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High Court Series VI

Appeals against Magistrates Convictions

Vol-15

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Rack No.

Shelf No.

Serial No. 15

General No. 129755

69

Saturday 10th November 1787

Present

The Honble Sir Archibald Campbell K. B.
John Hollond. James Hr. Casamajor
Robert Mainsell

To the Honble Sir Archibald Campbell K. B.
Governor and President &c. Council of Fort Saint George

In the Court of appeals
at Madraspatnam

In the Matter wherein Cuthbert Tenwick Commander of the Succefs
of Complaint and Proceedings thereon
of Nacodah Cundah Malum
Complainant

The Humble Petition and appeal of the
said Cuthbert Tenwick

Sheweth That a Bill of Complaint was Exhibited
And filed against your Petitioner in the Honble the Mayors
Court at Madraspatnam on the Twenty Ninth day of Sept.r
Filed in my office the 17. Sept.r 1787 Which was in the Year of our Lord One Thousand Seven
Charles D White Hundred And Eighty three at the Suit or Instance of
Nacodah Cundah Malum Charging your Petitioner with

Being

Being Indebted unto the said Complainant in the Sum of Thirty five Thousand, two Hundred and Fifty Nine Pagodas Sixteen fanams, and Sixty four Cash, Current Money of Madras or Fourteen Thousand One Hundred and three Pounds fifteen Shillings Sterling Money of Great Britain as the Value of a Brigantine called the Lauder Bacux And her Cargo. Charged to have been Illegally Captured by Your Petitioner in the Late War.

Your Petitioner further Sheweth that the said Complainant in and by his Bill of Complaint Charged, that Whilest he the said Complainant Was trading With the English and Entitled to their Protection in the Month of April One Thousand Sevenhundred and Eighty three. he was Captured a little to the Southward of Cuddalore by your Petitioner Without any Authority Whatsoever so to do and that he the said Complainant Was injured by the Conduct of Your Petitioner in the Premisses, and had sustained Damages to the Amount of Thirty five Thousand, two hundred and fifty nine Pagodas. Sixteen fanams and Sixty four Cash Current Money of Madras, as by an Account Current And Affidavit of the said Complainant Annexed to his said Bill of Complaint Was Stated

Upon

Upon which Bill of Complaint a Judgement or Decree of the said Mayors Court was in the Month of October One Thousand Sevenhundred And Eighty five Obtained Against Your Petitioner for the full Amount Charged by the said Complainant with Interest and Costs of Suit Without your Petitioner being brought before the said Hon^ble the Mayors Court to answer the several Charges, or Allowed to Defend Himself in Any manner Whatsoever in the Said Suit

By which Exparte Proceedings of the said Mayors Court Against Your Petitioner he is much Embarrassed and Aggrieved. and therefore did on or about the fourth day of this present Month of September present his Humble Petition to the said Court for Relief in the Premisses Praying that he might be Allowed to come in and defend Himself as in Law and Reason he Conceived he had a Right to do before final Judgement could pass in the Cause.

In which said Petition was briefly stated the Nature of the Cause, and the Situation of your Petitioner which had hitherto prevented his Appearing before the Court to defend Himself your Petitioner Likewise stated that for some Months previous to as well as for many Months After the said Bill was filed Your Petitioner was residing

in

In Calcutta in the Kingdom of Bengal, and was not either by himself or Attorney personally Summoned or required to Appear before the said Court to Answer to the Several Charges Alledged Against him.

Your Petitioner further stated that the said Bill and Proceedings Against him were irregular as well as Illegally instituted. — That the Bill of Complaint was filed on the Twenty ninth day of September Which was in the Year of our Lord One Thousand Seven hundred and Eighty three And a Summons thereupon Issued that on the next day being Tuesday the thirtieth Day of the same Month an Undue Return was made to the said Summons on which was Endorsed that Your Petitioner could not be found, without Allowing any reasonable time for your Petitioner to have Notice of such Proceedings either by himself or his Attorney, as in Law, and by the Practice of the Court he ought to have had.

Instead whereof the Very next day after the Bill was so filed Against Your Petitioner a Warrant of Sequestration was prayed for, and Issued Against the Property of your Petitioner of.

Which Proceeding no Notice was given to your Petitioner nor was any Property of your Petitioner ever Sequestered or Seized, under and by Virtue of the said Warrant of Sequestration Yet Nevertheless Your Petitioner Sheweth that without any legal Notice by Summons in Writing or otherwise being Served upon your Petitioner or any Property of your Petitioner being Attached so as to bring Your Petitioner before the said Mayors Court at Madras pat. nam to Answer the Premisses or Defend himself a Decree was obtained on the Twenty second Day of October One Thousand Seven hundred and Eighty five for the full Sum set up, and charged against your Petitioner — With Interest and Costs —

Your Petitioner further stated in his said Petition to the said Honble the Mayors Court that all the afore recited Proceedings were passed against him Without his ever being heard, or made a Party, that he your Petitioner was Advised and humbly Conceived that he ought not to be bound by such Sentence or Decree — but that he ought to be Admitted upon the Principles of Law and Natural Justice to come in And Defend himself, against the Many false Wicked

and

And Unwarrantable Charges Exhibited and unjustly Prosecuted Against Him in manner and form as before is Setforth

Your Petitioner in Order to Induce the said Honble the Mayors Court to Allow your Petitioner All reasonable Relief in the Premisses stated some of the many Errors Appearing on the face of the Proceedings, and pledged Himself to prove that He had only Acted Consistent with His Duty that having been Entrusted by His Highness Wau Law Jaw Nabob of the Carnatick with an Armed Ship in the late War called the Succes Galley Heryour Petitioner was by the expres Orders of His Highness the Nabob of the Carnatick, as well as by the Governor and Select Committee of Fort Saint George particularly Appointed And Ordered to Act under the Command of Lieutenant General Sir Eyre Coote the then Commander in Chief of the Kings and Company's Forces

Your Petitioner being under the expres Orders of the said Commander in Chief did on the Fifteenth day of March Which was in the Year of our

Lord One Thousand Sevenhundred and Eighty One, receive Orders from the said Commander in Chief Signified to Your Petitioner in Writing to proceed With the Armed Ship the Succes Galley then under your Petitioners Command to Porto Novo Roads and retake a Brigantine in Which were a Number of Elephants Which Had been Seized and Captured by some Armed Boats belonging to Hyder Ally that the Retaking of the said Vessell was of much Importance to the State, will Appear from the Very presing and Peremptory Orders sent to Your Pet.r by the said Commander in Chief through His Secretary, as also by Similar Orders from Mr. Dent Resident at Cuddalore, Whose Anxiety for your Petitioner to Exert Himself on this Enterpize is well Known to His Secretary And those Gentlemen who were near His Person

Your Petitioner further stated in His said Petition that Acting under and by Virtue of the Authority aforesaid and in Consequence of the Orders aforestated He Exerted Himself to retake the said Vessel And Succeeded on Board of Which Sixteen Armed Men belonging to Hyder Ally were Captured or made

Prisoners

Prisoners of War, the Vessel having been plundered of Most of her Valuable Cargo by the Enemy who had been in Possession of her a Considerable time before she could be Retaken

Your Petitioner under the foregoing statement Humbly Submitted His Said Case to the Consideration of the Hönble the Mayorscourt and prayed that all Proceedings against him in the Mode Adopted by the Complainant might be stopped And that he your Petitioner might be allowed upon giving Security for Costs to appear before the said Court by his Attornies and defend himself against the present Suit or any other Bill of Complaint which he the said Complainant might think proper or be Advised to prefer Against Your Petitioner regarding the Several Charges Matters and things by him Alledged Against Your Petitioner

Your Petitioner further Sheweth unto this Hönble Court that on the fourth day of this present Month of September a Writt of Execution being prayed for against Your Petitioner the aforestated Petition was presented to the Hönble the Mayorscourt on behalf of your Petitioner against the said Writt of Execution Issuing when after full Consideration & Debate thereon the said Mayors Court were pleased to refer the same to the further Consideration of a full Court to be held on Tuesday the Eleventh day of this present Month upon Your Petitioner finding Bail in the Sum of Fifteen thousand Star Pagodas for his Appearance

Your Petitioner further begs leave to Represent that on Tuesday the Eleventh day of this present Month of September Motion for a Writt of Execution to Issue Against him and the Merits of his Petition Came on to be heard, and Determined When the said Mayors Court Were pleased to grant and Order a Writt of Execution Against Your Petitioner to Issue for the Amount of Upwards of Fifty three Thousand four hundred and Seventy two Pags Thirty Six fanams and fifty two Cash, or Twenty one Thousand three hundred and Eighty nine Pounds and three Shillings Sterling Money of Great Britain to be Levied out of the Goods and Chattles of your Petitioner and the said Court were further pleased to dismiss or throwout the Petition of Your Petitioner With Costs All which will fully

Prisoners of War, the Vessel having been plundered of Most of her Valuable Cargo by the Enemy who had been in Possession of her a Considerable time before she could be Retaken

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Your Petitioner further Sheweth unto this Honble Court that on the fourth day of this present Month of September a Writ of Execution being prayed for against Your Petitioner the aforestated Petition was presented to the Honble the Mayorscourt on behalf of your Petitioner against the said Writ of Execution Issuing When after full Consideration & Debate thereon the said Mayors Court were pleased to refer the same to the further Consideration of a full Court to be Held on Tuesday the Eleventh day of this present Month, upon Your Petitioner finding Bail in the Sum of Fifteen thousand Star Pagodas for his Appearance

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fully

fully appear by an Attested Copy of the said Order of Court herewith sent for the Inspection of this Honble Court By which said Order of the said Honble the Mayors Court at Madraspatnam so made against Your Petitioner on Tuesday the Eleventh day of this present Month of September Your Petitioner Considers himself and is much Aggrieved Wherefore he humbly begs leave to Appeal therefrom to the Judgement and Equitable decision of this Honble Court of Appeals for the following Among other Reasons—

First ..... Because Situated as your Petitioner Was in the Command of an Armed Ship in the time of General War belonging to an Ally of Great Britain. And by that Ally Lent to Act under the Orders and Command of their Governor and Council. and by them further directed to Obey the Orders of their Commander in Chief Your Petitioner considers himself fully Warranted in Acting as he did. and that he ought not to be called in Question at this time for the same but had the Now pretended Complainant Any just Cause of Action or Complaint Against Your Petitioner

Touching the Premisses he should have Applied in time and to a Court Competent to determine upon the Merits the Proceedings Against Your Petitioner is a new Attempt and should it Succeed Against Your Petitioner for daring to Retake a Ship from an Open and Avowed Enemy the Effects Would be fatal and prevent the Exertion of Seamen in a future War, the Ill Consequences where of Will Your Petitioner Doubts not Appear fully to this Honble Court as well as the Illegal and Oppressive Measures instituted A Gainst Your Petitioner so as to draw down their Severest Censure and Displeasure Upon the Prosecutors there of

Secondly ..... Your Petitioner is Advised and humbly Conceives that by the Laws of the Realm of England, and Established Practice in all Courts of Law and Equity as Well as under an express Act of Parliament Now in full force the Mayors Court at Madraspatnam ought to have granted Your Petitioner the Relief prayed for in and by his said Petition. and upon Entering his Securities for Costs, should have Allowed Your Petitioner to have come in and Defended himself Against the said Bill of Complaint And that their Proceeding to pass

A Decree and grant a Warrant of Execution thereupon
Against Your Petitioner Without allowing him to be
heard or to Defend himself Was contrary to the
Principles of Natural Justice and Equity as well as
the Laws of Great Britain and of the most
Destructive and Ruinous Consequences to Your Petitioner
as tending to Impoverish and being to Ruin Your
Petitioner and his Family for having done his Duty
to the Publick and in the hour of Danger contrary
to every Principle of Reason Law or Equity

Thirdly Because Your Petitioner is
credibly informed and Verily believes that the pretended
Complainant Nacodah Candah Malum Whose Name
is Made Use of against Your Petitioner is not or ever was
the Owner of the Brigantine in Question or her Cargo or
Any part thereof that he was only a Pilot intrusted
With the Charge and Navigation of the Vessel
Retaken from the Enemy as before is stated by Your
Petitioner on the Coast that the Vessel and Cargo
belonged to People of Credit Who were well Acquainted
With the fate of the Vessel and Submitted to their Loss
Rather

Rather rejoicing at her being Retaken With part of her
Cargo by the English than that she should have fallen
into their Enemies Hands All which your Petitioner would
have proved by Indubitable Evidence Had he been allowed
to have come in and to Defend himself before the said
Honble the Mayors Court in Order that the Parties Concerned
in Establishing And prosecuting the Suit Against Your
Petitioner might be dealt with as they deserve Your Petitioner
reserving the right of having determined as to the Question of
Prize or no Prize to a Court Competent but which the said Mayors Court
at Madraspatnam As your Petitioner is Advised is not
Competent to Adjudge And determine upon or any such
Matter or Question relating to Prizes Captures, or Recaptures
And their Consequences

Fourthly Because Your Petitioner having
offered to Submit his Commission And Authorities for
Acting in the Premises to the Inspection of the said
Mayors Court as well as to Enter into such Securities, as they
should deem Adequate they ought to have received Your
Petitioners Plea and Dismissed the Suit Against Your
Petitioner, in the full Confidence that this Honble Court will

Examine

Examine into the Merits of his Case and render
him Justice. He begs leave to Submit the Orders of the
Honble the President and Council And of General
Sir Eyre Coote and his Commission to the Inspection
of this Honble Court of Appeals by annexing true Copies
thereof to this his Humble Petition and Appeal — the
Originals being ready to be produced if required —
Your Petitioner Submitting to the Judgement and —
Consideration of this Honble Court if an Investigation
Should take place, or be Ordered respecting the
Premises or if the same should be by them Dismissed
Under such Orders as in their Wisdom shall seem
Agreeable to Equity And good Conscience —
Wherefore and for such other or further Reasons
As may be Offered on the part of Your Petitioner at the
Hearing of this Matter — Your Petitioner Humbly
prays the Premises Seriously Considered that this
Honble Court will be pleased to Order and Direct
that the Petition of Your Petitioner to the Honble the
Mayors Court at Madraspatnam together with the
Bill of Complaint And all Proceedings in the Cause

On which the Writ of Execution hath Issued Against
Your Petitioner at the Suit or Instance of Nacodah
Cundah Malum may be Ordered up, and be brought
before this Honble Court of Appeals for their Consideration And
Judgement and that the Proceedings thereon be Annulled
And Dismissed And that this Honble Court of Appeals
Will be pleased to Order and Direct that the Sheriff
for the Town of of Madraspatnam And the Districts
thereof &c. Hold and detain the said Writ of —
Execution in his Possession and that he be forthwith
Strictly Enjoined and Restrained from Acting under
And by Virtue thereof, Until the further Order of this —
Honble Court — Lastly, your Petitioner Humbly prays
a General Relief in all and Singular the Premises
such as to this Honble Court Shall Appear Agreeable
to Law Justice And Equity — And your Petitioner
As in Duty Bound will ever pray &c.

Edward Ellis
Pullin Spencer
Solicitors for the Petitioner

His

His Highness the Nabob Wallaujaw. Ummeer. ul. Hind —
Omdah't. ul. Mulk Ansuph. ud Doulah. Anweer ud, —
Deen Cawn. Bahauder. Zuphur Jung. Sepah Salaur —
Soubahdar of the Carnatick —

To Cuthbert Charles Tenwick Esq.r

I do hereby appoint you to the command of the Succefs Galley. You are to obey such Orders as you may from time to time receive from me and you are hereby directed forthwith to take Charge of the said Ship from Capt.n Nathaniel Bacon. and to furnish me With a Correct List of all such Stores provisions &c.a as You may receive from him. and find on board the said Vefsel — Given at Chepauk February 5.th 1779 —

/Signed in persian/

Signed by Order
/Signed/ James Wesley Sec.ry

A true Copy

Edward Ellis
Pullen Spencer
Solicitor for the Petr

Captain Cuthbert Tenwick
Commander of the Succefs Galley
Sir

His Highness the Nabob having put your Ship under the Orders of the Honble the President and Select Committee. I have their Commands to inform You. that having taken in Your loading of Rice. you are then to make the best of your way to Cuddalore. where. should you receive No Orders to the Contrary from Lieut.t General Sir Eyre Coote You are to deliver Your Cargo to the Chief & Council such directions as you shall receive from the Commander in Chief of the Army or from the Chief and Council of Cuddalore You are to follow. It being the intention of Government in the present destination of the Succefs Galley that she shall be employed so as to afford the best Assistance to the Army — The accompanying are such Signals as are established for this Port —

Should the five Vefsels Which have been dispatched from hence With Grain. be still laying at Sadras. You will direct them to proceed to Cuddalore With all Possible expedition —

Enclosed you will receive Copy of the Signals for 1779 & 1780. Incase of the Appearance of Any Vefsels. You are to make use of the latter Which if not answered / but on no Account otherwise / you are to

To throwout the former The Signals for this Port are also sent to You Accompanying should You be in danger of being taken by any Enemy, but not untill the last extremity You are to be particularly Attentive to the destruction of these Signals. Dated in Fort St. George this 18th Feby. 1781 and Signed by Order of the President and Select Committee

/Signed/ Richard J. Sulivan
Sec.ty

A true Copy

Edward Ellis
P. Spencer
Solicitors for the Pet.r

To Captain Tenwick Commanding the Success Galley

Sir

I am desired by Sir Eyre Coote to Acquaint You that it is his pleasure You land the Troops with all Possible Expedition for which Boats are Ordered to attend And immediately after to proceed to Porto Novo roads and retake a Vessel Which Was seized Yesterday Morning by Hyders Armed Boats off that place her recovery is of Importance Sir Eyre therefore Wishes You could contrive so as to Arrive there early tomorrow Morning or Sooner if possible

I am Sir

Your most Obed.t Servant

Camp Newtown
15th March 1781

/Signed/ Tho.s Graham

/A true Copy/ Edward Ellis
Pulliew Spencer
Solicitors for the Pet.r

To Captain C. Tenwick
Commanding the Success Galley

Sir Cuddalore Roads

Having been informed that Another ship from the Eastward With Merchandize Has been seized by Hyders Armed Boats off Porto Novo I direct that You immediately Proceed thither and endeavour to retake her should You Succeed send Her on under Charge of proper people to the Roads of Cuddalore, and Keep Your Station off Porto Novo to protect and give warning to other Vessels Which may come there untill further Orders should the Intelligence prove false You will Nevertheless Keep Your Station and Advise Me Accordingly for which purpose You had better

Carry

Carry with you two Cattamarans ___

If you can destroy any of the Enemys Armed Boats I recommend your doing it, as it will be rendering an Essential Service ___

I am Sir,

Your most Obed.t Humble Servant

Camp Newtown
23.d March 1781

[Signed] Eyre Coote

A true Copy

Edward Ellis
Pullen Spencer
Solicitors for the Petn.rs

To Captain Fenwick

The Commander in Chief wishes to know whether You Can Land all the Men or not by no means to lose the night in droping down to Porto Novo, for that should You not reach it before Morning & take Possession of the Vessell the Enemy upon seeing Your approach may run her on shore

I am Sir,

Your most Obed.t Servant

Head Quarters
15.th March 8 PM.

[Signed] Tho.s Graham

[a true Copy]

Edward Ellis
Pullen Spencer
Solicitors for the Petn.rs

To Captain Fenwick

Sir

I have received your Note and in Consequence have Ordered all the Boats of this Settlement off to land the troops Which You will please immediately to send on Shore, a Snow belonging to a Tholia Merchant Mounting five three Pounders, 4 Swivels and 45 Lascars laden with a large Quantity of Rice, Pepper, Wax, Elephants &c.a having been taken by Hyders People off Porto Novo and Carried in to that place, and the General Sir Eyre Coote, being desirous of recovering, Her has advised that a Vessell of Force should be dispatched to that place With a proper Force of Military to retake her she at present lays in deep Water, and We think that she may be Easily recovered on the Disembarkation your Sepoys

We proposed to dispatch the Success Galley together With such other force as you may think Necessary, but No time Whatever must be lost to give the Enemy time to unload the sooner this Business is done the better the Vessell Hyder has taken is Worth 50000 Pagodas no time Whatever must be lost, there a Vessell at Anchor before the Factory House Mounting 4 Swivels she is a Vessell

J

Of a proper Burthen for this Expedition

Cuddalore
½ past 6 oClock
March 15th 1781

Sam. Sir
Your Obed.t & Humbly Servant
[Signed] C.s B.s Dent

A true Copy Edward Ellis
Pulliew Spencer
Solicitors for the Pett.r

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 11.th day of September Anno Domini 1781

Present

James Call Esquire Mayor
Edw.d Jn.o Holland Edw.d Garrow
William Webb John Menzies
George Savage Jos. dupre Porcher and
Andrew Ross Aldermen

Nacodah Condah Malem

Vers

Cuthbert Tenwick

Avadana Paupiah Bramaney and Sanapatty Vencatasawmy became Bail for the Personal Appearance of the Defendant in the Sum of 15000 Pagodas Agreeable to the Order of Court of last Court Day taken and acknowledged before the Mayor on the 6.th Instant Minute Made in this Cause last Court Day Read Petition of Cuthbert Tenwick then tendered Read — The Court having had due Consideration on the Motion made in this Cause last Court Day that a Warrant of Execution might issue Against the Defendants Effects, as also having had due Consideration on the Petition Which was then tendered to the Court on the part of the Defendant. It is ordered that Petition be Overruled and thrown out With Costs And that a Warrant of Execution do issue Against the Defendants Effects Mess.rs Aldermen Holland Porcher and Savage Dissent to the Resolution of the Court Mr. Aldermen Ross Dissents to the Resolution of the Court and Will send in his Reasons on or before next Court Day The Attorney's for the Petitioner pray that the Bail filed in this Cause on the 6.th Instant may be Discharged the Petitioners Petition having been Over Ruled — Ordered that the Bail do Stand discharged

A true Extract
[Signed] James Taylor
Regr.

