Witnesses past, Witnesses were Examined on the part of the said Miguel Joannes Publication past, The said Cause was Set down for hearing and coming on to be heard by and before the said Mayors Court on Tuesday the nineteenth day of this present month of November The said Court were pleased to Decree Your Petitioner to pay all the Costs and Charges attending the said Suit, as will more fully

more fully and at large appear by the said Decree which comes here with for the Inspection of this Honorable Court

From which said Decree of the said Mayors Court Your Petitioner doth appeal to this Honorable Court as he conceives the same is wrong and Erroneous and that he Your Petitioner is aggrieved thereby for the Several Reasons by him Your Petitioner Set forth in the said Proceedings in the said Cause

All which matter and things Your Petitioner Submits to the Judgment of this Honorable Court and humbly Prays that the said Decree may be Reversed and Set aside, That the said Bill of Complaint of the said Miguel Joannes may be Dismissed with Costs of the said Suit as well as of this appeal Your Petitioner doth also pray such further and other General Relief in all and Singular the Premises as to this Honorable Court shall seem Meet

Wm Sykes
Atty for the appellt

To the Honorable the Court of appeals at Madraspatnam

Between Miguel Joannes of Madras Merchant Complainant and Shake Buddoo of the same place Inhabitant Defendant

The amended Petition and Appeal of the said Shake Buddoo Sheweth That the abovenamed Miguel Joannes did on or about

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Filed the 20th Dec.r 1776
Ch.s Oakeley Clk

about the Tenth day of April which was in the Year of our Lord One thousand Seven Hundred and Seventy five Exhibit a Bill of Complaint in the Honorable the Mayors Court at Madras pateain thereby Setting forth That he did sometime in the Year of our Lord One thousand Seven Hundred and Seventy One advance and Lend the Sum of One Hundred and Forty Star Pagodas unto One abdool Cauder late of Madras Inhabitant in his Lifetime but since deceased on a Mortgage for the Term of three Years Upon certain Terms and Conditions as recited in the mortgage Deed bearing date the Twenty first day of August in the said Year One thousand Seven Hundred and Seventy One a true Copy whereof he Says is annexed to his said Bill of Complaint That the said abdool Cauder did Deposite the Bill of Sale of the said Premises in the hands of the said Miguel Joannes and of which he says he annexes a true Copy to his said Bill That the said Abdool Cauder did afterwards die without paying off the said mortgage or Satisfying the said Miguel Joannes's said Demand That Some time after the said Deed of Assignment was made George Mackay of Fort St. George Esq.r did send unto the said Miguel Joannes and request a Sight of the aforementioned Bill of Sale and mortgage which he Complied with as he did not in the least mistrust any advantage would be taken of such Confidence without his knowledge or Approbation That soon after the said George Mackay returned him the said writing when on Perusal he found to his great astonishment The following

following Subjoined to the Bill of Sale with the name and Seal of the said George Mackay Set and Subscribed thereto Viz.t This is to "Certify that although the Estimated Value of the House and Ground "mentioned in this Certificate is as therein Expressed Pagodas One "Hundred and fifty Still the owner thereof muctoomjee abdool "Cauder is bound by an Award of arbitrators which Award has been "Confirmed by me and Registred in the Award Book in dist. N.o 63. "in Case of Sale thereof to sell it to his Brother Shake Buddoo for "the Sum of ninety three Pagodas in Consequence of some Accounts "which before Subsisted between the said muctoomjee abdool Cauder "and the said Shake Budoo In Testimony whereof I have "hereunto Set my Hand and Seal in Fort St. George this "third day of March one Thousand Seven Hundred and "Seventy two (Signed) George Mackay (L.S.)

A Copy of which the said Miguel Joannes Says he Annexes to his said Bill of Complaint which Certificate the said Miguel Joannes pretends is wrong and Subjoined at the Instance of your Petitioner who he Says he is Informed pretends a Share or some right in and to the Mortgage Premises and Says that Immediately or soon after the Limitation was Expired for the Payment of the mortgage money he gave notice of the Premises being put up for Sale but before the same could be Sold your Petitioner applied to the said Miguel Joannes to defer the sale untill they could Settle the difference arising as the said Miguel Joannes Says from the said Certificate which he

he pretends he was ready to do But that Your Petitioner would not do so pretending he was equally Intitled to a share in the Premises and that the said Abdool Cauder his Brother had no right to assign over to the said Miguel Joannes the whole of the Premises and therefore that the said Miguel Joannes was Intitled to no more than the sum of ninety three Dol. as expressed in the said Certificate which Your Petitioner was ready to pay to the said Miguel Joannes on his Delivering up the Bill of Sale and mortgage to him Your Petitioner which the said Miguel Joannes refused pretending at the time he lent the said money to the said Abdool Cauder he was an Utter Stranger to any person or Persons having any Claim to the Mortgage Premises and that he lent his money upon the bare face of the Bill of Sale thereof also pretending that any Award made by the said George Mackay could not Invalidate the mortgage Deed of the said Abdool Cauder to him in any other manner or shape than by praying off the whole of the said mortgage more particularly when Reference is made to the Respective Dates of the mortgage and the Certificate subjoined by the said George Mackay wherein it appears that the Mortgage so made to him the said Miguel Joannes is prior to the Certificate and praying that Your Petitioner might Set forth and Discover what right or Title he has to the Premises in Dispute and be Decreed in case his Your Petitioners Title shall be well grounded either to pay the whole of the Mortgage

Mortgage to the said Miguel Joannes or that he the said Miguel Joannes be permitted to Dispose of the same by Publick Sale Pursuant to the authority vested in him by means of the said mortgage Deed and that Your Petitioner be Decreed to pay all Costs of the said Suit To which said Bill of Complaint Your Petitioner did on or about the Eleventh Day of July in the said Year One thousand Seven Hundred and Seventy five put in an Answer therein Setting forth that Your Petitioners Father dyed leaving two Sons named Abdul Cauder and him Your Petitioner as also one House and Ground Situated at Mortal Pettah in Dollet cauvor Coja Shamier Street which House having been Destroyed by Tempest and part of the Upper Materials thereof he the said Abdul Cauder did absolutely dispose of and Convert its produce to his own use Your Petitioner did some time after Purchase materials and Built Two Houses on the Same Ground on which the said House stood and a Dispute arrose between Your Petitioner and the said Abdul Cauder by reason of the latter Claiming a Share of the said House and Ground and the said Abdul Cauder made a Complaint to the Choultry Court and George Mackay Esqr was Desired to settle the difference The said Mr Mackay accordingly after having first obtained a Penalty Bond from the parties referred the Dispute to the Determination of Cauju Mahomid Ababaker and of Your Petrs own Cast who gave their award as follows, that is to say, they found that the said Abdul Cauder stood Indebted to Your Petitioner who they call Pador as Your Petitioner is sometimes called in the Sum

Sum of Twenty Pagodas and both Houses being valued at One hundred and Sixty Pagodas Viz.t Your Petitioners House at Sixty Seven Pagodas and abdul Cauder at ninety three Pagodas which difference between the Value of the said two Houses made abdul Cauders Debt to Your Petitioner thirty three Pagodas which he was to pay to Your Petitioner That if either of them the said abdul Cauder and Your Petitioner Sell their said Houses it must be to one another at the Valuation as above To which both the said abdul Cauder and Your Petitioner Agreed and so the said Arbitrators Determined as will more fully and at large appear by the said award which was confirmed by the said Mr. Mackay as Choultry Justice and Entered on the Records of the Choultry Court an attested Copy of which said Award by the Register of the said Court is annexed to Your Petitioners said Answer and which Your Petitioner Prays might be admitted as part thereof Your Petitioner further Setforth that in Consequence of the said Award they the said abdul Cauder and Your Petitioner were Permitted to get and were granted Choultry Certificates for their said Respective Houses But the said abdul Cauder Instead of getting his Certificate made out for ninety three Pagodas According to the said Award got it made for One Hundred and forty Pagodas which said Sum of One Hundred and forty Pagodas Your Petitioner mentioned by mistake Instead of One Hundred and fifty Pagodas and then went and Sold it to one Coja Ovanes by means of Coja Aviat for One Hundred and forty Pagodas and Your Petitioner Claimed a preference by

Vertue

Virtue of the said Award by Complaint to Edward Stracey Esq.r and the said Coja Aviet and Coja Ovanes were desired to Inspect into the said Award which they did and Relinquished the Purchase The said abdul Cauder some time after Sold the said House to one Jaffer Boy which Your Petitioner again Claimed by Complaint to the said George Mackay Esq.r Jaffer Boy being sent for by the said Mr. Mackay and made Acquainted with the Contents of the said Award, and Ordered not to Intermiddle with the said Affair, the said Jaffer Boy thereupon got the said Miguel Joannes under hand to Receive the said House Saying that he was going to take it on Mortgage Your Petitioner and those who were present Acquainted the said Miguel Joannes that the said abdul Cauder had no Right to mortgage the said House and that those who had already bought it at three aforesaid were Ordered to Relinquish the Purchase by the said Mr. Stracey and Mr. Mackay But the said Miguel Joannes instead of Declining the said Affair said he had already lent Money thereon and the said Miguel Joannes was desired to Receive his money back – Nevertheless Your Petitioner receiving no Satisfaction he Your Petitioner Acquainted the said Mr. Mackay with the Intentions and proceedings of the said Miguel Joannes and the said Mr. Mackay Summoned or sent for the said Miguel Joannes and desired he would produce the Certificate of abdul Cauders House which he did and the said Mr. Mackay indorsed the Contents of the said Award and Delivered it back to the said Miguel Joannes

and

and Ordered the said Miguel Joannes to Receive of Your Petitioner the Sum of ninety three Pagodas and to Deliver the said Certificate of the said House to Your Petitioner and Receive the Rest of his money back from the said Abdul Caudet Your Petitioner did accordingly tender the said ninety three Pat to the said Miguel Joannes which he the said Miguel Joannes refused to Receive unless the said Abdul Caudet would pay it to him altho' the said Abdul Caudet was Concealed by the said Miguel Joannes and was not to be found for Some time But upon the said Abdul Caudet appearing Your Petitioner again tendered the said ninety three Pagodas to the said Miguel Joannes which he the said Miguel Joannes still refused to Receive and the said Abdul Caudet afterwards died. This being the Case Your Petitioner Submites to the Judgement of the said Honorable Court as he now does to this Honorable Court, what Cause of action the said Miguel Joannes has against him Your Petitioner, and whether Instead of his Commencing the present action against Your Petitioner he the said Miguel Joannes should not have received from Your Petitioner the said Sum of ninety three Pagodas and Delivered up the said Choultry Certificate and House to Your Petitioner Agreeable to the said Award and Your Petitioners said offer Your Petitioner did then proceed more particularly to Set forth that he is an entire Stranger to the said Miguel Joannes having either in the Months of August One thousand Seven hundred and Seventy One or at any other time advanced or Lent the Sum

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of One Hundred and forty Pagodas unto the said Abdul Caudet on the Mortgage in Question But if he did so advance or Lend the same Your Petitioner Conceives he the said Miguel Joannes cannot Claim more than the Sum of ninety Three Pagodas from or on Account of the said House for the Reasons before mentioned which Your Petitioner Offered to pay him the said Miguel Joannes as before Set forth in Answer to what the said Miguel Joannes in his said Bill Sets forth about the Certificate which the said Mr. Mackay Subjoined to the said Choultry Certificate Your Petitioner said he Conceived it was but Just that Some thing Should be done to Shew on what Condition the said Abdul Caudet held the said House and the Interest he had in it in Order to prevent the said Miguel Joannes from taking any advantage thereof and also to prevent Your Petitioner from being Deprived of the Interest which he had in the said House or the Right that he Your Petitioner had to have the said House for the said Sum of ninety three Pagodas which he was ready and willing and did offer to Pay as aforesaid Agreeable to and in Compliance with the said Award. Your Petitioner did not therefore See any Injustice in the said Indorsment or any Injury done thereby notwithstanding any thing by the said Miguel Joannes alledged with regard thereto That the said Miguel Joannes pretends he Endeavoured to Settle the Difference between him the said Miguel Joannes and Your Petitioner in a friendly and in an Amicable manner and that Your Petitioner refused so to do In Answer thereto Your Petitioner said

said he was both Ready and willing and did offer to Pay the said ninety three Pagodas to the said Miguel Joannes on his Delivering the said House and Certificate to him Your Petitioner which the said Miguel Joannes refused, Insisting on either the said Sum of One Hundred and forty Pagodas or that the said House should be Sold for Payment thereof Your Petitioner did therefore Submit to the Judgement of the said Honorable Court as he now does to this Honorable Court how far the said Miguel Joannes either Endeavoured to Settle the said difference in a friendly and Amicable manner or that Your Petitioner refused so to do as he unjustly asserts Your Petitioner denies that he did pretend that he is Equally Intitled to a Share of the House in Question with the said abdul Cauder But said he Conceived himself Justly Intitled to the said House on Payment of the said Sum of ninety three Pagodas which he was and is ready to do and Conceived the said Miguel Joannes had no Right to Claim any greater Sum either from Your Petitioner or the said House Nor has the said Miguel Joannes as Your Petitioner Conceives any Right whatever to Detain the said House or Certificate as Your Petitioner was and is Ready to pay the said Sum of ninety three Pagodas If the said Miguel Joannes has any further Demand on Account of any money lent to the said abdul Cauder Your Petitioner Conceives he should make it on those who are in Possession of the Estate of the said abdul Cauder Your Petitioner further Saith it is immaterial to him Your Petitioner whether the said Miguel Joannes was a Stranger

Stranger to any Person or Persons having any Claim to the House in Question or not as that can by no means affect Your Petitioner's Right and Title thereto as aforesaid But Your Petitioner does not admit that the said Miguel Joannes was a Stranger thereto as he pretends On the Contrary the said Miguel Joannes was Acquainted therewith as aforesaid That Your Petitioner did not Claim a right to the said Premises on Payment of the said Sum of ninety three Pagodas by Virtue of the Act and Deed of the said George Mackay Esqr in making the said Indorsment but by Virtue of the said Award which the said Indorsment mentions and alludes to In Answer to the said Miguel Joannes's Charge that any Award made by the said George Mackay either by himself or others would or could Invalidate the Mortgage Deed of the said abdul Cauder to the said Miguel Joannes in any other means or Shape than by paying off the whole of the said Mortgage more Particularly when reference is made to the respective Dates of the Mortgage and Certificate Subjoined by the said George Mackay wherein it appears that the Mortgage so made to the said Miguel Joannes is prior to the Certificate Your Petitioner said that the said Miguel Joannes seems by the said Assertion either to have been Ignorant of the date of the said Award or to have intended if possible to mislead the said Honorable Court by Endeavouring to Convey to the said Honorable Court an Idea that Your Petitr Claimed the said House in Consequence and by virtue of the Certificate which the said George Mackay Subjoined to the said Choultry

Choultry Certificate which is very Unjust as Your Petitioner Claims the said Premises on Payment of the said ninety three Pagodas by Virtue of the said award which is prior to the said Mortgage as will appear on Reference to the Copy of the attested Copy thereof thereunto annexed as aforesaid which Claim your Petitioner Conceives to be Just and Legal and that the said Miguel Joannes has no right to keep Posession of the said House and Certificate as Your Petitioner was and is Ready to pay the said Sum of ninety three Pagodas as aforesaid Your Petitioner did therefore Conceive the said Miguel Joannes's proceedings Demand action and Prayer in his said Bill are unjust The following is Copy of an attested Copy of the Translate of the said Award annexed to Your Petitioners said Answer

N.63. To the Honble Josias Du Pre Esqr

late Chief Justice of the Choultry Court

The Humble Representation of Canjee Mahomed Ababaker

(L.S.)

