Supreme Court Series VI

Appeals from Mayor's Court Decisions

Vol. 9

25,000—4-5-12.

Block 7

Rack No.

Shelf No.

Serial No. 9

General No. 1206

111

480

To the Honorable the Court of appeals at Madraspatnam

Between George Moubray of Fort St. George Merchant Complainant and George Mackay Lieutenant in the Service of the Honorable The united Company of Merchant of England trading to the East Indies Defendant.

The Humble Petition and appeal of the said George Mackay Sheweth

That the above named George Moubray did on the Twenty Eight day of April which was in the Year of our Lord One Thousand Seven hundred and Seventy Eight Exhibit a Bill of Complaint in the Honorable the Mayors Court at Madraspatnam against your Petitioner for the sum of Two thousand seven hundred and sixteen Pagodas Eleven fanams and forty cash current Money of Madras which he pretended your Petitioner what Indebted unto him on the Balance of an Account current, of which he said a Copy was annexed to the said Bill of Complaint.

To which said Bill of Complaint your Petitioner put in an answer setting forth that he your Petitioner could not consider himself by any Means as Indebted unto the said George Moubray in the sum of two thousand seven hundred and sixteen Pagodas Eleven fanams and forty cash in the manner setforth and stated by the said Complainant in his said Bill of Complaint or any other sum or sums of money whatever your Petitioner did further in his said answer say that true it is the said Complainant has in his Posession an Interest Bond signed and sealed by your Petitioner for the sum of three Thousand three hundred and Eighty eight Pagodas and under date the Tenth day of June which was in the Year of our Lord One Thousand Seven hundred and seventy seven as setforth and stated by him the said Complainant in the Account current annexed to his said Bill of Complaint. But your Petitioner Absolutely denied

to

to have Recived from the said Complainant or from any other Person
or Persons for on his Account the said sum of three thousand three hundred
and Eighty Eight Pagodas as mentioned in the said Bond to have been
received by your Petitioner or any other sum of money whatever, wherefore
Your Petitioner humbly Conceived that he was not bound to Pay to the
said Complainant his said Pretended Demand and that the Action
Commenced by him is ungenerous and unjust, Your Petitioner did in his
said answer further say that it is also true that the said Complainant
did on or about the fifth day of February Last Recive from your Petitioner
the sum of one thousand Pagodas as mentioned in the said Account Current but
this Defendant could not allow the same to be Carried as a Credit to the said
Complainants Pretended Account Current for your Petitioner said he did
Insist and would Maintain that the Payment of the said sum of one thousand
Pagodas was an Act of Favour Conferred upon the said Complainant and not
an Act of obligation on the part of your Petitioner and your Petitioner did farthr
in his said answer humbly pray the said Honble the Mayors Court to order
and direct the said Complainant to shew how and in what manner he has paid
Your Petitioner the whole or any and what part of the sum he has Debited
Your Petitioner with in his said Account Current and that in a very Explicit
Manner as your Petitioner was and is an entire Stranger thereto

To which said answer the said George Moubray put in a
Replication still pretending that Your Petitioner does Justly and truely
stand Indebted unto him in the sum of Two thousand Seven hundred
and sixteen Pagodas, Eleven fanams, and forty Cash as stated and set forth
in the said Account Current annexed to his said Bill of Compleint and
that the same is true in Manner and form therein Expressed and shewn
and tho your Petitioner denies receiving the Consideration or Amount
of the said Bond yet he the said George Moubray presends one is Implied
he also says he is in Possession of some letters of your Petitioner in answer
to applications made for Payment and Lastly in his said Replication
says that there is no Manner of Occasion to set forth how the Debt in the
Bond arose saying it is sufficient to shew that the Bond was duly Executed
by your Petitioner and by him Delivered as his act and Deed and this being
established in Evidence is, he says, all that is required of the Obligee and

as to any Objection thereto the same he says must be represented and supported
by the Obligor as it is not the Business of an Obligee to invalidate a Bond
duly Executed.

Your Petitioner further sheweth that being sensible of the Illegality
and Injustice of the said Demand and of the Necessity there was for the said
George Moubray to shew how and in what manner he paid your Petitioner
the amount of the said Bond and he the said George Moubray having
Evaded it in and by his said Replication and not set forth the same tho
particularly required so to do well knowing if he did so that he would
invalidate his Claim as such discovery would have shewn the Illegality
thereof He your Petitioner did therefore put in a Rejoinder to the said
Bill Replication thereby Conforming his said answer and avering and
Justifying all and singular the matters and things therein Contained to be
good Certain true and sufficient in the Law and that the said Replication
is very untrue Evasive and insufficient for Your Petitioner to make
any further or other Rejoinder thereunto thereby putting the said George
Moubray upon the Proof of hes said Claim upon Which Proceedings
Issue was Joined, Rules for Examining Witnesses passed But not-
withstanding which and that the said George Moubray was by your
Petitioners said Answer called on to shew how and in what Manner
he paid the Money to Your Petitioner for which he Commenced the said
Action that he did not shew the same in his said Replication and that
by Your Petitioners said Rejoinder the said George Moubray was put
upon the proof of the several matters by him set forth in his said
Replication, Yet the said George Moubray did not produce or Examine
one Witness in Support thereof so that the said matters by him asserted
remained unproved and Unsupported and in that State Publication
passed the said Cause was set down for hearing and coming on to be
heard and Determined by and before the said Mayors Court on Tues-
day the Fifteenth Day of February in the Present Year of our Lord
One Thousand seven hundred and Eighty the said Court notwithstan-
ding the said Matters remained unproved and Unsupported as aforesaid

were

were pleased to Order and Decree that Your Petitioner should pay unto the said Complainant the said sum of Two Thousand Seven hundred and sixteen Pagodas Eleven fanams and forty Cash with Interest and Also Treble Costs of Suit

From which Decree of the said Mayors Court your Petitioner does appeal to this Honble Court as he Conceives the same to be Erroneous and that he Your Petitioner is aggrieved thereby.

First Because instead of the said Mayors Court Decreeing that the said Bill of Complaint should be dismissed with Costs as Your Petitioner did not admit to be Indebted unto the said George Moubrai either in the sum sued for or any other sum of money whatever and Absolutely denied to have Received from the said George Moubray or from any other Person or Persons for or on his account the said Principal Sum or any other sum of Money whatever and as Your Petitioner did also deny the validity of the said Suit and Call Upon the said George Moubray to shewn how and in what Manner he paid Your Petitioner the whole or any and what part of the sum he has Debited Your Petitioner with in his Account Current and that in a Very Explicit Manner as Your Petitioner was and is an entire Stranger thereto as aforesaid the said Court did Decree Your Petitioner to pay the said whole sum sued for as aforesaid as if either Your Petitioner had admitted of the Justness of the said Demand or as if the said George Moubray had proved the same or supported his allegations in his said Replication and particularly the Letters which he Mentions therein by Way of Confirming his said Demand which Not being by Your Petitioner admitted having put in the Rejoinder before Mentioned it was Incumbent on the said George Moubray in order to Support his said action to have proved the same and shewn what he Was is Particularly called on to do as aforesaid and which if true and Just he Might easily have done and his not doing so tends to Confirm Your Petitioners Objections thereto and Leaves the said Suit unsupported on the part of the said George Moubray who in Consequence was by No Means as Your Petitioner humbly Conceives Intitled to the Decree from Which Your Petitioner is now appealing and Your Petitioner in Course aggrieved thereby he Your

Petitioner being Decreed to pay such a Large sum when the said George Moubray refused to shew his right thereto and has not proved the Very Matters which he has asserted by way of shewing such his right or what he pretended Was so

Secondly; Instead of the said Mayors Court Decreeing that the said Bill should be Dismissed whereby the said George Moubray would have been Liable to Pay and Your Petitioner entitled to Costs the said Court have Decreed Your Petitioner to pay Treble Costs altho Your Petitioner has been at such a Considerable Expence in Defending the said Suit in Order if Possible to Avoid being Obliged to pay the Sum for Which the Said George Moubray has Unjustly Commenced this Suit and Notwithstanding the Same is Unsupported on the part of the said George Moubray as aforesaid Your Petitioner doth not therefore see Any good Cause Or Reason for his being Decreed to pay such a Large Sum and Treble Costs as if there Was not the least shadow of Reason for Your Petitioner Defending the Said Suit The Contrary Whereof Your Petitioner humbly hopes will clearly appear to this Honble Court from Whose Justice and Equity Your Petitioner humbly Hopes he shall have the Relief to Which he Conceives himself Intitled

With regard to the said George Moubrays Pretending that the Bond itself implies a Consideration and that Nothing can annull an act and Deed so apparently fair and Open but a Duress or Forgery Your Petitioner begs to Leave to Observe that Obligations and Considerations are Void if they are unlawfull and Your Petitioner Conceives nothing can More shew that the Bond in Question is Unlawfull or Such as he Your Petitioner ought not to pay than what is set forth in Your Petitioners said Answer and the said George Moubray refusing to shew how and in what Manner he paid Your Petitioner the whole or even any part of the Sum he has charged your Petitioner with Which if Just and Legal he might easily have done and which Your Petitioner Conceives he would have done had he not been Conscious that the same would Invalidate his Demand and shewn the same and his said Action to be Illegal and Your Petitioner Conceives it became the More Necessary and a duty Incumbent

cumbent on the said George Moubray to shew the said Matters because Your Petitioner hath in his said answer denied his having received the Principal sum mentioned in the said Bond and account or any other sum whatever on account of the said Bond and that he conceived himself not bound to Pay the said pretended Demand. Those circumstances do as Your Petitioner conceives shew what great Cause Your Petitioner had to Object to the said Demand and not admit of the Validity thereof or of the said action and to pay that the said George Moubray might be ordered to Shew the Nature of the said Demand in order that the said Mayors Court or any other Court before which the said Matters might come, or to which any Appeal in this Cause might be made, might be enabled to Judge of the Legality of the said Demand and action

All Which Matters and things Your Petitioner submits to the Judgement of this Honorable Court and humbly prays that the said Decree of the said Mayors Court may be Reversed and set aside and that the said Bill of Complaint may be Dismissed with such Costs as the Nature of the Cause requires 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 meet

In.r Sykes
att.rny for the appellant

Mayors Court at Madraspatnam. Tuesday the 15.th Day of February Anno Domini 1780

Present

Edw.d John Holland Esq.r Mayor
Cotton B Dent and Edw.d Gayton
Aldermen

Between George Moubray of Fort Saint George Merchant Complainant
& George Mackay a Lieutenant in the Hon.ble the United English East India Company's Service Defendant

This Cause coming on to be heard and Debated this Day in the Presence of the attorneys on both sides on Reading the Complainants Bill with an account Current annexed. The Defendants amended answer The Replication with three Letters inserted The General Rejoinder ON Hearing the Pleadings made use of by the attorneys and on due consideration had thereon. This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of two thousand seven hundred and Sixteen Pagodas Eleven fanams and forty cash / Pagod.s 2716 " 11 " 40 / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made it is also further ordered and Decreed that the Defendants do pay Treble Costs of Suit

In the Court of appeals

Plur
James Taylor
By.s

Between George Moubray of Fort St George Merchant Complainant and George Mackay Lieutenant in the service of the Hon.ble the United Company of Merchants of England trading to the East Indies Defendant

The answer of George Moubray Respondent to the Petition of appeal of George Mackay

The said Respondent says that he admits to have preferred his Bill of Complaint against the appellant in the Hon.ble the Mayors Court at Madraspatnam on the Day and year and for the sum of money as mentioned and expressed by the appellant in his Petition of appeal which the Respondent says is the Ballance of an Account Current arising on a Bond or obligation under the hand and Seal of the said Appellant and by him delivered over unto the Respondent

The said Respondent further says that he also admits that the

the appellant did to such your Respondents Bill of Complaint appear
and put in his answer to the purport and Effect as by him is set forth
in his Petition of appeal and among many other things therein set forth
did very irregular and out of place and Contrary to all Rule pray the said
Honorable the Mayors Court to order and direct the Respondent to shew how
and in what Manner the Respondent did pay unto him the appellant
the whole or any and what part of the sum the Respondent debited the
appellant with in his account furient and that to be a very Explicit man-
ner as the appellant pretended he then was an entire stranger to the same
the said Respondent further says that to this Extraordinary answer he
did put in his Reply and there specially pleaded in Support of his Bill
of Complaint and did therein shew the insufficiency of the appellants
answer But as the appellant has thought proper to pass Lightly over
the Contents of the said Replication the Respondent by Leave of this Honble
Court prays to introduce the Heads of such Replication which are as
follows that the Respondent did therein insert of the appellants standing
indebted unto him as charged by him the Respondent in his Bill of
Complaint that as the appellant admited of his having signed, sealed
and delivered the Bond on which the account arose that no act or Deed
in the Obtaining of this Bond, but a Duress or Forgery could invalidate
the same nor could the appellant avail himself thereof altho he says
he received no Consideration which Plea the Respondent insisted
did not hold good because all Bonds implies a Consideration the hav-
ing charged the Respondent with the want of Generosity, which
the Respondent in his Reply observes that the appellant has not
in his Answer set forth how and on what Occasion the want of
such Generosity arises The Respondent further says that he in his
Replication observed that he appellant in his answer acknowledged
to have paid one thousand Pagodas to the Respondent but does not
permit the same to be carried to the credit of his Bond only that he
Conferred the payment as an act of favor on the Respondent which
the Respondent refutes by alledging in his said Replication that he
had

no other Transaction with the appellant than the Bond in Question
and that the said sum of one thousand Pagodas was by him Received
on that account and no other and to corroborate this the Respondent did
insert Copies of the appellants Letters on the Subject the first Letter under
Date the ninth September in the Year of our Lord one Thousand seven
hundred and seventy seven set forth an acknowledgement of the Debt and
apology for Nonpayment with a Request of a Renewal and offer of a Secu-
rity by the Title Deeds of the appellants House in the Black Town, which
he said he valued at Eight thousand Pagodas an other Letter under Date
the Twenty third September one thousand seven hundred and seventy seven
promising payment at a future day together with an other Letter under Date
the Eighteenth of March following acknowledging the Debt with promises
of payment at a future Day— The said Respondent further says that
in his Replication he further observed that it was not necessary to set forth
the Consideration for which the said Bond was given because the only mat-
ter to be produced in Support of the Bond was its being duly signed, sealed
and Delivered for in case of any fraud or Coven it was the Business of the
obligor the appellant to have shewn it. The said Respondent further says that
to this Replication the appellant was Compelled by the order of the Honble
the Mayors Court and Confirmed by this Honble Court of appeals to rejoin, but
the Respondent prays Leave to deny that the said Rejoinder was by the appel-
lant put in from his being sensible of the Illegability and injustice of the
Respondents Demand and of the Necessity there was for the Respondent to
shew how and in what Manner he paid the appellant the amount of the said
Bond and as the Respondent as the appellant says Evaded it in and by his
replication tho by the appellant particularly required to set forth the Consideration
he the appellant was under the necessity of putting in a Rejoinder to the said Re-
plication which the appellant says Confirmed his answer and thereby putting
the Respondent upon proof of his claim all of which as inserted by the appellant
in his Petition of Appeal are not true Because this Honorable Court Confirmed
the Interlocutory order of the Honorable the Mayors Court with double Costs
as appears by the Records of this Honorable Court of appeals, whereby the appel-
lant was obliged to Confirm to the rule of Court and did to prevent his being
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in Contempt of the said Court put in a General Rejoinder, which is only a matter of Form and so far was the Respondent put on his Proof of his Demand that the appellant had by his acknowledging the Bond to be his act and Deed left no part of his Demand to be proved which the Respondent humbly submits to the Consideration of this Honorable Court of appeals. The said Respondent further says that true it is that he did not Examine any Witness in support of his Demand from a Conviction that there was no necessity to prove what the Law has so decidely admitted, the Respondent admits that had the appellant pleaded a Duress, Fraud or Deceit it might then have been the Business of the Respondent to have proved the Legality in the obtaining of the said Bond but as that was out of the Question there only remained the Due Execution of the Bond to be proved which being acknowledged by the appellant himself no further proof was necessary to be produced on the part of the Respondent of the appellant would wish discharge himself of his act and Deed he was the proper person to have invalidated the said Bond and not the obligee. The said Respondent further says that this Cause came on to be heard and was determined by the Honorable the Mayors Court in favour of the Respondent with Treble Costs of Suit from whence the said appellant has appealed to this Honorable Court of appeals assigning Certain Causes for his so doing which the Respondent hopes to make appear by such arguments, as are founded on Law & Practice to be of no force or validity. The Respondent in answer to the several Causes which the appellant gives as a reason for his appealing to this Honorable Court of appeals to the first objection which the appellant makes to the Decree of the Honorable the Mayors Court, that to the Bill of Complaint being dismiss'd with Costs by the said Honorable Court. Because the appellant did not admit of the debt by reason of his not having received any Consideration for such his bond the Respondent says is a very wrong argument, Because all Bonds if the Consideration is not expressed imply one and so Long as the Bond remains undischarged or delivered up so Long does the appellant remains indebted pursuant to the Tenor of his Bond it being adjudged in Equity that if a man enters voluntarily into a Bond though there was no Consideration yet if there was no fraud used in obtaining it the Bond shall not be received against in Equity; Here the Respondent says with submission to this Honorable Court is a Case in point ultimately decided upon that the want of a Consideration does not invalidate a Bond the Respondent further says that the appellant himself is silent as to the motives which induced him to give the Bond in Question he does not charge the Respondent with any undue Measures in the procuring of the Bond from him, why therefore is the Respondent to be under the necessity of setting forth the Consideration for which the Bond was given all that Law requires of the Respondent is to prove the Execution of the Bond and the appellant to prove the undue influence made use of to obtain this Bond from him which the appellant has not done, nor can he bring any one charge against the Respondent so as to shew the least tolour of Collusion in the Business it was fair and open transaction and assurances were repeatedly given by the appellant for the payment of the Bond as appears by the Letters set forth in the Replication, the Respondent further says that the appellants asserts in his Petition of appeals that he was an entire stranger to the manner on which he was paid the whole or any part of the sum he was debited by the Respondent notwithstanding which he acknowledges to have given the Bond in Question and of course he must stand indebted to the Respondent whether there was a Consideration given or not for it has been adjudged in Chancery that where a weak man gives a Bond or obligation if there be no fraud, or Breach of Trust in the obtaining it equity will not set a side the Bond, only for the weakness of the obligor. The said Respondent further says that there was no occasion to support the allegations contained in the Replication Because the appellant had acknowledged the Bond to be his act and Deed and there being no Legal Cause shewn why the appellant should not be compelled to pay it Judgement ought to have passed on the appellants own confession where as an opportunity was given by the Respondent for the appellant to have allowed or denyed the Correspondence as Exibited in the said Replication whereas no more than a General Rejoinder was put in after much time had been lost in compelling the appellant to Rejoin, the Respondent further says that it was no ways necessary or Incumbent on him to have supported his action against the appellant because the appellant had of himself in his answer acknowledged the Bond to be his act and Deed, what further

proof

proof the Respondent says would be required of him had the appellant specially rejoined and therein asserted or alledged special matters as a refutation to allegations setforth in the Replication it then might be incumbent on the Respondent to have produced Evidence in support of his Reply, but were the appellant on his act declines entring in to the specialty of the Replication it is needless to support by Evidence what is not in Issue for the merits of the suit was reduced to one single point, the Bond was the appellent indebted or not upon his Bond which he confesses to be his act and Deed and which he does not shew or assert that he has any ways discharged the only objection the appellant makes is that he received no Consideration which as the respondent has before shewn is no plea either in Law or equity if there was no Consideration it then became the duty of the appellant to shew the Motives that induced him to make such an act and Deed for it is very irregular that the Respondent should setforth the Consideration when the Bond expresses it to be for money Lent and advanced if there were any underhanded delaings in the Transaction the same should have been pleaded by the appellant as it is not the Business of the Respondent to point out Errors or Defects to defeat himself of his own right. The said Respondent Lastly says to this first objection of the appellant that the Causes he assigns for appealing from the Decree of the Honble the Mayors Court are very frivolous and Vexatious and are inconsistent to the known maxims both of Law and Equity The said Respondent further says to the second Cause assigned by the appellant for appealing Because the Honorable the Mayors Court had Decreed the appellant to pay Treble Costs when he had been at an Expence to defend him from the payment of a sum of money the Respondent says that there was no good Cause for the Court to Decree in the Manner they did and it was but right that the Respondent should have some Compensation for the risks he had run and the Damages he sustained particularly the Death of the appellant and the Damage the Respondent certainly sustained by being kept of his Money under every frivolous pretext that the art or Cunning of Man could invent for the Respondent says there had been upwards of Twenty Months Expired before the Decree could be obtained in the Mayors Court and when the proceedings came to be inspected by the said Court there

did not appear to them the Least Colour of Defence on behalf of the appellant in which opinion the said Court were unanimous and the awarding of Treble Costs was in Compensation of Damages which the said Court deemed was but equitable and fair. The said Respondent further says to the Observation of the appellant inserted in his Petition of appeal that he says obligations and Considerations are void if no Lawfull it is admited by the Respondent, but the Illegality of the appellants Bond has not been shewn or pleaded or insisted upon so that of Course the Bond remains as the Legal act and Deed of the appellant The said Respondent further says that so far from being Conscious that the Consideration for which the Bond was given being shewn would have invalidated the appellants Bond that the Respondent deemed it necessary as he was advised, the Law had prescribed a mode of pleading in actions of debt upon a Bond wherein the appellant was exceedingly faulty and Erroneous in his answer the Respondent further remarks on the observation made by the appellant respecting the payment by him Made of one Thousand Pagodas to the Respondent which the appellant says was a Matter of favor and not to be placed to the Credit of the Bond in Question of the Respondent had no Delaings or Transactions with the appellant to what account shall this one Thousand Pagodas be Carried to This Respondent says that the Payment of the said sum of one Thousand Pagodas is to all intents and purposes as good an Evidence in Support of the Legality of the Bond as any proof that can be brought, where the Effecting of the Bond is the Subject matter in Litigations and the Question may be asked what Consideration induced the appellant to give this one Thousand Pagodas he says a matter of favor the same Consideration holds good if necessary that it was a matter of favor that induced him to give the Bond in Question and therefore the appellant is bound by his own act and Deed and for that Consideration only if no other could be shown which is not the Business of the Respondent the said Respondent Lastly says that he Cannot see in any part of the appellants Petition of appeal good Cause for his appeal from the Decree of the Mayors Court because the Consideration for which the Bond was given was both expressed and implied and the one thousand Pagodas received by the Respondent and by him endorsed on the Back of the Bond or Carried to that amount makes the Demand on the appellant Legal and Conclusive

For all which Causes and things the Respondent humbly Prays this Honorable Court of appeals to Confirm the Decree of the Honorable the Mayors

Mayors Court of the fifteenth Day of February Last and Dismiss the appellants petition of appeals with exemplary Costs to be paid by the appellant.

Chas. Bromley
Attorney Respodint

Court of appeals at Madraspatnam } Monday the 20th March 1780.

Between George Mackay appellant
and George Moubray 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 appeals and answer and the several Exhibits of the Honorable the Mayors Court together with a Decree of the said Court given in this Cause on Tuesday the 15th Day of February anno Domini 1780 & 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 Honorable the mayors Court be Confirmed with single Costs in this Court

P Cur James Taylor Regr

To the Honorable Sir Thomas Rumbold Barronet President and Governor &c. Council of Fort St George

In the Court of appeals

Between Nagapah Chitty of Madras Merchant Complainant
and
Dawsonne Drake of the same place Esquire Defendant

The humble Petition and appeal of the said Nagapah Chitty

Sheweth

That your Petitioner did file a Bill of Complaint in the Hon'ble the Mayors Court against the above named Dawsonne Drake on the second

day of October in the present Year of our Lord one thousand seven hundred and seventy nine which Bill of Complaint was by way of an action on the Case against the said Dawsonne Drake for having on the Eighth day of September in the said present Year of our Lord one Thousand seven hundred and Seventy nine Written and Published or Caused to be Written and Published a Malicious and Infamous Libel by way of Protest made or Pretended to be Made by him Before Master John Sykes Notary Publick dwelling and Practising at Fort Saint George aforesaid wherein amongst other Things the said Notary wickedly, maliciously and injuriously and to the great damage of your Petitioner did declare publish and say the Libellous words following that is to say — And this Declarant further saith that Many of the said Shopkeepers being assembled together with an Evil Design of Injuring the said Declarant in or with Regard to the Business of the said Farm took an Opportunity Lately in the absence of Trivingadiah / the said Declarants Principal Manager / from his House to encourage and Spirit up a Number of Persons and People passing the Streets to Join them in Forcing open Storming and plundering his the said Trivingadiahs House of the Cash Plate and other Valuable Effects which they found therein that they burnt the Books Papers and Cadjans which they found in the Cash Chest and in the House which related to the Business of the said Farm and did other Considerable Damages and Created much Loss to this Declarant — and this Declarant further saith that the said Shopkeepers as the said Declarant hath been Credibly Informed and doth from clear and good Evidence Verily believe were Encouraged and Supported by Nagah Chitty / meaning your Petitioner / in such their Illegal and unjustifiable Conduct and Proceedings" — and in another place of the said Writing or Protest the said Dawsonne Drake did in Manner and form aforementioned Maliciously and injuriously and to the great Damage of your Petitioner Declare Publish and say the Libellous Words following that is to say. and this Declarant further saith that the said Nagapah Chitty meaning Your Petitioner had offered in Writing to Rent the said Farm notwithstanding he well knows the same was and is Rented by this Declarant thereby Endeavouring to annoy and Injure the said Declarant in or with Regard to the said Farm and the Profits and advantages arising or which may arise therefrom for and during the Remainder of the Farm for which

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the said Declarant hath Uttered the same and which said wicked malicious and Libellous Words will more fully and at large appear to this Hon'ble Court by a Copy of the said writing or Protest annexed to the said Bill of Complaint and which with the other Proceedings in the above Cause will in due times appear before this Honorable Court for the inspection thereof and your Petitioner did in and by his said Bill of Complaint charge the said Dawsonne Drake with having by the said Protest injured your Petitioner and that your Petitioner had Damages to the amount of one hundred Thousand Pagodas, wherefore he did bring his said Suit by way of Action on the Case and did Lay his damages at the said sum of one hundred Thousand Pagodas which at the Rate of Eight Shillings for the Pagoda makes in Sterling or Lawfull Money of Great Britain the Sum of Forty Thousand Pounds Sterling which said sum your Petitioner prayed that the said Dawsonne Drake may be decreed to pay together with all Costs of Suit and that the said Dawsonne Drake may be summoned and so forth to which said Bill of Complaint the said Dawsonne Drake did appear by his Attorney and did on the Twelfth day of October in this present year of Our Lord One Thousand Seven hundred and Seventy nine file a Demurrer by which said Demurrer the said Dawsonne Drake did pretend to say that he had an undoubted Right to Protest in the Manner that he had done and that the Action of your Petitioner was illegal. To which Demurrer your Petitioner on the Twenty Sixth day of October last past did file a Joinder in the said Mayors Court whereby your Petitioner did insist that the sundry Matters and Things Contained in the said Bill of Complaint of your Petitioner were good and sufficient in the Law whereon to maintain his said Action against the said Dawsonne Drake and that the said Dawsonne Drake by being a Contractor of the Betle and Tobacco Farms of the said Honorable Company could by no means be authorized to asperse the Character and Blacken the Reputation of your Petitioner in the Publick manner he had done by a Scandalous and Malicious Declaration in manner as is set forth in the said Protest. And your Petitioner sheweth that the said Demurrer and Joinder was set down to be heard and the same coming on to be heard on the seventh day of December in the present Year of Our Lord one Thousand seven hundred and Seventy nine the said Honorable Court were pleased to Order that the Complainants Bill do stand Dismissed as the Pleas made use of by the Defendants in his Demurrer

Demurrer were Sufficient to Bar the Complainant Action All which by Reference to the said Several Proceedings Now of Record in the said Court May Appear By which said Order of the Honble the Mayors Court Your Petitioner finds himself Much Aggrieved and doth therefore Appeal therefrom for the following Among other Reasons.

Because that the Words following Namely — That the said Mose Phipers as the said Declarant hath been credibly informed and doth from good and Clear Evidence believe were encouraged And Supported by Rayapah Chitty in such their Illegal Proceedings "And Which Words are Contained in and Make part of the said Protest Are Printedly levelled Against Your Petitioner And tend immediately to the Ruin of his Character Good Name and Reputation As an Individual And to the Dissolution of his Credit as a Merchant.

Because that all Breaches of the Peace and other Offences Against the Laws are to be Redressed by Laws And if the said Dawsonne Drake had been injured by any Person or Persons the Laws of his Country Were Open to him had he Made Application in due Form Which Same Laws expressly prohibit all Libels Against Persons And that the intention of such Prohibition is to Prevent Race Order And Good Government by Restraining all Persons from Making themselves their Own Judges of Complaints And to Oblige them to Refer them to the Decision of the Law

Because that the Matters Contained in the said Demurrer And which by the said Minute of the said Court on the Seventh Day of December are Called Pleas are by the Means Sufficient to bar Your Petitioners Right of Action And as far as the Same can be pretended to Apply to this Cause are More Properly Pleas of Justification than Cause of Demurrer and therefore the said Demurrer Should have been thrown

out

Costs with Costs.

Because that by the very Manner in which the said Court did Make the said Order and by the very Words thereof the said Court did pass a Censure on the said Protest, for they Ordered that Each Party should pay their own Costs.

Wherefore and for Other Reasons which may be Offered at the Hearing Your Petitioner Appeals from the said Order of the Seventh Day of December and Prays that the same May be Reversed with Costs, and that the said Dawsonne Drake May be Ordered to put in his Answer to the said Bill of Complaint.

J. Popham
Att.y for the Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 7th Day of December Anno Domini 1779

Present
George Proctor Esquire Mayor
James Ball Edw.d John Holland
Benj.n Roebuck Cotton B. Dent
Edw.d Garrow Edw.d Saunders &
William Webb Aldermen.

Nagapah Chitty
Pltff
Dawsonne Drake
Bill with Copy of a Protest annexed Read
Demurrer Read
Joinder Read. The Demurrer and Joinder coming on to be Argued and Determined this Day in the Presence of the Attorneys on both Sides on Reading the Complainants Bill with a Protest Annexed the Demurrer the Joinder On Hearing the Pleadings and Arguments Made use of by the Attorneys and on due Consideration had thereon the Court are of Opinion that the Pleas made use of by the Defendant in his Demurrer are Sufficient to bar the present Action This Court do not think fit to Order and do Accordingly Order that the Bill of Complaint be Dismissed and that each party do pay their Costs.