Do

To the Honble Major General Sir Archibald Campbell. K.B
President & Governor &c.a &c.a
Council of Fort St George

In the Court of Appeals
at
Madraspatnam

Between Nacodah Cunda Malem
Owner of the Brigantine called the
Lauder Baux Complainant And
Cuthbert Fenwick Commander of the
Ship Success Galley Defendant

The answer of the abovenamed Nacodah Cunda
Malum to the Petition And Appeal of the said
Cuthbert Fenwick

This Respondent for Answer to the
said Petition and Appeal or unto so much thereof as
this Respondent is advised is material or Necessary for
him to make Answer unto he Answereth and saith
that it is true that this Respondent did on the 29th day of
September Which Was in the Year of our Lord 1783 file
his Bill of Complaint in the Honble the Mayors Court
at Madraspatnam Against the said Cuthbert Fenwick
for

Filed in my Office
the 4th October 1787
Charles D White

For the Sum therein Mentioned being for the Value of a Vessel and
her Cargo charged to have been illegally captured by the said
Appellant

And this Respondent says it is also true
that by the said Bill of Complaint it is charged that Whilst
the Complainant was trading With the English And entitled
to their Protection he was captured on the day & Year and at
the place therein Mentioned Without Any Authority so to do and
that this Respondent Was injured thereby and had sustained
Damage to the Amount therein mentioned As by an Account
Current And Affidavit of this Respondent Annexed to the
Bill of Complaint might Appear

This Respondent also admits that
Upon this Bill of Complaint a Judgement or Decree Was
obtained in the Month of October 1785, but previous to such
Judgement this Respondent begs leave to State that the
Appellant having absented himself from the Jurisdiction
of the Mayors Court to avoid any process being personally served
on him a Warrant of Sequestration being the usual
process of the said Mayors Court in such case was regularly
sued out Against him on the 3d day of Sept. 1783. that on
the 6th day of April 1784. the same was returned that on the

3d

30th day of October in the said Last Mentioned Year the Mayors Court Were pleased to Order Notice thereof to be Served on the Attorney of the Appellant Attorney Who was then Absent And Which was done Accordingly — but the said Attorney of the Appellants Attorney not Appearing to the said Suit — And the Complainant having supported his Claim by the Affidavit of several People filed in the said Mayors Court the said Court were pleased to Order a full Court for the Hearing of the said Suit and such full Court did on the 22d. day of October 1785, upwards of two Years after the Commencement of the Suit order and decree the sum charged in the Bill of Complaint be paid to the Complainant as by the records of the Mayors Court may more fully Appear

This Respondent therefore can by no means Admit that After so many Precautions taken both by the Respondents Attorney previously to his commencing the Suit aswell as after it was commenced by the extraordinary length of time it Was depending the notice geven to the Only Representative that could be found of the Appellant the Affidavits exhibited and the more than Usual delay in every stage of the business the Appellant can With the least shadow of reason say he has been Aggrieved tho this Respondent does Admit that under such Pretence the Appellant did present a Petition to the said Mayors Court on the day and Year Mentioned in his Petition of Appeal

This Respondent also admits that such Petition did briefly state the Nature of the Cause and the situation of the Petitioner that he had resided in Calcutta several Months before And after the Commencement of the said Suit and that he Was not personally summoned or required to Appear thereto But this Respondent saith that it Appears by the Proceedings in this Cause aswell as by the records of the Government of Fort Saint George that the Petitioner had Notice of this Cause And therefore it is to be fairly inferred that his not Meeting the Merits thereof by a Defence was because he Was conscious the Claim was well founded And that he had No defence to Make thereto

This Respondent Also admits that the said Petitioner stated the irregularity of a summons being returned not to be found the Next day after it before date but such irregularity he conceives will Vanish if it be considered that every summons is Made returnable on the Next Court day after it issues and that

Sums

Summonses are issued on Mondays being the day Next before the Usual Court days as well as on any other days. if therefore the Sheriff does not return them on the Next day he does not pursue his Authority if he Wishes to have a Longer time to Satisfy himself About what return this to make the Court Will indulge him but if he is Satisfied of the truth of his return and Wants no longer time he may surely return it on any Court day he please if he does it improvidently And Makes an undue return An Action lies Against him but the return being Made by an Officer specifically appointed so to do And entered on record becomes an absolute truth not afterwards to be Straken And a sufficient Ground for any subsequent Proceedings — It is presumed the Petitioner Will scarsely Assert that he was to be found Within the Jurisdiction of the Mayors Court When the Sheriff returned he Was Not to be found but should that be the case he has his remedy

This Respondent also admits that the Said Petitioner stated that a Warrant of Sequestration had issued Against the Property of the Appellant And that No property belonging to him Was seized And yet a Decree had passed Against him — To Which this Respondent conceives it May be replied that the Warrant of Sequestration being an Authority to Seize the Goods of the Defendant as well for the Contempt shewn to the Court for not Appearing as for the purpose of satisfying the Complainants demand, his Withdrawing his property in Order to avoid such a Seizure is but Aggravating his Contempt. And it Would be a Strange Perversion of Justice to determine that because the Defendent has taken care to leave no Effects Within the Jurisdiction of a Court to Satisfy the Decree that therefore the Complainants Demand should not be Ascertained by such Decree — tho he had Waited patiently two Years for such Decision had given him every Notice he could Any Way do And had certain proofs that the Defendant Well Knew of the Proceedings Which he purposely Avoided Answering —

This Respondent also admits that the Petitioner stated that the Appellant had not been heard or Made a party to the Suit and that therefore a Decree ought Not to have passed Against him To Which this Respondent conceives it May be replied — That if he Has not been heard or made a party to the Suit it has

Has alone originated from his own Wrong to declining to
Make himself a party and seeking to be heard that it is as
Much a Maxim of Natural Justice as it is of Law: that
No one shall be Allowed to take Advantage of his
own Wrong doing but it Would be eminently Allowing
the Appellant to take such advantage if after so long
A space of time elapsed as four Years and when the
interest is Already become near half the Debt he shall
Now be Allowed to post pone for any longer time giving
Satisfaction to this Respondent.

This Respondent saith he has
shewn every Disposition both before And Since the
commencement of the Suit to Submit his Claims to any
Mode of Decision competent to determine them and
that he has endeavoured With an unremitting Assiduity
to Meet him upon any Ground he might himself
Chose but the Petitioner has Shewn equal Assiduity
in Avoiding every Discussion

This Respondent also admits that
the said Petition states his having Acted only
consistent With his Duty from the trust reposed
in him by his Highness the Nabob and the Orders
he had received. But to this it may be replied that the
Trust he was to fulfill and the Orders he was to execute Would
Only operate on the property of Enemies The Arms he was
entrusted With were only to be pointed Against them neither
His Commission or his Orders extending further that
Protection and Allegiance are reciprocal the Sovereign
Commission to Annoy the Enemy implies an Order to protect
his Subjects and that therefore if he has done otherwise he has
Not pursued his Commission those Orders under Which he
shelters himself are to retake a Vessel said to have been
Seized by Hyders Boats so that from his own statement she is
Acknowledged to be the property of a Subject Which by the
Proceedings in this Cause is proved to have been in the
Respondent When the Petitioner came up, notWithstanding
Which the Petitioner has thought proper to dispose of Her and
her Cargo without waiting for the form of Tryal and
condemnation as of right he ought to have done even in
the Most perfect certainty of it's being a legal Prize

This Respondent Admits that the
Prayer and proceedings in the said Petition Were as are
stated by the said Appellant and that the said Petition
Was thrown out with Costs But this Respondent can by no
means

Means admit that the Appellant has been in Any Manner
Aggrieved thereby either for the reasons therein Alledged or for
Any other reason Whatever And in Answer to the several
Reasons therein suggested he begs leave to observe

First — That it is an unheard of arrogance in the Petitioner
to claim as he appears to do on the score of Public Policy
An exemption from process at Law for a private injury
especially when he has No public Services to boast of
exigency to justify the Conversion of the property to his
own Use Which Conversion is the injury in Question

Secondly — To the second Reason suggested by the Appellant
this Respondent saith that by the Title preamble and
certain enacting Clauses in the Act of Parliament alluded
to by the Appellant the same Appears to have been
expressly Suited to the Situation of the Petitioner for the
Act of Parliament in Question is to prevent Persons
Avoiding Justice by absconding in order that they may
not be served With Process which is the case here

Thirdly — To the third Reason it is readily answered that
this Respondents Property in the Said Ship And Cargo is
Supported by the concurrent Testimony of several different
People and cannot be doubled And in regard to the
Competency of the Court he Asserts that Matters of Prize
have been discussed therein And it is for the furtherance of
Justice that it should be so, else enormities Against the
Property of Subjects on the high Sea might be committed
Without the risk of being called to Account under the
Pretence that the Mayors Court Which is the only Court
to decide on property was incompetent to the Question
But this Respondent saith that the property being
recaptured by the Crew of the Vessel the Matter is not at
All involved in the Question of Prize or no prize it is
a Seizure and conversion of Property Without Any Cause
or Right or Reason Whatever

Fourth — In answer to the fourth reason suggested by the Petitioner
this Respondent saith that the same Applies only to the
Property of Enemies not the Vessel and Cargo of a British
Subject or one living under the Protection of the British Flag
or of the Ally of Great Britain

To all which Reasons and such others as may
be offered at the hearing this Respondent prays that the said Orders of
the said Mayors Court of the Eleventh day of the said Month of Sept.r
may be Affirmed and the Petition and Appeal be dismissed With
Costs to be paid by the Appellant

/signed/ Stephen Popham
Attorney for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 10th November
Anno Domini 1787

Between Cuthbert Tenwick Commander
of the Ship Success Galley Appellant
and Nacodah Cundah Malum
Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both Sides Upon hearing the Petition of Appeal and Answer And the Petition to the Honble the Mayors Court together With the Order of the said Court given in this Cause on Tuesday the 11th day of Sept. anno Domini 1787 upon due Consideration had of the Matters therein Severally contained And of the Pleadings And Arguments Used by the Attornies on both Sides This Court doth think fit to Order And doth Accordingly Order that the said Order of the Honble the Mayors Court Dated the 11th day of September
Anno Domini 1787, be reversed With Costs in this Court And that the Petitioner Cuthbert Tenwick shall be

Allowed

Allowed to appear by his Attorney to Answer to the Present Bill of Complaint preferred Against him in the Honble the Mayors Court and to make such Defence As he might have done in case No Proceedings had been had thereon

By Court

/Signed/ Chas. N. White
Clk

To the Honble Sir Archibald Campbell K.B.
President & Governor &c.a Council of Fort St. George

In the Honble Court of Appeals

Between Thomas Jones by his Attorney
John Collin Tonyn And Peter Massey Casson
Complainants And Joaquim Gregorio
Defendant

The humble Petition and Appeal of Joaquim Gregorio
of Madras Inhabitant

Sheweth That the above named Thomas Jones by his
said Attorney's did on the Twenty Seventh Day of June
One thousand Seven hundred and Eighty five prefer a Bill of
Complaint Against Your Petitioner therein demanding the
Payment of One hundred And fifteen Pagodas and fourteen fanm.
due to him as the Bill Suggested upon a Certain Bond &
Account Copies whereof Are annexed to his Said Bill To
Which Your Petitioner did on the Twenty Seventh Day of
Sept.r following put in his Answer upon Oath and thereby
Admitting that he had Executed the Bond in Question
did insist that the Same was not given for any Money
Borrowed

Filed in my Office
the 7.th August 1786
Charles A. White Cl.k

Borrowed as recited therein but for the Amount of fees attending
To Suits at Law brought by your Petitioner as administrator of
Francesco de Moura Deceased Against Francisco Jozé and Patricio
de Velverde one of which Suits is Still depending and —"
Undetermined in this Honble Court that Previous to his —"
Executing the same the Above named Peter Massey Casson
One of the said Attornies of the said Thomas Jones had entered
into an Agreement With Your Petitioner Whereby he had —"
Undertaken that if any Deduction should be Made by
a Taxations of the Bills of Costs the Amount of such —"
Deduction should be set off and Allowed in part of such
Bond a Copy of Which Agreement Your Petitioner did Also
Annex to his said Answer and did further insist therein
that such Bills of Costs had not been Taxed or such —"
Deduction Allowed and therefore prayed that such Bill might
be dismissed With Costs Your Petitioner further Sheweth
that to this his said Answer the said Thomas Jones by his said
Attornies did on the Eighth Day of November following file
his Replication and did therein admit that the said Bond
Was given for the Consideration insisted on by your Petitioner
in his Said Answer And also that his Attorney had entered
into Such Agreement as is therein Set forth but pretended that
the

The said Peter Mapey Capsein had delivered the Bill of Costs to Your Petitioner and that therefore it Was his Business to have them Taxed and at the same time Suggesting that much Lenity And favor had been Shewn to Your Petitioner Stated it as a Ground for the said Thomas Jones to be allowed to Substantiate his Demand to this Replication Your Petitioner filed a General Rejoinder on the Sixth Day of December in the said Year abovementioned and Publication having Passed the Cause Was Setdown for hearing and was Accordingly heared and determined on Tuesday the Twenty fifth Day of July last in manner set forth in the Copy of the Decree hereunto annexed From which said Decree Your Petitioner humbly prays leave to Appeal to this Honble Court the same being as he conceives Very erronious and that principally for the Reasons following —

First — Because by the said Bond it is recited that the same Was given for Money Borrowed Whereas it afterwards Appears that the Consideration Was for Law fees And by Act of Parliament no Attorney can sue for his fees till the same have been Taxed and therefore such Bills Not being Taxed can be no legal or Valuable Consideration if not Void in itself Which may be doubted Yet certainly becomes so upon the Matter being Shewn —

Because

Secondly — Because allowing the same a Sufficient Consideration Yet a Manifest Injury is done to Your Petr by this Decree Which Orders him to pay a larger Sum of Money than he is bound to pay either by the Complainants Express Agreement by Law or in Conscience for Attorney's Bill being generally when Taxed Subjected to Considerable Reductions And no reason being Suggested that the Bills in Question were drawn with greater Moderation than Other It appears that Your Petitioner is not really indebted to the Complainant in the Sum of Money Mentioned in the Decree but in a Sum of Money Considerably less than that —

Thirdly — Because it was the Complainants Duty previous to his Making any Demand and a Necessary step to render such Demand legal to have the Bills Taxed Which he could have easely done even if the Bills were in the Possession of Your Petitioner / Which however he does not in any Manner prove / for as the Bills were Originally Made out by the Complainant or his Attornies it was Equally easy for them to make out Duplicates and to have such Duplicates taxed, and it is a Maxim in Law that the Plaintiff shall make out his Cause in every Respect agreeably to Law and not take Advantage of any Omission or Deficiency in the Defendant —

Fourthly — Because

Fourthly — Because of the Hardness and Unjustness of Your Petitioner Case in being Obliged by the said Decree to pay the Costs in a Suit brought by him in pursuance of his Duty as an Administrator out of his own Pocket before that Suit whereby he might be reimbraced is determined

For all which Reasons and for such other as may be Urged at the hearing Your Petitioner prays that the said Decree of the Hon'ble the Mayors Court may be set aside, and that the said Suit may stand Dismissed With Costs to be paid by the said Original Complainant

And Your Petitioner as in Duty Bound Shall Ever Pray

/Signed/ Peter Walker

Attorney for appellant

Mayors Court

Mayors Court at Madraspatnam

Tuesday the 25th day of July Anno Domini 1786

Present

Robert Ewing Esquire Mayor
Edward Garrow
John Holland & Edward
Aldermen

Between Thomas Jones by his attornies John Collin Tonyn and Peter Mafsey Esqrs of Madras Gentlemen Complainants

And Joaquim Gregorio of Madras Inhabitant Defendant

This Cause coming on to be Heard and Debated this Day in the Presence of the Attornies on both sides on Reading the Complainants Bill With Copies of a Bond and of an Account Annexed the Defendants Answer With Copy of a Receipt annexed The Replication With an Exhibit annexed, The General Rejoinder, On Hearing the Pleadings Made Use of by

the

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 pay unto the Complainant the full and Just Sum of
One hundred and fifteen Pagodas and fourteen Fanams
Pagodas 115 .. 14 .. / together with such Interest as
now is or shall hereafter become due thereon Untill
full Payment is Made also all Costs of this Suit

Ellis

/ Signed / James Taylor
Register

To the Hon^ble Major General Sir Archibald Campbell
K. B. President and Governor &c^a.
Council of Fort St George

In the Court of Appeals

Between Thomas Jones by his Attornies
John Collin Tonyn and Peter Massey Caspin
Complainant and Joaquim Gregorio Defendant

The answer of Thomas Jones by his Attornies John Collin
Tonyn and Peter Massey Caspin to the Petition and
Appeal of Joaquim Gregorio

This Respondent for answer to the said Petition
And Appeal or unto so much thereof as this Respondent is
Advised to be Material for him to make Answer unto
doth answer and say that it is true this Respondent by
his said Attornies did file his Bill of Complaint in the
Mayor's Court at the time and for the Sum stated in the
Petition and Appeal and this Respondent admits that the
Appellant hath therein the Substance of his answer to this
Respondents Bill of Complaint To which Answer this
Respondent admits his having replied supporting thereby
his Claim against the Appellant as charged in his Bill of

Com^d

Filed in my Office
the 10^th January 1787
Charles R Whitelock

Complaint and that after the Appellant had rejoined thereto And the other Usual Proceedings were had the Cause Was heard and a Decree given by the Mayors Court as stated in the Appeal Which Decree this Respondent humbly insists is According to Equity and good Conscience for the following Among other Reasons

1st ..... Because it appeared to the Mayors Court that this Respondents original Claim on the Defendant was for Business done Previous to February One thousand Seven hundred and Eighty four when this Respondent quitted India and that his Attornies indulged the Appellant from February to November without charging Interest on his account or Suing out any Process for the recovery thereof altho' it Was in their Power to have recovered the Amount due to this Respondent by a Summary Process to wit precept Attachment and Execution as is the usage in recovery of Claims for Law Fees

2dly ..... Because it appeared also that in lieu thereof the Appellant was indulged in consequence of his own Written Application with Six Months further time by taking his Bond dated in November and payable in May following, and that for the further satisfaction of the

Appt

Appellant this Respondents acting Attorney Peter Massey Capsin undertook to Allow in deduction of the Bond Any Extra Charges which might appear to have been in the Bills of Costs.

3dly ..... Because it appeared that altho' the Appellants pretence for not paying his Bond was that the Bills of Costs Were not taxed by the Register of the Mayors Court. Yet such Taxation Was impossible except by means of the Appellant himself Who was in possession of the Original Bills from the day he granted his Bond in November One thousand Seven hundred and Eighty four to this hour

4thly ..... Because the fairness of the Charges was evidently inferred by his not having had the Bills taxed especially as such Taxation is done free of any Expense whatever and by his not producing them or either of them to the Mayors Court in the Course of the Cause.

5thly ..... Because this Respondent hath not acted contrary to the Act of Parliament respecting attornies such act requiring only one Months delivery of Bill of Costs before an Action can be brought thereon Whereas in the present Case above Seven Months elapsed after the delivery of the Bill of Costs before the present action was commenced, and the said act of Parliament doth not

require

Complaint and that after the Appellant had rejoined thereto And the other Usual Proceedings were had the Cause Was heard and a Decree given by the Mayors Court as stated in the Appeal Which Decree this Respondent humbly insists is According to Equity and good Conscience for the following Among other Reasons

1st ——— Because it appeared to the Mayors Court that this Respondents original Claim on the Defendant was for Business done Previous to February One thousand Seven hundred and Eighty four when this Respondent quitted India and that his Attornies indulged the Appellant from February to November without charging Interest on his account or Suing out any Process for the recovery thereof altho' it Was in their Power to have recovered the Amount due to this Respondent by a Summary Process to wit precept Attachment and Execution as is the usage in recovery of Claims for Law Fees

2dly ——— Because it appeared also that in lieu thereof the Appellant was indulged in consequence of his own Written Application with Six Months further time by taking his Bond dated in November and payable in May following, and that for the further satisfaction of the Appellant this Respondents acting Attorney Peter Massey Casin undertook to Allow in deduction of the Bond Any Extra Charges which might appear to have been in the Bills of Costs.

3dly ——— Because it Appeared that altho' the Appellants pretence for not paying his Bond was that the Bills of Costs Were not taxed by the Register of the Mayors Court. Yet such Taxation Was impossible except by means of the Appellant himself Who was in possession of the Original Bills from the day he granted his Bond in November One thousand Seven hundred and Eighty four to this hour.

4thly ——— Because the fairness of the Charges was evidently inferred by his not having had the Bills taxed especially as such Taxation is done free of any Expense whatever and by his not producing them or either of them to the Mayors Court in the Course of the Cause.

5thly ——— Because this Respondent hath not acted contrary to the Act of Parliament respecting attornies such act requiring only one Months delivery of Bill of Costs before an Action can be brought thereon Whereas in the present Case above Seven Months elapsed after the delivery of the Bill of Costs before the present action Was commenced, and the said act of Parliament doth not require

Complaint and that after the Appellant had rejoined thereto And the other Usual Proceedings were had the Cause Was heard and a Decree given by the Mayors Court as stated in the Appeal Which Decree this Respondent humbly insists is According to Equity and good Conscience for the following Among other Reasons

1st ..... Because it appeared to the Mayors Court that this Respondents original Claim on the Defendant was for Business done Previous to February One thousand Seven hundred and Eighty four when this Respondent quitted India and that his Attornies indulged the Appellant from February to November without charging Interest on his account or Suing out any Process for the recovery thereof altho' it Was in their Power to have recovered the Amount due to this Respondent by a Summary Process to wit precept Attachment and Execution as is the usage in recovery of Claims for Law Fees

2dly ..... Because it appeared also that in lieu thereof the Appellant was indulged in consequence of his own Written Application with Six Months further time by taking his Bond dated in November and payable in May following, and that for the further satisfaction of the

Appt"

Appellant this Respondents acting Attorney Peter Massey Casin undertook to allow in deduction of the Bond Any Extra Charges which might appear to have been in the Bills of Costs.

3dly ..... Because it appeared that altho' the Appellants pretence for not paying his Bond was that the Bills of Costs Were not taxed by the Register of the Mayors Court. Yet such Taxation Was impossible except by means of the Appellant himself Who was in possession of the Original Bills from the day he granted his Bond in November One thousand Seven hundred and Eighty four to this hour

4thly ..... Because the fairness of the Charges was evidently inferred by his not having had the Bills taxed especially as such Taxation is done free of any Expense whatever and by his not producing them or either of them to the Mayors Court in the Course of the Cause

5thly ..... Because this Respondent hath not acted contrary to the Act of Parliament respecting attornies such act requiring only one Months delivery of Bill of Costs before an Action can be brought thereon Whereas in the present Case above Seven Months elapsed after the delivery of the Bill of Costs before the present action was commenced, and the said act of Parliament doth not

require

require as of Necesity that the Bill be taxed, but the same must be done if required which requisition was not made in the Present Case.

