25,000—4-5-32.

Block 7

Rack No.

Shelf No.

Serial No. 20

General No. 12080

1241

D.C. No. 14208
KUVR 2/19
10.624

2/
11/20
11280

Sheriff Court Series VI
Appeals against Magistrates Court decisions
Vol 20.
D.C. No. 14316

Replication and did thereon pretend that being about
purchasing the House in Question he did Apply for that
purpose to your Petitioners Mother and did agree for the
purchase of the same for the Sum of Six hundred and
fifty Pagodas and that Accordingly he resided thereon
as his Own for the Space of upwards of Twelve
Months when he was surprised by your Petitioners
informing him that the Agreement he made with his
Mother was of no Effect but that he would allow
him to Live there at the Rent of Two Pagodas a
Month which he pretends he consented to and
therefore he pretended that the charges of your
Petitioner were improper and Displayd a Spirit of
Litigation the said Complainants however did not
pretend to deny but that your Petitioner or his father
had paid the Sum of Nine hundred and fifty Pagodas
for the House and it was also certain that he
considered the same as good Security for Seven
hundred Pagodas for which he charged Interest
Seven Pagodas a Month so that it Appears by his

Own Shewing he charged Seven Pagodas a month
for the very same Property that he Only chose to allow
Two Pagodas a month your Petitioner further Sheweth
that to this Replication he did indue time put in
his Rejoinder in Which he dinyed that the
Complainant ever did purchase the House in Duestion
for Six hundred and Fifty Pagodas but he therein
Stated the fact to be that in the year One thousand
Seven hundred and Eighty the Honble Company having
Determined to enlarge the esplanade they resolved
upon taking down the Houses on Hogg hill where
the Complainant lived Who fending that his
House would be pulled down and not being able
to purchase Another without a good deal of
Difficulty he Applyed to the Concoply of your
Petitioner to get him the House in Duestion to
Which your Petitioner Replyed that if he would
pay him the Money that it Cost him hi
might have it to this he consented and it was
agreed

agreed that as a Small part had been taken away
away from the Ground and Annexed to your Petitioners
own Dwelling House some Reasonable abatement
Should be made for the same and inconsequence thereof
the Complainant did Advance several Sums of money
Amounting to gether to the Sum of Seven hundred
Pagodas but the bargain was never further
concluded and Matters remaind in this setuation
When the Government Ordered that Houses on Hogg
Hill to be immediately taken down upon which
the Repliant solicited your Petitioner to allowe
him to come in to the House in Duestion
Observing to him that he had paid the principal
part of the Purchase Money and that he would
soon after conclude the Bargain to which your
Petitioner consenting the Complainant entered
into the said House and continued to reside
therein but your Petitioner did not hear any
thing more from him about concluding the
purchase for upwards of a year and your
Petitioner

Petitioner insists that neither at the time this
Complainant entered in to the said House or at any
time After did your Petitioner ever Make any
Agreement with him to let him have the said house
at Two Pagodas a Month your Petitioner further
Stated in his Rejoinder a Number of facts in
Support of his case and Among others he charged
that several People had Offered to rent the said
House of your Petitioner and houses being very
Scarce at that time on Account of the War
they had proposed to pay him from fifteen to twenty
Pagodas a month for the same and particularly his
Highness the Nabob had Offered to advance him
a years Rent at the rate of Twenty Pagodas a
Month Amounting to the Sum of two hundred and
Forty Pagodas and to give good Security for the
punctual Payment of the subsequent Rent of
which your Petitioner informed the Complainant
and requested him to come to some Settlement
respecting the said House and to this the Complainant
constantly replyed that he would either settle the
bargain very Shortly or he would allow the
Defendant the same Rent for the House as others
Offered for the same on Which terms and on no
other whatever your Petitioner charges the
Complainant continued to live in the said House
from the Eighth of February One thousand Seven
Hundred and Eighty to the Twenty fourth of
October One thousand Seven hundred and Eighty
When the Complainant thought proper to leave
it without giving any Notice whatever to your
Petitioner and so much Damaged and out of
repair by his Occupying it that your Petitioner
was Obliged to lay Out considerable Sums of
Money in cleaning and repairing it your
Petitioner further Sheweth that after a Rejoinder
is filed it has been the constant practise of the
Court that if one should be joined and Witnesses
Examined but the Complainant not satisfied
with

with the Common Arsedes of litigiousness thought
proper to file a Surrejoinder which does little more
than repeat what he had before Advanced in his
Bill of Complaint and Replication your Petitioner was
of Course Obliged to Answer this New Procceding by
a Rebutter and thereupon issue was Joind: and both
parties proceeded to Examine their Witnesses The
Complainant on his part produced some Witnesses to
endeavor to Establish as a fact that the Rent of the
House was not worth more than Two Pagodas a
Month tho the same Witnesses all agreed that the
Complainant would very gladly have purchased
it for Six hundred and fifty Pagodas which at the
common Rate of Interest would have made the
Rent Amount to Six Pagodas and half a
Month and there is but one single Witness who
Swears to any specified Agreement and he not
only says that the Defendant agreed to accept
of Two Pagodas Rent but in his forwardness to
support

support the Cause of the Complainant he adds that
it was with Difficulty the Complainant was
induced to agree to give so much which Seems very
inconsistent as it is acknowledged that he would
gladly have given Six hundred and Fifty Pagodas
for the Purchase of the House and it is evident
that at that time Houses were very much
wanted in the Black Town as well on Account of
those that had been taken Down at the Hogg
Hill as on Account of the many Strangers that
had Crouded in to it from Different parts of
the Carnatic upon the breaking out of the war
this Testimony is also invalidated by the manner
in which it is Acknowledged the Complainant
had posfesion of the House which Appears on all
sides to have been inconsequence of his Treating
for the purchase of it and after he had advanced
upwards of Seven hundred Pagodas towards
payment of the purchase money it may therefore
fairly be doubted Whether the testimony of this Witness
who

who goes so far as to say that the Complainant did not consent even to pay Two Pagodas a month is not Mistaken and that therefore no sort of credit ought to be given to it and consequently no Agreement having been proved respecting the Rent. it should be left open to be settled at such Monthly Sum as is equitable and reasonable the Defendant has insisted that it was fair and reasonable he should have fifteen Pagodas a Month During the war and Eight Pagodas a Month in time of Peace of and in order to prove that he was entitled there to he has produced as witness Mr. Henry DuPuy who Swears that the House was sold for Nine Hundred or Elven Hundred Pagodas and therefore it may reasonably be Supposed that the money the Defendant says in his Answer that it Cost him that is to say Nine hundred and fifty Pagodas was the real Purchase Money the next Witness produced is Parasooram Pillah who swears that Houses

Houses in Black Town were very Difficult to procure During the last War and that the Rents commonly paid were Generally double and some times treble the Sums paid before the war and he also says that upon his Oath he believes that the House in Question might let for Fifteen Pagodas a Month During the continuance of War The third witness Pooneyacotty Pillia Deposes to the whole of the Treaty about the purchase of the House and that there was Seven hundred Pagodas advanced towards the purchase Money and that while Matters Continued so the Houses on Hogg Hill were Ordered to be pulled Down and Among the rest the Complainants who having thereupon Solicited to be Admitted into the House he was going to Purchase the Defendant consented thereto in full expectation of the bargain being compleated The fourth Witness produced was yagah Pillah who Swears that Several People in the time of the war Offered to rent the House at the rate of Fifteen to Twenty Pagodas a

a Month he also Swears that he did himself acquaint the Complainant thereof and requested him to Settle about the purchase to which he says he replyed that he would Settle it in a few days or that Otherwise he would pay the Defendant the same rent for the House that Other People offered to pay he also says that at the time this conversation passed he did not mention any Agreement between him and the Defendant to let him have the House for Two Pagodas a Month which he thinks he would have Mentioned if there had been any such Agreement and he adds that he does not knows any reason there could be for the Defendant to let his House to the Complainant for Two Pagodas a Month when he could get from other People from Fifteen to Twenty Pagodas the fifth Witness produced by the Defendant is Chellumbarum who Swears that an Offer was made by one of the Nabobs People to Advance One years Rent for the Same at the rate of Twenty Pagodas a

Month

Month being the Sum of Two Hundred and Forty Pagodas and to give good Security for the punctual payment of the Rent as it became due and another Witness named Iya Sawmy Pilla Swears that Forty or Fifty Different People lived in the House while the Complainant had it and that the Defendant was Obliged to lay out Fifty Pagodas in repairing it after the Complainant left it there are other Witnesses that Depose to the Defendants constantly denying that there was ever any Agreement to rent the House at Two Pagodas and that he was so fully persuaded of the Justness of his Demand that he would not allow it to be Disputed or have it to Arbitration ——

Your Petitioner further Sheweth that upon these Several Procedings the Cause come on to be heard on Tuesday the Twentieth day of October last when the said Mayors Court was pleased to order and Decree and did Accordingly Order and Decree that your Petitioner should pay the whole

amount

Amount of the Sum Sued for together with Interest and Costs as Appears by a Copy of the said Decree hereunto Annexed for the Inspection of this Honble Court the Original being ready to be produced when requsied by which said Decree your Petitioner thinks himself much Agrieved and does therefore Seek redress by Appealing in to this Honble Court for the following Among Other Reasons —

First Because plainly Appears that the House which is pretended to have been let at Two Pagodas a Month Cost the Defendant upwards of — Nine hundred Pagodas and therefore the purchase Money would produce at the Common Interest — upwards of Nine Pagodas a Month —

Secondly Because it is Acknowledged by all parties that the Complainant would very gladly have given Six hundred and Sixty Pagodas for the House in question and did in fact Advance — Seven hundred Pagodas on the Security of the said House for which he charged Interest Seven Pagodas a Month so that the purport of his Bill of Complaint is to receive Seven Pagodas a Month for the very Same property that he only allows Two Pagodas —

Thirdly Because it is evident that the Complainant did not enter into the House under any Agreement for Rent but Merely as the purchaser thereof and therefore as long as he Stayed in it Ought in all reason to be — Considered as his Property and the Money Advanced to be the property of the Defendant and therefore as the One Ought not to Charge Rent for the use of the House the Other Ought not to charge Interest for the use of the Money or if One insists on charging Interest for the Money the Other may equally insist upon — charge rent for the House and as the Complainant has charged Seven Pagodas a Month for the Money at any rate he ought allow the same for the House

Fourthly Because it is evident that the Rent of Houses in the Black Town during the War was much —

advanced

Advanced some of the Witnesses Swear to double or
Treble the Value of what they used to be let for in
time of Peace —

Fifthly ... Because it Appears that Several People —
Actually Offered to Rent the House in Question from
Fifteen to Twenty Pagodas a Month of which the
Complainant had Notice and did thereupon —
undertake to pay the same Rent as others had
Offered —

Sixthly ... Because it Appears that an Actual —
Offer was made to [illegible] Advance Two hundred and
forty
10 Pagodas for one years Rent and to give good —
Security for the punctual Subsequent payments at
the same Rate Whereas the whole Rent that the —
Complainant Allows for upwards of Six years
and Eight Months is Only One hundred Sixty
One Pagodas out of Which it Appears that
he was Obliged to expend Fifty Pagodas in —
Repairs so that the whole he really gets is one
hundred

hundred and Ten Pagodas at the same time that the
Complainant gets for Interest Five hundred and Sixty —
Pagodas —

Seventhly Because of the Number of People Amounting
to Forty & Fifty which it Seems the Complainant —
entertained at his House many of Whom it may be
presumed when Habitations were so much wanted —
paid him Rent for the Same or some other Equivolent —

Lastly Because of the very great hardship your —
Petitioner must Suffer should the Decree of the
Mayors Court be inforced by having been deprived of the
posession of his House for the Whole time when he
could make any profit of it under a pretended Treaty
to buy it and then when Houses are again —
become cheaper and of less Value to throw it upon
your Petitioners hands with an allowance of
so trifling a Sum for the Rent as One hundred and
Ten Pagodas Which Sums More intended as an —
insult on your Petitioner than any Serious Equivolent
for the lenght of time he occupied it being Six
years

years and upwards of Eight Months on the Purchase
Money it cost being Nine hundred and Fifty
Pagodas

For all which Reasons and
for such Others as may be
adduced at the hearing of
this Cause your Petitioner
humbly prays that the said
Decree of the Hon'ble the
Mayors Court may be reversed
and that this Hon'ble Court
will be pleased to make
such Other and further
Order therein as may be
Agreeable to Equity and good
Conscience and may relieve your
Petitioner from the very
great hardships he
Labours under and that
he

he may be also allowed his
reasonable Costs and Charges
and your Petitioner as in duty
Bound

Shall ever Pray

/Signed/ Peter Walker,
Sol.r for appel.ts

Mayors

Mayors Court at Madraspatnam

Tuesday the 20th day of October Anno Domini 1789

Present

William Webb Esqure Mayor
James Call — Vincentio Corbett
& Andrew Ross — Aldermen.

Between Krishnah Pillay of Madras Inhabitant by his Attorney Charles Perrycara of the same place Inhabitant — Complainant and Saulapauthien Sevengada Pillay also of the Same place Inhabitant — Defendant —

This Cause Coming on to be Heard and Debated this Day in the Presence of the Attorneys on both sides on reading the Complainants Bill with Copies of a Mortgage Bond and two Simple Bonds — marked A B & C an Account Current and an Assignment annexed the Defendants Answer With Copy of an — Account Current annexed the Replication the Amended — Rejoinder the Surjoinder the Rebutter the Interrogatories and Depositions on the part of the Complainant with three Original Exhibits and Translates thereof marked A B & C annexed the Interrogatories and Depositions on the part of the Defendant On Hearing the Pleadings made use of by the attorneys and on due Consideration had thereon This Court doth think fit to order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of One Thousand Four Hundred and Seventy Six Pagodas — Eighteen fanams and Thirty Six Cash / Pagodas 1476. 18. 36 / 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 —

J Cur
/Signed/ G Taylor Dpty Regr
a true Copy /Signed/ R. Walker
Solr to Applt

To the Honble John Hollond Esqr
Governor &ca in Council
Fort St. George

In the Honble the Court of Appeals } Between Saulapaukum Sreevengadah Pillay of Madras Inhabitant — Appellant and Krishna Pilla by his Attorney Charles Pereyra also of the same Place Inhabitant — Respondent —

The Answer of the above named Respondent to the Petition and Appeal of the above named Appellant

Filed in my office the 25th January 1790
Chas. H. White Clk

This Respondent admits that some time on or about the twenty ninth day of August one thousand Seven hundred and eighty eight he did by his Attorney aforenamed file his Bill of

of Complaint against the above named Petitioner in the Honble the Mayors Court at Madraspatnam and did thereon charge that the Petitioner was indebted to him in the sum of One thousand four hundred and Seventy Six Pagodas Eighteen fanams and twenty six Cash being a Ballance justly and truly due to him upon an Account Current Copy whereof was annexed to his said Bill of Complaint this Respondent admits that the Items which composed the said Account Current were in the first place a Mortgage Bond upon a House of the Petitioners for Seven hundred Pagodas and two Simple Bonds of one hundred Pagodas each — This Respondent admits that those three articles with Interest respectively due thereon made up the whole of the debt side of the said Account and Amounted together to the Sum of one thousand Seven hundred and twenty Six Pagodas four fanams and forty Seven Cash and that the Credit side of the said Account consisted of one article for House Rent at the rate of two Pagodas a month conformable to an Agreement made by the Petitioner and rather forced upon this

this Respondent and which with the Interest that had grown due thereon made up the Credit side of the said Account Two hundred and fifty nine Pagodas thirty two fanams and Eleven Cash and left the Balance above specified of One thousand four hundred and Seventy Six Pagodas Eighteen fanams and thirty Six Cash

This Respondent further admits that the Petitioner did some time after put in his Answer to this Respondents said Bill of Complaint upon Oath and did thereby insist that he was not indebted to this Respondent in the Sum sued for but admitted that he was indebted to this Respondent in the Sum of Eighty two Pagodas three fanams and Eight Cash and no more as by an Account Current annexed to his said Answer might particularly appear This further Respondent admits that in the said Account Current the several Sums charged in this Respondents debit was admitted by the Petitioner and that the Petitioner instead of allowing the Rent to be at two Pagodas a Month as he ought to have done and as was justly Setforth by this Respondent in his said Account stated that the House had been purchased by him for nine hundred and fifty Pagodas of Mr. Henry Dupuy and that it was well worth the Money the Petitioner further stated that the greater part of the time that this Respondent occupied the House was During the war but this Respondent does not admit the words that immediately follow to wit when the Black Town was crouded with Inhabitants for no such Words are in the Petitioners said Answer contained nor could he have Sworn to the Circumstance because the Severs was the Matter of Fact for the natives instead of Crouding into the Black Town Crouded out of it as fast as possible judging it to be by no Means a place of security for they imagined it would have been Entered by the Enemy as was the case last War and they therefore sought some Asylum more safe and which the Petitioner himself clearly shews

shews in his Rejoinder to have been the Case for he therein Declares that about a year after this Respondent on account of the war fled for Shelter to Tarcune and that he sent his own family thither.—

This Respondent admits the Petitioners said Answer did shew that Houses During the war were let for Double but not treble the Sum as the Petitioner Erroneously states they ought to let for in time of peace and that therefore the petitioner was Contented to charge rent for the said House at the rate of Fifteen Pagodas a Month During the war and Eight Pagodas during the Time of peace which this Respondent humbly insists was arbitrary oppressive and unjust because an Agreement for two Pagodas per Month had absolutely been made between the Petitioner and the Defendant and which this Respondent has fully proved of Course such Agreement was Definite and admitted not of any opposition from the Petitioner and this Respondent says the reasoning of the Petitioner relative to the interest he paid this Respondent for money this Respondent had advanced him is absurd and ridiculous for this Respondent lent the Petitioner a Sum of money and thereon charged the legal Interest of twelve per Cent: a transaction that could have had no affinity to or connection with the rent of the said House except in a matter of Set off nor can he adduce a Single argument therefrom that may be in the least Degree favorable to his purpose—

This Respondent admits that he did sometime on or about the Eleventh Day of November one thousand Seven hundred and Eighty Eight exhibit and file his Replication to the Petitioners said Answer and did therein were as in and by his said Bill of Complaint he had already averred that the petitioner was justly and truely indebted to him in the said Sum of one thousand four hundred and Seventy Six Pagodas Eighteen fanams and thirty Six Cash and did shew that the Petitioner had in his said Answer fully admitted the truth thereof but that by the most inconsistent mode ever adopted had of the same time attempted to do it away by an Account Current

Current fabricated for the purpose and in the most extraordinary manner then to shew the fallacy thereof to display the artifice of the Petitioner and to Demonstrate the justness of the said demand of February in the year one thousand Seven hundred and Eighty as setforth in the Petitioners said pretended Account Current being Desirous of purchasing the House in question did make an Application on that head to the Petitioners Mother who did agree thereto for the Sum of Six hundred and fifty Pagodas and thereupon gave him possession thereof and that he did reside therein for the Space of twelve Months. under a thought persuation that it was to all intents and purposes his own Supposing that the Petitioner did not think it necessary to come to an immediate and final Settlement for the purchase Money from the Idea that this Respondent might Demand the Balance of Accounts Depending between them as the Amount of one of the Bonds setforth in this

Respondents

Respondents said Bill of Complaint for the said Sum of Seven hundred Pagodas was then due and owing to this Respondent

This Respondent did in his said Replication further shew that he was one day surprised by the Petitioners informing him that the Agreement made with his mother by this Respondent was of no Effect and that the Petitioner could not sell the said House to this Respondent without injuring himself but that although he could not sell it yet he could Suffer this Respondent to remain therein as a Tenant at the rate of two Pagodas per mensum and which this Respondent conceived was has exorbitant but judging it would be more Eligible and prudent to deduct from the said debt due from the Petitioner as abovementioned the Amount of the said Rent as it should become due than pay ready Money monthly to a person with whom he had no manner of concerns this Respondents acceded to the Terms proposed by the Petitioner and Accordingly agreed to allow him the

said

said two Pagodas per month for the hire of the said House and that such Agreement was so made and Settled in the presence of Several Credible people and this Respondent did in and by his said Replication further Shew that the Petitioner never intimated to him during the time he occupied his said House that the rent thereof was too Small or that he intended to raise it but Suffered him to remain therein the full latitude of the said agreement of two Pagodas a month and consequently under a perfect confidence and Conviction that he would be accountable for that Sum and no more this Respondent did therefore humbly insist that the Charges in the Petitioners said pretended Account Current Annexed to his said answer were unjust and improper and Displayed a Strong Spirit of litigation and inequity — That this Respondent did not pretend to a Knowledge of what the Petitioner might have given for the said House nor was it to his purpose to enter into any discussion thereon it was sufficient for him to say that the said

said House never did let for more than two Pagodas by the month and that from the Time he left it it had not been let for even one Pagodas a month that if it were necessary he could shew an attempt by the Petitioner to impose on the Judgment of the Court in the Statement the Petitioner had made Respecting the purchase Money of the said House for that although he might have paid nine hundred and fifty Pagodas yet he never supposed it was worth that Sum nor would he have given so much had it not been for its Situation joining a piece of Ground already in his possession and which was not of it self large enough for the plans he had in Contemplation and that under such Circumstances it was well known people had paid ten times more than the Intrinsic Value of a House or piece of Ground that this Respondent did not occupy the whole but only a part of the premises purchased for the said Sum of nine hundred and fifty Pagodas for that the Petitioner uniting them to the piece of Grounds formerly in his possession

possession had built an upper roomed House on a part of them and in which House he himself resided that having so stated the real matters of fact this Respondent hoped appear that the Petitioners said Answer was wholly untrue and that the said pretendended Account Current in the said Answer mentioned and — thereunto Annexed was without any foundation Whatever and brought forward merely to harrass and Distress this Respondent and if possible — prevent him from obtaining that Justice which was his Due and for which only he had brought his Action this Respondent did then shew that the Petitioner had Devided his said pretended Account Current into two Branches Peace and War that under the former he charged this Respondent Eight Pagodas per Annum for the rent of the said House hired by this Respondent as aforesaid and that — under the latter he charged him fifteen Pagodas — with Interest thereon without ever producing any voucher or Setting forth any Argument and which was incumbent on him to do in order to shew by what Authority or upon what principle such uncommon and such Exorbitant charges were made or that if he had no Vouchers or Agreements to produce he should have setforth that he had given this Respondent notice to quit his said House who not complying therewith he had According to the forms of Law and agreable to Custom in such Cases raised the Rent to the Amount particularised in his said pretended Account Current but that as he had Neglected because in truth it was not in his power so to do it Evinced an Evil Disposition in the Petitioner and Displayed a want of common honesty to Discharge his Just Debts due to this Respondent

This Respondent never did Deny that the Petitioner had paid the Sum of Nine hundred and fifty Pagodas for the said House nor could this Respondent have so Denied because the Petitioner had in his said Answer Sworn to the Fact nor was it any wise Material to this Respondent whether the Petitioner did

did or did not purchase the said House or whether he gave nine hundred or nine thousand Pagodas for it but this Respondent Denies he ever considered the said House to be a good Security for the said Sum of Seven hundred Pagodas it was the best Security this Respondent could get and he therefore was obliged to be satisfied with it he did not advance the said Sum of Seven hundred Pagodas on a Mortgage of the said House for such Mortgage was a Subsequint Transaction therefore the Attempting to insinuate that this Respondent had by his own shewing charged Seven Pagodas a month for the very same properly he chose to allow two Pagodas only a month to the Petitioner Displays a Departure from Candore from truth and justice and is a wretched piss of Sophistry which Reason must Dispose and Equity Condumn this Respondent advanced the Petitioner Seven hundred Pagodas and Charged him the usual Interest of twelve

twelve per Cent which he acknowledges Amounted to Seven Pagodas per Month but which had nothing to do with this Rent of the said House—

This Respondent admits that the Petitioner did in due time put in his Rejoinder to this Respondents said Replication and therein deny that this Respondent ever did purchase the House in question for the said Sum of Six hundred and fifty Pagodas but states very Erroneously and untruly that in the year one thousand Seven hundred and Eighty the Honble Company having Determined to enlarge the Esplanade had resolved upon taking Down the Houses on Hog Hill where this Respondent then lived and who finding that his House would fall Amongst the number and not being able to purchase another without a good Deal of Difficulty he Applied to the Concepoly of the Petitioner to get him the House in question that to such Application the Petitioner replied if he would pay him the money it had Cost him he

he Onight have it that This Respondent Consenting it was agreed that as a Small part had been taken away from the Ground and annexed to the Petitioners own Dwellings House same reasonable abatement should be made for the same that in Consequence thereof this Respondent did advance several Sums of Money Amounting together to the Sum of Seven hundred Pagodas but that the bargain was never further concluded and Matters remained in that Situation until the Government ordered the Houses on Hog Hill to be taken Down that upon which this Respondent solicited the Petitioner to allow him to come into the House in question observing to him that he had paid the principal part of the purchase Money and that he would soon conclude the Bargain that the Petitioner consenting thereto this Respondent entered into the said House and continued to reside therein but that the Petitioner did not hear any thing more from him for upwards of a year — This Respondent admits

admits the Petitioner Onight also have stated and thereby falsely stated in his said Rejoinder that neither at the time this Respondent entered into the said House nor at any time after did the Petitioner ever Onake any agreement with him to let him have the said House at two Pagodas a Month this Respondent also admits the Petitioner did further state in his Rejoinder a Number of Circumstances in Attempt to support his case and that among other he might have charged that several people had offered to rent the said House and that they had proposed to him from fifteen to twenty Pagodas a Month for the same but this Respondent positively Denies the petitioner stated in his said Rejoinder that his Highness the Nabob had offered to advance him a years Rent at twenty Pagodas per Month and give him Security for the subsequent rent for this Respondent says that no Mention whatever is Onade of his highness the Nabob in the said Rejoinder

Rejoinder Which States only and in general terms that several people had proposed to pay the Petitioner from fifteen to twenty Pagodas a month but Who those people were has never appeared — Therefore this Respondent humbly insists that the Petitioner in endeavouring by false pleadings and false Statements to wrest from him that — Justice which is due to his Claims has acted contrary to every principle of Equity and good — Consience and Deserves the Severest reprehension from this honble Court —

This Respondent admits the Petitioner in his said Rejoinder did setforth that several — people offered to rent the said house in question and pay to him from fifteen to twenty Pagodas a month for the same that the Petitioner did in and by his said Rejoinder pretend though — without any the least foundation in truth that he did inform this Respondent thereof and — request him to come to some Settlement respecting the said House that this Respondent thereto replied he would ather Settle the Bargain very shortly or that he would allow the Petitioner the same Rent for the House as others had offered —

This Respondent positively denies any such Communication or that he ever lived in the said House upon any other Terms than those setforth in his said Replication and hereinbefore — mentioned that is to say for the Sum of two — Pagodas per month and upon those terms he admits he did live in the said House from the Eighth day of February one thousand Seven hundred and Eighty to the twenty fourth day of October One thousand Seven hundred and Eighty Six but Denies it was any wise Damaged or out of repair further than in common with other old Houses During a Space of Six years —

This Respondent admits that after a Rejoinder is filed it has been the general

tho

the not Constant practice of the Court below that issue should be joined and witnesses Examined and this Respondent says such would have been the Case in the present Instance had not the Petitioner introduced in his said Rejoinder such new matter as absolutely required contradiction — and the only made for that purpose was the — filing a Surrejoinder and which Surrejoinder of this Respondent contrary to the insinuation in the Petitioners said Petition contained does contain entire new matter in Answer to the new matter introduced in this Petitioners said Rejoinder for this Respondent has therein positively Denied that he ever did apply to purchase the House in question at the time the Company had intended to take Down the House on Hog Hill but that his — Application for purchasing the said House was Made Many Months prior to that period — that at the time of his taking possession of the

the said House in the said year one thousand Seven hundred and Eighty there was not the least report that the Houses on Hog Hill were to be pulled Down that the assertion in the Petitioners said — Rejoinder Setforth that the Company having — " Determined on Enlarging the Esplanade in the year One thousand Seven hundred and Eighty had to that end resolved to take down the Houses on Hogg Hill in the Black Town of Madras was an assertion every way Erraneous and untrue and introduced with no other View than that of misleading the — Judgement of the Court that this Respondent — admitted to have Spoken to the Petitioners Concerning and to his Mother regarding the purchase of the said House that the Petitioners Mother a few days afterwards happining to meet this Respondent did then make an offer to him of Selling the — said House and at the same time did tell him that her husband had purchased it from Mr. Deputy for his own Convenience and paid more than

than it was really worth and that as a part of the Ground had bun joined to their Large House she would let him have the remainder for Six hundred and fifty Pagodas that this Respondent agreed thereto and immediately afterwards took possession of the said House and paid and advanced unto the Petitioner by means of his Concopoly the Sum of seven hundred and Seventy One Pagodas and thirty three fanams that in the month of February or March in the year one thousand Seven hundred and Eighty one this Petitioner intending to Convey his property to Pulicat or some other Situation remote from Madras in order to be Secured against the Consequences of the war this Respondent did apply to him for a Bill of Sale for the said House so purchase as aforesaid for that a Sum exceeding Six hundred and fifty Pagodas the Amount of the purchase Money for the said House had been already paid by this Respondent to the Petitioner