Sign & Seal of Ababakar

Devan Sahib
Mustapha
Eman Sain } Heads of the Cast of Silk Twisters

Mootoh Chitty
Perambelah Chitty } Merchants

Sheweth

That a Dispute having happened between Abdell Caudet and his Brother Paddo about Sharing Two Houses We the abovementioned arbitrators having Examined into the Mortgage Debts and the Expence of the Building the same, and into the Rents received, the Scavangers rates paid According to the Declarations and Accounts on both Sides We find that Abdel Caudet stands Indebted to Paddo the Sum of Twenty Pagodas and both Houses being Valued at One Hundred and Sixty Pagodas Viz.t Paddo's House at Sixty Seven Pagodas and Abdul Caudet at Ninety three Pagodas which thirteen Pagodas that the Difference is between the two Houses Value makes the Debt thirty three Pagodas which Sum Abdell Caudet must pay to Paddoo

The House of Abdell Caudet Stands North to Coja Joannes House and Paddoo's House stands South to Yeddacommaran's House and their is a Wall devides the Houses in Question and each Party must Enjoy the Houses as before mentioned if either of them sell it must be One to the other at the Valuation as above to which they have both Agreed and so We Determine

March 20.th 1770. (Signed)
Moor Stile
22 Resurath 1173.

Perambelah Mootiapen
Devan Sahib
Mustapah Sahib
Eman Saiss

A true Translate from the Original Malabar by Connacapah Court Interpreter

Registred in Fort St George this 2.d April 1770

A true Copy
J. Daniell
Reg.r

To which said answer the said Miguel Joannes did not about the Eighteenth

Eighteenth day of September in the said Year of your Lord One thous-
-and Seven Hundred and Seventy five put in a Replication there-
-by setting forth many Evasive matters in order to Colour his
said Unjust Demand and Action, To which said Replication
Your Petitioner did put in a General Rejoinder thereby denying
the Several matters and things alledged by the said Miguel
Joannes and Confirming his said Answer.

Upon these Proceedings Issue was Joined Rules
for Witnesses passed Witnesses were Examined by or on the part
of the said Miguel Joannes, Publication passed, The said
Cause was Set down for hearing and Coming on to be heard
by and before the said Mayors Court on Tuesday the nin-
-teenth day of November in the present Year of our Lord one
thousand Seven Hundred and Seventy Six, The Appeals from
the Tenor of the said Decree of the said Court now before this
Honorable Court that the said Court was Sensible that the
said Miguel Joannes's Claim on Your Petitioner was Ill-
founded Yet as Your Petitioner has not made it Appear to
the said Court, as the said Decree Expresses that he is Intit-
-led to the Premises in Dispute, The said Court did therefore
think fit to Order and Decree and did Accordingly Order and
Decree that Your Petitioner should pay all Costs of the said
Suit.

From which said Decree of the said Mayors
Court Your Petitioner doth appeal to this Honorable Court as
he Conceives the same is Erronious and that he Your Petitioner is

is aggrieved thereby, Because it clearly Appears that the said Miguel
Joannes had no Demand whatever on Your Petitioner, nor had
he therefore any Cause of Action Against Your Petitioner, his the
said Miguel Joannes's Demand being on the Estate and Conse-
-quently Against The Executor or administrator of the said
Abdool Caudee to whom he says he lent the said money
and who he says gave him the Writing he mentions, Your
Petitioner could not therefore as he Conceives, be liable to pay
the Costs of so Unjust a Prosecution, Your Petitioner further
saith he Conceives it clearly appears by the said award
that he Your Petitioner had the Interest in the Premises
in Question which he Claims, and that the said award
being prior to the said Mortgage which the said Miguel
Joannes has Relied upon he the said Abdool Caudee had no
Right to Mortgage the same or at least that he could not
Engage them for more than the Sum of Ninety three Pat.
Agreeable to the Tenor true Intent and meaning of the
said Award, which said Award was in Course binding on the
said Abdul Caudee not only on account of the said Reference
but also because he Agreed to the said Award as Your Petitioner
has Set forth in his said Answer which said Answer being
upon Oath and the said Miguel Joannes not having
produced any proof to Contradict the same what Your
Petitioner has therein Set forth should, as Your Petitioner
Conceives, and Your Petitioner humbly hopes will by this
Honorable Court be Deemed Just and taken for fact and de-
-ny thing

thing by the said Miguel Joannes alledged witto regard to the said award contrary thereto considered as weak and Evasive and what can by no means avail him

All which matter and things Your Petitioner Submits to the Judgement of this Honorable Court and humbly Prays that the said Decree of the said Mayors Court may be Reversed and Set a Side, That the said Bill of Complaint may be Dismissed with Costs, and that the said Miguel Joannes may also be Decreed to pay the Costs of this appeal and Your Petitioner dotte Lastly pray such further and other General Relief in all and Singular the Premises as to this Honorable Court shall Seem Meet

Jno Sykes
Atty for the Appellt

Mayor's Court at Madraspatnam } { Tuesday the 19th Day of Novr Anno Domini 1776

Present

John Ewing Esquire Mayor
James Call ——— and Edw. John Holland
Aldermen

Mayors Court

Between Miguel Joannes of Madras Merchant Complainant and Shaka Budda of the same place Inhabitant Defendant

This Cause Coming on to be Heard and Debated this Day in the Presence of the Attorney for the Complainant The Defendant being in Court / The Attorney for the Defendant having declined Acting / on Reading the Complainants Bill with Copies of Mortgage and Bill of Sale &c. annexed the Defendants Amended Answer with Copy of an Attested Copy of an Award annexed The Replication The General Rejoinder The Interrogatories and Depositions on the part of the Complainant with a Bond or Obligation marked A annexed On Hearing the Pleadings made Use of by the Attorney for the Complainant and on Due Consideration had thereon, As the Defendant has not made it Appear to the Court that he is entitled to the Premises in Dispute, This Court dotte therefore think fit to Order and Decree, and dotte Accordingly Order and Decree, that the Defendant do pay all Costs of this Suit

J Hay
James Taylor
Rjr

In the Court of Appeals

Between Miguel Joannes of Madras Merchant Complainant and Shaka Buddoo of the same place Inhabitant Defendant

The Answer of Miguel Joannes to the Amended Petition and appeal of the said Shaka Budda

Filed in my Office the 4th March 1777.
Chas. Oakeley Clk.

The Respondent saith that he admits of his having filed his Bill of Complaint on the day and Year as set forth by the

the appellant in his Petition of appeal against him the said Appellee
in the Hon^ble the Mayor's Court at Madraspatnam, in which the
Bill of Complaint the Respondent did set forth, that one Abdul
Cawder late of Madras in his Life time, borrowed and received of the
Respondent the Sum of One hundred and Forty Star Pagodas in
the Month of August One Thousand Seven hundred and Sixty
one, for securing the Payment thereof the said Abdul Cawder
did mortgage and Apignorate unto the Respondent a House
situated in the Black Town of Madras, by which Mortgage the
said Abdul Cawder did make over all his Right and Title to the
said House and Premises, and left the Bill of Sale of the
Premises in the Hands of the said Respondent, a Copy of which
as also the Mortgage Deed are annext to the said Respondents
further set forth, that the said Abdul Cawder died without
paying the Respondent. The said Bill of Complaint further
setting forth, that George Mackay of Fort St. George Esquire
died some time in the Year of our Lord One thousand Seven
hundred and Seventy two, sendeavoured to the Respondent and
requested a sight of the said Bill of Sale or Certificate of the
Premises as also the Mortgage so left in the Hands of the said
Respondent, with which the said Respondent complied. The said
Bill of Complaint further setting forth that the said George
Mackay Esquire returned the said writings with a Superscrip-
tion under his Hand and Seal to the purport as set forth in
the said Bill of Complaint, to which writing of the said Geo.

Mackay

George Mackay Esquire, the Respondent set forth that he objected
and that upon enquiry the Respondent found, that the Defendant
Shake Buddoo had been the Instrument or the Occasion of the
said George Mackay's subjoining this said writing to the said
Bill of Sale, under the pretense of his being the Brother of the
said Abdul Cawder, the Bill of Complaint further set forth, that
after the time was expired for the Payment of the said One
hundred and Forty Star Pagodas, the Respondent did give
Notice of the Premises being put up to Sale, according to the
authority vested in the Respondent by the said recited Mort-
gage which Sale was postponed at the endeavour of the
said Shake Buddoo under the pretence of settling the
same with the Respondent. The said Shake Buddoo pretend-
ing that being a Brother of the said Abdul Cawder he was
entitled to half of the Premises mortgaged to the Respondent
and therefore his Brother had no right to mortgage the
whole of the said Premises offering to Pay the Sum of Ninety
three Pagodas as expressed in the writing of the said George
Mackay Esquire so subjoined to the said Bill of Sale, which
Sum of Ninety three Pagodas the Respondent set forth in his
said Bill of Complaint he refused, and assigned for a Reason
for his Refusal, that at the time he lent the said one hun-
dred and Forty Pagodas he was an utter Stranger to the
Claims of every Person on the said Premises and that it
appeared to the Respondent he had advanced and lent unto
the said Abdull Cawder the Sum of One hundred and forty

Pagodas

Forty Pagodas upon the late Appearance of the said Bill of Sale which seemed clear and explicite so as to be the sole Property of the said Abdull Cawder and that the Assignment thereof to the Respondent was as a fair legal and regular an act and Deed as any hitherto made and done. The Respondent in his Bill of Complaint set forth, that he was of Opinion that no act and Deed of the said George Mackay either in his private or Publick Capacity could by his aforementioned writing divest the Respondent of his Right to the whole of the Premises so Mortgaged to the Respondent because in the first instance the writing so subjoined to the said Bill of Sale by the said George Mackay Esquire was irregular and unconstitutional, and in the second place, the same was done without the Privity or Assent of the Respondent who in his said Bill of Complaint Sets forth, that no Award made by the said George Mackay Esquire or his Associates in the Choultry Court could invalidate or depreciate the Mortgage Title Deeds of the Premises in the Hands of the Respondent which was made over to him the said Respondent, before any Publication of the said Award. The said Bill of Complaint further — recites that by a Reference made to the respective dates of the Assignment of the said Bill of Sale and the writing thereto subjoined it would appear, that there was a Considerable difference of time intervening, and that the Assignment was prior to the writing of the said George Mackay. The said Respondent in his said Bill of Complaint sets forth, that he had

had no objection to the delivery of the Premises to the said Shake Buddoo upon his paying to the Respondent the full Amount of the said Abdul Cawders Mortgage, which the said Shake Buddoo the Appellant refused the said Respondent in his Bill of Complaint praying that the said Shake Buddoo might set forth and discover his Title to the Premises, which if the same appeared Just, that the said Shake Buddoo might pay off the full Amount of the Mortgage so made by the said Abdull Cawder or that the Respondent might be at liberty to Sell the said Mortgage — Premises and that the said Shake Buddoo be obliged to Pay all Costs of Suit to this Respondents Bill of Complaint, the said Shake Buddoo did on the Day and Year as set forth by him in his — Petition of Appeal put in his Answer and did recite Sundry — Transactions relative to the Ground and Two Houses Built thereon, which he the said appellant pretended were built partly with his Money and that the Premises descended from the Appellants and Respondents Father, the appellant further in his said Answer sets forth, that a difference about the Premises was referred to arbitration by the Direction of the said George Mackay Esquire, and that there was a decision thereon, and that by such — decision, each Party was to sell the Premises to one another at a certain fixed Price, the Answer further sets forth that they the said appellant and the said Abdul Cawder were permitted to get — Choultry Bills of Sale for their respective Houses, that the said Abdull Cawder in his Life time Sold his House to one Coja Davids for the Sum of One hundred and Forty Star Pagodas, of which the

appellant

appellant complained, and the said Coja Aviet relinquished the Claim, that the said Premises were sold to one Jaffier Boy who the Appellant says, under hand, got the Respondent to take the Bill of Sale on a pretended Mortgage, that the Respondent was acquainted with the Pretensions of the said appellant but that the Respondent would not Relinquish the Mortgage although his Mortgg money was offered to him hereupon the appellant says Complaints was made to the said George Mackay Esquire who sent for the said Bill of Sale or Certificate of Abdul Cawders House and endorsed on the same the writing as before mentioned with an Order for the Respondent to receive the Sum of ninety three Pagodas and deliver up the said Certificate or Bill of Sale which the said Respondent refused, The Appellant in his said Answer specially set forth the sundry Transactions of which the Respondent was entirely Ignorant The Respondent did reply thereunto and insisted on his Bill of Complaints and further of his being a Stranger to the Circumstances of the Death of the said appellants Father or of the matters respecting the House, and also of his being a Stranger to the Dispute between the appellant and his Brother the said abdul Cawder, that the Respondent knew nothing of any Award regarding the Dispute and further the Respondent did in his said Reply set forth the Title of the said abdullCawder to the Premises in dispute and supported the same by concurrent Testimony the Appellant to this Reply put in a General Rejoinder, Issue was soon after joined and Witnesses on the part of the Respondent were examined who

who clearly proved the Consideration of One hundred and Forty Pagos to have been advanced in their Presence to the said abdull Cawder in his life time, by the Respondent, and that the said abdull Cawder did Execute the Mortgage in their Presence. Publication being passed, this Cause was set down for hearing and on the Nineteenth day of November in the Year of our Lord One thousand Seven hundred and Seventy Six, this Cause came on to be heard and was determined in favor of the Respondent, as appears by the Copy of the said Decree annexed to the appellants Petition of Appeal from the Original of which the said Appellant does Appeal, but the Reasons he therein Assigns being so very Extraordinary, The Respondent begs leave of this Honble Court to Answer them