For all which reasons and such others as may be offered at the hearing this Respondent prays that the Judgement of the Mayors Court may be affirmed with exemplary Costs to be paid by the Appellant for his Litigious Conduct in the first instance and his very Vexations Appeal from the Decree of the Mayors Court without stating any reasonable Pretext for such Appeal but on the Contrary Attempting to mislead the Judgement of this Honble Court by an unfair interpretation of the act of the 2d of Geo. 2d

(Signed)
Stephen Popham
Solicitor for the Respondent

Court.

Court of Appeals
at
Madraspatnam

Saturday the 10th November 1787

Between Joaquim Gregorio of Madras Inhabitant Appellant And Tho's Jones by his Attornies John Collin Tonyn And Peter Mafsey, Cafsen — Respondents

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together With the Decree of the said Court given in this Cause on Tuesday the 25th day of July Anno Domini 1786, — Upon due Consideration had of the Matters therein — severally Contained and of the Pleadings And Arguments Used by the Attornies on both Sides this Court doth Think fit to Order and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court do Stand affirmed and that the Appellants Petn be hence Dismissed With Costs —

Test (Signed) Chas N White Clk

Saturday 1st December 1787

Present

Court of Appeals } The Honble Sir Archibald Campbell KB.
John Holland James Hy Casamajor
&
Robert Maunsell

To the Honble Sir Archibald Campbell K.B.
President & Governor &c.a Council of Fort St. George

In the Honble the
Court of Appeals }

Between John Robson of Madras Merchant
and Jamaloodeen of the same place Inhabitant

Sheweth The Humble Petition and Appeal of the above
named Jamaloodeen

That the above named John Robson did on the
Twenty fourth Day of July One thousand seven hundred and
Eighty four file a Bill of Complaint in the Honble the
Mayors Court against Your Petitioner to compell Your Petitioner
to pay unto him the sum of four hundred and Seventy Nine
star Pagodas which he pretended was owing to him for a
Ballance remaining unpaid of the Purchase Money of a

Filed in my Office
the 16. Octor 1786
Charles D White Esqr

Snow. Which he had sold to your Petitioner. to the said
Bill of Complaint your Petitioner appeared and put in his
Answer on the Eighth Day of March following in Which he
absolutely denied owing the said John Robson any sum of
Money Whatever but on the Contrary insisted that the said
Complainant was indebted to your Petitioner in the sum
of Two hundred and fifty Pagodas and Interest being
Money received by the said Complainant from your Petr
Without any Valuable Consideration given for the same
and Consequently to be Accounted for and returned
again to your Petitioner and to explain the same fully
to the said Honble Court your Petitioner did in his said
Answer state that he had on the Ninth Day of February
One thousand seven hundred and eighty four agreed
to purchase of the said Complainant a snow called the
Nasal with all her Cables Anchors and furniture
Agreeably to a List there of delivered to your Petitioner by
the said Complainant at the time of such Agreement
But that upon his taking Possession of the said snow
in Consequence thereof he had discovered that Many of the
Most materval Articles agreed to be sold to him by the
said Complainant were had not been delivered and that

Particulary

Particularly there were wanting a Large Grapnal and a new
Cable both of which were absolutely necessary for the Vessells
Safety and that instead thereof she was riding by a Small
Grapnell and an old Cable by no means sufficient for
that purpose That immediately upon his Making this
Discovery he had gone in person to the Complainant and
giving him Notice thereof requested him to furnish a
Proper Cable and grapnel agreeable to the Terms of his
Agreement without which the said Vessell was in constant
Danger of Coming a shore but that the said Complainant had
constantly refused and delayed so to do putting Your Petitioner
off for a Considerable time With several evasive and frevilous
Excuses till at Length your Petitioner was obliged to inform
him that as he had not performed his Part of the Agreement
in furnishing him With so material a Part of the Articles
Contained in the List delivered at the time of the sale he
must stand to any Loss that might happen as he could
not be Considered a Purchaser till all the Articles were
delivered Agreeably to the Terms of the Purchase the said Cable
And Grapnell being no inconsiderable part thereof in point
of Value and essentially necessary to the safety of the Whole
Your Petitioner further in said Answer stated that

During this Delay of the Complainant to perform his Agreement
the said Snow came on shore and was lost the Weather
at the time such accident happened not being in any
manner tempesterous or the sea unusually agitated
but the same arose from and being intirely owing to the
Badness and Insufficiencety of the Cable and Grapnell by
Which the rode which in all probabelity would not have
happened had she been furnished With such as were stipulated
in the said Agreement to be delivered With her to your
Petitioner That immediately after this Accident Your
Petitioner gave due Notice to the said Complainant thereof
Acquainting him at the same time that as he had not
completed his Part of the Agreement and the Accident
had happened in Consequence thereof he considered the
Bargain Void from the Begining the Vessell at his
Risque himself totally discharged therefrom and the
Money advanced to be returned again to him. Your
Petitioner further Sheweth that upon his feling his said
Answer he Solemnly made Oath to the Truth thereof
and having prayed many Rules for a Replication the
said Complainant did at Length on the fifth day of
December one thousand seven hundred and Eighty five file

his

his Replication thereto in which he Acknowledges the terms of the Agreement referred to in your Petitioners said Answer but pretends that all the Articles sold with the said Vessell were delivered With her. and that the Vessell was Lost purposely by your Petitioner he Acknowledges the Receipt of the Money stated to have been paid him but pretends that your Petitioner had Acknowledged his Claim to be just. and had made some Overtures for the Settlement of it by Means of Captain Ershim Nimmo No Rejoinder having been filed to this Replication the Cause was set down to be heard on the Papers above referred to. your Petitioner further begs leave to state that the said Complainant having some time after filed his Interrogatories proceeded to examine his Witnesses but without giving any Notice thereof to your Petitioners Attorney agreeably to the Constant Practise and standing Rule of the Honble the Mayors Court that the Opposite Party might have an Opportunity of enquiring into the Characters and Connections of the Witnesses produced And if Necessary to Object to their being Examined either or on the score of their Integrity or their Partiality or if no Objection lay to either to propose such Cross Interrogatories

To be Administered to them at the time of their Examination as might be thought Necessary your Petitioner further sheweth that not having such Notice he did not cross Examine such Witnesses and he did not examine any on his side and the Cause coming on to be heared upon the Evidence so obtained Notwithstanding your Petitioners Attorney objected to the Depositions the said Honble the Mayors Court was pleased to determine on Tuesday the 3d. day of October Instant in the Manner set forth in the Copy of a Decree hereunto Annexed the Original being ready to be produced when required From which said Decree of the said Honble Court your Petitioner prays leave to Appeal to this Honble Court as your Petitioner humbly conceive that such Decree is Very erronious for the Reasons followeing

1st Because the said Agreement on which the Complainants Claim are founded not having been performed Agreeably to the Tenor and Intention thereof and the Loss of the Vessell proceeding intirely from the Complainants failure in performing his Part of such Agreement it would be very hard to subject the innocent Party to bear the Loss

2d Because of the Manifest irregularity in Examining the Witnesses and in not giving the Usual and regular Notice at the time they were produced Whereby your Petitioner was

Prevented

Prevented from enquiring in to the Propriety of their Testimony being Admitted And offering such Interrogatories as he might Wish to have Asked them —

3 — Because of the Honble the Mayors Court Allowing the Depositions of the Complainants Witnesses to be read at the hearing Notwithstanding such Manifest Irregularity — Contrary to the Rules of Practice used in the Courts of Equity in England and Adopted by the Court hereas — contained in the Book of Instructions Which says that — Before any Witnesses is examined a Note of his Name and Place of Residence must be delivered in Writing to the — Adverse Party or his Attorney by the Examiner or his Clerk

4th — Because if such Depositions had not been read as your Petitioner conceived they ought not no other Evidence Was before the Court but the Assertion of the Complainant And the Denial of your Petitioner and the Latter being — Corroborated by his Solemn oath Would Naturally be — thought Weigh down the Scale in his favor. and therefore no other Evidence Was Necessary nor was any other in fact produced by him —

For all Which Reasons and for such other As may be urged at the hearing your Petitioner prays that the Said Decree of the Honble Mayors Court may be reversed and Set a side With Costs to be paid by the said John Robson — /Signed/ P. Walker

Attorney for Appt.

Mayors Court at Madraspatnam

Tuesday the 3d day of October Anno Domini 1786

Present

Robert Ewing Esquire Mayor

James Call & Josias du Pre Brother Aldermen —

Between John Robson of Madras Merchant Complainant and Jamalodeen of the same place Inhabitant Defendant

This Cause coming on to be heard and debated this day in the Presence of the Attornies on both sides on reading the Complainants Bill with Copies of an Achnowledgement or Receipt and also of an Account Current the — Defendants Answer The Replication the Interrogatories and Depositions on the part of the Complainant on — hearing

hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and just Sum of four Hundred and Seventy Nine Pagodas Eighteen fanams and Forty Cash /Pagodas 479. 18.. 40/ together with such Interest as now is or shall hereafter become due thereon Untill full Payment is made also all Costs of this Suit.

By Cur
/Sgnd/ James Taylor
Regr

/A true Copy/ P. Walker
Attorney for Appt

To

To the Honble Major General Sir Archibald Campbell
K.B. President and Governor and Commander in Chief &c.
Council of
Fort St. George

In the Honble the Court
of Appeals

Between John Robson of Madras
Merchant Complainant and
Jamaloodeen of the same place
Inhabitant Defendant

The answer of the abovenamed John Robson to the
Petition and Appeal of the said Jamaloodeen

This Respondent for answer to the said Petition
And Appeal or unto so much thereof as this Respondent
is advised is Material or Necessary for him to make
Answer unto he answereth And saith that it is true
this Respondent did on the Twenty fourth day of July
Which was in the Year of our Lord One thousand Seven
hundred and eighty four file his Bill of Complaint in the
Honble the Mayors Court at Madraspatnam Against the
said Appellant for the Recovery of the Sum of four hundred
And Seventy Nine Star Pagodas Eighteen fanams and
forty

Filed in my Office
the 10th January 1787
Charles A White Clk

Court of Appeals
at
Madrispatnam

Saturday the 1st December
Anno Domini 1787

Between Jamaloodeen of Madras
Inhabitant Appellant and John Robson
of the Same place Merchant Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 3d day of October Anno Domini 1786 upon due Consideration had of the Matters therein severally Contained And of the Pleadings And Arguments Used by the Attornies on both sides This Court doth think fit to Order And Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court do Stand affirmed and that the Appellants Petition be hence Dismissed with double Costs in this Court

Errors / Signed / Chas. N. White Clk

To the Honble Sir Archibald Campbell K.B.
President & Governor &c. Council of Fort St. George

In the Honble the Court of Appeals

Between Negapah Chitty of Madras
Merchant and Richard Johnston of
Fort St. George Esquire

The Humble Petition and Appeal of Richard
Johnston of Fort Saint George Esquire

Sheweth

That the above said Negapah Chitty did on
the thirteenth day of August in the present Year of our Lord
One thousand seven hundred and eighty Six prefer a
Bill of Complaint against Your Petitioner to compel Your
Petitioner to pay unto him the said Negapah Chitty the Sum
of two thousand Star Pagodas With Interest for the same
At the rate of Twelve Pagodas for every hundred Star Pagodas
by the Year and did further state in and by his said Bill
of Complaint that on or about the fourteenth day of April
Last past in the present Year One thousand seven hundred
and eighty Six the said Negapah Chitty did at the
especial Instance and request of your Petitioner advance
And Lend unto him the sum of two thousand Star Pagodas
to

Filed in my Office
the 7th November 1787
Charles N White Clk

To accrue at Interest after the rate of twelve Pagodas for every hundred Star Pagodas and that the said Principal — together with the Interest that might be due after that — rate Your Petitioner promised and undertook to pay unto him the said Negapah Chitty on the Twenty fourth day of June then next ensuing and that for the securing the Payment of the said principal Sum of two Thousand Star Pagodas With Interest after the rate aforementioned — Your Petitioner did enter into one Bond or Writing — Obligatory bearing date the said Fourteenth day of April in the present Year One Thousand Seven hundred and eighty six by which Bond Your Petitioner did Acknowledge himself to be bound unto the said Negapah Chitty in the Sum of four Thousand Star Pagodas With Condition thereunder Written to be Void upon the Payment of the said Sum of two Thousand star Pagodas With Interest for the same as aforesaid And that there was due and Owing unto the said Negapah Chitty for principal And Interest on the said Bond the sum of two — Thousand and eighty Nine Star Pagodas and twelve fanams To which said Bill of Complaint your — Petitioner Appeared and being desirous of closing his Accounts With the said Negapah Chitty gave his Attorney Orders and Instructions for that purpose that in the Mean time while your Petitioner was preparing his Accounts to Settle finally With the said Negapah Chitty the time allowed by the Honble the Mayors Court for putting in and filing An Answer to the said Bill of Complaint having elapsed the Attorney for the said Negapah Chitty Applied for a Decree in favor of his Client are in consequence thereof the Honble the Mayors Court was Accordingly pleased to Pronounce a Decree Without your Petitioners Knowledge in favor of the said Negapah Chitty on Tuesday the twenty fourth day of October last past in the present Year One thousand seven hundred and eighty Six as set forth and expressed in a Copy of the Decree hereunto Annexed for the Inspection of this Honble Court of Appeals And the Original is in the Possession of your Petitioner And ready to be produced when required. From which said Decree of the Honble the Mayors Court your Petitioner prays leave to Appeal to this Honble Court as your Pet. is of Opinion that if such Sentence order or Decree of the Honble the Mayors Court had not been pronounced so hastily that your Petitioner would have arranged all

Matters

Matters and Accounts With the said Nagapah Chitty in such manner and form as would have induced the Honble the Mayors Court to have dismissed the said Bill For all which Reasons and for as much as the Lenity of the Honble the Mayors Court was not extended to your Petitioner and that in rendering the said Judgement and Decree manifest error has entervenced and for many other reasons that will be Urged at the hearing of this Petition And Appeal before this Honble Court your Petitioner pray's that the said Decree of the Honble the Mayors Court Maybe Reversed and Set aside

[Signd] J. Grierson
Attorney for the Appellant

Mayors Court

Mayors Court at
Madraspatnam

Tuesday the 24th day of October
Anno Domini 1786

Present

Robert Ewing Esqr Mayor
James Call & William Webb
Aldermen

Between Nagapah Chitty of Madras Merchant Complainant
And Richard Johnston of Fort St George on the Coast of Coromandell Esqr Defendant

It Appearing by the Records of this Court that the Usual Rules have issued for the Defendant to Answer the Complainants Bill which he has Neglected doing 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 & Just sum of Two Thousand and Eighty Nine Pagodas and twelve fanams [Pags 2089. 12.] together With all such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit

Pr Cur
Signed
James Taylor
Regr

In

In the Court of Appeals

Between Negapah Chilly Complainant

and Richard Johnston Defendant

The Answer of Negapah Chilly of Madras —"
Merchant to the Petition and Appeal of Richard
Johnston of Fort St. George Esquire —

The said Respondent not Confessing
or Acknowledging allor any of the Matters or things to be
true as in And by the said Petition and Appeal are
Mentioned and Set forth for Answer thereunto says that
it is true that he the Respondent did on the 30th day
of August in the present Year 1786 prefer a Bill of
Complaint Against the Appellant in the Hon'ble the
Mayors Court to Enforce the payment of the sum of
Two Thousand Star Pagodas With Interest due to
the Respondent on a certain Penally Bond bearing
date the 14th day of April last past in the present
Year under the Hand and Seal of the said "
Appellant Whereby the said Appellant promised
And Undertook to pay the Respondent With the
Interest due on the 14th day of June last and

Ensuing

Filed in my Office
the 15th November 1786
Charles Whitehill Clk

Ensuing the day of the Date of the said Bond or Obligation
to Which said Bill of Complaint the Appellant did by
his Attorney at Law on the 5th September Next Ensuing
the filing of the said Bill of Complaint Enter his "
appearance and soon after paid the Sum of One "
Thousand Pagodas With a Promise and undertaking
to pay the Remainder in fourteen days from the day of
the date there of that thistime being Elapsed the said
Appellant was Written to, in order to remind him of
his aforementioned Promise and undertaking and on
the 19th day of the said Month of September a rule was
prayed for by the Respondents Attorney at Law and
on the 26th a further day was prayed for and a Rule "
granted for the Appellant to Answer that on the 3rd and
the 17th days of October following two Peremptory rules
Were prayed for and granted and on the 24th of the
Said Month as the Appellant had not put in his "
Answer a Decree was prayed for and granted in manner
And form as Set forth by the Appellant in a Copy of
Such Decree Annexed to the Petition and Appeal all of
Which the Respondent says was regular and fair
that no Advantage Was taken of the Appellant Nor any

Collu

Collusion Covin, Fraud, or Deceit observed in the proceeding but on the Contrary the Appellant had Wrotten Several Notes to the Respondent and his Attorney and therein promised from day to day that the Whole of the Bond or Writting Obligatory in Question, should be paid, and not only this Bond but the Appellant Assured the Respondent of his discharging one other Bond for two thousand Pagodas More as per his the Appellants Several Letters and Notes in his own Hand Writting and now in Possession of the Respondent ready to be produced to this Honble Court of Appeals Will Shew. The Respondent further says to the Appellants Asserting in his Petition and Appeal "that he being desirous of Closing his Accounts With the Respondent he had given Orders to his Attorney for that purpose and While his said Attorney Was so doing the time Allowed by the Mayors Court for putting in and filing his Answer to the Bill of Complaint Elapsed that the Attorney for the Respondent procured a decree Without the Appellants Knowledge In answer thereto the Respondent says Very true the obtaining of the Decree Might be Without the Knowledge of the Appellant but at the same time it is to be observed that the Appellant had an Attorney at Law in Court Who was present and being Asked by the Register of the Court as Usual if he had Any Objections to make or good Cause Shewn Why a Decree should not pass Against his Client the Appellant for want of an Answer declared he had none Which induced the Mayors Court to grant a Decree in favor of the Respondent The said Respondent further says that the Decree of the Mayors Court Was not hastily applied for or Pronounced that much time had been given the Appellant to put in his Answer beyond the Usual time and therefore the Appellant Asserting that he should have Arranged Matters in Such Manner and form as would have induced the Honble the Mayors Court to have dismissed the Respondents Bill of Complaint is very unjust for it cannot be supposed that Were an Action is Commenced on a Bond or Obligation and the Defendant has any Material Objection to make to the same he would not have pleaded Specially to the Action either in Abatement or Avoidance of the Obligation and this in due time and in proper Form The said Respondent further says that it is observable

Court of Appeals
at
Madraspatnam

Saturday 1st December
Anno Domini 1787

Between Richard Johnston of
Fort St. George Esqr. Appellant and
Nagapah Chitty of Madras Inhabitant
Respondent

This Cause coming on this Day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the Bill of Complaint of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 24th day of October Anno Domini 1786 upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed With Costs

Fleur /Signed/ Chas A. White Clk

To the Honble Sir Archibald Campbell K.B.
President and Governor &ca Council of Fort St. George

In the Honble the Court
of Appeals at Madraspatnam

Between Bryan Cotney of Madras
Esquire Administrator to the Estate
And Effects of Captain William Gowland
Deceased Complainant and Thomas
Jones late one of the Attornies of the
Honble the Mayors Court Defendant
Et Ec Contra

The Humble Petition and Appeal of the above
Named Defendant and Cross Complainant
Sheweth
That some time on or About the Sixteenth
Day February which was in the Year of Our Lord one thousand
Seven hundred and Eighty Six the above Named
Complainant exhibited and filed a Bill of Complaint
in the Honble the Mayors Court at Madraspatnam
against Your Petitioner Under pretence that your Petitioner
Was well and truely indebted unto him as Administrator
of Captain William Gowland Deceased in the full and

Just

Filed in my Office
the 5th February 1787
Charles A. White Clk

Observable on the perusal of the Petition an appeal that no solid reason is Assigned or Cause set forth as it ought to be Why the Decree of the Honble the Mayors Court should by this Honble Court of Appeals be reversed or set aside but the said Respondent prays leave to set forth and shew that it would have been more regular. had the said Decree been improperly or Clandestinely — obtained upon Any unjust Suggestions / that an Affidavit of such Circumstances should have been Made When the Honble the Mayors Court on a Special motion Would have set aside their Decree And given a further time for the Appellant to have put in his Answer in Case he had Any to make but no such Affidavit on Special motion was made of Coursany Reason Assigned by the Appellant in his Petition and Appeal for his Appealing from such Decree stands unsupported and falls to the Ground The said — Respondent further says that the Honble the Mayors Court Were not in the Least Erroneous in Pronouncing their Judgement against the Appellant pursuant to the Prayer of the Respondents Bell of Complaint the time Granted

Granted by the said Honble the Mayors Court at the instance of the Appellant himself the Respondent says extended beyond the Limits of the Usual Rules for answering and — therefore the Appellant in his Petition and Appeal saying that the Honble the Mayors Court did not extend their — Lenity to him was and his Wrong it being at his Own request the further extent of time to Answer was granted or otherwise the Respondent Would have obtained a Decree much Sooner the said Respondent further says it Appears very Plainly to him. that the Appellant Means to Procrastinate the Payment of his Bond or Writing Obligatory to the Respondent and Appeals to this Honble Court of Appeals for no other purpose their being no objection by Plea or Demurrer to the Original Cause of Action —

The said Respondent therefore Humbly Conceives And is Advised that the said Decree of the Honble the Mayors Court is Agreeable to Equity and justice and humbly hopes that the same shall be Affirmed and that the said Petition and Appeal Shall be Dismissed this Honble Court of Appeals With — Examplary Costs — / Signed / Chas Bromley — Attorney Respondent

Court

Just Sum of One thousand four hundred And thirty one
Pagodas, and twenty eight fanams Current Money
of Madras Upon a Note of hand And Account
Current Copy of Which bearing date the Tenth
day of January Which Was in the Year of Our Lord
One thousand Seven hundred And Eighty four was
Annexed to the Complainants said Bill of —"
Complaint to Which said Bill of Complaint your
Petitioner appeared by his Attornies John Collin Tenyn
Major in the Honble Company's Service And Peter
Massey Cassin of Madras Merchant Your Petitioner
further Sheweth unto this Honble Court that the
Usual Rules having issued to Answer the —"
Complainants Bill of Complaint he did by his said
Attornies on or about the Sixteenth day of May in the
Said Year of our Lord One thousand Seven hundred
And Eighty Six file his Answer to the Complainants
Said Bill of Complaint in and by Which said answer
Your Petitioner by his said Attornies admitted
to be true that he did Make and duly subscribe
Such Promissary Note of such Date Tenor Purport
And