Concopoly

Concopoly but that the Petitioner instead acquiescing with such the Equitable Demand of this Respondent did Contrary to all good faith and Justice deny that the said House had ever been Sold to this Respondent for the said Sum of Six hundred and fifty Pagodas but that notwithstanding he would Consent to let this Respondent have the said House upon paying the Sum of Seven hundred Pagodas that this Respondent not agreeing thereto insisted upon the Amount due to him from the Petitioner being paid without delay that the Petitioner thereupon urged that he had not Cash sufficient for that purpose but agreed to give to this Respondent a Mortgage Bond for the Amount of seven hundred Pagodas only and referred this Respondent to the Concopoly for the remaining Seventy one Pagodas and thirty three fanams pretending that the said Concopoly had paid to him no more than the said Sum of Seven hundred Pagodas that the Mortgage Bond in question was then Signed and delivered to this Respondent dated the twenty Eighth day of April one thousand Seven hundred and Eighty. This Respondent did

did further shew in and by his said Surrejoinder that before the Execution of the said mortgage Bond the Petitioner spoke to him respecting the Rent of the said House that this Respondent on asking what Rent he required was answered that he charged the same as other Tenants had paid and specified two Pagodas per month Which this Respondent at first refused to pay conceiving it was too high for such a House but that after many altercations and the Petitioner Declaring that some other persons who had lived therein had paid the same this Respondent agreed to pay the said two Pagodas per month that otherwise he might have procured Houses better situated much more Convenient and equally as Cheap for that the Rent of Houses was at that time very low as many were unoccupied because a great number of the Inhabitants impressed with fears for their safety and to avoid the horrors of war and the Dreadful Effect of famine had

fled

fled to Different parts of the Country —

This Respondent saith that the said — Surrejoinder did also shew by Argument Drawn from — reason and the nature of the thing that the Petitioner could not have let his House for the Sum of fifteen or twenty Pagodas per month that no notice thereof was ever given to this Respondent that the Petitioner — never did request him to Come to a final Settlement Concerning the same that this Respondent never did send any Mifsage to the Petitioner purporting that he would Settle the Bargain very shortly or that he Would allow the same rent as offered by others but on the Contrary that the rent for the said House had been settled by the Petitioner at two Pagodas — per month and no more and this Respondent Sheweth that the said Surrejoinder contains a — variety of other Facts entirely new and growing out of the Rejoinder of the Petitioner reference to the said Surrejoinder being had may Appear and that all such Facts are pertinent and necessary in

Contradiction

contradiction to the new matter brought forward in the Petitioners said Rejoinder but which it is not necessary here to recite because the Petitioner has thought proper from prudential Reasons to Suppress in his said — Petitioner certain passages of his said Rejoinder to — Which such Facts have allusion and are set up to Confute so that it will fully Appear as this Respondent humbly Conceives and so he Declares the truth to be that his said Surrejoinder was not filed from a — Litigious Motive but from absolute Necessity and that so far from being a Repetition of any thing contained in this Respondents Bill of Complaint and Replication — there is Scarcely a Single Sentence Contained in the one that can be met with in the other —

This Respondents admits that in Answer to the said Surrejoinder Which he positively asserts is not a new proceeding the Petitioner did file a Rebutter that thereupon issue did join and that both parties — proceeded to Examine Witnesses and this Respondent begs

begs leave to state that the Witnesses produced on his part did fully support and clearly establish the several matters and things charged and setforth in and by his said Bill of Complaint Replication and Surrejoinder in the first Instance and as a point on Which the matter in question principally rested this Respondent did produce Poovey Jah Moodilly not to prove the Agreement entered into between this — Respondent and the Appellant and who to the Second Interrogatory thus Deposed the Complainant after the Execution of the said Mortgage Bond as before Mentioned did express a Desire of quitting the said House that the Defendant did thereupon in his presence request the Complainant not to quit the same but to remain therein upon a rent of two Pagodas per month that the Defendant did let the said House to the Complainant at the — Certain rate of two Pagodas per month that the Complainant did Shew an unwillingness to take the said House at two Pagodas a Month as being too

too high and exorbitant and the said Poovey Tah Moodelly further Deposes it was with Difficulty that this Respondent could be prevailed on to give so much nor is there any inconsistency in this — Circumstance as the Appellant Would insinuate although it be acknowledged that this Respondent would have given Six hundred and fifty Pagodas for the — purchase of the said House because a variety of Circumstances might be offered in Argument and that ocour every Day to shew this Respondent justifiable in Offering more for the house than it was — really worth he liked the Situation which placed him Amongst his Friends and acquaintance but be this as it may it is of no moment to the — Matter in Dispute Whether the house was in his Opinion Worth Six hundred Pagodas or Six — hundred fanams for the immediate and grand Consideration is whether an Agreement did or did not Subsist between the Petitioner and this —

Respondent

Respondent relative to the rent not to the purchase of the House in question that such Agreement did — subsist and that the rent of the said House was thereby — rated and settled at two Pagodas per month is proved in the strongest Manner by the said Deposition of the said Poovey Tah Moodelly and Which is strongly corroborated by Trevengadia pillay No. 4 who to the Sixth Interrogatory Deposes that he was told that a Mortgage Bond for Seven hundred Pagodas granted by the Petitioner and that this Respondent on receiving the said Bond expressed a — Desire of quitting the said House which he then — rented that the Petitioner and his Concopoly did in his the said Trevengadiah Pillays presence go with this — Respondent to the House of Tah Meaning Poovey Tah Moodelly promising to settle the matter with him and that a few hours afterwards he did meet this Respondent who did tell him that he had agreed — with the Petitioner to pay him two Pagodas per — Month and that an Entry thereof had been made in the Petitioners Books by Apeyada Pillay — The

Petitioner

Petitioner has not produced a Single Witness in opposition thereto nor has he himself in his said Answer to the Bill of Complaint of this Respondent dared to Deny the — Agreement thereby shewn for in his said Answer he says — only he could not admit it So that the proof produced by this Respondent stands uncontroverted nor can the futile and Absurd Argument produced by the Petitioner in his said Petitioner in any Wise effect it indeed such an — Argument and at such a period too is too trifling to deserve the least attention — Had the Petitioner been able to point out any variance between one part of the Deposition of the said Poovey Pah Moodellar and another and — had actually done so or had combated the corroborating Testimony of Trevangadien Pillah by the force of — Reason Drawn from the Nature of the Thing then — indeed any Argument he might have urged in — Elucidation or further Demonstration of invalidity — Would have been important but he has not attempted so to do because he could not and therefore the arguments he has thought proper to intrude on this Honble Court are as impertainent as they are fallacious the Agreement of two — Pagodas per month having been thus amply established — the question of rent of the said House is not as the — Petitioner would Suggest left open to be settled nor had he the power to fix that extravagantly exorbetant quantum of rent Which his Evil and arbitrary Disposition would gladly Dictate Consequently his fifteen Pagodas a month During the War and Eight Pagodas a Month during the time of peace must be regarded more in the light of insult to a Court of Justice than as a Serious charge brought forward upon a principle of Equity with a view of obtaining redress and the reference made to Mr. Henry Dupuy relative to the purchase money of the said house and from Which alone Such Conduct of the Petitioner tooks for support must of Course fall to the Ground a man from Caprice Whim or any particular and to him interesting Consideration might pay nine hundred or nine Thousand Pagodas for a house that independent of such Circumstance and Considerations would not be

be worth fifty but it is not from thence to be inferred that he should be allowed to break through a bonafide Agreement and arbitrarily insist upon a Tenants paying Eight or fifteen Pagodas per month for the rent of a House which between Man and man is not worth two Pagodas a month. But to meet the Petitioner upon every ground and so effectually at once to expose his artful Conduct and plainly shew that what was may be the Language he now holds relative to the Value of the said House he had once a very different Opinion thereof Respondent begs leave to produce Facts that have been Delivered on Evidence — Poovey Tah Moodelly Ans to the last Interrogatory Deposes that in Consequence of his House adjoining that of the Petitioner and near to the House of which this Respondent lodged he had an opportunity of being well acquainted with his neighbours touching the Differences in question that the Petitioner did request him to prevail on this Respondent to purchase the said House for the Sum of Six hundred and fifty Pagodas

Pagodas as he had formerly Consented to do and that he would Discharge by the earliest opperturnity the remaining fifty Pagodas as also the Amount of the two Bonds of one hundred Pagodas each with the Interest due thereon that he did in Consequence confer with the Respondent who Declined becoming a purchaser after having been refused when he applied to the Petitioner on that head and insisted on the Petitioners paying unto him the several Sums Due to him Dauserry Naick

No 2 to the fourth Interrogatory deposes nearly to the same points as Deposed to by Poovey Tah Moodelly and exactly so in the one most material that is to say with respect to the Sale of the said House for the said Dauserry Naick positively asserts that the Petitioner did inform him that he had borrowed from this Respondent at Different times the Sum of Seven hundred Pagodas and did Entreat him to speak to this Respondent and request him to purchase the said house for the said Sum of Six hundred and fifty Pagodas and that he would grant his Bond for the remaining fifty

fifty Pagodas that he thereupon executed a Bond for
the said Sum of fifty Pagodas in favor of the "
Complainant that he the Deponent did thereupon "
make this Respondent acquainted with the Petitioners
proposals and Who not agreeing thereto he the said
Dawserry Naick did return the said Bond for fifty
Pagodas to the Petitioner a Circumstance which "
establishes the transaction by a kind of numerical
Argument and the Petitioner knowing his inability "
to confute it has passed it over in Silence

This Respondent further begs leave to shew
that the Depositions of the said Poovey Jah Moodelly
and the said Dawserry Naick are aided and corroborated
by the Deposition of Trevangadiah Pillay No 6 who
to the Sixth Interrogatory Deposes that this "
Respondent did in his presence Demand from the
Petitioner the Bill of Sale and Title Deeds of the
said House in Consequence of a Bargain that had
been entered into and agreed upon between them
and

and that the Petitioner did frequently promise "
he would comply therewith the said Trevangadah
Pillay has not mentioned the particular Sum "
agreed upon as the purchase Money of the said "
House but that Defect is supplied by the Petitioner
himself who in and by his said Rejoinder acknowledges
a Demand of the Title Deeds of the said House by
this Respondent and that the Sum mentioned as the
purchase Money was Six hundred and fifty Pagodas
This Respondent having thus incontestibly proved by
the Depositions of three witnesses who have deposed
positively and pointedly to the Fact that the "
Petitioner would gladly have sold to this Respondent
the said House for the Sum of Six hundred and fifty
Pagodas at a time too when as he pretends the "
House were a Double or treble their real Value the
Hypothesis upon which he Builds the onene "
hundred Pagodas paid to the said Mr. Henry Dupuy
as the purchase Money of the said House must
fall

fall to the Ground of Course and the more particularly so as by the Petitioners own Asertions and manner of Reasoning the said house at the time he purchased it which was in the Time of Peace could not have been worth more than two hundred and Sixteen Pagodas which is the one third of Six hundred and fifty Pagodas the Sum for which as it has been proved he would have Sold it to this Respondent and Consequently its full Value in the Time of War when Houses even According to his were worth Double or treble what they were worth in this Time of peace from these Circumstances and from the several proofs hereinbefore adduced by this Respondent it is of very little Consequence what Parasooram Pillay a Witness produced by the Petitioner Deposes relative to the Difficulty of procuring Houses in the Black town During the War or what he might declare upon oath his belief to be relative to the Rent which the house in question might have been let for indeed the Sum total of his Evidence amounts to no more than a Matter of Opinion and Belief which is never received in Apposition to direct and positive Evidence therefore when produced it must instead of assisting serve to expose the Weakness of a Cause and it will be shewn that Parsooram Pillah has in the Course of his Depositions sworn to untruths This Respondent has proved by the Deposition of Poovey Tayah Moodelly and Dafory Naick that the Petitioner was not only Willing but pressingly Desirous of selling to this Respondent the said House for Six hundred and fifty Pagodas and therefore whatever Pooney Coatty Pillah another Witness introduced in the Petitioners said Petition of Appeal may say relative to the pretended Treaty respecting the said House is altogether immaterial and impertinent he is at the best but an indifferent Witness for its declared

by

by the Petitioner that he was his Servant: and it
appears by the Deposition of Sevangada Pillah
that in the Act of borrowing Money from this —"
Respondent for his Master he Appropriated a part
of it to his own use and it will hereafter appear
that he has Deposed to Palpable Falshoods —
This Respondent admits as stated in the said Petition
that the Petitioners fourth Witness Yagapah Pillah
has Sworn that some people in the time of War —"
offered to rent the said House at the rate of Fifteen
to twenty Pagodas and that one of the Nabobs —"
People offered to advance one years rent at twenty
Pagodas per Month however of all them pretended —"
people who from Circumstances must have been
people of some Consideration not one of them
has been brought forward but even if they had —"
been brought forward even were the matter
as the Petitioner has stated it cannot have —"
any thing to do with the Matter in question

for

for Surely the offer of one man to rent a house over
the head of another who is in possession of it cannot —"
possibly be used at any time to vitiate an Agreement
entered into between the Tenant and the Landlord and
proved as in the present Instance by the positive —"
uncontroverted Testimony of one Evidence and by the —"
strongly corroborating Testimony of others Equally Vague
and insignificant as the Deposition of Jaya Saumy —"
Pillay who Swears that forty or fifty Different people
lived in the house whilst this Respondent rented it
if this Respondent suffered one hundred people to live
with him the Petitioner could not have any reason to
question him on the subject so that he duly paid his
rent but this Respondent Denies the assertion and
could he have known that the Petitioner would have
examined to such Extraneous and absurd matter this
Respondent might easily have proved that the —"
House would not possibly contain half the —"
number the Petitioner in finishing the Dissection

of

of the Evidence he has produced observes there are other Witnesses that Depose to his constantly denying there ever was any Agreement to rent the House at two Pagodas per Month and that he was so fully persuaded of the Justness of his Demand that he would not allow it to be Disputed or leave it to arbitration but this Respondent humbly insists that the Petitioner in Denying an agreement unfavorable to his plans is no proof that such agreement did not exist nor has he himself Denied the Existence of such Agreement in his said Answer for he there says that he Cannot admit that the rent of the house was to be only two Pagodas per Month on the Contrary that the House was purchased by him for the Sum of nine hundred and fifty Star Pagodas so that there is no Direct Denial nor a plausible reason given for evading the question but a jumble of confusion and therefore however he may have Denied to different people the existance of such Agreement and procured those people to Swear to such Denial yet no Argument can be

Drawn

Drawn therefrom to Shew the Agreement as stated by this Respondent did not exist nor is his refusing to submit to arbitration from a persuation of the justness of his Demand of greater force but indeed operates to avery contrary effect for had he been persuaded of the justness of his Demands he would have had no Objection in submitting them to arbitration when so required by Poony Onarian Pillay and that refusing so to do not only evinces that knowing the total want of foundation of his Demands he was affraid of an investigation but that he was governed by a litigious Spirit and dishonest principles and determined on forcing this Respondent to process at Law in order to harrass and Vex him and as long as possible to keep from his just dues

This Respondent having thus followed the Petitioner in the Statement he has thought proper to give in his Petition of Appeal and the evidence produced in Support thereof begs leave to shew

that

that the Petitioner in order the better to promote his purposes has suppressed a Variety of Facts and by Sophistry and insinuation charged the complexion of others and by such Means has altered considerably the Fact of the several papers in the Cause filed by him and this Respondent Amongest other things the Petitioner in his said Answer states that this Respondent lived in his the Petitioners house from the eighth day of February Which was in the year of Christ One thousand Seven hundred and Eighty until the twenty fourth day of October Which was in the year of Christ one thousand Seven hundred and Eighty Six which Statement is Omitted in the said Petition and evidently to glide over unnoticed if Possible a palpable falshood upon oath for the Petitioner in another part of his said Answer says he was Entitled to charge fifteen Pagodas a Months During the Time of War and Eight Pagodas a month During the time of peace on this Charge he formes his Account Current and strikes a Ballance of Eighty two Pagodas Which he says is the Ballance of the Account Annexed to his Answer and Which he swears is truly made up Now it Appears by a reference to the said Account Current that he begins his charge of fifteen Pagodas per month on the Eighth day of February One thousand Seven hundred and Eighty and as it is a Fact well known that the War did not Commence until the month of August following his Account Current is false According to his own Shewing and instead of Eighty two Pagodas the Ballance by his own made of calculation should have been upwards of one hundred and twenty Pagodas Nor is this the only falshood Committed by the Petitioner upon oath for in his said Answer he Swear positively that he purchased the house in question from Mr. Henry Dupuy Whereas it Appears by the Deposition of the said Henry Dupuy who to the third Interrogatory exhibitted on the part of the Petitioner Deposes that he Sold the said house to the Petitioners Father and Parrasarama Pilley on the same Side to the third Interrogatory corroborates

Corroborates that part of the Evidence of the said Henry Depuy this Respondent Sheweth that the Petitioner has omitted to recite in his said Petition a Material Circumstance set forth in his Rejoinder to your Petitioners said Replication and he must have so omitted it with a view of hiding the falsity of his Account Current and the self evident Contradiction in the said rejoinder contained the said Rejoinder states that after this Respondent obtained Possession of the house he the Petitioner received no more money from him for upwards of a year about which period many of the Inhabitants on Account of the War fled for Shelter to yarcum whether the Petitioner also sent his family but while there they were surprised by the Enemy carried to Tripasore and there Kept in Confinment which very much Distressed the Petitioner that in the midst of such distress this Respondent thinking it a favorable opportunity to deceive the Petitioner came to him and Desired him to Sign a Bill of Sale of the house acquainting the Petitioner that he had agreed with

with his Mother by means of the said Poney Coty Pilley to purchase it for the Sum of Six hundred and fifty Pagodas that the Petitioner was exceedingly surprised to hear this Respondent Declare so great an untruth for that this Respondent had not paid a fanam into his hands for the House but the Petitioner however in order to do every Justice to this Respondent Examined what money he had paid to the said Concopoly and found it Amounts to Seven hundred Pagodas for Which he offered to give a Mortgage Bond Which he Executed Accordingly and that in the month of April One thousand Seven hundred and Eighty the Petitioners family returned to Madras Now the Account Current of the Petitioner states that this Respondent entered the house on the Eighth of February One thousand Seven hundred and Eighty and after he had resided therein upwards of a year the Petitioners family were taken prisoners and carried to Tripasore and yet he shews immediately afterwards that they returned back in the begining of the year One thousand Seven hundred and Eighty that this

Respondent

Respondent paid him at Different times the Sum
of Seven hundred Pagodas yet he then Declares this
Respondent had not paid him a fanam and immediately
afterwards says he Examind his Books and found the
Money advanced by this Respondent Amounted to Seven
hundred Pagodas and for which he gave a Mortgage Bond

This Respondent begs permission to remark
on the Evidence produced by the Petitioner in support of
the assertions he has advanced in opposition to the just
Demands of this Respondent that pursaramapilley —
No. 2 Deposes that the War Commenced in the year one
Thousand Seven hundred and Eighty one and therefore the
Petitioner was Justified in Charging this Respondent
fifteen Pagodas per month from February One thousand
Seven hundred and Eighty to march one thousand —
Seven hundred and Eighty four so that this Witness —
Sworn contrary to the truth in the most positive —
Manner in One instance and by implication in
another also for the War instead of Commencing in the
year One thousand Seven hundred and Eighty one

Commenced

Commenced about the twelfth of July in the year one
Thousand Seven hundred and Eighty and the Petitioner —
in Charging fifteen Pagodas per month from February —
One thousand Seven hundred and Eighty as in the time of
war Made such Charge many months before the war —
was even thought of and therefore was not warranted in so
Doing — Poany Cooty Pilley No. 3 — Deposes that
the Petitioners Mother never did Agree to sell the house
in question to this Respondent for the Sum of Six —
hundred and fifty Pagodas and thereby has Sworn —
falsely for no man can Swear for the Act of another the
other Witnesses on the part of the Petitioner do not —
Speak to any point of their own knowledge but as they
have heard or According to their Opinion Which —
According to practice cannot be received as Evidence —
On the other hand the Witnesses produced by this —
Respondent fully establish every Necessary and —
Material matter by him setforth that the Deeds of
the House were Demanded by this Respondent and
promised by the Petitioner for the Sum of Six hundred

and

and fifty Pagodas is proved by the Testimony of Poovey Tah Moodeliar No 3 Trevengada Pilley No 4 and Dawserry Naig No 2 that the House was never let for more than two Pagodas per Month is ascertained by the Depositions of Poovey Tah Moodely No 1 — Dawserry Naig No 2 Trivengadiah Pilley No 4 and Vidilingum Moodelly — Examined by Commission and by the said Poovey Tah — Moodelly Dawserry Naig and Trevengadiah Pilley it is proved that no person of Credit has lived in the house since it was occupied by this Respondent and that — those who have lived in it have not paid any Rent and the most important point is proved in the — most positive manner by Poovey Tah Moodelly that the Petitioner agreed to let the House to this — Respondent at two Pagodas per Month and even pressed him to take it at that Rate —

This Respondent admits that upon the several proceedings had the Cause came on to be heard on Tuesday the twentieth Day of October last when

when the said Mayors Court was pleased to order and Decree and did Accordingly Order and Decree that the Petitioner — should pay the Whole Amount of the Sum sued for together with Interest and Costs as appears by a Copy of the said — Decree to the Petitioners said Petition annexed Rent this — Respondent Denies that the Petitioner was aggrieved thereby or that he has any Cause of Appeal therefrom —

And in Answer to the first Reason of the Petitioner as Cause of Appeal this Respondent says that it is no Argument to assert that because the House Cost upwards of nine hundred Pagodas it was Worth more than two Pagodas per Month and this Respondent has shewn by the — Depositions of four Witnesses that it never let for more than that Sum —

And in Answer to the Second Reason this Respondent says that the same principle Which influenced the Petitioner to purchase the house for nine hundred — and fifty Pagodas induced this Respondent to offer the Sum of Six hundred and fifty Pagodas it gave the Petitioner an opportunity of adding to his

his own house a piece of ground obsolutely requisite, and it would have placed this Respondent Amongst his Friends and Acquaintance so that the purchase of the one or the offer of purchase of the other can have Nothing to do with the rent of it This Respondent admits that it is a fact he did take a Mortgage of the said House as Security for the payment of Seven hundred Pagodas but it Appears in Evidence that the said Sum of Seven hundred Pagodas was advanced long before the Mortgage was granted and this Respondent after he had been Duped by the Petitioner took any Security he could get so that the conclusion Drawn from a Comparative View between the Interest of the said Seven hundred Pagodas and the rent of the house at two Pagodas per Month is absurd and altogether unfounded either in Reason Law or in Equity

And in Answer to the third Reason the Respondent says that he did enter into the possession of the said house as a purchased but that he was Deprived of such

such possession by the improper and unfair Conduct of the Petitioner who endeavouring to impose on this Respondent broke through his promises and Engagements and after he had litterally and bonafide sold the House refused to ratify the bargain and it is a Maxim in the Law that no Man shall take advantage of his own Wrongs

And in Answer to the fourth Reason this Respondent says that even admitting that the Rent of houses in the Black Town During the War was much advanced beyond what they let for in the time of Peace yet that has Nothing to do with the Agreement entered into between the Petitioner and this Respondent for the Sum of two Pagodas per Month for the house in question It is in proof that it never rented for more than two Pagodas per Month in time of peace and yet the Petitioner has under that head in his Account Current thought proper to charge Eight Pagodas per Month

And in Answer to the fifth Reason this Respondent says it does not Appear that several people actually

actually offered to rent the house in question from fifteen
to twenty Pagodas per month because the people who
it is pretended made the offer have never Deposed to
the fact nor have their names been mentioned but —
even had that been the Case to bring it forward as
Evidence against the agreement entered into between —
the Petitioner and this Respondent is very irregular
and altogether impertinent and this Respondent says
it no where in Evidence Appears that this Respondent
did agree with the Petitioner to give him fifteen —
Pagodas per month but on the Contrary it is proved
on the part of this Respondent by the Deposition of
Poovey Tah Moodelly and Strongly corroborated by the —
Deposition of Swengadiah Pillay that the Petitioner
agreed with this Respondent at the rate of two Pagodas
per month so that Whatever others might have —
offered even if they had offered as the Petitioner —
pretends but Which this Respondent Denies to have
been the Fact yet such Offers could not effect this

Respondent

Respondent —

And in Answer to the Sixth Reason this Respondent
says that the Matter therein Contained arises out of
the fifth Reason and is altogether fallacious untrue
and impertinent and so of Course Must be the —
Shewing of the Petitioner thereon but were an answer
Necessary this Respondent says he has already Answered
it in his Answers to every reason brought by the —
Petitioner as Cause of Appeal —

And in Answer to the Seventh Reason this Respondent says
that it is absurd in the heghest Degree to afert —
that because a Mans family Consisted of fifty people
he should pay rent Accordingly for it frequently is
the Case When a house Which lets at ten Pagodas
~~Pr.~~ month is hired by a single person that such
~~person~~ finding the expence too great takes in three
or four others Who pay their proportion thereof and
the landlord has nothing to say so that the ten
Pagodas per month be regularly paid to him but
in the present Instance such was not the Case

for

for this Respondents Family consisted of about ten People and those were himself his Wife Children and Servants and had this Respondent Conceived that the Petitioner would have examined to a point so Vague and Prolgatory he could have shewn that the House would not have held the number setforth by the Petitioner —

And in Answer to the last Reason this Respondent say that the Petitioner cannot suffer any hardship should it be the pleasure of the Honble Court to Affirm the said Decree of the said Mayors Court but were it to be otherwise this Respondent — would be Incurred and the Petitioner would — triumphe in his own Wrongs and have reason to exult in the succes of his artful plans and — inequisitions practices this Respondent would gladly have purchased the house and it appears in proof that he absolutly advanced the — purchase Money but the Petitioner taking advantage of

of this Respondents Credulity and easy nature — induced him to advance a Sum of Money under the Assurance that it was for the purchase of the said House and then when he abtained — posefsion thereof he refused either to sell the house to this Respondent or to return him his money — so that it was not this Respondent but the Petitioner who shamefully and Contrary to all good faith broke the treaty and notwithstanding the insinuations of the Petitioner it Appears by his own shewing that this Respondent did not quit the said house until two years and nearly Seven Months after the peace took place and this — Respondent says and therein humbly insists that there is not a matter contained in the numuricals reasons in the Petitioners said Petition setforth that bears the least Apperance of grievance — Suffered by the Petitioner in Consequence of the Decree of the said Mayors Court or a Shaddow of proof for Cause of Appeal therefrom to this Honble

Honble Court but on the Contrary this Respondent humbly Conceives it must be Evidence that the Opposition of the Petitioner to the just Demand of this Respondent is Merely to harrass and injure him and gratify the litigious and inequitious Spirit of the Petitioner and this Respondent. — further says that the Petitioner having admitted the due Execution of the Bonds setforth in the Account Current annexed to this Respondents said Bill of Complaint it remains to be considered Whether the extraordinary sett off introduced by the Petitioner in his said Answer is equitable or otherwise and to that End it is necessary to State, First — Whether this Respondent did or did not agree with the Petitioner to rent the said house for the Sum of two Pagodas per month and Secondly Whether the Petitioner ever Demanded agreater Sum than two Pagodas on the part of the Petitioner not a Single

Witness

Witness has been produced he has not even given the matter the Sanction of his own oath for in his Answer he does not positively Deny he says only that he cannot admit that the rent of the House was to have been no more than two Pagodas In favor of this Respondent is the Deposition of Poovey Tah Moodelly who positively Declares that two Pagodas per month was the rent of the said House as settled by the Petitioner himself and that it was with Difficulty this Respondent was prevailed on to give so much thinking it too extravagant and this is strongly corroborated by the Deposition of Trevangdoah Pilly and in further Proof are the Depositions of four Witnesses that the said House never did let for more than two Pagodas per month and there are three Witnesses who Depose that no person of Credit has resided therein since this Respondent left it on the Contrary that it has been the receptacle for

Women

Court of Appeals at Madraspatnam } Saturday the 10th day of Decr. Anno Domini 1791

Between Saulapaukum Trevengada Pillah of Madras Inhabitant Appellant and Kristnah Pillah of Madras Inhabitant by his attorney Charles Pereyra of the same place Inhabitant Respondent

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sids 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 20th day of October Anno Domini 1789 upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used

Women of ill fame. From all which Matters and things and when it is also Considered that the Petitioner and his two principal Witnesses as hereinbefore Shewn have Actually Sworn to untruths in Order to Accomplish his Design against the Fortunes of this Respondent

This Respondent humbly hopes that this Honble Court will be pleased to Confirm the said Decree of the said Mayors Court of the twentieth Day of October last and order that the Petitioners Petition and Appeal be Dismissed with Exemplary Costs to be paid by the Petitioner

/Signd/ J. S. Hall
Solicitor for Appellt.