A true Extract
James Taylor
Reg.r

To the Honble Sir Thomas Rumbold Baronet President & Governor &.c Council of Fort St. George
In the Court of Appeals

The Answer of Dawsonne Drake of Fort St. George Esq.r Respondent to the Petition and Appeal of Nagapah Chitty of Madras Appellant. &.c

This Respondent Saith he Admits that the said Appellant did file a Bill of Complaint in the Honble the Mayors Court against him this Respondent on the Second Day of October in the Year of Our Lord One thousand Seven Hundred and Seventy Nine Wherein he the said Appellant Stated and Shewed that this Respondent has been for Sometime past and Still

Continues

continues to be Contractor for Such of the Betle and Tobacco
Farms of the Honble the United Company of Merchants of
England trading to the East Indies as belong or are Subject
to the said Presidency of Fort St George as Appears by an Instrument
Called a Protest a Copy whereof is Annexed to the said Bill of
Complaint and prayed to be taken as part thereof — that this
Respondent well knew he hath been Renter of the said Farm both,
as the said Appellant hath been Informed and believes, Employed
One Bramony Called Sreevengadiah as his Chief or Principal
Manager in the Conducting and Carrying on the Business of
the said Farms, the said Appellant doth further in his said
Bill Shew that it Appeareth by the said Protest that Several
Persons Natives or Inhabitants of Madrasspatnam and the
District thereof did Sometime Ago Assemble together and
Commit Some Disorders about near the House of the said
Sreevengadiah, Both the said Assembly was had, or who the Persons were, Whether
Shopkeepers or Others doth not in any wise Concern him the
said Appellant, Or Whether they did force Open Storm and
Plunder the House of the said Sreevengadiah of the Cash Plate
or other Valuable Effects which they May have found therein
or whether they burnt any Books Papers or Cadjans Relating to the
said Farm or whether they did any other Considerable Damage or
did Create any Loss to this Respondent the said Appellant Saith
doth in no wise Concern him, the said Appellant doth Shew in
his said Bill Say Several things Regarding his good Name
Reputation and Fame as a Merchant and Individual and
Pretends the Same Remained Unsullied and his Character
Unimpeached Untill this Respondent being, as he the said
Appellant takes upon him to Aver, wilfully and Maliciously
Disposed and intending to injure him the said Appellant in

his good Name and Reputation did on the Eighth Day of September in the
Said Year of our Lord One Thousand Seven Hundred and Seventy Nine
Write and Publish or Cause Written and Published what he the said
Appellant very unjustly Calls a Malicious and Infamous Libel by Way
of a Protest made or, as he the said Appellant Says, pretended to be
Made before a Notary Publick Dwelling and Practising at Fort
St George aforesaid — the said Appellant doth then proceed in his
Said Bill to Mention What he Calls Libellous Words in the said
Protest about Many of the Shopkeepers Mentioned in the said Protest
Being Assembled together with an Evil Design of Injuring this
Respondent in or with Regard to the Business of the said Farm and
behaving in the Manner Set forth in the said Protest which
Occasioned Much Damage and Loss to this Respondent, and of this
Respondent having in the said Protest said that the said Shopkeepers
as he this Respondent had been Credibly informed and did from
good and Clear Evidence verily believe, were encouraged and Supported
by Nagapah Chitty (Meaning the said Appellant) in such their
Illegal and Unjustifiable Conduct and Proceedings — the said
Appellant doth then Pick out other Words in the said Protest which
he calls Libellous, of him the said Appellant having Offered in
Writing to Rent the said Farm Notwithstanding he well Knowing
the Same was and is Rented by this Respondent, thereby Endeavouring
to wrong and Injure him this Respondent in or with Regard to the
said Farm and the Profits and Advantages Arising or which may
Arise therefrom for and during the Remainder of the Term for which
this Respondent hath Rented the Same, and the said Appellant doth
in and by his Bill pretend that he is injured and hath Damages
to the Amount of One Hundred Thousand Pagodas, Under or which

Pretence

pretence he the said Appellant brought the said Suit Against this Respondent for the said Sum of One Hundred Thousand Pagodas and all Costs of Suit, this Respondent further Answering Saith that being Summoned to Appear to the said Suit he did by his Attorney Appear thereto Accordingly, and did on the Twelfth Day of October last file a Demurrer to the said Bill and for Cause of Demurrer said that it Appears by the said Appellants own Showing in his said Bill of Complaint that this Respondent has been for sometime past and still Continues to be Contractor for Such of the Betle and Tobacco Farms of the Honble the United Company of Merchants of England Trading to the East Indies as belong or are Subject to the Presidency of Fort St George aforesaid, And this Respondent having Suffered Considerable Damages by the Means Set forth in the Protest of which a Copy is Annexed to the said Bill of Complaint, and being likely to Suffer further Damages by or in Consequence of Such the Conduct of the said Appellant and the other Persons in the said Protest Named or alluded to he this Respondent did humbly Suppose he had an Undoubted Right to Protest in the Manner he has done on Account of the said Damages Consequently the the said Action Commenced by the said Appellant Against this Respondent upon a Supposition and under a pretence of him the said Appellant having Sustained Damages by or on Account of the said Protest is Illegal and Such as the said Appellant cannot Maintain Wherefore and for divers other good Causes and Errors and Imperfections in the said Bill Appearing this Respondent did Demurr in Law thereunto and Humbly Demanded the Judgment of the said Honble the Mayors Court whether he Should be Compelled to put in any further

or Other

Answer to the said Bill and Humbly prayed to be hence dismissed with his Reasonable Costs and Charges in the said behalf Most wrongfully Sustained — To which said Demurrer the said Appellant did on the Twenty Sixth Day of the said Month of October put in a Joinder thereby pretending that his said Bill of Complaint and the Sundry Matters and things therein Contained are good and Sufficient in the Law for him to Maintain his said Action Against this Defendant as will More fully and at large Appear on Reference to the said Bill of Complaint with the Copy of the said Protest Annexed and the said Demurrer and Joinder — This Respondent for further Answer to the said Appeal Admits that the said Demurrer and Joinder were Set down to be heard and that the same did come on to be heard Argued and Determined by and before the said Honble the Mayors Court on Tuesday the Seventh Day of December last, were the said Mayors Court on due Consideration had thereon did Declare of Opinion that the said Demurrer was Sufficient to bar the present Action and the said Court did think fit to Order and did Accordingly Order that the said Bill of Complaint be Dismissed and that each party do pay their own Costs as will More fully and at large Appear on Reference to the said Order which is or ought to be before this Honble Court.

By which said Order this Respondent doth by no Means think the said Appellant Aggrieved as he pretends, nor had he as this Respondent conceives, the least Cause or Reason to Appeal therefrom to this Honble Court either for the Reason he gives or otherwise.

And with Regard to the Reasons of the said Appellants Reasons for Appealing from the said Order this Respondent Saith that the Words which he the said Appellant says are pointedly Levelled Against him and tend Immediately to the Stain of his Character good

Character good Name and Reputation as and Individual and to the Destruction of his Credit as a Merchant are true as being Matters of fact, which he the said Appellant hath tacitly Acknowledged by not denying the Same, which he would have done had the Same been false, and in that case he the said Appellant might have had some Cause of Complaint, but the Case being as Stated by this Respondent he this Respondent has an Undoubted Right to Protest against all those in any way or in any Respect Concerned in Such Illegal and Unjustifiable Conduct as is in the said Protest Set forth, which Neither the said Appellant nor any others of the Concerned can possibly Justify, Neither he the said Appellant nor Any other Person whatever having any Right, Power or Authority to Intermiddle in any Shape or Respect whatever with the said Farms or any thing Regarding them or to do any thing which have would, Might or May Prevent or Occasion any Loss or Damage to this Respondent, if therefore the said Appellant by Interfering in the Business of the said Farms or doing or what is Stated in the said Protest, and not by the said Appellant denied either in his said Bill for the said Enormous Sum of One Hundred thousand Pounds, or his said Joinder, would render him liable to any Pains penalties Actions of Damages Protest or Representations of any kind As Matters Illegal Unjustifiable and Improper, and if the Same would have the Tendency which the said Appellant Mentions as One Reason why he is Aggrieved by the said Order of the said Worthy the Mayors Court it Appears to this Respondent Very Extraordinary that he the said Appellant would be Concerned in the said Matters or Act as he did so as to make himself Liable for Such his Conduct If the Maintaining of Such Conduct either

either Verbally or in Writing would have the Tendency which the said Appellant Mentions why would the Appellant Act so as to Occasion it Secondly the said Appellant Could not Suppose that this Respondent Could pass over Such Conduct in Silence or Suffer either him the said Appellant or any other Person to intermiddle with his Affairs and Concerns and harrass and perplex him this Respondent and Trample upon his Right and Property and Occasion Loss and Damage to him in any Respect with Impunity If the said Appellant had not intermiddled with this Respondents Affairs or Concerns he this Respondent would not have Protested against him, therefore what he this Respondent did with Regard to the said Matter, As for as Relates to the said Appellant, was entirely Occasioned by the said Appellant himself who may in Consequence blame himself and not this Respondent for the Same

In Answer to the Second of the Appellants Reasons for Appealing from the said Order of the said Mayors Court this Respondent Saith that Breaches of the Peace and other Offences against the Laws being to be Redressed by Law, as the said Appellant Observes, is no Reason why this Respondent Should not have Protested for the Causes, or the Account, and as he has done, nor doth the Same by any Means prevent this Respondent from Making his Application to the Laws of his Country for Such Redress as he was, is or may be intitled to, but was in Reality a Matter Preparative thereto and a Notice or Declaration of this Respondents Intentions both with Regard to what had then Already passed and what might also be the Consequence thereof, he this Respondent not then knowing how far the Conduct Mentioned in the said Protest might Extend or what

what Loss Injury or Damage he this Respondent might Eventually or
Sustain thereby — it was at the same time meant to Opperate so as to
Deter or prevent any Person or Persons what or Whomsoever and
Particularly those Mentioned in the said Protest from further or
Interfering in the Business of the said Farms or Occasioning any
further Losses Damages or Injury to this Respondent in or with
Regard thereto by signifying to them what might be the Consequence
if they did so — In Answer to the said Appellants Observation that
the Laws Expressly Prohibit all Libels Against Persons and that
the Intention of such Prohibition is to preserve Peace Order and
good Government by restraining all Persons from Making themselves
own Judges of Complaints and to Oblige them to Refer them to the
Decision of the Laws, this Respondent Saith that such the said
Appellants Observations are no Reasons Whatever why the said
Appellant is Aggrieved by the said Order of the said Mayors Court
In the first Place Because this Respondent doth by no means Admit
that the said Protest is a Libel Nor do or can the Laws Mention,
Mean or Allude to any such thing, but to Matters of the quite different
in their Nature and Tendency — It would be very Extraordinary
Indeed if a Person was to be Injured with Regard to his Property
and Concern in Business and be Prohibited from Mentioning such
Injuries or giving Notice either by Protest or otherwise that the
Person Injured doth and will hold the Person or Persons Occasioning
the same Responsible for the Losses and Damages which he
hath Sustained or may Sustain in Consequence thereof — In the
Second Place this Respondent says his said Protest is further
Mentions or Alludes to Matters of Breach of the Peace than as
they Relate to the Matters of fact Regarding the Business of the

Said

said Farms or the Damages which this Respondent has Sustained or Might
Sustain in Consequence of the Conduct and Matters Mentioned in the said
Protest In the third Place this Respondent has and hath a Right by
Law to Justify the Matters in the said Protest when Legally Called
on so to do, but which is not the Present Case as the Matters before
this Honble Court Speak for and Satisfy themselves, the said
Appellant having tacitly Admitted the very Matters to Complains
of to be Just, how Unjustly therefore this Respondent is Prosecuted
for so Considerable a Sum Under the Circumstances of the present Case
Must Evidently Appear to this Honble Court.

The Answer to the Appellants third Reason
for Appealing from the said Order of the said Mayors Court this
Respondent Saith that he doth Conceive and Humbly Insists that the
Matters contained in the said Demurrer are Sufficient to bar the
Appellants Action, and such was the Opinion and Determination of
the said Mayors Court as Appears by their said Order of the Seventh of
December last — And with Regard to what the said Appellants
Observes of Pleas of Justification, this Respondent begs leave to Observe
that they May be proper where the Charges or Matters for which so
Extraordinary an Action as this is brought is in the Commencement
or Original Process denied and Matter of Proof of the Fact may be
Necessary by way of Justification, but the Case is different here, for
the Facts Mentioned in the said Protest are not denied, this
Respondent therefore Demurs on the Face of the Appellants said
Bill, no other Justification being Necessary to shew that the said
Action was Illegal and cannot by no Means be Maintained — This
Respondent doth therefore Absolutely deny that the said Demurrer

Should

thereby have been thrown out with Costs as the said Appellant Unjustly
Quere.

In Answer to the Appellants fourth Reason
for Appealing from the said Order of the said Mayors Court
this Respondent Saith he is much surprized that the said
Appellant should say that by the Manner in which the said
Court did make the said Order and by the very Words thereof
the said Court did pass a Censure on the said Protest, and that
Merely because they Ordered that each party should pay their
own Costs, which this Respondent said is putting a Construction
on the Order of the said Court that doth by no means Appear, how
for therefore the said Appellant has a Right to put any such
Construction thereon Or of what Signification it is of to him, his
Bill being Dismissed this Respondent Submits of the Judgment
of this Honble Court. This Respondent at the same time begs
leave Just to Observe that the Costs of this Suit as far as the same
had then been proceeded in, being trifling were as this Respondent
Conceives the least part of the Consideration of the said Court, and
Indeed the Smallness thereof on the part of this Respondent was the
very Reason why this Respondent Submitted to and did not Appeal
from that part of the said Order being Unwilling to trouble this
Honble Court about such a trifle when the Mayors Court had done
this Respondent Common Justice in the Most Essential part of the
said Suit.

Wherefore and for other Reason which may
be Offered at the Hearing this Respondent doth Absolutely deny that
the said Appellant had any Just Cause or Reason whatever for
Appealing from the said Order of the said Mayors Court

of

of the Seventh Day of December last and Humbly prays that the
said Order may not be Reversed with Costs and this Respondent be Ordered
to put in his Answer to the said Bill of Complaint as prayed for by
the said Appellant, but this Respondent doth on the Contrary pray
that this Honble Court will be pleased to Confirm the said Order
and Dismiss the said Appeal with Costs, and this Respondent doth
Lastly pray such further and other General Relief in all and
Singular the Premises as to this Honble Court shall Seem Meet.

Jno Sykes
Attys Respondt

To the Honble Thomas Rumbold Esqr
President and Governor &c. Council of Fort St George
In the Court of Appeals.

Between William Petrie and Alexander
Brodie Executors to John Redhead Deceased
Complainants and Strie Setturam Ranza
Maharanze Soongar Defendt.

The Humble Petition of Appeal of the said Defendt

Sheweth

That the said Complainants Executors Named in the
Last Will and Testament of the said John Redhead Deceased did some
time on or about the fifteenth day of December which was in the Year
of our Lord One Thousand Seven Hundred and Seventy Eight file a
Bill of Complaint in the Honble the Mayors Court at Madraspatnam
setting forth that Your Petitioner stood indebted unto them as Executors

aforesaid in the

Filed in my Office 11 May 1779.
Stephen Sulivan Clerk of Appeals

aforesaid in the Sum of Seventy two thousand and Eighteen Rupees and Eight Annas, and Seven thousand Eight hundred and Sixty four Pagodas According to the Tenor of an Agreement or Samaud Copy of the translation Whereof is pretended to be Annexed unto the said Bill for the inspection of the said Honble the Mayors Court and prayed by the said Complainants to be Admitted as part thereof, which Sum of Seventy two thousand and Eighteen Rupees and Eight Annas at the Rate of three hundred and fifty Rupees for one hundred Star Pagodas the said Complainants said Amounted to the Sum of Six thousand One Hundred and Eighty four Pagodas Nine fanams and Seventy Eight Cash, which together with the Sum of Seven thousand Eight Hundred and Sixty four Pagodas Amounted to the Sum of Fourteen thousand and forty four Pagodas fanams and Seventy Eight Cash Current Money of Madras or in Sterling Money of Great Britain at the Rate of Eight Shillings for every Pagodas the Sum of Five thousand Six hundred and Seventeen Pounds fourteen Shillings and One penny or thereabouts. The said Complainants did also in their said Bill Setforth that being well informed that your Petitioner was about to depart from Madras they Soon had frequently and in a friendly Manner Requested the Payment of the said Sum of Fourteen thousand and forty four Star Pagodas Nine fanams and Seventy Eight Cash According to the true Spirit, intent and Meaning of the said Samaud or Agreement or to pay unto them the Sum of Six thousand one Hundred and Eighty four Star Pagodas Nine fanams and Seventy eight Cash and to cause Bezeram Ranze Brother to your Petitioner to pay the said Sum of Seven thousand Eight hundred and Sixty four Pagodas Pretending the same was a Ballance due upon one Bond of Ten thousand Pagodas given by the said John Redhead to Shumarow Naick or to Govinda Dose Verjee Dose to whom the said Shumarow Naick

Shumarow Naick was Compassionate sentenced of it is further in the said Bill Supposed that the said John Redhead had by order of your Petitioner Paid two thousand five Hundred and forty Pagodas to one Captain Lepaught According also to the true Spirit and Meaning of the said Samaud or Agreement by means whereof it is pretended that your Petitioner as well as his Brother the said Bezeram Ranze was indebted to the Estate of the said John Redhead in the said Ballance of Seven thousand one Hundred and Eighty four Pagodas Nine fanams and Seventy eight Cash and to which the Complainants say they are well entitled by force and Vertue of the said Samaud or Agreement and of the Tenor and expresswords of the last Will and Testament of the said John Redhead which said several Sums of six thousand one hundred and Eighty four Star Pagodas Nine fanams and Seventy Eight Cash and Seven thousand Eight hundred and Sixty four Pagodas it is further pretended that your Petitioner ought in Justice and Equity to Pay. But the said Complainants Setforth that your Petitioner Contriving and Confidrating to and with divers other persons and Setforth, how to defraud and defeat their said Claims, demands, and Rights, that Your Petitioner at one time pretended to Say that the said Services were not effected by the Solicitation of the said John Redhead and denied that he was not at all Assisting therein and alsoe that the said John Redhead was then dead and that your Petitioner was not bound to pay the Amount due by the said Agreement or to perform any Matter therein Specified. The said Complainants did further Setforth and Charge that they do offer to prove the same to be true that the said John Redhead did Assist Your Petitioner in effecting all or Most of the several Matters stated in the said Agreement, being points which Your Petitioner wished to have effected and that the said John Redhead was Continually

Soliciting

collecting the same as well with Viziram Ranze as with the Honble Thomas Rumbold Esq.r President of the Council of Fort St George to whom the said Complainants do Acknowledge the said John Redhead at that time Acted & abid almost at the time of his decease as Confidential Secretary by Reason and Means Whereof and of his knowledge of the Country Languages and of the politics of this Country the said John Redhead was enabled to be and in fact was of essential Service to Your Petitioner in Explaining and interpreting between him and the said Thomas Rumbold, and also that he was particularly instrumental in effecting the union between Your Petitioner and the said Viziram Ranze, which union is expressed in the said Agreement to be one of that points so much wished for by your Petitioner, The said Complainants in order to prove the same, say that Viziram Ranze was on a Visit to the said Thomas Rumbold on the sixth Day of July last, at which time Your Petitioner is supposed to have come there as if by Accident and the said Viziram Ranze being about to depart, being much concerned at this said Brother Your Petitioner whom he the said John Redhead interposed as much as was in his power to bring them together. The said Complainants further pretend that Your Petitioner and the said Viziram Ranze were again upon a Visit to the said Thomas Rumbold on the Eighth day of July at which they allledge that the said John Redhead did again urge a Reconciliation between them, And further that on the Eleventh day of the said Month One Tripetty Ranze who is introduced in the said Bill as Uncle to the said Viziram Ranze Accompanied the said Viziram Ranze on a Visit to the said Thomas Rumbold at which they set forth the said Tripetty Ranze was first taken aside by the said Thomas Rumbold and afterwards by the said John Redhead and was by them requested to be instrumental in effecting a Reconciliation between the said Brothers, The said Complainants

Complainants do also set forth that on or about the Eighth or Tenth of August the said Viziram Ranze repeated his Visit to the said Thomas Rumbold, when the said John Redhead was present and that the Subject of a Reconciliation was talked of and on which it is pretended the said Viziram Ranze desired a Day to consider of it, The said Complainants further charge that the said Viziram Ranze and your Petitioner met by then Mutch day at the Gardens of the said Thomas Rumbold when the said John Redhead is supposed to be present, and that he did Assist in effecting the Reconciliation which that day took place between the said Brothers when the said Complainants pretend went away together from the said Garden. The said Complainants in their said Bill further charge that your Petitioner Keeps up and Maintained a Constant intercourse with the said Thomas Rumbold Principally thro the Means of the said John Redhead from the Seventeenth Day of August to the beginning of the Month of September last past, when he the said John Redhead died. The said Complainants do also pretend that the several points Mentioned and set forth in the said Agreement to have been done and performed with the Assistance of the said John Redhead have been done and performed in favor of your Petitioner and that the said John Redhead was Assisting therein. The said Complainants do also set forth that by the aforementioned Agreement it is confessed that part of the Services have been rendered by the said John Redhead to your Petitioner because it is pretended it is evident on the face thereof that a Reconciliation has taken place and that the said Viziram Ranze has shewn a strong instance of his good Will by taking on himself as appears by the said Agreement as they the said Complainants say they hope to prove to the Satisfaction of the said Honble the Mayors Court, the payment of Seven thousand four Hundred and Sixty Pagodas part of the

of the Sale of Rupies intended as a Recompence for the said John Redhead which this Piece was done by way of an undertaking to save harmless the said John Redhead for a Bond executed for Ten Thousand Pagodas being Value Received by the said John Redhead of Shamrow Naick or to Govendana Dos Anjedos to whom the said Shamarow Naick acted as Gomastah, as further Acknowledgement of the said Services having been Rendered, Because they say the same was in part had on Account of the said Sale of Rupies, the said Complainants in their said Bill further endeavor to Shew that the said Sale of Rupies was given on Condition of the said John Redhead assisting in those points Therefore that the said Claims of the said John Redhead to the said Sale of Rupies was good in Law whether the said Matters were effected by the said John Redhead or by the said Thomas Rumbold or by the President and Council or any how otherwise they were effected shall as long as the said John Redhead did Solicit those Matters and did Act as Interpreter or otherwise between your Petitioner and the said Thomas Rumbold individually or the President and Council Collectively or otherwise. The said Complainants do further suppose that the said Agreement or Bond doth not Contain any proviso tending to annul the same in the event of the said John Redhead not being able to succeed in all or any of the points therein set forth but only States the Assistance already given or to be given and that it tends with the Assistance of Redeeming the Agreement on paying the Ballance thereof and that the same was given by the Spontaneous Consent

of your

of your Petitioner. The said Complainants further pretend to shew that the Law on all Contracts and Agreements is, that a Consideration of some sort or other is absolutely Necessary towards the forming of a Contract, because a Nudum pactum or an Agreement to do or to pay any thing on one side without any Consideration on the other is void in Law, but that any degree of Reasonality will prevent the Pact from being made, even tho' the same was founded upon a Prior Moral Obligation. The said Complainants do further set forth that the Agreement does of itself point out a sufficient Prior Obligation, namely the Reconciliation of the two Brothers, in which the Complainants say they have already shewn and hope to prove to the Satisfaction of this Hon'ble Court that the said John Redhead took a very Active and Serious part, as well as in the other points set forth in the said Agreement. And that your Petitioner and further that if your Petitioner does not conceive that the Influence or Interference of the said John Redhead with the said Thomas Rumbold or others of the Council, must have turned out to the Advantage of your Petitioner he would never have offered to the said John Redhead so Considerable a Reward and that the said Matters therein Specified were objects of the first Magnitude to your Petitioner, and which they pretend your Petitioner had frequently Acknowledged. On all which Account the said Complainants say your Petitioner is bound in Law Equity and Good Conscience to pay off the several Sums of Six Thousand one Hundred and Eighty four Pagodas Nine Fanams and Seventy Eight Cash and Seven Thousand Eight Hundred and Sixty Pagodas three Fanams on the face of the said Agreement the former of which said Sums Namely

The

the Sum of Six Thousand one Hundred and Eighty four Pagodas Nine
fanams and Twenty Eight Cash Your Petitioner the Complainants
say your Petitioner expressly promised and undertook to pay previous
to his Departure from Madras and the Latter of which Namely the
Sum of Seven Thousand Eight Hundred and Sixty Pagodas your Petitioner
did undertake to pay by taking upon himself to procure a discharge
from the said Shamarow Naick for Account of the said John Redhead
he the said John Redhead being indebted the same Sum to Shamarow
Naick or to Govindanado Desp Verguedep to whom the said Shamarow
Naick was Gomostah &c. the said Complainants setting forth that
Your Petitioner did refuse to give them any Manner of Satisfaction
touching the premises under various and evasive pretences, and so forth
the said Complainants praying that your Petitioner might be decreed
to pay unto them the Sum of Six Thousand One Hundred and Eighty four
Pagodas Nine fanams and Seventy Eight Cash and also the Sum of
Seven Thousand Eight Hundred and Sixty Pagodas then charged to be
due on the said Bond to Shamarow and that they might be further
and otherwise Relieved in the premises as the peculiar Nature and
Circumstances of the Case might require and as to this said Honble
the Mayors Court should seem Meet as more at large and that Your Petitioner
should pay all Costs of Suit. The said Complainants did further
pray that Your Petitioner might be Summoned and so forth to which
said Bill of Complaint Your Petitioner did Appear by his Attorney
and did file Bail and did also file Demurrer and plea to the
said Bill and did Demurr unto so much of the said Bill as brought
a Discovery of the Sum of Seven Thousand Eight Hundred and Sixty

Pagodas

Pagodas or to Cause Vizyram Rauze Your Petitioner's Brother to pay
the same being the pretended Ballance due on One Bond of Ten Thousand
Pagodas given by the said John Redhead to the said Shamarow Naick
or to Govindanadoss Vejeydep to whom the said Shamarow Naick is said
to be Gomostah, and Whereof it was further pretended in the said Bill
that the said John Redhead had paid by order of your Petitioner the
Sum of Two Thousand five Hundred and forty Pagodas to Captain
Arthur Lysaught, as is said According to true Intent and Meaning
of a said or Agreement in the said Bill before Mentioned and by means
Whereof it was charged that Your Petitioner as well his said Brother
are also indebted unto the Estate of the said John Redhead in the Sum
of Seven Thousand Eight Hundred and Sixty four Pagodas which was
Claimed by force and Virtue of the said Said or Agreement and of the
Tenor and express words of the Last Will and Testament of the said John
Redhead — And for Cause of Demurrer Showed that it Appeared by the
Complainants own Shewing in his Bill of Complaint that Your Petitioner
ought not to be called to Account for the said Sum of Seven Thousand eight
Hundred and Sixty Pagodas, by Reason of the said Testator having in his
Lifetime Accepted and Received an Undertaking from the said Vizyram
Rauze to pay the Same as is expressed in the following words of the said
Bill, To wit and the said Vizyram Rauze hath shewn a strong
instance of his good Will by taking upon himself as appears by the said
Agreement and as they the said Complainants say they hope to prove
to the Satisfaction of this Honble Court the payment of Seven Thousand four
Hundred and Sixty Pagodas as part of the Sum of Rupees intended as a
Recompence for the said John Redhead and the said Executors say
that the same was done by way of an undertaking to save harmless the
said John Redhead for a Bond executed for Ten Thousand Pagodas being
Value Received by the said John Redhead to Shamarow Naick

or Govindanado &c.

or Govindana Dosso Virjee Dosso to whom the said Manarow Vittil Acted as Gomostah, as a further Acknowledgment of the Services having been rendered, Because the same Meaning the said Sum of Seven Thousand Eight Hundred and Sixty Pagodas was in part now on Account of the said Lack of Rupees And your Petitioner therefore in his said Demurrer set forth that the said undertaking from the said Vizeram being in the aforesaid Manner avowed and insisted on by the said Complainants without any Averment of the same not having been performed is sufficient in the Law to Bar the Complainants from any demand for the same on your Petitioner, And as to so much of the said Bill as sought the Recovery of Seventy Two Thousand and Eighteen Rupees and Eight Annas According to the Tenor of the said Sanad or Agreement your Petitioner did plead thereunto, and for plea thereunto alledged that the Considerations upon which the said Sanad or Agreement was obtained by the Petitioner nor the pretended performance thereof are not sufficient in the Law to bind your Petitioner to pay the same nor any part thereof and did therefore plead the Act of Parliament made in the thirteenth Year of his Majesty King George the third All which Matters your Petitioner did aver and plead in Bar of the Complainants said pretended Demand &c.a