And Effect as the Complainant had set forth in his said
Bill but Positively denied that he therefore stood indebted
to the said Complainant as Administrator or Otherwise
in the said Sum of One thousand four hundred and
thirty One Pagodas and twenty eight fanams because
the said William Gowland in his Life time entered
into a Treaty With your Petitioner said Attornies for
the Purchase of a certain Messuage Tenament or
Dwelling house Grounds And Offices Situate lying
and being to the Southward of Saint Thome and
did Actually conclude and Agree to purchase the
Same at the Price or Sum of One thousand one
hundred and Seventy Star Pagodas Current Money
of Madras being of the Value of Four hundred and
Sixty Eight Pounds Lawful Money of Great Britain
for which he was to enter in to and execute a
Certain Bond or Obligation to Secure the Payment
thereof And that the said William Gowland Was
Accordingly put in Possession of the said Premisses
altho' he did Not enter in to or execute the said
Bond or Obligation According to his Aforesaid —"

Undertaking

Undertaking but postponed the same from time to time
Untill he was Suddenly Seized With a Severe Sickness
Which Terminated his Life And your Petitioner by
Said Attornies further did set forth in his Said Answer
that the said William Gowland did in his lifetime
become possessed of the Title Deed to the said Premises
in a very unfair and deceitful Manner Without
executing the said Bond or Obligation conformable
to his aforesaid Agreement Namely the said
William Gowland Went to the house of the said
John Collin Tonyn and told him he had been to
the said Peter Massey Cassin Who informed him
the Bill of Sale was executed and demanded
the same the said John Collin Tonyn imagining
from his having said that he the said William Gow
had been With the said Peter Massey Cassin and in
the confidential Manner in Which he the said
William Gowland spoke that he had made
Necessary Settlement With him the said Cassin
Cassin gave him up the Bill of sale Without
Any Written Voucher that a few days thereafter
Said Peter Massey Cassin

Circumstance called upon the said William Gowland and
remonstrated With him upon the Impropriety of his aforesaid
Conduct and demanded from him the Bond or Obligation
for the Purchase Money of the said house and Premises
to which the said William Gowland replied that When
your Petitioners Attornies paid the Amount of the promissary
Note Whereon the Complainant filed his Bill that he
Would then give the Bond so required and that it should
bear equal date With the Bill of sale and your Petitioner
did by his Said Attornies further in his Said Answer
Aver that the sudden and unexpected Death of the said
William Gowland was the real and only Cause Why his
said Attornies have not been able to Obtain the Bond "
According to the Agreement beforementioned but did insist
that he was equally intitled to recover from the estate
of the said William Gowland deceased the said sum of
One thousand One hundred and Seventy Pagodas of the
Value aforesaid and the Interest thereof and to set the
Same off Against the Demands of the Complainant in the same
full and Ample Manner as if the said Bond had been
really and in fact executed by the said William Gowland
in his

In his Lifetime And your Petitioner further by his said Attornies said that the Estate of the said William Gowland was justly and truely indebted unto him in the further Sum of Two hundred and twelve Pagodas two fanams and Twenty Six Cash the Amount With Interest of the Purchase of an horse and Sundry other Goods Wares and Merchandize for the recovery Whereof and to the End that the same Might be Set off against the Demand of the Complainants your Petitioner filed a Cross Bill in the Honble the Mayors Court Where in your Petitioner by his said Attornies charged that the said Bryan Hothy as Administrator to the Estate and Effects of Captain William Gowland Deceased stood justly and truely indebted unto your Petitioner in the full and just sum of Two hundred and twelve Pagodas two fanams and twenty Six Cash Current Money of Madras making in Sterling Money of Great Britain at the rate of eight shillings for every Pagoda the sum of Eighty four Pounds Sixteen Shillings and five Pence Arrising and Growing due upon an Account Current Annexed to the said Cross Bill to Which said Answer of your Petitioner and said Cross Bill your Petitioner further sheweth that the said

Coimpl.t

Complainant did on or About the Twenty Seventh Day of June in the said Year of Our Lord One thousand Seven hundred and Eighty Six file his Replication and Cross Answer Wherein the said Complainant endeavoured by every possible insineation And Suggestion Support his said Bill of Complaint and the several Matters and things therein contained as if true just and Valid Against your Petitioner and to invalidate and set a side the said Cross Bill and the Several Charges therein made Against the Estate of the said William Gowland to Which said Replication and Cross Answer of the said Complainants your Petitioner was According to the Rules and Practise of the Court below Obliged to file his Rejoinder as also his Cross Replication Wherein your Petitioner supported his Answer put in to the Complainants Bill of Complaint and his Cross Bill And urged the Right and equity he had to make the Sum of One thousand and seventy Pagodas the Purchase Money of the said house and Ground at Saint Thome together With the several other Charges as a Set off to the said Demand of the Complainant and your Petitioner further prays leave to represent to this Honble Court that upon the above Mentioned Proceedings issue

was

Was joined and Witnesses examined thereon after Which Publication passed and on Tuesday the Twenty third day of January last past and in this present year of Our Lord one Thousand Seven hundred and eighty Seven this cause came on and was determined and a Decree made in Manner And Form and to the Effect as set forth and expressed in the Copy of the Original of the Honble the Mayors Court hereunto annexed for the Inspection of this Honble Court And to Which your Petitioner humbly prays reference from which said Decree your Petitioner most humbly prays leave to Appeal to this Honble Court of Appeals as your Petitioner humbly conceives the said Judgement Sentence and Decree of the Honble the Mayors Court as erroneous and contrary to Equity for there clearly Appears to have been an Agreement between the Parties With Conditions to be performed on both sides the Complainant denies not the Existence of such Agreement but says that he had never heard of it before your Petitioner stated it in and by his said Answer and conceives it Would be prejudicial to the Mutual Dealings Among men if the Testimoney of Written Documents Was to be involidated by Oral Evidence but your Petitioner humbly

humbly conceives that in the present Instance there are such concurring Circumstances as Amount to an almost Absolute Certainty of the Existence of a Contract between your Petitioner and the said William Gowland in Manner and form as stated by your Petitioner and in no Manner contradicted by the Administrator of the said William Gowland the Witnesses go to prove the Execution of the Bill of Sale by the Attornies of your Petitioner and this proof your Petitioner imagines Makes Strongly in his favor in the Event that it Clearly demonstrates the Existance of the Bargain Which Was in the Nature of an implied contract the Bill of sale Was executed and delivered to the said William Gowland And it is Legal fair and equitable to imply that the said William Gowland undertook or Assumed to pay for it And because Matters of this Nature are the proper and Peculiar Objects of a Court of Equity Which determines According to the Spirit of the Rule and not According to the Strictness of the Letter and Which has a Jurisdiction over all Matters in the private Knowledge of the Party Which though concealed are binding in Conscience For all Which reasons and for such others as may

Maybe offered at the hearing of the Cause Your Petitioner prays that the said Decree of the Honble the Mayors Court in favor of the Original Complainant and dismission of the Cross Bill Maybe reversed and that the Original Complainant be decreed to pay unto your Petitioner the sum of Two hundred and twelve Pagodas Two fanams And twenty Six Cash the Balance justly and truely due to your Petitioner also all Costs of this Petition & and Appeal

/Signed/ Cullin Spencer
Solicitor for Appellant

Mayors Court

Mayors Court at Madraspatnam — Tuesday the 23. day of January Anno Domini 1787

Present

James Call Esquire Mayor
John Menzies Josias du Pre Porcher &
Andrew Ross Aldermen

Between Bryan Lotney of Madras Esqr, Administrator to the Estate and Effects of Captain William Gowland Deceased Oregenal Complainant and Cross Defendant and Thomas Jones late One of the Attornies of this Honble Court Original Defendant and Cross Complainant

E. V. E. Contra

These Causes coming on to be heard and debated this day in the Presence of the Attornies on both sides on Reading the Original Complainants Bill with Copies of a Note of hand and an Account annexed The Original Defendants Amended Answer With an Account Current Annexed The Cross Bill With Copy of an Account Current

annexed

Annexed the Replication The Cross Answer The Rejoinder The Cross Replication the Rejoinder The Interrogatories on the part of the Original Complainant and Cross Defendant With two Depositions. On Hearing the Pleadings made Use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Original Defendant do pay the Original Complainant the full and just Sum of One thousand four hundred and thirty One Pagodas and twenty Eight fanams / Pagodas 1431. 28. / together with all such Interest as is or shall hereafter become due thereon untill full Payment is made Also all Costs of this Suit and it is further Ordered and Decreed that the Cross Bill do Stand Dismissed With Costs

Clerk
/signed/ James Taylor
Regt

To the Honble Major General Sir Archibald Campbell
K. B. President and Governor in Council
in Fort St. George

In the Court of Appeals

Between Bryan Kotney of Madras
Esq. administrator to the Estate
And Effects of Captain William
Gowland deceased Complainant
And Thomas Jones late one of
the Attornies of the Honble the
Mayors Court Defendant
Et. Co. Contra

The answer of the above named Bryan Kotney to the
Petition and Appeal of Thomas Jones by his Attornies
John Colyn Tonyn and Peter Massey Cafsin

This Respondent for answer to the said
Petition and Appeal or unto so much thereof as this Respondent
Filed in my Office is advised is Material for him to make Answer unto
the 3d March 1787
Charles D White Esq. he answereth and saith that it is true this Respondent
did file his Bill of Complaint in the Mayors Court
At the time and for the Sum stated in the Petition
and

And Appeal To Which Bill of Complaint this Respondent
Admits that the Appellant by his said Attornies Appeared
And filed his Answer thereby denying to stand indebted
unto this Respondent in Any Sum of Money Whatever and
pretending as Setforth in his Petition and Appeal and that
the Appellant at the same time filed a Cross Bill in the said
Mayors Court Against this Respondent as Administrator as
aforesaid for the recovery of the Sum of Two hundred and Twelve
Pagodas Two fanams And Twenty Six Cash To which said
Answer of the Appellant and the said Cross Bill this
Respondent admits that he did at the time Setforth in
the Petition and Appeal file his Replication and Cross
Answer and did therein among other things setforth that
he was never informed nor did he know otherwise than by
the Appellants Original answer and by some previous
Letters of the said Peter Mafsey Cafsin that this Respondent
as administrator of the said William Gowland ought to be
Charged With the sum of One thousand one hundred and
Seventy Pagodas being the amount of an House and Ground
purchased of the said Thomas Jones by the said William
Gowland and that altho this Respondents did not pretend
to doubt the Asertions of the said Attornies as far as
Concern their own Acts and Deeds individually nevertheless

he Conceives that it would be of dangerous prejudice to the
mutual dealings of Men Among each other if the Testimony
of Written Documents was to be invalidated by Oral
Evidence and Particularly in the present case where it is
Asserted by the Attornies that one Paper was to be
Exchanged for another to Wit the Promisary Note of the
said Thomas Jones for his Bill of Sale to the said
William Gowland and that therefore it seemed rational
that the Attornies ought not to have delivered one till
they received the other or an Acknowledgement in lieu
thereof and in the said Replication and Cross answer
this Respondent did further state that as to what is said
of the said William Gowland having got the Bill of Sale
in a very unfair and deceitfull manner this Respondent
Never heard thereof until he read the Appellants answer
And therefore insisted that his right to the said Sum
of One thousand one hundred and Seventy Pagodas
ought not to be impeached by any thing Which hath
been Advanced by the Appellant in his said answer
And this Respondent in his said Replication further
Stated that as to the Sum of Two hundred and Twelve
Pagodas, Two fanams and twenty Six Cash Which
the said Appellant pretends to be due unto him by
the Estate of the said William Gowland for Interest of

Money

Money and the Purchase of a Horse and Sundry Goods Wares and Merchandize Sold and delivered to the said William Gowland and for the recovery of which the Appellant had filed a Cross Bill this Respondent said that unless the said Appellant should be able to Produce any authenticated Vouchers to Justify his said Claim this Respondent could not admit thereof but Submitted the same to the Judgement of the said Mayors Court for whose Consideration he thought it his Duty as Administrator as aforesaid to state the several Matters and things above stated to which said Cross Answer and Replication this Respondent Admits that the Appellant filed his Cross Replication and Rejoinder and this Respondent filed his Cross Rejoinder That upon the above Proceedings this Respondent admits that issue was joined and Witnesses examined thereon After which Publigation passed the Cause was Set down for hearing and was accordingly heard and determined on the Twenty third day of January Last Past When the said Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that the Appellant Pay unto this Respondent as Administrator as aforesaid the full and just Sum of One thousand four hundred And thirty One Pagodas and twenty Eight fanams together With all such Interest as then was or should thereafter become due thereon untill full Payment was made also all

Costs of this Suit

From which said Decree the Appellant having Appealed to this Honble Court under Pretence that the said Decree is Erroneous this Respondent doth now humbly insist that the said Decree was according to the Principles of Law and Reason and therefore ought to be Affirmed by this Honble Court for the Reasons stated in this Respondents Original Replication and Cross Answer as also for the following as Well as other Reasons

First That if the Exchange was to have taken Place it must have been of Matters of the same Value Whereas the Fact is that the Consideration expressed in the Bill of Sale is One Thousand One hundred and Seventy Pagodas and the Note is for One thousand One hundred and Seventy five Pagodas and fifteen fanams

Secondly The Promisary Note is dated on the tenth day of January One thousand Seven hundred and Eighty four The Bill of Sale is dated the third day of March in the said year and the said William Gowland did not die till the Eighteenth day of April following as appears by the Evidence of William Gardiner Deputy vinderlaken at Madras so that an interval of time happened of more than Six Weeks between the Executing the Bill of Sale by the Attornies

of

of the said Thomas Jones and the Death of the said "
William Gowland during which Period the final "
Arrangement or Commutation of Securities might and
ought to have taken Place if any such was intended
the more so as the said William Gowland lived in
the House of the said Peter Massey Casin one of the
Attornies above named of the said Thomas Jones for
some time previous to his last illness and it appears
by the Evidence of the said William Gardiner that "
William Gowland died in the house of Peter Massey Casin

Third. — Because it appears from the Evidence of Thomas
Ledsham one of the Subscribing Witnesses to the said
Bill of Sale that no Reserve Condition or Qualification
Whatever was Mentioned at the time of Executing
the same as would most probably have been the
Case if an Exchange of Documents or Securities was
to have taken place on the Contrary the said "
Thomas Ledsham barely proves the execution of the Deed
and more saith not to the Second or Last Interrogatory

Fourth. — Because the Original Defendant and Cross "
Complainant hath not Nor have his Attornies Sworn
to the Answer nor have they examined one Evidence
or

Or adduced any Voucher to prove any one Fact stated
in the Answer or Charged in the Cross Bill Whereas this
Respondent hath not only produced Positive Evidence
in support of His Claim to Wit the Possession of the Bill
of Sale and the Promisary Note but hath in a fair full
And Candid Manner sought out the real Merits of the
Case by examining Thomas Ledsham to the Execution of
the former (altho' it was admitted by the Appellant)
With the View of shewing to the Satisfaction of the Mayors Court that
no Reserve Condition or Qualification existed at the time of
executing the same and this Respondent examined the said
William Gardiner to Shew that the Parties were together
to the last hour of the Life of William Gowland and that
he lived above Six Weeks after the execution of the said
Bill of Sale so that no Surprise or other Deceit could be
intended Which there was not ample time to detect "
And remedy

Fifth — Because the Act of Parliament passed in the 29th year
of the Reign of Charles the 2d Commonly Called the Statute
of Frands and Perjuries makes a Special Provision
for the Case in Question the said Act Providing among
certain other Matters therein expressed that Where any

Contract

Contract or Sale is made of Lands Tenuments or Hereditaments or any Interest therein some Note or Memorandum in Writing should be made and signed by the Party interested and that a mere Verbal Assumpsit or Undertaking is Void Whereas in this Case there Neither is the Writing or even the Verbal undertaking sworn to by the Appellants or his Attornies or either of them or Proved by one Single Evidence

For all which Reasons and such others As maybe offered at the hearing of the Cause and Crofs Cause this Respondent prays that the Decree of the Mayors Court respecting the same be Affirmed by this Honble Court

/Signed/ Stephen Popham
Solicitor for Respondent

Court of Appeals at Madraspatnam

Saturday the 1st Decemba Anno Domini 1787

Between Thomas Jones by his attornies John Collin Tonyn and Peter Maffey Cafsier Appellants and Bryan Kelsey Administrator to the Estate and Effects of William Gowland Deceased Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together With the Decree of the said Court given in this Cause on Tuesday the 23d. day of January Anno Domini 1787 upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments Used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court be set aside that the Defendants Attornies do swear to their Original Answer on his behalf and each party to be at Liberty to examine Witnesses that the Arguments

Against

Against Oral evidence be expunged from the Cross Answer And the Cause reheard And that each Party do pay his Costs in this Court

Thus.

/Signed/ Chas N. White Clk

To the Kings most Excellent Majesty in Council

Between Bryan Cotney of Madras Esquire Administrator to the Estate and Effects of Captain William Gowland Deceased — Complainant and Thomas Jones late one of the Attornies of the Honble the Mayors Court — Defendant. Et. Ec. Contra

The Humble Petition and Appeal of the above named Complainant

Most Humbly Sheweth

That your Petitioner as Administrator of the above named William Gowland did on or about the Sixteenth day of February which was in the Year of Our Lord one thousand Seven hundred and Eighty Six file a Bill of Complaint in the Mayors Court at Madraspatnam against the above named Thomas Jones for the Recovery of the Sum of one thousand four hundred and thirty one Star Pagodas

Filed in my Office the 11. December 1787
Charles N. White Clk

And

And twenty Eight fanams Current Money of Madra
upon a Notes of Land and Account Current Copies
Where of were annexed to the said Bill of Compla
To which said Bill of Complaint the said Thomas Jon
appeared by his Attornies John Collin Tonyn And Pet
Masrey Cafsin and the Usual rules having issued
to Answer your Petitioners Bill of Complaint the said
Thomas Jones by his said Attornies did on or About the
Sixteenth Day of May in the said Year of our Lord one
Thousand Seven hundred and Eighty Six file his ans
to your Petitioners Bill of Complaint and did thereby ad
to be true the
that he did Make and duly Subscribe
Promisary Note Under date the tenth day of January
Which was in the Year of Our Lord one Thousand Sev
hundred And Eighty four but denyed that he there
Stood indebted unto your Petitioners as Administrat
as aforesaid or otherwise in the said Sum of One thousan
four hundred and thirty One Pagodas and twenty
Eight fanams Because that the said William Gowland
in his Lifetime entered in to a Treaty With the
Attornies of the said Thomas Jones for the Purchase of a
certain Messuage Tenement or dwelling House Gro
And

And offices situate lying and being to the Southward of
S. Thome and did conclude and Agree to Purchase the
Same at the price or Sum of One Thousand one hundred
And Seventy Pagodas for which he was to enter in to and
execute a certain Bond or Obligation to secure the "
Payment thereof and that the said William Gowland
Was Accordingly put in Possession of the said Premises altho
he did not enter into or execute the said Bond or Obligation
According to his aforesaid undertaking but postponed the same
from time to time until he was suddenly Seized With a
severe Sickness Which Terminated his Life and the said
Thomas Jones by his said attornies did further Saith in his said answer that the said "
William Gowland did in his Life time become possessed
of the Title Deed to the said Premises in a very unfair
And deceitful Manner Without executing the said Bond
or Obligation conformable to his aforesaid Agreement by
going to the house of the said John Collyn Tonyn and
telling him he had been With the said Peter Masrey Cafsin
Who informed him the Bill of Sale was executed and "
demanded the same Which the said John Collyn Tonyn
delivered Without taking any Written Voucher for the same
imagining from his having said that he the said William
Gowland had been With the said Peter Masrey Cafsin and
from

from the confidential manner in which he the said William Gowland spoke that he had made the necessary Settlement with the said Peter Massey Cassin that a few days thereafter the said Peter Massey Cassin being informed of the Above Circumstance called upon the said William Gowland & remonstrated with him upon the impropriety of his aforesaid Conduct and demanded from him the Bond or Obligation for the Purchase Money of the said House and Premises to which the said William Gowland replied that when the Attornies of the said Thomas Jones paid the Amount of the Promisary Note whereon your Petitioner filed his Bill he would give the Bond so required and that it should bear equal date with the Bill of Sale and the said Thomas Jones by his said Attornies did further in his said Answer aver that the Sudden and unexpected death of the said William Gowland was the real and only Cause why his said Attornies have not been able to obtain the Bond or Obligation According to the Agreement before mentioned but did insist that he was equally entitled to recover from the Estate of the said William Gowland deceased the said Sum of One thousand one hundred and Seventy Pagodas being of the Value of the House

And Premises aforesaid and the Interest thereof and to set off the same against the demands of your Petitioner in the same full and ample Manner as if the said Bond so said to have been promised by the said William Gowland had been really and in fact executed by the said William Gowland in his lifetime and the said Thomas Jones by his said Attornies further said that the Estate of the said William Gowland Was Justly and truely indebted unto him in the further Sum of Two hundred and twelve Pagodas two fanams and twenty Six Cash the Amount With the Interest of the Purchase of an House and Sundry other Goods Wares and Merchandize for the recovery Whereof the said Thomas Jones by his said Attornies filed a Cross Bill in the said Mayors Court Against your Petitioner And did therein charge that your Petitioner as Administrator as aforesaid stood indebted unto the said Thomas Jones in the said Sum of two hundred and twelve Pagodas two fanams and twenty Six Cash Current Money of Madras making in Sterling Money of Great Britain at the rate of Eight Shillings for the Pagoda the sum of Eighty four pounds Sixteen shillings and five pence pretending to have Arose upon an Account