Court

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 Kistnapillah of Madras
Inhabitant by his Attorney Charles Pereyra
Complainant and Salaputtum Tevangadah
Pillah also of Madras Inhabitant Defendant

The Humble Petition and Appeal of
the above named Defendant

Most Humbly Sheweth

That some time on or about the Twenty ninth day of August Which was in the year of Christ One Thousand Seven hundred and Eighty eight the said Kistna Pillah by his Attorney aforesaid did file his Bill of Complaint Against your Petitioner and did therein Charge that your Petitioner was indebted to him in the sum of One Thousand four hundred

Filed in my Office
the 26th December 1791
Chas. N. White
Clk

and

and Seventy six Pagodas Eighteen fanams and thirty six Cash being a Balance pretended to be due to him upon an Account Current Whereof a Copy is — Annexed to his said Bill of Complaint your Petitioner further Sheweth that the said Account Current arose upon a Mortgage Bond of your Petitioner for Seven hundred Pagodas and two Simple Bonds for one hundred Pagodas each your Petitioner Sheweth that those three several Articles with Interest respectively due thereon made up the Whole of the Debit side of the said Account Current and Amounted together to the sum of One thousand Seven hundred and twenty six Pagodas four fanams and forty seven Cash and the Credit side of the Account consisted of one Article for House Rent being for rent of House Mortgaged for Seven hundred Pagodas — But for Which the Complainant only thought proper to allow two Pagodas a Month and that with Interest thereon formed the Credit side of

the

the Account Amounting to the sum of two hundred and fifty nine Pagodas thirty two fanams and eighteen Cash and left the Balance above Specified of one — thousand four hundred and Seventy Six Pagodas eighteen fanams and thirty six Cash your Petitioner further — Sheweth that he did some time after put in his Answer upon Oath to the said Bill of Complaint and did thereby insist that he was not indebted to the Complainant in the sum sued for but he admitted to be indebted to him in the sum of Eighty two Pagodas three fanams and Eight Cash and no More as by an Account Current — Annexed to his Answer might particularly Appear your Petitioner Sheweth that he did in his Answer — further set forth that he admitted the several sums charged on the Debit side of the Complainants Account Current but your Petitioner instead of allowing the Rent to be at two Pagodas a Month as is erroneously stated by the Complainant insisted that the House had been — purchased by him for Nine hundred and fifty Pagodas of Mr. Henry Dupuy and was well worth that

Money

Money your Petitioner did further state that the greater part of the time that the Complainant Occupied the said House was During the War when the Black Town was much crouded with Inhabitants and the Rent of Houses there situated advances to two or three times as much as they were in time of Peace and therefore your Petitioner charged the Rent for the said House at the Rate of Fifteen Pagodas a Month during the War and Eight Pagodas During the time of Peace Which your Petitioner insisted was no more than What he ought to be allowed and not adiquate to the interest he paid the Complainant for the Money he advanced him on the Security thereof your Petitioner further Sheweth that to this his Answer the Complainant did on or about the Eleventh day of November in the said year of Christ One thousand seven hundred and Eighty eight put in his Replication and did therein pretend that he was about purchasing the House in Question and did apply for that purpose to your Petitioners Mother and did agree for the purchase of the same for the Sum of Six hundred and

and fifty Pagodas and that Accordingly he resided therein as his own for the space of Twelve Months and upwards When he was surprized by your Petitioners informing him that the Agreement he made with his Mother was of no effect but that he would allow him to live there at the Rate of Two Pagodas a Month to Which he pretends that your Petitioner consented and thence infferred that it was litigeous on the part of your Petitioner to sett off against his Demand as is Charged by your Petitioner in his said Answer Nevertheless the Complainant did not venture to Deny that your Petitioner had paid the same of Nine hundred and fifty Pagodas for the House and it was also certain that he considered the Same as good Security for Seven hundred Pagodas for Which he charged the Interest of Seven Pagodas a Month so that it Appears by the Complainants own Shewing that he charged seven Pagodas a Month for the very same property for Which he only chose to allow two Pagodas a Month your Petitioner

further

further Seventh That to this Replication he did
in due time file his Rejoinder in Which he denied
that the Complainant ever did purchase the
Lease in Question for Sixe hundred and fifty Pagodas
but he therein stated the fact that in the year one
thousand Seven hundred and Eighty the Government
of Fort Saint George having Determined to enlarge the
Esplanade they Resolved upon taking Down the
Houses on Hog Hill in one of Which the Complainant
lived whereupon he made Proposals with your
Petitioner for the purchase of the House in Question
to Which your Petitioner consented of the Complainant
would pay him the same sum Which the premises
Cost Deducting therefrom the value of such part
of the Ground belonging thereto Which your
Petitioner had taken therefrom and added to his
own house and it being so agreed the Complainant
advanced to your Petitioner the Sum of Seven
hundred Pagodas on Account and While this
Proposition was thus far procuded but before
any

any Bargain was finally Concluded the Government
of Fort Saint George Ordered that the Houses on Hog
Hill be immediately taken down whereupon the
Complainant requested your Petitioner to let him inhabit
the House in Question to Which your Petitioner having
consented the Complainant entered into possession of your
Petitioners said House and Contained to reside therein
for
upwards of one year without making any offer to
your Petitioner about concluding the purchase thereof
your Petitioner further Sheweth that he did in his
said Rejoinder insist that neither at the time the
Complainant entered into the said House or at any
time after he ever Made any Agreement with the
Complainant to let him have the said House at
two Pagodas a Month and he also stated a
Number of Facts in support of his case and
among others that several People had offered to
Rent the said House of your Petitioner during
the period in Question and that as Houses were
very Scarce at that time on Account of the
War they had proposed to pay him from Fifteen
to

to Twenty Pagodas a Month for the said House and ÷
particularly that his Highness the Nabob had offered
to advance him a years Rent at the rate of twenty
Pagodas a Month Amounting to the Sum of Two
Hundred and forty Pagodas and to give good Security
for the punctual payment of the Subsequent Rent
of Which your Petitioner informed the Complainant
and requested him to come to some Settlement respecting
the said House to which the Complainant constantly
replied that he would either settle the Bargain very ÷
shortly or he Would allow your Petitioner the same
Rent for the House Which he was offered by others
on Which Terms and on no other What ever your
Petitioner Charges that he permitted the Complainant
to continue to live in the said House during the
period in question to wit from the Eighth day of
February Which was in the year of Christ One
thousand seven hundred and Eighty to the twenty
Sixth day of October Which was in the year of
Christ One thousand Seven hundred and Eighty six

When

When the Complainant thought proper to leave the
said House Without giving any notice whatever to
your Petitioner and your Petitioner Sheweth that the
said House was so much Damaged and out of ÷
Repair by his Occupying it that your Petitioner
was Obliged to Layout a Considerable sum of Money
in the Reparis thereof your Petitioner further Sheweth
that after he had filed his Rejoinder to the purport
aforesaid Issue ought to have joined thereon and ÷
Rules pass for the Examination of Witnesses ÷
According to the usual practice of the Mayors ÷
Court in like Cases but the Complainant not satisfied
With harrassing your Petitioner by his unjust ÷
Claim as charged in his Bill of Complaint did by
Way of vexing your Petitioner With further Expences
file a Surrejoinder altho he did not thereby throw any
new Light on the Pleadings already had or do any
more than Repeat What he had before advanced to
his Bill of Complaint and Replication But your
Petitioner was of Course obliged to Answer to this

New

new Proceeding by a Rebutter and thereupon Issue was Joined and both parties proceeded to Examine their Witnesses your Petitioner Sheweth that the Complainant on his part produced some Witnesses who endeavoured to Establish as fact that the Rent of the House in Question ought not to exceed the — Monthly sum of two Pagodas altho the same Witnesses all Agreed that the Complainant would very gladly have purchased it for Six Hundred and Fifty Pagodas which at the Common Rate of Interest would have made the Rent Amount to Five and an half Pagodas a Month and there is but one Single Witness who Swears to any specified Agreement and he not only says that the defendant Agreed to Accept of two Pagodas Rent but in his — forwardness to support the Cause of the Complainant he adds that it was with difficulty the Complainant was induced to agree to give so much which — Testimony your Petitioner Sheweth is very inconsistent With the fact Acknowledged by the Complainant Namely

namely that he would gladly have given Six — hundred and fifty Pagodas for the purchase of the House and it is evident that at that time Houses were very much wanted in the Black Town as well on Account of those that had been taken Down on Hoy Hill for the purpose of extending the Esplanade and thereby Strengthening Fort Saint — George as by Reason of the great Number of — Strangers who had crowded into Madras from — Different parts of the Carnatic upon the — breaking out of the war your Petitioner Sheweth that the said Testimony is also invalidated by the Manner in which it is Acknowledged the — Complainant had possession of the House which Appears on all sides to have been in Consequence of his treating for the purchase of it and after he had advanced upwards of Seven hundred Pagodas towards payment of the Purchase Money which Sum of Seven hundred Pagodas would if lent on Bond at the Legal Interest being Twelve per Cent

Cent per Annum produce Seven Pagodas per Month
and therefore the sum laid out in Houses or Buildings
ought to produce an higher Interest whence your
Petitioner submits how little Credit ought to be given
to a Witness Who could depose that for such an
House and at such a period for general Request for
Houses the Complainant had grudged even to pay two
Pagodas a Month Whereas on the other hand it is
fair to infer that the House was worth in times
of Peace something more than the Legal Interest of
the purchase Money and in time of War such
an encrease thereof as was suited to the Encrease
of Inhabitants During the period in Question
Which Rent your Petitioner has as he conceives
estimated at a Moderate Rate by charging the
same at Eight Pagodas a Month in time of Peace
and Fifteen Pagodas a Month in time of War and
in Order to prove that he was entitled thereto he
has produced as Witness Mr Henry Dubey
Who swears that the House was Sold for Nine
hundred

hundred or One thousand one hundred Pagodas and
therefore it may Occasionably be supposed that the Money
the Defendant says in his Answer that it cost him
that is to say Nine hundred and fifty Pagodas was
the real purchase Money thereof your Petitioner
Sheweth that the next Witness produced on his
behalf to wit Parasooramah Pillah deposes
that During the War it was difficult to procure
Houses in the Black Town and that the Rents
Commonly paid were generally double and some
times treble the sum paid before the War and he
also Solemnly Declares that the House in Question
might let for fifteen Pagodas a Month during
the Continuance of War and the third Witness on
behalf of your Petitioner to wit Poonooty Pillah
Deposes to the Whole of the Treaty about the
purchase of the House and that Seven hundred
Pagodas were Advanced towards the purchase
thereof and that While matters continued so the
Houses on Hogg Hill were Ordered to be pulled
down

Down and Among the rest the Complainants
Dwelling House who having thereupon requested to be
admitted into the House he was going to purchase
your Petitioner consented thereto in full expectation of
the bargain being Compleated your Petitioner sheweth
that the fourth Witness produced on his behalf
is yayapillah who Deposes that several People
in the time of the War Offered to rent the said House
at the rate of Fifteen to Twenty Pagodas per month
he also Swears that he did himself against the
Complainant thereof and requested him to settle
about the purchase to which the Complainant
replied that he would settle it in a few days or that
otherwise he would allow the Defendant the same
rent for the House which other People offered to pay
he also says that at the time this Conversation
passed he did not mention any Agreement between
him and the Defendant to let him have the
House for Two Pagodas per Month which he
thinks he would have mentioned if there had been
any

any such Agreement and he adds that he does not
know any reason there could be for the Defendant to lett
his House to the Complainants for Two Pagodas per month
when he could get from other People from fifteen to Twenty
Pagodas your Petitioner sheweth that the Fifth Witness
produced on his behalf is Chellumbarum who Swears to an
offer being made by one of the Nabobs People to advance
One years Rent for the said House at the rate of Twenty
Pagodas per month being the Sum of Two hundred and forty
Pagodas and to give good Security for the Payment of the
Rent as it became due and another Witness named
Iyahsaumy Pillah Swears that forty or fifty different
People lived in the House while the Complainant had
it and that the Defendant was obliged to lay out fifty
Pagodas in Repairing it after the Complainant left it
your Petitioner Sheweth that other Witnesses on his behalf
Deposed that your Petitioner had uniformly denied that
there ever was an Agreement to rent the House at two
Pagodas per month your Petitioner most humbly
Sheweth unto your most Excellent Majesty in Council
that

that upon the above Proceedings the said Cause came on to be heard on Tuesday the Seventeenth day of October which was in the year of Christ One thousand Seven hundred and eighty nine where the said Mayors Court was pleased to Order and Decree and did Accordingly order and Decree that your Petitioner should pay the whole Amount of the Sum sued for together with Interest and Costs of Suit.

From which said Order and Decree of the said Mayors Court your Petitioner did Appeal to the Court of Appeals at Madras as he Conceived the said Decree to be Erroneous and Contrary to the principles of Substantial Justice for the following Amang other Reasons

Firstly..... Because it plainly Appears that the House which is pretended to have been lett at Two Pagodas per month Cost your Petitioner upwards of Nine Hundred and fifty Pagodas and therefore the purchase Money would produce at the Common Interest Nine and half Pagodas a Month.

Secondly..... Because it is Acknowledged by all parties that the Complainant Would very gladly have given Six hundred and fifty Pagodas for the House in Question and did in fact advance Seven hundred Pagodas on the Security of the said House for Which he charged the Interest Seven Pagodas per Month so that the purport of his Bill of Complaint is to receive Seven Pagodas a Month for the very same property for Which he only allows Two Pagodas.

Thirdly..... Because it is evident that the Complainant did not enter into the House under any Agreement for Rent but Merely as the purchase thereof and therfore as long as he Stayed in it the House ought in all Reason to be Considered as his property and the money advanced to be the property of your Petitioner and therefore as the one ought not to Charge Rent for the use of the House the other ought not to charge Interest for the use of the Money or if one insisted on Charging Interest for the Money the other may equally insist upon Charging Rent for the House and as the Complainant has Charged Seven Pagodas a Month for

for the Money at any rate he ought to allow the same for the House

Fourthly ..... Because it is evident that the Rent of Houses in the Black Town during the war was much Advanced and some of the Witnesses Swear that such Advance Amounted to Double or Treble the rate at which they used to be Let in time of Peace

Fifthly ..... Because it appears that several people actually Offered to rent the House in Question from Fifteen to Twenty Pagodas a Month of which the Complainant having had Notice he is bound in Equity to pay the same

Sixthly ..... Because it Appears that an actual Offer was made by the Arabobs People to advance two hundred and fifty Pagodas for One years Rent and to give good Security for the punctual Subsequent Payment at the same rate Whereas the Whole Rent that the Complainants allows for upwards of Six years and Eight Months is only One hundred and Sixty

Sixty One Pagodas of which it Appears that he was Obliged to expend Fifty Pagodas in Repairs so that the whole he really Offers to your Petitioner is One hundred and Ten Pagodas at the same time that he charges to your Petitioner for Interest the Sum of Five hundred and Sixty Pagodas

Seventhly ..... Because of the Number of People Amounting to Forty or Fifty which it Seems the Complainant entertained at his House it may be presumed as Arbitrations were so much wanted many of them paid him rent or some other Equivalent for the Same

To which said Appeal the above named Respondent did put in his Answer and therein principally rested his Defence upon the Establishment of the Agreement to pay only Two Pagodas a Month for the House which your Petitioner has shewn was supported but by one Witness and that a very Suspicious one and your Petitioner has proved a Number of Concurrent Circumstances all Incompatible With Such an Agreement and therefore proving

proving in as express a Manner as a Negative can be proved that he did not Agree thereto.

The Respondent pretended to say also that the House was not Worth the Sum of Seven hundred Pagodas for Which it was Mortgaged tho he admitted he had repeatedly Offered Six hundred and fifty Pagodas for its purchase he intimated also that Houses were not Let at higher prices in the Town of Madras during the late War with Hyder Ally than in time of Peace though many of your Petitioners Witnesses prove expressly the Contrary and the Fact is too Notorious to be Doubted as the Whole Country was then in the possession of the Enemy and its Inhabitants had no other Place Whereto they Could fly for Shelter he says too that the Offer of a much higher Rent specifically Charged to have been Made by his Highness the Nabob and proved by your Petitioners Witnesses is not to Credited and that he could prove had he thought it Necessary that he did not entertain in the House he rented from your Petitioner for several

Months

Months During the height of the War near Fifty Different People of his Relations Friends or dependants

The Respondent also Stated that your Petitioner in his Answer had not Denied the quantum because the Expression Made use of by your Petitioner is that he Cannot admit Which your Petitioner submits to be as much a Denial and was intended to be as fully so as Words can Make it for Whatever is not admitted must certainly be denied The Respondent also in his Answer rested much upon the Equity of the Case tho its is Obvious that the Equity is Clearly Against him being simply an Allowance of only Two Pagodas a Month for that property for Which he repeately Offered a Sum of Money Which would have produced Six and half Pagodas a Month your Petitioner therefore Most humbly presumes that it is but reasonable that either the rent should be made higher or that the Rate of Interest should be lowered so as to Make them equal or at least More upon an equality than the Respondent admits them to be and upon this

equitable

Equitable Ground he fully trusted that the said
Court of Appeals would have reversed the said Decree
of the said Mayors Court or have given him some other
Relief as his hand Case Aught require But your
Petitioner Sheweth that when the said Cause came
on to be heard before the said Court of Appeals on
Saturday the tenth day of this Instant December
the said Court of Appeals thought fit to Order and
Decree and did Accordingly Order and Decree
that the said Decree of the said Mayors Court
should stand affirmed as by the said Original Decree
herewith lodged may Appear by Which said Decree
your Petitioner Considers himself much aggrieved
and most humbly begs leave to Appeal therefrom
to your Most Excellent Majesty in Council for
the several Reasons above Stated as well as upon
the General Equity of your Petitioners Case and
therefore as well as for such other Reasons as may
be offered at the Hearing your Petitioner most
humbly prays your Most Excellent Majesty in
Council

Council to reverse the said Two several Decrees of
the Mayors Court and Court of Appeals at
Madraspatnam and to Order and Decree that the
said Complainant shall deliver up unto your Petitioner
his said three several Bonds to wit his said Bond
for Seven Pagodas and the said two several Bonds
of One hundred Pagodas each with a full acquittal
and Discharge thereon on your Petitioners paying unto
the Complainant the said Sum of Eighty two star
Pagodas Three Fanams and Eight Cash as Confessed
by your Petitioner in his said Answer to be due unto
the said Complainant and that the said Complainant
may be Decreed to pay all Costs of the Mayors
Court at Madras Which have accrued since
your Petitioner filed his said Answer as also
all Costs of the Court of Appeals at
Madras together with such as may be incurred
by this Appeal to your Most Excellent Majesty
in Council and your Petitioner most
humbly prayeth such further Relief as to
your

Your Most Excellent Majesty in Council may
Seem meet.

/Signed/ Stephen Popham
Solicitor for Appellant

Court of Appeals

Court of Appeals at Madraspatnam } Saturday the 10th day of December Anno Domini 1791

Between Saulapaukum Trevengada Pillah of Madras Inhabitant — Appellant and Kristnah Pillah of Madras Inhabitant by his Attorney Charles Pereyra of the Same place 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 Tuesday the 20th day of October Anno Domini 1789 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

think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court dostand Affirmed and that the Appellants Petition be hence Dismissed with Costs

Hur

/ Signed / Chas. N. White
Clk

To the Honorable John Hollond Esquire

President in Council

Fort St. George

In the Honorable the Court of Appeals at Madraspatnam

Between Formanum —
Arnachellum Moodelly of
Madras Inhabitant Complainant
and James Taylor George Moubray
Thomas Cockburn and Josias
Du Pre Porcher Executors
named in the last Bill and
Testament of George Savage
Deceased Defendants

The Humble Petition and Appeal of the above named James Taylor George Moubray Thomas Cockburn and Josias Du Pre Porcher

Sheweth

That the above named Complainant died on the fourth day of November which was in the year of our Lord One thousand Seven hundred and Eighty eight

Filed in my Office
the 9th December 1789
Chas N White
Clk

file

file his Bill of Complaint in the Mayors Court against the above named George Savage who was then During for the Recovery of the Sum of Eighteen thousand Six hundred and ten Pagodas and thirteen fanams Current Money of Madras Charged to be due on the Bond of the said George Savage Copy whereof together with an Account Current are Annexed to the Complainants Bill of Complaint To which said Bill of Complaint the said George Savage Appeared by his Attorney and after certain Rules had issued for him to Answer the said Bill of Complaint he duly filed his Answer on Record and did thereby set forth that he and James Taylor and James Call now of Fort Saint George Senior Merchants in the Service of the united Company of Merchants of England trading to the East Indies and also Andrew Magendie late also Senior Merchant in the said Service and since Deceased have been for several years back jointly interested in Certain Money Transactions or Dealings under the Name of the Concern Which said Concern

is

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 to Liquidate at present nor Could they even venture to fix a Period When such Liquidation Would take Place because as the said Concern had Claims on his Highness Wan Law Jan Vzr 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 on the same Event and the said George Savage did further in his said Answer set forth 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 and distinguished by the Name of the New Consolidated Debt and as a

Considerable

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 the said George
Savage could not nor could the said Concern from
any Accurate State of the Ultimate Situation of
such Concern and that it was therefore out of the
Power of the said George Savage to give to the
Complainant any precise Satisfaction respecting the same
and that he could not therefore ascertain the time
when he should be able to Discharge any private
Claims on him individually except as far as he might
be able so to do from his own individual Funds and
the said George Savage did further set forth that the
said Concern do Conceive themselves bound by law to
pay off all 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

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 individually Debts or in such other
Manner as to them individually should seem Meet
The said George Savage did also set forth that as
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 www
Law Jaw Nabob of the Carnatic and his several
Creditors and in such a Manner as was Consistent
With his Highnesses Finances and Resources after
the heavy Expences he had incurred by a Long and
Calamitous war in the heart of his Country so
his Creditors Who are Sufferers by Such Interest
had a Claim of Similar Indulgence from their

Creditors

Creditors at large by moderating the rigor of the Law and giving time till by a Restablishment of the publie resources of his Highness the Nabob he shall have Discharged his Debts and the said Concern as well as his Creditors at Large be thereby enabled to Discharge their several Obligations and the said George Savage did further setforth that the said Concern hath a greater Right to the Moderation and Indulgence of their respective Creditors than any other Creditors of his said Highness the Nabob by reason of the Assistance given by the said Concern towards the Relief of his said Highness in his political Exigencies the said George Savage therefore humbly Submitted to the Consideration of the said Mayors Court Whether the Complainant should receive any greater Interest than six per Cent upon such original Claim as he should prove to have upon the said George Savage and the said George Savage further said that he hopes the said Mayors Court would postpone any further Proceding in this Cause to such future

time

time as might enable the said George Savage to discharge all his individual as well as Partnership Debts the Period of which Indulgence he submitted to the said Court and that he was the more encourraged in the hop of a benign Attention from the said Court to the peculiar Circumstances of his Situation Because the Lord Chancellor of Great Britain had 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 the Lands was much below their real and intrinsic Value which Case the said George Savage Submitted was not so forciable as the said George Savages Whose Distresses in part originated from the liberal Attention jointly With his other Partner in the said Concern to the Public and General Weal To Which said Answer the Complainant filed his Replication and did thereby Among other Things insist that the said George

Savage

Savage was indebted unto him in the said Sum of Eighteen — thousand six hundred and ten Pagodas and thirteen fanams and did further set forth that it was nothing to the — Matter in Agitation before the said Court whether the — said George Savage was engaged with the said James Taylor and James Call or any other Gentlemen in certain Money — Transactions or Dealings under the name of a joint or other Concern or whether such Concern was indebted unto divers — Persons in very Considerable Sums of Money and the said Complainant did further in and by his said Repliscation set forth many other evasive Matters Which the said — George Savage did not nor doth your Petitioners by any Means admit To which said Replication the said George Savage filed his Rejoinder wherein he stated that if there be any Case wherein a Debtor had a Claim for the Indulgence of a Court of Justice to moderate the Rigor of the Law by giving time for Payment of his Debt that the said George Savage had Such Claim Against the Complainant for the said George Savage said that he hath had Money Transactions with the

Complainant

Complainant so far back as the year of our Lord one thousand Seven hundred and Seventy eight that on the Balance of such Transactions the Principal Sum which the said George — Savage owed the Complainant on the twenty fourth day of April which was in the year of Our Lord one thousand seven hundred and Seventy Six was Six thousand Star Pagodas and that the said George Savage paid the Interest thereon — up to the twenty fourth day of April in the year of our Lord One thousand Seven hundred and Seventy seven and that — previous to his embarking for Europe Which was on the fifth Day of July in the said year he desired the — Complainant to recive the Principal of his Bond Which he refused the said George Savage further stated that the Complainants present Demand had arisen from an — Annual Renewal of the Bond adding the additional Interest every year and that had his Demand been Charged at simple Interest it Would have stood as follows to wit —

1777. 24th April — Principal		6000
1789. 24th April — Int.		8640
		14640

Whereas

Whereas his Claim is now Accumulated by such compound Interest as before stated to Pagodas Eighteen Thousand Six hundred and ten and thirteen fanams besides Interest thereon from the thirty first day of July Which was in the year of Our Lord One thousand Seven hundred and Eighty eight to which said Rejoinder the Complainant from a Seditious Spirit filed a Surrejoinder and did therein pretend that the said George Savage was highly irregular in bringing forward in his said Rejoinder a Statement of his Account with the Complainant in Order to Claim a Relief in the present Action as such Statement if any had ever existed Should have been Setforth in the answer of the said George Savage to the Complainants Bill of Complaint and not at the Close of Proceedings that new Matter was to be Suggested and the said Complainant did further in his said Surrejoinder Among other things Deny the Offer Which was made by the said George Savage to the Complainant to pay the Principal of his said Bond to which said Surrejoinder the said George Savage filed a Rebutter Supporting the Several

Several Matters and things Mentioned in his said Rejoinder that upon the above proceedings Issue was Joinder and two Witnesses examined by the Complainant upon Which Publication passed and the said Cause was Set down for hearing and your Petitioners Shew that in the Interim that is to Say on the Tenth Day of August last the said George Savage Departed this life but previous to his Death he duly Made and published his last Will and testament Whereof he Appointed your Petitioners his Executors Who have Duly proved the Same in the said Mayors Court and Obtained probate thereof your Petitioners Shew that the said Cause hath been Since received by the Complainant and that on the twenty fourth Day of November last the said Cause came on to be heard by and before the said Mayors Court Who were pleased its Order and Decree and did Accordingly Order and Decree that your Petitioners Should pay unto the Complainant out of the Estate and Effects of the said George Savage Deceased the Aforesaid Sum of Eighteen thousand Six hundred and ten Pagodas and thirteen

fanams

fanams together with all Such Interest as then was or should thereafter become due thereon until 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 Complainant has no right Whatever to a preference of the other Creditors of an equal Degree and because he well know the actual Situation of the said George Savage and of the said Concern to be Such as has been above Setforth for which Reasons the Complainant ought not to have attempted to put the said George Savage at the Expence of a Suit at Law from a principal which does not Carry with it an equal Justice to the other Creditors in equal Degree of the said George Savage

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

of an Act of Parliament of his Present Majesty and done on principles of fair Justice to his said Highness Ware Law Jaw &c.a 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 Expense he had incurred by a long a 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 Reestablishment of the publick resources of his Highness the Nabob Shall have enabled him to Discharge his Debts and thereby enable the estate of the said George Savage and the said Concern to Discharge their Several Obligations to their Respective Creditors the more so as the Same were incurred by the Afsistance given by the said Concern towards the relief of his said Highness the nabob in his Political Exigencies

Thirdly Because the Lord Chancellor of Great

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 Redumption on Mortgaged Estates while the war raged and the price of Lands was much below their real and Intrinsic Value which Case your Petitioners as Executors of the said George Savage Submit is not so forcible as that of the said George Savage Whose Distresse had in part Originated as aforesaid from his Liberal Attention to the public and General Weal

Fourthly ..... Because the said George Savage died so late as in the Month of August last and your Petitioners did not obtain Probate of his Will until the Month of September last and as the Concerns of the said George Savage are numerous and extended and as your Petitioners believe there are Bond Creditors of the said George Savage not resident at Madras and Who have not ~~not~~ yet been informed of his death so as to lay in their Claims and Moreover as your Petitioners Cannot ascertain Whether the estate of the said George Savage is Solvent or insolvent all which the Complainant well knew your Petitioners humbly Conceive that the Complainant is not entitled to a preference of the other Creditors of equal Degree of the said George Savage and that your Petitioners might incur a personal responsibility under the knowledge they already have Acquired of the Involved State of his Affairs as well as from their embarrassed State as Setforth by the said George Savage in his said Answer to the Complainants Bill if your Petitioners were to permit the said Complainant to Seeze by an Execution Such property as may be Wether the Jurisdiction of this Honble Court to the prejudice of the other Creditors of the said George Savage of Equal Degree With the Complainant.