First. The appellant says that from the Tenor of the Decree it appears that the Honble the Mayors Court were sensible that the Respondents Claim on the appellant was ill founded and that he the appellant had not made it appear to the said Honble Court his Title to the Premises in dispute and therefore the said Honble Court thought proper to Decree the appellant should Pay all Costs. In answer thereto the Respondent says it appeared to the said Honble the Mayors Court that the Respondent had Lent the Sum of One hundred and Forty Pagodas to the said abdull Cawder on a Mortgage of his House and Ground and it also appeared that the said abdull Cawder had a Sole clear and

Separate

2 B

Seperate Right to the Premises in dispute and that the Mortgage so by him made to the Respondent was a legal and unincumbered Assignment and that the act and Deed of the said George Mackay Esquire was deemed invalid and of no force or Effect and could not be allowed in Bar of the Respondents whole demand or to divest him of the Right of selling the Mortgage Premises pursuant to the Terms and Conditions of the Assignment

Secondly, It appeared to the said Honble the Mayors Court that the Respondent had a good Cause of action against the appellant as an Intruder and a Person who hindered the Respondent from getting his Demand discharged by his the appellants Pretensions to the Property mortgaged to the Respondent and Setting up a pretended Title to the Premises in dispute The Respondent says it was not the Business of the said Honble the Mayors Court to enquire into the merits of the Respondents Title to the Premises, though the Respondent submitted the same to their Consideration, but it appeared that the Title under which the appellant claimed should have been the only matter enquired into which with many other matters relative to the Subject matter in dispute were particularly enquired into and maturely deliberated on and it was found by the said Honble Court that the appellant had no right or Pretensions to the Premises That the said Abdull Cawder had a Seperate clear and undivided Interest in the Premises and could give, Devise, and bequeath, the same, as he thought proper without the least Hindrance or Disturbance of the said appellant or any other Person whatsoever. This Cause being in the nature of an Ejectment against the Title of the appellant, the Prosecution against him for the setting up of a Spurious Title, is well warranted and proper, the Respondent being by Law intitled to a Writ of Right for quiet Possession

This Respondent humbly Conceives and is advised that the said Decree is agreable to Equity and good Conscience and therefore humbly hopes that the same shall be affirmed and that the said Petition of Appeal shall be dismissed this most Honble Court of Appeals with Costs

Chas. Bromley
Atty Respondt.

Court of Appeals at Madraspatnam } Thursday the 21 May 1778

Between Shake Buddo Appellant
and Meguel Soumes Respondent

This Cause coming on this day to be heard and Debated before this Court by the attorneys on both Sides upon hearing the Petition of appeal and answer and the Several Exhibits of the Honble the Mayors Court together with a Decree of the said Court given in this Cause on Tuesday the 19th day of November Anno Domini 1776 and upon due consideration had of the matters 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 Honble the Mayors Court given in this Cause do stand Confirmed and that the appellants Petition be hence dismissed with Costs in this Court

J. Cur
Tho Lewis
Clk

To the Honorable the Court of Appeals at Madraspatnam

Between Ninapah of Madras Inhabitant and Antonio de Souza of the same place Merchant

The Humble Petition and Appeal of the said Antonio De Souza

Sheweth

That the abovenamed Ninapah did on or about the

Filed the 16 Nov.r 1776
Chas Oakely Clk

Seventh day of November which was in the Year of our Lord One Thousand Seven Hundred and Seventy four Exhibit a Bill of Complaint in the Honorable the Mayor's Court at Madraspatnam for the Sum of Two Thousand Pagodas Current Money of Madraspatnam being the Amount of a Bill of Exchange bearing Date the third Day of July in the Year of our Lord one thousand Seven Hundred and Seventy three Drawn by Trevor Perria Oyah Modeliet then of Arcot since deceased, as Agent under Your Petitioner for Providing Cotton Thread on Behalf of The united Company of Merchants of England Trading to the East Indies upon Your Petitioner as Agent for the said Business of the said Cotton Thread payable in four Days after Sight

To which said Bill of Complaint Your Petitioner did on or about the Tenth day of January which was in the Year of our Lord one thousand Seven Hundred and Seventy five put in an Answer, thereby denying to be Indebted unto the said Ninapah either in the said Sum of Two Thousand Pag.s or in any other Sum of Money whatever, and also that the said

action was unjust and Ill founded for the Reasons therein particularly Set forth. Your Petitioner did also Exhibit a Cross Bill of Complaint Against the said Ninapah in Order to oblige him to Deliver up the said Bill of Exchange to Your Petitioner as Agent as aforesaid for the Reasons therein also Set forth. To which said Answer and Cross Bill the said Ninapah put in a Replication and Answer and Your Petitioner put in a Rejoinder and Replication and the said Ninapah put in a Rejinder to Your Petitioner's Replication

Upon these Proceedings Issue was Joined, Rules for Witnesses passed. Witnesses were Examined, Publication passed. The said Cause and Cross Cause were set down for hearing and Coming on to be heard by and before the said Honorable the Mayor's Court on Saturday the Second Day of this present Month of November. The said Court were pleased to Decree Your Petitioner to pay unto the said Ninapah the said Sum of Two Thousand Pagodas with Interest and Costs of Suit, and also to Dismiss Your Petitioner's said Cross Bill with Costs, as will more fully and at Large appear by the said Decree which comes herewith for the Inspection of this Honorable Court

From which said Decree of the said Mayor's Court Your Petitioner doth appeal to this Honorable Court as he Conceives the same is wrong and Erroneous and that he Your Petitioner is Aggrieved thereby for the Several reasons by him Your Petitioner Set forth in the said Proceedings in the said Causes, and also what appears in Your Petitioner's favor in the

the Depositions of the said witnesses To which your Petitioner craves Reference

All which matter and things Your Petitioner Submits to the Judgment of this Honorable Court and humbly Prays that the said Decree may be Revised and Set a Side That the said Bill of Complaint of the said Ninapah may be Dismissed with Costs and that he the said Ninapah may be Decreed to Deliver up unto Your Petitioner as Agent as aforesaid the said Bill of Exchange and pay all Costs of the said Cross Suit as well as of this appeal Your Petitioner doth also pray such further and other General Relief in all and Singular the Premises as to this Honorable Court shall seem Meet

Jn.o Sykes
Atty for the appellt

To the Honorable the Court of Appeals at Madraspatnam

Between Ninapah of Madras Inhabitant
and Antonio de Souza of the same place
Merchant

The Amended Petition and appeal of the said Antonio de Souza

Sherwin

Filed the 20th Decr 1776.
Chas Cakeley Clk.

That the aforenamed Ninapah did on or about the Seventh Day of November which was in the Year of our Lord One Thousand Seven Hundred and Seventy four Exhibit a Bill of Complaint

Complaint in the Honorable the Mayor's Court at Madraspatnam for the Sum of Two Thousand Pagodas Current money of Madras being the Amount of a Bill of Exchange bearing date the third day of July in the Year of our Lord One Thousand Seven Hundred and Seventy three Drawn by Trevor Perria Oyah Moodeliar then of Arcot since Deceased as Agent under Your Petitioner for Providing Cotton Thread on Behalf of The United Company of Merchants of England Trading to the East Indies upon Your Petitioner as Agent for the said Business of the said Cotton Thread payable in four days after Sight The said Bill Stating that Your Petitioner did on the Twelfth day of June in the same Year that the said Bill was Drawn present the said Bill to Your Petitioner for acceptance and that Your Petitioner did Accept the same a Translate of which said Bill as also a Copy of the said Acceptance the said Ninapah Annexes to his said Bill of Complaint and pretends that he the said Ninapah did Soon after the said Bill became due Demand payment of Your Petitioner who he says promised payment thereof and the said Ninapah further Saith that he hath since that time frequently Demanded payment from Your Petitioner of the said Sum of Two Thousand Star Pagodas But that your Petitioner Obstinately and wilfully Refused to pay the same or to give him the said Ninapah any manner of Satisfaction touching the Premises

To which said Bill of Complaint Your Petr. did on or about the Tenth Day of January which was in the Year

Year of our Lord One thousand Seven Hundred and Seventy five put in an answer thereby denying to be Indebted unto the said Ninapah either in the said Sum of Two Thousand Pagodas as is unjustly Set forth in the said Bill of Complaint or in any other Sum of money whatever And your Petitioner did in his said Answer Set forth that he Conceived it clearly appears by the said Bill of Complaint that your Petitioner is not nor ever was Indebted unto the said Ninapah on your Petitioners own Account in the said Sum for which the said Action is Commenced, As the very Bill of Exchange on which the said Action is Grounded was on Account of the United Company of Merchants of England Trading to the East Indies As appears by the said Bill of Drawn and it was drawn on your Petitioner not on his your Petitioners own Account but on Account of the said Company's your Petitioner being the said Company's Agent in the Business of the Cotton Thread Used by or on Account and behalf of the said Company in the manufactures of their Cloth, and the acceptance by your Petitioner was in his Capacity of Agent for the Business of the said Cotton Thread, and not on his your Petitioners own Account as Appears by the said Bill and acceptance, your Petitioner did and doth therefore Conceive that the said Action Commenced Against your Petitioner as if the said Bill was Drawn on and Accepted by him your Petitioner on his own Account is wrong Illegal and Unwarrantable, as if your Petitioner was Answerable for the Amount of the said Bill at all it must be in his Capacity As Agent for the said Business of the said Cotton Thread and not as for his own Account your Petitioner did therefore plead the said matter in Bar to the said Action, But your Petitioner did nevertheless in his Capacity of Agent for the said Cotton Thread beg leave to Relate to the said Honble the Mayors Court the following matter which he Conceived would, had the said Action been properly Commenced Against your Petitioner in his said Capacity of Agent, have been Sufficient to Shew to the said Honorable Court that the said Ninapah has no Demand whatever on your Petitioner even in his said Capacity as Agent or otherwise and therefore that the said Action is in every Respect Illegal That on the Twelveth day of July which was in the Year of our Lord One thousand Seven Hundred and Seventy three the Bill of Exchange on which the said Action was Commenced was presented to your Petitioner for Acceptance which he your Petitioner in his Capacity of Agent for the said Cotton Thread as aforesaid Accepted and Ordered the said Ninapah or the Person who presented the said Bill for Acceptance to carry the said Bill when due to the office of the said United Company's Export warehouse keeper for payment as usual in Cases of this nature your Petitioner being in his said Capacity of Agent as aforesaid under the said Export Warehouse keeper That a very few days afterwards your Petitioner being in his Office in the said Warehouse the said Ninapah applied to him and said the time Limitted in the said Bill was Expired and that the Cash keeper had not paid the amount thereof whereupon your Petitioner immediately sent for Andias pah Moodeliar the Cash keeper and Mootiah Moodaliar the Accomp and and

and Ordered them in the presence of the said Ninapah to Discharge the said Bill which they Promised to do, and the said Ninapah Appeared Satisfyed and went with them the said Cash keeper and Accountant into the office where the money is paid on Account of the said Agency and the Business of the said warehouse, That on Settling the Cash Account of the said Agency for the said month of July Your Petitioner found a Charge of Two Thousand Pagodas as paid for the Amount of the said Bill, from which, together with no further Application having been made by the said Ninapah or any other Person on his Account to Your Petitioner on Account of the said Bill or the Amount thereof Your Petitioner naturally Concluded that he Your Petitioner was Discharged by the payment of the Amount thereof to the said Ninapah and that the said Cash keeper and Accountant had taken up the said Bill of Exchange as usual in the like Occasions and which the said Ninapah should have delivered up on Payment of the Amount thereof, and what further Confirmed Your Petitioner in his said Conclusion that the said Bill was Discharged was that Perria Oyah Modaliar the Agent under Your Petitioner for Providing the said Cotton Thread and who Drew the said Bill on that Account gave Your Petitioner in his Capacity of Agent as aforesaid Credit for the Amount of the said Bill in his Accounts of the said Agency as money received on that Account Your Petitioner further Sheweth unto this Honorable Court that he Your Petitioner never heard a word about the said Bill or had any application whatever made to him on Account thereof either by the said Ninapah or any other Person whatever until about two or three

Months

months before the Commencement of this present Action when the said Perria Oyah Modaliar was so much Indisposed that it was apprehended he would die and the said Cash keeper gone to Ganjam that he Your Petitioner and the said Ninapah met Accidentally at the Durbar of His Highness the Nabob where the said Ninapah told Your Petitioner that he had a Bill of Exchange Accepted by him Your Petitioner for Two Thousand Pagodas and that the said Cash keeper to the said Warehouse had not paid it which greatly Surprized Your Petitioner, and he Your Petitioner immediately said that could not be, for the money or Amount of the said Draft must have been paid as the Accounts of the said Perria Oyah Modaliar for the said Year One thousand Seven hundred and Seventy [illegible] were Settled notwithstanding which Your Petitioner desired the said Ninapah to come to the said warehouse for That the said Andiapah Modaliar the said Cash keeper was gone Yet Your Petitioner would be able from the Books and Accounts of the said Agency to Shew the said Ninapah that the said Amount of the said Draft was paid and that if the said Ninapah Still held the said Draft it must have been by some Accident neglect or mistake That a few Days afterwards the said Ninapah came to the said Warehouse where Your Petitioner called upon Mottiah the said Accountant for the said Cash Account and the Accounts of the said Perria Oyah Modaliar of the said Agency and therein and thereby Shewed to the said Ninapah that the said Amount of the said Draft was paid in the absence of the said Ninapah by the Order of the said Perriah