Current

Current Annexed to the said Cross Bill of Complaint To
Which said Answer of the said Thomas Jones And Cross
Bill your Petitioner Sheweth that he did on or About the
twenty Seventh day of June in the said Year of our Lord
one thousand Seven hundred and Eighty Six file his
Replication and Cross Answer and did therein among
other things set forth that he was never informed nor did he
Know otherwise than by the Original Answer of the said
Thomas Jones and by some previous Letters of the said Peter
Massey Cassin that your Petitioner as Administrator of the said
William Gowland ought to be Charged With the Sum of One
Thousand one hundred and Seventy Pagodas, being the
Amount of an House and Ground purchased of the said
Thomas Jones by the said William Gowland and that
Altho' your Petitioner did not pretend to doubt the
Assertions of the said Attornies as far as Concerns their
own Acts and Deeds individually Nevertheless he conceives
that it Would be of dangerous prejudice to the Mutual
Dealings of Men among each other if the Testimoney of
Written Documents Was to be invalidated by Oral
Evidence And Particularly in the Present Case where
it is Asserted by the Attornies that one Paper was to be

Exchan-

Exchanged for another to Wit the Promesary Note of the
said Thomas Jones for his Bill of Sale to the said William
Gowland and that therefore it Seemed rational that
the Attornies ought not to have delivered the one till
they received the other or an Acknowledgement in lieu
thereof and in the said Replication and Cross answer
Your Petitioner did further state that as to What is
Said of the said William Gowland having got the
Bill of Sale in a Very unfair and deceitfull manner
Your Petitioner never heard thereof until he read the
Answer of the said Thomas Jones and therefore insisted
that his right to the said Sum of One thousand one
hundred And Seventy Pagodas ought not to be
impeached by Any thing which hath been advanced
by the said Thomas Jones in his said Answer and
Your Petitioner in his said Replication further stated
that as to the sum of two hundred and twelve Pagodas
two fanams And twenty Six Cash Which the said
Thomas Jones pretended to be due unto him by the
Estate of the said William Gowland for the Interest of Money
And the purchase of a Horse and Sundry Goods Wares and
Merchandize sold and delivered to the said William

Gowland

Gowland and for the recovery of which the said Thomas Jones had filed a Crofs Bill your Petitioner said that unless the said Thomas Jones should be able to produce any authenticated Vouchers to Justify his said Claim Your Petitioner would not admit thereof but submitted the same to the Judgement of the said Mayors Court for Whose Consideration he thought it his duty as Administrator as aforesaid to state the Several Matters and things above Stated To which said Crofs Answer and Replication your Petitioner sheweth that the said Thomas Jones by his said Attornies filed his Crofs Replication And Rejoinder And your Petitioner filed his Crofs Rejoinder & Issue upon the Above Proceedings Issue was joined And Witnesses examined thereon after which publication passed the Cause was set down for hearing And was Accordingly heard and determined on the twenty third day of January last past When the said Mayors Court were pleased to Order and Decree and did accordingly Order and Decree that the said Thomas Jones should pay unto your Petitioner as Administrator as aforesaid the full and Just Sum of One thousand four hundred And thirty one Pagodas and twenty Eight fanams together With all Such Interest as then was or should thereafter become due thereon untill full payment was made also all Costs of the Suit

From which said Decree of the said Mayors Court the said Thomas Jones by his said Attornies did appeal to the Honble the Court of Appeals under pretence that the said Decree was Etroneous and Contrary to Equity and did in the said Petition and Appeal set forth many evasive matters and things Which your Petitioner did not nor doth by any means admit — To which said Petition and Appeal your Petitioner filed his Answer and did therein humbly insist that the said Decree was according to the Principles of Law and reason and therefore ought to be Affirmed by the Court of Appeals for the Reasons stated in your Petitioners Orginal Replication and Crofs Answer as also for the following Among other Reasons —

First. That if the Exchange was to have taken Place it must have been of Matter of the same Value Whereas the Fact is that the Consideration expressed in the Bill of sale is One Thousand One hundred and Seventy Pagodas and the Note is for One thousand One hundred and seventy five Pagodas fifteen fanams —

Secondly. The Promisary note is dated on the Tenth day of January One thousand Seven hundred and Eighty four The Bill of Sale is dated the Third day of March in the said year and the said William Gowland did not die till the

Eighteenth

Eighteenth day of April following as appears by the Evidence of William Gardiner deputy undertaker so that an interval of time happened of more then six Weeks between the Executing the bill of Sale by the Attornies of the said Thomas Jones and the Death of the said William Gowland during which Period the final Arrangement or Communication of Securities might and ought to have taken place if Any such was intended the more so as the said William Gowland lived in the House of the said Peter Massey Esqr one of the Attornies abovenamed of the said Thomas Jones for some time previous to his last illness and it appears by the Evidence of the said William Gardiner that William Gowland died in the House of Peter Massey Esqr

Thirdly Because it appears from the Evidence of Thomas Ledsham one of the subscribing Witnesses to the said bill of Sale that no reserve Condition or Qualification Whatever was Mentioned at the time of executing the same as would most probably have been the Case if an Exchange of Documents or Securities was to have taken place on the Contrary the said Thomas Ledsham barely proves the execution of the deed and more saith not to the Second or Last Interrogatory —

Fourthly — Because the said Thomas Jones hath not nor have his Attornies sworn to the Answer nor have they examined one Evidence or adduced Any Voucher to Prove any one Fact stated in the Answer or charged in the Cross Bill whereas your Petitioner hath not only produced positive Evidence in support of his Claim To Wit the possession of the Bill of Sale and the Promissary Note but hath in a fair full and candid manner sought out the real Merites of the Case by examining Thomas Ledsham to the execution of the former / altho it was admitted by the said Thomas Jones / With the View of Shewing to the Satisfaction of the Mayors Court that no reserve Condition or Qualification existed at the time of executing the same and your Petitioner examined the said William Gardiner to shew that the parties were together to the last Hour of the Life of the said William Gowland and that he lived above Six Weeks after the Execution of the said Bill of Sale so that no Surprize or other deceit could be intended which there was not ample time to detect And Remedy —

Fifthly — Because the Act of Parliament passed in the Twenty Ninth Year of the Reign of Charles the Second commonly called the Statute of Frauds and Perjuries makes a Special Provision for the Cause in Question

The

The said Act Providing among certain other Matters therein Expressed that whereany Contract or Sale is made of Lands Tenements or Hereditaments or any Interest therein some Note or Memorandum in Writing should be made And signed by the Party interested and that a mere Verbal Assumpsit or undertaking is Void Whereas in this Case there neither is the Writing or even the Verbal undertaking sworn to by the said Thomas Jones or his Attornies or either of them or proved by one Single Evidence

Your Petitioner sheweth that the said Petition and Answer came on to be heard and determined on the First day of this Instant December by the said Court of Appeals Who were pleased to order and Decree And did Accordingly order and Decree that the said Decree of the Mayors Court be set aside that the attornies of the said Thomas Jones do swear to their Original Answer on his behalf and that each party be at Liberty to examine Witnesses And that the Arguments Against oral evidence be expunged from the Cross Answer and the Cause reheard and that each party do pay his Costs in the said Court of Appeals. all which will more fully and at Large appear by reference to the several Proceedings had

had in the above Cause in the said Mayors Court and Court of Appeals to which said Several proceedings and to each of them respectively your Petitioner prays leave to refer and have such full and Ample benefit of them And of each of them as if they and each of them were herein before fully stated and set forth as part of this your Petitioners Appeal

From which said Decree or order of the said Court of Appeals your Petitioner Most humbly appeal to your most Excellent Majesty in Council as he conceives the same Erroneous And that your Petitioner is much Aggraived and injured thereby for the Reasons Assigned in your Petitioners Original Replication and Cross Answer as also for the Reasons Assigned in your Petrs Answer to the said Court of Appeals and for the following Among other Reasons

First Because The Charter of Justice of Madras by which The Mayors Court at Madras is established as well as an Appeal therefrom to the President and Council of Fort St George as a Court of Appeals do not Warrant that discretionary Modification of the Proceedings of the Mayors Court which Appears upon the said Decree of the said

Court

Court of Appeals of the first Instant for the said Charter after constituting the said President and Council a Court of Appeal has the following Words namely And to hear and determine the same and to do all other acts Matters and things necessarily incident thereunto — which words imply no more than the Appointment of his own Clerks Solicitors and other officers and the Mode or Method of Hearing and recording the Proceedings thereof —

Secondly Because in the Common Acceptation of the Word Appeal and by the Custom of all Courts of Appeal whether to his Majesty in Council from the decision of the Courts of Justice in the Colonies or to the House of Peers of Great Britain on Appeals from Decrees in Chancery the Judgement or an Appeal must be an Affirmance or Reversal of the Decree of the Lower Court either as to the Sum to be paid for debt or Costs or the thing to be done nor can such Judgement go out of the Matters and things Decreed by the Lower Court for the Very Appeal states the Decree to be Erroneous and the Appellant therefore prays a Reversal and the Respondent states the decree to be Just and prays to have it affirmed Whereas in the Present case the Court of Appeals have neither attended to the Prayer of the Appellant or Respondent but have made a new decree by which they have deprived the Mayors Court of their Original Jurisdiction to hear and determine and have made themselves in this Instance the Original Court —

Thirdly Because by the Proceedings of the Mayors Court it Appears that the Defendants Attornies had an — Enlarged time for Answering before they filed their Original Answer And a Commission was prayed to swear them to their said Answer on the twenty fifth of April one thousand Seven hundred And — Eighty six after Which to Wit on the Sixteenth of May one Thousand Seven hundred and eighty Six an Amended Answer was filed and a further time — prayed for the return of the Commission but no Commission Was returned or was the Answer ever Sworn to but the Cause suffered to go on to Issue after. Which Your Petitioners conceive the defendants Attornies have No Claim to be allowed to Swear to their Answer Nor have they in their Appeal to the Court of Appeals at Fort Saint George prayed for any such indulgence

And

And your Pet.rs further state that in Like manner have Rules passed to examine Witnesses but the Defendants Attornies never examined any and Proceeded to publication in the Cause without offering any Testimoney to support their Answer or Cross Bill nor have they in their said Appeal prayed Leave to examine Evidence so that in those Two Points the Court of Appeals have ordered to be done What neither the Appellant or Respondent ever prayed for

Fourthly Because that it seems to have been Agreed as a General Rule even before the Statute of Frauds and Perjuries that no Parol Evidence could be admitted to Controul What Appeared on the face of a Deed or Will not only from the Danger of Perjury but from a Presumption that whatever the Parties at that time had in contemplation was all reduced to Writing Wherefore the Argument against Oral Evidence as Stated in your Pet.rs Cross Answer and which was in the Words following Namely that it Would be of dangerous prejudice to the Mutual Dealings of Men Among each other if the Testimoney of Written Documents Was to be invalidated

By

By Oral Evidence was Apposite to the Point at Issue in the Cause and therefore ought not to be expunged besides Was Such Arguments irregular According to the usage of Pleading in the Majors Court Exceptions there to Might have been taken by the Cross Complainant Which not being done either by him or the Court at the hearing of the Cause the same was not a Matter for the Consideration of the Court of Appeals Who have no Jurisdiction Whatever over the Forms of Proceedings in the Lower Court except as coming to them by Appeal on Demurrer Exceptions or otherwise

Fifthly Because that supposing the Court of Appeals at Fort Saint George Competent to Repen the Cause in the Manner they have ordered Nevertheless as it was not the fault of your Petitioner that the Defendants Attornies did not swear to their Answer or examine Evidence it seems contrary to Reason that your Pet.rs should be taced With Costs for the Omissions of the Opposite Party

To all Which Reasons and such others as may be offered at the hearing of this Cause Your most humbly prays that your Petitioner Most Excellent Majesty in Council May be pleased to Affirm the Decree of the Mayors Court at Madraspatnam of the Twenty third day of January last

And

And that the Defendant or his Attornies may be Decreed to pay all Costs of the Suit and Cross Suit

/Signd/ Stephen Popham

Solicitor for Appellant

Court of Appeals
at
Madraspatnam } ss. Saturday the 1st December
Anno Domini 1787

Between Thomas Jones by his attornies John Collin Tonyn and Peter Mafsey Cafsin Appellants and Bryan Lottney Administrator to the Estate and Effects of William Gowland Deceased Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on

Tuesday the 23. day of January Anno Domini 1787 upon due Consideration had of the Matters therein severally contained and of the Pleadings And Arguments Used by the Attornies on both sides This Court doth think fit to Order an Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court be set aside that the Defendants do Swear to their Original Answer on his behalf and each party to be at Liberty to examine Witnesses — that the Arguments against Oral evidence be expunged from the Cross Answer and the Cause reheard - and that each Party do pay his Costs in this Court

/Signd/ Charles D White Esqr

To

To the Honble Sir Archibald Campbell K.t B.t &c.a
President and Governor &c.a Council of
Fort Saint George

In the Honble the Court of Appeals
at Madraspatnam

Between Thomas umpherston
by his attorney David Young of
Madras Merchant Complainant
and William Gardiner of the same
Place Shop Keeper Defendant

The humble Petition and Appeal of the
abovenamed Defendants

Sheweth

That some time on or about the Eighth Day
of February in this present Year One Thousand Seven hundred
and Eighty seven the Above named Complainant
exhibited and filed a Bill of Complaint in the Honble
the Mayors Court at Madraspatnam Against Your Petitioner
under pretence that your Petitioner Was well and truly
indebted unto him the said Complainant in the full
And just Sum of Sixhundred And Sixty five Pagodas

Filed in my Office
the 18. June 1787
Charles D. Whitcutt

And

And Twenty nine fanams Current Money of Madras making
in Sterling Money of Great Britain at the rate of Eight Shillings
for every Pagoda the sum of Two hundred and Sixty six
Pounds and five Shillings upon a Bond or Written
Obligation a Copy of which Bond bearing date the first
Day of March Which Was in the Year one Thousand Seven
hundred And Eighty six Was Annexed to the Complainants
said Bill of Complaint to which said Bill of Complaint
your Petitioner Appeared by his Attorney When special Bail
being prayed for by the Attorney of the Complainant your
Petitioner was under the Necessity of procuring good and
Substantial Bail for him to abide by the ultimate Decree
or Judgement of the said Court in this Cause your Petitioner
further Sheweth unto this Honble Court that the Usual
Rules having issued for him to Answer the Complainants
Bill of Complaint he did on or about the Tenth Day of
April in this present year One thousand Seven hundred
And Eighty seven file his Answer to the Complainants said
Bill of Complaint in and by which answer your Petitioner
as Defendant admitted the Execution of the said Bond
but that he was not of right bound to pay off or discharge
the Amount of the same as the Terms and Conditions

upon

Secondly That as your Petitioners Answer upon Oath is so — Clear and full in every Respect as the breach of Contract on the part of the Complainant is so circumstantially Set forth in the Same and as your Petitioner solemnly declares he can prove his Said Answer to be true in every point the same ought Accordingly to all Rules of Law Equity and Reason to have had full faith given to it and the said Positive Oath of your Petitioner he humbly conceives — Sufficient to Warrant a Reversal of the said Decree of the Said Mayors Court

For all which Reasons and for such others as may be offered on the part and behalf of your Petitioner at the Hearing of this Cause your Petitioner humbly prays that the said Decree of the Honble the Mayors Court May be reversed and that the Bill of Complaint of the said Complainant be dismissed and that the Complainant be Ordered to pay all Costs attending this Petition And Appeal —

/Signed/ Cullen Spencer
Solicitor for Appellant

Mayors

Mayors Court
at
Madraspatam

Tuesday the 5th day of June
Anno Domini 1787

Present
James Call Esquire Mayor
Edward John Collond Robert Ewing
And Andrew Ross Aldermen

(S1)

Between Thomas umpherston
by his attorney David young of
Madras Merchant Complainant
And William Gardiner of the same
Place Shop Keeper Defendant

Mayors Court

This Cause coming on to be heard and debated this Day in the presence of the Attornies on both sides on — reading the Complainants Bill With Copies of a Bond or Obligation Account Current and an Assignment annexed the Defendants Answer With Copy of an Agreement — Marked A Annexed on hearing the Pleadings Made use of by the Attornies and on due Consideration had thereon This Court doth therefore think fit to Order and Decree and doth —

Doth accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and just Sum of Six hundred and Sixty five Pagodas and Twenty Nine fanams / Pagodas 665.. 29.. / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made also All Costs of this Suit

Thus

/Signed/ James Taylor
Regr.

To the Honble Sir Archibald Campbell K.B. &c.
President and Governor &c. Council of
Fort Saint George

In the Honble the Court of
Appeals at Madraspatnam

Between Thomas Umpherston
by his attorney David young of
Madras Merchant Complainant
And William Gardiner of the same
Merchant Defendant

The Answer of the above Named Complainant
To the Petition and Appeal of the above
Named Defendant

Sheweth

This Respondent by way of answer to the said
Petition and Appeal or unto so much thereof as concerns
this Respondent to make answer unto saith he admits
it to be true that he did as attorney as aforesaid on
or about the Eighth day of February in the present year
of Our Lord One thousand Seven hundred And eighty Seven
exhibited and file his Bill of Complaint in the Honble

Filed in my Office
the 3d July 1787
Charles D. White Esqr

the

The Mayors Court at Madraspatnam Against the said Appellant for the Recovery of the full and just Sum of six hundred and Sixty five Pagodas Twenty Nine fanams Current Money of Madras being the Amount of a certain Bond or Obligation bearing date the first day of March One Thousand Seven hundred and Eighty Six and granted by the said Appellant to the said William Gardnier to which said Bill this Respondent also Admits that the said Appellant appeared and did on or About the Tenth day of April in this present Year One thousand Seven hundred and Eighty Seven and put in his Answer to this Complainants Bill of Complaint as is Mentioned in the said Appellant Petition — and that he did in Consequence thereof on the First day of May move the Honble Mayors Court for the said Cause to be heard upon Bill and Answer and that the Same came on to be heard on the Fifth day of June in the present Year One thousand Seven hundred And Eighty Seven by and before the said Mayors Court Who were of Opinion that there was nothing " Contained in the said Answer that could affect the said Bond and were pleased to order and Decree That the said Appellant should pay unto this Respondent the full and just Sum of Six hundred and Sixty five Pagodas Twenty Nine fanams together With all Interest and Costs As by the Proceedings so thereon had may More fully Appear from which said decree of the Mayors Court the said Appellant hath Appealed to this Honble Court pretending that the Same was erroneous for the reasons set forth And Stated by the said Appellant in his Petition and Appeal But this Respondent saith that the said Decree is just and consonant to every Lawful and equitable Principle and in Reply to the Exceptions set up by the said Appellant This Respondent begs leave to remark —

First — That however it may be the Rule in All Equity " Proceedings Whenever a Plaintiff denies to proceed to " hearing on Bill and Answer to take the Defendants " Answer to be true in all Points Yet it cannot be supposed that When a Cause is set down for hearing on Bill And Answer Where a Bond is Admitted And When at the same time reasons are Attempted to be given Why it is not to be discharged that the Complainant altho' he does not deny the Existance of such Admits the " Legal Efficacy of them so as for them to Operate to the

Extinction

Extinction of the Bond for if such was to be the Construction No Causes under a similiar Predicament would be set down on Bill and Answer or if they were would any hearing at all be requisite for their being so set down would be if so fact a Determination And in this Case altho' this Respondent cannot pretend to say that an Agreement of the kind the Appellant hath mentioned in his Answer to this Respondent Bill of Complaint was never made that allowing it to have been so it being by the said Appellants own shewing a more parole Agreement this Respondent humbly conceives it cannot be admitted to operate to the Prejudice of a simple regular Bond wherein no Conditions No Agreement of the Kind is mentioned or taken Notice of and it was upon that point of Law which induced this Respondent to set the said Cause down for hearing on Bill and Answer

Secondly That as the said Bond is admitted on the Part of the said Appellant and Nothing is afterwards advanced for the purpose of setting the same aside except a Verbal agreement said to have taken place between the said Appellant and the Assignor of the said Bond but which neither appears upon the face of the said Bond or the Agreement Annexed as an Exhibit to the Answer of the said Respondent to be a Consideration or Condition on which the said Bond was granted or does the Sum expressed in the said Exhibit agree with the Amount of the said Bond this Respondent therefore Submits to this Honble Court whether so sacred an Instrument as a Bond is or ought to be in any Shape effected or invalidated by any Verbal Agreement not Conveyed in the Tenor of it and that if the said Respondent is Aggrieved by a Breach of a separate Agreement on the Part of the said Assignor he hath his separate Right of Action Against him

For which Reasons and such others as may be offered at the hearing of this Cause this Respondent humbly hopes that the said Decree of the Honble the Mayors Court of the Fifth day of June last will be affirmed and the Appeal of the Appellant be dismissed with exemplary Costs

[Signed] Charles Baker
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 1st December
Anno Domini 1787

Between William Gardiner of Madras
Shop keeper Appellant and Thomas
Umpherston by his attorney David
Young of the Same place Merchant
Respondent

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and Answer And the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 5th day of June. Anno Domini 1787 upon due Consideration had of the Matters therein severally Contained And of the Pleadings And Arguments Used by the attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and That the Appellants Petition be hence Dismissed with Costs

By Cur / Signed / Chas N. White Clk

To the Honble Sir Archibald Campbell K. B.
in Council in the Court of Appeals

Between George Moubray by his
attorney Henry Alexander of
Fort Saint George Esqr Complainant
And Myla Tanacooly Pillah of
Saint Thome Inhabitant
Defendant

The Petition and Appeal of the said
Complainant by his said Attorney
Sheweth

That your Petitioner by his said
Attorney did Some time on or about the Twenty fourth
day of March which was in the year of Our Lord One
Thousand seven hundred and Eighty six exhibit a
Filed in my Office the 9th July 1787 Bill of Complaint in the Mayors Court at Madraspatnam
Charles N White Clk
Against the above named Defendant for the Sum of
Eight Hundred and Seven Pagodas ten fanams and
twenty seven Cash being for the Balance Arising upon
two Bonds or Obligations given and granted unto your
Petitioner for the Principal Sum of One thousand and five
hundred

of the Principal and Interest of the above Bonds whereupon he saith that he paid the aforesaid Sum of One thousand five hundred and twenty two Pagodas and the Defendant moreover saith that he ought to have Credit for two other Sums To Wit the Sum of two hundred and fifty Pagodas and one hundred and twenty five Pagodas for which he saith your Petitioner ought to be Answerable, altho' Neither of the said Sums are included in the Account Current annexed unto his said Answer and the said Defendant further saith that this Action was commenced against him with a View to distress him and as a proof of which he exhibits the Account Current Annexed unto your Petitioners Bill which he saith is incorrectly drawn and cast up which was sworn to by the said Henry Alexander and the Defendant also Setforth other matters in his Answer and Account equally frivolous false and evasive and your Petitioner sheweth that the Defendant having Admitted of the execution of the said Bonds in his said Answer your Petitioner did not think it incumbent upon him to enter in to a Minute denial of the several other Matters there-