For all Which Reasons and Such others as may be offered at the hearing your Petitioners as the Executors of the said George

George Savage Most humbly
Pray that the Decree of the
said Mayors Court be reversed
with Costs of Suit to be paid
by the Complainant.—

/Signed/ Stephen Lipham
for Sapper

Mayors

Mayors Court at Madraspatnam } Tuesday the 24th day of November Anno Domini 1789.

Present

William Webb Esquire Mayor
Vincentio Corbett — Andrew Ross
and Henry Chichley Michell —
Aldermen

Between Termanum —
Arnachellum Moodelly of
Madras Inhabitant Complainant
and James Taylor George Moubray
Thomas Cockburn and Josias
Du Pre Porcher Executors
named in the Last Will
and Testament of George Savage
Deceased Defendants —

This Cause Coming on to be heard and
presence of the Attornies on both sides on Reading the
Debated this day in the Complainants Bill with Copys
of a Bond and an Account Current Annexed The
Defendants

Defendants Answer, The Replication The Rejoinder
The Surrejoinder The Rebutter the Interrogatories and
Depositions on the part of the Complainant with a
Bond Annexed the Bill of Revivor of the Complainant
On Hearing the Pleadings made use of by the
Attornies and on due Consideration 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 George Savage Deceased the full and Just
Sum of Eighteen Thousand Six hundred and Ten
Pagodas and thirteen Fanams / Pagodas 18610.13. /
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

Hur
Signed / George Taylor
Dotty Regr

To the Honble John Holland Esquire
President in Council
In the Honble the Court
of Appeals at Madraspatnam

Between Ternanum Arnachellum
Moodelly of Madras Inhabitant
Complainant and James Taylor
George Mowbray Thomas Cockburn
and Josias Du Pre Porcher
Executors named in the Last
Will and Testement of George
Savage Deceased Defendants

The answer of the abovenamed Ternanum
Arnachellum Moodelly to the Petition and Appeal of the
above named James Taylor George Mowbray Thomas
Cockburn and Josias Du Pre Porcher Executors named
in the Last Will and Testament of George Savage
Deceased.

Filed in my Office the 23. January 1770.
Chas. N. White Clk

This Respondent admits that he did
on

on the Fourth day of November which was in the
year of Christ One thousand Seven hundred and Eighty
eight file his Bill of Complaint in the Honble the mayors
Court against the above named George Savage Who was
then living for the Recovery of the Sum of Eighteen
thousand Six hundred and Ten Pagodas Thirteen fanams
Current Money of Madras Charged to be due on the Bond
of the said George Savage Copy whereof together with an
Account Current were annexed to this Respondents Bill
of Complaint and this Respondent Also admits that
the said George Savage did during his life time appear
by his Attorney at Law to the said Bill of Complaint
and after Certain Rules had issued for him to answer
thereto he did put in his Answer to the said Bill and
did thereby Set forth that he the Said George Savage
James Taylor and James Call Men of Fort Saint George
Senior merchants in the Service of the United Company
of Merchants of England Trading to the East Indies
and also Andrew Anajendic late also Senior
Merchants in the said Service but Since Deceased
had

had been for Several years back Jointly interested in
Certain Money Transaction or Dealings under the name
of a Concern and that Such Concern was then indebted
unto Different Persons in very Considerable Sums of
Money which it was not in their Power then to
liquidate nor could they even venture to fix a Period
when such Liquidation would take Place because as
the said Concern had Claims on his Highness
Wawlajah Nabob of the Carnatic to the Amount
of Several Lacks of Pagodas the Payment where
of Althe then in a Train of Settlement under the
Sanction of an Act of Parliament must Depend on
the Continuance of Peace in the Carnatic Competency
of the said Concern to Settle with their Creditors
must in like Manner Depend on the Same event
and this Respondent admits that the said George
Savage did further in his said Answer Set forth that
as the Interest of Twelve per Cent at Which the
Debts of the Said Highness the Nabob did formerly
Run was Reduced to Six per Cent on all Such as were
included

included in that Species of Debts Commonly Known
and Distinguished by the name of New Consolidate Debts
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 owe by the said
Concern were at an Interest of Twelve p Cent the
said George Savage could not nor could the said Concern
from any Accurate State of their Ultimate Situation
and that it was therefore out of the Power of the said
George Savage to give to this Respondent any Presice
Satisfaction respecting the same and that he could not
therefore Ascertain the time when he should be able
to Discharge any private Claims on him individually
Except as far as he might be able so to do from his
own individual funds and this Respondent also
admits that the said George Savage did further
setforth that the said Concern did Conceive themselves
bound by Law to pay off all the Debts of the
Concern from such funds as were for that purpose

in

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 Should have been
fully Discharged then and not before the partners thereof
had individually aright each to his Separate Share
of the Surplus funds and may individually Apply
the same to the Payment of their Separate and individually
Debts or in Such Other Manner as to them individually
Should Seem Meet and this Respondent further
Admits that the said George Savage did also setforth
that as the Arrangement above made for the Reduction of the
Interest on the New Consolidated Debts 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 Wawlajah Nabob of
the Carnatic and his Several Creditors in such
Manner as was Consistent With his Highnesses finances
and Resources after the Heavy Expence he had incurred
by a long and Calamitous War in the heart of

his

his Country & his Creditors Who were Sufferers by
such Reduced Interest had a Claim of Similar —
indulgence from their Creditors at Large by moderating
the rigor of the Law and giving time till by Restablishment
of the Publick Resources of his Highness the Nabob
he should have Discharged his Debts and the said —
Concern as well as his Creditors at large be thereby —
inabled to Discharge their Several Obligations and the
said George Savage did further Setforth that the —
said Concern had agreater right to the Consideration
and indulgence of this respective Creditors then any
other Creditors of his said Highness the Nabob by
reason of the Assistance given by the said Concern
towards the Relief of this said Highness in his —
Political exigences and this Respondent does further
admit that the said George Savage did therefore
humbly Submit to the Consideration of the —
said Mayors Court Wether this Respondent —
Should receive any greater Interest then Six

Vbent

Vbent upon such Original Claim as he should prove
to have upon the Said George Savage Who further —
Sayed that he hoped the said Mayors Court would —
Postpone any further Proceedings in the Cause to such
future time as might enable the said George Savage
to Discharge all his individual as well as partnership
Debts the Period of Which indulgence is Submitted to
the said Court and that he was the more encouraged —
to hope for such benign Attention from the said Court
to the Peculiar Circumstances of his Situation —
because the Lord Chancellor of Great Britain had
Set an Example of the Like Clamency and on —
Similar During the General Distresses of the late
War by Postponing the foreclosure of the Equity of
Redumption on Mortgaged Estates While the war
raged and the Price of Lands was much below —
their real and inlensic Value Which Case the
said George Savage pretended was not so forcible
as the Said George Savages Whose Distresses in
part Originated from the liberal Attention —

Jointly

Jointly with his Other Partners in the said Concern to the Public and General Weal this Respondent admits that to this Answer he did in due time file his Replication and did therein state that not withstanding Any thing Alledged by the said George Savage in his Answer he was really and truly indebted to this Respondent in the Sum of Money Charged in his Bill of Complainant and that in the Manner therein Specified and he did further insist that the said George Savage did not by any means Deny the said Debt but only Sought to evade the Payment of it by involving it with Matters Which were altogether Extraneous and which had no Relation Whatever with the Debt in Question this Respondent further in his Replication Alledged that it was Nothing to the Matter before the Court whether the said George Savage was or was not engaged in the Concern mentioned in his Answer or whether Such Concern was

was or was not indebted to Many Different People in Several Considerable Sums of Money but the Question before this Court was Whether the Defendant was or was not indebted to this Respondent in the said Sum of Eighteen thousand Six hundred and ten Pagodas and thirteen fanams as Charged in the Bill of Complaint Which not being denyed by the Said George Savage was of Course Admitted by him and a full Confession of this Respondents demand This Respondent also in his said Replication insisted much upon the Frivoulousness of the Defence of the said George Savage in Stanting to the Court as a reason for them not give a Decree his own enability to Satisfy the Demand and adding at the Same time that he did not even Know when he should be able to discharge it and yet Requesting the Court to postpone their Decree for a Period of Which he could not himself Ascertain the Limits this Respondent did also insist that what the said George Savage had Suggested respecting the Reduction of the

the Interest on his Highnefses had nothing whatever to do with
the Interest of this Respondents Debt this Respondent further
Sayd in his said Replication that the Sum of Money mentioned
in the Bond for which the Present Suit is brought was really
and bona fide Actually Lent and Advanced by this Respondent
to the said George Savage at his particular request without
any View whatever but that of Obliging the said George Savage
and receiving the legal and Customary Interist and the
Respondent further Sayed that at the time he lent this
Money to the said George Savage the said George Savage was in
no Manner Concerned with the said James Taylor James Call or
with any other Person in any Transactions with his Highness the
Nabob but he did at that time carry on Trade on his Own
Account and for the purposes of such Trade was the money
lent for had the said George Savage been in the least habits
of intercourse with the Durbar or had any Onction with the
Concern thereof This Respondent never would have lent him a
Single Pagoda and he further insisted that had his present
Demand Originated in the Same Manner as many of

the

the Demands on his Highness the Nabob he should not have
thought it unreasonable to have the Interest on it reduced but as
the fact really was and so the said George Savage well knew
that the Money for which the Bond was given was really lent
to him upon his Particular Request and in Order to serve him
and that upon his engagement to pay the Interest therein
Specified he Knows not a Single Reason why he should not
Recover the full Interest which the said George Savage Solimnly under
his hand and Seal engaged to pay and which the Law Allows
him to receive this Respondent also insisted that the decision
of the Lord Chancellor of Great Britain could have no weight
in the Present case as on a Mortgage of Landed Property in
England where the Value pledged is in General double the
Money Lent the Lender therefore runs no risk Whatever and
is not injured by Postponing the Debt Whereas by Selling the
Property at a Price Lower than its real Value the Mortgagor
may be Essentially hurt but the present Case is not
a Mortgage but a Bond no property is here Pledged and
Consequently none to be Sold under its real Value besides
Peace has now been long Established and his Highnefses Debts

are

are fast Paying off the Decision of my Lord Chancellor in
England is Stated to have been in the Midst of the late War
Ten or Twelve year Since and therefore in no One instance —"
either in time in Place or in any Single Circumstance is it —"
Applicable to the Present Case and for these Reasons this —"
Respondent insisted that he was fully intitled to the whole
Money Sued for both Principal and Interest and as the said
George Savage had not and indeed Could not Pretended to
Deny the Debt he prayed a Decree for the Same with —"
Intrest and Costs of the Suit this Respondent further —"
Admits that to this Replication the said George Savage
filed his Rejoinder in which he Attempted to set up a —"
Charge of Compound Interest and to Open an Account
of Twelve or thirteen years Standing but as the Same was
not Supported by a Single Witness nor by the Oath of the
said George Savage it is not Necessary here to take any notice
thereof tho the Answer if necessary is perfectly plain for
as the Account it is Admitted was Settled and a —"
New Bond given for the balance of Such Account every

thing

thing in the former Account was done away by the Consent —"
of the said George Savage When he executed the said Bond and
this Respondent can no way be Accused of having Demanded
any thing but what he is Justly entitled to that is to Say the
Principal Money mentioned in the said Bond and the —"
Interest that has accrued thereon and it would be hard indeed
if upon a Persons borrowing a Sum of Money and keeping it
for several years without paying the Interest the Lender was
not at Liberty to take a New Bond for the Principal and
Interest due and this Respondent further Admits that to
this Rejoinder this Respondent did file a Surrejoinder but
not from a Litigious Spirit as is Suggested by the —"
Appellants but because the said George Savage had in his
Rejoinder introduced Several New Matter Which were not
Noticed in his Answer and this Respondent also admits
that he did in his said Surrejoinder insist upon the —"
irregularity of the said George Savage introducing such
New Matter as he had not taken Notice of it in his
Answer and also that he did therein deny that any
Offer was ever Made by the said George Savage to

him

him to pay the Principal Money of the said Bond and did thereon State many reasons why this Respondent would gladly have recived the Money had it bun offered him but as the said George Savage did not think fit to Support what he Asserted in his Rejoinder by any proof What ever it is needless here to make any further remark thereon and this Respondent also admits that to this Surrejoinder the said George Savage did file a Rebutter but no further Supporting the matter and things mentioned in the Rejoinder than by meerly repeating them the Same being a General Paper and upon this Proceedings this Respondent Admits that issue was joined and two Witnesses were Examined on the part of this Respondent Who fully proved the due Execution of the Bond in their presence but no Witness was Examined on the part of the said George Savage the Several Rules passed for that purpose and he had every Opportunity of proving the Several Allegation Contained in his Answer and Rejoinder had he chosen to have done so

and this Respondent Admits that Publication having passed the said Cause was Set down for hearing but in the Interim the said George Savage having departed this life and having previously Appointed the Appellants as Executors Who Obtained Probate of his Will the said Suit was revived by this Respondent Against the said Appellants Who having Appeared to the Suit the same did on the Twenty fourth day of November last come on to be heard before the said Mayors Court who pleased to order and Decree and did Accordingly order and Decree that the Appellants should pay unto this Respondent out of the Estate and Effects of the Said George Savage the Sum of Eighteen thousand Six hundred and ten Pagodas and thirteen fanams with all such Intrest as then was or should thereafter become due thereon untill full Payment was made and also Costs of Suit and this Respondent insists that Such Decree so far from being Contrary to the Principles of Substantial Justice as is Strongly pretended by the Appellants is in fact the only Decree that Could with the least Shadow of Justice begiven in the Suit it Could not

not possibly Consistent with Principles of Justice be given Otherwise unless it had Added Exemplary Costs to be paid by the Appellants for the Manifest Attempt that has been Made thro out the Whole Procedings to provastinate the Suit and to Offord Some feeble Ground to found their present Appeal to this Honble Court and from thence to Appeal it to England for Which the Appellants Can have no real Reason Whatever and in Answer to the Several Reasons Suggested by the Appellants this Respondent Says

That in regard to his having no right to a preference to the Other Creditor of the said George Savage of an Equal Degree this Respondent Says that no Notice is taken in the Answer of the said George Savage or in any Other of the Papers filed by him of his having Other Creditors and therefore it is not regular for the Appellants to Suggest the same as a Reason in their present Appeal but even if it had been taken Notice of in the Procedings it has no Relation to his Demand he can not be Supposed to know that there

there are any Other Creditors and if there are they have as
all
of them the Same Opportunity of Seeking their Debts that he has and if they Neglected or do not Choose to Apply for Payment it Can be no Reason that he Should do the same as their Necessity may not perhaps be so ~~Pressant~~ urgent or the Sums due to them of Such Consequence as the Subject of the Present Suit is to this Respondent and in regard to the Second Reasons Suggested this Respondent Says

That this Respondents Debt was Contracted with his Highness the Nabob and therefore he could not be affected With any Arrangement that he has Made that Moreover the said George Savage did lay So little Stress upon the Several facts that are Stated in his Answer that he did not think it Worth his While to adduce any Testimoney in Support of it and in Reality it is so very Frevolous that as Scarcely to bear a Serious Consideration and plainly points out the Object Intended by it namely Some Shallow Ground to build an Appeal upon and thereby Decree off the Payment of a Debt the Justness Whereof he could not pretend to deny this

Respondent

Respondent further Saith

That in regard to the third reason respecting the Decease of the Lord Chancellor of Great Britain it has been fully replyed to already in this his Answer and it need not here be repeated that the Case Determined in England and the present one differs in every particular of time and Place and Circumstance the present is not a Debt upon Mortgage but upon a Bond we are not now at war but have been long at Peace and it is well known that the Nabobs Debts which are stated as the Pretended ground for Delay are now fast paying off and Particularly that part of it of which the Concern Alluded to by the Appellants is said to have a Considerable Share and this Respondent Says.

That in regard to the fourth reason If the said George Savage had made any Alteration in the matters to be Determined by the Mayors Court the Appellants when they Appeared to the Bill of Revivor should have Shewn it as a Cause why the Suit Should not stand Revived and have Examined Witnesses in support thereof and as they have not done so but did Consent upon their Appearance that the Suit should Stand Revived upon the Proceedings then before the Court

Court it is to be presumed they were perfectly Satisfied that the Cause Should be heard upon these Proceedings and the whole that is now Suggested is meerly an after thought at any rate he did it not Appear before the Court at the Hearing of the Cause and therefore Could not any way affect the Decree nor can it Affect an appeal from such Decree nor do the Appellants really Expect it should but it is meerly Suggested like all their other Reasons to hold up Some little Shew of Argument to Colour Over the Procrastination they are really Aiming at

And Lastly this Respondent Says that his Demand being a plain Simple and undisputed Debt Acknowledged by the Solemn Act and Seal and Signature of the Said George Savage to the Said Bond and such Bond being proved by Two Witnesses to have been Duly Delivered and Executed for the purposes the Bond Expresses and the Same being Moreover Admitted by the said George Savage in his life time who did not Attempt to adduce any Proof Whatever either by Writing or by Witnesses of the Defence Set up in his Answer and Rejoinder it follows of Course that the Mayors Court could not possibly pass any other Decree than what they have Done that is to Say the Payment of a Debt which had been proved by this Respondent and

Respondent and was admitted by the said George Savage in his life time to be justly and truly due—

For all which reasons and such others as may be offered at the Hearing this Respondent humbly prays that the said Decree of the Said Mayors Court may be Affirmed and he also humbly trust that to mark their Displeasure at so Evident an attempt to Procrastinate the Payment of so Just a Debt this Honble Court will be pleased to Sett the Appellants with such Exemplary Costs as they in their Wisdom may think Meet—

/Signd/ L. Walker
Solicitor for Respt

Court

Court of Appeals at Madraspatnam

Saturday the 30th day of December Anno Domini 1791—

Between James Taylor, George Moubray Thomas Cockburn and Josias DuPre Porter of Fort St George Esquires Executors named in the last will and Testament of George Savage Deceased Appellants and Sermanum Arnachellum Moodely 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 Tuesday the 2d day of November Anno Domini 1789— 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

the Mayors Court do stand Affirmed and that the
Appellants Petition be hence Dismissed with Costs.

Hur,

/Signed/ Chas. N. Whites
Clk.

To the Kings Most Excellent Majesty in Council

Between Seroomanum Arnachellum
Modley of Madras Inhabitant
Complainant and James Taylor
George Moubray Thomas Cockburn
and Josias Dutre Porcher Executors
named in the Last Will &
Testament of George Savage Deceased
Defendants

The Humble Petition and appeal of the above
named Defendants

Most Humbly Sheweth

That the above named Complainant did on
the fourth day of November Which was in the year of Our Lord one
Thousand Seven hundred and Eighty Eight file his Bill of Complaint
in the Mayors Court at Madraspatnam Against the above named
George Savage who was then living for the Recovery of the Sum
of Eighteen Thousand Six hundred and ten Pagodas thirteen
Fanams Current Money of Madras Charges to be due on the Bond

Filed in my Office
the 23 Dec. 1791
Chas N White
Clk

of

of the said George Savage Copy whereof together with an Account Current are annexed to the Complainants Bill of Complaint To which said Bill of Complaint the said George Savage Appeard by his Attorney and after Several Rules had Issued for him to answer the said Bill of Complaint he duly filed his Answer and did thirby setforth that he together with James Taylor and James Call now of Fort St. George Senior Merchants in the service of the united Company of Merchants of England trading to the East Indies and also Andrew Majendie late also Senior Merchant in the said Service and since Deceased have been for several years backt Jointly interested in Certain Money Transactions or 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 to liquidate at present nor Could they even Venture to fix a Period when such liquidation may take Place because as the said Concern hath Claims on his highness waw Low Jew Wazeer 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 Continuation of Peace in the Carnatic the Compentency of the said

said Concern to settle with their Numerouse Credetors Must in like manner Depend on the same Event and the said George Savage did further in his said Answer setforth 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 and 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 the said George Savage; Could not nor could the said Concern from any Accurate state of the ultimate Situation of such Concern and that it was therefore out of the Power of the said George Savage to give to the Complainant any precise Satisfaction respecting the same and that he could not therefore Ascertain the time when he should be able to discharge any private Claims on him individually except as far as he might be able so to do from his own individual Funds and the said George Savage did further Setforth that the said Concern do Conceive themselves bound by Law to pay off all the Debts of the Concern from such Funds as are for that purpose in their Custody posession

or

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 separate share of the
Surplus Funds and may individually Apply the same to
the Payment of their separate and individually Debts or in
such other Manner as to them individually shall Seem meet
the said George Savage did also set forth that as 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 Wauw Law Jaw
Nabob of the Carnatic and his Several Creditors and in such
a Manner as was Consistent with His Highness Finances
and Resources after the heavy Expences he had incurred
by a Long and Calamitous War in the heart of his
Country so his Creditors Who are Sufferers by such reduced
Interest had a Claim of Similar Indulgence from their
Creditors at large by Moderating the rigor of the Law
and giving time till by a Establishment of the publick resources
of his Highness the Nabob he shall have discharged his Debts
and the said Concern as well as his Creditors at large be thereby
enabled to Discharge their Several Obligations and the said George
Savage did further set forth that the said Concern hath a greater Right
to the Moderation and indulgence of their respective Creditors
than any other Creditors of his said Highness the Nabob
by reason of the Assistance given by the said Concern towards
the relief of his said Highness in his political Exegencies
the said George Savage therefore humbly Submitted to the
Consideration of the said Mayors Court Whether the
Complainant should receive any greater Interest than
Six per Cent upon such Original Claim as he should prove
to have upon the said George Savage and the said George
Savage further Stated that he hoped the said Mayors Court would
postpone any further Proceedings in this Cause to such
future time as Might enable the said George Savage to
Discharge all his individual as well as Partnership
Debts the Period of Which indulgence he submitted to
the said Court and that he was the more encouraged in
in the

the hope of a Benign Attention from the said Court to the peculiar Circumstances of his Situation Because the Lord Chancellor of Great Britain had 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 Mortgage — Estates While the war rages and the price of Lands — was much below their real and Intrinsic Value which Case the said George Savage Submitted was not so forcible as that of the said George Savage Where distresses — Originated in part from the liberal Attention which he jointly with his other Partners in the said Concern had Shewn to the Public and General Weal — To which said Answer the Complainant filed his Replication and did thereby among other things insist that the said George Savage was Indebted unto him in the said Sum of Eighteen thousand Six hundred and Ten Pagodas thirteen Fanams and did further Setforth that it was Nothing to the Matter in agitation before the said — Court Whether the said George Savage was ingaged with

the

the said James Taylor and James Call or any other Gentleman in Certain Money Transactions or Dealings under the Name of a Joint or other Concern or wether such Concern was indebted unto divers Persons in very Considerable Sums of Money and the said Complainant did further in and by his said — Replication Setforth many other evasive Matters Which the said George Savage did not nor doth your Petitioner by any Means admit To which said Replication the said George Savage filed his Rejoinder Wherein he stated that if there be any Case wherein a Debtor had a Claim for the Indulgence of a Court of Justice to Moderate the Rigor of the Law by giving time for Payment of his Debt that the said George Savage had such Claim against the Complainant for the said George Savage said that he hath had Money Transactions with the — Complainant so far back as the year of Our Lord one thousand Seven hundred and Seventy Eight that on the Balance of such Transactions the Principal Sum Which the said George Savage owed the Complainant on the Twenty fourth day of April — Which was in the year of our Lord One thousand Seven hundred and Seventy Six was Pagodas Six thousand and that the said

George

George Savage paid the Interest thereon upto the Twenty fourth day of April which was in the year of our Lord One thousand Seven hundred and Seventy Seven and that previous to his Embarking for Europe which was on the fifth day of July in the said last Mentioned year he desired the Complainant to receive the Principal of his Bond which he refused the said George Savage further stated that the Complainants present Demand had arisen from an Annual Renewal of the Bond adding the additional Interest every year and that had his Demand been Charged at Simple Interest It would have Stood as follows to wit

1777.	24. April	Principal	6000
1789.	24. April	Interest	8640
			14.640

Whereas his Claim is now Accumulated by such Compound Interest as before Stated to Pagodas Eighteen thousand Six hundred and Ten Thirteen Fanames besides Interest thereon from the thirty first day of July which was in the year of our Lord One thousand Seven hundred and Eighty Eight

To which said Rejoinder the Complainant from a Religious Spirit filed a Surrejoinder and did therein pretend that

that the said George Savage was highly irregular in bringing forward in his said Rejoinder a Statement of his Account with the Complainant in Order to Claim a Relief in the present Action as such Statiment if any had ever existed Should have been setforth in the Answer of the said George Savage to the Complaenants Bill of Complaint and not to suggest such new matter at the Close of Procedings and the said Complainant did further in his said Surrejoinder among other things deny the offer which was made by the said George Savage to the Complainant to pay the Principal of his said Bond To which said Surrejoinder the said George Savage filed a Rebutter Supporting the several Matters and things mentioned in his said Rejoinder that upon the above Procedings Issue was Joined and two Witnesses Examined by the Complainant upon which publication passed and the said Cause was set down for hearing and your Petitioners shew that in the Interim that is to say on the Tenth day of August last the said George Savage departed this Life but previous to his Death he duly Made and published his last Will and Testament whereof he Appointed your Petitioners his Executors Who have duly proved the same in the said Mayors Court

Court and Obtained Probate Thereof your Petitioners shew that the said Cause hath been since revived by the Complainant and that on the Twenty Fourth Day of November last the said Cause came on to be heard by and before the said Mayors Court who were pleased to order and Decree and did " Accordingly Order and Decree that your Petitioners should pay unto the Complainant out of the Estate and Effects of the said George Savage Deceased the aforesaid Sum of Eighteen Thousand Six hundred and thirteen Pagodas and thirteen " fanams together with all such Interest as then was or " thereafter become due thereon untill full Payment was made also all Costs of the Suit—

From Which said Order and Decree of the said " Mayors Court your Petitioner did Appeal to the Court of Appeals at Madras as they Conceived the said Decree to be Erroneous and Contrary to the principles of Substantial Justice for the following among other Reasons—