Oyah

Oyah Modaliar to Caulatiapah his the said Perria Oyah Modaliars
Nephew who as well as the said Ninapah Transacted Busines
for the said Perriah Oyah Modaliar and the Amount of which
said Draft the said Perria Oyah Modaliar so Ordered the said
Caulatyapah his said Nephew to Receive as the said Nina-
=pah to whom the said Bill was made payable for and on Account
of the said Perria Oyah Modaliar and not on Account of the
said Ninapah or for money due and Owing to the said Ninapah
left Madras in the said month of July One Thousand Seven
Hundred and Seventy three and before the said money was paid
your Petitioner did further in his said Answer Set forth that
the said Ninapah on being Thereon the said Accounts went
away without Saying any thing about the said matter and the
said Ninapah made no further Application to your Petitioner
about the said Bill of Exchange untill the very day that news
Arrived of the decease of the said Perria Oyah Modaliar which was
Some time in the month of September last when the said
Ninapah applied to your Petitioner for Payment of the Amount
of the said Bill which your Petitioner refused to pay for the
Reason before mentioned, whereupon the said Ninapah said
he would prosecute your Petitioner for the Amount of the
said Bill and your Petitioner in Order to Satisfy himself further
about the said matter wrote to the said Caulatyapah and
Tyrvoor Aurmacan his the said Caulattyapahs Father and
Brother of the said Deceased Perria Oyah Modaliar desiring
to be Acquainted with the Particulars of the Circumstances
attending

attending the said Bill, they not only being Acquainted with the
said matter in the life time of the said Perria Oyah Modaliar But
having also since his the said Perria Oyah Modaliars Decease had
the management of his Estate To which he your Petitioner
Received Answers of which Translates are annexed to your Petitioners
said Answer for the Inspection of this Honorable Court marked
A. and B. and which your Petitioner Prayed might be admitted
as part thereof which Letter your Petitioner Conceives do clearly
Shew that the Amount of the said Bill was paid, That the said
Bill should have been Delivered upon payment thereof and
therefore the said Demand and Action of the said ninapahare
Illegal as well on that Account as the said matter having
rested for so long a time as from July One thousand Seven hundred
and Seventy three to July or August One Thousand Seven hundred
and Seventy four without any Demand whatever being made
on your Petitioner either by the said Ninapah himself or by his
Attorney or Agent for the Amount of the said Bill, therefore your
Petitioner Conceived the said Demand is also on that Account
contrary to the Custom of Merchants in Cases of Bills of Exchange
and Illegal. your Petitioner further Sheweth that it is natural to
Suppose there was and it also appears by the said Letter of the
said Caulattyapah that there was a Letter sent by the said Perria
Oyah Modaliar to the said Ninapah with the said Bill of Exchange
which Letter your Petitioner prayed the said Ninapah might be
ordered to produce for the Inspection of the said Honorable Court
and of him your Petitioner. your Petitioner further Set forth that he

he humbly hoped by what is therein Set forth it would clearly appear to the said Court that the said Demand and action are Illegal Unjust and without foundation that the said Ninapah has no Right whatever to withhold the said Bill of Exchange But that he ought long ago to have Delivered it up to your Petitioner and that he still ought to do so and your Petitioner therefore prayed that the said Honorable Court would be pleased to order or Decree the said Ninapah to Deliver the said Bill of Exchange up to your Petitioner Accordingly and to Dismiss the said Bill with Examplary Costs for his Litigiousness and attempt to Recover the Amount Principal and Interest of the said Bill when he cannot but be Sensible of the Illegality of his said Demand and Action. The following are Copies of so much of the said Letters mentioned in your Petitioner's said Answer as Relates to the matter in Question in these Causes Viz.t

Caulattyapah from Arcot Dated the 25th October 1774

Caulattyapah's Compliments to Mr. Antonio de Souza my Uncle Perria Moodalier having used to get done for him by ninapah Moodalier whatever Business he had at Madras he has drawn a Bill of Exchange on You in favr of the said Ninapah Moodelly for 2000 Pagodas and by a Letter desired him to receive the said Sum and pay some other Persons, and in the mean time he has wrote the said Convequence to Andyapah Moodalier and me after the time of Payment of the said Draft past I desired ninapah Moodalier to Receive the amount of the said Draft and pay to whom desired but he desired me to receive the said Sum from Andyapah Moodalier and pay myself & whom desired thereupon I asked Andyapah Moodalier to pay for the said Draft who promised to pay the next day, but the same day ninapah Moodalier went away to Southward, on the next day I have desired his People to give me the said Bill of Exchange who said that they know not where it is which Affairs I have Acquainted to Andyapah Moodalier and likewise wrote to my Uncle and he wrote Letter to Andyapah Moodalier for it, who took my Receipt for 2000 Pagodas deducting some money for the Ballance of nutty Chitty Annoga Chitty and paid the Rest to me, which money I have paid for others.

Some time after our Conicopoly hath been to Ninapah Moodalier and Examined his Account of dealing with ours where the said 2000 Pagodas of the said Draft was not given Credit to us by ninapah Moodalier nor we Debited him, and nothing talk was about it till the death of my Uncle but You know how it is now

(Signed) Tyrvoor Caulattyapah

To

Mr. Antonio de Souza

at Fort S.t George

Tyrvoor Aurmocam from Arcot Dated the 17th November 1774

Tyrvoor Aurmocam's Compliments to Mr. Antonio de Souza

I have received your Letter and observed the Contents thereof you wrote me that ninapah Moodalier told You that he paid 2000 Pagodas to Paryah Moodalier at Vaulanjanagar and got a Draft on You payable at Madras, I have very well enquired of the Gomastas and Conicopolies at Vaulanjanagar and Arcot who said there is no such thing but Paryah Moodally having Ballance due to Some

Some Body at Madras he thought not proper to write to you to pay them Ballance but mynapah Moodelly being Friend to him has drawn a Draft in his favor on You and ye Letter desired him to receive the Amount of the said Draft and pay the said Ballance likewise they said that in Case you should send for the said Letter from mynapah Modalier and observe it every thing will plainly Appear besides this my son Caulatty apah said that when mynapah Moodally received the said Draft and got it Signed by you he desired my Son receive the Amount thereof and pay the Ballance himself but forgetfully not delivering the Draft unto him went away to Southward, whereupon my Son wrote Letter to Paryah Moodley at Arcot and he wrote Letter to Andy apah Moodali who took a Receipt from my Son for 2000 Pag.s deducting some Money for the Ballance of Nelly Chitty Armoga Chitty and paid the Rest to him and he paid for the other Ballances

Since mynapah Moodelly returned from the Camp you know whether he Demanded of You the Amount of the said Draft or not but not us neither he has given credit for it when he has sent us his Account for the Ballance due to him by us nor we Dabited him till the death of my Brother Paryah there was no talk of this Draft but since his death we understood by your Letter that he sued in this Court if it is true that the Amount of the said Draft is due to mynapah modalier why should not he receive it from You after 4 days and how come he to stay so long and now come in the Court after the Death of my Brother

K

To Mr. Antonio de Souza
at Fort S.t George

As will more fully and at large appear by the said Answer and the Translates of the said Letter thereunto Annexed

Your Petitioner further Sheweth unto this Honorable Court that he did also Exhibit a Cross Bill of Complaint against the said mynapah in Order to oblige him to Deliver up the said Bill of Exchange to your Petitioner as Agent as aforesaid for the Reasons therein also Set forth, To which said Answer and Cross Bill the said Ninapah put in a Replication and Answer and your Petitioner put in a Rejoinder and Replication and the said Ninapah put in a Rejoinder to your Petitioner's Replication As will appear on Reference thereunto

Upon these Proceedings Issue was Joined, Rules for Witnesses prayed, Witnesses were Examined, Publication prayed, The said Cause and Cross Cause were Set down for hearing and coming on to be heard by and before the said Honorable the mayor's Court on Saturday the Second day of November in the present Year of our Lord One thousand Seven Hundred and Seventy Six The said Court were pleased to Order and Decree that your Petitioner should pay unto the said ninapah the full and Just Sum of Two Thousand Pagodas together with all such Interest as there was or should thereafter become due thereon untill full Payment is made also all Costs of the said Suit The said Court did also further Order and Decree that your Petitioner's said Cross Bill do stand Dismissed with Costs to be paid by him your Petitioner As well more fully and at large appear

appear by the said Decree now before this Honorable Court

From which said Decree of the said mayors Court Your Petitioner doth appeal to this Honorable Court as he Conceives the same is Erroneous and that he Your Petitioner is Aggrieved thereby, as it plainly and clearly appears not to have been Your Petitioners fault that the Amount of the said Bill was not paid to the said Ninapah himself He Your Petitioner having done every thing on his part that was necessary for him to do to Comply with this Acceptance of the said Bill in his Capacity of Agent as aforesaid, therefore it must have been the said Ninapahs own fault and owing to a Design of appropriating to himself the Amount of the said Bill which it clearly appears not to have been the Intention of the said Perriah Oyah (Modaliar should be the Case and which he the said Ninapah well know, notwithstanding the advantage the said Ninapah Endeavours to take of a few words in the Letter addressed to the said Ninapah with the said Bill which he well knows was never meant to Opperate in his favor, as he is very Sensible the said Perriah Oyah Modaliar would have Stepped was he living and Indeed as appears by the Depositions of the Witnesses Examined in this affair, for Your Petitioner in the proceedings in this Cause has and could only Set forth what came to his knowledge about the said Bill, and tho the said Ninapah does in his said Replication deny that upon his applying to him Your Petitioner and acquainting him the said Bill was not paid he Your Petitioner sent for the said Cash keeper and Accountant and in the Presence of the said Ninapah Ordered them to Discharge the said Bill out of the Cash belonging to the said Warehouse in their or the said Cash keepers Possession and that they promised so to do, and that the said Ninapah went away Seemingly Satisfyed therewith, Yet he the said Ninapah does in his said Answer to Your Petitioners said Cross Bill admit the said matter, thereby clearly Shewing that he Your Petitioner did every thing in his power to Comply with the said Bill of Exchange and his Acceptance thereof in the Capacity before mentioned, nor doth Your Petitioner Conceive that more could with the least Degree of propriety be Expected from Your Petitioner, as it was not his Your Petitioners Province or Business as Acting in his Capacity of Agent for the said Cotton Thread as before mentioned, to do more than he did, Because In the first place he was not the Cash-keeper, as the Drawer well knew and as the said Ninapah must also well know from the Orders Your Petitioner gave for the said Bill to be carried to the Cash keeper under the said Warehouse keeper for Payment, and also from Your Petitioner sending for the said Cash-keeper and Accountant upon the said Ninapahs Complaining of the Non Payment of the Amount of the said Bill as before mentioned, Your Petitioner could not therefore be answerable for the Cash either with regard to the Bill in Question or any other Bill by him Your Petitioner Accepted in the Capacity of Agent as aforesaid and in the Second place the said Ninapah going with the said Cash keeper and Accountant on Your Petitioner giving the said Order for Payment on the said Ninapahs Complaint of non payment and never Returning or applying to Your Petitioner either to acquaint

Acquaint him that the said Bill was not paid & of this leaving Madras
and leaving or not leaving the said Bill for Payment clearly Shews
that the said Ninapah did not, nor Indeed could he under such
Circumstances depend upon or Expect Payment of the Amount of
the said Bill from your Petitioner, These matters do, as your Petitioner
Conceives, clearly Shew that upon the Circumstances attending
the Case in Question as far as came to his knowledge he your
Petitioner could not be Answerable to the said Ninapah for the
Amount of the said Bill and therefore that he is not only Unjustly
Prosecuted But also that the said Ninapah should have Delivered
up the said Bill to your Petitioner as Agent as aforesaid without
any Prosecution and therefore that he your Petitioner is Aggrie-
ved by the said Decree of this Honble Court But as further
that it is clearly proved by the Witnesses in this Affair that
your Petitioner was Agent as aforesaid, that the Cash relative
to the said Business was not kept by him but by the said
Andiapah as Acting under the said warehouse keeper, That
the Bills accepted by your Petitioner in his said Capacity as
Agent were paid by the said Cash-keeper and not by your Petitioner
and that the Amount of the said Bill was paid to the said
Caulatiapah by Order of the Drawer of the said Bill, your Petitr
begs leave to Observe that the Depositions of some of the said Witnesses
have Discovered to your Petitioner what he did not know at the
time he gave in his said Answer and other Proceedings and
which he your Petitioner Conceives doth Shew the nature of the
said affair and of the said Ninapah's Conduct in a clearer light
and

and that he is by no means Intitled to Recover the amount of the said
Bill from your Petitioner, For Perumboodoor Andiapah Moodaliar in
his Deposition Saith That he doth know that the said Ninapah
was not to keep the Amount of the said Bill But that the same
was to be paid away to the Use or for the Account of the said
Perria Oyah Moodaliar to some other Person or Persons - That the
said Ninapah did Transact Business for the said Perria
Oyah Moodaliar Occasionally both as an Agent and a Friend.
That he believes the Bill in Question was Drawn in favor of the
said Ninapah in one of those Capacities, and that the said
Caulatiapah did also Occasionally Transact Business for the
said Perria Oya Moodaliar, That before the said Bill in
Question arrived at Madras the said Perria Oyah Moodaliar wrote
to the said Perumboodoor Andiapah Moodaliar a Letter Informing
him that he had wrote to the said Ninapah and also to the
said Caulatiyapah desiring them when they had Received the
Amount of the said Bill to pay it away to different Persons
to whom he the said Perria Oyah Moodaliar was Indebted, That
a few Days afterwards the said Ninapah was a going to Sett
off for Trichinopoly, and about one Day before his Departure
he brought the said Caulatiyapah to the Warehouse to the
said Perumboodoor Andiyapah Moodaliar and desired him
the said Depenent when the said Bill arrived and became
due to pay the Amount to the said Caulatiapah in Order that
he might pay it away according to the said Perria Oyah
Moodaliars directions, That the Amount of the said Bill was
about