Your Petitioner further more shews that the Seventh third day of February which was in the Year of our Lord One Thousand Seven Hundred and Seventy Nine the said Complainants did file a Joinder and a Reply insisting that their said Bill ought not to be quashed but that the Sundry Matters and things therein set forth alledged and Charged are good and sufficient in the Law to call your Petitioner in question in the said Honble the Mayors Court and that the several pleas made use of by your Petitioner were very vague waived

very Vague waived and insufficient And for further Joinder to the said Demurrer the said Complainants said that the said Vizeram Ranze having undertaken to pay the said Sum of Seven Thousand Eight Hundred and Sixty Pagodas did not at all involved the Claim the said John Redhead or his Legal Representatives had on the said Defendant your Petitioner, Because the same was not taken in Commutation for and in lieu of the Sum which the said John Redhead had in Law your Petitioner, but only by way of Strengthening the Security of the said John Redhead as to such part of the said Lack of Rupees as the said Vizeram Ranze did thereby undertake to pay the said Complainants setting forth that had the said John Redhead have Meant thereby to have exonerated your Petitioner he would have executed some Deed for that purpose and that no such Deed or could appear to have been executed and further set forth that the same was done by the said Vizeram Ranze as they insisted and as they say they have stated the same in their said Bill of Complaint with a View to shew the good Will of the said Vizeram Ranze to his Brother your Petitioner the said Complainants further said that the said Vizeram Ranze had not Complied with such his undertaking but on the Contrary the said Complainants said, they were willing to prove to the said Honble Court that the said Ballance of Seven Thousand Eight Hundred and Sixty Pagodas and Interest due thereon was still due to the Govindana Dosso Virjee Dosso who had frequently Applied to the said Complainants as the Legal Representatives of the said John Redhead for Payment thereof The said Complainants by way of further Joinder say that they had expressly Charged your Petitioner with being Liable to the payment of the said Sum of Seven Thousand four Hundred and Sixty Pagodas because that According to the true intent and Meaning of the said Sanad or Agreement and by means whereof your Petitioner as well as his Brother were also indebted to the Estate of the said John Redhead in the said Ballance of Seven Thousand Eight Hundred and Sixty Pagodas as also in the

said Sum

Said Sum of Six Thousand One Hundred and Eighty four Pagodas Nine fanams and Seventy Eight Cash, wherefore the Complainants do insist that they have not in any wise discharged or Meant or intended to discharge Your Petitioner from the Responsibility to which they say they Conceive he is by Law liable on account of and by Virtue of the true intent Spirit and Meaning of the said Sum or Agreement The said Complainants do Next Reply to the plea of your Petitioner whereby Your Petitioner Alledged that the Considerations upon which the said Sum or Agreement was obtained by the Testator and the pretended performance thereof are not sufficient in the Law to bind Your Petitioner to pay the same or any part thereof and did therefore plead the Act of Parliament Made in the Thirteenth Year of her Majesty King George the third: The Complainants in their said Reply say that the Law lays down in express Terms that a Contract for any Valuable Consideration, as for marriage, for money, for Work done or for other Reciprocal Contract, cannot be impeached in Law and those Valuable Considerations were devided by the Civilians into four Species first Do ut Des, Money for Money, or Goods for Goods, Second, Facio, ut Facias, Work for Work or a Mutual forbearance for doing any Matter, Third, Facio, ut des, when a man agrees to perform anything for a price either Specifically Mentioned or left to the determination of the Law to set a Value on it, and Fourth Do, ut Facias, which is the is the direct counter part of the former, as where one agrees to pay a certain Sum for a certain Service, And that the Law further says that a Consideration of some sort or other is so absolutely Necessary to the forming of a Contract, that a Nudum pactum or an Agreement to do or pay any thing on one side without any Consideration on the other is totally void in Law, but that any Degree of Reciprocity, will prevent the pact from being Nuda, even if that thing be founded upon a Prior Moral Obligation, is no Longer Nudum pactum, The said Complainants do therefore Submit to the said Honble Court whether or not the Services stated on the face of the said Bill of Complainant to have been performed by the said Testor and the positive Agreement it self, which they Specially Allege that Your Petitioner did not presume to Controvert, and which on the face of it they say shews that the same was given as well for Services performed as for others which were to have been performed at a future Day, and in the Solicitations of which Services the Complainants insisted and did not doubt to prove that the said John Redhead took an Active part were sufficient Reasons in the Law to Oblige the said Defendant to pay the Amounts Charged in the said Bill of Complaint The said Complainants by way of further Reply said that your Petitioner had not set forth any particular Clause in the said Act of Parliament or by way of Argument or Reason in Law why the Complainants should not recover of your Petitioner the several Sums Mentioned in the said Bill of Complaint to be due and owing by your Petitioner to them as Executor of the said John Redhead, Wherefore and for several Reasons in their said Joinder and Reply before set forth they prayed that the Demurrer of your Petitioner might be Dismissed with Costs and that the said Honble Court might order that the plea urged by the said Defendant Your Petitioner might stand for an Answer, because Your Petitioner had therein and thereby entered into the Merits of the Cause and had also pleaded an Act of Parliament therein in Support of his said plea, by means whereof Your Petitioner had in Law given and ought to be considered as having given an Answer to the said Bill of Complaint And Your Petitioner Answereth that the said Demurrer and Plea and Joinder and Reply were set down to be heard, and the same coming on to be heard on or about the Twenty Eighth Day of April in this present Year of our Lord The said Honble Court were

pleased

please to Dismiss the said Demurrer and plea and to order Your Petitioner to give in an Answer to the said Bill filed by the said Complainants By which said order of the Honble the Mayors Court Your Petitioner finds himself much Aggrieved, because Your Petitioner shew'd that that Matter shewn to the said Honble Court as Cause of Demurrer Appeared upon the face of the Complainants Bill and was by their own shewing insufficient to call Your Petitioner to an Account for the same, And your Petitioner Sheweth that the Considerations upon which the said Sums or Agreement was given being alleged, and in themselves Contrary to Law, as well as the express prohibition of an Act of Parliament pleaded by your Petitioner, the said Court ought upon an inspection thereof to have Dismissed the said Ill founded Bill notwithstanding any thing Mentioned by the Complainants in their Joinder and Reply— For your Petitioner Sheweth that the said Honble Court should have attended to the Nature of the Consideration expressed in the said Sums or Agreement, whether the Same was legall or not, and not whether there was a Consideration or not, because in Law all unreasonable and illegal Considerations in a Contract, Covenant or Agreement Make the Same, ipso facto Void— As when a person of Such understanding is drawn into an Agreement— Also where the Method of Obtaining an Agreement is not Strictly Regular, altho the Same may be in part executed— Or where an undue Advantage has been taken of another's Understanding or Circumstances Therefore the execution and delivery of the said Sums for the Consideration therein mentioned, doth not make the Same more binding because as the Same was illegally, no act of the Testator or of your Petitioner could afterwards make the Same legal, for which Reason the said Court should have dismissed the said Bill; the said Sum or Agreement upon which it is founded being illegal and void, and therefore not Sustainable with the Equity and Dignity of the said Court to determine thereon

but by a dismission of the said Suit— And Your Petitioner further Sheweth that the said Court ought to have dismissed the said Bill upon the plea of your Petitioner of the Act of Parliament aforesaid which was read and shewn to the said Court at the hearing of the aforesaid Matter wherein it appears that from and after the first Day of August One Thousand Seven Hundred and Seventy four, „No person „holding or exerceising any Civil or Military office under „the Crown or the said United Company in the East Indies shall Accept, receive „or take, directly or indirectly by himself or any other person or persons on his „behalf or for his use or benefit of or from any of the Indian Princes or Powers „their Ministers or Agents for any of the Natives of Asia any present, Gift, Donation „Gratuity, or Reward, pecuniary or otherwise upon any Account, or on any „pretence whatsoever, or Any promise or engagement for any present, Gift, Donation, Gratuity, or Reward, And if any person holding or exerceising any „such Civil or Military office shall be guilty of any such Offence and shall be „thereof legally convicted in such Supreme Court at Calcutta or in the Mayors „Court in any other of the said United Company's Settlements where such „Offence shall have been committed, every such person so convicted shall „for first double the Value of such Present, Gift, Donation, Gratuity or Reward „so taken and received, one Moiety of which for future shall be to the said „United Company and the other Moiety to him or them who shall inform „or prosecute for the Same, and also shall and may be sent to England by „order of the Governor and Council of the Presidency or Settlement where „the Offender shall be convicted unless such person so convicted shall give „sufficient Security to remove him or themselves within twelve Months „after such Conviction, Provided always, that Nothing in this said Statute „Contained should extend or be construed to extend to prohibit or prevent „any person or persons who should carry on or exercise the profession of „a Counsellor at Law, a Physician or Surgeon or being a Chaplain from accepting „taking, or receiving any fees, Gratuities or Rewards in the way of their „Professions"— And Your Petitioner Sheweth that the Attorney on his

be

the

behalf at the hearing of the aforesaid Matters did shew that the said Sanad or Agreement was void in Law and expressly within the Meaning of the said Statute, the same being enacted for establishing certain Regulations for the better Management of the Affairs of the East India Company as well in India or in Europe. The preamble whereof sets forth that the several powers and Authorities granted by Charters to the United Company of "Merchants of England trading to the East Indies had been found by Experience "not to have sufficient force and Efficacy to prevent various abuses which "have prevailed in the Government and Administration of the Affairs "of the said United Company as well at home as in India to the "Manifest Injury of the publick Credit and of the Commercial Interest "of the said Company and that it was therefore become highly "Expedient that certain Regulations better Adopted to their present "circumstances and Condition should be provided and established "Among which said Abuses to be prevented his said Attorney did insist was included the Act of the said Testator in taking and Receiving the said Sanad as a promise or engagement for the payment of the several Sums therein Mentioned, And also that it was not a Compleat for him to prove his said Plea by shewing that the Testator did hold a Civil or Military Employ under the Crown or the said United Company, it appearing by the Complainants own Acknowledgement in his Bill of Complaint that the Testator acted at the time therein Mentioned, And Almost to the time of his Decease as Confidential Secretary to the said Thomas Rumbold Esqr President of the Council of Fort St George which Circumstance whether the same is true or false, Your Petitioner did not think himself bound to prove the same having been averred and set forth by the Complainants themselves, it Appears also in many parts of the said Bill that the Complainants do introduce the said Testator as acting under the said Thomas Rumbold. And the Complainants do also in their said Bill say that if your Petitioner did not Connive that the Interference or Interposition of the Testator with the said Thomas Rumbold or others of the Council Must have turned to the Advantage of your Petitioner, he would never have offered to him, the said Testator, so Considerable a Reward, and that the Matters therein Specified were only of the first Magnitude to your Petitioner. Wherefore Your Petitioners Attorney Insisted that the Affairs in which the said John Redhead had engaged himself and the Acceptance of the aforesaid Sanad or Agreement were expressly within the Meaning and Implication of the said Act of Parliament as the same was not given for any of the Considerations Specified in the said Act, the persons of Commanders, Physicians, Surgeons and Chaplains in the way of their profession but that the said Sanad was taken and Received for Considerations which are Strongly and expressly prohibited in the said Act and are in every Respect and point of View within those Abuses intended to be Prevented by the Legislature in the said Act for it is incidental to Statutes that whenever a Power is given by a Statute every thing necessary to the Making it effectual is given by implication And your Petitioners Attorney did also shew that the said Honble Court ought in the Construction of the said Act to Consider the Mischief intended to be Remedied by it, And because every Mischief and abuse may not commit for the sake of dishonest gain by Oppression, fraud or extortion cannot be particularly provided against by an Act of Parliament, therefore are particular Considerations or Causes of Acceptance or Receiving any present Gift or Donation from the Persons therein mentioned, but the Acceptance and Receipt thereof is prohibited upon any Account or on any pretence whatsoever so that if the Considerations for the said Sanad or Agreement had been, on any Account or on any Pretence the same would be, and ought to be, declared void, as being Contrary to the aforesaid Act of Parliament, but your Petitioner Submitts that where the

the Considerations Mentioned in the said Samud are Attended to, they are in themselves sufficient from the Nature of common Right and Justice to exempt your Petitioner from the payment thereof, or any part thereof, but even in case it is Reflected that the said Samud or Agreement is cleared from the illegality of the said Considerations or in itself illegal, and Contrary to the express Letter of the said Act, there does not remain a doubt but the said Bill of Complaint founded thereon ought in Course to be Dismissed; For all which Matters and things your Petitioner doth Conceive himself much Aggrieved by the said order of the Worthe Mayor's Court and doth therefore Appeal therefrom Humbly hoping that this Worthe Court will take the same into their Consideration and make an order for the order of the Mayor's Court to be Reversed and that the said Bill of Complaint be dismissed with exemplary Costs.

Hy Dupuy
Atty Appellt

Extract from the Minutes of a Court Held at the Town Hall on Wednesday the 28th Day of April Anno Domini 1779

Present
George Proctor Esquire Mayor
John Turing Edward Garrow
Cotton Bowerbank Dent and Edwd Saunders
Aldermen

William Petrie and Alexander Brodie Executors of John Readhead Dcd
vers
Sree Sittaram Rawze Maharawze Soongiar

Amended Bill with Copy of the Translation of a Samud or Agreement annexed Read
Demurrer and Plea Read
Joinder and Reply Read

The Demurrer and Plea and Joinder and Reply Coming on to be Argued and Determined this Day in the Presence of the Attorneys on both Sides on Reading the Complainants Amended Bill with Copy of the Translation of a Samud or Agreement annexed the Demurrer and Plea the Joinder and Reply and on Hearing the Pleadings and Arguments Made Use of by the Attorneys on both Sides and on due Consideration had thereon The Court are of Opinion that the Plea made Use of by the Defendant in his Demurrer and Plea are insufficient it is therefore ordered that the Demurrer and Plea be thrown out with Costs and the Defendant put on his Answer the 4th Day is given the Defendant till the 11th May next to Answer the Complainants Bill in default of which Judgment will be given for the Complainant

A true Extract
James Taylor
Regr

To The Honble Thomas Rumbold Esquire President and Governor &c. Council of Fort St George

In the Court of Appeals

Between William Petrie and Alexander Brodie Two of the Executors Named in the last Will and Testament of John Read Late Deceased and who have duly proved the same in and have obtained Probate thereof from the Honble the Mayors Court at Madras Patnam James Henry Cossamajor the other Executor named in the said Will and Testament having Refused to act in and having formally renounced the said Office of Executor

Executor thereof as by the Records of the said Court Reference being thereunto had may appear Complainants an Stre Setteram Rauze Maha-
rauze Longour

Defendant

The Petition of William Petrie and Alexander Brodie the Complainants above named against the Petition of the said Stre Setteram Rauze Maharauze Longour Defendant—

Sheweth

That on Wednesday the twenty Eighth day of April last past the Demurrer and Plea and Joinder and Replyin a Certain Cause in the Honble the Mayors Court of Madras Patnam where in the said William Petrie and Alexander Brodie as Executors in Manner afore said are Complainants and the said Stre Setteram Rauze Maharauze Longour is Defendant Came on to be argued in the Mayors Court and that after reading the Complainants Amended Bill with Copy of the Translation of a Sanneds or Agreement annexed the Demurrer and Plea the Joinder and Reply and on hearing the Pleadings and Arguments made use of by the Attorneys on both Sides and on due consideration had thereon the Court were of Opinion that the Plea made use of by the Defendant in his Demurrer and Plea were insufficient and did therefore Order that the demurrer and Plea be thrown out with Costs and that the Defendant put in his answer to the Complainants Bill by the Eleventh day of this Instant May in default of which Judgement was to be given for the Complainants—

That on the said Eleventh day of May the Register read a Notice from the Clerk of the Honble Court that an Appeal had been lodged here from the said Order of the Twenty Eighth day of April last past Your Petitioners however with all deference and Respect to this Honble Court beg leave to Represent that the said Order of the twenty Eighth day of April is merely an Interlocutory Order and that therefore they humbly Apprehend No Appeal lieth therefrom to this Honble Court for the following among other Reasons

1 Because such a Practice if admitted would not be only Contrary to the Natural Rules of Justice and Right but also by reason of the delay Expence Embarassment and Vexation which must follow such Appeals if allowed of be a flagrant Perversion of Every Principle of Law and Equity nor is such a Practice by any means warranted by the Royal Charter under which the Honble the Mayors Court and this Honble Court are constituted or by the Rules of Practice laid down by the Book of Instructions Sent out with the said Charter and which Book of Instructions was as Your Petitioners are informed Drawn up by the Abbal Council of that time in Great Britain and intended to ensure a uniformity for the future Proceedings of the Several Courts instituted by the said Charter and from which Instructions No Deviation should be countenanced as the said Courts which by the Charter have authority to form their own Rules of Practice did adopt these Instructions and they as well as the Criminal Courts have always adhered to them—

2 Because the Present Appeal being form an Order on a Demurrer and a Plea which is evidently frivolous & the Still more reasonable as Demurrers and frivolous Pleas are totally discouraged by an Expres Clause in An Act of Parliament made in the Fourth of Queen Anne and this doctrine has at all times and on all Cases been Strongly Reprobated by the Courts at Westminster insomuch that Counsellors at Law who set their hands to frivolous Pleas are punishable by attachment and the Court of Chancery has gone so far as to issue an Order that neither Bill Answer Demurrer or any other Plea Should be Received under the hand of a Counsellor who had set his hand to a long insufficient Demurrer and Demurrers are Almost prohibited by the Book of Instructions and it is expresly declared in the Magna Charta that Justice and Right shall not be denied or deferred to any Person—

3 Because that the Mayors Court and the Court of Appeals being constituted by Charter must be governed by the Plain Sense and Construction thereof and ought by no means to admit of any Practice which is expresly repugnant to the direct Construction and the Natural Implication of the said Charter and also of the Book of Instructions before Mentioned

Im-

and

In the former of which it is set forth that the Mayor and Aldermen for the being are authorized to Try hear and Determine all Civil Suits actions and Pleas Between Party and Party And in another place the Charter Says that the Defendant or Defendants are to be let out to Bail upon giving Sufficient Security to abide and Perform the Final Order and Judgement of the said Court or such Final Order and Judgment as Shall or may be given upon any Appeal to be brought in the said Cause or to Surrender himself to the said Court to be Charged in execution till the said Judgment Shall be Satisfied And when mention is made of appeals the Words are And it is Our further Will and Intent and We do by these Presents to ordain and establish that if any Person or Persons shall think him her or themselves aggrieved by any Judgement Sentence or Decree of the said Mayors Court or if the said Governor or President and Council for the time being or the Major Part of them shall think the said Company aggrieved by any Judgement Sentence or Decree of the said Court that such Person or Persons and the said Governor or President and Council for the time being or the Major Part of them for and on the Name of the said United Company shall or may within Fourteen days after such Judgement Sentence or Decree of the said Court shall be entered of Record Appeal to the Governor or President and Council of Fort St. George aforesaid for the time being whom or any three or more of them whereof the Governor or President or in his Absence the Senior of the Council residing there to be One We do hereby for Us Our heirs and Successors constitute nominate and appoint to be forever hereafter a Court of Records for that purpose to receive such appeals and to hear and determine the same and to do all other Acts Matters and things Necessarily incident thereto Provided if the said Governor or President or any of the said Council shall be any ways interested in the Event of any such Action or Suit no Person so interested shall Sit or act as a Judge upon such Appeal but the same shall be heard and determined by such of them the said Governor or President and Council as shall be no ways interested therein or any three or more of them and in all Cases where the Number of Voices shall be equal in the determination or Judgement upon such Appeal the Governor or President or in his Absence the Senior of the Council who

Shall

Shall be present and not interested shall have two Voices which determination shall be final if the debt Damages or thing Adjudged to be paid done or delivered or Matter in dispute shall not exceed the Value of One thousand Pagodas but in case the same do exceed the Value of one thousand Pagodas any Person or Persons who shall think him her or themselves aggrieved by such Judgement Sentence or Decree made on Such Appeal shall and may within Fourteen days after the Judgement Sentence or Decree given or made upon such Appeal shall be entered of Records or if there shall not be a Sufficient Number of the said Governor or President and Council disinterested in the Event of Such Appeal to hear and determine the Same so that no Judgement Sentence or Decree can be given or made by them then although the debt Damages or thing to be delivered or Matter in dispute shall not exceed the Value of One thousand Pagodas it shall and May be lawful for the Party or Parties aggrieved by the Judgement Sentence or Decree of the said Mayors Court within Twenty One days after such Judgement Sentence or Decree shall be entered of Record to Appeal to the One Our heirs and Successors in Council as is usual in Cases of Appeal from any of Our Colonies in the West Indias upon giving Security to pay Interest not exceeding the Current Rate of Interest which shall prevail at the time of pronouncing Such Judgement Sentence or Decree for the thing Adjudged or Decreed to be paid done or Delivered and the Costs of Such Appeal in Case the said Judgement Sentence or Decree shall be affirmed

And it is Our Will and Pleasure that the Judgement Sentences and Orders of Us Our heirs and Successors and of the said Governor or President and Council made upon any Such Appeals Respectively shall and may be put in Execution by the said Mayors Court in Such Manner as an Original Judgement of the said Court Should or might have been and there are hereby Required and Commanded to Execute the same accordingly and in case the said Mayors Court shall Refuse or Neglect because Such Judgment Sentences or Orders to be Executed within Fourteen days after Application Made to them for that purpose it Shall be lawful for and We do hereby Require and Command the said Governor or President and Council to Execute or cause the same to be executed by such ways and Means as the said Mayors Court Might have done

and

And in that part of the Book of Instructions which treats of Interlocutory Orders no Mention is made of their being Appealable or does the Word Appeal Appear in the said Book of Instructions till Page where follow these Remarkable Words

Thus being having given You an Historical account of the Necessary Steps to be made Use of in the Progress of a Suit from the beginning down to be Execution against the Bail We are at liberty to say something Concerning Appeals touching which You will observe that same directions are Given in the Charter for the explanation whereof and in Order to Reduce the same into Practice these few things may be Necessary to be laid First the Petition of Appeal should contain the Case of the Petitioner an Appellant and the Substance of the Decree and this should be Directed and expressed in short and concise terms and the Reasons should be assigned for which the Party Appeals or wherein he is aggrieved

From the Charter therefore it appears that no Appeal lies from the Interlocutary Order made in the Answerer and Plea and Joinder and Reply in the above Cause on the said Twenty Eighth days of April for no Debt Damages or things were by the said Order decreed to be paid done or delivered and therefore no Security can be given for payment of Interest for thing adjudged or decreed to be paid done or delivered No Judgment being given or existing in this Cause whereby any thing is to be paid done or delivered Nor is there any matter now before this Hon^ble Court whereon a Judgment can be given which the Mayors Court can put in Execution for the Act of Execution or Executing Judicial Orders from Courts of Records Relates to the Sheriff who is to cause such Execution to be Executed in manner as is Convenant to the Judgment of the Court under whose Authority he Acts and Such Execution must of Necessity relate to a Corporeal entity whither it be ad Personam or ad Rem to Sings Persons or things or to put Persons dispossed into possession of the things whereunto they are Legally entitled or whither it be to Serve Processes Personal or otherwise whereas in the Present Case neither an affirmance or Reversal of the said Interlocutory Order of the Twenty Eight day of April can create any matter to be Executed any Debt to be paid or any duty to be performed by the said Mayors Court or by this Hon^ble Court in the Event of there Refusal

Refusal or Neglect to execute the same within Fourteen days after Application made for that purpose and by such ways and Means as the said Mayors Court would have done And from the said Book of Instructions it is Still more Manifest that Appeals to this Hon^ble Court do not lie from Interlocutory Orders of the Hon^ble the Mayors Court for by the Above Extract it appears that the Council who drew up the said Book of Instructions were not in their Opinions at Liberty to say anything concerning Appeals till they had given an Historical Account of the Necessary Steps to be made use of in the Progress of a Suit from the beginning down to the Execution against the Bail and that the Petition of Appeal should contain the Case of the Petitioner or Appellant and the Substance of the Decree and after Stating the Case the Decree and Reasons for the Appeal it should conclude thus &c^a whence it appears that as the Case of the Appellant and the Substance of the Decree are to be the Efficient parts of an Appeal No Appeal can lie where no decree has been made

4 Because that in the Event of any Order passed by this Honoble Court on an Appeal from an Interlocutory Order of the Mayors Court there will arise to the Person or Persons who may think him her or themselves aggrieved by such Order an Insurmountable difficulty in obtaining Relief Accordingly to the Charter as there is No Judgment Sentence or Decree or any thing adjudged or decreed to be paid done or performed for the Performance whereof with Interest Security can be given And therefore nothing upon which the King in Council can according to the Charter passed Judgment of Reversal or whereon the King in Council can affirm Judgment Sentence or Decree which can be carried into Execution by the said Mayors Court or this Hon^ble Court according to the Charter

5 Because that in the Letters Patents or the Charter of Justice bearing date the Twenty Sixth day of March One thousand Seven hundred and Seventy four whereof the Supreme Court of Judicature at Bengal is established and which said Charter as far fourth as the same treats of Rules for Proceeding in any Stages of a

Suit

Suit should be considered as a Reference of the best Authority for the Guidance of the said Mayors Court and this Hon^ble Court in all points which can admit of a doubt and wherein an Analogy can be made without deviating from the Charter on which the Courts here are established there are the following Emphatic Words

And it is Our further will and Pleasure and We do hereby direct establish and ordain that if any Person shall find him her or themselves aggrieved by any Judgment Decree Order or Rul of the said Supreme Court of Indicature at Fort William in Bengal in any case whatever it shall and may be lawful for him and them to Appeal to Us Our Heirs or Successors in Our or their Privy Council in Manner and under such Restrictions and Qualifications as are hereinafter Mentioned that is to say in all Judgments Decrees or Decretal Orders made by the said Supreme Court of Indicature at Fort William in Bengal in any Civil Cause the Party and Parties against whom or to whose immediate Prejudice the said Judgment Decree or decretal Order shall be or land may by his or their humble Petition to be preferred for that purpose to the said Supreme Court of Judicature at Fort William in Bengal pray leave to Appeal to Us Our heirs or Successors in Our or their Privy Council Stating the cause or causes of Appeal and in case such leave to Appeal shall be Granted by the Party or Parties who is are directed to pay any Sum of Money or to perform any Duty the said Supreme Court of Judicature at Fort William in Bengal shall and is hereby empowered to award that such Judgment Decree Rule or Order shall be carried into Execution or that Sufficient Security shall be given for the Performance of the said Judgment Decree Rule or Order as shall be made expedient to Real and Substantial Justice provided always that where the said Supreme Court of Judicature at Fort William in Bengal shall think fit to Order the Judgment Decree Rule or Order to be executed Security shall be taken from the other Party or Parties for the due Performance of such Order or Decree as We Our Heirs or Successors shall think fit to make thereupon and in all Cases We will and Require that Security should also be given to the Satisfaction of the said Supreme Court of Judicature at Fort William in Bengal for the payment of all such Costs as the said Supreme Court of Judicature at Fort William in Bengal may think likely to be incurred by the said Appeal and also for the Performance of such Judgment or Order as We our Heirs or Successors shall think fit to give or make thereupon and upon such Order or orders of the Supreme Court of Judicature at Fort William in Bengal thereupon made being performed to their Satisfaction the said Supreme Court of Judicature at Fort William in Bengal shall allow the Appeal and the Party or Parties so thinking him her or themselves aggrieved shall be at liberty to prefer and Prosecute his her or their Appeal to Us Our Heirs or Successors in Our or their Privy Council in such manner and from and under such Rules as are observed in Appeals made to us from Our Plantations or Colonies or from Our Islands Guernsey Jersey Sarke and Aldernay

And it is Our further will and Pleasure and We do hereby direct and Ordain that in all such Cases the said Supreme Court of Judicature at Fort William in Bengal shall Certify and transmit under Seal of the said Supreme Court of Judicature at Fort William in Bengal to Us ourselves or Our Heirs or Successors Our or their Privy Council a true and exact Copy of all the Evidence Proceedings Judgments Decrees and Orders had or made in such Causes Appealed

Whence it Appears that the Only Persons competent to make Appeals are those who are directed to pay any Sum of Money or to perform any Duty and that previous to the obtaining of leave to appeal Security shall be given for the Performance of such Order or decree as this Majesty in Council shall think fit to Make on the said Appeal and it also Appears that the said Judges Must Certify to this Majesty in Council under the Seal of the Supreme Court a true and Exact Copy of all the Evidence Proceedings Judgments Decrees and Orders had or Made in such Causes Appealed and that therefore as the Parties Complainants or Defendants where the Suit has only gone to the Arguing of Demurrer and Plea and Joinder and Reply do not either in

the Mayors Court this Hon^ble Court or the said Supreme Court of Fort William in Bengal come expressly or by Implication within the discription above stated an Appeal from such an Order is by no means allowable—

6 Because that from all the Dominions of the Crown where the Right of Appealing in the last Resort is Vested in the King in Council Appeals lie only from decree and that Tribunal exercises its Judicial Authority in a Committee of the whole Council who hear the Allegations and Proofs and Make the Report to the Majesty in Council by whom the Judgment is finally given which Allegations and Proofs being necessary in all Appeals to his Majesty in Council it is evident that the Admission of the Appeal in the above Suit might in the Event cause a Reference to the Majesty in Council whereon as there would be no Sentence Judgment or Decree for the payment of any Sum or Performance of any Duty to be confirmed or Reversed the whole Process would Appear totally Nugatory and without any foundation in Law or Equity and would Manifest a Practice flagrantly injurious to the Majesty's Liege Subjects and Subversive of those Rights of Redress with which his Gracious Majesty has by his said Charter been pleased to indulge those who live under the Jurisdiction of this Courts in this Distant part of the Globe and who look up to the due Administration of Justice consonant to the Plain Construction of the said Charter and freed from those Vexations Delays which the Chicane of Interested Advocates May have tempted them to Invent without Reason and to promote without Law to the Prejudice of all parties and in Many Cases to the Prevention of Real and Substantial Justice

7 Because that the Minutes of the Mayors Court or of this Hon^ble Court do not Contain one Precedent to Shew that such Practice has ever been allowed before some late Attempts had been made to that purpose the irregularity of which as Yet has not been but now will Come to be Contested before this Honble Court— On the Contrary there are instances on the Minutes of the Hon^ble the Mayors Court which clearly Manifest that such a Practice was not to be treated either by that Court or this

This Honble Court— One on the December one thousand Seven hundred and forty one and January One thousand Seven hundred and forty two in Cause wherein Devicundo Jungee Complainant and Nairo Ball Chitty is Defendant— A Certain Order was made in this Cause on the first day of the said Month of December and on the Fifteenth day of the same Month the Defendants Attorney desired to Know if the said Order was intended as a Ground for a Peremptory decree or only an Interlocutory one and Assigned for his Reason for Asking the Question that if it be Peremptory he is Ordered to Appeal from it Twas answered by the Court that they intended at the time of Making it and now deem it Interlocutory On the Twelfth of January one Thousand Seven Hundred and forty two Decree was given for the Complainant and on the Ninth day of February a Notice was Read from the Clerk of the Appeals That the Defendant had Appealed to the President and Council The Other President is on the Minutes of June 9th One Thousand Seven hundred and forty four On the Twelfth of which Month in a Cause wherein Thomas Eyre and others were Complainants and Christopher Craddock was Defendant after the Complainants Bill of Complaint and Defendants Plea in Bar with other Papers relating to the Cause was Read the Court taking the same into Consideration Order that the Defendants Plea be dismissed with Costs and that the Defendant Answer the Complainants Bill— on the Twenty Sixth of the said Month of June A Note was Read from the Clerk of the Appeals acquainting the Register that the Defendant had Appealed from the said Order of the Twelfth and third day of July a Second Note from the Clerk of Appeals was Read acquainting the Register that the Honble the Court of Appeals had thought proper not to Admit the Petition of Appeal of the Defendant Christopher Craddock which he had Lodged the Twenty Sixth Ultimo on the Fourteenth of August the Court gave a Decree for the Complainant and at the Court held the Eighteenth of September the Register Read a Note from the Clerk of the Court of Appeals dated the Eleventh of the said Month which Mentioned that the Defendant had Appealed from the Decree from these Instances therefore it is evident that it was equally understood by the Mayors Court as well as the Court of Appeals that No Appeal would lie from an Interlocutory Order and that from the Nature and Circumstances of the Several Demurrers Pleas or other Dilatory Proceedings which Appear upon the Records of the Hon^ble the Mayors Court

Court is most if not all the Instances where such Appeals have been permitted. It is equally evident that they are frivolous and evasive purposely calculated to frustrate the Claims of the Suitors by endless and cruel delays which carry the Appearance of an Insult to the Authority of both Courts by Rendering Abortive the Legal Exercise of such Authority

For all which Reasons and others which may be offered at the hearing Your Petitioners Humbly pray that this Honble Court will be pleased to dismiss the Petition of Appeal and to return this Cause to the Honble the Mayors Court to be there determined according to Law and Equity and in Conformity to the said Charter and the Book of Instructions

[Signed]

Stephen Popham

To the Honble Thomas Rumbold Esqr. President & Governor &c. Council of Fort St. George

In the Court of Appeal

Between William Petrie and Alex. Brodie two of the Executors in the Last Will and Testament of John Redhead Deceased Complainant and Sree Sidderam Rauze Mahaurauze Loongar Defendant

The Answer of the said Defendant to the Petition of the said Complainants

The said Respondent first of all saith that he conceives the Petitioners said Petition is very irregular and unprecedented it being an unheard of Proceeding in any Court of a Petition being offered to a Petition it being impossible to determine upon the Merits of either without an Answer being given to both Therefore the Petitioners having filed their said Petition after this Honble Court had accepted the same and had taken Cognizance of it by directing the Petitioners to Appear and answer as