Firstly ..... Because the Complainant has no Right " Whatever to a preference of the other Credetors of equal " Degree and because he well knew the Actual Situation of

of the said George Savage and of said Concern to be such as has been above Setforth for which Reasons the Complainant ought not to have Attempted to put the said George Savage at 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 George Savage—

Secondly ..... Because the Arrangement above made for the Reduction of the Interest on the New Consolidated Debt was so made under and by Vertue of an Act of Parliament of his Present " Majesty and done on Principles of fair Justice to his said Highness Waw Law Jaw &c. the Nabob of the Carnatic and his several Creditors and in such a Manner as was consistent with the Situation of his Highness Finances and Resources after the heavy Expence he had incured 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 Reestablishment of the Public Resources of his Highness the Nabob shall have enabled him to Discharge his Debts and thereby enable the Estate of the

the said George Savage and 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 the Nabob in his Political Exigencies

Thirdly ..... 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 Mortgage Estates while the war raged and the Price of Lands were much below their real and Intrinsic Value which Case your Petitioners as Executors of the said George Savage Submit is not so forcible as that of the said George Savage whose distress had in part originated as aforesaid from his Liberal Attention to the Public and General Weal

Fourthly ..... Because the said George Savage died so late as in the Month of August One thousand Seven hundred and eighty nine and your Petitioners did not obtain Probate of his Will until the Month of September then following and as the Concerns of the said George Savage are numerous and extended and your Petitioners believe there are Bond Creditors of

of the said George Savage not Resident at Madras and who have not yet been informed of his Death so as to lay in their Claims and moreover as your Petitioners Cannot ascertain whether the Estate of the said George Savage may prove solvent or insolvent all which the Complainant well knew your Petitioners humbly Conceive that the Complainant is not entitled to a Preference of the other Creditors of equal Degree of the said George Savage and that your Petitioners might incur a Personal Responsibility under the Knowledge they already have Acquired of the Involved State of his Affairs as well as from their embarrassed State as setforth by the said George Savage in his said Answer to the Complainants Bill if your Petitioners were to present the said Complainant to seize by an Execution such Property as may be Within the Jurisdiction of this Honble Court to the prejudice of the other Creditors of the said George Savage of equal Degree with the

Complainant

Complainant and still more so as the said Complainant hath resisted every offer of Accomodation made by your Petitioners altho such Offers went as far as they could do in Justice to the other Creditors and your Petitioners also gave — frequent Notice to the Complainant of the Expense to which he put the Estate of the said George Savage by — persevering in this Prosecution —

To which said Petition and Appeal the — Complainant did put in his Answer setting forth many evasive matters and things which your Petitioners did not nor do by any means admit and your Petitioners shew that their Petition and Appeal and the Answer of the said Complainant thereto came on to be heard and — Determined on the Fifth day of this Instant December by the said Court of Appeals at Madras who were pleased to Confirm the Decree of the said Mayors Court with Costs of Suit in 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 Procedings had in the

the above Cause in the said Mayors 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 therein — before fully Stated and setforth and made part of this Appeal —

From which said Decree of the said Mayors Court and Court of Appeals your Petitioners most 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 because that by reasons of the present War with Tippoo Sultaun the Resources of the Country are employed to defray the exegencies of the State and therefore your Petitioners as Executors of the said George Savage Cannot by reason thereof expect to receive from his said Highness the Nabob of the Carnatic any part of the immense Sums due

to

to the said George Savage and the other Partners in the said Concern on the said new Consolidated Bonds of his said Highness the Nabob till Peace shall be reestablished for which Reasons and such others as may be offered at the hearing of the Cause — your Petitioners Most humbly pray that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set aside and that all further Proceedings be stayed till Peace shall be reestablished and that His Highness the said Nabob be enabled to pay off part of his said New Consolidated Bonds from the returning Revenues of his Country and your Petitioners pray such further Relief as to your most Excellent Majesty in Council may Seem Meet —

[Signed] Stephen Popham
Lr. for Appellant

Court

Court of Appeals
at
Madraspatnam

Saturday the 10th day of December
Anno Domini 1791 —

Between James Taylor George
Mcubray Thomas Cockburn and Josias
DuPre Porcher of Fort Saint George
Esquires Executors named in the
last will and Testament of George
Savage Deceased Appellants and
Permaum Arnachellum Moodelly
of Madras Inhabitant 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 24th day of November Anno Domini 1789 upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by

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

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To the Kings Most Excellent Majesty in Council

Between Seroamanum —
Arnachellum Moodelly of Madras
Inhabitant Complainant and
James Taylor George Savage —
Moubray Thomas Cockburn and
Josias Dutre Poocher Executors
Named in the Last Will and
Testament of George Savage Deceased
Defendants —

The Answer of the abovenamed Complainant to the Petition and Appeal of the abovenamed Defendants —

This Respondent does admit that he did on or about the Fourth day of November which was in the year of Our Lord One thousand seven hundred and Eighty Eight file his Bill of Complaint against the abovenamed George Savage who was then living for the Recovery of the Sum of Eighteen thousand Six hundred and ten —

Pagodas

Filed in my Office
the 23d January 1792
Chas N. White Clk

Pagodas and thirteen fanams Current Money of Madras and did Charge the same to be due on the Bond of the said George Savage Copy whereof as also of an Account Current this Respondent admits were annexed to his said Bill of Complaint and that the abovenamed George Savage did Appear thereto by his Attorney at Law and that after certain Rules had issued for him to answer this Respondents said Bill of Complaint the said George Savage did put in his Answer thereto and did thereby setforth that he the said George Savage together with James Taylor and James Call of Fort Saint George Senior Merchants in the Service of the united Company of Merchants of England trading to the East Indies and also with Andrew Mojendie late also a Senior Merchant in the Service of the said united Company but since Deceased had been for several years past jointly interested and engaged in certain Money Transactions and Dealings under the Name of the Concern which said Concern was indebted unto different Persons in very Considerable Sums of Money which it was not then in

in their Power to Liquidate nor could they ascertain a Period when such Liquidation would take place because the said Concern had Claims on his Highness Walajah & Nabob of the Carnatic to the Amount of several Lacks of Pagodas the Payment of which altho then in a Train of Settlement under the Sanction of an Act of Parliament must depend upon the Continuance of Peace in the Carnatic and that the Competency of the said Concern to settle with their Creditors must in like Manner depend upon the same Event and this Respondent admits that the said George Savage did further in his said Answer setforth that as the Interest of Twelve per Cent at which the Debts of his said Highness the Nabob did formerly run was reduced to Six per Cent on all that part which is included in that Species of Debt Commonly known and distinguished by the name of the New Consolidated Debt and that as a Considerable Portion of the said Concern on his said Highness the Nabob even of that Description

while

while many of the Debts of the said Concern bore an Interest of 5 per Cent that neither the said Appellants nor the said Concern could from any Accurate Statment of what would be their ultimate and that therefore it was out of the Power of the said George Savage to give this Respondent any precise Satisfaction respecting the same nor could he ascertain at what time he should be able to discharge any private Claims against himself Individually so far as his own Individual Funds would enable him to do and this Respondents does admit that the said George Savage did further state that the abovementioned Concern did Consider themselves bound by Law to pay off all the Debts of the said Concern out of such Funds as even for that purpose in their Custody or Power before they could appropriate such Funds to the Liquidation of the Debts of the Individual Members of the said Concern and that when the Debts of the said Concern were fully Discharged then and not before the Partners therein had

had individually a Right each to his separate share of the Surplus Funds and might Individually apply the same to the Payment of his private and Individual Debts or in such other Manner as to each of them individually might seem meet and this Respondent further admits that the said George Savage did further in his said Answer set forth that as the abovementioned arrangement made for the Reduction of the Interest in the New Consolidated Debt and was so made under by Virtue of an Act of Parliament of his present Majesty and done on Principles of fair Justice to his said Highness the Nabob and his several Creditors and in such a Manner as was consistent with his Highness's Finances and Resources after the heavy Expence he had incurred by a long and Calamitous War in the heart of his Country therefore his Creditors who were sufferers by such reduced Interest had a Claim of similar Indulgence from their Creditors at large by moderating the Rigour of the Law and giving time untill by a Re establishment of the Public Resources

of

of his highness the Nabob he shall have discharged his Debts and the said Concern as well as his Creditors at large be thereby enabled to Discharge their several Obligations and this Respondent admits that the said George Savage did in his said Answer further setforth that the said Concern had a greater Right to the Moduation and Indulgence of their respective Creditors than any other Creditors of his said Highness the Nabob by Reason of the Assistance given by the said Concern towards the Relief of his said Highness in his Political Exigencies and this Respondent Does further admit that the said George Savage did thereupon humbly submit to the Consideration of the said Mayors Court whether this Respondent should receive any greater Interest than six per Cent upon such original Claim as he should prove to have upon him the said George Savage and that he hoped the said Mayors Court would postpone any further Proceedings untill such future time as might enable the said George Savage to discharge his Individual as well as Partnership Debts the

Period

period of which Indulgence he submitted to the said Mayors Court and that he was the more encouraged to hope for such benign Attention from the said Mayors Court to the peculiar Circumstances of his Situation because the Lord Chancellor of Great Britain had 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 the said George Savage pretended was not so forcible as his own whose Distresses in part originated from the Liberal Attention which he jointly with his other partners in the said Concern had shewn to the public and general Weal.

This Respondent further admits that to this Answer of the said George Savage he did in due time file his Replication and did therein insist that Notwithstanding any thing alledged to the Contrary by the said

George

George Savage in his Answer he was really and truly
indebted to this Respondent in the Sum of Money charged
in his said Bill of Complaint amounting to the said Sum
of Eighteen thousand Six hundred and ten Pagodas and thirteen
Fanams and that in the Manner therein Specified. But this
Respondent can by no Means admit that his said
Replication contained any evasive Matter but humbly
insists that the whole and every part thereof tend to
establish and Confirm the Justness of his present Demand
and clearly did away the frivolous and unimportant Objections
set forth in the Answer of the said George Savage and this
Respondent humbly insists that the Manner in which
the said Appellants have recited his said Replication in
their said Petition and Appeal is Most uncandid and
unfair and must strongly tend to evince the weak
reliance they had upon the Objections in the said
Answer contained and this Respondent further
admits that he did in his said Replication insist
that the said George Savage did not by any Means

deny

Deny the said Debt but only sought to evade the
Payment by involving it with Matters which were
altogether extraneous and which had no Relation
Whatever with the Debt in Question and that he
did further alledge in his said Replication that it
was in no Manner relative to the Matter before the
Court whether the said George Savage was or was not
engaged in the Concern Mentioned in his Answer
or whether such Concern was or was not indebted to
Many Different People in several Considerable Sums
of Money but the only Question before the Court
was whether the said George Savage was or was not
indebted to this Respondent in the said Sum of
Eighteen thousand Six hundred and ten Pagodas as
Charged in his said Bill of Complaint which
not being denied by the said George Savage was
of Course admitted by him and was a full
Confession of this Respondents Demand and
that he did in his said Replication insist much

upon

upon the Frivolousness of the Defence set up by the said George Savage in stating to the said Mayors Court as a Reason for Him not to give a Decree against him that he was unable to satisfy this Respondents — Demand and adding at the same time that he did not even know when he should be able Discharge it and yet requesting the said Mayors Court to postpone their — Decree against him to a period of which he himself could not ascertain the Limits and that this — Respondent did also insist that what the said George Savage had Suggested respecting the Reduction of Interest on his Highness the Nabobs Bonds had — nothing whatever to do with the Interest of this — Respondents Debt and that the Sum of Money — mentioned in the Bond for which the present Suit is brought was actually and Bonafide lent and — advanced by this Respondent to the said George Savage without any View whatever but that of Obliging the said George Savage receiving only the legal and Customary Interest —

Interest and that this Respondents further said that at the time he lent the Money to the said George Savage the said George Savage was in no Manner Concerned with the said James Taylor and James Call or with any other Persons in any Transactions with his Highness the Nabob but he did at that time Carry on trade on his own — Account and for the Purposes of such Trade this — Respondent lent the said Sum of Money to the said George Savage for had the said George Savage been in the least Habits of Intercourse with the Decree or had any Connection With the Concerns thereof this — Respondent never would have lent him a Single — Pagoda and that this Respondent insisted that had his present Demand against the said George Savage — Originated in the same Manner as many of the demands against his Highness the Nabob had he should not have thought it unreasonable to have the Interest on it reduced But as the fact really was and as the said George Savage — well knows that the Money for which the Bond was

given

given was really lent and advanced to the said George Savage at his particular Request and in order to serve him and that this Respondent so advanced the said Sum of Money upon his engaging to pay the Interest therein stipulated he therefore knew not a Single Reason why he should not recover the full Amount of the Interest which the said George Savage had solimnly under his hand and Seal engaged to pay and which the Law allows him to receive and this Respondent also insisted in his said Replication that the Decision of the Lord Chancellor of Great Britain could have no weight in the present Case because in Mortgages of Landed Property in England the Value pledged is in general Double the Money lent and therefore the Lender runs no Risk whatever and is not injured by postponing the Payment of his Debt Whereas by selling the Property below its real Value the Mortgagor would be eventually hurt but the present Case was not that of a Mortgage but of a Simple Bond no Property is here pledged

pledged Consequently none is to sold under its real Value Besides this Respondent insisted in his said Replication that Peace had been long established and his Highness's Debts were fast paying off The Decision of the Lord Chancellor in England on the Contrary was stated to have been made in the Midst of the late War Ten or Twelve before and therefore in no one particular either in time Place or Concurrence of Circumstances was there in such Decision any thing relative or applicable to the present Case and that therefore this Respondent did insist that he was fully established to the whole of the Money Sued for as well Principal as Interest and as the said George Savage had not nor indeed Could not pretend to deny the justness of the Debt he prayed a Decree for the same with Interest and Costs of Suit

This Respondent further admits that to this his Replication the said George Savage did file his Rejoinder in which he attempted to set up

up a Charge against this Respondent of having Demanded Compound Interest and also to open and Discuss an Account of Ten or Twelve years back — Which had long been settled and Closed but as the same was not supported by a Single Witness not even attested by the Oath of the said George Savage this Respondent humbly insists that it is not necessary here to take any Notice thereof altho if request the Answer to such a Charge is perfectly obvious for as it is Admitted that the said Account was settled and a new Bond given for the Balance of such Account every thing in the former Account was done away by the Consent of the said George Savage when he Executed the said Bond and this Respondent Cannot way be accused of having Demanded any thing but What he is justly entitled to that is to say the Principal Money mentioned in the said Bond and the Interest Which has since accrued thereon and it would be hard indeed if upon a Persons —

borrowing

borrowing a Sum of Money and keeping it for several years without paying the Interest the Lender was not at Liberty to take a new Bond for the principal and Interest due

And this Respondent further admits that to this — Rejoinder of the said George Savage he did file a Surrejoinder but Denies to have been actuated therein by any Litigious spirit but humbly insists it was requisite and necessary for him to file the same from the said George Savage having very — irregularly and improperly introduced Much New and — extraneous Matter into his said Rejoinder Which he had not taken Notice of in his said Answer and this Respondent admits that he did in his said Surrejoinder insist upon the Irregularity and improprity of the said George Savage introducing such New Matter of Which he had not taken any Notice in his said answer And also that he did therein deny that any offer was ever made by the said George Savage to this Respondent to pay the principal Money of the said Bond and that he would gladly have received the Amount of the said Bond had it been offered him but as the said

George

George Savage did not think fit to support what
he asserted in his said Rejoinder by any proof whatever
it is needless here to make any further Remarks
thereon and this Respondents also admits that to this
his Surrejoinder the said George Savage did file a —"
Rebutter but in no Degree supporting the matters
and things mentioned his said Rejoinder but merely
repeating them the same being a General Paper —

And this Respondent does admit that upon
the foregoing Proceedings Issue was joined and that
Two Witnesses were examined on the part of this —"
Respondent Who fully proved the due Execution of the
said Bond in their Presence But that no Witnesses
were examined on the part of the said George Savage
although several Rules passed for that purpose and
he had every Opportunity of proving the several —"
Allegations Contained in his said Answer and Rejoinder
had he been able to have done so and this Respondent
does admit that Publication having passed the

said

said Cause was set down for hearing and that in the Interim
the said George Savage did depart this life and that he
did previous thereto by his will appoint the appellants
his Executors and that they obtained Probate of his said —"
will and that this Suit was revived by this Respondent
Against them the said Appellants who having appeared
to the Suit the Same did on the Twenty fourth day of
November One thousand seven hundred and Eighty Nine —"
Came on to be heard before the said Mayors Court and
that they were pleased to order and Decree and did —"
Accordingly Order and Decree that the Appellants —"
Should pay unto this Respondent out of the Estate and
Effects of the said George Savage the aforesaid Sum of
Eighteen thousand Six hundred and ten Pagodas and
thirteen fanams with all such Interest as then was or
might thereafter become due thereon untill full Payment
was made, and also all Costs of Suit and this —"
Respondent humbly insists that such Decree so far
from being in any Manner Erroneous or contrary to
the Principles of Substantial Justice as is strangely

pretended

pretended by the Appellant was in truth the only Decree that Could with the least Shadow of Justice be given Which could not possibly with the Principles of Justice be given otherwise unless it had adduced exemplary Costs to be paid by the Appellants for the manifest Attempt that had been made throughout the Whole proceedings to procrastinate the Suit and to afford some feeble pretence for appealing to the Honble the Court of Appeals at Madraspatnam and from thence to your Most Excellent Majesty in Council for which the Appellants Can have no Reason Whatever but that of depriving this Respondent for a Considerable length of time of a large Sum of money Which is justly and fairly due to him

And this Respondent does not admit that from this Decree of the said Honble the Mayors Court the Appellants did Appeal to the Honble the Court of Appeals at Madraspatnam in which said Appeal they did very partially select and recite such Papages from the Procedings in the said Mayors

Mayors Court as might give a colourable pretence for Such their Appeal and did also assign several frivolous and inconsiderable Reasons to induce the said Court of Appeals to reverse the said Decree

And this Respondent does admit that to their said Petition and Appeal he did file his answer and to the Reasons alledged by the Appellants he did say

To the First that in regard to his having no Right to a preference to the other Creditors of the said George Savage of an equal Degree this Respondent said that as no Notice was taken in the answer of the said George Savage or in any other of the Papers filed by him of his having other Creditors that therefore it was very irregular for the Appellant to suggest the same as a Reason in their Appeal But this Respondent said that even if it had been taken Notice of in the Procedings it could in no way affect his Demand that he could not be supposed to be acquainted with what other Creditors the said George Savage had and that if in Fact he had any others they had all of them the same Opportunity to seek the Recovery of their Debts that he had that if they neglected

or

did not choose to apply as he had done for Payment that Could be no Reason why this Respondent should follow their example their circumstances might not perhaps be so urgent or the Sums due might not be of that consequence to them as the Sum for Which the present Suit is brought is to this Respondent —

And in regard to the Second Reason this Respondent did say that this Respondents Debt was not contracted with His Highness the Nabob and therefore he not be affected with any Arrangement that he had made that moreover the said George Savage had in his Life time taken so little steps upon the several Facts that are stated in his said answer that he had not thought it worth his while to prove One of them and in reality they were so very trivial and unfounded that they scarcely would bear a serious Consideration and plainly point out the Object intended by them namely that of affording some shallow Ground some weak Pretence for Appealing thereby to delay the Payment of a Debt the justness of which they could not pretend to deny —

and

And to the Third Reason respecting a Decision of the Lord Chancellor of great Britain this Respondent did say that he had already fully replied to that point that it was unnecessary for him again to remark that the Case Determined in England differed from the present One in every particular in time in place in Circumstance that the present Suit was not respecting a Debt upon Mortgage but upon a Simple Bond that we were not engaged in war but on the Contrary Peace had been long established that the Nabobs Debts which were made the pretence for delay were fast paying off and more particularly that part of it in which the Concern alluded to by the Appellants had been stated to be interested namely the Consolidated Debt —

And to the Fourth Reason this Respondent did say that if the Death of the said George Savage had made any Alteration in the Matter to be determined by the said Mayors Court the Appellants when they Appeared to the Bill of Revor ought to have shewn it as a Cause why the said Suit should not stand revived and have put in an Answer to that purport and have examined —

Witnesses

Witnesses in support thereof but as they had not done so but did Consent upon their Appearance that the Suit Should stand revived upon the Proceedings before the Court it was to be presumed they were perfectly satisfied that the Cause should be heard upon those Proceedings and the whole that the Appellants had suggested was merely an after thought that at any Rate it did not appear before the Court at the Hearing of the Cause and therefore could in no way affect the Decree nor could it affect an Appeal from such Decree nor did the Appellants really expect it should but that they merely suggested it like their other Reasons to hold up some little shew of Argument slightly to conceal the Procrastination they were really aiming at—

And lastly this Respondent did say that his Demand being a plain simple and undisputed Debt acknowledged by the solemn Act seal and Signature of the said George Savage and the Bond being proved by Two Witnesses to have been duly Executed and delivered for the purposes in the Bond expressed the same being moreover admitted by the said George Savage in his Life time who

who did not attempt to adduce any Proof whatever either by Written Evidence or by Witnesses of the Defence set up in his Answer and Rejoinder it followed of Course that the said Mayors Court could not possibility give any other Decree than that which they had given namely the Payment of a Debt which had been proved by this Respondent and was admitted by the said George Savage in his life time to be justly and truely due—

For all which Reasons and for such others as might be offered at the Hearing this Respondent prayed that the said Decree of the said Mayors Court might be affirmed and also humbly trusted that to mark their Displeasure at so evident an attempt to procrastinate the Payment of so just a Debt that the said Court of Appeals would be pleased to tax the Appellant with Such Exemplary Costs as they in their Wisdom might think meet

And this Respondent admits that the said Petition and Appeal and the Answer of this Respondent thereto came on to be heard and Determined on the day stated

stated by the Appellant before the said Court of Appeals at Madraspatnam who were pleased to affirm the Decree of the said Mayors Court with Costs of Suit as by the several Proceedings as well of the said Mayors Court as of the said Court of Appeals Copies whereof are herewith transmitted may Appear —

And this Respondent says that the Appellant had not any Real or just Reason to appeal therefrom to your most Excellent Majesty in Council nor indeed any other Reason whatever than the wish to wade and procrastinate the Payment of the Debt which they well know is justly due and owing and ought long since to have been paid and in regard to the Reson alledged by the Appellants in their Appeal to your Most Excellent Majesty in Council namely Because the Resources of the Country are by Reason of the present War with Tippoo Sultan employed to defray the Exigences of the state and that therefore the Appellants as Executors of the said George Savage cannot expect to receive from his Highness the Nabob of the Carnatic any part of the Immense Sums due to them untill Peace shall be established the same is too frivolous to require any Answer and is only a Repetition of their former Evasions to delay Payment of a just Debt and as all the Appellants other Reasons have been already fully Answered and he can have no just Reasons against the said Decree —

This Respondent most humbly prays that the said Decree of the said Mayors Court as also of the said Court of Appeals at Madraspatnam may be Confirmed With Such Exemplary Costs for the manifest Procrastination shewn in so long a Litigation for a just Debt as to your Most Excellent Majesty in Counil may Seem Meet —

[Signed] P. Walker
Solicitor for Respt

F

To the Honble John Hollond Esquire
President and Governor &c. and the Council of Fort St. George

In the Court of Appeals
at Madraspatnam

Between Soobarayah of
Madras Inhabitant Complainant
and William Gordon of
Madras Gentleman Defendant

The Humble Petition and Appeal of
the said William Gordon.

Sheweth

That on or about the Twenty Second day of
January Which was in the year of our Lord One
thousand Seven hundred and Eighty Seven the said
Complainant did Exchibit a Bill of Complaint against
your Petitioner in the Honble the Mayors Court at
Madraspatnam for the sum of Pagodas three hundred
and fifty Seven fourteen fanams and Thirty Cash arising
upon and said to be the Balance due upon an Account
Current

Filed in my Office
the 3d December 1789
Chas. White Clk

Current a Copy Which Account Current was annexed
to his said Bill of Complaint and which he did pray
might become part thereof and your Petitioner Sheweth
that he did on or about the Twenty Seventh day of
March following put in an Answer to the Complainants
said Bill of Complaint Wherein your Petitioner did
positively deny Standing indebted in the said Sum of
Pagodas three Hundred and Fifty Seven fourteen fanams
and thirty Cash or in any other Sum or Sums
Whatsoever which in Order to illustrate and prove
your Petitioner did in his said Answer Set forth
that the said Complainant was not on his Account
Authorized to Disburse any Money as he had
pretended in his said Bill of Complaint and the
Account Current thereunto annexed nor were any
Directions given for that purpose on the Contrary
your Petitioner asserted that he had a Covenanted
Servant of the Name of George Knox then living
With him who transacted all his Business in
Whom he placed all kind of Responsibility Who
Made

Made all purchases Received and paid away Monies
and with whom he had finally Settled all and every matter of
Account and thereupon your Petitioner did observe his said Answer
that the said Complainant having had no such dealings with
him nor ever having been employed in the Manner as he the
said Complainant represented it so to be that he had no right
of action against your Petitioner and your Petitioner sheweth
that the said Complainant did on or about the Twenty —
Ninth day of May following in the aforesaid year file a
Replication adducing therein Various positions and false
Statements in Support of his said Bill of Complaint and
Drawing Conclusions thereon Which though favorable
to his own purpose Were repugnant to every Principle
of truth and contrary both to reason and to Equity as in and
by his said Replication reference being thereunto had may
Appear and your Petitioner Sheweth that he did file a
General Rejoinder in Support of his said Answer that
issue did Join thereon and rules passed for the —
Examination of Witnesses When your Petitioner did —
adduce such Clear and incontrovertible proof as ought to

have

have insured a Decree in his favor

And your Petitioner sheweth that the Situation of the
said George Moss having afforded him an Opportunity of
being fully and intimately Acquainted with all and every thing
regarding the Subject Matter he did Cause him to be Examined
thereon and your Petitioner Sheweth that the evidence Which he
gave was such as to prove beyond the shadow of doubt that the
Action of the said Complainant was improperly brought and
as such was not intitled to relief for the said George Moss did
shewin and by the Depositions on the Interrogatories —
annexed on the part of your Petitioner that he had lived with
your Petitioner and Conducted the Business of his Shop the
Management of Which was Solely Committed to his Care
that the Complainant through his Recommendation had
been introduced into the Service of your Petitioner But that
he had acted in a Subordinate Situation Subject to the
Control and Direction of him the said George Moss
Whose instructions he was bound to Obey that He the
said Complainant never was employed as a Head or
Confidential Servant and that he never Could have

been

been directed or Authorized to expend or disburse any
Sum or Sums of Money Whatever for or on Account of
your Petitioners Shop Because he the said George
Moss had the Sole Management thereof all and every
Matter therein being Committed to his Care and for
Which he became responsible and the said George Moss
did further Depose that there Could not be any
Accounts for which he the Complainant was answerable
excepting the daily Cadjan Accounts of the expenditure of the Shop
Which were merely Kept as Memorandum and Which as
Concisely it was his peculiar province to attend to and lastly
that the said Complainant was a person of Suspicious
Character irregular in business and inconstant in his
Attendance and your Petitioner Sheweth unto this Honble Court
that David Jamesfield another Witness on the part of
your Petitioner deposed to the most Material Points in
the same Manner as the said George Moss especially in
regard to the said Complainants Character Which he
represented to be such as was held in very little
estimation

estimation and the said David Jamesfield and further
Depose that the said Complainant was not Considered
as a Confidential Servant nor was he ever directed by your
Petitioner to expend any Sum or Sums of Money for him
or on his Account and that he never was entrusted with
the Care and Management of the Shop nor was he
responsible for and on Account of the Monies paid and
Recived in the Course of the Business and your Petitioner
Sheweth that Peter Mapsey Capsin and William Leamy
Deposed that they were Chosen as arbitrators to Settle
some Accounts between your Petitioner and the said George
Moss Which difference arose from a Representation
Made to your Petitioner by the Complainant
Charging the said George Moss to be guilty of
practises injurious to your Petitioners interest and the
said Peter Mapsey Capsin and William Leamy did
further Depose that upon a thorough investigation
thereof the Charges exhibited against the said George
Moss by the said Complainant Appeared to be
frivolous and ill founded and dictated through
Malice