about One month after the Departure of the said ninapah from Madras paid to the said Caulatiapah and that the same was so paid by the Order of the said ninapah and on Account of the Bill in Question, and that the payment of the Amount of the said Bill to the said Caulatiapah was Considered as a full Discharge of the Amount of the said Bill, and it was considered so because the said ninapah had desired him the said Perumbodoor Andiapah to pay the Amount of the said Bill to the said Caulatiapah and that the said Perria Oyah Moodaliar and the said ninapah were on Friendly Terms, That the said ninapah Transacted Business for the said Perria Oyah Moodaliar for several Years and that there was no new mode of Transact Bills Drawn by the said Perria Oyah Moodaliar on Your Petitioner in favor of the said ninapah &c. appears by the part of the said Andiapah's Deposition wherein he says that he knows the said ninapah was attorney to the said Perria Oyah Moodaliar at Madras Ten or Twelve Years and that whenever the said Perria Oyah Moodaliar came to Madras he always lived with the said ninapah, That during the time the said Perria Oyah Moodaliar was agent as aforesaid for the said Business of the said Cotton Thread He Drew Two Drafts on Your Petitioner in favor of the said ninapah, and the said Caulatiapah received the amount of the said Bills and paid it to the Creditors of his said Uncle That before the said Perria Oyah Moodaliar sent the Draft for Two Thousand Pagodas in Dispute he wrote to the said Perumbodoor Andiapah and also to the said ninapah and Caulatiapah Informing them that he should send the said Bill in favor of the said ninapah and that the amount was to be paid to his Creditor at Madras and desired the said Perumbodoor Andiapah to see that the said money was accordingly paid, and then mentions the Circumstance of the said ninapah's Carrying the said Caulatiapah to him the said Deponent, desiring him to pay the amount of the said Bill to him on Account of the said Perria Oyah Moodaliar's Creditor and mentioning that he had given his Nephew Verasawmy Instructions about getting it accepted and pay the Amount of it to the said Caulatiapah That some time afterwards Your Petitioner Informed him that he had Accepted the said Bill and desired him to pay it, That the said Caulatiapah came to the said Deponent and Informed him that the said ninapah before his Departure for Trichinopoly had ordered the said Verasawmy to deliver him the said Draft and that now the said Verasawmy told him the said Bill was lost. That the said Deponent desired the said Caulatiapah to write Immediately to the said Perria Oyah Moodaliar Informing him of the said Bill being lost and in Consequence the said Perria Oyah Moodaliar wrote to the said Deponent not to mind the Loss of the said Bill But to pay the Amount to the said Caulatiapah and to take his Receipt for the same, That he the said Deponent sent for the said Verasawmy and told him that he had not behaved well in this Business however the said Perria Oyah Moodaliar had wrote him the said Deponent to pay the Amount of the said Bill to the said Caulatiapah which he had accordingly done, That the said Verasawmy wrote to the said Perria Oyah Moodaliar Informing him that the said Caulatiapah had received the Amount of the said Bill and paid it away to his the said Perria Oyah Moodaliar's Creditor, That some time

time after the said ninapah returned and the said Perria Oyah Moodalier arrived here and lived in the House with the said ninapah, as usual, Four or Five months, That during his stay here he settled all his accounts with Your Petitioner, But the said Deponent did not hear any thing about the said Bill in Question at that time nor untill fifteen months afterwards, which said Deposition is in a great measure Confirmed by that of the said Caulatiapah for he Confirms the matter of the said ninapah's taking him to the said Perumbadoor Andiapah and desiring him the said Andiapah to pay the amount of the said Bill to him the said Caulatiapah That the amount of the said Bill was paid to him accordingly and that such payment was considered as a full Discharge of the said Bill, He also Confirms his Letter to Your Petitioner of which a Translate is annexed to Your Petitioner's said Answer, and saith That Perria Oyah Moodalier Drew a Bill of Exchange for One Thousand Pagodas on the said ninapah about Two months before he Drew the Bill in Question, The amount of which he the said Caulatiapah received and paid to One Chinatomby Moodalier, who at the same time told the said Caulatiapah that he wanted the whole that the said Perria Oyah Moodalier was Indebted to him, which was Two Thousand Pagodas and upwards That in Consequence the said Caulatiapah wrote to the said Perriah Oyah Moodalier Informing him what the said Chinatomby had said and the said Perria Oyah Moodalier immediately wrote to the said Caulatiapah and

and also to the said ninapah desiring him to apply to the said Andiapah for the Loan of Two Thousand Pagodas to pay the said Chinatomby and another person, That the said Andiapah put them off from day to day for upwards of a month, The said ninapah then wrote to the said Perria Oyah Moodalier Acquainting him how he and the said Caulatiapah had been put off by the said Andiapah and that the said Chinatomby had not been paid, In Consequence of which the said Perria Oyah Moodalier immediately sent down the Bill of Exchange in Question, That after the said Bill arrived the said ninapah kept it and told the said Caulatiapah it was not Come and wrote to the said Perria Oyah Moodalier that it was not come to Hand, That the said Bill was Accepted without the said Caulatiapah's knowledge and the said ninapah's Nephew kept a Letter from the said Caulatiapah which the said Perria Oyah Moodalier had wrote him, and Immediately after he was Informed of the said Bill being accepted he went and asked the said Ninapah's Nephew for it who Replyed that when it became due he would give it to him, The said Caulatiapah Suspecting that some Tricks were playing immediately wrote to the said Perria Oyah Moodalier who wrote to the said Andiapah to pay the said Caulatiapah the Amount of the said Bill he the said Caulatiapah giving a Receipt for the same, That some time afterwards the said Perria Oyah Moodalier came to Madras and lived with the said Ninapah who was returned from the Southward / near Six months, during which time the said ninapah mentioned nothing about the said Two Thousand Pagodas in Question, and after the said Perria Oyah Moodalier left this

this place and went to Arcott the said Ninapah sent the account between him and the said Perria Oyah Moodaliar but Specified nothing about the said Bill in the said Account, but made a Ballance in his the said Ninapahs favor of Two Thousand and Odd Pagodas, but by the said Perria Oyah Moodaliars Account which the said Caulatiapah has in his Posession the said Ninapah stands Indebted unto the said Perria Oyah Moodaliar in the Sum of Two Thousand Pagodas, From which Circumstances Your Petitioner humbly hopes it will clearly appear to this Honorable Court that the Amounts of the said Bill was never Intended to be appropriated to the use of the said Ninapah That he the said Ninapah must have been Sensible of it That Supposing he could have claimed a right thereto he did by his Conduct as before related Divest himself thereof, that Your Petitioner could not at any rate be Answerable to the said Ninapah for the same for the Reasons before mentioned, and that the said Decree of the said Court is Erroneous.

Your Petitioner doth therefore humbly Pray that the said Decree of the said Mayors Court may be Reversed and Set aside, That the said Bill of Complaint of the said Ninapah may be Dismissed with Costs, That the said Ninapah may be Decreed to Deliver up to Your Petitioner as Agent as aforesaid the said Bill of Exchange and pay the Costs of the said Cross Suit and also of this Appeal, and Your Petitioner doth Lastly pray such further and other General Relief in all and Singular the Premises as to this Honorable Court shall seem

Mist

Jno. Sykes
Atty for the Appellt

Mayors Court at Madraspatnam

Saturday the 2d Day of November
Anno Domini 1776

Present

John Turing Esquire Mayor
George Smith — James Call
George Proctor — Eyles Irwin and
Edw. John Holland — Aldermen

Between Ninapah of Madras Inhabitant Original Complainant and Cross Defendant and Antonio de Souza of Fort Saint George Merchant Original Defendant and Cross Complainant Et Contra

Bill with Translate of a Bill of Exchange annexed Read

Answer with Translation of two Letters annexed Read

Cross Bill Read

Replication Read

Cross Answer with Translate and Copy and Translate of Letter Annexed Read

Amended Rejoinder Read

Amended Replication Read

Cross Rejoinder Read

Exceptions of the origenal Complainant and Cross Defendant Read answer

Answers to the Exceptions Read

The Court Proceed to take into Consideration The Original Complainants Exceptions to the Depositions of Caula-tiapah Pumbadoo Andeapah Moodaliar Andepoor Mootiah Moodaliar and Malacca Vencatachella Moodaliar and the Original Defendants Answer thereto, on hearing the Pleadings made use of by the attornies on both Sides, and having had Due Convideration thereon are of Opinion, that the Original Complainants Exceptions are Insuffi-cient to throw out the Depositions of the Witnesses Excepted to, It is therefore Ordered that the Exceptions be over-ruled with Costs to be paid by the Original Complainant Interrogatories on the part of the original Defendant and Crop Complainant with Two Papers marked A and B annexed Read.

Two Depositions taken thereunto Read The Witness No 5 did not appear for Examination.

Two Exhibits on the part of the Original complainant and Crop Defendant Read.

These Causes Coming on to be Heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Original Complainants Bill with Translate of a Bill of Exchange Annexed The Original Defendants Answer with Translates of Two Letters Annexed The Crop Bill The Replication The Crop Answer with Translate and Copy and Translate of Letter Annexed The Amended Rejoinder The Amended Replication The Crop Rejoinder The Exceptions of the Original Complainant and Crop Defendant and the Answer thereto The Interrogatories and

Depositions

Depositions on the part of the Original Defendant and Crop Complain-ant with Two Papers marked Letters A and B annexed Two Exhi-bits on the part of the Original Complainant and Crop Defendant

On Hearing the Pleadings made use of by the Attornies and on Due Convideration had thereon This Court Doth think fit to Order and Decree, and Doth Accordingly Order and Decree, that the Original Defendant shall pay unto the Original Complainant The full and Just Sum of Two thousand Pagodas / Pag.s 2000 / together with all such Interest as now is or shall hereafter become Due thereon until full Payment is made also all Costs of this Suit And it is further Ordered and Decreed, That the Crop Complainant Bill do Stand Dismissed with Costs to be paid by the Crop Complainant

J Cut
James Taylor
Rg.r

In the Court of Appeals

Between Ninapah of Madras Inha-bitant is Original Complainant and Crop Defendant

And Antonio De Souza of the same place Merchant is Original Defend.t and Crop Complainant

The Answer of Ninapah to the Petition of Appeal of the said Antonio De Souza

Filed in my Office the 5th March 1777 Chs Caseley Clk

The Respondent says that he admits to have filed this Bill of Complaint in the Hon.ble the Mayors Court against the

appellant

appellant on the day and Year as Set forth in the Appellants Petition of Appeal and for the Sum therein expressed being the Amount Principal arising on an Inland Bill or Draft bearing date the same day and Year as Set forth by the said Appellant in his said Petition of Appeal drawn by the Person therein mentioned payable in four days, the which was presented to and accepted by the said Antonio De Souza who by such Acceptance became responsible to the Respondent or his Order whenever presented for Payment, pursuant to the Custom and Usage of merchants, the said Appellant having by several Excuses put off payment the said Respondent was under the Necessity of Exhibiting his Bill of Complaint in the Honble the mayors Court against the Appellant for payment to which Bill of Complaint the Appellant did put in his Answer on the day and Year as Set forth in his Petition of Appeal pleading therein the General Issue of Nil Debet, or that he was not indebted to the Respondent and further Specially reciting his Reasons why he should not be obliged to pay pursuant to his Acceptance, saying he was only an Agent for the United Company of merchants of England trading to the East Indies in the providing of Cotton Thread used by or on account of the said Honble Company and that the Bill of Exchange drawn upon the said Appellant and by him Accepted was for and on account and use of the said Honble Company and therefore was not responsible for such Acceptance, that being for and on account of the said Honble Company and therefore the appellant pleaded his Acceptance as Agent in Bar to the Bill of Complaint of the Respondent, The Respondent further says that the said Appellant not chusing to Rely solely on this Plea, as knowing such Plea in Bar could not be considered so as to preclude the Respondent from his Right of Action against the appellant as Acceptor, he the appellant made a Special Answer therein entering into the merits of the Transaction and Setting forth Sundry Circumstances altogether unknown to the Respondent That the Accepted of the said Bill of Exchange as Agent for the said Cotton Thread and ordered the said Respondent to carry the said Bill for payment when due to the office of the said United Company's Export Warehouse keeper that a few days after the said Respondent came to the appellant and acquainted him that he had applied for payment and the Cash-keeper had not taken up the Bill, whereupon the appellant sent for the Cash keeper and Accountant and directed them to pay the Bill, that the Respondent went away Satisfied, the Respondent says, that to this part of the answer it appeared to the Honble the mayors Court that the Respondent had applied to the appellant and informed him that the Bill by him accepted was not discharged, which the said Honble Court from the appellants own Shewing allowed that the appellant was sufficiently apprized of the Bill not being discharged and therefore it became the indispensible duty of the appellant to enquire after and

and take up the said Bill pursuant to his acceptance whether in his own Capacity or as agent Factor &c. for others and which he might have easily done as the means were in his possession that the Settling of the Cash Account of the said Agency for the said months of July in which the said Bill was presented and accepted and finding that the said Principal Sum of Two thowand Pagodas charged by the said Cash keeper and Accountant to be paid for the said Bill was no sufficient Bar against the Demand of the Respondent because the appellant had a Right to insist on the Bill being produced as a Voucher that the Amount of the said Bill had been paid, that therefore the neglect of the appellant in passing the Account without Vouchers was an act and Deed of his own and could not effect the Demand the Respondent had on him by Virtue of his acceptance and it further appeared to the said Honble the Mayors Court whether the Respondent did or did not apply any further for payment Still the appellant could not be justified in passing the account of this Demand without a legal discharge which was the producing the said Bill by the appellant accepted and the Conclusions the Appellant made from his Ideas of the Bill being given up to the Cash keeper and Accountant that the said Bill was discharged, the said Honble the Mayors Court esteemed falacious and that the appellt crediting the words of the said Cash keeper and accountant in preference to the Usual mode of passing Accounts was very irregular and unwarrantable and could not be supported by any mode or proceeding whatever. The Appellant in his Answer further Set forth that the Respondents should have delivered up the said Bill to the said Office of the Export Warehouse keeper on payment of the Amount thereof, which the Respondt Says he would have done on such payment the appellant further in his Answer Set forth as a further belief of the said Bill being discharged that the Drawer of the said Bill had given him Credit for such Amount, this Reason the said Honble the Mayors Court were pleased to observe that no order of the Drawer to the said appellant could vitiate the Demand the Respondent had on the appellant pursuant to his acceptance, the appellant by his such his Acceptance having once created himself Debtor to the Respondent became always so until the Bill was discharged, The Respondent further says that the appellant in his answer Set forth that he had no more applications from the Respondent until a few months before the Respondent Exhibited his Bill of Complaint against him the Drawer of the said Bill being then much indisposed and the Cash keeper gone to Ganjam, that it appeared to him the appellant from the accounts of the Drawer of the said Bill that it was discharged and as a further confirmation the Respondent was desired to come to the Warehouse and see the Books which the said Respondent did do and found that the Cash keeper had carried the Amount of the said Bill to the Credit of the Cash as so much Money paid by the Drawer