Alledged And did therefore put in a General Replication thereto generally denying the Answer to be true and whereto the Defendant did file a General Rejoinder and Issue did thereupon join and Rules did pass for the Examination of Witnesses and Witnesses were examined on the part of the Defendant To the following points To Wit Veerapermall Saith that in Governor Rumbolds time the Defendant paid him One Hundred and twenty five Pagodas by desire of your Petitioners Dubash as a Compensation for some Pady fields charged to have been taken by him to make a Road Comsapen Saith that One hundred and twenty Pagodas were paid by desire of the Dubash on this Account Sookaroyah Saith that he heard your Petitioners Dubash Order the Defendant to pay One Hundred And twenty five Pagodas on Account of some Pady fields And to the Last Interrogatory he saith that Your Petitioners Dubash told the Defendant in his hearing that his Master Meaning your Petitioner had Agreed to Forgive three hundred Pagodas on Account of Interest due from the Defendant That upon these Proceedings publication did pass and the said Cause

of the Principal and Interest of the above Bonds whereupon he saith that he paid the aforesaid Sum of One thousand five hundred and twenty two Pagodas and the Defendant moreover saith that he ought to have Credit for two other Sums To Wit the Sum of two hundred and fifty Pagodas and one hundred and twenty five Pagodas for which he saith your Petitioner ought to be Answerable, altho' Neither of the said Sums are included in the Account Current annexed unto his said Answer and the said Defendant further saith that this Action was commenced against him with a View to distress him and as a proof of which he exhibits the Account Current Annexed unto your Petitioners Bill which he saith is incorrectly drawn and cast up which was sworn to by the said Henry Alexander and the Defendant also Set forth other matters in his Answer and Account equally frivolous false and evasive and your Petitioner sheweth that the Defendant having Admitted of the execution of the said Bonds in his said Answer your Petitioner did not think it incumbent upon him to enter in to a Minute denial of the several other Matters therein alledged

Alledged And did therefore put in a General Replication thereto generally denying the Answer to be true and whereto the Defendant did file a General Rejoinder and Issue did thereupon join and Rules did pass for the Examination of Witnesses and Witnesses were examined on the part of the Defendant To the following points To Wit Veerapermall Saith that in Governor Rumbolds time the Defendant paid him One Hundred and twenty five Pagodas by desire of your Petitioners Dubash as a Compensation for some Paddy fields charged to have been taken by him to make a Road Comrapen Saith that One hundred and twenty Pagodas were paid by desire of the Dubash on this Account Sooharoyah Saith that he heard your Petitioners Dubash Order the Defendant to pay One Hundred And twenty five Pagodas on Account of some Paddy fields And to the Last Interrogatory he saith that your Petitioners Dubash told the Defendant in his hearing that his Master Meaning your Petitioner had Agreed to forgive three hundred Pagodas on Account of Interest due from the Defendant That upon these Proceedings publication did pass and the said Cause was

was thereupon Sett down for hearing and was Sett down
to be heard on Tuesday the Twenty Sixth day of the
Month of June last past and the Several proceedings
before recited were Actually read and the Attornies
on both sides heard thereupon When your Petitioners
Attorney did pray a Decree according to his said Bill
the Defendant Not having proved that the Sum by
him in his Answer charged to have been paid more
than had been credited him by your Petitioner To
Wit the Sum of three hundred and thirty five Pds
had been Actually paid and also that the Defendant
might pay all Costs But your Petitioner sheweth
that the said Honble Court instead of giving a
Decree according to the said Bill did decline passing
any Decree at all in the said Cause and did Order
that your Petitioner should put in a special Replication
to the Defendants Answer upon the Suggestion the
Same did contain a Variety of Matter And that for
Want of certainty it was impossible for the said Court
to proceed to Judgement on the Several Matters then
before them and the said Court did further Order that
the said Defendant should rejoin specially and
that

That each Party should be at Liberty to examine Witnesses
Again in Support of his Cause and did Moreover order
that the present Rejoinder the Interrogatories and
Depositions to be Sett aside with Costs to be paid by your
Petitioner By which said Order and by the said Honble
Court not giving Judgement upon the said proceedings
before them your Petitioner doth find himself aggrieved
And doth therefore Appeal therefrom to this Honble Court
And for Cause of Appeal Sheweth That the said Cause
Was at a fair and certain Issue upon the Proceedings
had therein and that it was Not Necessary in Order
to make the Same more clear that Your Petitioner should
file a special Replication that his being Directed to
do so is a restraint on the Rights and priviledges
Allowed by Law to Suitors in all his Majestys Courts
in Great Britain and elsewhere that a General Replication
Was to all intents and purposes of the Law and the
practice of the said Court sufficient to bring the said
Cause to a fair Issue and was thereto More Regular
and formally Adapted than a special Replication
That the Defendant having Admitted of the execution of
the said Bonds and having only pleaded thereto a
certain

1

Certain Setoff of a Sum by him charged to have been paid besides the Sums credited by your Petitioner on that Account the reality of which was the only Matter in issue and it was the Defendants part to have proved that he had paid that Sum on Account of his said Bonds that Burthen laying upon him the Defendant And Not upon your Petitioner because your Petitioner could only enter into evidence that the Defendant had Not paid the Money Which is a mode of Evidence inadmissible in the Law which Never imposes the proof of a Negative as being impossible and contrary to Reason your Petitioner therefore saith that as the Defendant was at full liberty to make that Defence he judged most proper and as he was at equal liberty to support that Defence by Witnesses if he hath failed therein your Petitioner ought to have a Decree according to the prayer of his Bill the Ground of Which To Wit the Two Bonds being Admitted by the Defendant your Petitioner had Not Occasion for Evidence as he Would have had in Case the Defendant had denied the Debt Which your Petitioner must then have proved by examining Witnesses to the Execution of the Bonds

And your Petitioner Sheweth that the Defendant can suffer no injury by his having filed only a General Replication and the Order that your Petitioner shall Reply Specially to the Several Matters Setforth in the Defendants Answer is a hard Ship upon your Petitioner as supposing him in possession of Matter of reply thereto And thereby establish by a partial implication the Reality of the Matters contained in the said Answer because if they are Not Real or Within your Petitioners Knowledge it Will Not be possible for your Petitioner to reply Specially to the said Answer Notwithstanding the said Order that he shall do so

And your Petitioner Sheweth that the Defendant having had the full benefit of the Law to prove his Answer he ought to have Advantaged himself thereof in proper time And if he hath failed in his proof it is rather to be presumed that he hath Not Any in support of his Answer than that he hath failed thro other Causes That it is a Rule in Law that No new Witnesses shall be examined after publication except upon Cause shewn upon Affidavit And that the parties Nor their Attornies have not seen the Depositions All which must be done before the Cause is Set down for hearing but in No instance

after

After ... Because each Party having had time to
Produce their Witnesses it is their duty to avail themselv
thereof That the Rule that No Evidence shall be
examined after publication is doubtless established to
prevent the perjuries men might be tempted to be
Guilty of themselves And Suborn in others to Supply
a defective body of Evidence That the Defendant is no
Within the Mischiefs this Rule of practice is meant t
Prevent by having seen his Depositions which he
the Universal Latitude of the Order at Liberty to
Amend and Add to and Generally to examine
And as many more Witnesses as he may judge
be Necessary to supply the Deficiency of his prio
Evidence

That the Order that your Petitioner
pay all Costs from the filing of the Answer is ha
ly grievous your Petitioner Not having incurred a
penalty by misleading or by Not conforming to
Rules and practice of the Law and the said Hon
the General Replication filed by your Petitioner
a sufficient proceeding to bring the said Cause to
And Material Issue And your Petitioner ought

Therefore to pay the said Costs part of which includes the
insufficient Evidence of the Defendant

Your Petitioner therefore doth Appeal
from the said Order to this Honble Court Copy of which is
hereto Annexed humbly praying Relief therefrom And that
this Honble Court will be pleased to hear and determine
the said Cause or that they will reverse the said Order
by directing the said Honble Mayors Court to proceed
to hear and determine the said Cause upon the proceed-
ings before had and that your Petitioner may have all
Costs of this Appeal and further such other Relief in the
premisses as to this Honble Court shall seem Meet

[Signed] Henry Du Puy
Solicitor for the Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 26th day of June Anno Domini 1787

Present

James Call Esquire Mayor
George Savage & Andrew Ross
Aldermen

George Moubray by his Attorney Henry Alexander

Vers

Myla Tanacootty Pillah

Bill with Copy of an Account Current Copies of two Bonds or
Obligations and Copy of Assignment Annexed Read
Affidavit of Henry Alexander Read
Answer with Copy of an Account Current Annexed Read
General Replication Read
General Rejoinder Read
Interrogatories on the part of the Defendant Read
Three Depositions taken thereunto Read.

It Appearing to the Court from the Proceedings in this Cause that the Complainant has only filed a General Replication instead of a Special one to the Defendants Answer which Contains a Variety of Matter Whereby for want of certainty it is impossible for this Court to proceed to Judgement on the several Matters now before them This Court doth think fit to Order and doth accordingly Order that the Complainant do file a Special Replication to which the Defendant must Rejoin Specially And that each Party be at Liberty to examine Witnesses Again in Support of his Cause and it is further Ordered that the present Rejoinder the Interrogatorys and Depositions be Set aside with Costs to be paid by the Complainant

A true Extract
(Signd) James Taylor
Regr

Court of

Court of Appeals
at
Madraspatnam

Saturday the 1st December
Anno Domini 1787

Between George Moubray by his
Attorney Henry Alexander of Fort St. Geo.
Esqr. Appellant and Myla Sanacoty
Pillah of Saint Thome Inhabitant
Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and the several Pleadings in the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 26th day of June Anno Domini 1787 upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and doth Accordingly Order that the said Order of the Hble the Mayors Court do stand Affirmed Saving that each Party do pay his Costs

By Order
/Signed/ Chas N. White Clk

To the Hönble Sir Archibald Campbell K.B.
President and Governor &ca Council of
Fort Saint George

In the Hönble the Court of appeals

Between Sunca Chinna Kistnamah
Chitty by his Attorney Reynoo Toolah
Vencatarramiah And Edward
Jourdan Esqr. Executor to the Last
Will and Testament of Francis
Jourdan Esqr. Deceased

The humble Petition and Appeal of Edward
Jourdan of Fort Saint George on the Coast of
Coromandell in the East Indies Esqr. Captain
of Cavalry in the Service of the Hönble the United
English East India Company under this
Establishment of Fort Saint George Executor
With a Probate to the Last Will and Testament
of Francis Jourdan late of the same place
Esquire Deceased

Sheweth

That the abovesaid Sunca Chinna Kistanah
Chitty by his abovesaid Attorney Reynoo Toolah Vencatarramiah
Filed in my Office the 2d May 1786 did on the 13th day of January in the present Year of Our Lord 1786 prefer a Bill of Complaint Against your Petitioner Charles N. White Clk as the Executor to the Last Will and Testament of Your
Petr.

Petitioners Brother Francis Jourdan late of Fort St. George Esqr
Deceased in Order to Compell your Petitioner as Executor
aforenamed to pay unto him the said Suncoo Chinna Kistna
mah Chitty and his said Attorney the Sum of Two thousand
Nine hundred and forty four Pagodas nineteen fanams
And thirty Cash as the Balance of an Account Current
Arising on a Bond penal for the sum of Seven thousand
Nine hundred and Seventy one Pagodas Conditional on
the Payment of the Principal Sum of Three thousand Nine
hundred and Eighty five Pagodas and twenty one fanams
With Interest under the Hand and Seal of the said
Francis Jourdan in his life time given unto the abovesaid
Suncoo Chinna Kistnamah Chitty Which Bond your
Petitioner Sheweth beareth date the 10th of July in the
Year 1783 a Copy whereof as also a Copy of the Account
Current as a Copy of the pretended Assignment And
Power of Attorney are annexed to the said Bill of
Complaint to this said Bill of Complaint Your Petr
as Executor aforenamed Appeared and was under
the Necessity of putting in such an Answer as the
Situation of the said Deceased Francis Jourdans
Concerns and Affairs Would then Admit of and also in
Conformity

Conformity to the Rules in Law prescribed to Executors
And Administrators Where they become Defendants
Especially in such Concerns and Affairs that are
complicated Wide and Extensive such as the
Deceased Francis Jourdans were Who Traded in
his life time to Sundry Ports and Places in Europe
And in Asia And Which required Many Years to
bring to a final Conclusion Your Petitioner did in
Consequence of being an Executor to the said Francis
Jourdan make and put in such an Answer as the
Law directs thereby reserving a right of Equality as to
payment to such of the Specially Creditors as were of
An Equal Degree With the said Suncoo Chinna Kist
Namah Chitty and his said Attorney Your Petitioner
having in no Sort or Shape pleaded in Avoidance
of the said Bond of the said Francis Jourdan or in
Any Shape denied the demand made on the Same
but on the Contrary Admitted of the Debt With this
Reservation and Observation that although Your
Petitioner did Admit of the Debt Yet your Petitioner
did not admit of Assets Sufficient in hand to pay
the Demand of the said Suncoo Chinna Kistnamah
Chitty

Chitty or his Said Assignee by reason of the Extensiveness of the Affairs of the said Deceased Whereby your Petitioner could Not With Any Degree of Procession an Account of the real State And Condition of the Deceaseds Estate and Effects - Your Petr as Executor aforesaid did Also in Such his Said Answer Set forth that Your Petitioner Was himself a Specially Creditor on two Penalty Bonds to a Very large Amount as Set forth in your Petitioners Account Current Annexed to his Said Answer and that your Petitioner had Not Assets in Hand Sufficient to pay himself Which by Law he was as a Bond Creditor first entitled to do in full Though there might Not be Sufficient Assets to pay the other Creditors of an Equal degree With your Petitioner Your Petitioner further in Answer did Set forth in a Schedule Annexed thereto a List of the Several Specially Creditors of the Said Francis Jourdan Who were on an Equality With the Said Suncoo Chinna Kistnamah Chitty Their right as to an Equality of payment Your Petitioner prays of the Hon^ble the Mayors Court a reservation thereof So that No Advantage might be taken to their prejudice of the Suit preferred by the said Suncoo Chinna Kistnamah Chitty Against your Pet^r as Executor aforenamed and

Your Petitioner did also in Such his Said Answer pray of the Said Hon^ble the Mayors Court a reservation of his Preferential Right of payment to Not only the Said Suncoo Chinna Kistnamah Chitty but also the other Specially Creditors of the Said Francis Jourdan Your Petitioner did also further pray a reservation of his Expences And Charges as incidental to his Office of an Executor All of Which said Answer Your Petitioner Sheweth he gave in as in Equity And Justice to the Several Creditors of the Said Francis Jourdan Was Due and Owing Your Petitioner further Sheweth that this said Bill of Complaint With your Petitioners Answer Were Set down for hearing and the Same came on before the Hon^ble the Mayors Court and Was by them determined on Tuesday the 18^th day of this Instant April in Manner and Form as Set forth and expressed in a Copy of the Decree Pronounced by the said Hon^ble the Mayors Court hereto Annexed for the inspection of this Hon^ble Court of Appeals And the Original in the Possession of your Pet^r and ready to be produced When required — From which said Decree of the Hon^ble the Mayors Court Your Petitioner as Executor to the last Will and Testament of the said Francis Jourdan prays leave to Appeal to

this

This Honble Court of Appeals as your Petitioner is of an Opinion that such Sentence Order or Decree of the Honble the Mayors Court is very Erroneous as so Decreed against your Petitioner as an Executor Because the said Order Sentence or Decree of the Honble the Mayors Court takes No notice of the Claims of the Sundry Specially Creditors by your Petitioner Set forth and shewn in your Petitioners Answer Nor of the Want of Afsets in your Petitioners hands to pay himself and the Sundry Creditors of the Said Francis Jourdan When in fact the Sentence or Decree of the Said Honble the Mayors Court ought to have been as in the like Cases Where they are a Numbers of Specially Creditors unsatisfied and the Want of immediate Afsets in the Hands of the Executor or Administrator to discharge their Several Claims the Debt admitted With a Stay of Execution to be paid out of the Afsets in future so that the same be not to the Prejudice of the Specialty Credetors Whose right as to Equality of payment With the said Suncoo Chinna Kistnamah Chitty is preserved to them by the Answer of your Petitioner to the Bill of Complaint to the Said Suncoo Chinna Kistnamah Chitty Which your Petitioner says ought to have been Observed in the Decree

Decree as pronounced by the Honble the Mayors Court

Whereas by the said Decree it does there appears as if there was no other Creditors of the said Francis Jourdan but the said Suncoo Chinna Kistnamah Chitty and that there Were afsets Sufficient in hand to Satisfy such Decree of the Honble the Mayors Court Whereby your Petitioner is Liable to be prosecuted for a Devastavit by all the Creditors Your Petitioner further says as another Cause for appealing from the said Order Sentence or Decree of the Honble the Mayors Court that they ought to have Marshalled the payment of the said Suncoo Chinna Kistnamah Chittys demand as Set forth and prayed for by your Petitioner in his Answer for your Petitioner Sheweth that by such said Answer Your Petitioner has Kept the Demand of the said Suncoo Chinna Kistnamah Chitty within the Letter of the Law and the Decree of the said Honble the Majors Court should have been Accordingly for with great Submission to this Honble Court of Appeals the said Order Sentence or Decree of the said Honble the Mayors Court does not Nor cannot operate or give a preferrence to the Prejudice of the several Specially Creditors Whose Claims Your Petitioner has

In

In said Answer set forth and preserved and Who are thereby interested and have a right to the produce of the Asets, When, and Where soever they may be found your Petitioner further sets forth that the Decree of the said Honble the Mayors Court would have done very Well had there been no other Creditor and Where no Special Answer was put in it might then be presumed the Debt was just and that there were No Creditors of an Equal Degree and Asets in presenti sufficient to pay Whereas by your Petitioners Mode of pleading the Rule laid down by the Law of the Land is preserved and the said Suncoo Chinna Kistnamah Chitty is Still No further Considered than as a Bond Creditor for in fact he has only Ascertained his Debt and though he has obtained a Decree against the Executor Yet he is Not in the Eye of the Law considered as a Judgement Creditor of the Deceased Francis Jourdain because the Decree can only relate to the Proceedings Carried on in the Courts For all which reasons And for as many More as may be Urged at the hearing of this Petition and Appeal before this Honble Court of Appeals Your Petitioner as Executor to the Last Will and Testament of Francis Jourdan Deceased prays that the said Decree of the Honble the Mayors Court may be reversed and Set aside as Erroneous And that such Decree may be made according to Law With Costs to be paid by the said Suncoo Chinna Kistnamah Chitty

/Signed/ Charles Bromley

Attorney for Appellant

Mayors

Mayors Court
at
Madraspatnam

Tuesday the 18th day of April
Anno Domini 1786

Present

Robert Ewing Esquire Mayor
George Savage & Pos. du Pre Porcher
Aldermen

Between Lunca Chinna Kistna-
-mah Chitty of Madras Merchant
by his Attorney Roynoo Coolah Venca-
Inhabitant Complainant and Edward
Jourdan of Fort St. George Esqr. Captain
in the Honble Companys Service
Executor of the Last Will and Testa-
-ment of Francis Jourdan late of
Fort St. George Deceased Defendant

This Cause coming on to be heard and debated this Day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of a Bond Account Current and Assignment Annexed The Defendants Answer with an Account Current

And List of the Creditors Annexed On hearing the Pleadings And Arguments Made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant out of the Estate and Effects of Francis Jourdan Deceased the full and Just Sum of Two thousand Nine hundred and forty four Pagodas Nineteen fanams and thirty Cash / Pagodas 2944.19.30 / together With such Interest as Now is or shall hereafter become due thereon Untill full Payment is made Also all Costs of this Suit

Ebur

/ Signed / James Taylor Regr.

/ A true Copy /

Chas. Bromley
attorney for Appellant

In

In the Court of Appeals

at

Madraspatnam

Between Sunco Chinna Kistnamah Chitty by his attorney Royanoolah Venkatasamiah Complainant And Edward Jourdan Esqr. Executor of the Last Will and Testament of Francis Jourdan Esqr. Deceased Defendant

The Answer of the said Sunco Chinna Kistnamah Chitty by his attorney aforesaid to the Petition and Appeal of the above named Edward Jourdan Executor as aforesaid of the said Francis Jourdan

This Respondent not confessing or acknowledging all or any of the Matters and things to be true in such Manner and form as in and by the said Petition and Appeal is Mentioned for Answer thereunto Saith that he doth Admit that he died by his said attorney on the Thirteenth Day of January last and which was in the present Year of Our Lord One Thousand

Filed in my Office
the 12th June 1786
Charles D'White Cr

Seven hundred And Eighty Six prefer a Bill of Complaint in the Court before the Mayors Court against the Appellant as executor of his late Brother for the Recovery of the Sum of Two thousand Nine hundred And forty four Star Pagodas Nineteen fanams And thirty Cash being the Ballance of an Account Current Arising upon a Bond entered in to by the Said Francis Jourdan in his Life time in the Penal Sum of Seven thousand Nine hundred And Seventy one Pagodas Conditioned for the Payment of three thousand Nine hundred And Eighty five Pagodas and Interest to this Respondent his Executors Administrators or Assigns on a Day Now long since past and that the Said Bond is Dated the Tenth Day of July One thousand Seven hundred & Eighty three as by the Copy thereof Annexed to such Bill of Complaint will appear And this Respondent doth also Admit that the Said Appellant did put in his Answer thereto And did thereby Among other things acknowledge such Bond and the Justness of this Respondents Demand at the same time Stating that the Affairs of the Testator were wide And extensive And the

Debts

Debts he owed very Numerous and considerable and by reason of such Extensiveness he could not with any Degree of Precision then Under an Account thereof or say whether the said Estate was Solvent or not, and that the said Appellant was himself a considerable Creditor of the said Estate upon Bond and did thereby pray a priority in Payment of his Debt as well as of the Expences attending the Executorship, and an Equality in Payment of the other Bond Debts of the said Estate and that the said Appellant did in no sort or shape plead in Avoidance of the said Bond of the said Frances Jourdan to this Respondent or in any Shape deny the demand made on the same and this Respondent further Admits that the said Cause coming on to be heard on the said Bill of Complaint and Answer on the Eighteenth day of April last the said Honorable the Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree that the said Appellant should pay unto this Respondent out of the Estate and Effects of Frances Jourdan Deceased the full and Just Sum of Two Thousand Nine hundred and forty four Star Pagodas Nineteen fanams and thirty Cash together with such Interest as then was or thereafter should become due thereon and also all Costs of Suit, from which said Decree the said Appellant did Lodge an Appeal to this Honble Court on the first Day of May last pretending that such Decree was Erroneous and praying that it might be made According to law Whereas this Respondent says and insists that the said Decree is not erroneous and that the said Mayors Court upon the Proceedings had before them could not according to Law make any other Decree than they have done and in Support thereof he begs leave to Suggest the Reasons following

First Because the Bill being brought for a Specific Sum of Money due on Bond and the Answer Admitting such sum of Money due on Bond the Court cannot do otherwise than Confirm such Acknowledgment by their Decree for from such Premises the Conclusion follow of itself

Secondly Because the Court has no power to Modify or qualify their Decree but a certain Simple issue is to be brought before them, and they are to determine on it either in the Affirmative or Negative as it done in the present Case they cannot modify it by Stipulating the time or mode of Payment

3dly Because the Appellant in his said Answer does not Positively Assert that he has not Assets but only from the Extensiveness of the Testators Concerns and his Ignorance thereof he Seems Apprehensive that he shall not have enough to pay all

all the Testators Debts which Admits afsets for part and when afsets is for Part Admitted the Law is declared in book 3 Report Page 134 that the Judgement must be given for the whole debt.