Malice and they did further depose that on the Course of the said investigation It Clearly and truly Appeared to them that all Receipts were given and disbursements of Money made by Means and through the said George Moss and that the said Complainant was not the Confidential Servant he would have wished to Make himself Appear and your Petitioner sheweth unto this Honble Court that the Matters Submitted to the investigation and decision of the said Arbitrators were the very Accounts Which are now the Subject of discussion Being all and every of the Items Charged in the Account Current Annexed to the said Complainants Bill of Complaint and upon Which he Charged the said Balance of Pagodas three Hundred and fifty Seven fourteen fanams and thirty Cash to be due and Owing to him and your Petitioner Sheweth that it Appears by the aforesaid evidence that the said Complainant was frequently Called upon and interrogated during the time the said Arbitrators were Sitting touching the said Matters of Account But that he did not in

in the most distant Manner insinuate that there was any Balance due to him which at once Exhibits a Strong and Convincing proof that he the said Complainant did not at that time Conceive himself legally intitled to Call upon your Petitioner for the payment of the Sum which he has sued him for and your Petitioner sheweth that the said Complainant did on or about the thirty first of March in the present year by Means of his Attorney at Law file exceptions to the evidence of the said Peter Massey Cafsin Praying therein that his Depositions might be Suppressed and dismissed alledging that he was the Bail of the Defendant and of Course interested in the event of the suit and your Petitioner sheweth that he did put an Answer thereto and for answer said that Although the Strict Letter of the Law Rendered the Evidence of the Bail inadmissible yet equity Departing therefrom in Order more effectually to promote the Objects of Justice Stept in to qualify the rigour thereof and your Petitioner did thereupon assert that

that his Cause Could not be safely heard without the evidence of the said Peter Mafsey Cafsin and therefore — prayed that the said Exceptions Might be Overuled and set aside and your Petitioner sheweth that previous to the hearing of the Cause the said exceptions came on to be argued when the Honble the Mayors Court were pleased to order the Interrogatories and depositions of the said Peter Mafsey Cafsin to be Suppressed and dismissed by Which Order your Petitioner was much aggrived being thereby precluded from having the Benefit of an evidence essential to his Cuse and your Petitioner — Sheweth unto this Honble Court that it was peculiary hard upon him to be deprived if the evidence of the said Peter Mafsey Cafsin Because he was no further interested in the event of the suit than being one of the Bail and had your Petitioner been informed by his Attorney that a Person of that discription was inadmissible by Law he would have directed him to have Moved the said Mayors Court and prayed that he might have been relieved upon your Petitioner

Substituting

Substituting a person of equal Responsibility in his place and Which He easily Could have done But your — Petitioner emputes this fatal Omission in his said attorney at Law to his bad State of Health Which prevented — him paying that Attention to his business Which was Necessary and Which has since been the Occasion of his leaving the Country for the Restablishment of it But your Petitioner Humbly trusts that the Candour and equity of this Honble Court will Upon a due — Consideration of the Defiancy Arising therein your Petitioner Sheweth unto this Honble Court that although the evidence of the said Peter Mafsey Cafsin would have given additional weight to his said Cause and would in a Clearer Manner have exposed the Arrets thereof yet your Petitioner does not infer that his Defence — rested therein on the Contrary your Petitioner will ever maintain that the Evidence Which he produced independant thereof and herein before recited Was Sufficient and — Ought to have insured him a Decree in his favor in the said Mayors Court and your Petitioner —

further

further Shweth unto this Honble Court that the Account Current which is Annexed to the said Complainants Bill of Complaint Strongly Corroborated What your Petitioner has proved by evidence for in the Credit side thereof it Appears by the Complainants own Shewing that he received all advances from George Moss under whose immidiate Care he acted and to whom at all time he was responsible and thereupon your Petitioner Contends that With him he ought to have settled and not with your Petitioner whom he had no right to apply to much less to sue in Legal from your Petitioner Shweth unto this Honble Court that in Opposition to such Clear and positive testimony Supported by every presumptive and Collateral Circumstances the said Complainant did adduce the most Vague and Negatory evidence calling Witnesses to whom no Credit Ought to be given because on the face of their Deposition It plainly Appeared that they were the easy tools of the said Complainant Answering either in the affirmative or Negative as they Appear to have been previously instructed Without knowing any thing of the Subject

Subject Matter before them and your Petitioner sheweth that Vencatachella Pillah one of the said Complainants Withesses Appears to have delivered himself with much inconsistency For he says that in the month of February last the Defendant In his presence and that of Tellisingah Pillah did promise to pay the Balance Charged to be due and Owing to the Complainant Whow your Petitioner Shweth that the period Which he the said Vencatachellar Pillah alluded to was more than Twelve Months Subsequent to the Commencement of the Action and therefore It would be the hight of Absurdity to suppose that your Petitioner would allow an expression to escape him so very prejudicial to his Interest at the very time he was Defending the Suit and that upon principles Consistent with the Strictest Justice and your Petitioner Shweth that if such was the Case that the said Tellisingah Pillah was present and heard such an expression It was peculiarly incumbent on the said Complainant to Caus him to be examined thereon for your Petitioner Shweth that it is an invariable Rule both in Law and in equity that

they

the best evidence that Can be brought forward is to be produced and the said Tellisingah Pillah being a Man of high Cast and much respectability his Deposition would have have been particularly attended to and would have Stamp'd Credit thereon But the said Complainant Justly Conceiving what would be the result of such interrogation Confined himself to the Evidence of a joint Confederacy who had neither Cast or Character to lose nor Conscience to attend to.

Your Petitioner Sheweth that upon examination of such Witnesses as aforesaid that Publication did pass and the Cause being set down for hearing came on Afterwards to be heard on Friday the Twentieth day of November last past By and before the said Mayors Court When they did think fit to Order and Decree and did accordingly Order and Decree that your Petitioner should pay the Sum Sued for being Pagodas three hundred and fifty seven fourteen fanams and thirty Cash With such Interest as then was or Should thereafter become due thereon untill full payment was Made Together with all Costs of Suit

Suit as more fully and at large Appears by the said Decree a Copy of Which is hereunto annexed for the inspection of this Honble Court Marked A and to Which your Petitioner Humbly Prays a reference may be had from Which said Decree of the said Mayors Court your Petitioner doth Appeal to this Honble Court as He Conceives the same erroneous and that he is aggrieved thereby for the following Among other Reasons

First ... Because your Petitioner is advised that the Bill is by no Means Supported as Required either by Law or by Equity for your Petitioner having in and by his said answer upon Oath Denied the Debt on Which the Complainant has brought his Action he ought to have produced Witnesses in Opposition thereto Who Ought positively to have Sworn to the justness of the said Balance and have proved the same But instead of that the said Complainant has adduced such evidences as are not entitled to Credit or Respect For they are people totally unacquainted With your Petitioners Circumstances and have never Set forth how where or in what Manner they

they gained their knowledge—

Secondly ..... Because your Petitioner in Opposition to the—
Vague and unsatisfactory evidence of the said Complainant
has shewn by the Ample and unequivocable Testimony of
Reputable witnesses that he was not indebted to the said
Complainant in the Sum of Pagodas three hundred and fifty
Seven fourteen fanams and thirty Cash nor had he any—
Just Cause of action against him and particularly by the
Evidence of the said George Moss the Covenanted Servant of
your Petitioner who has Solemnly deposed that he only—
was authorized to disburse Money that whatever Money
the said Complainant might have laid out was by
his Order the said Complainant being under his—
immediate Direction and With him only Could he—
Account for it—

Thirdly ..... Because this Appears by the Complainants
own Shewing to have been the Case he the said—
Complainant having Actually Applyd to an attorney
at Law to sue the said George Moss Who did on
Consequence thereof Write to and Demand of him the
very

very Balance Which is now the Subject of discussion and
which Letter is now in the possession of your Petitioner It
having been delivered to him by the said George Moss—
and thereupon your Petitioner maintains that it would
be in direct Opposition to every principle of Law
and Equity if the said Complainant was allowed a—
double Remedy Which would be the Case If your—
Petitioner is Compelled to pay the said Sum Sued for—

Fourthly ..... Because your Petitioner has fully and in a
Satisfactory Manner proved that he never employed or
Authorized the said Complainant to disburse any money
for or on Account of him But that he employed the
said George Moss and no other and that he has settled
with him all and every Matter of Account and has
actually paid to him the very Balance Which the
said Complainant Sues your Petitioner for—

Fifthly ..... Because all the Matter of fact herein before
Setforth is strongly Corroborated by all those presumptive
Circumstances Which Carry weight and Conviction
With them and Which Seldom mislead For it would
have

have been the height of folly and madness in your Petitioner at a time when he was absent in Camp upon the Publick Service and had no kind of Expectation of speedily returning to have admitted a person of the said Complainants Character to Disburse Money In manner that the Court's most proper when at the same time he had intrusted the said George Amos's With the sole Charge of the said Shop.

For all which reasons and Others which may be offered at the hearing of this Cause your Petitioner doth Appeal from the said Decree of the said Mayors Court of the Twentieth day of November last past to the Judgment of this Honble Court and most humbly prays that the same may be Reversed and Set aside With Costs to be paid to your Petitioner and last your Petitioner doth pray such further and Other General Relief in all and Singular the said Premisses as to this Honble Court shall seem Meet.

/Signed/ George Chalmer,
Atty for Respt

Mayors

A

Mayors Court at Madraspatnam } Friday the 20th day of Novemr 1789 Anno Domini

Present

William Webb Esquire Mayors
James Call Edward Garrow
& Andrew Ross. Aldermen

Between Seobaroyah of Madras Inhabitant Complainant

and William Gordon of Madras Gentleman Defendant.

The Exceptions of the Complainant to the Interrogatories to and to the Deposition of Peter Massey Cafsin who became Bail for the Defendant and the Answer thereto Coming on to be Argued and the Court having had due Consideration thereon are of Opinion that the Exceptions are good and Sufficient it is therefore Ordered that the Interrogatories to and the Deposition of Peter Amassey Cafsin be Suppressed

and

and the Defendant do pay the Costs attending the
Exceptions

This Cause Coming on to be argued and
Determined this Day in the Presence of the Attornies on
both sides on Reading the Complainants Bill with Copy of
an Account Current Annexed the Affidavit the Defendants
Answer the Replication the General Rejoinder the
Interrogatories and Depositions on the part of the
Complainant the Interrogatories and Depositions on the
part of the Defendant 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 Shall pay unto the
Complainant the full and just Sum of three hundred
and fifty Seven Pagodas fourteen fanams and thirty Cash
Pagodas 357. 14. 30) together with all such Interest
as now is or Shall hereafter become due thereon intill
full Payment is made also all Costs of this Suit

(signed) Thos George Taylor
Deputy Regr.

20

To the Honourable John Holland Esqr.
President in Council
Fort St. George

In the Honble the
Court of Appeals

Between Soobaroyah of Madras
Inhabitant Complainant and Willam
Gardon of Madras Gentleman Defendant

The Answer of the above named Soobarroyah to the
Petition of the above named William Gardon

This Respondent for answer to the said Petition
and Appeal or unto so much thereof as concerns this Respondent
to make Answer unto saith that he admits to be true that this
Respondent did at the time mentioned in the Appellants Petition
and Appeal file a Bill of Complaint in the Mayors Court
at Madrarpatnam against the Appellant for the Recovery
of the Sum of Three hundred and fifty seven Pagodas
fourteen Fanams and thirty Cash due and owing to this
Respondent on the Balance of an Account Current Copy
Whereof is annexed to this Respondents said Bill of
Complainant To which said Bill of Complaint this Respondent
admits that the Appellant did at the time Mentioned in
the said Petition and Appeal file an Answer wherein he
denied to be indebted unto this Respondent in the said Sum
of

Filed in my Office
the 30th December 1779
Chas H. White
Clk

of Three hundred and fifty seven Pagodas fourteen fanams and thirty Cash in any other Sum of Money Whatever and pretended that the Appellant never did this Respondent to lay out any Money for him at the time mentioned in this Respondents Accounts Current and that he had an articled Servant by the name of George Moss then living with him who transacted all the Business of the Appellant and with whom the Appellant had compleatly and finally adjusted and settled all Accounts and the Appellant did further set forth in and by his said Answer that he did not concern that this Respondent who as the Appellant pretended was never employed by him in any manner had any Right of action against him To which said Answer this Respondent admits that he filed his Replication wherein he stated his Case fully as follows that about the year one thousand Seven hundred and Seventy five when this Respondent and the Appellant were at Tanjore the Appellant took this Respondent into his Service in the Capacity of Conicopoly and Cashkeeper and that this Respondent in his

Service

Service in the Capacity of Conicopoly and Cashkeeper and that this Respondent continued in his Service untill the month of October Which was in the year of our Lord one thousand Seven hundred and eighty six this Respondent further stated that in or about the Month of February Which was in the year of our Lord one thousand Seven hundred and eighty three the Appellant opened an Apothecarys Shop in the Black Town at Madras in Which he placed one George Moss as Master and this Respondent as Conicopoly and Cash Keeper and the Appellant ordered this Respondent to take particular Care in the Management of the Account and Cash of the said Shop and he also requested of the Respondent that in Case there would be any want of Money for the use of the said Shop that this Respondent would borrow and Supply it and having done so the Appellant went away to Camp and this Respondent in Conformity to the Request of the Appellant borrowed Money from different Persons not only for the use of the said Apothecarys Shop but also for the Appellants own use this Respondent did further set forth that when the Appellant was at

Palamcottah

Palamcottah this Respondent did by a Letter acquaint the Appellant that the said George Moss the Writer always over charged for every thing which he purchased for the said Shop. Whereupon the Appellant by three different Letters ordered this Respondent to make out the Account of the said Shop and the Over charges which the said George Moss had made and if this Respondent would bring the same to Palamcottah that the Appellant would pay whatever Balance was due to this Respondent Inconsequence of which Order and Moreover as being the Servant of the Appellant this Respondent conceived it to be his Duty to go and under the Accounts of the said Shop to the Appellant and therefore he took the same to Palamcottah and Shewed and explained the Different Over Charge Which the said George Moss had made all which he translated into English and delivered to the Appellant and this Respondent further stated that by the said Account there appeared a Ballance of Two hundred and odd Pagodas due by the Appellant unto the said George Moss and also another Sum of Three hundred and odd Pagodas due unto this Respondent all amounting to

to Pagodas Five hundred and thirty seven Pagodas four fanams and ten Cash whereupon the Appellant told this Respondent to to sign the said Account which this Respondent at first refused but the Appellant having afterwards promised to pay the Ballance of this Respondents Account this Respondent signed the said Account.

This Respondent did further setforth that the said George Moss sent an Account Current to the Appellant in which there Appeard a Ballance of One thousand two hundred and odd Pagodas in favor of the said George Moss due by the Appellant in Consequence of which the Appellant was obliged to keep this Respondent at Palamcottah for upwards of seven Months and till the Return of the Appellant to Madras soon after which there was a Dispute between the Appellant and the said George Moss about the Accounts of the said Shop and the same being refferred to Arbitration was settled agreable to the Account delivered by this Respondent to the Appellant at Palamcottah This Respondent did further setforth that after the Arbitrators had settled the said Account this Respondent again applied to this Appellant for the

Payment

Payment of the Ballance so due to him Whereupon the
Appellant told this Respondent that he expected on the
Second Day of December one thousand seven hundred and
eighty six to receive the Accounts due by the said George Moss
and as soon as it came to hand he would pay and discharge
this Respondents said Ballance upon Which Assurance
and promise
of the Appellant this Respondent rested satisfied until the
tenth Day of the said Month of December when this
Respondent again asked the Appellant for the Payment of
the Ballance of the said Account who instead of discharging
the same beat and ill treated the Respondent and confined
him in his the Appellants own House and afterwards he
gave two Pagodas to this Respondent in part Payment of
the Ballance and promised to pay the Remainder some
Days after this Respondent lastly said that the Appellant
himself employed this Respondent in the Business and that
he was the Person who owes the Ballance of the said
Account Annexed to his said Bill of Complaint as
above setforth and that this Respondent had not any
thing to do with the said George Moss therein

To

To which said Replication this Respondent admits that
the appellant filed a General Rejoinder and this Respondent also admits
that Issue was joined and Rules passed for the Examination of
Witnesses when this Respondent in Justice to himself called those
Material Witnesses who were well acquainted with the Matters
in Dispute between the Appellant and this Respondent in order
to support the several Matters and things mentioned in this
Respondents Replication as far as they knew or had come to the
Knowledge thereof.

This Respondent saith that Permaul Moodelly
Who served as an head Dubash to the Appellant for twenty
five or twenty six years and who was well acquainted with
every Circumstance and Transaction of the Appellant as well
as of this Respondent and who had no Interest Whatever with
Was summoned to give evidence on the part of this Respondent
this Respondent Who deposed that he served the appellant in
the Character of Head Dubash for the Term of Twenty five or
twenty six years and that therefore he was well acquainted with
all the servants who were employed in the Appellants Service
that this Respondent was employed by the Appellant in the
Capacity of a Conicopoly and that after the Appellant had

opened

opined an Apothecarys Shop in the Black Town this
Respondent was sent to the said Shop in the Station of a
Conicopoly and Cash Keeper under the Deriction of the said
George Moss that the monthly pay of this Respondent was
paid by the Appellant that the said Permaul Moodelly
examined the Accounts now in Dispute and that he found a
Ballance due by the Appellant to this Respondent of a above
Two hundred Pagodas that the Appellant promised to pay the
Balance in full that when this Respondent prefsed frequently
for the said Ballance the Appellant gave him a Blow and paid
at the same time two Pagodas in part Payment of the
said Balance and promised to pay the Remainder as soon as he got
Money

Vencatachella Pelly who was and still is a Head
Conicopoly at the Post Office at Fort St. George deposed that
he was present when the Appellant promised to pay this
Respondent the Amount of the Ballance due to him by the
Appellant and that if was so promised in the Presence of
Tillesingah Pillah to whom a Complaint was made by this
Respondent Regarding the said Balance

This

This Respondent in Answer to that Part of the
Appellants Petition wherein he says that if the Appellant had
promised to pay the Balance in the Presence of Telle Singah Pillah
it was peculiarly incumbent on this Respondent to have caused
the said Tell Singah Pillah to be examined thereon Saith that he
was on the point of Summoning the said Telle Singah Pillah to
give Evidence in this Cause but he was then so fully engaged in
the Business of the then Governor of Fort St. George to whom he
was Head Dubash that this Respondent waved applying
to him especially as the other Witnesses whom this Respondent
adduced in his favor were adequate to the full Proof of this
Respondents Claim on the Appellant

This Respondent saith that Kailasam Doctor who
was a particular Acquaintance of the Appellant and often frequented
his House and Shop was also well acquainted with this
Respondents Situation and therefore this Respondent called him
as an Evidence who deposed that the Appellant did in his
Presence order this Respondent to receive from the Appellants
Apothecary Shop at the Rate of four Pagodas per Month
as this Respondents Wages as Conicopoly of the said Shop
that

that the Appellant did desire this Respondent to advance all such Sums of Money as Should be wanted for the said Shop and that this Respondent did lay out Money for the said Shop that the Appellant repeatidly promised to Discharge this Respondents Demand and that this Respondents proceeded to Innavelly by the Appellants Order with the Accounts of the said Apothecarys Shop

Charles Casimire one of the Appellants Witnesses and who was Appointed by the Appellant as one of the arbitrators to adjust the said Shop Accounts then in Dispute between the Appellant and the said George Moss deposed that this Respondent was the Appellants confidintial Servant and Comiosly and that this Respondent did dispersse Money for the Appellants Account and that Monies were due to this Respondent from the Appellant on Account of the said Shop

This Respondent Saith that the several Witnesses Produced on the part of this Respondent were not by any Means interested or conneted with this Respondent But this Respondent says that George Moss and David Fennisfield were the Appellants own Servants and the said George Moss was at the time of giving his Evidence and inveterate Enemy of this Respondent there being at that time a Suit in the said Mayors Court between the said George Moss and this Respondent

This Respondent further saith that in the Appellants Petition and Appeal are contained many false and foreign Matters and things Which this Respondent doth not by any means admit all Which this Respondent Saith were introduced in the said Petition and Appeal with no other View than to Mislead the Judgment of this Honorable Court and thereby to harrass and oppress this Respondent who the Appellant well knows reduced to poverty and Wretchedness by the Cruelty and Injustice of the Appellant in refusing to this Respondent the Payment of his just Claims

This Respondent admits that he filed Exceptions to the Evidence of Peter Massey Esqr one of the Appellants Witnesses praying therein that this Depositions might be suppressed and dismissed because the

the said Peter Anafsey Cafsin was Bail for the Appellant in this Cause and of Course intereated in the Event of the Suit this Respondent admits that the Appellant did put an Answer to the said Exception—

This Respondent further admits that upon Examination of such Witnefses as aforesaid Publication did pafs and the Cause being set down for hearing this Respondent admits that previous to the hearing of the said Cause the said Exceptions came on to be argued when the said Mayors Court were pleased to order the Interrogatories and Depositions of the said Peter Anafsey Cafsin to be suppreſsed and dismifsed with Costs This Respondent further admits that the said Cause did also come on to be heard on Friday the twenty eth Day of November last past by and before the said Mayors Court who were pleased to order and Decree and did accordingly Order and Decree that the appellant should pay unto this Respondent the Sum of Three hundred and Fifty Seven Star Pagodas Fourteen fanams and thirty Cash together with all such Interest as then was or should thereafter become due thereon until full

payment

Payment was made also all Costs of the Suit—

From which said Decree of the Mayors Court the Appellant did Appeal to this Honble Court of Appeals under pretence that the said Decree is Erroneous and that he is aggrieved thereby but this Respondent saith that the Appellant hath no Cause or Ground whatever to be Aggrieved for the following Among other Reasons—

First Because the Appellant in his answer to this Respondents Bill of Complaint makes no other defence to this Respondents Claim on him except a pretence that the Appellant never employed this Respondent and this Respondent states fully in his Replication when where and for what period of time this Respondent was employed by the appellant instead of refuting the afsertions of this Respondent in his Replication or stating any explanation of his own Conduct filed a general Rejoinder thereto whence it is fair to infer that the matters and things stated in this Respondents Bill and Replication are true and his Claim against the Appellant is well formded—

Secondly Because the Evidence of Cormaul Moodly the

the Appellants Head Dubash supports this Respondents
claim in its full extent

Thirdly Because the very Evidence of George Moss on which
the Appellant lays such Stress makes against himself in as much
as it Appears thereby that this Respondent clearly had the Claim
in question on the Appellant or George Moss and the blended
superintendance of the Appellant and George Moss in the Business
of the Shop made it for some time a Doubt to this Respondent
against whom to file his Bill and the explanation of
George Moss on this Respondents first Application thro his
Attorney proved that the Appellant was the Principal against
Whom his Redress lay for his Wages and Disbursements in the
Shop

Thirdly Because no Argument can arise in favor of the
Appellant from that part of the Evidence of George Moss or
any other Person which States that tho this Respondent was
present at the Arbitration between George Moss and the
Appellant this Respondent made no Claim nor were his
Accounts brought forward for this Respondents Saith that
such Arbitration related only to the relative Amounts of
the

the Appellant and George Moss and not to those in question
between the Appellant and this Respondent who appeared at
that Arbitration for the Sole purpose of Supporting the
Appellants Claims against the said George Moss little
expecting the ungrateful return he received from the
Appellant and that he should have referred to the said George
Moss for evidence in his favor Against this Respondent
as the retribution for this Respondents pains and trouble
to establish the Appellants Claims against the said George
Moss and this Respondent submits to the consideration of
this Honble Court that under the foregoing state of
Matters the said George Moss's Evedence ought not
to weigh much in the present Cause

Fourthly Because from the Evedence of Peter Marjey
Cofsin as to what came out at the above Arbitration
the Principal Stress is to be laid on the Evedence of
Charles Cafsimire who acted as Interpreter and his
Evedence goes fully to establish the Claim of this
Respondent against the Appellant

Fifthly Because the Evedence of Vencatachellah
Pillah

Pillah the Sappal Dubash proves the appellants promise to pay this Respondent

Sixthly Because the appellants said head Dubash Permaul Moodelly states in his answer to the third Interrogatory that the appellant promised Payment from the money he should receive from the said George Moss and that he again applied for the Amount the appellant gave him a Blow for his request but still paid him two Pagodas in part of his Debt and Promised to pay the remainder as soon as he got Money.

For all which Reasons and Such others as may be offered at the hearing this Respondent hopes this Honble Court will be pleased to confirm the Decree of the said Mayors Court and that the Appellants Petition and Appeal be Dismissed with Costs to be paid by the Appellant.

[Signed] Stephen Popham
Solicitor for the Respondent

Court

Court of Appeals at Madraspatnam } Saturday the 10th day of December Anno Domini 1791

Between William Gordon of Madras Gentleman Appellant and Soobarayah of the same place 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 20th day of November Anno Domini 1789 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

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

Whereupon

(Signed) Chas. N. Whitte
Clk

Saturday

Saturday 17th December 1791

Present

Sir Charles Oakeley Baronet

William Pitre and John Hudleston

Between Hawkim Cawn and Cawder Cawn
appellants and Yedool Cawn Attorney to
Laul Bebby Respondent —

Whether an appeal lies from a Sentence of the
Mayors Court in matters of Ecclesiastical Jurisdiction to the President
in Council —

I have perused with much attention the Charter of
8th January 1753 / from whence the President & Council derive
their appellants authority / and apprehend an appeal from
a Sentence of the Mayors Court in Matters of Ecclesiastical Jurisdiction
does not lie to the President in Council under that Charter, —

/ Signed / Benj.n Sulivan
attyr Genl —

Ordered that the above Cause Papers to be returned
to the Mayors Court —

Saturday 17th December 1791

Present

Sir Charles Oakeley Baronet

William Petrie and John Hudleston

To the Honble John Holland Esqr.

President in Council

Fort St. George

In the Honble the
Court of Appeals

Between Tajapah Moodeliar of Madras
Inhabitant by his Attorney William Lewcock of the
same place Complainant and Chedambara Moodeliar
and Yersoopan Executors Named in the Last
Will and Testament of Bathoor Moodoo Moodeliar
Deceased Defendants—

Shen.