Order of the said Drawer of the said Bill to his nephew Caulatteapah
the Respondent says that the Honble the Mayor's Court took this
apertion into Consideration as well as the Evidence given in to
support it and they were clearly of opinion that this Transacti-
on was a mere piece of Chicanery in the Cash keeper and
Accountant and could not effect the right inherent in the
said Respondent pursuant to the acceptance and that no
Order of the Drawer could be sufficient for the appellant to
permit the Cash keeper and Accountant to make up their
accounts or for the appellant to pass them in that manner
The appellant in his answer layed great stress upon the
Respondents not making any further application for payment
which the appellant says was not made untill the very day
that news arrived of the Decease of the Drawer of the said Bill
this apertion appeared to the said Honble the mayor's Court
as contradictory to what the appellant had before apserted
for he aperts the Respondent did apply to him during the
indisposition of the Drawer of the said Bill The said Respon-
dent further says the appellant having Set forth that he had
in his answer applied to Caulatyapah and Tyrvoor Armocam
the Relations of the Drawer of the said Bill desiring to be
Acquainted with the particulars attending the said Bill
they having the management of the said Drawer's Estate
and Received some Letters from them, that from such
Correspondence the said Bill appeared to be discharged,
the said Honble the mayor's Court were of opinion that
what

what the appellant apserted and the said Persons alledged had no
influence in their opinion so as to endruce them to invalidate
the Acceptance so made by the said appellant and that any
delay of the said Respondent in demanding payment did
not discharge the said appellant or allow him in purdence to
give Credit to the Order of the Drawer of the said Bill or to the
Declaration of the said Cash keeper and Accountant belong-
ing to the Warehouse when there was a Bill of Exchange out-
standing against the appellant who by Virtue of his Accep-
tance became a Trustee for the payment The appellant
further in his Answer to the Respondents Bill of Complaint
Set forth that the Drawer sent a Letter to the said Respondent
with the Bill of Exchange which was produced at the request
of the appellant the which to be the appellant never contro-
verted nor ever disallowed of the Contents all that the appell.
apserted was, that in Case the Letter was produced it would appear
that the Demand on the said Bill was unjust Illegal and
without foundation and that the said Respondent ought to give
up to him the appellant the said Bill and prayed the Honble
the mayor's Court to decree the giving up of the said Bill with
Costs the which the said Honble the Mayor's Court were pleased to
determine that the said appellant had no right to the said
Bill untill he had discharged the same and further his applica-
tion was immaterial because at the first Setting out of the answer
he denies to be indebted to the Respondent as he only accepted the
said Bill as Agent, if in this Instance admitting his Plea to be
true.

true which the Respondent cannot do for he is not obliged to pay said Bill, he the appellant has no Right by which he can lay a property in the said Bill and of course his Request of the being to be delivered up to him fell to the ground, and respecting the Letter the said Honble Court were firmly of opinion that the Drawer of the said Bill appeared indebted to the said Respondent and that the said Letter proved the said Bill to be the property of the said Respondent for Value Received which on the appellant Side was never deemed to be otherways the said Respondent further Says the appellant having in his Petition of Appeal introduced a Copy of a Letter from Caulatty apah dated at Arcot the twenty fifth Day of October one thousand Seven Hundred and Seventy four as also another Copy of Letter from Tyrumurmocan Dated Arcot the Seventeenth November One thousand Seven Hundred and Seventy four These Letters the appellant Rested most of his defence upon but when Submitted to the Consideration of the Honble the Mayor's Court there appeared so great a Contradiction between these Letters and the one of Perriah Modeliar the Drawer of the said Bill that the said Honble the Mayor's Court would give no Credit to the said Two Letters from Arcot The said Respondent further Says that he admits a Cross Bill was by the appellant filed against him in the Honble the Mayor's Court to deliver up the Bill as also to discover by Interrogatories the true Circumstances of the Bill to which the Respondent gave in his a full and perfect Answer thereby denying

denying the Charges in the appellants Bill of Complaint Specially Setting forth that he admitted of having presented the Bill to the said appellant for Acceptance which when due he directed the Respondent to go to the Office of the Warehouse keeper to get paid that the Respondent Acquainted the appellant the Bill was not paid being after it became due, that the appellant sent for the Cash keeper and Accountant and Ordered them to pay the Respondent which they promised to do and the Respondent rested Satisfied that they would do so, but instead thereof the Respondent was put off The Respondent Admitted in his Answer of his leaving Madras being obliged so to do on Account of his being in the Service of the Nabob of the Carnatick but of his being any reason why the appellant should give Credit to the words of the Cash keeper and accountant to the prejudice of the said Bill so by the appellant Accepted the Respondent in his Answer denied that the said Bill was for the use of the Drawer to discharge Sundry Demands on him but left to the Discretion of the Respondent, to corroborate which the Respondent did annex a copy of the Letter as prayed for by the appellant and did also Set forth that the Drawer of the said Bill Stood indebted to the Respondent in the Sum of three thousand Pagodas and therefore applied the Two thousand Pagodas Bill towards the discharge of this Debt which was left in the Discretion of the said Respondent by the said Letter the Respondent denied that he knew any thing of the said Orders of the said Drawer to his Nephew Caulatty apah

Caulatiapah to receive the Amount of the said Accepted Bill and that he had no Connection with the said Caulateapah that he insisted that the Receipt given by the said Caulateapah should not precludehim from his Demand on the appellant notwithstanding the several pretexts made by the appellant which appeared only to serve the parties engaged in this Business. The Respondent further in his Answer denyed leaving the Bill with any person to procure payment, though charged by the appellant in his Cross Bill of Complaint as he knew that neither the Cash keeper or Accountant could be Trusted The Respondent further in his said Answer to the said Cross Bill of Complaint objected to the Letters of the said Tyrvoor Caulatiapah and Tyrvoor Aurmocam they being the Relations of the Drawer of the said Bill and of course interested in the decision of the Suit, Special reasons being assigned in the Respondents said Answer as by a reference thereto will more fully Appear, The appellant in his Cross Bill of Complaint having Specially Interrogated the Respondt. he the said Respondent did as specially Answer thereto and having so done, must be taken as conclusive Evidence in support of the Respondents Original Bill of Complaint The said Respondent further says, that the appellant did put in a long and Elaborate Replication and therein did dwell much upon Argument and his own Opinions of what ought to be done and the like, that the Custom and Usage of Merchants in the present instance was to

totally forgot and neglected and the only intention of such Reply was to refute the Assertion of the Respondent and to favor the parties concerned in this unjust negociation of discharging the said Bill so by the appellant Accepted, the Idea that the indispensible duty of the Appellant was, that after his being Acquainted of the Bill not being discharged that he was to Seek after enquire into, and take up the Bill was totally forgotten by the Appellant, and in the depth of the appellts arguing in the Replication, it appears that he was the only person the Respondent could demand payment of, for it appeared from the appellants own Shewing that the Cash keeper and Accountant were obliged to pass their Accounts before him and that it was in the appellants power to have objected to the Charge untill the Bill was produced, the several pretences of the Cash keeper and Accountant made in order to save themselves was rather applying to the passions of the appellant which gave way to his own prejudice, therefore they the said Cash keeper and Accountant are Debtors to the Appellant who gave them Credit upon their words, although the Appellant well knew the Accepted Bill was outstanding, which might have been made over to Twenty People, any one of which the appellant was responsible to the Respondent further Says that the whole of this Replication is to this purport that the appellant having Accepted a Bill it became in his Idea the Duty of the Respondent to be continually running

after

after him for payment and his omitting to do so the Appellant
Says he was induced to believe the Assertions of the Cashkeeper
and Accountant, and therefore Credited their Account, this
Credit could not prejudice the Respondents Right, the
Appellant had been Apprized of the Bill not being paid, a
Caution sufficient to giving any Credit to the said Cash
keeper and Accountant, on the Contrary he the Appellant
should have insisted on the Bill being produced and the
Accounts kept open, till that was Settled, of this Opinion was
the said Honble the Mayors Court and that the means were
certainly in the power of the Appellant To this Replica-
tion, a Rejoynder was put in and filed by the Respondent
and Several Special Arguments Drawn from the Custom
and usage of Merchants inserted, particularly to that part
of the Appellants defence where he Asserts that he accepted
the said Bill only as an Agent, to which the Respondent Answered
that such Acceptance was as binging upon him in that he was
a Bill of Exchange Drawn Simply upon himself, for he, as Agent
accepted to pay when the same became due and as Agent he is
bound to pay, and an Action of the Case lyes against every person
that is privy to a Bill, as has been adjudged in the following
Adjudged Case, Viz.t "The Plaintiff was Indorsee of a Bill of
"Exchange drawn from Scotland upon the Defendant in
"these words at Thirty days sight pay to J. S. or Order 20 £
"value received of him and place the same to Account of the
"Charles Stillemay &c.

To Mr. Humphrey Bishop Cashier of the York Buildings Company
at their House in Winchester Street London Accepted 13th June
1732 per H. Bishop this Bill not being paid an Action was
brought against the Defend.t upon his Acceptance and
adjudged to pay because the addition of Agent or Cashier to the
Defendants name is only to denote the person with more certain-
ty. The Respondent Says that at the time the Bill was present-
ed it was optional in the Appellant to have Accepted the Bill
and when he did Accept it, he certainly had A peto to have
discharged it and that he was the only person regularly for the
Respondent to apply to for payment the Respondent conclud-
ed Specially in his Rejoynder by some Special Remarks all of which
were approved of by the said Honble the Mayors Court, The
Respondent further Says that he replied to the Original Answer
of the Appellant to which the Appell.t put in a Special
Rejoinder repeating the same Arguments in support of his
Answer as he had done throughout the proceedings save and
except that the Appellant Says all that he had to do was to
Settle the Accounts of that Concern properly, meaning his
Agency, as far as in his power or came to his knowledge, here
the Appellant has Accepted a Bill, and therefore proper for
him to see it properly discharged, and not to have trusted to
the words of those imployed under him for it certainly appears
that the President and Council of Fort Saint George repos-
ed a Special Trust and Confidence in the Appellant
and not in the Cash keeper and Accountants who are only employ-
ed as

as Apellants

The Respondent further says the Proceedings being so far finished Issue by consent of both parties was joined Witnesses Examined, Publication passed and these Causes determined in the mayors Court/ by a Special Summons to all the members to attend/ on Saturday the Second Day of November One thousand Seven Hundred and Seventy Six in favor of the Respondent as set forth by the appellant in his Petition of Appeal and Dismissed the appellants Cross Bill of Compt. against the Respondent with Costs But before the Respondent proceeds to answer the reasons Assigned by the appellant in his Petition of Appeal for Appealing the Respondent humbly begs leave to Recite the particulars of the Evidence on the behalf of the appellant produced before the said Mayors Court with their opinions delivered in open Court.

First the Respondent objected to the Depositions of Caulaty-apah, Pumbadoor Andeapah Moodeliar, Andepoor Mootiah Moodeliar and Malacca Venatachella Moodeliar Evidences produced by the appellant which was over Ruled and their Depositions ordered to stand.

Second the Deposition of Permuboodoor Andeapah Moodeliar the Cash keeper under the appellant was read it appeared to the Honble the Mayors Court that this Evidence had extended his Evidence to Support himself by denying what the appellant had in his Answer Asserted which is Evident from the fifth Deposition of this Evidence and in another part of the said Deposition he positively Asserts that the Respondent

6

Respondent told him he would leave the Bill in the Hands of another person to get Accepted and paid and the Appellant Swears in his Answer, the Respondent got the Bill accepted and was the person who complained of the Bill not being paid

The Deposition of Andepoor Mootyah Moodeliar the Accountant being hear say of what the aforementioned Witness Andeapah told him, that little or no Credit was given to the same as no part of this Evidence could be reduced to a certainty.

The Deposition of Merchelamany Sets forth that about Twelve months after the payment of the Bill in question Andeapah produced a Receit for the said Amount Signed Caulytapah this Receipt was never produced as an Exhibit in this Cause or taken the last notice of the proceedings appearing to the said Honble the Mayors Court as something fictitious.