As Respondent thereto this Respondent is humbly of Opinion that the said Petition seems rather aimed at the Authority and Jurisdiction of this Honble Court than to conduce in any light to Shew why this Respondent was not aggrieved by the Judgment or Order of the Honble the Mayors Court and for what Reason and upon what grounds the same should not be reversed which the Petitioners ought and ought to have done by way of Answer and their having neglected to put in their answer according to the order of this Honble Court this Respondent conceives and is advised that according to the practice of this Honble Court that the said Judgement or Order of the Honble the Mayors Court Appealed from by this Respondent ought to be Reversed and the Petitioners Amended Bill be dismissed as well as the said Petition filed by the said Complainants which this Respondent prays accordingly and this Respondent in order to avoid the same irregularity complained of against the Petitioners prays leave to Answer the said Petition as followeth That he doth Admit that on Wednesday the twenty eighth day of April last past a Demurrer and Plea and a Joinder and Reply on the aforementioned Cause came on to be heard and argued on the Honble the Mayors Court that the Complainants amended Bill with the Copy of the Translation of a Sanad or Agreement annexed the said Demurrer and Plea the Joinder and Reply were Read and that on hearing the Pleadings and Arguments made use of by the Attorneys on both sides the said Court were of Opinion that the Pleas made use of by the Defendant in his said Demurrer and Plea were sufficient and did therefore order that the said Demurrer and Plea be thrown out with Costs and that the defendant should be put upon his Answer

This Respondent doth also admit that the Register of the Mayors Court did on the eleventh of May last past read a Notice from the Clerk of this Honble Court that an Appeal had been lodged in this Honble Court from the said Order of the Honble the Mayors Court of the Twenty eighth day of April

The Subjects of the Petition of the said Petitioners is that they with all deference and Respect to this Honble Court beg leave to Represent that the said Order of the twenty eighth day of April is merely an Interlocutory Order and that therefore they humbly Apprehend no Appeal lieth therefrom to this Honble Court for the Reasons by them alledged which this Respondent Saith is very erroneous and founded upon principals injurious to common Right and Justice and by way of Answer to this

to the first Reason alledged against the said Appeal of the same being productive of delay expence embarassment and Vexation if such Appeals were allowed this Respondent saith the same carries no solid connection of such mischiefs attending or being intended in the present instance and merely general tends to Reflections upon troubles and inconveniencies the Natural Concomitants through every stage of a litigation but at the same time that the legislature that hath Shewn every attention to the execution of Justice in this distant parts as every provision is secured for Rendering them effectuall by Reverencing to the Inhabitants of this distant Country their Liberties and Rights in an pure and unblamed enjoyment as the opposing Causes of length of time in Obtaining them and a distant Seperation will admit Justly and wisely Regarding a private Inconvenience of less injury than a publick failure of Justice which might Notwithstanding the honest and jealous Zeal of the worthy Members of this Colony who are intrusted with the dispensation and expounding of the Law there an compliance in the clearing of that extensive branch Science and many other Causes endanger the Rights and properties of the Community in the most Sacred and important points if they were not controuled and Seasonably obstructed by the Confirmation or reversal of those Judgements from the Source of the legislature in England and upon these foundation His most Excellent Majesty Reserved the Right of Appeal to any person or persons who may think themselves aggrieved by any Judgment Sentence or Decree of the Hon^ble the Mayors Court without any limitation whatsoever Respecting the Nature of such Judgments Sentences or Decrees and this Respondent saith that there is contained in the Book of Instructions which tends to prohabit or discourage Appeals of the present Stamp and all the said Courts may derive an Authority from the said Charter to form their own Rules of practice the said Authority has never been extended to the Suppression of Appeals but they have always been admitted without drawing upon Appellants the Jealousy of Mayors Court or the discouragement of this Hon^ble Court

In Answer to the Second Objection of the said Petitioners this Respondent saith that the Petitioners Argument of this Appeal being frivolous because the same is from an Order on Demurrer and Plea is by no means evident and the said Appeal ought not therefore to be Slured or Reproached them if the same had been upon a Judgement of the Mayors Court for this Respondent to pay the sum and for as demurrers and Pleas

and Pleas likewise are ever day when proper to be received filed and entered on all the Courts of Westminster without imputation to the parties or their advocates of design to elude the Course of Justice and do every day prevail and are means of Stopping the litigious and Mischievous Views of wicked Men to involve the Weak and unguarded into long and tedious Law Suits upon illegal and unwarrantable Claims and Titles in the Nature of the one Appealed from this Respondent this Respondent further saith that the practice of Courts Respecting ill advised Corrupt Councellors is very inapplicable in the present Case and the Report thereof Mentioned by the Petitioners may be as far as this Respondent is advised very erroneous And imagines rather that the Petitioners alludes to the Case of Councellors Selling their hands to plead knowing them to be false otherwise every advocate in the Law would come under the like censure who Signed a Demurrer or a Plea not admitted by the Court Lastly this Respondent saith that the Petitioners Quotation from Magna Charta is very inconvenient and improper in the present Instance as the Right of defending Suits According to the Law is equally a part of Magna Charta and liberty of doing it According to the Law as much Authorized and Sanctioned as the Right of commencing Suits

To the third Objection this Respondent Saith that he admits that the Hon^ble the Mayors Court as well as this Hon^ble Court being constituted by Charter can only Act in Conformity with the Sense of the said Charter in which this Respondent Saith there no Matter which can any way be construed or implied to discourage or Reject the receiving of Appeals in the Nature of the one before this Hon^ble Court for if it had been the intention of the Charter to Restrain Appeals from interlocutory Judgments the Previledge of Appealing would not have been extended to any Judgments Sentences or Decrees but would have limitted Appeals to final Judgments Sentences or Decrees as Judgments in the Law are two fold final and Interlocutory both which Kinds Must be imbraced in the Sense of the Charter by no distinction or discription of what Nature the Judgment to be appealed from is pointed out and the one with as Good Reasons and parity of Justice be exploded as the other this Petitioner as it should Seem with a View to Strengthen his Arguments against the admission of Appeals from Interlocutory Orders Saith that by the Charter the Mayor and Aldermen for the time being are Authorized to try hear and determine all Civil Suits Actions and Pleas between

Party

62

Party and Party as if he would dispute them the power of hearing and determining all Interlocutory proceedings leading to such final determination but all the necessary Authority is expressly given Yet it must be in course implied as tending to the purposes of Justice proposed by the Charter and the Respondent with Submission on insists that the part of the Charter quoted by the Petitioner is expressly in favor of Appeals from any Judgements Sentences or Appeals of the said Mayors Court provided the same shall be done fourteen days after entering Suits Judgement Sentence or decree on Record as it is evident that the expression of the Charter doth not turn entirely upon final Judgements where the debt damages or things directed to be paid done or delivered amount to the Value of one thousand Pagodas but it expressly mentions and describes the Nature of the Suits to be so Appealed from the Governor and Council to his Most Excellent Majesty in Council that is where the Matter in dispute amounts to one thousand Pagodas which can only be interpreted and construed Respecting any Judgements Sentences or decrees made in a Suit when the Matter in dispute shall Amount to the Sum of one Thousand Pagodas may be appealed from by any Person finding himself aggrieved by any Judgement Sentence or decree made that is as to so much of the said Charter as has Reference to appeals to his Majesty in Council the privilege as to appeals to this Honble Court Remains open and indisputable to any person or persons who find him her or themselves aggrieved by any Judgement Sentence or decree of the Honble the Mayors Court and altho. the Respondent is of Opinion that the same priviledge extends in the like Cases from the President and Council to his Most Excellent Majesty in Council yet the same not being a Matter of Consideration at present before this Honble Court this Respondent doth not mean to Speake of Appeals to his Majesty in Council of the Nature of the present or of any Interlocutory Nature at this time but will hereafter shew to this Honble Court that Appeals from Interlocutory determinations of the Mayors Court and of this Honble Court do now exist and are before his Majesty in Council when Decree or Order thereon is not yet come to India

The Petitioner further saith that from the Charter no Appeal lies from the Interlocutory order made on the Answer and Plea and Joinder and Reply in the above Cause on the twenty eight day of April because that no Damages

Damages or things were by said Order directed to be paid done or delivered and therefore no Security can be given for payment Interest for things adjudged or decreed to be paid done or delivered no Judgement being given or existing in this Cause whereby any thing is to be paid done or delivered the Respondent saith that the said Reference is much against the Petitioners for Supposing that the Judgements of the Honble the Mayors Court had been that the said Petitioners Bill should be dismissed in this early stage of the Suit there should be the same bars to this appealing which they now oppose to the Respondent and the Same would continue if the falacy of his Reasoning was to be inforced even upon a dismission of the said Bill at a Solemn hearing after a Regular progress through all the proceedings until examination of Witness Publication and so forth as a Complainant is not decreed to pay any debt or Damages nor to do or deliver any thing but is foiled and disappointed in his attempts to compell another to pay a debt make good a Damage or to deliver a thing by him demanded never the less it is undoubted but the Charter has provided an impedial benifit to Result any party whether Complainant or Defendant who may find themselves aggrieved in any progress or Stage of a Suit by a Judgement or Sentence as well as a decree of the Mayors Court as it is but Reasonable and equitable they should have liberty to do because it is the formation and establishment of a Claimants title and ables him to enforce and Substantiate his Right upon such Rules of practice and Grounds of Law and an admissible and he Chuses to plead for that end and without these Previledges without the Choice of the Manner and exercise of the rules of Supporting his Claims or if he were denied the liberty of Altering the Manner or mode of his proceedings by addition or amendment it is very clear according to the practice of the Law that a plea at the hearing of his Cause upon these imperfect grounds of his intention or desire to have brought it before the Court more compleat and clear would nive avail him but that he would be told it was too late and that he should have availed himself of his Choice or information before. It is therefore clear that Interlocutory proceedings are the foundation or Grounds upon which a Mans Right and properly in a Court are built and the Argument holds and extends itself with equal strength and Necessity to the Defendant as to the Complainant as a denyal of the right of pleading or defending a Claim must

be

be as injurious to the one as to the other and Requires the care and interposition of Justice in as full an extent as the ultimate determination of clearned and approved Rights in its matured and most perfect State the Petitioners further say that there is no Matter now before this Honble Court whereon a Judgement can be given which the Mayors Court can put in execution because they say the Act of Execution or Executing Judicial orders from Courts of Record Relates to the Sheriff but this Respondent with Submission conceives that the Matter before this Honble Court is to dismission the Petitioners Bill which is a Judicial execution and of a different Nature from those executions dependant on the office of the Sheriff and every act of a Court of Justice is a Judicial execution whether it be to Supersede their own Order upon Cause shewn to Retain or dismiss a Suit or any prayer or motion dependant on it And it is not to be presumed that the Mayors Court would retain a Suit where the same had been dismissed by this Honble Court nor dismiss a Suit which this Honble Court had thought proper to Retain

In Answer to the fourth Objection this Respondent Saith that the difficulty discovered by the Petition arising to persons appealing from interlocutory orders in Obtaining Relief according to the Charter because there is no judgement Sentence or decree or any thing adjudged or decreed to be paid done or performed for the performance whereof with the Interest Security can be given this Respondent hath already observed that the present Appeal is to this Honble Court before whom no Such Objection can be brought as Security is not Requisitive in that Case but as the Petitioners have pointed out the difficulty this Respondent conceives it not improper to obviate the same by a Reference to what hath been done and practiced before requiring of Security upon appeals from interlocutory orders as well as in Cases where Bail hath been filed by way of Security according to the Charter in Appeals lodged from the Decrees of this Honble Court by Complainant in Suits which have been thereon dismissed many of which are extant Among the Records of this Honble Court

Respecting the fifth objection this Respondent is of Opinion that the Substance thereof is no very wide deviation from the point in question as to render it absolutely improper for him to take any further notice thereof

In Answer to the Sixth objection this Respondent Saith that he conceives the Right of Appealing in the last resort from all the Dominions of the Crown is extended only to decrees for it appears by the Reference made to the Charter aforesaid for the Supreme Court of Judicature at Bengal that appeals may be made from any Judgements decrees orders or Rules and this Respondent saith that it is very Convenant with Justice and Equity that it should be so for so jealous a Regard hath the legislature Shewn for the private interests and properties of the Community that appeals are admitted from the Court of Chancery to the Sight Court of Parliament or House of Lords and that only from final determinations or decrees but from any interlocutory order arising between the Commencement of the Suit and the final hearing thereof which Circumstance being admitted this Respondent is humbly of Opinion it cannot be questioned Whether a Right of Appeals lies from an interlocutory order of this Honble the Mayors Court to this Honble Court by any Person who may be aggrieved thereby which order this Respondent hopes and doubts not will be Reversed by the Judgement of this Honble Court by a dismission of the Petitioners Bill of Complaint

In Answer to the Seventh Objection of the said Petitioners this Respondent Saith that the Minutes of the Honble the Mayors Court are full of Precedents of Appeals from interlocutory Matters to this Honble Court many of which have been appealed against from this Honble Court to his Majesty in Council before whom they now are for Determination and this Respondent saith that the precedent Shewn by the Petitioners are by no Means decisive nor do they furnish any grounds for this Honble Court to deviate from a practice long adopted and sanctioned by Reports of judicial acts lastly this Respondent saith that the whole of the said Petition is a Medley of inconsonant and ill founded Law Replead with impertinence and Reflections upon persons and things no ways interested or belonging to the Matter in question before this Honble Court and highly unfit for the dignity of this Honble Court to determine upon this Respondent doth therefore pray that the said Petition by dismissed and that the order of the Honble the mayors Court may be reversed and the said amended Bill of Complaint be dismissed with all Costs of Suits

66

Court of Appeals
at
Madraspatnam

Fr. Thursday 2d. September 1779

Between Sree Sittaram Rauze Maharauze Senger Appellant and William Pelin and Alexr. Brodie Executors to John Redhead deceased Respondent

This Cause coming on to be heard and debated this day before the Attornies on both sides upon hearing the Petition of Appeal the Several Exhibits of the Honble the Mayors Court together with an Extract from the Minutes of the said Court given on Wednesday the 28th day of April Anno Domini 1779 and Cross Petition being presented by Mr. Popham praying that this Honble Court will be pleased to dismiss the Petition of Appeal and to Return this Cause to the Honble the Mayors Court to be there determined according to Lawand Equity &c. Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Cross Petition be dismissed with Costs and the Space of One Week allowed for Answering the Petition and appeals

By Cur
Stephen Sulivan
Clk. of Appeals

To the Honble Sir Thomas Rumbold
Baronet President and Governor &c.a Council
of Fort St. George

In the Court of Appeals

Between William Pelin and Alexander Brodie two of the Executors named in the last will and testament

6

testament of John Redhead Deceased and who have duly proved the same in and have obtained Probate thereof from the Honble the Mayors Court at Madraspatnam James Henry Casamayor the other Executor named in the Said Will and Testament having Refused to act in and having formally Renounced the said Office of Executor thereof as by the Records of the Said Court Reference being thereunto had may Appear

Complainants.

and Sree Sittaram Rauze Maharauze Senger Defendant

The Answer of the said Complainants to the Petition of Appeal of the said Defendant

This Respondents by way of Answer unto the said Petition and Appeal or unto so much thereof as this Respondents are advised doth Materially concern them to make answer unto Say that it is true that these Respondents and the said James Henry Casamayor as Executors named in the said Will and Testament of the John Redhead deceased did file a Bill in the Honble the Mayors Court at Madraspatnam on or about the time Mentioned and Set forth by the said Petitioner in his said Petition and Appeal and it is also true that these Respondents and the said James Henry Casamayor as Complainants did State and Set forth the divers and Sundry Matters and things which are mentioned in the said Petition and Appeal and it is also true that the said Petitioner as Defendant was Summoned to Appear and that he did Appear by his Attornies and did file Bail and that he did also file a Demurrer and Plea to the said Bill and did demur and Plead thereto and to the Respective Parts thereof in manner as is also Set forth in the said Petition and Appeal and it is also true that these Respondents as Complainants did file a Joinder and Reply at the time and in manner and to the Effect and purport as the same is Stated and in the said Petition and Appeal and it is also true that the said Demurrer and Plea and Joinder and Reply were ordered to be heard and that the same were heard at the time Mentioned in

the said

in the said Petition and Appeal and that the Honble the Mayors Court were pleased to dismiss the said Demurrer and Plea and to order the said Petitioner as Defendant to give in an Answer to the said Bill of Complaint But for Greater Certainty as to the Dates Substances and Contents of the said Several Precepts Orders Proceedings these Respondents Crave leave to Refer thereunto when the Same Shall be produced before this Honble Court And to Such full and ample benefit thereof and of every part thereof as if the same were herein before fully Stated and Setforth these Respondents further Answering Say that the said Petitioner has no Reason to Consider himself aggrieved by the said Order of this Honble Court whereby the said Demurrer and Plea were ordered to be dismissed with Costs and that he should give an Answer to the Bill of Complaint of these Respondents on the Contrary these Respondents do humbly insist that the said Order should be Affirmed and the Petition and Appeal of the said Petitioner should be dismissed with Costs for the following among other Reasons

1 Because the Considerations Stated in the said Bill of Complaint and in the Copy of the Same thereunto Annexed Contain Matter abundantly Sufficiently to entitle these Respondents as Complainants to a full Answer to the several Charges therein exhibited against the said Petitioner as Defendant and that as the said Charges as well as the Principal Points of these Respondents Claim against the said Defendant are Matters to be Supported by Evidence to be taken in the usual Circumstances of the Cause No Demurrer could hold good

2 Because the said Same Appears from the Main Construction thereof to be as much as Tribute of Gratitude for Services already done as an Earnest to engage the future good Offices of the said John Readhead 1st As the Amity Between the two Brothers came to have been Established 2dly a part of the said Money namely Twenty Seven Thousand Nine hundred and Eighty one Rupees and Eight Annas seems intended to have been passed to the Credit of the said John Readhead 3dly if the Services had been on Expectancy only there would have words to have Expressed a Futility in the Event of John Readhead's decease or Success

3 Because these Respondents in their said Bill of Complaint have also Stated the particular Mulungo held and the Acts of Service done by the said John Readhead towards the said

Petitioner

the Petitioner and which was Subsequent to the Granting of the said Same and the said Bill also Setforth as follows That the Several other Points Mentioned and Setforth in the said Agreement to have been done and performed with the Assistances of the said John Readhead have been done and performed in favour of the said Shee Sellaram Rouze Maharaunze Sangur and that the said John Readhead was Assisting therein which said Charge being of the very Essence of the Said Same and being a Matter to be determined by Evidence after the said Cause had been at Issue this said Demurrer was well overruled

4 Because the Active Interference of the said John Readhead in manner as is Stated in the said Bill of Complaint was a Consideration Sufficient in Law to entitle him to demand an Ample Gratification from the said Petitioner for the said John Readhead exclusive of his Knowledge of the Politicks of this Country and his distinguished integrity which made him a proper Person to be employed and entrusted by the said Thomas Rumbold as Governor in Transactions of the first Consequence with the Country Powers was by his very accurate Knowledge of the Country Language as well Qualified to be of the first Service to the said Petitioner The said John Readhead being thereby enabled to interpret in a full and exact manner the views of the said Petitioner and the Systems which he was so Anxious to Establish and which fair Candid and impartial interpretation and Explanation of those Important Points the said Petitioner was conscious he could not procure thro' the Means of any Native or other Person Resident in this Country And these Respondents insist that the Gratification stipulated in favor of the said John Readhead was by no means an extravagant Recompence when the Assistance give by him was on Matters of such importance as those which appear on the face of the said Same

5 Because the said John Readhead did not at the time mentioned in the said Same or during any part of the time wherein he Acted as Secretary to the said Thomas Rumbold hold or Exercise any Civil or Military Office under the Crown or the said United Company in the

in the East Indies and therefore was not within the Meaning of the said Act of Parliament

6th Because all Penal Statutes are to be Construed Strictly and that the Powers claimed by the Petitioner to begiven by a Statute by Implication have Reference only to the Carrying into Execution the Paines or Penalties intended by such Statute but these Respondents humbly Insist that no Statute or Act of Parliament whatsoever and Especially no Penal Statute can be construed with so much Latitude as to include Persons of a denomination not therein most Pointedly and particularly Described especially when such persons are not or can be within the Spirit of the act itself the intent of which was to prevent the Servants of the Company who held high and Important Offices of Trust in the Service of the said Company from advancing their own particular Interests at the Expence of those of their Employers and these Respondents say that as the said John Readhead was not Employed by the said Company he could not betray any trust Reposed in him by them and that therefore the said Act of Parliament could not or could any Clause therein Extend to him and these Respondents have as much right to insist that according to the Spirit of the said Act of Parliament Singuel is entitled to the same priviledge of Exclusion which Counsellors at Law Physicians or Surgeons Enjoy as the said Petitioner has to Assert that the said John Readhead tho not in the Service of the Company Ought to be Subject to the Penal Clauses of the said act of Parliament

For all which Reasons and for others which may be Offered at the hearing These Respondents pray that the said order of the Honble the Mayors Court May be affirmed and that the said Petition and Appeal may be dismissed from this Honble Court with Costs

Court of Appeals
at
Madraspatnam

Monday the 20th March 1780

Between Rowe Settaram Ranga Mahasnuzy Lavingar Appellant and William Petrie and Alexr Brodie Executors to John Readhead deceased 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 from the Order of the Honble the Mayors Court made in this Cause together with the answer to the said Petition of Appeals and the said Order given in this Cause on Wednesday the 26th day of April Anno Domini 1779 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 doth Accordingly order that the order of the Honble the Mayors Court be Reversed with Costs

P Cur Stephen Sulivan
Clk of Appeals

To the Kings Most Excellent Majesty
in Council

Between William Petrie and Alexander Brodie Two of the Executors Named in the Last Will and Testament of John Readhead Deceased and who have duly Proved the same in and have Obtained Probate thereof from the Honble the Mayors Court at Madraspatnam and Sam Henry Casamayor the other Executor Named in the said will and Testament having refused to

to Action and having formally renounced his
said Office of Executor thereof as by the Records
of the said Court Reference being thereunto had
may Appear. Complainants and Oliver
Pettaram Rauze Mahamauze Longoust
Defendant.

Sheweth The Humble Petition and Appeal of the
said William Petrie and Alexander Brodie.

That the abovenamed Petitioners as Executors Named in the Last will
and Testament of the said John Read had deceased did about the Fifteenth day of
December which was in the Year of our Lord one Thousand Seven hundred and Seventy
Eighty file a Bill of Complaint in the Honble the Mayors Court at Madras
patmans setting forth that the said Defendant stood indebted unto them as Executors
as aforesaid in the Sum of Twenty Two Thousand and Eighteen Pagodas Eleven
Annas and Seven Thousand Eight hundred and Sixty Star Pagodas According to
the Tenor of an Agreement or Sarnad Copy of the Translation whereof thereunto
Annexed which said Sum of Twenty Two Thousand and Eighteen Rupees and eight
Annas make Six Thousand one hundred and Eighty four Pagodas nine fanams
and Seventy Eight Cash which with the said Sum of Seven Thousand Eight
hundred and Sixty Pagodas makes the Sum of fourteen thousand and forty
four Star Pagodas Nine fanams and Seventy Eight Cash Current money
of Madras or in Sterling Money of Great Britain at the Rate of Eight
Shillings for every Pagoda the Sum of five thousand Six hundred and
Seventeen Pounds fourteen Shillings and one Penny or thereabouts and your
Petitioners did further Set forth in their said Bill that they Requested
Payment of the said Sum of fourteen thousand and forty four Pagodas Nine fanams
and Seventy Eight Cash According to the true Spirit intent and meaning of the
said Argument and as Executors as aforesaid or to pay unto them the Sum of Six
thousand one hundred and Eighty four Pagodas Nine fanams and Seventy Eight
Cash and to cause Vizeram Rauze Brother to the said Defendant to Pay

the

to Pay the said Sum of Seven thousand Eight hundred and Sixty Star Pagodas being the
Ballance due on a Bond of Ten thousand Star Pagodas given by the said John Readhead
to Shammaraw Nauck or to Gouverna Dosa Vizeo Dosa to whom the said Shammaraw
Nauck was Gomastah whereof the said John Read had did by Order of the said Defendant
Pay two thousand Four hundred and Forty to one Captain Lyoaght according to the
Meaning of the said Agreement by means whereof the said Defendant as well as his said
Brother was also Indebted to the Estate of the said John Readhead in the Ballance of
Seven thousand Eight hundred and Sixty Pagodas as also in the above Sums of Six
thousand One hundred and Eighty four Star Pagodas Nine fanams and Seventy Eight
Cash and to which the said William Petrie and Alexander Brodie were well intitled
as Executors as aforesaid under and by force and Virtue of the said Agreement and of the
Tenor and Express words of the Last Will and Testament of the said John Readhead
and which said Several Sums the said Defendant ought in Justice to Pay and
Your Petitioners did further Set forth and Charge that the said John Readhead did
Assist the said Defendant in Effecting all or most of the Several Matters Stated
in the Agreement being the Points which the said Defendant wished to have Effected
And that the said John Readhead was continually Soliciting the same as well
With the said Vizeram Rauze as with the Honble Thomas Rumbold Esquire Presi-
dent of the Council of Fort St. George to whom the said John Readhead acted at that
time as Secretary by reason and means whereof and of his Knowledge of the Country
Language and of the Politics of this Country the said John Readhead was enabled
to be and in fact was of essential Service to the said Defendant and was particularly
instrumental in Effecting the Union between the said Defendant and his said
Brother Vizeram Rauze which Union is Expressed in the said Agreement to be
one of the Points so much wished for by the said Defendant and that the said
Defendant Maintained a constant intercourse with the said Thomas Rumbold
thro the Means of the said John Readhead from the said Twentieth day of August
to the beginning of September then next following when the said John Readhead
Died

To which said Bill of Complaint the said Defendant
die about the Eleventh day of January which was in the Year of Our Lord one thousand
Seven hundred and Seventy Nine filed a Demurrer and Plea and Did demur and Plead

unto

unto so much of the said Bill as sought Recovery of the Sum of Seven Thousand Eight hundred and Sixty Pagodas and for cause of Demurrer did Amongst other things say that he ought not to be called to account for the said Sum of Seven Thousand Eight hundred and Sixty Pagodas by Reason that the said John Read Read had in his Life time accepted an Undertaking from the said Vyzeram Rauze to pay the same and that such undertaking without any Averment of the same not being performed was Sufficient in Law to Bar any Demand on the Defendant for the same and the said Defendant did further Demurrer so much of the said Bill as sought the Recovery of Twenty two Thousand and Eighteen Pagodas and Eight Annas saying that the Consideration upon which the said Argument was Obtained by the said John Read Read and the performance thereof were not Sufficient in Law to Bind him the said Defendant to pay the same and did also Plead the act of Parliament made in the Thirteenth Year of Your Most Excellent Majesty Reign in Bar of Your Petitioners Demand

To which said Demurrer and Plea Your Petitioners did on or about the Twenty third day February which was in the Said Year of Our Lord One Thousand Seven hundred and Seventy Nine file a Joinder and insisting that their said Bill ought not to be Dismissed and that the undertaking of the said Vyzeram Rauze did not invalidate or Bar their Claim on the said Defendant the same being by way of Collateral Security to the said John Read Read as to such part of the said Lack of Rupees which the said Vyzeram Rauze undertook to Pay and that such Undertaking did not discharge the said Defendant from the Responsibility to which he was liable to pay the said Sum of Seven Thousand Eight hundred and Sixty Star Pagodas or the said Sum of Six Thousand one hundred and Eighty four Pagodas Nine Fanams and Eighty Cash according to the Meaning of the said Argument and Your Petitioners in their Joinder did by way of Reply contend that the Act of Parliament Recited by the said Defendant in General Terms without Recital of any particular Clause therein was no Reason against the Recovery of the said Sums Stated in their Bill of Complaint under the said Argument and that a Contract for any Valuable Consideration could not be impeached &c

And Your Petitioners further Shew unto Your most Excellent Majesty in Council that the same coming on to be heard over about the Twenty Eighth day of April which in the said Year of Our Lord One Thousand Seven hundred and Seventy Nine the Court were pleased to Dismiss the said Defendants said Demurrer and Plea and to order him to give in an Answer to Your Petitioners said Bill to which Order of the Worthy the Mayors Court at Madraspatnam and all the Proceedings now of Record therein they most humbly Refer and pray that the same may be admitted as part of this their Petition and Appeal to Your most Excellent Majesty in Council

From which said Order of the said Mayors Court the Said Defendant did on or about the Eleventh day of May which was in the said Year of Our Lord One Thousand Seven hundred and Seventy Nine Appeal to the President and Governor and Council of Fort St George as the Court of Appeals Setting forth that he was agrieved by such the Order of the Mayors Court and in Support of his Grievances so by him alledged Reasons for his Said Appeal Several particular parts of his Demurrer and Plea Submitting to the Judgement of that Court whither or no the said Mayors Court ought not to have dismissed Your Petrs said Bill of Complaint and praying that the said Order of the Mayors Court might be Reversed and Your Petitioners Bill Dismissed with Costs

And Your Petitioners humbly Shew unto Your Most Excellent Majesty in Council that Your Petitioners did put in an Answer to the said Petition and Appeal and in Support of and Justifying the Order of the Mayors Court did endeavour to Shew the Justness of their Claim and the Reasons why the said Defendant should be Obliged to Answer Your Petitioners Bill of Complaint and that Your Petitioners Should Receive the Sum due under and by Virtue of the said Sanad

And Your Petitioners further Shew unto Your most Excellent Majesty in Council that the said Petition and Appeal came on to be heard and Determined before the said Court of Appeals on the twentieth days of March last past when the said Court was pleased to Order and that the said order of the said Mayors Court given in the Cause should be Reversed and Your Petitioners Bill Dismissed with Costs all which matters will fully and at large appears by the Copy of the said order of the said Court of Appeals hereunto Annexed for the Inspection of Your most Excellent Majesty in Council to which your Petitioners most humbly Refer and pray that the same may be admitted as part of this their Petition and Appeal

From which said order and Decree of the said Court of Appeals your Petitioners do appeal to Your most Excellent Majesty in Council as they most humbly Apprehend and Conceive that the same is Erroneous and that they are aggrieved thereby for the reasons given by Your Petitioners in their Answer to the Petition of Appeal of the said Defendants and

BECAUSE that such Order of the Honble the Mayors Court of Appeals appears contrary to Law and seems to have been given on principles pretended to be Justified more on Circumstances of Particular Information than on any Grounds of Law which particular information ought to have been a Subject of Evidence in the Cause after the same had been at Issue according to the Rules of Proceeding in the said Honble the Mayors Court instead of being a Ground for Supporting the said Demurrer and Plea

For all which Reasons and for others which will be offered at the hearing Your Petitioners do most humbly Appeal to Your Most Excellent Majesty in Council and do humbly pray that the said order of the said Court of Appeals may be Reversed with Costs and that the order of the Honble the Mayors Court may be confirmed with full Costs to be paid by the said Defendant

And Your Petitioners as in Duty Bound Shall Ever pray

Court of Appeals at Madraspatnam } Monday the 20th March 1780

Between Sree Sellaram Kauze Makrauze Loengar Appellant and William Petrie and Alexander Brodie Executors to John Headlead Deceased Respondents

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 from the order of the Honble the Mayors Court made in this Cause together with the Answer to the said Petition of Appeal and the said order given in this Cause on Wednesday the 26th Day of April Anno Domini 1779 and upon due Consideration had of the Matters severally Contained and of the Pleadings and Agreement used by the Attorneys on both sides This Court doth think fit to Order and Adjudge Accordingly Order that the said Order of the Honble the Mayors Court be reversed with Costs

(a true Copy)

A true Copy from the Order of the Honble the Court of Appeals of the twentieth Day of March last past

To the Honble Thomas Pearse Pearkold Esqr

President and Governor &c. Council of Fort Saint George

In the Court of Appeals

Between Cummapah modeliar &c

Ramah Anjaloo by their Attorny Peter

Both in Complainants and Ivanny

Gudda Paupiah Defendant

The Humble Petition of Appeal of the said Defendant

Sheweth

That the said Complainants did sometime on or about the Nineteenth day of June which was in the Year of our Lord one Thousand Seven hundred and Seventy Seven Exhibit a Bill of Complaint against your Petitioner therein setting forth that Your Petitioner did Stand indebted unto them the said Complainant in the full just Sum of one Thousand three hundred and fifty Nine Pagodas twenty fanams and thirty Cash which the said Complainants did pretend was the Ballance of an Account Current arising upon a Supposed Cadjan Bond or Writing Obligatory bearing date the first day of March which was in the Year of our Lord one Thousand Seven hundred and Seventy Seven a Translate of which said Account Current and also a Copy of an Assignment or Transfer thereof with a power of Attorney were thereunto annexed for the inspection of the said Horible the Mayors Court and were by the said Complainants prayed to be admitted as part of their said Bill of Complaint.