The humble Petition and Appeal of the said Defendants

Sheweth That the said Complainant by his said Attorney did some
time on or about the Twenty fourth day of December which was
in the year of our Lord One thousand Seven hundred and Eighty three
Exhibit and file a Bill of Complaint in the Honble Mayors Court at
Madraspatnam against your Petitioners as Executors as aforesaid
Chargeing

Filed in my Office
15th Dec. 1791
Thos. H. White
Clk

Charging that they your Petitioners as Executors as aforesaid were indebted unto him the said Complainant in the full and Just Sum of three thousand and thirty one Pagodas and fourteen fanams Current Money of Madras the said Complainant for setting forth that on the fifteenth day of August which Was in the Year of our Lord one thousand seven hundred and Seventy Nine that the Above Named Testator Boothaur Moodas Moodelair borrowed and received of Robert Hughes of Fort St. George the full and Just Sum of Two thousand Pagodas Current Money of Madras to secure the Payment of which unto the said Robert Hughes his heirs Executors Administrators or Assigns the said Complainant shewed that the said Testator entered into and duely Executed Signed Sealed and delivered in the presences of Credible Witnesses as and for his act and Deed a certain Bond or Written Obligation whereby he pretended that the said Testator acknowledged to have at or before the execution of the said Bond Borrowed and received of and from the said Robert Hughes the said Sum of Two thousand Star pagodas payable in five months from the day of date thereof with Interest at and after the Rate of Twelve p Cent per annum and the said Complainant in the said Bill further Sheweth that the said Testator himself his heirs Executors and Administrators thereby became held and

firmly

firmly bound unto the said Robert Hughes his Heirs Executors Administrators or Assigns for the true and just payment of the said Principal Sum of Two thousand Pagodas Current Money of Madras with full and legal Interest which Might arise and become due thereon — And the said Complainant by his said Attorney did further shew that on the Twenty fifth day of August which was in the Year of our Lord one thousand Seven hundred and Eighty for good and Valuable Consideration in hand paid by the Complainant unto the said Robert Hughes — He the said Robert Hughes did fully and Effectually Assign transfer and Sett over unto the Complainant his Heirs Executors Administrators or Assign and for Just and Valuable Consideration all Right Title Claim and Interest which he had before that time professed had or was entitled unto in or from the said Bond or Obligation and did fully Transfer and make over all the Money Principal and Interest which was due or which might arise or grow due thereupon unto the Complainant his Heirs Executors Administrators or Assigns — All which Matters the Complainant did pretend did fully and clearly Appear by Copies of the said Original Bond and Assignment with the Acknowledgement of good and Valuable Consideration being by him the Complainant to the said

Robert

Robert Hughes paid and made to his Satisfaction and also by
Copies of an Assignment with an account Current Annexed
for the inspection of the said Honble Court all which he prayed
might be taken and Received as part and parcells of his said
Bill of Complaint the Originals being in the possession of his said
Attorney Ready to be delivered when Required— And the said
Complaint further Shewed that he had frequently and in an
Amicable Manner Requested Payment from the said Bonthoos
Moodoo Moodelly as in his life time and since his Decease of and
from your Petitioners as Executors of the said Testator the said
Sum of three thousand and thirty six Pagodas and fourteen
fanams Current Money of Madras—

And the said Bill did further shew that
Your Petitioners had refused to pay the Same— And that your
Petitioners might answer and be Decreed so to do and that your
Petitioners might be Summoned so to do— And your Petitioners
shew that they did on or about the Twentieth day of April which
was in the Year of our Lord One thousand Seven hundred and
Eighty four put in a Joint and Several plea and answer to
the said Bill— Not Confessing or Acknowledging all or any of

the

the matters and things in the said Bill Contained to be true in
such manner and form as the same were therein and thereby Set forth
charged and alledged and for plea thereunto said— that it appeared
by the said Bill and the Exhibits thereto Annexed that the Ground
upon which the said Action was established was a Bond or Obligation
pretended to have been given by the Testator in his life time to wit unto
Robert Hughes dated the twenty fifth day of August one thousand
Seven hundred and Seventy nine for the Sum of Two thousand Pagodas
payable in five months at Twelve per Cent Interest per annum—
Nevertheless the said Robert Hughes was not made a party in the
said Bill as he ought to have been Consistent with the established
and indispensable Rules and Practice of Law and Equity in which
altho' a Bond might be Assignable the Assignee must sue upon—
such Assigned Bond According to form prescribed and laid down
in both those Courts except in Cases of Bankrupts and some other
Cases in no way relating to the present and which Forms were
Constantly adhered to by the said Honble Mayors Court in the
Admission of Suits of that Nature— which were not for the
Assignee to Commence an Action in his own Name but in the
Name of the Assignor and for which purpose it was even Necessary

That

that a Letter of Attorney authorizing the Assignee to commence a Suit under that Form should be annexed and made part of the Assignment by which the property in such Bond was meant and intended to be made over and Assigned And not in the manner and form the present Suit was commenced in the name of the Assignee in the first Instance claiming in the said Bond which provided the same had been Assigned According to the Rules aforementioned ought to have been sued upon in the Name of Robert Hughes by his attorney Tyapah by his attorney — William Lewcock and not in the Name of Tyapah the pretended Assignee — And that — altho no power is given to the said Tyapah to commence and action against the Testator or your Petitioners his Executors the said defect and deficiency in the said Assignment did not cure the Error of his commencing the present action in his own Name contrary to all Rule and practice and — much less could the second Assignment and power to — William Lewcock help or did the said Error but that — Such Original Assignment was less exceptionable upon its own Ground as being irregular in itself and must of course fall as well as the present action until a conformity with the Rules

of

of the said Mayors Court should entitle the said Assignee to commence another action upon a more legal foundation — And that your Petitioners did therefore humbly demand the Judgement of the said Mayors Court on the said Matters and things in their said plea pleaded — And your Petitioners shew that without waiving their said plea — but Relying thereon for answer unto the Rest and Residue of the said Bill of Complaint or unto such Matters therein contained alledged and Setforth as they were Advised to be material for them to make answer unto they said that they denied to stand indebted unto the said Tyapah in the Sum of three thousand and thirty one Pagodas and fourteen fanams or unto his attorney William Lewcock or in any other Sum or Sums of Money whatsoever — And your Petitioners did admit that they were Executors of the said Testator &c. And by way of further answer unto the said Bill they your Petitioners did pray to lay before the said Court what they know relating to the present demand and did deny that the deceased Testator did ever directly or indirectly receive any Sum or Sums of Money or any consideration whatever upon the said Bond from the said Robert Hughes or from any person or persons whatsoever on his Account — altho they did not deny that the said Testators name was not thereto Subscribed — But they did

not

not admit that the said Robert Hughes on the fifth day of August one thousand Seven hundred and Eighty at Fort Saint George — orelse where for any good or other consideration did fully and — effectually or otherwise Assign transfer and Settover unto the Complainant the said Bond or Obligation — And your Petitioners Shew that they did on the contrary Setforth that the whole of the said Tyapahs Bill of Complaint was an unjust and unfair action worked and contrived by him and his attorney for the purpose of Wronging the Estate of the deceased as the said Tyapah — well knew and your Petitioners did Setforth the particulars of the said unjust and unfair conduct of the said parties to the said Bill — Which Your Petitioners were advised it was not Necessary for them to give any Evidence of further than by the said Answer on account of the said Replication and the said Bill entirely differing in the nature and Cause of action and that your Petitioners Plea was good and Sufficient to warrant the — dismission of the said Bill and that your Petitioners would not therefore be required to prove the said Matters further than in case the said Bill should after such dismission be brought in proper form of Law — For your Petitioners shew that the said

Tyapah

Tyapah did Reply unto the said Plea and Answer And thereafter file an Amended Replication — denying the several matters and things contained in the said Plea and Answer — alledging that the same did not relate to him or in any manner affect his Claim — For the Repliant therein saith that he the said Tyapah Advanced and paid the said Money to the Testator in his life time for the Bond in question whereby he saith that the property and title in and to the said Bond was in him — and the name of the said Robert Hughes by his express permission and assent put into the Bond after the custom of the Country — the Repliant pretending that he was Dubash to the said Robert Hughes had full permission and liberty to use his said Name as and by way of Sanction or Security to him the said Repliant — Which Fact the said Repliant Saith was well known and assented to by the said Testator whom he pretends he received the Money from the said Repliant which the Repliant Said that he would prove to the Satisfaction of the said Court — But your Petitioners shew that he did not prove either the Custom or the Fact upon the Custom and the — Repliant did Notwithstanding the said Variance in his Replication from the said Bill presume to doubt not that his Right would be established in and to the said Bond and the power of Assigning the —

the money due thereupon — And did also presume to doubt not but that the open and fair manner — instead of the concealed and designing Manner in which he had brought his Claim before the said Mayors Court would produce the desired Effect and prove the means of affording him as he presumed the Relief sought for — in and by his Bill of Complaint the full and clear declaration of the said Robert Hughes Regarding the property of the said Repliant — He therefore presumed to Conceive that the same would be Sufficient to establish his Claim — before the said Court as a Court of Equity — a true Copy of which — declaration the said Repliant said was Annexed unto his said Bill — But your Petitioners pray to Observe that in the Bill there is not any declaration of the said pretended money paid on the said Bond being the property of the said Tyapah but on the Contrary the said Deed in the said Bill is called an Assignment of a Bond — Which Runs in the following Words — I Robert Hughes do make over unto Tyapah for Valuable Consideration now Received of him all my Right and title to an Obligation granted me by Boothoo Moodoo Moodelliah of Madras Inhabitant bearing date the twenty fifth day of August One thousand Seven hundred and Seventy Nine for the full

full and just Sum of two thousand Current Pagodas with all such — Interest as now is or shall hereafter become due thereon Witness my hand in Fort Saint George this 25th day of August 1780 — And your Petitioners shew that the Repliant did not only call the said — imperfect Deed an Assignment in his said Bill but did ineffectually attempt to supply the deficiences thereof by alledging thereon matters quite Contrary thereto To wit that the said Robert Hughes did fully and effectually Assign transfer and settover unto the said Tyapah his Heirs Executors Administrators or Assigns and for Just and Valuable Consideration but all Right title Claim and Interest which he the said Robert Hughes b[e]fore that time possessed had or was entitled unto of in or from the said Bond or Written — Obligation and did fully transfer and make over all the Money principal and Interest that then was due or which might arise or grow due thereupon unto him the said Tyapah his Heirs — Executors Administrators or Assigns — whereby it Appears that the Repliant Meant Only to deceive and impose on the Justice of this Honble Court and that he had no Just Reason to rely on their Equity but on the Contrary to expect their disapprobation at such Attempts contrary to all principles both of Law and Equity

Because

—Because it appears that your Petitioners had not only pleaded to the manner of the said action being commenced but to the sufficiacy and insufficiency of the said pretended Assignment even to maintain an action— And your Petitioners did also deny the Execution of the said pretended Deed— which hath not in any Manner been proved— consequently even if the said Declaration had been a regular Legal and formal Assignment as requisite and necessary to entitle the said Tyapah to bring his action in the name of the said Robert Hughes for want of such proof the same could not be taken for the said Robert Hughes— He being a party interested— And your Petitioners shew that upon this new false Ground of the said Bond being the property of the said Tyapah Because declared so to be by the said pretended Declaration declared upon by the said Tyapah in his said Replication He the said Repliant pretends that he cannot suppose that it will Materially affect or injure his Claim whether his Suit be commenced and prosecuted in the name of— Tyapah by his attorney William Lewcock as if it was in the name of Robert Hughes by his attorney Tyapah by his attorney William Lewcock if as the Repliant saith the Transaction—

whereupon

Whereupon the Suit is commenced was fair and Just— which he presumes to say his Just without paying attention that he has not commenced his action in the manner prescribed by the said mayors Court and that your Petitioners had a Right to plead to any irregularity in bringing of the action but it appears that the— Repliant would even have thought himself Justificia if he had not commenced the action against them as Executors that he might if he had been inlined or wrongly advised so to do have prosecuted them in their own private Capacities— And then have trusted to his own— arbitrary notions of Equity— Which your Petitioners are advised is not accordingly to the practice of Courts of Equity— which altho they may be liberal in their Judgements are pure and uniform in all the forms and avenues thro which their Judgements are to be obtained and a Judgement in Law or Equity cannot be strictly legal without it hath its foundation upon the modes of practice prescribed— and Your Petitioners shew that the said Repliant did not Reply in any Manner Sufficient in Law or Equity to over rule the said Plea and Answer and the said Replication was every evasive— And the Repliant did not deny but that the said Robert Hughes did write a letter copy of which is Annexed to your Petitioners said Plea and

Answer

answer whereby the extraordinary Circumstances of the said Robert Hughes demanding payment of the said Bond in the December following the said pretended Assignment — further than by availing themselves — thereof to support the said Bill and to contradict the said Replication — and your Petitioners shew that the said Replication being so evasive in every Respect Your Petitioners did Rely that no Decree could be grounded on the said Bill or on the Contradictory Grounds of the said Replication — Your Petitioners therefore did only put in a General Rejoinder thereto — and did Join Issue thereupon and many Rules passed for the examination of Witnesses and among other Witnesses produced was the said Robert Hughes was examined on the part of the Complainant in January One thousand Seven hundred and Eighty Eight — Who to the Seventh Interrogatory deposes that he hath not any Interest in the event of the Determination of the present Suit But he doth not say whether he ever had or not any Interest or whether he knew the Testator or any of the matters and things in the said Bill of Complaint Contained further than by deposing to the pretended Assignment Copy whereof is Annexed to the said Bill that the Original Exhibit marked **B** is his own hand Writing and that he make over the said Exhibit marked with the Letter **B** to Tyapah for the purpose and Interest that

that he the said Tyapah should receive the full amount of a Bond granted him by one Boothoor Moodeo Mondelliar with the Interest that Might be due thereon — But the said Tyapah did not think proper to produce the said Bond to the said Robert Hughes which your Petitioners shew — besides that the said Robert Hughes must at one time have been — interested in the said Bond and that he was at such time Interested therein the said Evidence is very insufficient to maintain the said Bill or the said Replication — Covey Venayagum Alias Perryah Iyah Moodelly another Witness on the part of the said Complainant in part supports the Replication but denies the Bill by saying that this Bond was executed payable to Mr Hughes and that the Bond was sent with the Money to the Testator who detained the Money and — returned the Bond — Iyah Sawmy Again upon the Bond being produced to him deposes to the execution of the Bond and to his carrying the Sum of Two thousand Pagodas to the Testator on Account of Mr Robert Hughes which in parts supports the Bill but contradicts the Replication — Chinglevy the next Witness and who Saith he was a Subscribing Witness to the Bond and who must have been as well informed of the payment of the Money if it had been paid as according to the aforecited Evidence the returning of the Bond

was

was according to one instanous with the detention of the money and according to the other at the time of the money being carried doth not know whether any money was or was not paid in consequence of the execution of the said Bonds by the Testator and in the following interrogatory he saith that the Bond whereto he was interrogated was made out for Two thousand Pagodas in the name of the Complainant in the title of the Interrogatories Named — Which Complainant Your Petitioners shew was Lyapah.

Your Petitioners shew that upon this Evidence publication did pass and the said Cause was Settdown for hearing and coming on to be heard on the fifteenth day of this present month of December the said Honble Mayors Court did Decree that your Petitioners Should pay unto the Complainant out of the Estate and Effects of the said Boothoor Moodoo Moodelly Deceased the Sum of three thousand and thirty one Pagodas and fourteen fanams together with all such Interest as then was or Should thereafter become due thereupon also all Costs of Suit Copy whereof also of an Extract from the Minutes of the said Court of the said Fifteenth day of December are hereunto Annexed — By which said Decree your Petitioners as Executors as aforesaid do find themselves Aggrieved and

and do therefore Appeal therefrom to this Honble Court and for Cause of Appeal Shew.

Because that the said Honble Mayors Court ought not have over Ruled their said Plea and to have Decreed upon the said Bill that Your Petitioners should pay the amount Principal and Interest of the said Bond upon the aforesaid Evidence produced For that the said Bill was very insufficient to warrant the said Decree as your Petitioners were not Called upon to answer to the said Bill in that Manner and Form prescribed by the Law in Cases of Assignments of Bonds which as Assignments thereof are allowed for the Convenience and benefit of Trade and Money Negotiations Ought to be strictly construed according to Regular Forms in Order that those beneficial purposes may be solely Answered and not to leave to the Arbitrary or mistaken Will or notions of people to deviate from such prescribed forms which your Petitioners observe cannot be gneended by any Necessity or turned to any good use or Advantage but on the Contrary if Deviations from such established Rules and forms were allowed to obtain in this instance a deviation in all other prescribed forms and Rules of Law would be equally liable to indulgence and therefrom a Confusion and uncertainty be engendered and introduced

introduced into the practice of Courts as would greatly endanger — not only the Rights of a Defendant to be called upon in no manner than is warranted by Law but the practice and Law of Courts would be thereby over thrown and be forced to give way to Error informality — and the arbitrary Will of Ignorance or Contumacy — the practice of the Court is therefore Justly determined the Law of the Court which enjoins punctuality and Observance to all its Suitors to those first and necessary Lines by which the way of Justice can only be pursued — Your Petitioners were therefore justified by their Plea against this Arbitrary and illegal proceeding in the Complainant who ought if he had Right on his side to have conformed to those Regulary Steps to obtain it by Amending his Bill by causing the said Robert Hughes to execute to him an Assignment and power of — Attorney in form and by making him the said Robert Hughes a party thereto — Which your Petitioners shew they had a Right to insist on in Support of their own Right as well as in maintenance of the established Rules of Law — And your Petitioners shew that the said Mayors Court could not dispense with such a necessary and fundamental Observance in the Complainant or proceed to give Judgement against them upon the deficient and imperfect Bill before

them upon any presumptive Grounds of Equity or — implied Right thereto, — As upon an Assumpsit of Argument Appearances or implication of Right unsupported by law facts and uncontroverted Right — the Law would be made to give way to Arbitrary Reasoning — Justice to the Various Ideas of men upon it and the Rule of implications be substituted for deficiency of Evidence — and your Petitioners do Maintain that it is of the utmost importance that the — said Robert Hughes should be made a party to the said Suit — And the said Tyapah was not entitled to a Decree for the said Bond upon the mere Grounds of his having by some means come to the Possession of it nor is it different in the Law whether the said Decree had been for your Petitioners to pay the said Money to Robert Hughes by his Attorney Tyapah by his Attorney William Lewcock or whether the said Decree be in the Manner that it is Now made that your Petitioners shall pay this Money to the said Tyapah by William Lewcock because in Case the said Action had been commenced in the Form prescribed by Law in the Name of the said Robert Hughes It cannot be determined what plea or Answer or What Evidence

Evidence he might not have produced in proof thereof — the Bill would have been totally changed not Simply in its Form but in its Essence and Nature and your Petitioners would in that Case have been advised to file a Cross Bill against the said Robert Hughes for a discovery of his Original Interest in the said Bond how he became in possession thereof for what Consideration it was executed to him and for what Consideration it was Assigned and finally for a delivery thereof to be cancelled which your Petrs shew he could not regularly have done against the said Tyapah upon his Bill of Complaint for want of the said Robert Hughes being made a party thereto as the said Tyapah would have had it in his power to conceal himself under the absence of the said Robert Hughes as party and your Petitioners would have been without Relief by being without the Means of discovery — for whatever the said Tyapah may pretend that the Sums falsely asserted to have been paid was his own property — the said Robert Hughes was nevertheless a party in the said Bond at the time of its Execution or at the time of the Assignment he attempted to make of it whereby he avowed and took upon himself every Consequence derived from the Original execution of the Bond altho he doth not appear informed of the said Bond by his deposition but that is because the said Tyapah did not interrogate him to it which your

Petrs

Petitioners conceive was necessary without that his Answering to an Interrogatory leading to the discovery of such his knowledge — might also lead to a discovery of what was contrary to the Interest of the Complainant — For altho the said Complainant declares that the said Robert Hughes did pay the Testator the Sum acknowledged to be due on the said Bond — Your Petitioners have denied that the Testator did receive any Money in Consideration of the said Bond directly or indirectly from the said Robert Hughes — and altho — the Complainant hath Setforth that the said Robert Hughes did make over the same for a Valuable Consideration Your Petitioners have also denied that he did do so — And your Petitioners therefore say that whatever the Complainant did Setforth in his Replication was in every respect Contrary to what he Setforth in his Bill of Complaint respecting the execution Consideration and Assignment — of the said Bond and therefore so far from being a denial of what Your Petitioners did in these respects Setforth in their plea and Answer — the said Plea and Answer do stand uncontroverted and allowed of in every Matter respecting the same and as the said Replication did not Support the Bill it did not deny the Plea and Answer of course the same ought to be affirmed and the

Bill

Bill dismissed even upon these Grounds which your Petitioners say are much more liberal and equitably constructed than the General Merits of the Complainants proceedings are in fact entitled to be—

And your Petitioners shew that in Consideration of these Circumstances they were not bound by the course of the Law to prove their answer because their Plea was good to every purpose and intent of the Law and is in fact admitted by the Replication which doth in no sense deny it— Your Petitioners having already observed on the Evidence produced by the Complainant shew imperfect and unavailing the same is to support even that part of the Complainants proceedings which he hath been desirous to establish as the foundation for a Decree Your Petitioners do humbly conceive that it is not Necessary or Requisite for them to make any further or other remark to shew its invalidity and Your Petitioners therefore pray that this Honble Court will be pleased take the said several proceedings before mentioned into their Serious Consideration and Order and Decree that the said Decree of the Mayors Court of the Fifteenth December One thousand Seven hundred and Eighty Nine be Over—

Ruled

Ruled and Reversed with Costs in both Courts and that this Honble Court will grant your Petitioners such further and other Relief as to them in their Wisdom may seem Meet—

/Signed/

Henry Dupuy

Attorney for Appellant

Mayors

Mayors Court at Madraspatnam } Tuesday the 15th day of December Anno Domini 1789

Present

William Webb Esqure Mayor
Edward Garrow Andrew Ross
& John Mitford Aldermen

Between Tyapah of Madraspatnam Inhabitant by his attorney William Lewcock alss of the same place Complainant and Chedambara Moodelly and Yeroosapem of Madras Inhabitants Executors named in the Last Will and Testament of Boothoor Moodoo Moodelliar Deceased Defendants

This cause coming on to be Argued and Determined this Day in the Presence of the attornies on both Sides on Reading the Complainants Bill with Copies of four Exhibits annexed the Defendants Joint and several Plea and Answer with three Exhibits annexed The Amended Replication The General Rejoinder The Interrogatories and Deposition on the part of the Complainant with Two Exhibits marked A & B annexed one Exhibit on the part of the Defendant 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 Defendants do pay unto the Complainant out of the Estate and Effects of Boothoor Moodoo Moodelliar Deceased the full and Just Sum of three thousand and thirty one Pagodas and fourteen fanams / Pagodas 3031.14. / 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

By Cur
/Signed/ George Taylor
Depy. Regr.

True Copy /Signed/ Henry Dupuy
Attorney for appellant

Tyapah

Tayapah Moodelliar by his attorney William Lewcock

vers

Chedombara Moodelliar & Yeroosapen Executors of Boothoos Mondar Moodelliar Deceased

I dissent to the Decree of the court in this Cause Because of the insufficiency of the Assignment by Hughes to Tyapah and that the Action is commenced in the name of Tyapah instead of being brought in the name of Hughes by his attorney Tyapah and in the name of Tyapah by his attorney Lewcock which is the Mode of Suing in such cases prescribed by the Law and practised by the court and was so determined lately in this court in a cause where Desveaux Suid. the Executors of Whalmough in his own name on a Bond made over to him by Bromley but the court was of Opinion that the Action was not properly laid and Should have been brought in the name of the Assignor Bromley by his attorney — Desveaux the more especially (as is the Case in the present instance) it did not appear that there was a Regular — Power granted by Bromley to sue upon and therefore the — Court thought proper to Dismiss the Bill with Costs Because the Bill of Complaint Setsforth that the Money was Borrowed by the Deceased from Hughes and was transferred by him to Tyapah for a Valuable Consideration But the Replication is a total departure from the Bill by Charging that the Money was the property of Tyapah and that the name of Hughes was only made use of According to the — Custom of Dubashes taking Bonds in the Name of their Masters — Which Appears to me a practice not only illegal but very detrimental to the public good and too often — Made use of in that regid exercise of Power and influence which the Strong are Seldom backward in Practising over the Weak and Should therefore in my Opinion — be encountered with every discouragement that a court of Justice finds a proper Occasion to make use of —

Because the Answer of the Executors which is upon Oath denies the receipt of the money and they insist that the Bond against which the Relief is — prayed was a Voluntary one on which no Consideration was given and as the Bond is Claimed in Consideration of money lent — and the prosecutor has not brought Sufficient Proofs in Support of his Consideration — he Should not now be allowed to make it a Claim on the Estate of the Deceased even as a Voluntary Bond — Seeing that the Evidence

brought

brought in proof of the Consideration is so Contradictory as not
Sufficient to Refute the Answer of the Defendants
Covey Venayagam Says— that the money was sent
and detained on the delivery of the Bond. but states that it was
the money of Tyapah and procured from him
Iyah Sawmy Says— it was Mr. Hughes money
Chengleroy Says— he does not know of any money
having been paide
For all which Reasons I am of Opinion that there
are not Sufficient grounds for the present Decree
Signed
Andrew Ross
Alderman
15th Decr 1789

A true Copy
(Signed) James Taylor
Regr

True Copy
(Signed) Henry Dupuy
Attorney for Appellant

To

The Honorable Edward John Holland Esqr
President in Council
Fort St George

In the Honble
the Court of Appeals

Between Tayapah Moodeliar of
Madras Inhabitant by his attorney
William Lewcock of the same place
Complainant and Chedambra Moodeliar
and Yeroosapen Executors Named in the last
Will and Testament of Soomoo Moodeliar
Moodeliar deceased Defendants. —

The Answer of the above named Complainant to
the Petition and Appeal of the above named Defendants —

Filed in my Office
the 15th Feb 1790
Chas Wm Ellis

This Respondent admits that he did by
his said Attorney some time on or about the twenty fourth day
of December which was in the year of our Lord one thousand Seven
hundred and Eighty three Exhibit and file a Bill of Complaint
in

in the Honble the Mayors Court at Madras patnam Against the
Appellants Charging that they were as Executors as aforesaid
endebted unto him in the full and Just Sum of three thousand
and thirty one Pagodas and fourteen fanams Current money
of Madras that this Respondent did further set forth that on
the fifteenth day of August which was in the year of our Lord
One thousand Seven hundred and Seventy Nine the Above Named
Testator Bootkoor Moodoo Moodeliar borrowed and Received of
Robert Hughes then of Fort St George the full and Just Sum
of Two thousand pagodas Current money of Madras and that
to Secure the payment thereof unto the said Robert Hughes his
Heirs Executors Administrators or Assigns the said Testator
entered into and duly executed Signed Sealed and delivered
in the presence of Credible Witnesses as and for his Act and
Deed a certain Bond or Written Obligation Whereby he
pretended that the said Testator Acknowledged to have at or
before the Execution of the said Bond borrowed and Received
of and from the said Robert Hughes the said Sum of Two
thousand Star Pagodas payable in five months from the day
of the date thereof with Interest at and after the Rate of twelve
per Cent per Annum that the said Testator himself his Heirs
Executors

Executors and Administrators thereby became held and firmly
bound unto the said Robert Hughes his Heirs Executors &
Administrators or
Assigns for the true and Just payment of the said principal
Sum of Two thousand Pagodas Current Money of Madras
With full and legal Interest which might arise and become
due thereon and this Respondent admits that he did by his
said Attorney further shew that and the twenty fifth day of
August which was in the year of our Lord one thousand Seven
hundred and Eighty for good and Valuable Consideration
in Hand paid by this Respondent unto the said Robert Hughes
he the said Robert Hughes did fully and Effectually Assign
transfer and set over unto this Respondent his Heirs Executors
Administrators or Assigns all Right Title Claim and
Interest which he before that time possessed had or was
entitled unto in of or from the said Bond or Obligation and
did fully Transfer and make over all the Money principal
and Interest which was due or which might arise or Grow
due thereupon unto this Respondent his Heirs Executors &
Administrators or Assigns all which Matters this Respondent
did Alate would fully and Clearly Appear by Copies of the
said original Bond and Assignment with the Acknowledge
=ment

=Acknowledgement of good and Valuable Consideration by him
this Respondent to the said Robert Hughes paid and made to his
Satisfaction and also by copies of an Assignment with an &c.
Account Current annexed for the inspection of the said Mayors
Court all which he prayed might be taken and received as
part and parcells of his said Bill of Complaint the Originals
being in the possession of his said Attorney and Ready to be &c.
delivered when Required And this Respondent Admits Leave
further to shew that he had frequently and in an Amicable Manner
Requested payment from the said Boothoor Moodoo Moodelian
in his Lifetime and since his decease of and from the Appellants
as Executors of the said Testator the said Sum of three thousand
and thirty one pagodas and fourteen Fanams And this Respondent
Admits the said Bill did shew such other Matters as in the
Appellants said Petition of appeal is set forth.