The Deposition of Caulateapah Sets forth in his fifth Deposition that the Respondent took him to the Cash keepers Andeapah and desired the Cash keeper, that in Case the Bill of Exchange in this Cause and Cross Cause should arrive during his the said Original Complainants and Cross Defendants Absence, that he would pay the Amount of the said Bill to the said Calateapah and that the same was paid about Twenty Days after the Respondents departure the appellant in his answer, says the Respondent tendered the Bill for Acceptance and when it became due complained

of the Cash keeper and Accountant not discharging it the appellant says he enquired of them and desired them to pay the Respondent this the Court observed was a flat Contradiction

In the Ninth Interrogatory this Evidence says that Perriah Oyah Modeliar sent down the Bill of Exchange in this Cause after the Bill arrived the said Nimapah kept it and told this Deponent that the said Bill was not come and wrote to the Drawer of the said Bill, the Day after the Respondent left Madras and his Nephew went to the Appellant and got it accepted whereas the Appellant Says in his Answer that Nimapah presented the Bill for Acceptance and when it became due, directed him to go to the Warehouse for Complained of non payment, and that the Appellant sent for the Cash keeper and Accountant and directed them to pay the Respondent the Honble the Mayor's Court observed that this Evidence had over Stretched his Conscience and that his Deposition was not well Connected to Carry the least Idea of Truth, for had the said Caulatiapah informed the Appellant or had the said Andeapah the Cash keeper told him that the Respondent had desired the Cash might be paid to Caulatiapah, when the Appellant sent for the Cash keeper, there had been a probability of Truth, but as this Evidence had exceeded the bounds of Truth, some of the Members were for bringing some of the Evidence to Publick Justice, this Evidence positively Asserts that hearing the Respondents Nephew

Nephew had got the Bill accepted he went to him and asked him for it, who replied that when it became due, this Evidence should have it here again it appeared to the said Honble the Mayor's Court a palpable falsity for both Appellant and Respondent declare the Application for Acceptance and payment was personally between themselves and that a Complaint against the Cash keeper and Accountant for non payment of the Appellant, was by the said Respondent solely had the said Caulatiapah been so busy with the Respondent's Nephew to deliver up the Bill after its Acceptance, and before it became due, he would certainly have Applied to the Appellant and acquainted him of this Circumstance as to the Order said to be given to the said Cash keeper by the said Respondent for payment to the said Caulatiapah The Respondent Says that Several of the Members of the said Honble the Mayor's Court openly expressed their Sentiments upon these Depositions but as the Attorney for the Respondent did not chuse to make any Special motion therein the affair dropped

The Respondent says in his Answer to the Reasons Assigned by the Appellant for his Appealing to this Honble Court he humbly begs leave to offer the following as Arguments in Support of his Demand on the Appellant

First that it was certainly the fault of the Appellant that the amount of this Accepted Bill was not paid to the Respondent because he the Appellant had no Right to pay any money or paper to account by any Order of the Drawer whilst

whilst such Bill was Outstanding against him and whatever Design the said Respondent had of appropriating the Amount of the said Bill to himself that such Design would not be the Business of the Appellant for his Business was to see the Bill paid or discharged and taken up—

Secondly That it appears from the Strenous manner in which the Appellant insinuates, "the Respondent means to "take the advantage of a few words addressed to the said Respondent in the Letter of Perriah Oyah Moodaliar" the said Respondent Says he never meant to avail himself of any frivolous writing or Address of the said Drawer of the said Bill but on the contrary he meant to do himself Justice and expose to the Appellant the bad behaviour of the parties under him whom it appears to the said Respondent the Appellant is supporting, notwithstanding the opinion of the Honble the Mayors Court as to the Evidence produced on the part of the Appellant

Thirdly the Respondent Says that the Appellant did not do every thing that lay in his power to Comply with the Bill by him accepted, for he the Appellant certainly was bound to have Discharged his Bill pursuant to his Acceptance and it was a matter of no consequence to the Respondent whether the Appellant was the Cash keeper or not the Cash keeper and Accountant were under the said Appellant and the Amount of Cash kept under his the Appellants inspection and if he will permit these people so under him to Transact his Business the Appellant must Suffer for their Conduct and as to the

the Appellants sending for the Cash keeper and Accountant and giving them Orders to pay the Respondent, that this Acting and doing will never discharge the Appellant from his Acceptance, but the said Respondent begs leave to observe, in this part of the Appellant reasons why he should not be responsible for the said Bill, because he sent for the Cash keeper and Accountant upon Complaint of their not discharging the said Bill of Exchange, here a matter of Fact is asserted by the Respondent Admitted, and by the Appellants Evidence denied, here a flat Contradiction by Evidence, being the Interested parties in the Event of this Suit, the Credibility of which is humbly submitted to this Honble Court of Appeals—

Fourthly the said Respondent Says that he ever deemed the Appellant responsible to him for the Amount of the said Accepted Bill and no one Else, therefore the several arguments made use of by the Appellant in his Petition of Appeal falls to the ground as also his Opinion regarding the said Bill being delivered up to him, for if he refuses to pay the Bill as Agent, he as Agent has no Right against the Bill holder, but this application of the Appellant seemed to Carry an Idea of his desiring to have this Bill to produce in the passing of his Agency as a Voucher for Monies said to be paid by the Cash keeper under him—

For all which Reasons the Respondent is humbly of Opinion that the Petition of Appeal should stand dismissed with Costs and the Decree of the

the said Honble the Mayor's Court from which the appellant appeals stand Confirmed and therefore prays that the same be ordered Accordingly—

Chas. Bromley
Att'y Respondt.

Court of Appeals at Madraspatnam } Ss Thursday the 21st May 1778

Between Antonio de Souza Appellant
and Ninapah — Respondent

This Cause Coming on this Day to be heard and Debated before this Court by the Attorneys on both Sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayor's Court, together with a Decree of the said Court given in this Cause on Saturday the 2d. Day of November Anno Domini 1776. and upon due Consideration had of the Matter 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 Mayor's Court given in this Cause be reversed and set aside and that each party do pay his own Costs in both Courts, and this Court doth further Order and Decree that the Bill of Exchange in Question in this Cause be delivered into the Appellant by the Respondent. Pr Cur

Tho Lewin

Between Ninapah of Madras Appellant
and Antonio de Souza of the same place Respondent
Ele Contra

To the King's Most Excellent Majesty in Council

The Humble Petition of Appeal of Ninapah of Madras Merchant from a Decree or Sentence of the Honble the President and Council of Fort Saint George as a Court of Appeals there

Filed in my Office the 3 of June 1778
Tho Lewin Clk

Humbly Sheweth

That your Appellant did some time in the Year one Thousand Seven Hundred and Seventy Four file a Bill of Complaint in the Honble the Mayor's Court at Madraspatnam against the above said Antonio de Souza for the payment of the Sum of Two Thousand Pagodas and Interest arising upon an Inland Bill of Exchange written in Malabar and bearing date the third day of July One Thousand Seven Hundred and Seventy three drawn upon and Accepted by the said Antonio de Souza to pay in four days after sight of the said Bill, to which said Bill of Complaint the said Antonio de Souza did appear and put in his Plea and Answer in which plea the said Antonio de Souza denied he stood indebted to your Appellant in the Sum of Two Thousand Pagodas because the Acceptance by him made was for and on Accounts of the United Company of Merchants of England trading

Trading to the East Indies he the said Antonio de Souza being then at the time of the acceptance the said Company's Agent for the providing of Cotton Thread and by the said Company in the Manufactory of their Cloth and that the Acceptance by him the said Antonio de Souza was in his then said Capacity of Agent for the Business of the said Cotton thread and not on his own Account and therefore the Action Commenced by Your Appellant against him was wrong and illegal for that the Action should have been brought against him in his Capacity as Agent for the said Cotton thread and not as if on his own Account which matter the said Antonio de Souza pleaded in Abatement to Your Appellant's Suit in the said Honble the Mayor's Court Your Appellant further Sheweth that the said Antonio de Souza proceeded with his Answer and Acknowledges that on the Twelfth Day of July One thousand Seven Hundred and Seventy three the Bill of Exchange in question was presented to him for Acceptance which he as Agent for the Cotton Thread Accepted and Ordered that the said Complainant or the person who presented the said Bill to carry the same when due to the Office of the said Company's Exportivare house keeper for payment. The Answer further Sets forth that a few days after the Acceptance Your Appellant did apply to the said Antonio de Souza and Acquaint him that the time which was limitted for payment was expired and that the said Cash keeper had not paid the Amount thereof whereupon he the said Antonio de Souza sent for one Andeapah Moodaliar the Cash keeper

Cash keeper and Mootiah Moodelair the Accountant and Ordered them in the presence of the Complainant's meaning Your Appellt. to Discharge the said Bill, which they promised to do, the said Antonio de Souza further in his Answer Says, that on Settling the Cash Account of the said Agency for the said Months of July, but when that Account was Settled the said Answer does not Set forth, he the said Antonio de Souza found a Charge of Two thousand Pagodas as paid for the Amount of the said Bill, from which together with no further application having been made by the said Complainant's meaning Your Appellant or any other person on his, Your Appellant's Account to him the said Antonio de Souza on Account of the said Bill of the Amount thereof, the said Antonio de Souza naturally concludes that the said Bill was discharged by the payment of the Amount thereof to the said Complainant and that the said Cash keeper and Accountant had taken up the said Bill of Exchange as usual The said Answer further Sets forth that as a further Confirmation of the said Bill being discharged that the Drawer of the said Bill gave the said Antonio de Souza Credit in his Accounts for the Amount of the said Bill but the Appellant humbly begs leave to observe that no date or time when these Accounts were Settled are produced the answer further Sets forth that the said Antonio de Souza says that a Considerable time was Elapsed without any Application being made to him for Account of the said Bill either by the said Appellant or any person for him until about two or three months before Your Appellant filed his Bill of Complaint against the said Antonio de Souza in the Honble the Mayor's Court and before the Decease of the Drawer of the said Bill of Exchange in

question

question when the Complainant / Your appellant / applied to the said Antonio de Souza for payment telling him that he the appellant could not procure payment from the Cash keeper — whereupon the said Antonio de Souza Answered that he had Settled all Accounts with the Drawer of the said Bill of Exchange for the Year One Thousand Seven Hundred and Seventy three, desiring the appellant to come to the Warehouse and See the Books of Accounts wherein Your appellant would see that the said Draft had been paid The Answer further Sets forth that Your appellant went a few days after to the said warehouse when and where the said Antonio de Souza called upon Moliah the Accountant for the said Cash Account and the accounts of the Drawer of the said Bill of Exchange and Shewed Your Appellant that the amount of the said Draft was paid in the absence of Your appellant by the Order of the said Drawer to one — Caultyapah the Nephew of the Drawer, which said Draft the Drawer so ordered the said Caultiapah to receive, because the said Bill was for and on Account of the Drawer only to be received and not for and on Account of any Money due or owing to Your appellant and more especially as Your Appellant had left Madras before the said Money was paid, The said Answer further Sets forth that Your Appellant made no further application about the said Draft untill the Decease of the Drawer of the said Bill was known when Your Appellant applied to the said — Antonio de Souza for payment, which the said Answer Sets forth that the said Antonio de Souza refused to pay for the reasons before given

given when Your Appellant threatned to prosecute him for the same. The Answer further Sets forth that the said Antonio de Souza did write to the said Caulatyapah and Tyrvoor Aumocan, The Father and Brother of the said Deceased for the particulars of the Circumstances attending the said Bill as they were persons conversant with the Affairs of the Drawer of the said Bill to which Letter the said Antonio de Souza Says he received Answers a Translate of which Letters are annexed to the said Answer the purport of which is as follows.

Caulteapah from Arcot dated 25. Octo 1774 to Mr De Souza — Says "That his Uncle Perria moodeliar had Drawn a Bill of Exchange for Two Thousand Pagodas on the said Antonio de Souza in favor of the said Ninapah Your appellant and by Letter desired him to receive the said sum and pay some other persons, the said Caulteapah further Saying that he the said Caulteapah desired the said Ninapah moodeliar to receive the said Sum and pay to whom desired but that Your appellant desired him the said Calteapah to receive the said Sum from Andeapah moodeliar and pay as desired, the said Caulteapah Says he desired the said Andeapah Moodeliar to pay for the said Draft who promised to pay the next Day, but the same day the said appellant went away to the Southward without leaving the Draft behind him, whereupon the said Caulteapah applyed to Andeapah the Cash keeper and wrote to the Drawers of the said Bill at Arcott that the said Andeapah

took

took a Receipt for the Two thousand Pagodas deducting some Cash therefrom and paid the Rest to him the said Calleapah. The other Letter from Tyrroo Aurmocan from Arcot Dated the Seventeenth of November One thousand Seven Hundred and Seventy four to the said Antonio de Souza is much to the same purport with this addition, that he says, that his Son Caulleapah said that when Nenapah Modely Received the said Draft and got it Signed by You he desired my son to Receive the Amount thereof and pay the Ballance himself. Your Appellant further Sheweth that the said Antonio de Souza in his said Answer further Sets forth that he apprehended these Letters plainly Shewed that the said Bill of Exchange was paid and that the said Bill should have been delivered up upon such payment and more particularly so as the said matter having rested for so long a time as from July One thousand Seven Hundred and Seventy three to July or August One thousand Seven hundred and Seventy four without any Demand whatever being made on the said Antonio de Souza either by the appellant himself or his Attorney or Agent and therefore he the said Antonio de Souza conceived the said Demand was also on that Account contrary to the Custom of Merchants in Cases of Bills of Exchange and Illegal, the said Answer further Sets forth that there was a Letter of advice or Instructions sent by the Drawer of the Bill in Question to the Appellant with the said Bill of Exchange which he desired might be produced and which Your Appellant Sheweth was produced. The Answer being thus briefed in all its Circumstances