The said Complainants do further in their said Bill Assert that they had frequently and in an Amicable Manner Requested

Filed in my office the 4th Febry 1779

Stephen Sulivan

Clerk of Appeals

Requested Payment from your Petitioner of the said Sum of one Thousand three hundred and fifty Nine Pagodas twenty fanams and thirty Cash

And Your Petitioner further sheweth that he did Appear and did Answer unto the said Bill of Complaint therein denying to be indebted unto the said Complainants in the said Sum of one Thousand three hundred and fifty Nine Pagodas twenty fanams and thirty Cash unto which said Answer the said Complainants did file a Replication insisting upon and confirming their said Demand to be just and your Petitioner did Rejoin thereto denying the Several Matters and things set forth in the said Replication and maintaining the Sundry Matters alledged in his your said Petitioners said Answer Whereupon Issue did join and Rules did pass for the examination of Witness and Witnesses were examined by the said Complainants and publication did pass in the said Cause and the said Cause was Set down for hearing and coming on to be heard on or about the nine tenth day of this present Month of January there being attorney on behalf of your Petitioner the said Honble the Mayors Court were pleased to order and Decree and did Accordingly order and Decree that Your Petitioner should pay unto the Complainants the full and just Sum of one Thousand three hundred and fifty Nine Pagodas twenty fanams and thirty Cash together with Such Interest as then was or should thereafter become due thereon untill full Payment should be made and Your Petitioner further Sheweth that the said Court did moreover and Decree that Your Petitioner should be taxed with double Costs

By which said Decree of the said Honble the Mayors Court Your Petitioner saith he is much aggrieved first because it doth not Appear that the Complainants have sufficiently proved their said Demand in order to ground a Decree for the same for that the Complainants have commenced their said Action upon the Assignment of a Certain Account Current which they say together with a Power of Attorney are annexed unto their said Bill whereas upon Reference being had to the said Assignment it will Appear that the same is of a Cadjan or Writing Obligatory for the

the Sum of one Thousand three hundred and Seventy Seven Pagodas
bearing date the fore[illegible]day of March which was in the Year of our Lord
one Thousand Seven hundred and Seventy Seven which is a Sum far exceed-
ing the Amount of the said Complainants Action which is only for the sum
of one Thousand three hundred and fifty Nine Pagodas twenty fanams
and thirty Cash so that there being an error in the very foundation of the
said Action Your Petitioner conceives that the said Hon'ble the Mayors
Court ought not have gone upon a Decree upon so imperfect and erroneous
Grounds more especially as the said Assignment is not proved which your
Petitioner conceives ought to have been done in order to establish the Right
of Action thereupon For without the said Assignment the said action
could not Legally exist the Transaction of the Original Debt being between
two Natives who are not Authorized by the Charter to commence carry on
Suits against each other so that the said Assignment being the Sole
life and foundation of the present Action against your Petitioner
should not only be exact and [illegible]
any Matter conformable to the Nature
and Degree of the Original Debt pretended to be due to the said Com-
plainants but the same should in Order to Obtain weight in Law sufficient
to be the Ground of a Decree against your Petitioner be proved to be duly and
Regularly executed

And your Petitioner further saith that the said Debt
doth not at all appear to be proved by the Witnesses exhibited to the execution
of the said Bond for all tho' the said Bond might have been as executed Yet
Many Circumstances ought and Regularly read with the Complainants to
have proved and to have set forth in Order to validate their said Demand

For all which matters and things Your Petitioner
doth think himself aggrieved by the said Decree and further more that the said
Hon'ble the Mayors should have taxed your Petitioner to pay double Costs upon
the said Decree Your Petitioner came being left without any Attorney to defend
the same or to urge any thing in favor of Your Petitioner by which means the

Said

said Cause was heard under Circumstances very disadvantageous to Your
Petitioner and in such Situation that it could not be possible for the Court to
judge how far it was the fault or Misfortune of Your Petitioner to have his cause
thus abandoned and that the Charge of Litigiousness should not be warranted
against Your Petitioner upon the forced and strained exaggerations of his oppo-
nents Attorney upon Matters not existing any way dependant or connected
with the Nature of the Cause

Wherefore your Petitioner doth appeal to this
Hon'ble Court and doth most humbly pray that this Hon'ble Court will be
pleased to Reverse the said Decree of the Hon'ble the Mayors Court or such
part thereof as to this Hon'ble Court shall seem Meet and also to give
Your Petitioner such other Relief in the premises as shall be according to
the Equity of Court

Mayors Court
at
Madrasapatnam

Tuesday the 19th Day of July
Anno Domini 1779

Present

George Proctor Esquire Mayor
James Call and Cotton Bowerbank Dent
Aldermen

Between Cunnapah Moodeliar
and Ramah Angaloo Naik of Cuddalore
but at present of Madras Merchants

by

by their Attorney Peter Bodkin of the same place Merchant Complainant and Avanny Gudda Paupiah also of the said place Merchant Defendant

This Cause coming on to be heard and Debated this Day in the Presence of the Attorney for the Complainant the Attorney for the Defendant having Declined acting and an Affidavit of Service of Rules for hearing produced and Sworn to in Court on Reading the Complaints Bill with Translate of a Bond account Current and Copy of an Assignment Annexed the Defendants General answer the Generale Replication the General Rejoinder the Interrogatories and Depositions on the part of the Complainants on hearing the Pleadings made use of by the Attorney for the Complainant this Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of one thousand three hundred and fifty Nine Pagodas Twenty fanums and thirty Cash / Pags 1359. 20. 30. / together with such Interest as now is due shall hereafter become due thereon Untill full payment is made and it is further Ordered and Decreed that the Defendant be taxed with Double Costs for his Litigious suit

By Court

James Taylor
Regr

In the Court of Appeals

Between Cunnapah Moodliar and Ramah Angaloe Naik by their Attorney Peter Bodkin and Avanny Gooda Paupiah.

The Answer of Cunnapah Moodeliar and

and Ramah Angaloe Naik of Cuddalore by their Attorneys Peter Bodkin to the Petition and Appeal of Avanny Gudda Paupiah

Filed in my office the 18th February 1779 Stephen Sulivan Clerk of Appeals

These Respondents not confessing or Acknowledging all or any of the Matters or things to be true as are and by the said Petition and Appeal are mentioned and set forth for answer thereunto say that they believe it to be true that such Decree as is Complained of was made by the Honble the Mayors Court as in the said Petition and Appeal is mentioned and set forth but as to any Grievance Complained of by the Appellant the Respondents say is without any Manner of foundation for the Respondents aforts that the Appellant being indebted unto them in a certain Sum of Money as a proof thereof did give unto them a Cadjan Bond or writing for the Amount thereof declaring that he the said Appellant Stood indebted unto the Respondents the Bill as the Respondents are advised and say being thus Established the same cannot be denied from any other proof than that of denying the Cadjan writing to be the Act and Deed of the Appellant which he in his proceedings before the Mayors Court has never denyed but on the Contrary it Appears by the Account Current Annexed to the Respondents Bill of Complaint that the Appellant has acknowledged that the said Cadjan Writing is his Act and Deed by having paid Sundry Sums of Money to the Respondents for which Credit in the said account Current is given to the Appellant thereby creating a Self Evident proof of the Validity of the Debt as no Stronger proof by Law and Equity is required than a mans own Act and Deed which is proof positive against himself unless the same be Obtained by Duress of imprisonment paid &c. and then in that Case the party executing such a writing must acknowledge the same to be his Act and Deed and pleading the Special matter as to the Avoidance of the same the Respondents further say as they are Advised that it has been adjudged in the Court of Kings Bench at Westminster that on Debt upon a Bond the Defendant cannot plead Nill Debt he does not owe but must plead non Est factum that it is not his

Deed

Dend the Respondents further say the Appellant has only in his Answer
averred that he is not Indebted unto them in the Sum Sued for nor in any
other Sum of Money whatever how the General Issue of Nill Debt is plead-
ed which is contrary to Law because the Appellant was Charged with a
Certain Sum originating from the act and Deed of the Appellant which
he ought to have acknowledged as it is a Rule of Law that no one can avoid
his own act and Deed by averring that it was delivered only on Condition
unless he Shew a writing of the Condition for as the Appellant is charged by
a Sufficient writing so he must be discharged by a Sufficient Writing or by
some other thing of as high Authority as the Obligation the Respondents fur-
ther say that they having Exhibited a translate of the Cadjan Bond or writ-
ing Obligatory and made the same as part of their Bill of Complaint the
Appellant denying that he is not indebted thereupon is no plea to the
Insufficiency or invalidity of the said Cadjan Bond or writing because as the
Respondents are advised the bear denying of the Debt is not sufficient the Special
Matter should have been set forth by the Appellant in his Answer and there
Headed in avoidance of his said Act and Deed which not being done the Cad-
jan Bond or writing Obligatory stands to all intents and purposes good and
Sufficient in Law to charge the Appellant with the said Respondents
further Say that upon this General Answer of the Appellants the Respon-
dents were precluded from Specially Replying in Support of their Bill
of Complaint and left to Support their Charge by the Testimony of Evidence
which the Respondents did by due proof of the hand writing set and Subscribed
by the Appellant to the said Cadjan Bond or writing Obligatory though the
Respondents say there was no Necessity for their so doing because the Plea
Pleaded by the Appellant in his Answer was no plea to the Action and
therefore the Act and Deed of the Appellant stood confessed

The Respondents in Answer to the Objections
which the Appellant makes as Arguments in Support of his Petition and
Appeal begs leave to make the following Observation in Refutation to
Such

Such the Appellants Arguments first the Appellant says it does not
Appear that the Complainants meaning the Respondent have Sufficiently
proved their said Demand made to Ground a Decree for the Same for that
the Respondents have commenced their Action upon the Assignment of a certain
Account Current whereas upon a Reference being had to the said Assignment
it Appears that the same is of a Cadjan writing Obligatory and that the
Sum of the same does exceed the Amount of the Complainants action
which was only for the Sum of one thousand three hundred and fifty nine
Pagodas twenty fanams and thirty Cash which the Appellant terms
an Error in the foundation of the Respondents Action and therefore the
Decree of the Honble the Mayors Court was imperfect and Erroneous in answer
thereunto the Respondents say that they Standing Indebted unto the above
mentioned Peter Boldhen to the full Amount of the Ballance of the account
Current annexed to their Bill of Complaint did Assign Transfer and set
Over the said Cadjan Bond or writing Obligatory in order to recover so much
thereof as Appeared due to the Respondents the Cadjan Bond or writing being
a Specialty and Chose in Action was the best Security that possibly could
be made over to the said Peter Boldhen and which Transfer as the Respondents
are advised do say was agreeable to Law for an Assignee of a Bond or a just Debt
cannot sue in his own Name a letter of Attorney is added to the Deed of
Assignment empowering the Assignee to receive the Debt or to Sue for it in
the Name of the Assignor which from of Law by a reference to the Deed
of Assignment Annexed to the Bill of Complaint will appear in all respects
conformable to such Law and exact in all Shapes to the Precedents made
use of in the like Cases and which no liberty Previlege or Exclusion whether
by Charter Usage or Prescription can set aside that mode of proceeding for the
Recovery of Money on Specialty by Assignment being according to the esta-
blish Law of Great Britain for by the Statute of the 3d. and 4th Queen Anne
Bills of Exchange are Assignable over and so are all Notes whereby any
Person shall promise to pay another, or Order or Bearer the Money mentioned
in Such Note The said Respondents further Say that having thus

Shewn

Shewn to this Hon^ble Court the right of Assignment and the Modern which their action was Commenced are agreable to Law and Equity it now remains for the Respondents to shew why they prefer the Cadjan bond or writing Obligatory to that of the Ballance of the Account Current and the Reason is that the Cadjan Bond Writing was in itself of a higher Nature than the Ballance of the Account Current arising thereon as the Orignal of the Debt had it creation in the making of the Deed or Writing whereas by an Assignment of an Account Current the Orignal of such Account remains to be disputed from the beginning so that the Charge of Error by the Appellant in the Assessment of the two Sums is entirely Vague for the right the Respondents have for the use of the said Peter Bodkin in the Ballance of the said Account arising in the said Cadjan Writing Transferred over as aforementioned the Respondents further say there can arise no Error in the Assignment of the said Cadjan Bond or writing because such Deed or writing is intire in itself and no ways paid on Account of that Bond with the Assignee as the Assignor so that in fact its only Changing of Persons and not the reality for that Still continues a Duty untill the Bond or Note is ultimately discharged the said Respondents further say that the Appellant Charges that the Assignment is not proved which he conceives ought to have been done in Order to Establish the right of Action in Answer thereto the Respondents say they are advised that the Assignment is legal that the execution thereof has never by the Appellant been disputed in any of his proceedings except in his Petition of Appeal now before this Hon^ble Court which comes too late as the Merits of the Cause are only Appealed from and not the Errors or Imperfections that there may be in any of the proceedings before the Hon^ble the Mayors Court the Respondents further say that had there been any doubt as to the legality of the Assignment the same ought to have been excepted to before the final Determination in the Hon^ble the Mayors Court as Exceptions and Demurrer are interlocutory Matters intervening between

between the filing of the Bill of Complaint and the final Determination of the Suit such Exceptions and Demurrer been allowed to lop of the Exuberance Branches of the Suits in order that the matter Complained of whether it be a Debt or Damage may come pure and unincumbered before the Court for their Ultimate Decision but with Submission to this Hon^ble Court the Petition and Appeal of the Appellant does not arise from any Interlocutory Order but from a final Sentence and Decree pronounced on the merits of the Orignal Cause of Action so that the Plea of Error made use of does not come before this Hon^ble Court of Appeals the said Respondents further say that the Appellant having Asserted that as the Transaction of the Orignal Debt being between two Natives whom he says are not Authorized by the Charter to Commence or carry on Suits against each other in answer thereto the said Respondents say they are advised that inasmuch the Natives will consent to Settle their Affairs by a reference to the Mayors Court they are at Liberty so to do in the present instance the Appellant was Sued for a certain Sum of Money arising on a Obligation the Appellant Appears and makes Answer denying the Debt but omits to Plead in his Answer the want of Jurisdiction in the Mayors Court to take Cognizance thereof here the Respondents say implies an Assent to have the Matters in difference decided by the Hon^ble the Mayors Court and Admitting of their Jurisdiction in the discussion but the Respondents beg leave to observe that in the present instance there is a regular Assignment pursuant to the Statute of Queen Ann and that in favor of an European so that whether the Charter does or does not exclude Natives Suing each other Yet the Debt being a Choose in action is legally Assignable pursuant to the said Statute in that Case made and provided any Charter to the contrary notwithstanding The said Respondents further say to so much of the Petition and Appeal of the Appellant wherein he Asserts that the Assignment is the Sole life and foundation of the present Action against him and that the same should not only be exact and in every matter Conformable to the Nature and Degree of the Orignal Debt and that such Assignment

Should

Should be duly proved and regularly acquitted in answer thereto these
Respondents to say that the Assignments in every respect regular and legal
that it Appears in every Shape Sufficiently Authenticated wanting no proof
of its Authenticity there being no Objection thereto by the Appellant in
his proceedings before the Honble the Mayors Court of Course the
Assignment and power of attorney is tacitly Admitted and therefore
the Objections now made by the Appellant are out of time as well as
out of place the said Respondents further say that they having proved
the Hand writing of the Appellant to the Cadjan Bond or writing
Obligatory the said writing is Sufficiently established and Debt arising
fully Shown which is all the Law requires but with Submission to this
Honble Court there was no Necessity to prove the said Writing as the
Appellant never denied the same to be his act and Deed only that he
was not Indebted upon the same to the Respondents but said did not rest
with the Respondents to Show the Consideration for which a Bond is
given nay it is an axiom in Law that all Bonds Notes &c imply a Consi-
deration and all that is required is proof of the Signing and Sealing and
Some other writing of equal force be produced in avoidance of the same
the Respondents further Say that by the Depositions of the Witnesses
on the part of the Respondents it Appears very Clear that the Cadjan
Writing is the Act and Deed of the Appellant and that he was at
Some pains to get persons to Testify his Executing the same thereby
proving that the making and delivery over of the said Cadjan writing was
Solely the act and Deed of himself by which he does acknowledge him-
self to be Indebted and Created a self Evident proof against himself
and which cannot be controverted in any Respect because every persons
Deed is Evidence for or against himself the Respondents further say
that if the Appellant had any doubts about the proof of the said
Cadjan writing that According to Law and according to the Establish
Rules and order of the Honble the Mayors Court the Appellant
Ought to have Demurred or Excepted against the Depositions for
their

their Insufficiency and this should have been done / provided there
had been any Cause for that such Exceptions / after the time of the
Publication of the Deposition of Witnesses and before the Setting down
of the Cause to be heard for after Setting down of a Cause to be heard
no Exceptions on either Side can be Admitted as it is Supposed that
the Merits of the Orignal Complaint is to be ultimately decided on
and those only - so that the Objections the Appellant now makes
come too late as it is not the insufficiency of the Depositions
Appealed from but the final Decree of the Honble the Mayors
Court pronounced on the Debt the said Respondents further say
that they do not conceive that the Appellant can be aggrieved by being
Adjudged to pay double Costs because the litigiousness was so very Apparent
in the Course of the proceedings by putting the Respondents to the proof
of their property for the use of the aforementioned Peter Bodkin the
Delays made use of and the desertion of the Attorney at Law employed
by the Appellant for no other purpose than
the Ultimate decision of the Honble the Mayors Court The Bill
of Complaint having been filed in the Month of June One
Thousand seven hundred and Seventy Seven and a Decree pronounced
in favor of the Respondents the Nineteenth of January in the pres-
ent Year One Thousand Seven hundred and Seventy nine whereas the
whole of the proceedings as they now Stand might have been gone through
and decided on in the Course of two Months the Respondents further
Say that the Appellant Complains that he was without any
Attorney to defend his Suit or to urge any thing in favor of the
Appellant by which means his Cause was heard under circumstan-
ces very advantagious to him and that it was impossible for the
Court to Judge how far it was the fault or Misfortune of the
Appellant to have his Cause thus Abandoned in answer thereto
the Respondents say that the Attorney at Law for the Appell-
ant having Refused to be employed any further on behalf of the

Appellant

Appellant the Respondents by their Attorney did move for and procure an Order for the Cause to come on to be heard which Order had frequently from time to time been served on the Appellant and his Attorney at Law an affidavit of which Service was made in Court pursuant to the practice of the said Honble the Mayors Court so that the fault lay in the Appellant by not employing some other Attorney of the said Court the want of which did not in the least injure his proceedings because the whole of the proceedings were read and debated upon by the Honble the Mayors Court as If the said Appellant or his Attorney at Law had been present and as to the Charge of Litigiousness arising from the forced and Strained exaggerations of the Respondents Attorney upon matters not existing the Respondents say they have been informed that their Attorney at Law did not in any Shape Speak to the Business as it Appeared to him that there was no further occasion to Support the Respondents demand by any Arguments further than the proceedings then before the said Court for all which matters and things the said Respondents humbly conceive and are advised that the said Decree of the said Honble the Mayors Court is agreeable to Equity and Justice and therefore humbly hopes that the same shall be Affirmed and that the said Petition and Appeal of the Appellant be dismissed this Honble Court of Appeals with exemplary Costs.

Court of Appeals at Madraspatnam } &c Monday the 20th March 1780

Between Avarany Cuddla Pauliah Appellant and Cunnapah & Ramanjalo by Peter Bodkin Respondent

This Cause coming on this day to be heared 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 16th Day of January Anno Domini 1779 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 be Confirmed with Single Costs in this Court.

By Cur Stephen Sullivan
Cl. of Appeals

To His Most Excellent Majesty in Council

Mayors Court Madraspatnam

Between Cumanpah Moodelar and Ramah Angallee by their Attorney Peter Bodkin

And

Swamy Gudda Panpah

The Humble Petition and Appeal of the said Defendant

Sheweth

That the said Complainants by his said Attorney did Sometime on or about the Nineteenth Day of June which was in the Year of Our Lord One thousand Seven hundred and Seventy Seven Exhibit a Bill of Complaint against Your Petitioner in the Mayors Court of Madraspatnam setting forth therein that your Petitioner did Stand indebted unto them in the full and Just Sum of One thousand Three Hundred and fifty Nine Pagodas Twenty fanams and thirty Cash which the said Complainants did pretend was the Ballance of an Account Current arrising upon a Supposed Cadjan Bond or writing Obligatory bearing Date the first day of March Which was in the Year of Our Lord one thousand Seven hundred and Seventy Seven a translate of which said Account Current and also a Copy of an Assignment or Transfer thereof with a power of Attorney were thereunto annexed for the Inspection of the said Mayors Court of Madras aforesaid which were by the said Complainants prayed to be admitted as part of their said Bill of Complaint the said Complainants did in their

their said Bill aforesaid that they had frequently and in an Amicable Manner requested payment from Your Petitioner of the said Sum of One thousand three Hundred and fifty Nine Pagodas Twenty fanams and thirty Cash

And Your Petitioner Sheweth that he did Appear and did Answer unto the said Bill of Complaint thereby denying to be Indebted unto the said Complainants in the said Sum of one thousand three Hundred and fifty Nine Pagodas Twenty fanams and thirty Cash unto which said Answer the Complainants did file a Replication insisting upon and Confirming their said Demand to be just and Your Petitioner did Rejoin thereto denying the Several Matters and things in the said Replication and Maintaining the Sundry Matters and things alledged in his Your Petitioners said Answer after which issue did Join and Rules did pass for the Examination of Witnesses and Witnesses were Examined by the said Complainants and Publication did pass in the said cause which was Entered down for hearing and Coming on to be heard on or about the Nineteenth day of the Month of January which was in the Year of Our Lord one thousand Seven Hundred and Seventy Nine there being no Attorney on behalf of Your Petitioner the said Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that Your Petitioner Should pay unto the said Complainants the full and Just Sum of one thousand three Hundred and fifty Nine Pagodas Twenty fanams and thirty Cash together with Such Interest as then was or should thereafter become due thereon until full payment Should be made and Your Petitioner further Sheweth that the said Court did further Order and Decree that Your Petitioner should be taxed with Double Costs of Suite

By which said Decree Your Petitioner thinking himself aggrieved did Appeal therefore unto the President and Council of Madraspatnam aforesaid According to the direction of Your Most Excellent Majestys Royal Charter and did then show for Cause of

Appealing

Appealing First. Because it did not Sufficiently Appear that the Complainants had proved their said Demand in Order to Ground a Decree for the same the Complainants having Commenced their action upon the Assignment of a certain Account Current which they say together with a power of Attorney are Annexed unto their said Bill whereas upon Reference being had to the said Assignment it will appear that the Same is of a bad an Bond or writing Obligatory for the Sum of one Thousand Three Hundred and Seventy Seven Pagodas bearing Date the first day of March which was in the Year of Our Lord One Thousand Seven Hundred and Seventy Seven which is a Sum far exceeding the Amounts of the Complainants Action which is only for the Sum of one Thousand Three Hundred and fifty three Pagodas Twenty fanams and thirty Cash so that there being an Error in the very foundation of the said Action Your Petitioner humbly conceived that the said Mayors Court ought not to have gone upon a Decree upon so unjustified and erroneous a foundation more especially as the said Assignment is not proved which Your Petitioner further says and conceives ought to have been done in Order to establish the Right of Action thereupon for that without the said Assignment the said Action could not legally exist the Transaction of the Original Debt being between two Natives of India who are not authorized but are excluded by Your Most Excellent Majestys Royal Charter from commencing or Carrying on Suits against each other so that the said Assignment being the sole Use and foundation of the said Action against Your Petitioner should not only be exact and in every Matter Conformable to the Nature and Degree of the Original Debt pretended to be due to the said Complainants but the same should in Order to Obtain weight in Law sufficient to be the Ground of a Decree against Your Petitioner be proved to be duly and Regularly executed.

Your Petitioner did moreover Shew that the said Debt did not at all Appear to be proved by the Witnesses exhibited to the

to the execution of the said Bond for that although the said Bond might have been so executed Yet many Circumstances ought and did Regularly not with the Complainants to have proved and to have Set forth in Order to Validate their said Demand.

For all which Matters and things Your Petitioner did allege that he thought himself aggrieved by the said Decree and further because the said Court should have taxed Your Petitioner with Double Costs upon the said Decree Your Petitioners Cause being left without any Attorney to defend the Same or to urge any thing in favor of Your Petitioner by which Means the said Cause was heard under Circumstances very Disadvantageous to Your Petitioner and in such Situation that it could not be Possible for the Court to judge how far it was the fault or misfortune of Your Petitioner to have his Cause thus abandoned and that the Charge of Litigeousness should not be warranted against Your Petitioner upon the forced and strained exaggeration of the Opponents Attorney upon matters not existing or any way dependant on or connected with the Nature of the Cause.

Wherefore Your Petitioner did Appeal to the said President and Council and did Humbly pray that they would be pleased to Reverse the said Decree or such part thereof as to them should seem Meet and also to give Your Petitioner such other Relief in the premisses as should be According to the Equity of the Court and Your Petitioner further Sheweth that the said Complainants as Respondents did Answer the said Petition and Appeal of Your Petitioner which Petition together with the said Answer came on to be heard before the said President and Council on the twentieth Day of March in the Present Year of Our Lord One Thousand Seven Hundred and Eighty when Your Petitioner Sheweth that they in their Capacity of a Court of Appeals instead of Reversing the said Decree of the Mayors Court aforesaid or of giving Your Petitioner any Relief thereon did order and Decree that the same should Stand confirmed with Costs by which said Decree

Your

Your Petitioner doth find himself much aggrieved for the Reasons before in his Said Petition and Appeal given and further that it Appearing by the proceedings in the said Cause that Your Petitioner did deny to have indebted unto the Said Complainants in his Answer to their Bill of Complaint it was their duty full to have proved the same which Your Petitioner with Humbly Submission conceives they have not done in any Manner to warrant the said Decree as all the proof exhibited by the Complainants only goes to the Execution of the said Bond without Shewing any Demand of payment which however is expressly Charged in the Bill or any promise of payment by Your Petitioner made but on the Contrary it Appears by the said Bill that Your Petitioner refused to pay the Complainants Demand which made it the more necessary in case the Complainants had it in their Power to prove that it was done to do So which could have been easily and without any difficulty done if the Debt had been actually owing and no such Evidence appearing is not only a Strong presumption but a full Evidence of the Same not being due and as a further Objection against the said Decree Your Petitioner humbly Conceives that the Original Contract being Negotiated between two Indian Natives who are by Your Most Excellent Majesties Royal Charter excluded from the Right of Action against each other the Complainants could not give or dispose any legal Right of Action to the said Attorney who cannot by the said Assignment and power of Attorney be put in a better Situation than the Assignors Original were in whose place and Stead the Attorney was transferred thereby as Your Petitioner humbly Conceives it is not the Person but the Original Contract which is to be Attended to for all the the Attorney might have Maintained an Action against Your Petitioner in case Your Petitioner had been the Obligee to him the said Attorney in the said Bond Nevertheless the said Attorney cannot as Your Petitioner with Submission conceives procure the same Right of Action by Assignment of a Debt original Contracted by the Negociations of two Indian Natives according to the Customs of their Cast which Customs being preserved to them in the Determination of Civil Suits and Actions it is Natural Suppose that Your

Your Petitioner or any Natives of India would not expose themselves to a Jurisdiction from which they are exempted if they had reason to apprehend they could be compelled to it by such easy evasions and further Your Petitioner Humbly prays leave to offer to Your Most Excellent Majesty in Council that the Nature and institution of the said Action tends to evade and Set aside the intention of the Royal Charter by introducing Suits into the Mayors Court at Madrass that name of which they can have no Cognizance or Jurisdiction by means of Assignment and power of Attorney which Assignment and power of Attorney are by the Complainants annexed in their said Bill as indispensable to warrant the Same the Complainants thereby virtually admitting that the said Bill could not be Sustained independant of such Assignment and power Your Petitioner therefore from the Complainants own principal of Action doth humbly conceive that the said Assignment and power are meant to be legal and in all points formal and Adequate in the Law for the purposes purposed from them and if they are not that the Complainants themselves will not Maintain that they are Sufficient to answer the ends which he Originaly hoped to Attain by their execution and Your Petitioner Saith that his answer to the said Bill did go to the whole thereof and the said Assignment and power being so essential a part of the said Bill it was as indispensable in the Complainants to prove the Consideration and execution of the said Assignment to be Bonafide as it was for them to prove the execution of the said Bond and this having Neglected to do so leaves a Vacuum in the Evidence which cannot be supplied by any Construction an implication whatever for by Your Petitioner pleading Generally to the said Bill it was the Duty of the Complainants to prove the whole not Generally but particularly and in every part all tho it might have been otherwise if Your Petitioner had pleaded any Special points because by Noting his Defence upon any particular defect or Objection was a tacit and implied confession of such points not

pleaded

Pleaded to and which may more generally be needless to prove in Evidence but in the Present Instance Your Petitioner Humbly conceives that every part essential to the existence of the Suit should and ought to have been proved.

For all which Matters and things Your Petitioner doth Appeal to Your Most Excellent Majesty in Council Humbly Referring the aforegoing premisses praying that Your Most Excellent Majesty in Council will be pleased to Reverse the said Decree of the Mayors Court and of the President and Council of Madraspatnam aforesaid.