4thly Because if the fact is so, that he had not afsets he should have pleaded it Specially, so that the Respondent might have been obliged to have Joined in issue upon the fact and it would then be ascertained by Evidences and Determined by the court whether there are afsets are not and besides if there are not afsets the Decree becomes Harmless for there is nothing to be levied on it

5thly Because there is no foundation in Law for the Idea of putting the Debts in an Equal mode of Payment but the Law is Estoppel that of Creditors in an equal Degree those shall be paid first who take out Execution first, and as to the Executors own Demands if he has any the Law has already Executed them in himself.

6thly Because tho the Appellants Take the Present Decree to be Erroneous he does not Suggest any other Decree that might have been given and not be Erroneous, the fact indeed being that upon the Proceedings before the Court no other Decree could be given and not be Erroneous

For all which Reasons as well as for such Mens as may be offered at the hearing this Respondent by his Attorney aforesaid prays that the Appellants Petition and Appeal may be

Dismissed with costs to be paid by the Appellant himself for this his unnecessary and Litigious Application to this Honorable court

/Signed/

Peter Walker

Attorney for Respondent

court

Court of Appeals
at
Madraspatnam

Saturday the 1st December
Anno Domini 1787

Between Edward Jourdan Executor of
Francis Jourdan Deceased Appellant and
Sunco Chinna Kistnamah Chetty by his
attorney Royanoto Lah Venkataramiah
Respondent.

This cause coming on this day to be heard and debated before this court by the attorneys on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors court together with the Decree of the said court given in this cause on Tuesday the 13th day of April Anno Domini 1786. 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 draw and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors court do stand affirmed saving the rights and credits of the said Edward Jourdan as Executor to the Estate of the said Frances Jourdan and that the Appellant do pay the costs in this court.

Vera /Signed/ Chas N. White Clk

To the Honble Sir Archibald Campbell K.B.
President and Governor &c. Council of Fort St George

In the Honble the Court of Appeals

Between Avadanum Paupiah Bromony
and Edward Jourdan Esquire Executor to the last
will and Testament of Frances Jourdain Deceased

The Humble Petition and Appeal of Edward Jourdan of
Fort St George on the Coast of Coromandell in the East Indies
Esquire Major of Cavalry in the Service of the Honble the
United English East India Company under this Establish-
ment of Fort Saint George Executor with a Probate to the
last Will and Testament of Frances Jourdan Late of the
same place Esquire Deceased

Sheweth

That the aboves.d Avadanum Paupiah Bromony did on
the 25th day of April in the present Year of our Lord 1786. prefer a
Filed in my Office Bill of Complaint against your Petitioner as the Executor to the last
the 21st Nov.r 1786 Will and Testament of your Petitioners Brother Francis Jourdan late
Charles N. White Clk
of Fort Saint George Esquire Deceased. in Order to compell your Petitioner
as Executor aforenamed to pay unto him the said Avadahnum Paupiah
Bramony the Sum of Six hundred and Seven Pagodas Nineteen fanams
and

and thirteen Casts, as the balance of an Account Current arising on a Bond penal for the Sum of One thousand Star Pagodas conditional on the Payment of the Principal Sum of Five hundred Star Pagodas with Interest under the hand and Seal of the Said Francis Jourdan in his life time given unto the abovesaid Avadanum Paupiah Bromony which Bond your Petitioner sheweth beareth date the 10th of July in the Year 1784. a Copy whereof, as also a Copy of the Account Current are annexed to the said Bill of Complaint to this said Bill of Complaint your Petitioner as Executor aforenamed, assigned and was under the Necessity of putting in such an Answer as the Situation of the Deceased Francis Jourdan's Concerns and Affairs would then Admit of, and also in Conformity to the Rules in Law prescribed to Executors and Administrators, where they become Defendants Especially in such Concerns and Affairs that are Complicated Wide and Extensive such as the Deceased Francis Jourdan's were who Traded in his life time to sundry Ports and Places in Europe and in Asia, and which required many Years to bring to a final Conclusion, your Petitioner did in consequence of being an Executor to the said Francis Jourdan make, and put in such an Answer as the Law directs. Thereby desiring a Right of Equality as to payment to such of the Specialty Creditors as were of an Equal Degree with the said Avadanum Paupiah Bromony

Your

Your Petitioner having in no sort or shape pleaded in Avoidance of the said Bond of the said Francis Jourdan, or in any shape denied the Demand made on the same but on the Contrary Admitted of the Debt with this Reservation and Observation, that although your Petitioner did Admit of the Debt, Yet your Petitioner did not Admit of Assets Sufficient in hand to pay the Demand of the said Avadanum Paupiah Bromony by reason of the Extensiveness of the Affairs of the said Deceased whereby your Petitioner could not with any Degree of Precession render an Account of the Real State and Condition of the Deceased's Estate and Effects, your Petr as Executor aforesaid; did also in such his said Answer, Set forth that your Petitioner was himself a Specialty Creditors on Two Penalty Bonds to a very large Amount, as Set forth in your Petrs Account Current Annexed to his said Answer, and that your Petr had not Assets in hand Sufficient to pay himself which by Law he was, as a Bond Creditor first entitled to do in full, though there might not be sufficient Assets to Pay the other Creditors of an Equal Degree with your Petitioner, your Petitioner further in Answer did Set forth in a Schedule annexed thereto a list of the Several Specialty Creditors of the said Francis Jourdan, who were on an Equality with the said Avadanum Paupiah Bromony their Right as to an Equality of Payment your Petitioner Prayed of the Honble

the

the Mayors Court a Reservation thereof so that no Advantage
might be taken to their prejudice of the Suit prefered by the said
Avadanum Paupiah Bramony against your Petitioner as Executor
aforenamed, and your Petitioner did also in such his said Answer
Pray of the said Honble the Mayors Court a Reservation of his
Preferential Right of Payment to, not only the said Avadanum
Paupiah Bramony, but also the other Specialty Creditors of the
said Francis Jourdan Your Petitioner did also further pray a
Reservation of his Expences and Charges as incidental to his office
of an Executor. all of which said Answer your Petitioner
Sheweth, he gave in as in Equity and Justice to the several
Creditors of the said Francis Jourdan was due and Owing your
Petitioner further Sheweth, that the said Bill of Complaint
with your Petitioner's Answer were Set down for hearing and the
same came on before the Honble the Mayors Court and was by
them Determined on Tuesday the fourteenth day of this Instant
November, in manner and form as Setforth and Expressed in a
Copy of the Decree pronounced by the said Honble the Mayors
Court, hereto annexed for the inspection of this Honble Court of
Appeals, and the Original in the Possession of your Petitioner
and ready to be produced when required From which said
Decree of the Honble the Mayors Court your Petitioner as Executor

to the last Will and Testament of the said Francis Jourdan prays leave
to Appeal to this Honble Court of Appeals as your Petitioner is of
an Opinion, that such Sentence Order or Decree of the Honble the
Mayors Court is very Erroneous as so Decreed against your Petitioner
as an Executor. Because. the said Order Sentence or Decree of
the Honble the Mayors Court, taken no Notice of the Claims of
the Sundry Specialty Creditors by your Petitioner Setforth and
Shewn in your Petitioners Answer nor of the want of Assets in
your Petitioners hands to pay himself and the Sundry
Creditors of the said Francis Jourdan when in fact the
Sentence or Decree of the said Honble the Mayors Court ought to
have been as in the like Cases, where they are a Numbers of
Specialty Creditors unsatisfied and the want of immediate
Assets in the hands of the Executor or Administrator to discharge
their Several Claims the Debt admitted with a Ray of Execution
to be paid out of the Assets in future so that the same be not
to the Prejudice of the Specialty Creditors whose right as to
Equality of Payment with the said Avadanum Paupiah
Bramony is preserved to them by the Answer of your Petitioner
to the Bill of Complaint to the said Avadanum Paupiah
Bramony, which your Petitioner says ought to have been
Observed in the Decree as pronounced by the Honble the Mayors
Court

Court Whereas by the said Decree it does there Appear as if there was no other Credetors of the said Francis Jourdan but the said Avadanum Paupiah Bramony, and that there was Assets Sufficient in hand to Satisfy such Decree of the Honble the Mayors Court whereby your Petitioner is liable to be prosicuted for a Devastavit by all the Creditors - your Petitioner further says as another Cause for Appealing from the said Order Sentence or Decree of the Honble the Mayors Court that they ought to have Marshalled the Payment of the said Avadanum Paupiah Bramony's Demand as Set forth and Prayed for by your Petitioner in his Answer, for your Petitioner Sheweth, that by such said Answer Your Petitioner has held the Demand of the said Avadanum Paupiah Bramony within the Letter of the Law, and the Decree of the said Honble the Mayors Court Should have been Accordingly for with great Submission to this Honble Court of Appeals the said Order Sentence or Decree of the said Honble the Mayors Court does not nor cannot Operate or give a preferrence to the Prejudice of the Several Specialty Creditors whose claims your Petitioner has in his said Answer Set forth and preserved, and who are thereby intended and have a right to the produce of the Assets where and wheresoever they may be found Your Petitioner further sets forth that

that the Decree of the said Honble the Mayors Court would have done very well had there been no other Creditor and where no Special Answer was put in, it might then be presumed the Debt was Just and that there were no Creditors of an Equal Degree and Assets in present Sufficient to Pay Whereas by your Petrs mode of pleading the Rule laid down by the Law of the Land is preserved and the said Avadanum Paupiah Bramony is still no further Considered than as a Bond Creditor, for in fact he has only Ascertained his Debt and though he has Obtained a Decree against the Executor Yet he is not in the Eye of the Law Considered as a Judgment Creditor of the Deceased Francis Jourdan because the Decree can only related to the Proceedings Carried on in the Courts

For all which Reasons and for as many more as may be Urged at the hearing of this Petition and Appeal before this Honble Court of Appeals your Petitioner as Executor to the last Will and Testament of Francis Jourdan Deceased prays that the said Decree of the Honble the Mayors Court may be Reversed and Set a Side as Erroneous, and that such Decree may be made According to Law with Costs to be paid by the said Avadanum Paupiah Bramony

[Signed]

Charles Bromley

Attorney Appellants

Mayors Court at Madraspatnam } { Tuesday the 11th day of Novemr. Anno Domini 1736

Present

Robert Ewing Esqr. Mayor
James Ball & William Webb
Aldermen

Between Avadanum Paupiah Bramony of Madras Inhabitant Complaint. and Edward Jowdan a Captain in the Service of the Honble United English East India Company Executor with a Probate to the Last Will and Testament of Francis Jourdan late of Madras Esquire Deceased 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 Copy of a Bond or Obligation annexed. The Defendants Answer with an Account Current and List of the Creditors annexed On Hearing the Pleadings made Use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant out of the Estate and Effects of Francis Jourdan Deceased the full and just Sum of Six hundred and Seven Pagodas thirteen fanams and thirteen Cash / Pagodas 607. 13. 13. / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit.

How

/ Signed /

James Taylor
Regr.

To

To the Honble the Court of Appeals
at Madraspatnam

Between Avadanum Paupiah
Bramony of Madras Inhabitant Complainant
and Edward Jourdan of Port Saint George
on the Coast of Coromandel in the East
Indies Esqr. Captain of Cavalry in the
Service of the Honble the United English
East India Company under this Establishment
of Port Saint George Executor with a Probate
to the last Will and Testament of Francis
Jourdan late of the same place Esquire deceased
Defendant.

The Answer of the said Complainant to
the Petition and Appeal of the said Defendant.

The said Respondent doth admit that he
did on or about the Twenty fifth day of April in this present Year
of Our Lord One thousand Seven hundred and Eighty Six
Prefer a Bill of Complaint against the Appellant as Executor
to the last Will and Testament of the abovenamed Francis
Jourdan Deceased in Order to compell him as Executor aforenamed
to pay him the Sum of Six hundred and Seven Pagodas Nineteen

Filed in my Office
the 19th December 1788
Charles R White

Fanams and thirteen Cash as the Principal and Interest of and
upon a Bond or Obligation by the Deceased in his life time given
and granted under the date of the Tenth day of July One
thousand Seven hundred and Eighty four Copy whereof was
Annexed unto the said Bill of Complaint, whereunto the said
Appellant did Appear and did file an Answer on the Tenth
day of October in the said Year of Our Lord, wherein the said
Appellant did fully Admit the execution of the said Bond
by the said Deceased and the Debt thereupon owing to be Justly
duely and owing and that he the Appellant as Executor of the
said Deceased was Answerable for the same as far as the Estate
and Effects of the Deceased would go, but did nevertheless pretend
that he was a Specialty Creditor and that there were also
Sundry other Creditors of the Estate of which he the Appellant
did deliver in a pretended Account and did Set forth many other
Matters extraneous to the Nature of this Respondent's demand and
the Suit and Action thereupon which in no Sense being proper
for a defence thereto and as the Appellant had fully
Acknowledged the Justness of the Debt due to this Respondent,
he this Respondent was Advised that the same was sufficient
to ground a Decree in his favor this Respondent did cause the said
Bill and Answer to be Set down for hearing without any further

proceedings

proceedings and the same coming on to be heard in the said Mayors Court on the fourteenth day of November last past when the said Court did Order and Decree that the said Appellant should pay out of the Estate and Effects of the said Frances Jourdain Deceased the aforesaid Sum of Six hundred & Seven Pagodas Nineteen fanams and thirteen Cash together with all such Interest as then was or should thereafter become due thereon untill full payment should be made also all Costs of Suit as Appears by Original Decree and Copy thereof annexed to the Appellants Petition and Appeal, which said Decree this Respondent Saith is legal and Just and cannot be any Grievance to the Appellant as Executor or otherwise and of Course there is no Just Cause of Appeal therefrom, nor hath the Appellant Setforth any but such as are frivolous and evasive and not grounded or Warranted by any Law consequently the said Decree is good legal and Sufficient and not injurious to the Appellant or to any other pretended Creditors the Appellant and they being equally at Liberty to Setforth and prove their Demands in that forme prescribed by law which is Necessary for their Allowance as Just Debts against the said Estate in like manner as this Respondent hath Pursued or in such other

manner

Manner as is Required and by Law Necessary. This Respondent therefore prayeth that the said Decree of the Mayors Court may be confirmed with Costs in this Honble Court.

/Signed/

Henry DuPuy

Attorney Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday 1 Decembr
Anno Domini 1787

Between Edward Jourdan Executor
of Francis Jourdan Deceased Appellant
and Avadanum Paupiah Brammony
Respondent.

This Cause coming on this day to be heard and debated before this Court by the Attorneys on both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 14th day of November anno Domini 1786 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 said Decree of the Honble the Mayors Court do Stand Affirmed saving the Rights and Credits of the said Edward Jourdan as Executor to the Estate of the said Francis Jourdan and that the Appellt do pay the Costs in this Court.

Hall /Signed/ Chas N. White
Clk

To the Honble Major General Sir Archibald Campbell
K. B. &c. &c. President in Council Fort St George
In the Honble the Court of Appeals

Between Rangapillah of Madras
Complainant and James Taylor George Savage
and James Ball Executors of Andrew Majendie
Deceased Defendants.

The Humble Petition and Appeal of the above
named Defendants.

Sheweth,

That the abovenamed Rangapillah did on the
twenty fourth day of October which was in the Year of Our Lord
One Thousand Seven hundred and Eighty Six file his Bill of
Complaint in the Honble the Mayors Court against your
Petitioners as Executors of Andrew Majendie for Recovery of the
Sum of Nine Thousand Six hundred and Seventy Star Pagodas
and Thirty Fanams Current Money of Madras charged to be
due on the Bond or Obligation of the said Andrew Majendie
bearing date on or about the first day of January which was in
the Year of Our Lord One Thousand Seven hundred and Seventy
Nine and conditioned for payment by the said Andrew Majendie
his

Filed in my office
the 27th Sept. 1786.
Chas N. White

his Heirs Executors or Administrators of the Sum of Five thousand and five hundred Star Pagodas on demand together with Interest thereon after the rate of two per Cent per Annum to which said Bill of Complaint your Petitioners appeared by their attorney and after certain Rules had ifsued for them to Answer the said Bill of Complaint they duly filed their Answer on Record thereby Acknowledging themselves to have been appointed Executors of the Will of the said Andrew Majendie and that they had duly proved the same in the Mayors Court and taken upon themselves the burden and execution thereof and stating that even suppose such Bond to have been executed in the manner alledged Nevertheless the Situation of the affairs of the said Andrew Majendie and your Petitioners prevented them from giving any Satisfaction whatever to the said Rungapillah except as thereinafter is stated and which is as follows Namely that your Petitioners together with the said Andrew Majendie had been for Years back Jointly interested in certain money Transactions and dealings under the Name of the Concern which said Concern is at present indebted unto divers and sundry Persons in very considerable Sums of Money which are not in the power of the said Concern at present to liquidate nor could they even venture to fix a period when such liquidation will

take

take place because as the said Concern hath Claims on his Highness Wan Law Jah &c.a Nabob of the Carnatic to the amount of Several Lacks of Pagodas the payment whereof altho' now in Train of Settlement under the Sanction of an Act of Parliament must depend on the continuance of Peace in the Carnatic the Competency of the said Concern to settle with their numerous Creditors must in like manner depend on the same event and your Petitioners further stated that as the Interest of twelve Per Cent at which the debts of his said Highness the Nabob formerly Run is reduced to Six per Cent on all such as are included in that Species of debt commonly known or distinguished by the Name of the New Consolidated debt and as a considerable portion of the Claims of the said Concern on his said Highness the Nabob is of that discription while many of the debts due by the said Concern are at an Interest of twelve per Cent per Annum, your Petitioners did therefore solemnly declare in their said Answer that they could not form any Accurate state of the Ultimate Situation of such concern, and therefore it was out of their Power to give to the said Rungapillah any precise Satisfaction respecting the same or to ascertain what may be the Ultimate situation of the affairs of the said Andrew Majendie or to state as they ought to do was it in their power an Account

Current

Current of the Estate of the said Andrew Majendie as his Executors and your Petitioners further stated That they were bound by law as well as by their duty to the Concern to pay off all the debts of the Concern from such Funds as are for that purpose in their Custody Possession or Power before they can appropriate those Funds to the liquidation of the debts of the Individual Members of the said Concern and that when the debts of the said Concern shall have been fully discharged Then and not Before the partners thereof have individually a right each to his Seperate Share of the Surplus Fund and may individually apply the same to the payment of their seperate and individual debts or in such other manner as to their individually may seem Meet.

Your Petitioners have observed in their said Answer that the Situation of the said Andrew Majendie as a partner in the said Concern Jointly with your Petitioners being such as is herein before stated and your Petitioners being as they conceive bound in legal duty as Surviving Partners of the said Andrew Majendie to apply all such Funds as are in their possession wherein he is interested as a partner in the said concern towards payment of the debts due by the said Concern they could not with safety to the said Concern satisfy or discharge the demand of the said Rungapillah on the Estate of the said Andrew Majendie even tho he should be fully able to prove the validity of his claim to the Satisfaction of the Mayors Court.

Your Petitioners further stated that the said Andrew Majendie was at the time of his death and his Estate is still indebted on Bond unto several Persons in Europe as well as in India in Sundry Sums of Money and therefore your Petitioners humbly Submitted that the said Rungapillah ought not to have any preference of such other Bond Creditors and that the payment of the Claim of the said Rangapillah might have been an advancement of Assets which is not the Case in the hands of your Petitioners and make them liable to discharge the Seperate debts of the said Andrew Majendie.

All which matters and things your Petitioners were ready to aver and prove as the Mayors Court should direct and therefore prayed to be thence dismissed with their reasonable costs and charges on that behalf most wrongfully Sustained.