Circumstances concluded with praying that the said Bill of Exchange might be delivered up to him and that Your Appellants Bill of Complaint might Stand dismissed with Costs. Your Appellant further Sheweth that on the same Day the said Answer was filed being the ninth Day of January One thousand Seven hundred and Seventy five the said Antonio de Souza preferred a Cross Bill of Complaint Against Your Appellant in the said Honble the Mayors Court and after Specially Reciting the Circumstances relating to the said Bill of Exchange the said Antonio de Souza did in such his said Cross Bill of Complaint exhibit certain Interrogatories relative to the said Bill of Exchange in order to Discover whether there was any fraud or Collusion on the part of Your Appellant the said Cross Bill of Complaint further praying that the said Bill of Exchange in Question might be delivered up unto the said Antonio de Souza and that Your Appellant might pay all Costs of Suit. To this Cross Bill of Complaint Your Appellant Appeared and put in his Answer and also filed a Special Replication to the Answer of the said Antonio de Souza in the original Suit. The Answer of Your appellant admitting of the said Periah Ayah Modelier the Person mentioned in the Cross Bill of Complaint drawing upon the said Antonio de Souza for Two thousand Pagodas under the Day and Date as in the said Cross Bill mentioned the said Cross Answer further Setting forth that the said Antonio de Souza did direct the appellant to go

go to the Office of the Ware house keeper to get paid but denies that this was at the time of the Acceptance but Admits it to be at the time of the Demand made for payment, Your Appellant also in the said Answer admitted of the said Antonio de Souza sending for the said Andiapah Moodeliar the Cash keeper and Mootiah Moodeliar the Accountant and ordered them to pay off Your Appellant which they promised to do and Your Appellant did Acknowledge himself Satisfied therewith upon a presumption that they would have complied therewith but as they evaded the same by sending Your Appellant from one to the other compelling Your Appellant to attend them from time to time the said Answer of Your Appellant further answering to the Interrogatories in the said Cross Bill exhibited acknowledged his leaving Madras but pleaded the Necessity thereof by his being in the Service of his Highness the Nabob of the Carnatick and by his order was under the immediate and indispensible duty of going to Camp so that the necessity of leaving Madras pleaded for itself and this Your Appellant acknowledged was before the payment pretended to be made in discharge of the said Bill of Exchange in Question, Your Appellant in his Answer pleaded that notwithstanding any Delay on the part of the Appellant the same ought not to be to his or their prejudice so as to loose the whole of his Demand on the said Antonio de Souza, Your Appellant further in his answer denied that the said Bill of Exchange was drawn for the use of the said Periah Pyah Moodeliar but admitted and insisted that the said Bill was Drawn for Account of Your Appellant, Your Appellant answering to his said Cross Answer the Letter as prayed for by the said Antonio de Souza wherein it appeared that the Drawer of the said Bill of Exchange stood indebted unto Your Appellant in more Money than the Amount of the Bill Drawn upon the said Antonio de Souza and that the said Drawer left it in Your Appellants option to pay himself or to pray others, Your Appellant setting forth in his said Answer that the said Antonio de Souza stood indebted unto him the Appellant in the Sum of three thousand Pagodas upon his Bond and therefore Your Appellant had no intentions of applying the Amount Bill of Exchange in Question to any other use than towards the Bill of Exchange in Question to any other use than towards the Bond of Your Appellant further in his Answer asserted that he was an entire Stranger to the Amount Bill of Exchange being received in his absence by the Order of the Drawer of the said Bill as Your Appellant insisted he had never given any Orders to pay the same to any person whatever, Your Appellant further in his Answer insisted that the Person giving a receipt for the said Sum of Two thousand Pagodas ought not to preclude Your Appellant from calling upon the said Antonio de Souza for payment Your Appellant assigning certain reasons that Appeared to him consonant to the usage and Custom of Merchants the Answer of Your Appellant further Answering to the Arguments made use of by the said Antonio de Souza in his Cross Bill of Complaint and also insisting that the said

said Antonio de Souza ought not to have permitted the said
Two thousand Pagodas to be carryed to Account untill the
Voucher, being the Bill of Exchange, was produced. Your
Appellant further Shews that in his said Answer he
excepted to the Letters annexed to the said Antonio de Souza's
orgeneal Answer as the persons who wrote them and whose
names are Subjoined to the said Letters were much interest
-ed in the Event of the Cause they being the relations and
next of kin and of Couse by the malabar Laws and Customs are
obliged to pay the Debts of the Deceased The Appellant further
in his Answer fully Answered every Interrogatory and refuted
every Argument made use of by the said Antonio de Souza in his
Cross Bill of Complainant and also Your Appellant insisting
that on his Return from Camp and after demand for payment
that the Drawer of the said Bill was alive as also the Cash
keeper was then at Madras so that it was in the power of the
said Antonio de Souza to have Settled the same with the said
Cash keeper, Your Appellant further Sheweth that having filed
a very Special Replication to the Original Answer wherein by
every Argument and by every position and the Rule of Right,
Your Appellant did in his Opinion not only refute every Assertion
made use of by the said Antonio de Souza in his Original Answer
but Supported Your Appellants Bill of Complaint, to this
Reply the said Antonio de Souza did put in an Amended Rejoinder
and also Replyed Specially to Your Appellants Cross Answer
which Amended Rejoinder and Reply were near much the
same

same in Sense and Substance, Your Appellant Rejoined and the Cause
came to an Issue and witnesses were Examined on the part of the
said Antonio de Souza the Deposition of the said Andeapah
the Cash keeper being taken, the same was to the Effect following,
that the said Antonio de Souza did Accept of the said Bill of Exchange
but that when the said Bill became due the Appellant did not to the
best of his knowledge and belief apply to the said Antonio de Souza
for payment and Acquaint him that the said Bill was not
paid and that the said Antonio de Souza did not send for the
said Cash keeper and Accountant and gave them Orders to pay
the said Bill, that the Drawer of the said Bill in Question
had wrote to the said Andeapah informing him that he had wrote
to the said Appellant and the said Caulteapah the person who received
the Cash that when they had received the Amount of the said Bill
to pay it away to different persons the said Deposition further
Setting forth that a day before the Appellant was going to Set
off for Trichinopoly, the Appellant brought Caltea pah to the
said Andeapah at the Warehouse and desired the said
Andeapah that when the Bill arrived and became due to pay
the Amount to the said Caulteapah that he the said Andeapah
believed that the said Appellant did leave Madras before the said
Bill in Question arrived, that the said Bill was paid about a
Month after the departure of the said Appellant for Trichinopoly, in another part of the said Andeapahs Deposition he says
that Your Appellant did tell him that as he was under the
Necessity of going to Trichinopoly he would direct his Brother

Varen

Veerasawmy to deliver the said Draft to Caultea pah and desired the said Andeapah to assist the said Veeraswamy in getting it Accepted and pay the Amount to the said Caultea pah, that some time after, that the said Antonio de Souza informed him the said Andeapah that he had Accepted of the said Bill and desired the said Andeapah to pay it, that Caltea pah informed him that Veerasawmy was the person ordered to get the Bill accepted but that the same was lost that he informed the Drawer of the said Bill that the same was lost who desired the said Andeapah to pay the Amount to Caltea-pah and take a Receipt for the same The Deposition of Moodiah the Accountant being no more than what the said Andeapah told him The Deposition of Malacca Vencatasha Moodeliar is of little purport, the Deposition of Machelamany Declares that the appellant did not carry the said Bill to the office for payment that the appellant did not acquaint the said Antonio de Souza that the said Bill was not paid till after the Death of the Drawer, The Deposition of Calteapah the person who received the Money, Says that the appellant at the time he left Madras Acquainted him that he had not Received the said Bill of Exchange, that the Appel-lant took the said Caltea pah with him to the Cash-keeper and desired him that in case the Bill of Exchange in Question should arrive during his the appellants Absence that he the said Cash-keeper would pay the Amount of the said Bill to the said Caltea pah that about Twenty days after this the Amount

Amount of the Bill was received and he gave a Receipt for the same, in another part of the said Caltea pah's Deposition, he says, that the Drawer of the Bill of Exchange sent the said Bill and after it's arrival your Appellant kept it and told him that it was not come that the day after your Appellant went from Madras your Appellants Nephew went to the said Antonio de Souza and got the said Bill Accepted without Acquainting him the said Caultea pah and also that your Appellants Nephew kept the Letter that the Drawer had wrote your Appellant that the said Caltea pah being informed in the Warehouse that the said Appellants Nephew had got the said Bill in Question Accepted he the said Caultea pah went and asked the said Nephew for it, he replied that when it became due he would give it to him Your Appellant further Sheweth that these Proceedings were Set down for hearing and the Causes came on to be heard the Second day of November One Thousand Seven Hundred and Seventy Six in the Honble the Mayors Court when the said Honble the Mayors Court were unanimously of opinion that the said Antonio de Souza should pay unto the appellant the Sum of Two Thousand Pagodas together with all such Interest as then was or should thereafter become due until full payment was made as also all Costs of Suit and further that the said Antonio de Souzas Cross Suit should stand dismissed with Costs, as will more fully Appear by a true Copy marked A of the Decree or Sentence of the said Honble Court hereunto Annexed for the inspection of Your Most Excellent Majesty in Council, Your appella-

Appellant further Sheweth that from this Order Sentence or Decree of the said Honble the Mayors Court the said Antonio de Souza did on the Twentieth Day of December One thousand Seven Hundred and Seventy Six Lodge an Appeal with the Honble the President and Council of Fort St George to which said Appeal Your Appellant did put in his Answer therein especially reciting every Circumstance Attending this Business Your Appellant further Sheweth that this Appeal and Answer came on to be heard and was determined the Twenty first day of May last past when the said Honble the President and Council were pleased to reverse the said Decree of the said Honble the Mayors Court and Decreed that the said Bill of Exchange should be delivered up to the said Antonio de Souza and each party to pay their own Costs as will more fully Appear by a true Copy Marked B hereunto Annexed for the inspection of Your most Excellent Majesty in Council from which said last mentioned Sentence or Decree of the said Honble the President & Council Your Appellant does Appeal to Your most Excellent Majesty in Council

first. Because it Appears to Your Appellant that this action against the said Antonio de Souza was well founded and that by the Custom and Usage of Merchants he ought to pay the said Bill to Your Appellant pursuant to his the said Antonio de Souzas Acceptance notwithstanding any plea made use of by the said Antonio de Souza to the Contrary

Secondly Because the said Honble the Mayors Court had so decided by given their Opinion in Your Appellants favor

Thirdly Because there Appears so great a difference between what the said Antonio de Souza has asserted in his Original Answer and Cross Bill of Complaint and the Depositions of the Evidence so materially interested in the Event of the said Suit and Your Appellant having so specially Answered the Interrogatories put by the said Antonio de Souza that the same must be taken as the best Evidence that the nature of the thing will admit of

Fourthly Lastly That as the said Honble the Court of Appeals were of opinion that the said Antonio de Souza should pay his own Costs as the matter in difference arose from his own Neglect it follows that the said Antonio de Souza should make good the Amount of the Bill of Exchange in Question so by him Accepted and that the Decree of the said Honble the Mayors Court should stand Confirmed and the Decree of the said Honble the Court of Appeals be Reversed

For all which Matter and things Your Appellant prays Your most Excellent Majesty in Council to take into Consideration and that Your Majesty by the advice of Your Council will most graciously please to reverse the Sentence or Decree of the said Honble the Court of Appeals with Costs and that the Decree of the Honble the Mayors Court passed the Second De

of November One thousand Seven Hundred and Seventy Six Stand Confirmed and the said Antonies de Souza be Decreed to pay all Costs of this Your Appellants Petition of Appeal

And Your Appellant as in duty bound

Shall Ever Pray

Chas. Bromley

Atty Appellt.

A M

Mayors Court at Madraspatnam

Tuesday the 2d. Day of November Anno Domini 1776

Present

John Turing Esquire Mayor

George Smith. James Call

George Proctor Eyles Irwin

Edwd. John Holland Aldermen

Between Nonapah of Madras Inhabitant Original Complainant and Cross Defendant and Antonio de Souza of Fort Saint George Merchant Original Defendant and Cross Complainant Et Contra

Bill with Translate of a Bill of Exchange annexed Read

Answer with Translate of Two Letters annexed Read

Cross Bill Read

Replication Read

Cross Answer with Translate and Copy and Translate of Letter annexed Read

amended Rejoinder Read

Amended Replication Read

Cross Rejinder Read

Exceptions of the Original Complainant and Cross Defendant Read

Answer to the Exceptions Read

The Court proceed to take into Consideration the Original Complainants Exception to the Depositions of Carlitapah Pumbadoo Andeapah Moodelliar Andepoo Mootiah Moodelliar and Malacca Venkatachella Moodelliar and the Original Defendants answer thereto on hearing the Pleadings made use of by the Attornies on both Sides and having had due Consideration thereon are of opinion that the Original Complainants Exceptions are Insufficient to throw out the Depositions of the Witnesses Excepted to. It is therefore Ordered that the Exceptions be over ruled with Costs to be paid by the Original Complainant Interrogatories on the part of the Original Defendant and Cross Complainant with two Papers marked A and B annexed Read. Five Depositions taken thereunto Read The Witness A B did not Appear for Examination. Two Exhibits on the part of the Original Complainant and Cross Defendant Read

These Causes Coming on to be heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Original Complainants Bill with Translate of a Bill of Exchange Annexed. The Original Defendants Answer with Translates of Two Letters annexed. The Cross Bill. The Replication. The Cross Answer with Translate and Copy and Translate of

&c

Letter annexed, The Amended Rejoinder, The Amended Replication, The Cross Rejoinder The Exceptions of the original Complainant and Cross Defendant and the Answers thereto The Interrogatories and Depositions on the part of the original Defendant and Cross Complainant with two Papers marked Letters A and B annexed, Two Exhibits on the part of the original Complainant and Cross Defendant 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 original Defendant shall Pay unto the original Complainant the full and Just Sum of Two thousand Pagodas / Pagodas 2000 -/ together with all such Interest as now is or shall hereafter become Due thereon until full Payment is made also all Costs of this Suit and it is further Ordered and Decreed that the Cross Complainants Bill do Stand Dismissed with Costs to be paid by the Cross Complainant

Per James Taylor
Regr

Attested to be a true Copy
Chas. Bromley
Atty appellt

B

Court of Appeals
at
Madraspatnam

Thursday the 21st May 1778.

Between Antonio de Souza Appellant
and Ninapah - - - - - Respondent

This Cause coming on this Day to be heard and Debated before this Court by the attorneys on both Sides upon hearing the Petition of appeal and Answer and the several Exhibits of the Honble the Mayors Court together with a Decree of the said Court given in this Cause on Saturday the 2d Day of November Anno Domini 1776 and upon due Consideration had of the matter verbally 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 Honble the Mayors Court given in this Cause be reversed and set aside, and that each party do pay his own Costs in both Courts and this Court doth further Order and Decree that the Bill of Exchange in Question in this Cause be delivered unto the Appellant by the Respondent

Per Thos. Lewin
Clerk

Attested to be a true Copy
Chas. Bromley
Atty Appellt