To the Honble Sir Thomas Rumbold Bart
President and Governor &c. Council of Fort St. George

In the Court of Appeals

Between Charles Bromley Complainant
and
George Stratton Henry Brooke Charles Floyer Archdale Palmer Frances Sowdon and George Mackay Esquires Defendants

The Petition and Appeal of the said Defendants

That the said Complainant did Some time on or about the Fourteenth day of February which was in the Year of Our Lord One Thousand Seven hundred and Seventy Eight file a Bill in the Honble the Mayors Court against Your Petitioners Setting forth that Your Petitioners stood indebted unto the said Complainant in the Sum of Fourteen Thousand Two hundred and Thirty five Star Pagodas and twenty five fanams as the Ballance due on an Account thereunto annexed the Debit Side of which Account Current Consists of two Articles Namely the Sum of Fourteen Thousand Seven hundred and Ninety three Star Pagodas and Nineteen fanams being the Amount of a Bill of Fees to the said Bill of Complaint also annexed and which said Bill of Fees is said to be for Business pretended to be done by the said Complainant as Solicitor on behalf of Your Petitioners and the Sum of One Thousand One hundred and Seventy Pagodas being the Amount of a Bill of Fees to the said Bill of Complaint also annexed for Business pretended to be done by the said Complainant in his Capacity as Notary Publick and which said Two Sums amounts in the whole to the Sum of Fifteen Thousand Nine hundred and Sixty three Star Pagodas and Nineteen fanams In part and an Account whereof the said Complainant has given Credit for the Respective Sums of Seven hundred and twelve Pagodas and thirty Six fanams Nine hundred and Fifty Pagodas and Sixty five Pagodas as will appear by the said Account Current and the said two several Bills of Fees to which Your Petitioners pray to Refer this Honble Court and also that they may have the full Benefit thereof and of Each and Every part thereof as if the Same were herein more particularly set forth and Your Petitioners Shew that the said Complainant did Set forth in his said Bill of Complaint that he was employed as Solicitor and Agent and also as Notary Publick by Your Petitioners not only for themselves but also for and on Account of Brigadier General James Stuart Lieutenant Colonel Mathew

Horne Captain James Eidingtown and Captain Arthur Lyoaght on certain
Business at the Sessions of Oyer and Terminer and General Goal Delivery
for the Town of Madrassapatnam they Your Petitioners and the said James
Stuart Mathew Horne James Eidingtown and Arthur Lyoaght then
Standing accused of Homicide by an Inquest delivered in by George Andrew
Ram as Coroner to the Honble John Whitehill Esquire one of his
Majestys Justices of the Peace who did thereupon issue Warrants to
Apprehend Your Petitioners and the said James Stuart Mathew
Horne James Eidingtown and Arthur Lyoaght whereupon Your
Petitioners and the said James Stuart did Surrender themselves and
were by the said John Whitehill committed to the Custody of the
Sheriff of the Town of Madrassapatnam the said Bill of Complai-
nt also Sets forth that the said George Stratton one of Your Petitioners
did on the first hearing of the Inquest send an Express for the Complai-
nant and that on his arrival he was consulted by the said George
Stratton and others in the Steps Necessary to be taken in their then
Situation and the said Bill of Complaint proceeds to Set forth the
Sundry Meetings held on the said Business the Instructions given by your
Petitioners to the said Complainant the Attendances given by the Complai-
nant the Copies of the Papers made out and the other acts and things
done by him on their account the said Bill also states Several Altera-
tions between the said Complainant and George Mackay one of Your
Petitioners respecting the Sum which the Complainant ought to have
Receive for his trouble and the Manner in which it ought to be paid the Refere-
nce to James Tyler Esquire as to the Quotum which the said complainant
ought to have Received and the said Complainants acquiescence as to the
Quantum proposed by the said James Taylor and finally agreed to by Your
Petitioner George Mackay on the part of himself and Your other Petitioners
the said Bill of Complaint then States that Your Petitioner George
Mackay offered to pay his proportion of the said Sum so finally settled
by the said James Taylor and the said Complainant to if the said Complainant

Would

Would Sign Receipt to the said George MacKay for his proportion to which
the Complainant objected unless the said George MacKay and the others
Your Petitioners would be Jointly and Severately responsible for the remain-
der which Responsibility being Refused the said Complainant declined to
Sign the said Receipt saying that if he must go to Law for a part he must
go to Law for the whole the said Bill of Complaint then states that the
said Bill of Charges thereunto annexed is for Business done at the Quarter
Sessions and for Business done as Notary Publick and that Your Petitioners
were indebted unto the said Complainant in the said Sum of Fourteen thou-
sand two hundred and thirty five Star Pagodas and Twenty five fanams
as appears by the said Account Current and that he had frequently and in
an Amicable Manner Requested Payment And so forth and prays
Herein and thereby prayed that Your Petitioners might be Decreed to
Pay unto the said Complainant the said Sum of Fourteen thousand
two hundred and thirty five Star Pagodas and Twenty five fanams with
Costs of Suit to and that Your Petitioners should be Summoned and required
to Appear before the said Honble Court at a certain time and place to be
by the said Honble Court pursuant and appointed then and there to answer
the said Bill of Complaint and to Stand to and abide by such Order
and Decree as to the said Court should Seem Meet to which the said
Bill of Complaint Your Petitioners Appeared by their Attorney and
Your Petitioner the said Charles Floyer did on the Fourteenth Day
of April which was in the Year of Our Lord One thousand Seven
hundred and Seventy Eight file and did Swear to his Answer and the
Said Archdale Palmer and Frances Jourdan did also file and Swear to
their Joint and Seperate Answer on the Twenty first day of April which
was in the Year of Our Lord One thousand Seven hundred and Seventy
Eight wherein among other things the said Charles Floyer Archdale Pal-
mer and Frances Jourdan did Deny that the said Complainant was
employed by Your Petitioners on Account of the said James Stuart

Mathew

Mathew Horne James Eidingtown and Arthur Lyoaghil or either of them on any Business at the Sessions of Oyer and Terminer and General Goal Delivery for the Town of Madraspatnam they did also deny that the said Complainant was employed by them to provide the Proceedings of the said Inquest at any Expence nor do they believe that any there of your said Petitioners gave any such order they also denied that any Instructions were given by them nor do they believe any Instructions were given by any other of Your Petitioners to be said Complainant to make Such Several and Distinct Copies as might enable Your Petitioners to make a Joint or Separate Defence they also deny having given their Concurrence to the Instructions pretended by the said Complainant to have ben Received from Your Petitioner George Mackay Namely that Copies of the Proceedings should be sent Round to each of the Persons concerned they also shew by their said Answer that the First Bill of Costs exhibited by the said Complainant being deemed exorbitant was Returned to him whereupon he gave in a Reduced Bill of Costs which Reduced Bill did not Amount to so much as the first Bill by the Sum of three thousand Pagodas and upwards and the said Archdale Palmer and Frances Jourdan set forth also that the said Bill first delivered in did not amount to more than Eleven thousand Pagodas or thereabouts which is above Four thousand Pagodas less than the Sum Charged in the Bill of Fees annexed to the said Bill of Complaint the said Archdale Palmer and Frances Jourdan also say that the Complainant had confessed that he had reduced the said Bill of Eleven thousand Pagodas and upwards to Seven thousand one hundred and Twenty Eight Pagodas and Nine fanams The said Petitioners Charles Floyer Archdale Palmer and Frances Jourdan also Sate that the said George Mackay did lay before them two Bills received from the said Complainants which after they had examined they said desired the said George Mackay to inform the said Complainant that there were several Overcharges in the

in the said Bills for Several Services which were never performed and Several Copies which were never Delivered they Submit to the said Court whether by any thing charged by the Complainant in his Bill of Complaint the Several Defendants should be Seperately bound for the whole of the said Bills of Charges they deny also that the Idea of Making out of Seperate Bills was ever Dropt by them they also deny any Knowledge of the Conversation Stated in the said Bill of Complaint to have passed between the said Complainant and the said George Mackay about any Agreement in Writing which the said George Mackay said on the part of himself and Your other Petitioners they would enforce by Law unless the said Complainant meant thereby the Alteration of his Last Bill where he drew out the Proportions of each they deny also having ever declared or having heard the said George Mackay say he had ever declared that the said Complainant was not to quit his Claim on Your Petitioners for the Charges of the Said James Stuart Mathew Horne James Eidingtown and Lyoaghil and the said Petitioners Frances Jourdan expressly says that he agreed with Your other Petitioners to pay his proportion which appeared to be due after deducting the said Charges the said Defendants did on their said Answers Submit to the consideration of the said Mayors Court whether for the reasons therein and herein before Stated and more especially by the Confessions made by the said Complainant the said Bill of Fees ought not to have been reduced as being much overcharged and whether by ought which did Appear on the said Bill of Complaint Your said Petitioners are liable to pay more than their several Sixth Parts or Proportions of such Bill of Charges as should be Judged Reasonable and to be a proper Compensation for the Trouble and Expences incurred by the Complaint as Stated in the said Bill of Complaint and Your Petitioners Prayed to be dismissed with their Costs and Your Petitioners the said George Stratton Henry Brooke and George Mackay did by their several Attorneys file their Answers in the said Court according to the Usage and practice of the said Court and with the Consent of the said

Complainant

Complainant who consented to have the same filed without Oath as
Your said Petitioners were also sent from Madras at the time when the
said Complainants filed his said Bill of Complaint by which said
Answers the merits of the said Complainants Claim on Your Petitioners
is Submitted to the Consideration of the said Court and Your Petitioner
the said George Mackay did therein State his having paid an Account
of his share due to the Complainant the Sum of One Thousand and Ninety
Two Pagodas and Twenty four fanams and that he had offered to pay the
Sum of Ninety three Pagodas and Twenty Seven fanams making together
the Sum of One Thousand One hundred and Eighty Six Pagodas and Eleven
Fanams being the Sixth Part or Proportion of the said reduced Bill
and that his said Attorneys were ready to pay the same and they prayed
that the Complainants Bill be dismissed with Costs To which said several
Answers the said Complainant did file his Replication on the Twenty
fifth day of May which was in the Year of Our Lord One thousand
Seven hundred and Seventy Eight and therein among other things by him
Set forth and Alledged by way of Supporting his Claim on Your Petitioners
in the full extent as Stated in his Bill of Complaint did Stated as
a Reason why the said Charles Tyloyer employed him on the part
of the said James Stuart that the Name of the said James Stuart is
inserted in a certain Petition delivered in to the Justices and that the
said Petition contained the Names and was written on account of every
Person concerned in the Inquest nevertheless the said Complainant
conceived he had no Claim except on Your Petitioners for payment he
States also that the said Charles Tyloyer entered into certain Bonds
of Indemnification with the said James Stuart Mathew Horne
James Cuding town and Arthur Lyoaght he also Set forth by way
of Reason why he thought no Expence should be Spared several
Notes or Letters said to be Received from Your Petitioners George
Stratton and George MacKay none of which Maintain the Word

Expence

105

Expence or Contain any Order for the furnishing of all or any of those
Copies of the Proceedings which are Charged to the General Bill of Costs
as if furnished for the General Good of them all Save and except the
Letter of George Stratton under Date from Trechinopoly of the Eleventh
Day of December which was in the Year of Our Lord one thousand
Seven hundred and Seventy Seven wherein he desired to Speake to Your
Petitioners Charles Tyloyer and to Benjamin Sulivan Esquire to have
Attested Copies of the Exceptions to the Inquest and the Petition to the
Justices of which the said George Stratton desired that an Attested Copy
should be sent home Publickly as soon as possible and Your Petitioners
Shew that so far from the said Letter containing any Express order for the
furnishing all the said Copies which are charged in the said Bill of Fees
the said Complainant quotes a Letter from Your Petitioner George Stratton
Dated Madras the fourteenth day of December which was in the Year
of Our Lord One thousand Seven hundred and Seventy Seven wherein
are the following Words Their reasons according to Form
the Papers went properly attested from the President and Council for
it was an Supposition that they would not sent every paper that I desired
Copies from You the said Complainant also States a Difference in Opinion
between Your Petitioners as to the mode of Reference and that Your Petitioner
George Stratton wanted to have an Indictment preferred against them
Singly the said Complainant states also that in Consequence of the
said Difference of Opinion Your Petitioner the said George MacKay
did insist on Copies of the Proceedings of the Inquest being made by the
said Complainant and circulated round to all Your Petitioners and
further said that whether Your Petitioner George Stratton approved
of the measure or not it was of no consequence and directed the Compl
ainant to go on without consulting the said George Stratton as the
said George Stratton would not give them any Copies of the Proceedings
and that the same was said in the Presence of the said Mathew Horne

and the

And the Complainant States also that he should have made but one Copy of the Proceedings had it not been for the Repeated Directions of the said George Mackay who undertook the Management of the Business the said Complainant also States that Your Petitioner the said Charles Floyer had not been furnished with a Copy of the Proceedings even at so late a Date as when Your Petitioners assembled to consult about Prosecuting the Jury and that on the said Complainant offering to send them the said Charles Floyer refused to Receive the said Copy the said Complainant also States that the said George Mackay had informed him that the said Charles Floyer would Pay his Proportion of the said George Mackays reduction provided the said Complainant would give him a Receipt in full which the said Complainant says he Refused from an Idea that all the Defendants were bound to make Regard the whole of the Charges and after Stating Sundry other Matters the said Complainant Prayed for the same Remedy against Your Petitioners as in and by the said Bill of Complaint he had already Prayed to which said Replication Your Petitioners did file a Special Rejoinder in the said Mayors Court on the Twenty Eighth day of February which was in the Year of Our Lord One Thousand Seven hundred and Seventy Eight wherein among other things they deny to Stand indebted to the said Complainant in the Sum Charged in his Bill of Complaint and that they are bound Jointly and Severally but that each is bound to pay his own Share of such Bill of Costs as Shall appear to be justly and legally due and the said Charles Floyer doth not that the notes Quoted by the said Defendant contain any Order or Instructions for the said Complainant to be employed on the part of the said James Stuart Mathew Horne James Eidingtown or Arthur Lyoght or any or either of them and the said Charles Floyer further insists that has having executed any Bonds of Indemnification to the said James Stuart Mathew Horne James Eidingtown and Arthur Lyoght in an agreement that they

that they were liable in the first instance to the said Complainant and that they then had their Remedy over against the said Charles Floyer the said Charles Floyer also insists that none of the Letters quoted by the said Complainant contain any Order to burn nor to spare any Expence in procuring the Copies of the Proceedings of the Inquest and that the Complainant acknowledges that the said George Mackay alone gave the Order for furnishing the said Copies and that the said George Stratton Objected thereto and the said Charles Floyer further says that his Objection to the Complainants delivering up the Office Copies of the said Proceedings was that he should thereby be deprived of serving them at the said Complainants Office the said Charles Floyer also insists that the very Letters quoted by the Complainant to support his Claim to charge for furnishing distinct Copies of all the Proceedings to each of Your Petitioners Manifestly destroy all pretence to any Claim for the same the said Letters being Expressive of their Respective Papers Your Petitioners Respectively wanted and his Order for furnishing a compleat Copy to the Grand Jury is an Argument that such one Copy should be Sufficient the said Charles Floyer also States that by the Complainants own Shewing he ought not to pay for any Copy as the same was not in his Possession at the time he wanted to prepare for his Defence the said Charles Floyer also insists that the Reduction of the first Bill of Costs having been under the Inspection of James Taylor Esquire Register of the said Court whose Official Situation as well as sound Knowledge and impartial Rule of Determining all Matters Referred to him made him proper Judge of the Amount of such Fees as the said Defendant could equitably Claim ought to be binding to the said Complainant he further insists on behalf of himself and Your other Petitioners that as the said Complainant had brought each and every of them before the said Court that each of Your Petitioners was liable only to his Share of such Sum as should be Decreed in favour of the Complainant the

Said

Said Charles Thayer also says that being unacquainted with the Nature of Law Charge he Submitted the whole to the Determination of the said Court declaring at the same time that the said Bill of Fees and Disbursements Appeared to him to be enormous exorbitant and beyond all Bounds of Justice Law Reason Equity or Good Conscience

Your said Petitioners Archdale Palmer and Frances Jourdan do therein say that for or notwithstanding any thing by the said Complainant Set forth in his Replication their answer stands uncontroverted and they Submit to the Consideration of the said Court that they are each Answerable only for a Sixth part of the Bill of Fees or Disbursements which the said Court might adjudge to the said Complainant Your other Petitioners in like Manner by their said Attornies say that their said Answer stand Uncontroverted and all Your Petitioners pray as in and by their said Answers they had Already Prayed Your Petitioners further Shew that the said Cause after the said Rejoinder was filed being at Issue the said Complainant did Examine Several Witnesses in order to Support his said Claim against Your Petitioners and in particular the said Complainant did Examine the said Mathew Horne and James Taylor touching Sundry Matters and things and Publication having passed the said Cause was set down for hearing and came on to be heard before the said Honble the Mayors Court on the Twenty Ninth day of September last past when the said Court were pleased to order and Decree that Your Petitioners do Jointly and Severally pay unto the Complainant the full and Just Sum of Eleven thousand One hundred and Seventy Pagodas without Interest in full for the Fees and after Deducting therefrom the Sum of One thousand Seven hundred and Twenty five Pagodas and thirty Six fanams for which Amount the Complainant had given Your Petitioners Credit in the Account Annexed to the said Bill of Complaint and that Your Petitioners do pay all Costs of Suits

Your

Your Petitioners Shew that they do conceive themselves much aggrieved by the said Decree as to the Three fourths thereof Namely their being Jointly and Severally bound the Guarantors of the Decree and the Costs of Suit and humbly Appeal therefrom to this Honble Court for the following among other Reasons

First as to Your Petitioners being Jointly and Severally bound in the whole Amount of the Decree

Because the said Complainant in his said Bill of Fees and which is the Claim on which he Charges Your Petitioners instead of Charging one Retainer as for a Joint Cause has Charged Ten Seperate Retainers Namely one for each of Your Petitioners and one for each of them the said James Stewart Mathew Horne James Eidingtown and Arthur Lysaght whereby he seems to have Considered each as Liable to his Share of the Charge he hath also stated that tho' he Recommended that a Committee should assemble for the purpose of of Carrying on the Law Suits it was objected to he also States a Difference in Opinion Between Your Petitioners as to their mode of Defence and that Your Petitioners George Stratton wanted to have an Indictment preferred against him Singly he also States that the said George Mackay alone gave the Order for furnishing the said Copies and that the said George Stratton objected thereto Your Petitioners the said Frances Jourdan Shews that his Case differed also so materially from that of Your other Petitioners that had there been a trial he could not in Justice to himself have Stood with Your other Petitioners but must have Shewn Severally that the Detention of George Lord Pigot after October which was in the Year of our Lord one Thousand Seven hundred and Seventy Six was

Contrary

Contrary to a Motion made by the said Frances Jourdan and Carried against them by a Majority in Council and he further says he had prepared Sundry Papers to lay before the Grand Jury inclosing Copies of the said Motion for the Release of the said George Lord Cigot with Sundry Defends and Opinions with none of which the other Defendants have been Charged

All which Matters and things seem Clearly to Shew that the Complainant has no Joint and Separate Claim on any one of Your Petitioners for the whole of any Sum already Decreed or to be Ultimately Decreed in his favour but that for the Reasons aforesaid and as he has thought proper to commence his Suit against all Your Petitioners the Payment of the Amount of the Decree should be apportioned equally among them

Second as to the Sum of Eleven thousand one hundred and Seventy Pagodas Decreed to be paid by Your Petitioners they Appeal therefrom

Because that by the Title of his Bill of Suit and by the Matters and things Set forth by the said Complainant in the said Bill of Complaint and in the Replication the said James Stewart Matthew Horne James Edingtown and Arthur Lyaught appear equally concerned with Your Petitioners and Should therefore Pay their Shares thereof and in particularly they Should pray for such Copies of Proceedings or other Papers as were Supplied to them and further that from the Proceedings had in the said Mayors Court thereof Your Petitioners have Severally denied Upon Oath that they gave any Orders for the furnishing of Distinct Copies of the said Proceedings to the Several Persons mentioned in the said Bill of Fees and that they believe the other Defendants

had

had never given any such Instructions and because that the Evidence given by the said Mathew Horne doth not Prove that the said George Markey gave any Orders for furnishing Such Copies that two thirds of the said Bill of fees consists of Charges made for Extra Copies furnished to Divers and Sundry Persons against whom Respectively the said Complainants Appears to have no Claim in Law if he can Prove that Instructions had been given him for that purpose but that Your Petitioners Conceive they Ought not to Pay the same or any part thereof And that they are only Bound to Pay their Several Ratios of a General Bill for Business done for them Generally and to such an Amount as May Appear to be a proper Compensation for the trouble the said Complainant had on their Accounts

Third as to the Costs of Suit Decreed by the said Mayors Court to be paid by Your Petitioners they Appeal therefrom

Because Your Petitioners the said Charles Tilyer and George Stratton have by the Complainants own Shewing appeared willing to Pay to the Complainant a Reasonable Compensation for his Trouble and the said Complainant hath in no wise proved any Refusal of proper Satisfaction from any other of Your Petitioners and also

Because the said Mayors Court did Shew in Some of the acts Your Petitioners conceive not in a Sufficient Manner their Disapprobation of the said Complainants Demand by Curtailing therefrom the Sum of Four thousand Seven hundred and Ninety three Pagodas and Nineteen fanams

Fort

For all which Reasons and for others which May be offered at the Hearing Your Petitioners Pray that the said Decree of the Mayors Court may be Reversed with Costs and that Your Petitioners may have such further and other Relief in the Premises as to this Honble Court shall seem Meet.

Mayors Court Held at the Town Hall on Wednesday the 29th day of Sept. Anno Domini 1779

Present

Georg Proctor Esqure Mayor

Edw. John Hollond Esq. Roebuck

Cotton Bowerbank Dent Edw. Garrow

Edwd Saunders and William Webb

Aldermen

123

Charles Bromley
1903

George Stratton Henry Brooke Charles Floyer
Archdale Palmer Frances Jourdan and
George Mackay

Wm Gedion Firth one of the Witnesses on the part of the Complainant who on the 7th day of this Instant did apply to this Court to Rectify his Deposition to the 8th Interrogatory appear and being duly Sworn the 8th Interrogatory put to him by the Examiner is now put to him in Court and the Evidence he now gives agrees with his Deposition taken by the Examiner Except that he then deposed that there was a Suit Instituted by the Right Honble George Lord Pigot against George Stratton Henry Brooke Charles Floyer Archdale Palmer Frances Jourdan and George Mackay where as he now Deposes that there were no Suits Instituted in this Honble Court against the said George Stratton Henry Brooke Charles Floyer Archdale Palmer Frances Jourdan and George Mackay by the said George Lord Pigot and acquaints the Court that he did not Recollect the same at the time of his Examination before the Examiner

Ordered that the Deposition be Rectified

Bill with Two Bills and Account Current Annexed Read

Answers George Stratton Read

Answers of the Henry Brooke Read

Answers of the Archdale Palmer and Frances Jourdan Read

Answers of George Mackay Read

Replication Read

Rejoinder Read

Interrogatories on the part of the Complainant Read

Two Depositions taken thereunto Read

Interrogatories on the part of the Complaint with a paper annexed Read

One Deposition taken thereunto Read

Interrogatories on the part of the Complainant with a Exhibite
A 1 to 15 Exs Read

Six Depositions taken thereunto Read

Interrogatories on the part of the Complainant with Two Papers
Annexed Read

Three Depositions taken thereunto Read

Interrogatories on the part of the Complainant Read

Four Depositions taken thereunto Read

Interrogatories on the part of the Complainant with Two
Papers annexed Read

Two Depositions taken thereunto Read

Interrogatories on the part of the Complainant Read

Three Depositions taken thereunto Read

This cause coming on to be heard and Debated this day
in the presence of the Attorneys on both sides on Reading the Compla-
nants Bill with the Bills and Account Current annexed the Seperate
Answers of the Defendants the Replication the Rejoinder the Interrogatories
and Depositions on the part of the Complainant 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 Defendants Do Jointly and Severally pay unto the Complainant
the full and Just Sum of Eleven Thousand one hundred and Seventy Pags
(Pags 11170) without Interest or Costs for the Same Sued for deducting
therefrom the Sum of one Thousand Seven hundred and Twenty Seven
Pagodas and Thirty Six fanams 1727. 36. for which Amount
the Complainant hath given the Defendants Credit in the Account
Current

Current annexed to his Bill of Complaint and that the Defendants Do
pay all Costs of this Suit.

Decree

In the Court of Appeals

Between Charles Brearley Compt.t
and George Stratton, Henry Brooke Charles
Floyer Archdale Palmer Francis Jourdan
and George MacKay Esquires Defendants

The Answer of Charles Brearley to the Petition of Appeal
of George Stratton, Henry Brooke Charles Floyer Archdale
Palmer Francis Jourdan and George MacKay

The said Respondent Saith, that he Admits to have
filed his Bill of Complaint in the Honble the Mayors Court of Madras-
patnam on the Day and Year and for the Sum Mentioned and Set forth
in the said Bill against the above said Appellants being a Ballance of
Accounts arising on a Bill of Charges and Expences for Work and Labour
as an Attorney and Solicitor as also as Notary Publick before them done
and performed by the Respondent upon the Retainer and at the Special
Instance and Request of the said Appellants in and about the Prosecuting

Defending

Defending and Solliciting of diverse Causes, Suits and Business and for Money laid out expended and paid by the said Respondent at the like Instance and Request of the said Appellants in and about prosecuting Defending and Solliciting of those Causes in Consequence of a certain Verdict called a Coroners inquest and for Money due to the said Respondent for his Fees as Sollicitor and Notary Publick and of Right payable to him in that Respect the said Respondent further says that having been under the Necessity of preferring his said Bill of Complaint in the said Honble the Mayors Court though contrary to his the Respondents inclinations the said Appellants come in person and others by their representatives did Appear and put in their Joint and Seperate Answers denying the Facts as Stated and Setforth by the Respondent in his Bill of Complaint which induced the Respondent to Reply Specially thereby Setting forth as many of the particulars as were consisting with that Confidence which the Appellants had Reposed in him the said Respondent and by such Representation the whole of what had passed between all parties was faithfully Narrated to this Special Replication a Rejoinder was thrown in and Endeavours were made use of to invalidate the facts as alledged by the Respondent in his Replication the Respondent further says that Issue was Joined and Witnesses Examined particularly Mr. Jarrett Taylor the Register of the Mayors Court to whom the Matters in Difference had been Submitted Lieut. Colonel Mathew Horne John Sykes Notary Publick Several of the Servants of the Respondent and Sundry other Persons employed by the Respondent for the particular Cause of the Appellants and for no other the said Respondent further says that this Cause being Setdown for hearing the same did come on and was determined on the day and Year and in manner and from as the same is Setdown and Discribed in the Decree a Copy of which is annexed to the Appellants Petition of Appeal and from the Original of which the

Appellants

Appellants have Appealed and for such their Appealing have Assigned certain Causes to which the said Respondent begs leave to Answer

And first as to the Appellants being Jointly and Seperately bound for the whole Account of the Decree the Respondent did Setforth and Exhibit in his Replication the Result of a Suit depending on record the same Ground as the present dispute and there determination of the Court of Kings Bench was that each defendant was Answerable for the whole Costs so that the Respondent says that the Honble the Mayors Court have on their Decree Adjudged according to Law and the Respondent does further Say that from the Original Ground on which the Respondents demand arose being an Instrument said to be a Coroners Inquest they the Appellants are Jointly and Seperately bound to answer every Expence and Charge that they may be put to on Account of the same, but as to the proportion that each person is to bear whether to be as Precedents and Governed by the Youngest Number of Council that is matter the parties themselves are to be Settled and Adjusted as it is impossible for the Respondent to draw the line he not being in the least acquainted with the Politicks in the beginning that occasioned a Division in the Government the said Respondent further says that by Reference had to Sundry of the Exhibits the Honble Court of Appeals will find that Addresses in Writing to the Respondent were made in the plural Number the Honble Court will also find that Petitions were made Jointly to the Bench of Justices and this Honble Court will also further find that the Respondent was Admitted by the Honble Bench of Judges of that Court wherein the Appellants were bound over to Appear to attend and plead if occasion offered as Sollicitor in that Court for the Special purposes of all the Appellants as will more fully Appear by a Reference to the Records of the said Court that being a Special indulgence not usually

granted

Granted and only then in Cases of great Necessity where the parties are allowed
a Barrister at Law to plead and not an Attorney the Respondent begs
leave to observe here that the said Bench of Justices having admitted
the Respondent to Appear and Plead for the Appellants and Received
the same the as binding and Effectual upon all the Appellants as
any Decree whatever on the like Occasion and the Respondent
further says that he herein does as in and by his proceedings in the
Hon^ble the Mayors Court he has already done, Asserts that the
Appellants did employ this Respondent not only on their
Account but also on Account of every Military person and others
Acting under their orders to take every Method that could possible
Suggest it self that might tend to the advantage and benefit of the
appellants and Persons Acting under their Orders and in Order to
Shew the truth of this Assertion the Several Suits carried on by the
late George Lord Pigot and the present Claud Russell Esquire
against some of the Military who have Absconded to Europe by Order
and Directions of the Appellants or such of them as were in or near
Fort Saint George where all the Appeals lay Ready for hearing in these
Suits the Appellants without hesitation did pay the Expences to the Res-
pondent the said Respondent further says that by leave of the Hon^ble
Court he proceeds to Answer the Cause first Assigned by the Appellants
for their Appealing they Say that the Respondent has Charged Ten
Seperate Retainers instead of Charging one Retainer for the whole
It is Admitted and the Reasons for the Respondent so doing was at the
Request and desire of the said George Mackay one of the Appellants
as may be seen in the Bill of Costs in the possession of the Appellants
though Carefully avoided to be exhibited and as another Reason because
the Appellants were entitled to a Retainer from every Defendant
whether they be Jointly or Seperately Concerned in the Suit for the
Respondent Saith that it is not his Act and Deed that Seperate

or Joint

or Joint the parties Complainant or Defendant in a Suit it is the nature
of the Complaint that Causes either the Junction or the Division the Solli-
citor may Attempt at the Request of the any of the parties to Serve but
that does not in the least destroy the Original Cause of Complaint for the
Defendants are Jointly and Seperately bound the one for the other so long
as the Original Cause of Complaint exists the Respondent further says
that the aforesaid he had a Right to Charge a Retaining fee to the
Appellants for every Person whose Name Appeared on the said Coroners Ingu-
est or who might afterwards be found Aiding and abetting under the orders
of the Appellants and of this Opinion were the Appellants formerly
this Respondent further Says and begs leave to observe of what use of Service
would it be to Seperate and Divide the Military from the Civil in the
Expences Attending the Suits as also the said Coroners Inquest when as
the Respondent shews on his proceedings before the Hon^ble the Mayors
Court the Military were Indemnified and Kept harmless from all
Charges and Expences Attending any Prosecution that might be Carried
on against them for their Proceedings under the Orders of the Appellants the
Respondent further Says he never Considered each Person of the Appellants as
liable only for each his Share on the Contrary the Respondent Considered the
Appellants as Jointly and Seperately the one for the other bound to pay
the whole of whole of the Respondents Charges whether it be on their own
Account or an Account of the Military acting by their Orders of the Appel-
lants at first did not in the least doubt for had any doubt then arose
the Respondent presumes that the Appellants would not have so readily
paid him the said Respondent further Says that there could not be
a greater instance of the Respondent Considering the Appellants being
liable for the whole when it was Recommended to them to form a Law
Committee as it was apprehended there would be much Embarrassment
Trouble and Expence which Committee the Appellants or some of them
Objected to forming and the Reasons Assigned were that as they must

to

to directed by the Respondents Opinion on the Severall Proceedings it was unnecessary and left every thing to the discretion of the Respondent who Acted to the best of his Skill and Judgement and with as little Expence as the Nature of the Case would admit and So far from putting the Appellants to any Extraordinary Expence that the Respondent does Say that he has by him a Number of Copies of the Severall Proceedings which have never been brought to Account the Respondent begs leave to Observe that when the Inquest was Known and Published the Appellants by the Means of George Stratton Esquire as also George MacKay did Direct and order the Respondent to make Sundry Copies of Papers for the purposes of dispatching them to Bengall for the Opinion and inspection of the Gentlemen there the same at Bombay and the same for Europe the Burthen of the Business laying so heavy and the Continual Applications from the Appellants and their Repeated Orders the Respondent was under the Necessity of taking into his Service for the time the Business lasted a great Number of Writers at Expence and what with the Expence of stay and provisions and fees of Court the Respondent layed out upwards of two thousand and five Hundred Pagodas the Respondent further begs leave to Answer that part of the Petition of Appeal wherein the Appellant Frances Jourdan Asserts that his Cause differed materially from that of the others Petitioners becaus of his Motion made at the Council Board for the Release of the person of the late George Lord Pigot for what purpose this is brought on the Carpet again the Respondent cannot possibly guess at as the Respondent has nothing to do with the Motion Mr. Jourdan made for such a motion could not in the least extenuate the Criminality if it should be deemed abhorrent in the Arresting and imprisoning of the Late Lord Pigot nor would Such a motion in the least exculpate the said Frances Jourdan had the Law pronounced him Guilty of the Crime in the Bill