Your Petitioners shew that they swore to their Answer as before stated and the said Rungapillah filed a General Replication and your Petitioners a General Rejoinder whereupon Issue was joined and Witnesses examined to prove the Execution of the Bond by the said Andrew Majendie after which publication was

was passed and the said Cause was set down for hearing and the same came on to be heard before the Mayors Court on ~ Friday the fourteenth day of this Instant September where the said Court were pleased to Order and Decree and did ~ accordingly Order and Decree that your Petitioners should pay unto the said Rungapillah out of the Estate and Effects of the said Andrew Majendie deceased the full and just Sum of Nine Thousand Six hundred and Seventy Star Pagodas and Thirty fanams together with all such Interest as there was or should thereafter become due thereon untill full payment was made also all Costs of the Suit which Decree of the said Mayors Court your Petitioners conceive to be Contrary to the Principles of substantial Justice for the following among other Reasons

First Because the said Rungapillah has no right whatsoever to a preference of the other Creditors of an equal degree and ~ because he well knew the Actual Situation of the Estate of the said Andrew Majendie and of your Petitioners as his Executors to be such as has been above set forth for which Reasons the said Rungapillah ought not to have attempted to put the Estate of the said Andrew Majendie to the Expence of a Suit at Law ~ from a principle which does not carry with it an equal Justice to the other Creditors in equal degree of the said Andrew Majendie

Second Because the Arrangement above made for the reduction of Interest on the New Consolidated Debt was so made under and by Virtue of an Act of Parliament of His Present Majesty and done on Principles of Fair Justice to his said Highness Wallaw Jah the Nabob of the Carnatic and his Several ~ Creditors and in such a manner as was consistent with the Situation of his Highness's Finances and Resources after the heavy Expences he had incurred by a long and Calamitous War in the Heart of his Country. So that his Creditors who are ~ Sufferers by such reduced Interest have a claim of Similar Indulgence from their Creditors at Large by moderating the Rigor of the Law and giving time till a Restablishment of the Public Resources of his Highness the Nabob shall have enabled him to discharge his debts and thereby enable the said ~ Concern to discharge their several Obligations to their respective Creditors. The more so as the same were incurred by the ~ Assistance given by the said Concern towards the Relief of his said Highness in his Political Exigencies

Third Because the Lord Chancellor of Great Britain has set an example of the like Clemency and on Similar Grounds during the General distresses of the late War by Postponing the Foreclosure of the Equity of Redemption on Mortgaged Estates

while

while the War Raged and the prices of Lands much below their real and Intrinsic Value, which case your Petitioners submits is not so forcible as that of your Petitioners whose distresses have in part Originated as aforesaid from their Liberal attention to the Public and general Weal.

For all which Reasons and for such other Reasons as may be offered at the Hearing Your Petitioners pray that the said Decree of the Honble the Mayors Court be Reversed and Set aside with Costs.

/Signd/ Stephen Popham
Attorney for Appellants

Mayors Court at Madraspatnam } { Friday the 14th day of September Anno Domini 1787

Present

Mr Edward John Holland Senior Alderman
William Webb Sir John Menzies
& Andrew Ross Aldermen

Between Rangapillah of Madras Inhabitant Complainant and James Taylor George Savage and James Call of Fort Saint George Merchants Executors Named in the Last Will and Testament of Andrew Mojendie Deceased Defendants

This Cause Coming on to be Heard and debated this day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of an Account Current and a Bond or Obligation annexed The Defendants Answer The General Replication The General Rejoinder The Interrogatories and Depositions on the part of the Complainant with Exhibit Marked A annexed On Hearing the Pleadings made Use of by the Attornies and 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 out of the Estate and Effects of Andrew Mojendie Deceased the full and Just Sum of Nine Thousand Six Hundred and Seventy Pagodas and thirty fanams / Pagodas 9670. 30 -/ together with all such

such Interest as now is or shall hereafter become due thereon & untill full Payment is made also all Costs of this Suit.

(A Cur

(Signed) George Taylor

Depty Regr

In the Honble the Court of Appeals at Madraspatnam.

The Answer of Rangapillah of Madras, Respondent to the Petition and Appeal of James Taylor, George Savage and James Call Executors of

(Signed) Andrew Mayendie Deceased

Petitioners.

In the Cause wherein the said Rangapillah is Complainant and the said James Taylor George Savage and James Call are Defendants

Filed in my Office the 20. October 1787
Charles D'White

The said Respondent admits that he did on or about the Twenty fourth day of October which was in the Year of our Lord One thousand Seven Hundred and Eighty Six file a Bill of Complaint against the Petitioners in the Honble the Mayors Court as Executors aforesaid for the Recovery of the Sum of Nine Thousand Six Hundred and Seventy Pagodas and thirty fanams due upon a Bond or Obligation of the said Andrew Mayendie bearing date the first day of January which was in the Year of our Lord One Thousand seven Hundred and Seventy Nine and Conditioned for Payment by the said Andrew Mayendie his Heirs Executors or Administrators of the Sum of Five Thousand and five Hundred Pagodas on Demand together with Interest thereon after the Rate of ten per Cent per Annum unto which said Bill of Complaint the said Petitioners did appear by their Attorney and after several Rules for Answering thereto the Petitioners did file an Answer therein admitting of the justness and Execution of the said Bond by the said Andrew Mayendie in his life time and Acknowledging that they had been appointed Executors of the Last Will and Testament of the said Andrew Mayendie and that they had duely proved the same in the Honble the Mayors Court at Madras and had taken upon themselves the burthen and execution thereof. Nevertheless the said Petitioners did alledge that the Situation of the affairs of the said Andrew Mayendie and of them the said Petitioners prevented them from giving any satisfaction whatever to this Respondent except as the Petitioners did in their Answer afterwards state, Namely, that the Petitioners and the said Andrew Mayendie had been for many years back jointly interested in certain Money transactions and dealings under the Name of Concern, which said Concern the Petitioners did say was indebted unto divers and sundry persons in very considerable Sums of Money, which it was not in the power of the said Concern at that time to liquidate and moreover that they could not venture to fix a period when such

such Negotiation would take place. Because the said Concern had Claims on his Highness Maw Law Jaw &c.a Nabob of the Carnatick to the Amount of Several Lacks of Pagodas, the payment whereof the Petitioners pretend, altho' now in a train of settlement under the Sanction of an Act of Parliament, must depend on the continuance of peace in the Carnatick. and they did moreover setforth that the Interest of twelve per Cent at which the Debts of his said his Highness the Nabob formerly run, was reduced to Six per Cent on all such as are included in the species of Debt commonly known or distinguished by the Name of the New Consolidated Debts and that a Considerable Portion of the Claims of the said Concern on his said Highness the Nabob was of that discription, while many Debts due by the said Concern were at an Interest of twelve per Cent per annum, the Petitioners did therefore declare that they could not form any accurate State of this Ultimate Situation of such Concern, And therefore it was out of their power to give to this Respondent any precise satisfaction respecting the Same, or to ascertain what might be the Ultimate Situation of the affairs of the said Andrew Majendie or to state as they ought to do, was it in their power, an Account Current of the State of the said Andrew Majendie his Executors, And the Petitioners did likewise pretend that they were bound by Law as well as by their duty to the Concern to pay off all the Debts of the Concern from such funds as are for that purpose in their Custody possession or power, before they could Appropriate those funds to the Liquidation of the Debts of the individual Members of the said Concern, and that when the Debts of the said Concern shall have been fully discharged, that then and not before the partners thereof had individually each a Right to his seperate Share of the surplus fund, And Might individually apply the Same to the payment of their Seperate Debts &c.a

And the Petitioners did then Observe that the Situation of the said Andrew Majendie as a partner in the said Concern jointly with them being, such as was by them in their said Answer setforth, and being as they conceived bound in legal duty as Surviving partners of the said Andrew Majendie to apply all such funds as were in their possession wherein the said Andrew Majendie was interested as a partner in the said Concern towards payment of the Debts due by the said Concern they could not with safety to the said Concern, satisfy or discharge the Demand of this Respondent on the Estate of the said Andrew Majendie &c.a

The Petitioners did further state that the said Andrew Majendie was at the time of his death and his Estate was still indebted on Bond unto several Persons in Europe as well as in India in sundry Sums of Money, and that therefore the Petitioners humbly Submitted, that this Respondent ought not to have any preference of such other Bond Creditors &c.a

Unto which said Answer this Respondent did file a General Replication and the Petitioners did file a General Rejoinder, whereupon Issue was joined and

Witnesses

Witnesses were examined by this Respondent to prove the execution of the said Bond by the said Andrew Mayendie, but no Witnesses were produced on Behalf of the Petitioners, and afterwards publication passed in the said Cause, And the same was sett down for hearing And did come on to be heard before the said Mayors Court on Friday the fourteenth day of September last past, When the said Court were pleased to order and Decree, and did Accordingly order and Decree, that the Petitioners should pay unto this Respondent out of the Estate and Effects of the said Andrew Mayendie Deceased the full and just Sum of Nine Thousand Six Hundred and Seventy Pagodas and Thirty fanams together with such Interest as then was or should thereafter become due thereon until full payment should be made also all Costs of Suit. Which said Decree this Respondent Saith is founded upon the strongest principles of substantial Justice, and from which Decree no Appeal can be warranted by Law Equity or Good Conscience, And this Respondent saith that the said Appeal is evidently calculated by the Petitioners to delay the Payment of this Respondents just demand upon the Estate of the said Andrew Mayendie, and this Respondent saith that the several Reasons whereon the Petitioners have grounded their said Appeal, are not consistent nor do they shew sufficient Cause for their not complying with the Decree of the Mayors Court. And in Order more fully to point that there was not any Law or just Cause, whereupon

whereupon the Petitioners can justify their said Appeal, This Respondent to the First Objection against the said Decree saith, That he hath not by his action brought against the Petitioners, claimed any preference to the other Creditors of an equal Degree, if any such there are, which this Respondent saith is not a Matter in Question before this Honble Court, or if such there were, the Petitioners should have particularly stated who they are, if they had imagined the Same, would have benefited them, But this Respondent Saith that he was compelled to bring his said Action on Account of the backwards and disinclination in the Petitioners to admit his demand in any degree at all, which have a probability of payment, even to the entire exclusion of his demand upon them as Executors of the Estate of the said Andrew Mayendie, as appears by the Evidence this Respondent hath been Obliged, from the nature of the Petitioners Answer, to produce in support of this demand. And this Respondent doth not believe the Situation of the Estate of the said Andrew Mayendie to be entirely such as is setforth in the said Answer, Because the said Andrew Mayendie had a Very large Interest in the different Funds of his Highness the Nabob, independant of the Partnerships, which the Petitioners would avail themselves of under the Title of Concern, as a pretence for not paying off the Debts owing by them as Executors of the said Andrew Mayendie, which Connexion between the said Petitioners and the Deceased in his life, hath not any thing to do with the

the nature of this Respondents demand, nor doth it appear that the said Partnership or Concern, as it is described by the Petitioners, came under the general understanding of the Laws of Survivorship in Trade, so as to exclude the private Creditors of the said Andrew Majendie from being paid the Amount of their just debts out of his Estate, whether in his own Name, or as connected with any Concerns of the Petitioners, who this Respondent is advised have no Title to apply the Same to the payment of their own debts jointly contracted with the deceased, in preference to the private Creditors of the said Andrew Majendie; and if any preference is at all allowable by Law to be given to the Petitioners, the Same can only operate upon such part of his Estate which had Relation to his Concerns with the Petitioners in his life time, and not over such part of his Estate which was then held by him independant of any connexion with the said Concern, which this Respondent saith ought to go towards the discharge of his private Creditors.

To the Second Objection. This Respondent Saith, that the Arrangement Referred to by the Petitioners, as if the Same personally concerned them only, (further than that their Creditors were included and involved in that part of it whereby the Interest upon their demands upon the Nabob are Reduced to Six per Cent, and that the Demands of their Creditors ought therefore likewise to be Reduced to Six per Cent,) this Respondent saith, that the said Arrangement was framed and adopted as a general Convenience to all the Nabobs Creditors, many of whom have not any Creditors, and which Arrangement instead of being Regarded as a hardship, is esteemed to be effected by the powerfull efforts of Men of the first influence and Confidence in the legislature in favor of the Nabobs Creditors whereby, his several Debts are placed in a fair and equitable order of payment, for the compleating of which a certain Fund has been created and sett a part by which means, the said Nabobs Debt hath acquired a Validity, which before such Arrangement did not exist but was merely Ideal and uncertain, the said Petitioners should not therefore pretend that they have been sufferers thereby, as it is universally Acknowledged that the Said Arrangement hath been, and is, by the punctual Observance to the Order of its plan, productive of the greatest Advantage to the Nabobs Creditors, who would otherwise have Remained in that State of uncertainty which naturally afflicts the Doubtfull Creditor; which matters this Respondent saith, are well known, and it is a Mockery of the Justice of the Court by the Petitioners, to pray for a Moderation of Interest, and time till a Reestablishment of the publick Resources of His Highness the Nabob shall enable the said Concern to discharge their several Obligations, with which this Respondent Saith he hath not any thing to do, and denies that he lent the Deceased the Sum of Money in question for the purpose of enabling the said Andrew Majendie, or the said Concern to relieve the said Nabob in his political exegincies.

To the Third. This Respondent Saith that as the said Objection is not founded upon any matter in Law or Equity, whereby his demand can be impeded or delayed, he doth not think it necessary for him to give any Answer thereto or to any other part

part of the said Petition and Appeal further than by
referring the same, and the Petitioners Answer to the
Judgement of this Honble Court, humbly praying that
this Honble Court will be pleased to confirm the Decree
aforesaid of the Mayors Court, and to dismiss the Petition
and Appeal with exemplary Costs as not being founded upon
any legal or equitable Cause, but calculated merely with
a View to protract and delay the payments of this Respondents
just demand by means of an expensive and long litigation
to his great loss and injury.

[Signed] Henry DuPuy
Attorney for Respondent

Court of Appeals
at
Madraspatnam

Saturday the 1st December
Anno Domini 1787

Between James Taylor George
Savage and James Call of Fort St. George
Merchants Executors Named in the last
will and Testament of Andrew Majendie
deceased Appellants and Rangapillah of
Madras Inhabitant Respondent.

This Cause coming on this day to be heard and
debated before this Court by the Attornies on both sides upon
hearing the Petition of Appeal and Answer and the several
Exhibits of the Honble the Mayors Court together with the Decree
of the said Court given in this Cause on Friday the 14th day
of September Anno Domini 1787 upon due Consideration
had of the Matters therein severally Contained and of the
Pleadings and Arguments used by the Attornies on both sides
This Court doth think fit to Order and Decree and
doth Accordingly Order and Decree that the said Decree
of the Honble the Mayors Court do stand Affirmed and
that the Appellants Petition be hence dismissed with Costs.

Hur [Signed] Chas N. White Clk

To the Kings most Excellent Majesty in Council

Between Rungapillah of Madras Complainant and James Taylor George Savage and James Call Executors of Andrew Majendie deceased Defendants

The Humble Petition and Appeal of the above named Defendants

Most Humbly Sheweth

That the above named Rungapillah did on the twenty fourth day of October which was in the year of our Lord one Thousand seven hundred and eighty six file his Bill of Complaint in the Mayors Court against your Petitioners as Executors of Andrew Majendie for recovery of the sum of Nine Thousand six hundred and Seventy Pagodas Thirty fanams current Money of Madras charged to be due on the Bond or Obligation of the said Andrew Majendie bearing date on or about the first day of January which was in the year of our Lord One Thousand seven hundred and seventy nine, and conditioned for payment by the said Andrew Majendie his Heirs Executors or Administrators of the sum of Five Thousand Five hundred Pagodas

Filed in my Office the 11th December 1787
Charles A White

on demand together with Interest thereon after the rate of Ten per Cent per Annum to which said Bill of Complaint your Petitioners appeared by their Attorney and after certain Rules had issued for them to answer the said Bill of Complaint they duly filed their Answer on Record thereby acknowledging themselves to have been appointed Executors of the Will of the said Andrew Majendie, and that they had duly proved the Same in the Mayors Court and taken upon themselves the Burden and Execution thereof and they stated therein that even suppose such Bond to have been executed in the manner alledged Nevertheless the situation of the Affairs of the said Andrew Majendie and your Petitioners prevented them from giving any satisfaction whatever to the said Rungapillah except as therein after is stated and which is as follows namely That your Petitioners together with the said Andrew Majendie had been for years back jointly interested in certain Money Transactions and Dealings under the name of the Concern, which said Concern is at present indebted unto divers and Sundry Persons in very considerable sums of Money which it is not in the power of the said Concern at present to liquidate nor could they even venture to give a Period when such liquidation will take place because as the said Concern hath Claims on his Highness Waw Laur Jaw &c.a Nabob of the Carnatic to the amount of several Lacks of Pagodas the payment whereof altho' now in a Train of Settlement under the Sanction of an Act of Parliament must depend on the continuance of Peace in the Carnatic the Competency of the said Concern to settle with their Numerous Creditors must in like manner depend

depend on the same Event. And your Petitioners further stated that as the Interest of Twelve per Cent at which the Debts of his said Highness the Nabob formerly run is reduced to Six per Cent on all such as are included in that species of Debt commonly known or distinguished by the Name of the new Consolidated Debt and as a considerable portion of the Claims of the said Concern on his said Highness the Nabob is of that description while many of the Debts due by the said Concern are at an Interest of Twelve per Cent per Annum. Your Petitioners did therefore solemnly declare in their said Answer that they could not form any acurate State of the Ultimate situation of such Concern and therefore it was out of their power to give to the said Rungapillah any precise satisfaction respecting the same or to ascertain what may be the ultimate situation of the Affairs of the said Andrew Majendie or to state as they ought to do was it in their power an Account Current of the Estate of the said Andrew Majendie as his Executors. And your Petitioners further stated that they were bound by Law as well as by their Duty to the Concern to pay all of the Debts of the Concern from such Funds as are for that purpose in their Custody posession or Power before they can appropriate those Funds to the Liquidation of the Debts of the Individual Members of the said Concern and that when the Debts of the said Concern shall have been fully discharged then and not before the Partners thereof have individually a Right each to his seperate Share of the Surplus Fund and may individually apply the Same to the payment of their seperate and individual Debts or in such Other manner as to them individually may seem meet.

Your Petitioners then observed in their said Answer that the situation of the said Andrew Majendie as a Partner in the said Concern jointly with your Petitioners being such as is herein before stated and your Petitioners being as they conceive bound in legal Duty as surviving Partners of the said Andrew Majendie to apply all such Funds as are in their posession wherein he is interested as a Partner in the said Concern towards payment of the Debts due by the said Concern they could not with safety to the said Concern satisfy or discharge the Demand of the said Rungapillah on the Estate of the said Andrew Majendie even tho' he should be fully able to prove the Validity of his Claim to the Satisfaction of the Mayors Court.

Your Petitioner further stated that the said Andrew Majendie was at the time of his death and his Estate is still indebted on Bond unto several Persons in Europe as well as in India in sundry Sums of Money and therefore your Petitioners humbly submitted that the said Rungapillah ought not to have any preference of such other Bond Creditors and that the payment of the Claim of the said Rungapillah might have been an admission of Assets (which is not the Case) in the hands of your Petitioners and make them

them liable to discharge the seperate Debts of the said Andrew Mayendie

All which Matters and Things your Petitioners were ready to aver and prove as the Mayors Court should direct, and therefore prayed to be thence dismissed with their reasonable Costs and Charges in that behalf most wrongfully sustained

Your Petitioners most humbly shew that they swore to their Answer as above stated and the said Rungapillah filed a General Replication, and your Petitioners a General Rejoinder whereupon Issue was joined and Witnesses examined to prove the Execution of the Bond by the said Andrew Mayendie after which the Publications was passed and the said Cause was set down for hearing and the Same came on to be heard before the Mayors Court on Friday the Fourteenth day of September last when the said Court were pleased to order and Decree and did accordingly order and Decree that your Petitioners should pay unto the said Rungapillah out of the Estate and Effects of the said Andrew Mayendie deceased the full and just Sum of Nine Thousand six hundred and Seventy Star Pagodas and Thirty fanams together with all such Interest as there was or Should there after become due thereon until full payment was made Also all Costs of this Suit

From which said Decree of the Mayors Court your Petitioners did appeal to the Honble the Court of Appeals as they conceived the said Decree to be contrary to the Principles of Substantial Justice for the following among other Reasons

First Because the said Rungapillah has no right whatever to a preference of the other Creditors of an Equal Decree and because he well Knew the actual Situation of the Estate of the said Andrew Mayendie and of your Petitioners as his Executors to be such as has been above setforth for which Reason the said Rungapillah ought not to have attempted to put the Estate of the said Andrew Mayendie to the expense of a Suit at Law from a Principle which does not carry with it an equal justice to the Other Creditors in Equal Degree of the said Andrew Mayendie

Secondly Because the Arrangement above made for the reduction of the Interest on the new consolidated Debt was so made under and by virtue of an Act of Parliament of His present Majesty and done on principles of fair Justice to his said Highness Wallajah the Nabob of the Carnatic and his several Creditors and in such a manner as was consistent with the situation of his Highnesses Finances and Resources after the heavy Expenses he had incurred by a long and Calamitous War in the heart of his Country so that his Creditors who are Sufferers by such reduced Interest have a Claim of similar indulgence from their Creditors at large by moderating the

the Rigor of the Law and giving time till a restablishment of the Public Resources of his Highness the Nabob shall have enable him to discharge his Debts and thereby enable the said Concern to discharge their several Obligations to their respective Creditors the same so as the same were incurred by the assistance given by the said Concern towards the Relief of his said Highness in his political Exegencies.

Third. — Because the Lord Chancellor of Great Britain has set an Example of the like Clemency and on similar Grounds during the General Distresses of the late War by postponing the Foreclosure of the Equity of Redemption on Mortgaged Estates while the War raged and the Price of Lands was much below their real and intrinsic value which Case your Petitioners submit is not so forcible as that of your Petitioners whose Distresses have in part originated as aforesaid from their liberal attention to the Public and General Weal.

To which said Petition and Appeal the Complainant did put in his Answer setting forth evasive Matters and things which your Petitioners did not do by any means admit. And your Petitioners shew that their Petition and Appeal and the Answer of the said Rungapillah thereto came on to be heard and did on the first day of this Instant December by the said Court of Appeals at Madras who were pleased to affirm the Decree of the said Mayor's Court with Costs of Suit

the said Court of Appeals to be paid by your Petitioners, All which will more fully and at large appear by reference to the several Proceedings had in the above Cause in the said Mayor's Court and Court of Appeals to which said several Proceedings and to each of them respectively Your Petitioners pray leave to refer and to have such full and ample Benefit of them and of each of them as if they and each of them were herein before fully stated and set forth and made part of this Appeal.

From which said Decree of the said Mayor's Court and Court of Appeals your Petitioners humbly appeal to your most excellent Majesty in Council for the reasons assigned in your Petitioners said Appeal to the Court of Appeals at Madras as above stated and for such other reasons as may be offered at the hearing of this Cause. And your petitioners most humbly pray that the said Decree of the said Mayor's Court and Court of Appeals at Madraspatnam be reversed and set a side and that the Complainant be ordered to pay all Costs of Suit.

[Signed]
Stephen Popham
Attorney for Appellants.

Court

Court of Appeals
at
Madraspatnam

Saturday the 1st December
Anno Domini 1787

Between James Taylor Georg
Savage and James Call of Fort S
George Merchants Executors Nam
in the last will and Testamen
of Andrew Majendie deceased
Appellant and Rungapillah o
Madras Inhabitant Respond

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Friday the 14th day of September Anno Domini 1787 upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with Cost

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Signed Chas N Mac