Suite

Suite that his Lordship intended to have brought against all the Appellants and which were Actually drawn out the motion might be pleaded in the mitigation of Damages the Respondent begs leave to Observe that the said Frances Jourdan says that his Case differed so widely from the Plot that he could not Stand with the other Appellants then why did the said Francis Jourdan Join with the Appellants in the several motions Made to the Bench of Justices and why the said Frances Jourdan Assist to the Respondent from time to time as he did the Respondent further Says that the said Frances Jourdan during the Carrying on of the whole Process did not to the best of the Respondents Recollection mention a word of Seperate defence however it was not in the option of the said Frances Jourdan to have made a Seperate defence as it depended on the Bill of Indictment and also of the Court of Oyer and Terminer the defence of the late Majority was drawn out and Fair Copied in the name of All the Appellants and intended to have been Read in open Court by the Respondent this defence was Ordered and directed by the Appellants to be drawn out by Benjamine Sulivan Esquire and the Respondent furnished him with such Materials as were in his Profession and this Defence has since been published together with all the Proceedings in London and what is more particularly that when all the Appellants were discharged by Proclamation the Respondent did upon a motion being made by Some Person in Court Appear and Answer for their forthcoming if Called upon before the breaking up of the Sessions which is also Recorded the Respondent humbly Submits their Observations to the Honble Court of Appeals and hopes it does evidently Appear that all the Appellants are Jointly and Seperately bound to the Respondent the said Respondent further Says that he did not furnish the several Papers without Orders and directions of Some and all of the Appellants Sometimes Orders were given by Mr. Stratton in the presence of all the Appellants at Several of their Meetings and Sometimes Mr. Stratton would give

the

the Respondent Orders and directions which were frequently the Result of Meetings that were held when the Respondent was absent about the Appellants Business for it was impossible to be always present at their Meetings as the Respondent was under the Necessity of Attending the Justices in the Examination of Witnesses the Appellants to say that the Respondent ought to Apportion the amount of the Decree among them how and in what manner that is to be done the Respondent does not Know as he is at a Loss to Say how much the proportion of George Stratton Esquire the then President is to the Rest of the Appellants as Members under him in the Government

To the Second Cause for the Appellants Appealing being the Sum of Eleven Thousand one Hundred and Seventy Pags being Decreed the Respondent Says that the Appellants should have candidly set down the deduction being four Thousand Seven Hundred and Sixty three Pagodas and Nine Fanams and then it will appear to be the Sum of Eleven Thousand one hundred and Seventy Pagodas deducting there from one Thousand Seven hundred and Twenty Seven Pagodas and Thirty Six fanams as Each Received from the Appellants making the Sum due to the Respondent Nine Thousand four hundred and forty two Pagodas and Six fanams being within twenty four Pagodas of what the Appellants originally drawn justly due to the Respondent as will appear by the Adjusted Account in their Possession

And in Answer to the Observation of the Appellants regarding James Stewart Matthew Horne James Edington and Arthur Lyoaght that they should pay their proportions the Respondent Says that he was employed by the Appellants for and on Account of the said James Stewart Matthew Horne James Edington and Arthur Lyoaght as he had been on their occasions and in order to Shew the truth of this Assertions that the said Matthew Horne did not arrive from Tanjore till within a short time of his intended Trial and whose Defence was of a Material Consequence to the Appellants as also that of James Edington and Arthur Lyoaght who did not arrive at Madras till within a few hours of the day he was to take his Trial Bail for their Gentlemans Appearance was found by the means of the said George Stratton and by the Appellants was the Respondent employed in Attending upon the same the Respondent Says he was employed by the Appellants in the Several Suits that were appealed to England and being so employed by them he deems he was equally employed by the Appellants in Business of the Inquest the Respondent Says that the Appellants were very desirous of having a Trial as Speedy as possible because some of them wanted to go to Europe to Serve the Interest of the whole and in order to facilitate the same was the several Papers and Copies made out and Extracts from the Books and Records of Government made and paid for which were intended as Exhibits in Support of the Appellants Defence and every Attention was paid as the Shortness of the time would Admit and to the best of the Respondents Abilities and the Respondent does further Say that Some Allowance should be made for the Carrying on of Causes at the discretion of the Solicitor who ought to be the best Judge of what is proper and fitting to be done on the Occasion had the Appellants been brought to their Trial and Papers and Exhibits should be wanting it could not be admitted as an Excuse that the Solicitor Did not Receive any orders from his Clients for that purpose if the Solicitor deems any Paper Writing as Necessary to Support his Clients Defence he ought not to Neglect procuring of it whether it be Consent of his Client or not if the Trial had taken place the Appellants would have been under the unfortunate Necessity of

procuring

Producing the Records of Government in Justification of their Proceedings and this is very evident as Some Cause must be Assigned for the Arresting and Confining of the Person of the late Lord Tigot there Papers were deemed Necessary and as were many other Papers Armed by the Appellants as Necessary for the Justification of their Proceedings to the World and which Papers were dispersed abroad under Attestation of the Respondent as Notary Publick by the Appellants themselves The Respondent begs leave of this Honble Court of Appeals to Suppose of a Bill of Indictment had been found by the Grand Jury the Trial of the Appellants and those who acted under them would have been the Business of Months had the Appellants to have sought for their Evidence and therefore in order to prevent along and tedious Trial and in order that every Person might Come prepared the Appellant George Mackay exerted himself and gave directions for the Several Proceedings to be Copied to which none of the Appellants dissented the said Respondent Says that in order to Remove the Injurious prejudices that might arise in the Minds of the People both at home and at Broad on the Publication of the Coroners Inquest it was also deemed Necessary that the Papers should be Copied and Some of them Attested to be Sent and which was done and sent both for and near by the said George Skeallon and Several of the Appellants the said Respondent further Says that by Evidence he has Supported every part of his Charge Exhibited in his Bill of Complaint and Could if Necessary produce Instructions in Writing that were taken at Sundry times of what was to be done for and on account of the Appellants and likewise has Shewn that According to Law all and every of the Appellants must be Responsible to the Respondent and in Case of any division or Seperation that Rests with the Appellants who can best Account to each other what they did with the Respective Copies of the Proceedings but as to the Idea that the Appellants have formed of their only being found to pay their Several Ratio of a General Bill for

Business

Business done and to Such Amount as might Appear to be Proper compensation for the trouble the Respondent had on their Account the Respondent Says that it Now become the Business of the Appellants to Set forth what that General Bill should be that they will pay they have the Respondents Bill of Costs from whence they might have made out of General Bill which the Respondent does insist was made out after a Reference had to Mr. Farrer Taylor aforementioned but for Reasons best Known to themselves was not exhibited though Such General Bill was and is now in their Possession the amount of which the Appellants were then Ready to pay provided the Respondent would Accept from each Person their Respective Share and give to each of them a Receipt in full which was Objected to on the part of the Respondent for every good Reasons the Respondent Says that it Certainly was and is Now the Business of the Appellants to be particular as to the quantum of the Sum to be paid and Assign their Reasons for Such Reductions as might be made in the Respondents Bill of Costs

And in Answer to the third Cause which the Appellants Say they have for Appealing on Account of the Costs Decreed by the Mayors Court to be paid by the Appellants the said Respondent Says that the Honble the Mayors Court after having for Some time deliberated on the whole of the Proceedings gave it as their opinion Unanimously that as the Respondent had done every thing as Paid on their Power before the filing of the Suit to accommodate the Business and having Since the Commencement of the Bill of Complaint offered to leave the Matter in difference to arbitration or any other mode that might be Agreed upon they the said Honble the Mayors Court Adjudged it Necessary and Proper that the Appellants should pay all Costs The Respondent further begs leave to answer the Observation of the Appellants Regarding what they call Containing from the Respondents Bill of Costs the Sum of Four thousand

Seven

Seven hundred and Sixty three Pagodas and Nineteen fanams that after much deliberation which lasted a whole fortnight the Honble the Mayors Court were pleased to put the Question to the Respondent that as the Sum Charged Appeared to be great and as the Business to be every heavy and no Specifick Sum was offered by the Appellants whether or not if the Court should procrastinate for the payment of the Notary fees the Sum of one thousand one hundred and Seventy Pagodas as Charged by the Respondent in his Bill of Complaint and the Sum of Ten thousand Pagodas in full for the Trouble and Expences Attending upon this Inquest the Respondent would be Satisfied to which Respondent Answered in the Affirmative Notwithstanding the Respondent lost thereby the Sum of Four thousand Seven hundred and Sixty three Pags and Nineteen Fanams besides the Interest upon the whole Sum which the Respondent likewise gave up the Respondent Says the Question was Agitated in Court by the Honble Members and Unanimously carried without dissenting voice there being no objection to the mode of decision So that instead of the Honble the Mayors Court Curtailing their

The Respondent of the Sum of four thousand Seven hundred and Sixty three Pagodas and Nineteen fanams the Reducing of the Sum Total of the Respondents Bill of Costs may be imputed to the Submission the Respondent made in Court for the Charge of Gaining the whole Account was in favor of the Respondent there being no Specifick Sum offered by the Appellants although they were in possession of the Bill of Costs and Could have shown where the Respondent had been wrong the Honble Court could not Decree any matters or thing in favor of the Appellants more Especially as there were no Objection made as to Manner of carrying out the

out the Costs the only thing which Appeared to be the Great Point wanted to be gained by the Appellants was the Severance so that the one was not to be Answerable for the other and if this point had been gained not only the Respondent but every other person who acted by the Orders of the Appellants would have been greatly injured the said Respondent further Says that he Only believes and is very certain that only point in View of the Appellants by this Appeal is to Seperate and devide but as the Cause Originated in their Joint Capacity as a Majority of Government every Act and deed which has been done and may hereafter arise in Consequence of the Appellants order to must be by them borne Jointly and Severally the one for the other and all and every the Charges and Expences which is has been and shall be laid out and Expended in and upon these Several Acts and Deeds must in the like manner be borne and Sustained by the Appellants as for instance the Several Appeals of Lord Pigot and Claud Russell against the aforementioned Brigadier General James Stuart &c. these are Carried on at the Expence of the Appellants who paid the Respondent and who have Appointed the Respondent as the Agent and also the Solicitor for the Managing of those Suits in India as several persons have been Applied to to accept of a power of Attorney and Refused the Respondent lastly Says that since his obtaining the Decree in the Honble the Mayors Court he has endeavoured to the utmost of his power to Settle the payment of the Decree to the faction of all parties and cannot find out any other Reason that has prevented it other than the want of a Seperation by a Decree of Court which the Respondent Says Cannot be done as it is Contrary to Law the Respondent further Says that Should he Consent to accept of each of the Appellants Shares upon Record he does not Know but he may essentially injure some of the Appellants as well as those who acted under their orders nor does he Know how he may injure the parties Concerned in the Appeals to the King and Country

For

For all which Causes and things the said Respondent humbly Prays that this Honble Court of appeals will Confirm the Decree of the Honble the Mayors Court in the full Extent from whence the Appellants have Appealed and that the Petition of their Appeal be dismissed with Costs to be paid by them to the Respondents and such other Relief as to this Honble Court shall seem meet

Court of Appeals
In
Madraspatnam

Thursday the 2d Dec. 1760

Between George Stratton Henry Brooke Charles Floyer Frances Fourdan George Mackay — Appellants

and

Charles Bromley — 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 the Several Exhibits of the Honble the Mayors Court together with a Decree of the said Court given in this Cause on Wednesday the 29th day of September Anno Domi 1759 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Argument 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 given in this Cause do Stand affirmed and the Appellants Petition be hence dismissed with Costs and with the legal Interest from the day the said Cause was appealed in this Court Decreed by the Honble the Mayors Court to be paid to the said Respondents

Test

(Signed) Chas. Freeman
Clk

To the Honble the Court of Appeals at Madraspatnam

Between Vellapah Chitty by his Attorney Modoo Mun Chitty of Madras Merchant Complainant And Joannis Jora Jacob of the same place Merchant Defendant

The Humble Petition and appeal of the said Vellapah Chitty by his said Attorney Modoo Mun Chitty

That the said Vellapah Chitty by his said Attorney did on the fifteenth day of June which was in the Year of Our Lord one thousand Seven hundred and Seventy Six Exhibit his Bill of Complaint in the Honble the Mayors Court

Court at Madraspatnam against the above said Joannes Sera Jacob for the Sum of three hundred and Ninty Nine Pagodas four fanams and Forty Cash Current Money of Madras being the Ballance of an Account Current thereunto Annexed towhich said Bill of Complaint the said Joannes Sera Jacob did put in an Answer thereby denying to be Indebted unto Your Petitioner in the said Sum for the Reasons therein Mentioned or in any other Sum of Money whatever) to which said Answer Your Petitioner put in a Replication and the said Joannes Sera Jacob put in a Rejoinder soon was Joined Rules for Witnesses were Examined on the part both of Your Petitioner and the said Joannes Sera Jacob Publication passed and the said Cause was Set down for hearing and Coming on to be heard on Tuesday the Twenty third day of March in the present Year of Our Lord one thousand Seven hundred and Seventy Nine the said Court were pleased to order and Decree that the said Joannes Sera Jacob do deliver unto Your Petitioner One Pecul and One hundred and Eighteen Pounds of Raw Silk mentioned by the said Joannes Sera Jacob in his Account Current Marked A upon Your Petitioner paying unto the said Joannes Sera Jacob the Sum of one hundred and Sixty Six Pagodas twenty five fanams and Forty five Cash

The Ballance of the Account Current Marked B Annexed to the said Joannes Sera Jacobs Answer with Interest of Nine p Cent from the Twenty fifth March One thousand Seven hundred and Seventy Six thedate of the said Account Current And that Your Petitioner should pay all Costs of the said Suit As will more fully and at Large Appear by the said Decree which Comes herewith to the inspection of this Honble Court

From which said Decree Your Petitioner Doth Appeal to this Honble Court as he Conceives the same to be Erroneous and that he Your Petitioner is Aggrieved thereby as Your Petr humbly hopes will Particularly Appear to this Honble Court from and his Your Petitioners said Bill Replication and Deposition to all which Your Petitioner Craves Reference

All which Matters and Things Your Petitioner Submits to the Judgement of this Honble Court and Most humbly prays that the said Decree may be Reversed and Set aside and Your Petitioner doth also pray such further and other General Relief in all and Singular the premises As to this Honble Court Shall Seem Meet

Mayors Court
at
Madraspatnam

Tuesday the 23 Day of march
Anno Domini 1779

Present

George Proctor Esquire Mayor
George Taswell and Cotton Bowerbank Dent
Aldermen

Between Vellapah Chitty
by his Attorney Moolvenian Chitty
of Madras Merchant Complainant and Johannes Sera Jacob
of the

132

of the same place Merchant
Defendant

This Cause coming on to be heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with an Account Current and an Assignment annexed the Defendants answer with two Accounts Annexed thereto Replication the Rejoinder the Interrogatories and Depositions on the part of the Complainant the Interrogatories and Depositions on the part of the Defendant with four Exhibits annexed On hearing the Pleadings made Use of the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do deliver up to the Complainant One Pecul and One hundred and Eighteen Pounds of Raw Silk mentioned by the Defendant in his Account Current Marked A upon the Complainants paying unto the Defendant the Sum of One hundred and Sixty six Pagodas twenty five fanams and forty five Cash [Pags. 166. 25. 45] the Ballance of the account Current marked B annexed to the Defendants Answer with Interest of Nine P Cent from the 25th. March 1776 the Date of the said Account Current and it is further ordered and Decreed that the Complainant do pay all Costs of this Suit

Pecul

Persons properly that the Neat Amount of their Goods and Merchandize being Spanish Dollars Nine hundred and twenty Nine and three Quarters was Remitted to China for the use of the Respondents who invested the same with the Cash of other persons in the purchase of Raw Silk as the most beneficial Returns for all parties Concerned that these Returns Arrived the Month of June one thousand Seven hundred and Seventy Six in the Ships St. Cruze at Madras being only Six Days before the Arresting of the Respondents Person notwithstanding the said Goods and Merchandize were not disposed of nor are they at the filing of this Respondents Answer to the petition of Appeal disposed of in any Sort which Returns he the said Respondent Says he was Ready and willing to give up to the Appellant upon payment of Charges usually incurred on the like Cases the Respondent in his Answer further Setforth that the Appellant had Absconded from the Jurisdiction of the Mayors Court on account of his Creditors and that he the Respondent was not acquainted of any purpose being the Complaint by his Attorney Mostly Man Chitty against the Respondent the Respondent Says that in his Answer he Acknowledged to have Received a Message from Mr. Du Pay the Attorney at Law Demanding the said Returns for account of the said Appellant to which the Respondent Readily Agreed upon Condition either of his Freight and Charges to be paid or Staying until the said Returns could be disposed of but the Respondent Setforth in his said Answer that there was no Power of Attorney or any Authority produced or Shewn to him the said Respondent further Setforth that the Returns was Raw Silk in common with other Returns of different Sorts in the like Articles but that in Case the said Appellant would Settle his Account on Authority some person to do it for him he the Respondent would give up the Appellants proportion of the Raw Silk or pay him the Neat Amount thereof when sold the

Respondent

Respondent further Showed in his Answer that the never Refused to
up the Raw Silk or come to Account with the Appellant other then
as aforementioned the said Respondent further Says that being Charged
with the Amount of Twenty Seven Peices of Carnbays he Acknowledged
his having received the same upon Sale and Commission but not having
it in his power to Sell or dispose of these Goods he brought them back
to Madras in whose possession they then was and now are and that
he the said Respondent was Ready to deliver them up to the Appell
and or any person Authorized by him upon payment of the freight and
other Charges the said Respondent further Says that same person
did on the Name of the Appellants demand those twenty Seven
Peices of Carnbays to be delivered up to them but as the Respondent
was not Shown the Authority by which those Person acted the Respon-
dent Refused to part with the said twenty Seven pieces of Carnbays
until the Authority was produced with the Respondent in his
Answer dumed was Convoked and Acting with the precedence to Ap-
and his Employer to his Answer the said Respondent Says a Replica-
tion was made and filed the Eleventh day of September one thousand
Seven hundred and Seventy Six wherein the Appellants did insist
on the Respondent being Indebted unto them in the Sum of three
hundred and Ninety Nine Pagodas four fanams and forty Cash and
denying that he was indebted unto the said Respondent and further
the Appellant did insist on the Respondents Account [Marked B]
and Annexed to the Answer had no Reference or Connection with
the Suit in Question and therefore unnecessary for them to taking any
further Notice thereof the Replication reciting that the Case as by
the Respondent Stated was not true but States the Case in the follow-
ing Manner that in the Month of June one thousand Seven
hundred and Seventy the Respondent Applied to them the Appellant
to entrust to him the Respondents Care whatever piece Goods he the
Appellant

Appellant had to Send to Manilla and Accordingly he did not Consign
to the Respondent Seven Bales of piece Goods which he requested might be
Sold on the Appellants Account and whereof five were disposed and for the
Remainder two a Receipt was produced and delivered by the Respondent from
under the hand of his Factor at Manilla the Replication further Sets
forth that sometime after the Appellant did Return the said Receipt
to the Respondent with Seven Bales of Piece Goods more to be disposed of
at Manilla all of which the Respondent Sold except one of the former
Bales and twenty Seven Bales of Carnbays which were unsold out of a
former Bales which said Bale of Piece Goods was the Bale as Recited
in the Respondents Answer the said Appellant further in his Reply
Says that in the Month of April one thousand Seven hundred and
Seventy Six he sent one of his People to the Respondent to enquire if
the Appellants money that was due in Manilla was Remitted to
China to which the Respondent Answered that the Money was Safe
in China and that his the Respondents Attorney had purchased Raw
Silk and intended to freight the same on Board of the Ships St Croix
excepted at Madras the Appellant further Sets forth that sometime
after he heard of the said Ships Arrival at Negapatnam and that the
Silk in Question was on Board that he after the Arrival of the Ships
at Madras did send Person to the Respondent to demand the Raw Silk
and the twenty Seven pieces of Carnbays which the Appellant Asserts
that the Respondent twice promised to deliver, but on the third time of
the demand that the said Respondent Refused to deliver the said Goods
which the Appellants says induced him to apply to Mr Henry Du Bug
one of the Attornies of the Hon[ble] the Mayors Court for to make a formal
demand of the said Raw Silk and piece Goods to which demand the
Respondent Refused to Comply with as the said Appellant Says the
said Appellant further Says that he was obliged to prefer a Bill of
Complaint against the Respondent which the Appellant made was

Regular

Regard and Just as also the Account made out as Annexed to his Bill of Complaint against the Respondent the said Appellant further in his Reply Sets forth his Objections to the Account Current / Marked A / annexed to the Respondents Answer pointing out the Charge of Commission upon the sale of the Bale of Cambricks as wrong as also the Charges Commission as paid to one Coja Maul Saffer as being an unreasonable Charge having before once paid the same upon the Sale of the said Goods and therefore That the Respondent was not entitled to any other or further Commission on the said Goods to this Reply of the Appellant / the Respondent did file his Rejoinder and entered Specially into the Circumstances of the Case by Refuting the Objection of the Appellant to the Respondents Account / Marked B / observing in the said Rejoinder That no Cause was Assigned by the Appellant for his Objection thereto which Appeared mysterious to the Respondent and therefore Cautious in parting with the property Demanded the Respondent further in his Rejoinder Sets forth That no person or persons with any power or Authority Applied to him on Account of the Appellant for the said Goods and therefore unjust for the said Respondent to part with the property to persons no ways legally Authorized to make the Demand or did the Respondent as he Sets forth intend to deliver up the said Goods without first Settling the Ballance of the Account / Marked B / notwithstanding the pretended Assignment made to the Appellants Brother Mootu Mar Chitty which the Respondent Charged was done with an intent to evade coming to a final Adjustment of their Accounts Notwithstanding the property not Assigned was a part of the Original Consignment and what ever Charges there might Remain unsettled thereupon the Goods in the hands of the Consignee Remain as a pledge till the final discharge of the Accounts that arose upon the Original Consignment to evade the said Respondent further Says That in his Rejoinder he further Specially Recites That from the Assignment and power of Attorney and other Matters that there was the Appearance of a Combination between the Appellant and the said Mootu Mar Chitty his Brother to obtain the property belonging to the Appellant in the possession of the said Respondent without discharging the Ballance due to the Respondent on the Consignment and endeavouring to oblige the Respondent to Relinquish his preten-sions on the said Goods and Com upon the Appellant for the payment of the Ballance although at this time the said Appellant had absconded from Madras for fear of his Creditors there being Warrants of Sequestration issued against his Effects to enforce his Appearance to the many Suits preferred against him in the Mayors Court at Madraspatnam the said Respondent further in his Rejoinder Says and Alledges That his charge of Commission was proper and Just the said Respondent further observed in his said Rejoinder That Notwithstanding the pretended Assignment to the said Mootu Mar Chitty the Brother as if the property was Solely vested in him the said Mootu Mar Chitty / Yet as the said Appellant had so worded his proceedings in the Name of the Appellant by his Attorney the said Mootu Mar Chitty the Right of property appeared to be in the Appellant and therefore the said Mootu Mar Chitty the pretended Assignee could not be in a better plight than the Assignor the said Respondent further in his Rejoinder observed to the particulars of his Account / Marked B / That the same arose upon Respondentia and common Interest Bond and that the credit given for the Respective Sums was from the Sales of the Goods Originally Consigned to him further Observing That this Account Subsisted between Merchant and Merchant arising upon Consignment of Merchandize and that Such Goods as Remained undisposed of in the hands of the Respondent are Supposed to be detained as a Security for the payment of the Ballance arising on the Original Consignment according to the Usage and Custom of the Merchant and According to the Equity of the Case because it will has ever been understood That the property of the thing Consigned is in the Consignee who becomes Trustee for the property and of Course Responsible

and

and therefore it was always understood that the Merchandize so Consigned should make Good the Charges incurred thereon and that the Consignee is not obliged to part with the property untill his property indemnified the said Respondent further observed that it could not be supposed that the would part with the property untill the Freights from China had been Settled and paid which could not not be properly Ascertained untill the whole of the Raw Silk was disposed of the said Respondent further in his said Rejoinder Specially argued the Case as will appear by Reference had to the said Rejoinder the said Respondent further Says that If Issue was Joind and an Examination of Witnesses took place on both Sides publication passed and the Cause set down for hearing which come on was heard and determined on the Day and Year as Expressed and Set forth in the Decree a Copy of which he Annexed to the Appellants Petition of Appeal to which the Respondent humbly begs leave to Refer this Honble Court of Appeals the said Respondent further Says that from the Petition of Appeal he does not find any reason Assigned for Appealing from the Decree of the Honble the Mayors Court from the said Petition how far Erroneous whether in whole or in part the said Decree of the said Honble the Mayors Court is so that the Respondent is left without the benefit of Answering to any objections that there might be to the Decree which the Respondent is humbly of Opinion is contrary to Equity for all Appeals should Specify and Express some Certain Cause why a decree Sentence or Order of Court is Erroneous and therefore for this and many other Causes herein Assigned and Set forth the Respondent humbly prays that the said Petition of Appeal may be Dismissed and that the Appellant be obliged to pay all and every such Costs and Charges as to this Honble Court of Appeals shall seem Meet

Court of Appeals
at
Madraspatnam &c

Thursday the 28th Decr 1780

Between Vellapah Chitty by his Attorney Mooturmah Chitty Appellant and Joanne Serra Jacob 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 the Several Exhibits of the Honble the Mayors Court together with an Order of the said given in this Cause on Tuesday the 28th day of March Anno Domini 1779 and upon due Consideration had of the matters therein Severally Contained and of the pleadings and Arguments used by the attorneys on both Sides this Court doth think fit to order and Decree and doth Accordingly order and Decree that the Decree of the Honble the Mayors Court given in this Cause do stand Affirmed and further that the Twenty Seven Cases of Cambays Specified in the Respondents Answer to the Bill of Complaint filed against him in the Honble the Mayors Court by the Appellant be delivered to the said Appellant and that each Party do pay his Costs in this Court

Witness
[Signed] Chas Freeman
Chr

To the Honble Thomas Rumbold Esqr
President and Governor &c Council of Fort St George

In the Court of Appeals

Between Khoja Marcar Complainant and Banyah Angaroo Chitty Chinna Aungaroo Chitty Sheshachellah Chitty and Meetu Ramah Chitty Defendants

The humble Petition and Appeal of the defendants Banyah Angaroo Chitty Chinna Aungaroo Chitty Seshachellah Chitty and Meetu Ramah Chitty

Sheweth

That Your Petitioners have heretofore had Several Dealings in Trade with the said Khoja Marcar and in particular did agree for the purchase of Raw Silk to the Amount of Ten thousand Pagodas in the month of October which was in the Year of Our Lord One thousand Seven hundred and Seventy Seven which was to be paid for in Piece Goods in Return whereof Your Petitioners paid to the Value of Seven thousand five hundred and fifty Pagodas in Piece Goods and gave their Bond for two thousand four hundred and fifty Pagodas being the Remainder thereof and Your Petitioners further Saye Shew that the said Complainant promised to pay unto Your Petitioners a Commission of Seven per Cent on the Piece Goods which Amounts to five hundred Twenty Eight and half Pagodas and further to allow a discount for time according to the Custom in Return for Prompt Payment

Payment which Custom is in general from two to three Months Interest and the Complainant did further promise to indemnify Your Petitioners for any Loss which they might sustain by the Loss of the Raw Silk Notwithstanding which Your Petitioners show the said Complainant Neither paid the said Commission or any part thereof to Your Petitioners nor has he made any Allowance by way of Custom or has he Recompensed Your Petitioners for the Loss which they Sustained by the said Raw Silk all th. Your Petitioners Aver that the said Loss did Amount to a Sum exceeding One thousand Pagodas

Your Petitioners further Shew that in the Months of January and February which were in the Year of Our Lord One thousand Seven hundred and Seventy Eight they paid Six hundred Pagodas on Account of the said Ballance of Two thousand four hundred and fifty Pagodas Never the less the said Complainant had the injustice to cause a Bill of Complaint to be filed in the Honble the Mayors Court on the fifth day of May in the said Year One thousand Seven hundred and Seventy Eight for the said full Sum of Two thousand four hundred and fifty Pagodas to which Suit Your Petitioners Appeared by their Attorney and after having Given Bail According to the form of the said Court they did in due time put in an Answer upon Oath the said Bill of Complaint and did thereby deny in General terms that they did Stand indebted unto the said Complainant in the said Sum of two thousand four hundred and fifty Pagodas and Interest in Manner as the Same was unjustly Charged in the said Bill of Complaint which Your Petitioners conceived they had great Right to do under all the Circumstances hereinfore Set forth to which Answer the said Complainant Replied and Your Petitioners Rejoinder during which time Your Petitioners waited

on the

on the said Complainant Several times who promised them with the hopes of Settling their Mutual Accounts in an Amicable Manner and that he would not proceed on the Suit, in Consequence of which Your Petitioners thought it unnecessary by an Amended Answer to state to the Honble the Mayors Court the Circumstances above Mentioned Relying entirely on the said Complainant Your Petitioners however Shew that the said Complainant Notwithstanding Such his Assurances laid by his Attorney Cause the said Suit to be at Issue in the said Mayors Court whereby Your Petitioners were deprived of the Benefit of Stating the above several Matters and things and Your Petitioners further Shew that the Complainant did Still Continue to Amuse Your Petitioners with Assurances of Accommodation untill he had examined the Witnesses to the proof of Your Petitioners said Bond and had obtained an Order for passing Publication in the said Cause whereby Your Petitioners were further deprived of the power of Examining any Evidence to the Merits above Stated and the said Cause Coming on to be heard on Tuesday the Eighteenth of this Instant may Your Petitioners obtained a Letter from the said Complainant addressed to his Attorney Requesting him to put off the hearing of the Cause as he had Some Reason to believe he should Settle with the Defendants on an Amicable Manner the said Letter however was not Considered by the said Attorney as worded in Terms Sufficiently perceive to warrant him to put off the said Hearing Whereupon the said Cause was heard and altho' Your Petitioners had positively sworn that they did not the said Sum of two thousand four hundred and fifty Pagodas Yet the Honble the Mayors Court were pleased to decree that the said Defendants Your Petitioners should pay unto the Complainant the full Sum of Two thousand four hundred and fifty Pagodas and Interest together with Treble Costs of Suit for their Litigiousness as by the said Decree Reference being thereto had may Appear

Your

Your Petitioners however Shew that they have in no wise shewed any inclination to act Litigiously or to contest the fair and Just Claims of the said Complainant but on the Contrary have Manifested every Good Intention to Settle the same in an Amicable Manner and they further Shew that by an Account Settled and Adjusted at the every time of the hearing of this Cause as aforesaid the Said Complainant had Stated an Account with Your Petitioners and had therein allowed unto Your Petitioners Credit for the said Sum of Six hundred Pagodas and and as the said Complainant had by his Note to his Attorney Shewed a Causeiousness that he ought to Settle the Affair in an Amicable Manner Your Petitioners humble hope that this Honble Court will be pleased to Reverse the said Order and Decree of the Mayors Court Espicially so much thereof as Relates to the Treble Costs whereby Your Petitioners have Conceived themselves Much Aggrieved and that this Honble Court will be pleased to Grant unto Your Petitioners such further Relief in premises as to this Honble Court in their Great Wisdom shall Seem Meet

146

Mayors Court
at
Madraspatnam

Tuesday the 18th Day of
Anno Domini 1779

Present

George Proctor Esquire Mayor

James Call and Cotton Bawerbank Dent

Aldermen

Between Hosp. Marott of
Madras Merchant Complain-
ant and Periah Angaroo Chitty
Chinna Angaroo Chitty Sheeha
Shulla Chitty and Keedu Rama
Chitty of the same place merchant
Defendants

This Cause Coming on to be heard and Debated this Day in the Presence of the Attorneys on both Sides on Reading the Complainants Bill with Copy of the Translation of a Bond or Obligation Annexed the Joint Answer the General Replication the Interrogatories and Depositions on the part of the Complainant 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 Defendants do pay unto the Complainant the full and Just Sum of Two thousand and Four hundred and Fifty Pagodas / Pags. 2450 / together with such Interest as now is or shall hereafter become due thereon and It is further Ordered and Decreed that the Defendants do pay Treble Costs of Suit for their Setegiousness for

Now

To the Honble Thomas Rumbold Esqr.
President & Governor &c. Council of Fort Saint George

The Answer of Hosp. Marrot
Complainant to the Petition of Appeal
of Coryah Ayngaroo Chitty Chinna
Angaroo Chitty Shefsachellah Chitty
and Mootu Ramah Chitty
Defendants

The said Respondent doth absolutely object and except to the Petition of Appeal so far as the same is introductive of Matters not Appearing on the face of the proceedings in the above Cause Appealed from as no New Matters can be admitted upon an Appeal than what was made use of at the hearing of the Cause which Arose upon a Bond under the Signation of the Defendants and a General Answer simply denying the Debt thereupon Claimed to be due a General Replication thereto and a General Rejoinder with the Interrogatories and Depositions of

Witnesses

Witnesses produced on the part of the said Complainant in support of his said Demand from which Depositions it Appears that the Respondents Demand is sufficiently proved to be just and Stands uncontroverted by any Evidence on behalf of the Appellants to the said Decree of the Honble the Mayors Court is therefore just as well as their Sentence of Treble Costs for the Appellants Litigiousness because no greater instance can be Shewn of Litigiousness than denying a just Debt upon Oath in order to gain delay and Keep a just Creditor out of his property thro' a tedious Course of a process by putting him to the proof of his Debt by a Solemn examination of Witnesses which is a Sentence not only Justly made for an Attempt to elude and prevent the Justice of the said Honble Court but as deserving on Account of the immorality of the Means practiced to Effect it. This Respondent therefore doubts not but that this Honble Court will see no Cause to Reverse the order of the said Honble the Mayors Court either in part or in Whole but that they will see just Cause to Confirm the Same with Treble Costs in this Honbles Court also

Court of Appeals
at
Madraspatnam } Thursday 28th Decr 1780

Between Peenah Angaroo Chitty Chinna Angaroo Chitty Shechachilla Chitty and Moodnarain Chitty Appellants
Joseph Marcell Respondent

This

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 to get that with a Decree of the said Court given in this Cause on Tuesday the 15th day of May Anno Domini 1779 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used by the Attorneys on both Sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree of the Honble the Mayors Court given in this Cause do Stand Affirmed and that the Appellants Petition be hence dismissed with Treble Costs in this Court

Per Curr
(Signed) Chas Freeman Clk

To the Kings Most Excellent Majesty
in Council

Between Joseph Marcell of Madras Merchant Complainant and Peenah Angaroo Chitty China Angaroo Chitty Shechella Chitty and Moodoo Parnah Chitty of the same place Merchants Defendants

The Humble Petition and Appeal of the said

said Cetyah Angaroo Chitty Chinna
Angaroo Chitty Shethachilla Chitty
and Moodu Ramah Chitty

Sheweth

That the above Named Ussup Marott did on or about the fifth day of May was in the Year One Thousand Seven hundred and Seventy Eight file his Bill of Complaint in the Honble the Mayors Court at Madrassapatnam against Your Petitioners for Recovery of Two Thousand four hundred and fifty Pagodas which he in Such Bill Charged to be due on the Bond or Obligation of Your Petitioners a Translation whereof being said to be Annexed to Such Bill and whereto the said Ussup Marott Referred he the said Ussup Marcotte did pray that Your Petitioners might be Decreed to pay the same with all Interest and Costs of Suit wherefo Your Petitioners did on due from and time Answer and as the Truth was they did deny the Charges thereof to which they said Answer the said Ussup Marcott did Reply in Support of his said Bill of Complaint and the Charges thereof to which Replication to Your Petitioners did Rejoin and Issue being Joined Witnesses Examined and the Cause Standing in its Regular Stage for a hearing the same came on to be heard in and before the Honble the Mayors Court on the Eighteenth day of May which was in the Year one Thousand Seven hundred and seventy Nine when the said Court thought proper to Decree and did Accordingly Decree that Your Petitioners should pay unto the Respondent the said Sum of two Thousand four hundred and fifty Pagodas with the Interest then thereon due or to become due thereon and Public Costs of Suit

And

And Your Petitioners do further Shew unto Your most Excellent Majesty in Council that from such said Decree they Appealed to the President and Governor and Council of Fort St George as the Court of Appeals Setting forth that Your Petitioners had before that time and in the Month of October one Thousand Seven hundred and Seventy Seven purchased of the Respondent Raw Silk to the Amount of Ten Thousand Pagodas which they were to Pay in Piece Goods and whereof Your Petitioners did in part payment there of pay to the Value of Seven Thousand five hundred and fifty Pagodas and for the Remainder being two Thousand four hundred and fifty Pagodas did give their Bond And Your Petitioners in such their Petition of Appeal did further and with the truth Set forth that the Respondent promised them a Commission of Seven per Cent and such Piece Goods which Amounted to five hundred and Twenty Eight Pagodas and a half and did further promise to allow them Customary discount for Prompt Payment which According to General Usage was from Two to Three Months Interest and did further promise to and keep them harmless from any Loss they might Sustain on such Silk and on which they Your Petitioners Appeared to have Sustained also of upwards of one Thousand Pagodas for which said Loss on the said Silk and for the said Commission of five hundred and Twenty Eight and a half Pagodas as also for the said Allowance for Prompt Payment Your Petitioners did Shew to the said Court of Appeals and do now humbly Shew unto Your Most Excellent Majesty in Council that they Your Petitioners never did Receive any Sort of Recompense payment or Satisfaction whatever notwithstanding unto the said Respondent promises to them for that purpose and Your Petitioners do further Shew unto Your Most Excellent Majesty in Council that notwithstanding Such their just Claim on the Respondent they did as Set forth in their said Petition of Appeal and on the Year one Thousand Seven hundred and Seventy Eight Pay Five hundred Pagodas on part of the said Ballance of Two Thousand four hundred and fifty Pagodas Notwithstanding all which the Respondent did as aforesaid cause his Bill of Complaint to be filed

for

for the whole Ballance of two Thousand four hundred and fifty Pagodas and Your Petitioners did further in such their Appeal Shew that they had in Course of Such their Proceedings in the Honble the Mayors Court waited Several times on the Respondents from whose promises and from the Circumstances of the Case they had every Such Reason to excpect an Amicable Settlement of the Matter so before that Court in soumuch that they only on their part not only defended in genral form without Specially introducing such Merits as must have prevailed in favour of Your Petitioners but under such Expectation and full Confidence of an Amicable Settlement they were prevented from preparing Such Evidence as might prove the truth of the Premises and Your Petitioners did further Shew to the said Court of Appeals that they in no wise Acted with any imitation to act Litigiously or Contd the fair Claims of the Respondent and in Confirmation thereof they did Refer to a Letter Written by the Respondent to his Attorney Requiring the said Attorney Coolstone the hearing of the said Cause and they did further Set forth that even Since the hearing of the said Cause in the said Mayors Court they and the Respondent had Settled the Account between them wherein the said Respondent gave them Credit for upwards of five hundred Pagodas under which Circumstances Your Petitioners did Ground the Reason for such their Appeal to the Court of Appeals at Madras Batuam and whether or no they had not Reason to Consider themselves Aggrieved with Respect to the Treble Costs so Decreed in the said Mayors Court and that therefore that part of the said Decree ought to have been Reversed

And Your Petitioners further Shew unto Your Most Excellent Majesty in Council that to such their Petition and Appeal the said Respondent did Answer and Endeavour to Shew to that Court that Your Petitioners defence was aforesaid and for the Reasons already Offered by them made was Litigious and Dilatory and did Occasion the Respondent to enter into the full Proof of his Demand in which said

Answer

Answer the Respondent Prayed to Confirm the Decree of the said Mayors Court with treble Costs which Cause in the said Court of Appeals Coming on to be heard and being heard on the Twenty Eighth day of December one Thousand Seven hundred and Eighty that the said Court of Appeals were pleased to Affirm the Decree of the said Mayors Court and that Your Petitioners Petition and Appeal Should be dismissed with treble Costs all which Matters will more fully and at large Appear by the Copy of the said Order and Decree of the said Court of Appeals here unto Annexed for the Inspection of Your most Excellent Majesty in Council and prayed by Your Petitioners to be taken as part of this their Appeal to which with all other the Proceedings Already Referred to as well in the said Mayors Court as in the said Court of Appeals Your Petitioners humbly Crave leave of Reference and that they may be Admitted in Support of this Appeal of Your Petitioners

From which order and Decree of the said Court of Appeals Your Petitioners do Appeal to Your Most Excellent Majesty in Council Most humbly Apprehending themselves Aggrieved thereby and that the same is Erroneous for the Reasons given by Your Petitioners in their said Appeal to that Court and Because Your Petitioners humbly Apprehend that Such the order of the said Court of Appeals so Affirming the said Order and Decree of the Mayors Court is Contrary to the meaning of a certain Act of Parliament Made in the thirteenth Year of the Reign of Charles the Second and which was never Since Repealed whereby it was Enacted that from and after the twentieth day of January One Thousand Six hundred and Sixty one if any Person or Persons after the said Day shall or Prosecute any writ or writs of Error for Reversal of any Judgment Whatsoever given after any Verdict and that the said Judgment Shall be Afterwards Affirmed there every such Person or Persons Shall pay unto the Defendant or Defendants in the said Writ or Writs of Error his or their double Costs to be Assessed by the Court Where Such Writ of Error

Shall

shall be dispending for the delaying of Execution Therefore as Your Petitioners
and every Circumstance Attending this Cause as well in the said Mayors Court
as in this Court of Appeals have Reason to Conceive themselves and do Conceive
themselves Actually and Greatly Aggrieved they humbly Pray that Your
Most Excellent Majesty in Council will be graciously pleased to Reverse
the said Order of the said Court of Appeals and also to pleased to Reverse
such part of the said Decree of the said Mayors Court as they in their said
Petition of Appeal to the said Court of Appeals Prayed for and that
such further Relief may be granted unto Your Petitioners as to Your
Most Excellent Majesty in Council may seem meet from the Reasons before
Stated and for such other Reasons as may be offered at the hearing of this Appe
al

Court of Appeals
at
Madraspatnam } Thursday the 28th Dec. 1780

Between Caryah Angarro Chitty
Chinna Angarro Chitty Sheshachella
Chitty and Moodurannah Chitty Appellts
and Joseph Marrot 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 Appe
al and Answer the Several Exhibits of the Honble the Mayors Court together
with a Decree of the said Court given in this Cause on Tuesday the 16th day of May
Anno Domini 1779 and upon due Consideration had of the Matters therein
Severally Contained and of the Pleadings and Arguments Used by the Attorneys
on both Sides this Court doth think fit to Order and Decree and doth Accordingly
Order and Decree that the Decree of the Honble the Mayors Court given in this
Cause do Stand Affirmed and that the Appellants Petition be hereby
dismissed with Costs in this Court

P Cur

(Signed) Chas Freeman
Cth

Madras Patnam

In the Court of Appeals

Caryah Angarro Chitty Chinnna Angarro Chitty
Sheshachilla Chitty and Moodu Rannah Chitty
are Admitted to Bail to Venkatachellum Chitty and Pedabala Chitty of
Madras Merchants to Answer Costs and Interest as shall be Adjudged by
His Majesty in Council

At the Suit of
Joseph Marrot

Taken and Acknowledged this Fourth day of January 1781
Before me

Judge of Court of Appeals

156

2

To the Honble the Court of Appeals
at Madraspatnam

Between Nicholas Clawson of
Madras Merchant Complainant and
John Rich of the same place Inhabitant
Defendant

The Humble Petition and
Appeal of the said John Rich

Sheweth

That the said Nicholas Clawson did on or about
the Twenty third day of May which was in the Years of Our Lord One thousand
Seven hundred and Seventy Eight Exhibite his Bill of Complaint in the
the Mayors Court at Madraspatnam against Your Petitioner for the Sum of
Three Hundred and Twenty Five Pagodas Arising as Alledged by him upon
a Certain Promissory Note Subscribed by Your Petitioner own hand Writing
dated in Negapatnam on the Twenty Fourth day of April in the said Year
One thousand Seven hundred and Seventy Eight wherein Your Petitioner
had undertaken and Promised to Pay to one Firmany Shetia or order the
said Sum of three hundred and Twenty five Pagodas after the Expiration
of twenty five days from the date thereof for Value Recvived and that on the
Twenty Second day of May following and before Your Petitioner had paid the
said Sum of three hundred and Twenty five Pagodas unto the said Firmany
Shetia or any part thereof the said Firmany Shetia Attorney Named
Rakim Mott had Indorsed the said Promissory Note over unto him the
said Nicholas Clawson with his own proper hand thereto Subscribed and by

Said

said Indorsement had Appointed the Contents of the said Promissory Note to be
paid unto the said Nicholas Clawson and for that purpose the said Rakim Mott
did deliver the said Promissory Note over unto the said Nicholas Clawson and
whereof the said Nicholas Clawson had given frequent Notice unto Your Petitioner
that by Reason whereof and also by force of the Statute in that Case made and
Provided Your Petitioner was become Answerable and Chargeable to pay to the
said Nicholas Clawson the aforesaid Sum of three hundred and Twenty five
Pagodas

To which said Bill of Complaint Your Petitioner
did on or about the Second day of June in the Year One thousand Seven hundred and
Seventy Eight put in a Demurrer and for Cause of Demurrer Shewed that the
scope and end of the said Nicholas Clawson was to be Believed touching the said
Promissory Note of hand said to have been given Granted by Your Petitioner
to the said Firmany Shetia and which said Note of hand the said Nicholas
Clawson would by his said Bill be Claim by an Assignment made
thereon by the said Rakim Mott as Attorney to the said Firmany Shetia and yet
he had not Alledged nor doth it Appear by the said Bill of Complaint that
the said Note of hand had been Assigned over or Indorsed by the said Firmany
Shetia the Original holder of the said Note and to whom it is made Payable
wherefore and for as much as by the Laws and Customs of Merchants the said note
could not be Negotiated so as to Inable the said Nicholas Clawson to bring an
Action against Your Petitioner in his Own Right unless the said Note had been
first Assigned or Indorsed over to the said Rakim Mott by the said Firmany
Shetia the Original Holder thereof and for which Reason Your Petitioner could
not Pay the Money demanded by the said Nicholas Clawson in his said Bill
of Complaint for Your Petitioner would be liable to be Questioned by such Person
as may have Possession of the first Note of hand Given and Granted by Your
Petitioner to the said Firmany Shetia

and to

And to which said Demurrer the said Nicholas Clawson did on or about the Fourth day of February in this Present Year of our Lord One thousand Seven hundred and Seventy Nine put in a Joinder thereto denying the Severall Matters and things Sett forth and alledged by Your Petitioner in his said Demurrer and insisting on the Justness of his Claim on the said Note of hand and Your Petitioner further Sheweth that the said Demurrer and Joinder were set down to be Argued and on Tuesday the Second day of this Present Month of March they came on to be Argued when the said Mayors Court were pleased to order and did Accordingly Order That Your Petitioner said Demurrer be thrown out with Costs and Your Petitioner put upon his Answer as will more fully and at large Appear by an Extract of the said Order hereunto Annexed for the Inspection of this Honble Court to which Your Petitioner most humbly Refers and prays that the same may be Admitted as part of this his Petition

From which said Order of the said Mayors Court Your Petitioner doth Appeal to this Honble Court as he conceives the same Erroneous and that he is much Aggrieved thereby Because Your Petitioner is humbly of Opinion that from the Several matters and things Alledged Set forth and Stated by him in his said Demurrer the said Mayors Court ought not to have Ordered Your Petitioners said Demurrer to be thrown out but on the Contrary Your Petitioner is humbly of Opinion and hopes that this Honble Court will be of the same that for the reasons Clearly Set forth in Your Petitioner said Demurrer the Bill of Complaint of the said Nicholas Clawson ought to have been Dismissed with Costs of Suit

Your

157

Your Petitioner therefore most humbly Submits all the said matters and things to the Judgement of this Honble Court and humbly Prays that the said Order may be Reversed and Set aside and that this Honble Court may be pleased to order the Bill of Complaint of the said Nicholas Clawson to be dismissed with Costs in the said Mayors Court and also in this Honble Court and Your Petitioner further prays that the said Nicholas Clawson may Appointed a short day to Answer all and singular the Matters and things herein Contained before this Honble Court and Your Petitioner does also pray such further and other General Relief as well and Singular the Premises as to this Honble Court Shall Seem Meet

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2d Day of March Anno Domini 1779

Present

George Proctor Esquire Mayor
James Call and Collon Bowerbank Dent
Aldermen

Nicholas Clawson
versus
John Rich

Bill with the Copy of a Promissory Note Annexed Read
Demurrer Read
Joinder Read

The

The Demurrer and Joinder

Coming on to be Argued and Determined this day in the Presence of the Attorneys on both Sides on Hearing the Complaint Bill with the Copy of a Promissory Note Annexed the demurrer the Joinder on hearing the Pleadings made use of by the Attorneys and on due Consideration had thereon the Court are of Opinion that the Plea Made Use of by the Defendant in his demurrer are Insufficient this Court doth therefore think fit to Order and doth Accordingly Order that the Defendants Demurrer be thrown out with Costs and the defendant put upon his Answer

Days given the defendant till the 16th Instant to Answer the Complainants Bill in default of which Judgment will be given for the Complainant

To the Honble Thomas Rumbold Esqr.

President and Governor &c. Council of Fort St. George

In the Court of Appeals

Between Neclas Clausen of Madras Merchant Complainant and John Roch of the same place Inhabitant Defendant

The Answer of the said Neclas Clausen Respondent to the Petition of John Roch

This Respondent saith that he doth Admit that on or about the Twenty Third day of May which was in the Year of our Lord One Thousand Seven hundred and Seventy Eight he did Exhibit a Bill of Complaint against the said Appellant for the Sum of Three hundred and Twenty five Pagodas therein Alledged to have arisen on a certain Promissory Note of hand Subscribed with the Appellants own hand Writing and dated in Nagapatnam on the Twenty fourth day of April in the aforesaid Year of Our Lord and that the Appellant did thereon ordered take and promise to pay unto one Teemany Shetia or Order the Sum of Three hundred and Twenty five Pagodas after the Expiration of Twenty five days from the date thereof for Value Received and that this Respondent did further Charge in his Bill that before the said Appellant had paid the said Sum of Three hundred and Twenty five Pagodas or any part thereof unto the said Teemany Shetia he the said Teemany Shetias Attorney named Rakiah Mott did endorse over the said promissory Note unto this Respondent with his own proper hand Writing thereto Subscribed he did Charge in the said Bill that he had given frequent Notice of the aforegoing premises as well as that by reason thereof and by reason of the Statute in that Case made and provided the Appellant was became Answerable and Chargeable to pay unto this Respondent the aforesaid Sum of three hundred and Twenty five Pagodas which this Respondent did Accordingly pray the said Appellant might be decreed to pay &c.

This Respondent admits that the said Appellant did on the Second day of June in the year of our Lord One thousand Seven hundred and Seventy Eight put in a demurrer and for Cause of demurrer Shewed that the Scope and End of this Respondents Bill was to be relieved touching the said promissory Note of hand given and Granted by the said appellant

Appellant unto the said Freemany Shelia which Note of hand the Respondent did Claim by an Assignment made thereon by Rakim Mott as Attorney to the said Freemany Shelia all the the said Appellant in his Demurrer observes that it is not alledged nor did it Appear by the said Bill that the said note of hand had been Assigned over or endorsed by the said Freemany Shelia for which reasons and for so much as the Appellant pretends by the Laws and Customs of Merchants the said note could not be Negotiated so as to entitle the Respondent to bring an Action against him the said Appellant in his Own Right unless the said Note had been first Assigned or endorsed over to the said Rakim Mott by the said Freemany Shelia the Original holder thereof and for which reason the said Appellant pretended he could not pay the Amount thereof unto the Respondent and therefore did Demurre

To which said Demurrer the Respondent did file a Joinder inveiling that his Bill of Complaint ought not to be quashed for the many Trifling and evasive pleas made use of by the defendant in his said Demurrer in order to elude the just and legal Claim by him therein made and that the endorsement of the said Note of hand by the said Rakim Mott as Attorney to the said Freemany Shelia made is Sufficient in the Law to maintain his said Action against the said Respondent because the said Rakim Mott as Attorney to the said Freemany Shelia doth Stand in his place and stead and thereby to Action and do in all things for the said Freemany Shelia in the same Manner as if the the said Freemany Shelia had endorsed the said note himself and that the said form and Manner of Negotiating the said Note by endorsement of the said Rakim Mott as Attorney to the said Freemany Shelia was agreable to the Custom of Merchants and legally Valid According to the true Spirit and meaning of the Law authorizing and Warranting notes of hand payable to order and this Respondent did further in his said Joinder insist that there was no necessity for the said Freemany Shelia to endorse the said Note over to the said Rakim Mott in order to enable him to endorse over the said Note of hand to this Respondent because the power of Attorney given and Granted by the said Freemany Shelia is of

is of equal if not Superior validity in the Law or at Least implies and contains every Necessary and Requisite the Law to enable and empower him to endorse over the said Note and that the said Freemany Shelia is bound by his depending and granting such power to the said Rakim Mott equally as if he himself had with his own hand writing endorsed the same for which reasons the Appellant to plea of his being liable in case he should pay the said note of hand upon the said endorsement to be called in question by any person who might be in possession of the first Note of hand was prevaricating and evasive wherefore and for other reasons in his said Joinder contained and set forth this Respondent prayed that the said Demurrer might be dismissed with Exemplary Costs and that the Appellant might be put upon his Answer

And this Respondent doth Admit that the said Demurrer and Joinder were set down to be argued and on Tuesday the Second day of March in the present Year of Our Lord did come on to be argued when the Honble the Mayors Court were pleased to order and did Accordingly order that the Appellants said demurrer should be dismissed with Costs and that the Appellant should put in his Answer by the Fourteenth day of the said Month of March which said order of the Honble the Mayors Court to dismissed the said demurrer this Respondent saith was just and that the Appellant cannot be aggrieved thereby nor do any of the Matters and things by him alledged in his said demurrer stand in the least to shew that the Appellant is or can in the Law be aggrieved by the said order because the Cause of Action brought by this Respondent is upon a Matter which cannot be controverted the same arising upon a Promissary Note of hand by the Appellant given to the said Freemany Shelia or order and consequently liable in its nature to be negotiated and to pass through Various hands and the Appellants first Cause of demurrer Viz.t that the said Freemany Shelia had not himself indorsed over the said Note to this Respondent is very weak and shews the design of the

appellant

Appellant to avail him self of any Argument however contradictory to reason or Groundless in point of Law in order to evade paying and discharging the said Note for if said Freemany Shetia had himself endorsed over the said Note there would have been no reason for the said Backum Mott to have endorsed the same as his Attorney and the power given to Backum Mott to act on behalf of Freemany Shetia shews the Necessity of the Note being Negotiated in the Manner it has been and an Argument to the contrary tends to destroy the Effect of powers of Attorney which are Instruments authorized and sanctioned by the Law as promotive of publick Convenience by enabling men to Act and carry on their affairs in different parts at the same time or to prevent and Supply that ruin and confusion which an absence from Residence or any other personal incapacity would otherwise occasion and the Law hath abrogated every inconvenience which might arise from a Constituent evading the Acts of his Attorney by declaring them his own and Respecting the property of the person in Possession by the Attorney of the said Freemany Shetia this Respondent is humbly of opinion that upon the aforegoing foundation no Objection can be made because the said Backum Mott had Authority which he Certainly had by the power of Attorney Granted him by the said Freemany Shetia to bring an Action for the said debt he undisputably had a power likewise to Authority another person to do so and the Manner in which he has empowered this Respondent is the only one accustomed among Merchants and others which is by endorsement and Regarding the objections made by the Appellant if he should pay this Note of hand to this Respondent he might be liable to be Called in question by the professors of the Second this Respondent saith that the said Agreement would hold equally Good if the said Freemany Shetia had himself endorsed the said Note

For all which Matters and things this Respondent is humbly of opinion that the said Order of the Mayors Court ought to be affirmed and for as much as the said Demurrer and the Appeal from the said Order do evidently mark a Litigious and dishonest intention in the Appellant to take every advantage that can arise to him from a Misuse of the Indulgence of

the practice of the Law to Keep and detain in his profession the property of this Respondent under Colour of the Groundless and evasive pretensions to Justice this Respondent humbly prays that the said petition of Appeal may be dismissed with Exemplary Costs

Court of Appeals
Madraspatnam
} for Thursday 28th Dec.r 1780

Between John Rich Appellant and
Nicholas Clawson 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 the several Exhibits of the Honble the Mayors Court together with an Order of the said Court given in this Cause on Tuesday the 2d day of March Anno Domini 1779 and upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments Used by the Attorneys on both sides this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Order of the Honble the Mayors Court given in this Cause do Stand affirmed and the Appellants Petition be hence Dismissed with Costs in this Court

By Cur
Signed Chas Freeman Clk

by the Appellant to the Respondent for value as will more fully
Appear by the Account Current Annexed to the Bill of Complaint
to this Bill of Complaint was Annexed a writing pretended to be an
Assignment with a power of Attorney from the said Appellant
to enable the said Moolu Mar Chitty to prosecute and file this
Bill of Complaint against the said Respondent to this Bill of
Complaint the said Respondent did put in his Answer and annexed
two Accounts thereto which Answer did deny Standing Indebted to the
Appellant in the Sum the Respondent was held to Bail for but
insisting that the Appellant was Indebted to the Respondent in
the Sum of one hundred and Sixty Six Pagodas twenty five fanams
and forty five Cash Referring the Honble this Mayors Court to the
the Respondents Account Current / Marked B / annexed to his said
Answer the said Respondent further Saith that in his said Answer
he Specially Recited the Circumstances of the Cause which the Respon-
dent by Leave of this Honble Court prays briefly to Recite the same
That the Appellant some time in the Year One thousand Seven
hundred and Seventy Consigned Some Goods and Merchandize to the
Respondent then at that time on his departure for Manilla
which Goods and Merchandize were Carried by the Respondent to
Manilla which not Being at that time answering the Market
the said Goods and Merchandize were left at Manilla in the hands
of the Respondents Attorney to be disposed of for Accounts of the said
Appellant that on his the Respondents Return to Manilla
which was in the Year of our Lord One thousand seven hundred
and Seventy four he found the said Goods and Merchandize undispo
sed of which Goods and Merchandize he the Respondent
disposed of upon certain Conditions to be performed on the part of
the purchasers and in like Manner did the Respondent Dispose
of other Peoples property without any Regard had to any particular

Persons

In the Court of Appeals

Between Villapah Chitty by his Attorney Moodu Mar Chitty of Madras Merchant Appellant And Soanoo Tera Jacob of the same place Merchant Respondent

The Answer of Soanoo Tera Jacob to the Petition of Appeal of Villapah Chitty by his Attorney Moodu Mar Chitty

The said Respondent Says that the Appellant having preferred his Bill of Complaint in the Hon^ble the Mayors Court on the fifteenth day of June One thousand Seven hundred and Seventy Six against Your Respondent for the Sum of Three hundred and Ninety Nine Pagodas four fanams and forty Cash which he Pretended was the Ballance of an Account Current to his said Bill of Complaint Annexed and upon Oath being made by the said Attorney of the said Appellant the Respondent was Arrested and held to Bail the said Respondent further Saith that the pretended Account Current of the Appellant originally arose upon Some Goods and Merchandize Consigned by the Appellant to the Respondent upon Sale and Returns the Returns of which said Consignments the said Respondent was Charged with having Returned from the Appellant and his Attorney and also the Respondent was charged with having Refused to come to an account with the said Appellant or his Attorney for Certain Piece Goods delivered by the