And this Respondent admits that the
Appellants did on or about the Twentieth day of April which
Was in the year of our Lord one thousand Seven Hundred and
Eighty four put in a Joint and Several Plea and answer to this
Respondents said Bill of Complaint and that they did for
plea thereunto say that it Appeared by the said Bill and
the

the Exhibits thereto annexed that the ground upon which the
said action was established was a Bond or Obligation
pretended to have been geven by the Testator in his life time
To Wit unto Robert Hughes dated the Twenty fifth day of
August one thousand Seven hundred and Seventy Nine for the
Sum of Two thousand Pagodas payable in five Months at
Twelve per Cent Interest per annum Nevertheless that the
said Robert Hughes was not made a party in the said
Bill as he ought to have been consistent With the Established
and indispensable Rule and practice as they did pretend of
Law and Equity in which Cases a Bond
Assignable the Assignee should sew upon such Assigned
Bond According to Form prescribed and laid down in both
those Courts except in cases of Bankrupts and some other Cases
in no way relating to the present and which Forms were constantly
adhered to by the said Honble Mayors Court in the Admission
of Suits of that Nature which were not for the Assignee to
Commence an action in his own Name but in the Name of the
Assignor and for Which purpose the Appellants did pretend it
Was even Necessary that a Letter of Attorney Authorizing the Assignee
to Commence a Suit under that Form should have been annexed

and

and made part of the Assignment by which the property in such Bond was meant and intended to be Made over and Assigned and not in the manner and form the present Suit was Commenced which they did pretend ought to have been commenced in the Name of Robert Hughes by his Attorney Tayapah by his attorney William Lewcock and that altho no power was given to this Respondent to commence an action against the Testator or the Appellants his Executors the said defect and deficiency in the said Assignment did not cure the Error of his commencing the present action in his own Name contrary as the Appellants pretended to all Rules and practice and much less could the second Assignments and power to William Lewcock help or cure the said Error but that such Original Assignment was left exceptionable upon its own Grounds as being irregular in Itself and must of Course fall as well as the present Action until a Conformity with the Rules of the said Mayors Court should entitle the said Assignee to commence Another action upon a more legal foundation and this Respondent Admits that the Appellant without waiving their said Plea but relying thereon for answer unto the rest and residues of the said Bill of Complaint did say that they denied to stand indebted unto this

Respondent

Respondent in the Sum of Three thousand and thirty one Pagodas and fourteen fanams or unto his Attorney William Lewcock or in any other Sum or Sums of Money whatever that they did admit they were Executors of the said Testator and did pray to Lay before the said Court what they pretended they knew relating to the demand of this Respondent and this Respondent admits the Appellants did deny that their deceased Testator did ever directly or indirectly Receive any Sum or Sums of Money or any Consideration whatever upon the said Bond from the said Robert Hughes or from any Person or Persons whatsoever on his Account altho they did not deny that the said Testators name was thereto Subscribed But they did not admit that the said Robert Hughes on the fifth day of August one thousand Seven hundred and eighty at Fort St. George or else where for any good or other Consideration did fully and effectually or otherwise assign transfer and Set over unto this Respondent the said Bond or Obligation and the Appellants did on the Contrary insinuate that the whole of the said Tayapahs Bill of Complaint was an unjust and unfair action Worked and Contrived by him and his Attorney for the purpose of Wronging the Estate of the deceased as they pretended this Respondent well knew But this Respondent denies that the

Appellants

Appellants did set forth any particulars that does in the least tend to shew a shadow either of unjust or unfair conduct in the parties to this Respondents said Bill of Complaint and this Respondent says that the said Answer of the Appellants did state a Variety of Extraneous matter altogether impertinent to the matter in dispute and did enter into Arguments and reasonings that were full of Contradictions and inconsistencies and such as tended to involve the case of this Respondent in perplexity and confusion Amongst other things the Appellants in their said Answer did say that the said Bond was Executed that they firmly believed he died in the full persuasion thereof and that he declared so a few hours before he died although this Respondent says the Exhibit annexed to their said Answer and which is a Note from the said Robert Hughes shews that their Testator not only knew a considerable Time previous to his death that the said Bond was Executed to Robert Hughes and not to Thomas Welch but that he must also have frequently promised to pay or otherwise discharge the Consideration thereof for the said Robert Hughes in the said Note says addressing the Appellants said Testator "I am repeatedly put off in payment of your Bond I am now to acquaint you that I will wait no longer than a day or two and if not paid in that

I shall

I shall proceed against you as the Law directs" This Respondent says that whatever might have been the opinion of the Appellants Relative to the sufficiency of their said Plea and Answer or whatever Motives might have influenced their conduct to prevent their proceeding to examine Witnesses in support thereof this Respondent says the reasonable conclusion is that they found too late they had asserted in their said Plea and Answer much more than they could not prove and therefore they evaded what they judged imprudent to Meet.

This Respondent admits that to the said Answer of the Appellants he did file his amended Replication denying the several Matters and things contained in the said plea and Answer alledging that the same did not relate to him or in any manner affect his claim for this Respondent therein did say that he advanced and paid the said money to the Testator in his life time for the Bond in question that the property and Title in and to the said Bond was in this Respondent and that the Name of the said Robert Hughes was by his express permission and assent put into the Bond agreeable to the Custom of the country this Respondent at the same time shewing that he was subject to the said Robert Hughes had full permission and liberty to use his said Matters name as a Sanction or Security to this Respondent which fact this Respondent asserted was well known and asserted to by the

the said Testator when he received the Money from him which this Respondent doe say he would prove to the satisfaction of the said Court But this Respondent admits he did not enter into proof because the Appellants had allowed thereof by filing a General Rejoinder thereto — This Respondent admits he did express himself free from doubt that his Right in and to the said Bond and to the power of assigning the Money due thereupon would be fully established and that the Candour and Justness with which he had submitted his Claim to the Judgement and determination of the said Mayors Court and the full and clear declaration of the said Robert Hughes regarding the property of the said Bond or Written Obligation and the Money thereon being Vested in and the absolute property of this Respondent would prove the means of affording him the relief sought for in and by his said Bill of Complaint — And this Respondent says that the remarks made by the Appellants on the Assignment executed by the said Robert Hughes to this Respondent of the Bond in Question are erroneous and incorrect and this Respondent says it does not appear from any thing in his said Replication contained that he meant to deliver or impose on the Justice of the said Mayors Court on the Contrary he did in stating the Question in his said Replication refer the Matter to their Consideration in its true state and left the Merits or Demerits to their Judgement nor does the Reasons assigned by the Appellants for the purpose of establishing an opposite Fact lend in least to affect the Ground of Action of this Respondent or to impeach his conduct in prosecuting the same and this Respondent says that the sufficiency of the said Assignment executed by the said Robert Hughes to this Respondent was every way apparent to the said Mayors Court and he humbly insists the same is amply proved and legally established by the Oath of the said Robert Hughes and therefore sufficient in equity to entitle this Respondent to bring his said Action in such Manner and form as appeared the most eligible in order to prevent that procrastination which has constantly been the Appellants object and this Respondent says that the said Robert Hughes has also upon his Oath proved Notwithstanding any thing to the contrary advanced by the Appellants that he was not any wise interested in the Matter in Dispute and this Respondent further saith that the several facts stated in his said Replication however they may differ in appearance from those set forth in his said Bill of Complaint are still in Reality the same as they all go to one and the same point for it is exactly the same in respect to Substance although different as to form whether the Sum set forth in the said Bond was immediately or

Advanced /

Advanced by himself to the Appellants said Testator or whether it
Was advanced to him by the said Robert Hughes and by the said
Robert Hughes assigned over to this Respondent and this Respondent
therefore says as in and by his said Replication he has already
said that whether the Suit was commenced and prosecuted in the
Name of Tayapah by his Attorney William Lencock or in the Name of
Robert Hughes by his Attorney Tayapah by his Attorney William Lencock
could not in reason or in Equity make any the smallest Alteration in
the Matter of fact or in the least effect this Respondent demand
against the Appellants as Executors of the said Boothoor Mooda
Moodelear and this Respondent sheweth that his said Replication
further stated that this said Bond on which he grounded his
Right of action Against the Appellants did bear the legal Interest
of Twelve per Cent per Annum and not Twenty four per Cent as
unjustly charged in the Appellants said Joint plea and Amended answer
That the contradictory mode of pleading Made use of by the Appellants
Was altogether new and contrary to Reason and to the Rules of
practice followed and observed in any Court of Law or Equity —
Because they did as Executors admit the Name of the deceased was
duly subscribed and in his proper Hand writing to the said Bond
Which is sufficient to establish the right of action in the Holder of the

said

said Bond first being a specially the possession thereof entitled
the holder to such a right and interest thereon as the Arguments and
shewings of the Appellants could not set aside — and this Respondent
did in his said Replication further say that it was absurd in
the Appellants immediately after they had acknowledged the
Execution of the said Bond to consist on their said Plea and
Amended answer that they admitted not that the said Robert
Hughes did on the Twenty fifth day of August one thousand Seven
hundred and Eighty at Fort Saint George or else where fully
and effectually or otherwise assign transfer and set over unto this
Respondent the said Bond or Obligation and did shew from
Law & Equity and the nature of the thing that his said action
was justly founded and properly brought and that the Conduct
of the Appellants was irregular evasive improper and unjust
as in and by the said Replication reference being thereunto
had may appear and therefore the assertion of the Appellants
in their said Petition and Appeal contained that this Respondent
did not reply in any manner sufficient in Law or in Equity
to over rule their said plea and Answer is very incorrect and
equally so in the assertion of the Appellants that this Respondents
said Replication was every way evasive — This Respondent

admits

admits he did not in his said Replication deny that the said Robert Hughes did Write a Letter Copy of Which is annexed to the Appellants said Plea and Answer whereby it appeared that the said Robert Hughes had demanded payment of the said Bond in December following the said assignment but on the contrary that he did Acknowledge the same and thereon say that it was a conduct very extraordinary in the Appellants to insinuate that the said Robert Hughes had never seen the Bond in question when they themselves produced a Letter addressed from him to the obligor their said deceased Testators demanding payment of the Contents thereof So that the pretext made use of by the Appellants for filing a General Rejoinder cannot avail them and this Respondent says that if in his said Replication hereinbefore he had departed from the Matter contained in his said Bill of Complaint as insinuated by the Appellants they should have demurred to such pretended irregularity but that not having done so the said Replication of this Respondent being special and the Rejoinder of the Appellants being general the several Matters and things in the said Replication contained must of course stand good and sufficient in the Law and be taken and received as

as granted and confessed by the Appellants — This Respondent admits that on the Appellants filing a General Rejoinder to this Respondents said special Replication Issue did join and Rules did pass for the Examination of Witnesses and that several Witnesses were examined accordingly on the part of this Respondent and this Respondent admits that amongst the Number of Witnesses the said Robert Hughes was produced and Examined and that he did to the Seventh Interrogatory depose he had not any Interest in the Event of the determination of the present Suit of any manner or sort whatever and this Respondent humbly insists Rules have been altogether superfluous and unnecessary to have examined the said Robert Hughes in the Manner and to the matter suggested by the Appellants that is to say whether he ever had or had not any Interest in the Event of the determination of the present Suit for the said Robert Hughes had in substance deposed thereon to the Seventh Interrogatory as above set forth equally superfluous and consequently unnecessary would have been the Interrogatory whether the said Robert Hughes had known the Testator because the Appellants had themselves shewn by the Letter exhibited with their said Answer that the said Robert Hughes was in the Habit of corresponding with him and that he

(had

had often demanded payment from him of the Bond in question — and this Respondent says that the said Robert Hughes has gone still further for the Eighth Interrogatory he deposes that the Exhibit — Marked with the Letter **B** and which is the Assignment a copy — whereof is annexed to the Respondents said Bill of Complaint is of his own proper hand writing and that he did execute the same for the purpose and Intent that he the said Tayapah should recover the full amount of a Bond granted to him the said Robert Hughes by the said Boothoo Moodoo Moodeliar the Appellants said — Testator with the Interest that might be due thereon and this Respondent says that such declaration on the part of the said Robert Hughes was full and sufficient both in Law and in Equity at once to shew had no manner of Interest in the Event of the present Suit to — establish the rights of action in this Respondent against the Appellants as Executors as aforesaid and to shew the knowledge of the said Boothoo Moodoo Moodeliar This Respondent therefore says that it was not necessary for him to produce the said Bond to the said Robert Hughes — and this Respondent shews that having thus proved the said Robert Hughes had no right or Title either directly or indirectly in or to the said Bond he did proceed to prove the due Execution thereof although he was advised that

Such

such proof was altogether unnecessary as that the Appellants had themselves admitted the fact in their said plea and answer and this Respondent sheweth that he did clearly and distinctly prove the same by the depositions of several Witnesses amongst the Number Covey Venaigum alias peryeah Moodeliar was produced who to the third Interrogatory deposed in the most particular and circumstantial Manner that the said Boothoo Moodoo Moodeliar died in the year one thousand Seven hundred and Seventy Nine and his Cousin Named Chengleroy to him the deponent to procure the Sum of Two Thousand Star Pagodas and that he did within the space of ten days obtain the same from Tayapah and sent to the said Robert Hughes that the said Boothoo Moodoo Moodeliar interceded with the Deponent to obtain from the said Tayapah five months Credit for the Repayment and who after much importunity consented and — that thereupon the Bond for the said Sum of Two thousand pagodas was drawn out payable to the said Robert Hughes and sent together with the said Sum of Two thousand pagodas to the said Boothoo Moodoo Moodeliar who obtained the money and returned the Bond to Tayapah duly executed — And saying to the Sixth Interrogatory deposes that the contents of the said Bond were particularly explained to and fully understood by the said Boothoo

Moodoo

Moodoo Moodeliar previous to the Execution thereof that the said Bond
Was filled up in his the deponents own hand Writing and that he
carried to the said Boothoo Moodoo Moodelly the said Sum of Two
thousand Pagodas which was delivered to him by the said Tayjapa
on Account of the said Robert Hughes to whom the Deponent was
a Writer Chengleroy Concerning to the Second Interrogatory deposes
that he did set and Subscribe his Name as a Witness to the
said Bond granted by the said Boothoo Moodoo Moodelly unto the
said Robert Hughes for the sum of Two thousand Pagodas and that
he did so set and subscribe his name by the express and particular
desire and request of him the said Boothoo Moodoo Moodeliar
that the name Boothoo Moodoo Moodeliar set and subscribed
to the said Bond was of the proper hand Writing of the said
Boothoo Moodoo Moodeliar that the Seal affixed to the said
Bond was the Seal of him the said Boothoo Moodeliar and
that the said Bond was so executed in his the Deponents presence
— and the said Chengleroy did to the said Interrogatory further depose
that he knew the Sum of Two thousand pagodas was paid to him the
said Boothoo Moodoo Moodeliar in consequence of the said Bond
but this Respondent says that by a mistake of the Examiner
it was set forth in the deposition of the said Chengleroy to the said

Second

Second Interrogatory that he did not know that any Sum or Sums of
Money was or were in consequence of the said Bond paid
to him the said Boothoo Moodoo Moodeliar. — And this
Respondent sheweth that on the Error being discovered the
Attorney for this Respondent did on the Nineteenth day of
September one thousand Seven hundred and Eighty Eight move the
said Mayors Court that Chengleroy Moodely a Witness
produced on the Cause might be permitted to amend his
deposition to which prayer the Appellants Attorney did object
Whereupon this Respondents Attorney did pray he might amend
his Petition and Affidavit and the said Mayors Court were
pleased to order Accordingly and this Respondent sheweth
that he did on the Twenty first day of July in the year
of our Lord one thousand Seven hundred and Eighty Nine
thereupon file a petition and an affidavit of the said Chengle-
=roy in the said Mayors Court stating the said Error and that the
Fact was as above set forth to wit that the Sum of Two thousand
pagodas was paid to the said Boothoo Moodoo Moodeliar on
Account of the said Bond and did therefore pray that the said
Chengleroy might be reexamined Viva Voce at the hearing
of the Cause as appears by the Copy of the Extract of the

Minutes

Minutes of the said Mayors Court and of the said Petition and
Affidavit herewith annexed for the inspection of this Honble Court
to which this Respondent begs leave to refer and prays the same
May be taken as part of this his Answer to the appellants said
Petition of appeal and this Respondent says that although the
prayer of this Respondents said Petition was perfectly regular
and that the said Mayors Court do allow the Correction of an
Error in the deposition of a Witness by re-examining him Viva
Voce at the hearing of the Cause yet the said Mayors Court were
pleased to refuse the like indulgences to this Respondent and to
Order that his Petition and the said Affidavit of the said Chengkaroy
should be thrown out with Costs. — And this Respondent
says in opposition to the suggestion of the Appellants that the
evidence of the said Coy Venaigeum alias peregah Moodeliar
does not deny the Matters set forth in this Respondents said
Bill of Complaint in deposing that the said Bond was executed
payable to the said Robert Hughes for the Bill shews the said
Bond to have been assigned over by the said Robert Hughes
to this Respondent and the deposition of the said Coy Venaigeum
at the same time supports the Replication of this Respondent
for whilst it shews the Bond was executed to the said Robert
Hughes it proves that the said Sum of Two thousand pagodas was
advanced

advanced by this Respondent and this Respondent says that the
Evidence of Sah Sawmy whilst it supports the Bill in no wise
contradicts the said Replication of this Respondent for it states
the Bond to have been executed to the said Robert Hughes which is
the matter declared in the Bill and which is the Matter of
fact and the assertion of the said Sah Sawmy that this Respondent
gave him the said Sum of two thousand Pagodas to carry to the
said Boothoo Moodoo Moodeliar in the Name of the said Robert
Hughes shews that the money was absolutely advanced by this
Respondent and so far it goes to the support of the said Replication
— This Respondent says it was not necessary that he should
have communicated to the said Sah Sawmy the particulars of
his Transaction and as the Bond was drawn out in the Name of
the said Robert Hughes it was necessary to impress the said Sah
Sawmy with the belief that the said Sum of Two thousand Pagodas
for which the said Bond was executed belonged to the said
Robert Hughes — and this Respondent says he has fully
shewn the Matter stated in the deposition of the said Chengkaroy
And which is twisted into an unnatural construction by the
Appellants in their said Petition of appeal to have been an Error
committed by the Examiner and this Respondent says that the

deposition

deposition of the said Chengleroy to the fifth Interrogatory does not contain the inconsistency which the Appellants would insinuate for this Respondent denies the said Chengleroy has deposed that the Bond was made out in the name of this Respondent and this Respondent admits that upon such Witnesses being Examined on Publication did pass in the above Cause and that the same came on to be heard before the said Mayors Court on the fifteenth day of the present Month of December and that the said Mayors Court did Decree that the Appellants should pay to this Respondent out of the Estate and Effects of the said Moodoo Moodeliar deceased the Sum of Three thousand and thirty one Pagodas and fourteen fanams together with all such Interest as then was or should thereafter become due thereupon also all costs of Suit — But this Respondent denies that the Appellants are thereby aggrieved or that the cause of appeal shewn by the Appellants has any the least foundation in reason or in Justice but on the contrary that the same is evidently litigious and oppressive nor can they derive any the least benefit or advantage from the dissent of one of the Judges of the said Mayors Court of which dissent a copy is annexed to their said Petition of appeal. —

And this Respondent to the Reasons offered by the Appellants as cause of appeal says that the assertion of the Appellants is Erroneous and incorrect in stating that the Mayors Court ought not to have over ruled their said Plea and give a decree in favor of this Respondent for the Amount principal and Interest due upon the said Bond for this Respondent says that from the Nature of the thing and from the Several proofs adduced by this Respondent in Support of his Claim the said Mayors Court could not agreeable to Reason and Equity have decreed otherwise Because in the first Instance the Appellants have themselves admitted the Execution of the said Bond by their said Testator and upon which this Respondent has grounded his Action and in the second Instance it has been clearly established by the depositions of several Witnesses that the said Sum of Two thousand Pagodas in the said Bond acknowledged to have been received by their said Testator is the sole property of this Respondent indeed the only plea the Appellants have offered to the contrary is a pretended — informality in a point of Law and upon such plea alone they hold themselves excusable in an attempt to deprive this Respondent of his Just dues But this Respondent denies the informality pleaded by the Appellants to be of any force or efficacy whatever and that had it been of force or efficacy they themselves have destroyed it by rejoining generally

Generally to special Matters set forth in the Replication of this Respondent and this Respondent says that although the formalities of the Law may be requisite in some instances yet Equity corrects the Law and decedes as the right appears to be and in the present Instance the right evidently and incontestably goes with this Respondent for he has proved the Execution of the said Bond by the subscribing Witness thereto one of Whom Chengleroy deposes that he set and Subscribed his Name as a Witness to the said Bond at the particular desire and Request of the said Boothoor Moodoo Moodeliar to whom he read and explained the same and he has also proved the consideration in the said Bond set forth to have been received by the said Boothoor Moodoo Moodeliar and Covey Venaigum alias Peryah Pah Moodeliar deposes he sent the said Bond and Money to Boothoor Moodoo Moodeliar Who returned the Bond Executed as aforesaid and detained the Money and Pah Savvy deposes that he carried the Money to the said Boothoor Moodoo Moodeliar and that the said Bond was filled up in his the deponents hand Writing for the said Sum of Two thousand Pagodas and this Respondent to shew his sole and exclusive right to the Sum conditioned to be

paid

Paid in and by the said Bond has produced the said Robert Hughes to whom it was Executed and who has deposed that he did Make over the said Bond to this Respondent for the purpose and intent that this Respondent should recover the full amount thereof together with the Interest that might be due thereon and further that the deponent had not any manner or sort of Interest whatsoever in the event or determination of the present Suit and this Respondent saith that the deposition of the said Robert Hughes is sufficient to destroy the suggestion made use of by the Appellants in their said Plea and effectually to do away the Arguments made use of in the dissent to the Appellants said petition of Appeal annexed for the Case in the said dissent cited of Devans and the Executors of Whatmough is not a Case in point for the obliger Bromley did not declare upon Oath that he had made over to Devans the Bond Executed to him for the sole Benefit and Advantage of the said Devans or that he was not in any Manner or wise interested in the event of the Suit instituted by the said Devans against the Executors for the recovery of the Amount of the said Bond and therefore the Court could not in Law or Equity decide in favor of the said Devans - because the said Bromley had not relinquished his right to the condition of the said Bond in such manner and form as the

Law

Law demanded or as Equity of the said Bond in such manner
Required — And this Respondent says the maxim of the Common
Law as formerly established that a Chose en action was not
Assignable was adopted merely to prevent the multiplication
of Suits and the subversion of Justice in the present Instance if
there can be no multiplication of Suits nor can Justice be
Subverted for the said Robert Hughes has declared upon Oath
he made over the Bond en question to this Respondent en order
that he might recover the amount thereof principal and
Interest from the Obligor and further that he the said Robert
Hughes has no Interest whatever in the Event of the present
Suit So that even Agreeable to the Spirit of the Common Law
this Respondents demand is just much more so as Sanctioned
by Equity which protects a Chose en Action in the same
Manner as the Common Law protects a chose en possession
and departing from the Subtilties and Refinements of the Law
is governed by reason and the Matter of Fact and gives
Judgement according to Right and Justice — and this Respondent
therefore says that the Contention of the Appellants on this point
of Law goes no further than to evince a spirit of Litigation
and the evil disposition of Harrassing and distressing this

Respondent.

Respondent — and this Respondent says that the Arguments used
by the Appellants to shew that the said Robert Hughes ought to
have been made a party to the present Suit are fallacious and
nugatory for this Respondent says that had the Appellants been
inclined to file a Cross Bill in the Nature of a Bill of
discovery they might have filed it against this Respondent and
have examined the said Robert Hughes on Interrogatories by
which they might have derived every Information they might
have obtained by filing a Cross Bill against the said Robert
Hughes had he been made a party to the Suit and this Respondent
says in examining the said Robert Hughes it was not necessary
Interrogatory Necessary and therefore the incarceration of the Appellants
that he did not examine the said Robert Hughes to points which
might have led to a discovery relative to his the said Robert
Hughes knowledge of the said Bond is futile and redeculous
— The Appellants were at liberty to cross examine the said
Robert Hughes and might have proposed to him any and as many
Interrogatories as they might have thought proper but this for
prudential reasons they declined doing and for the same reasons
they also declined entering into any proof in support of the very
extraordinary and equally impertinent matters set forth in their said

D

and answer — And this Respondent saith that it is not for the Appellants at this time to speak of the Replication of this Respondent as having departed from the declaration in his said Bill of Complaint contained for that had they Judged such a Departure of sufficient importance they Might and ought to have demurred thereto or in their rejoinder have urged such matters as might have appeared Necessary but on the Contrary they absolutely and to all intents and purposes admitted the Several Facts as stated in this Respondents said Replication by filing thereto a General Rejoinder only and declining to examine Witnesses — and this Respondent begs permission to shew that the Appellants having acknowledged the Signature Boathoor Moodoo Moodeliar to the said Bond affixed to be of the proper hand Writing of their said Testator which proves the Execution of the said Bond and as the only objection urged thereon by the Appellants that their said Testator did imagine the Obligee Was Thomas Welsh and not Robert Hughes is done away by the face of the Bond itself and by the said note of the said Robert Hughes addressed to the said Boathoor Moodoo Moodeliar Annexed to the Appellants said

Answer

and not Thomas Welsh the said Answer both of which shew the Obligee to be Robert Hughes Bond stands of itself and without the Several other proofs adduced by this Respondent as duly executed and the Sum therein conditioned to be paid to the said Robert Hughes is under the Several Circumstances hereinbefore set forth vested in and the Sole property of this Respondent and this Respondent says that the said Robert Hughes in and by his deposition and by the Letter by him addressed to the Appellants said Testator and to their said Plea and Answer annexed shews he did during the life time of the said Testator take an active part to recover the Amount of the said Bond and by his said deposition the said Robert Hughes further shews that he has made over to this Respondent all right title and Interest in and to the same and that he has not therein any Interest right or Title Whatever. —

From all which matters and Reasons and such others as may be offered at the hearing this Respondent humbly prays this Honble Court to Confirm the said Decree of the said Mayors

Mayors Court of the Seventh day of December
last past and that the Appellants Petition
of Appeal from their very illegeous
Conduct in the premisses be dismissed
with Ecampeny Costs to be paid out of
their own pockets. —

/Signed/ James Stuart Hall
Lt for Respondents

Extract

Extract from the Minutes of a Court Held at the Town
Hall on Tuesday the 9th day of September Anno Domini 1788

Present,
Edward Garrow Esquire Mayor
George Savage Josias DuPre Porcher and
Andrew Ross — Aldermen

Tayapah Moodeliar by his attorney William Lewcock,

Vers,

Cheddambaram and Yevvosapen Executors of Boodoor Moodoo Moodeliar
deceased, —

The Attorney for the Complainant prays
that Chengleroy Moodelly a Witness produced in this Cause on
behalf of his Client may be now permitted to amend his
Deposition — The Attorney for the Defendant Objects to the
Motion by reason that the same is irregular and contrary to the
Practice of the Court — The Attorney for the Complainant prays
he may be allowed till Next Court day to state the Errors to be
Amended by Petition and Supported by Affidavits —

Ordered

Ordered accordingly —

A true Extract

/Signed/ George Taylor
Regr.

A true Copy

/Signed/ J. S. Hall
Sol.r for Respt.

To

To the Honorable the Mayors Court at Madraspatnam,

Between Jayapah Moodaliar by his Attorney William Lewcock Complainant and Yeroosapen and Cheddambram Moodelly of Madras Merchants, Defendants —

The Petition of the above Named Complainant,

Sheweth,

That in the above Cause your Petitioner did Examine Sundry Witnesses and among others Chengleroyen a Concopoly that part of the Second Deposition as taken by the late Examiner Mr. Thomas Chase is contrary to what the said Witness did depose as may appear by his affidavit hereunto annexed. —

Your Petitioner therefore prays that the said Witness may be Re-examined Vera Voce at the Hearing of this Cause touching the said Matter. —

/Signed/ Stephen Popham
atty Petr.

A true Copy
/Signed/ J. Taylor Regr.

A true Copy
/Signed/ James S. Hall
Sol.r for Respt. —

To

Filed 21st July 1789.

To the Honble the Mayors Court
at Madraspatnam

Between Tayapah Moodaliar
by his attorney William Lewcock
Complainant

and

Yeroosapen and Cheddambram Moodelly
of Madras Merchants
Defendants

The affidavit of Chenglerayen Conceply

The said Chenglerayen Conceply Maketh Oath and Saith that since passing Publication in the above Cause he this Deponent was called upon by Mr Pullen Spencer the Attorney for the Complainant in the above Cause who did read to him the Depositions to the Interrogatories to him Exhibited on behalf of the Complainant in the above Cause by the Means and Interpretation of Gopaul Bramany he the said Pullen Spencers Head Writer and other persons — and the said Deponent Saith that upon the Second Deposition being read and Interpreted

Interpreted to him as aforesaid he this Deponent did declare that the Same was not according to what he this Deponent had deposed before the Examiner Mr Thomas Chase at the time of his Examination and that the words which follow the Words "he did set and Subscribe his name as a Witness to the said Bond so granted by Boodoor Moodoo Moodeliar to Mr Robert Hughes by the express and particular desire and request of him the said Boodoor Moodoo Moodeliar "to Wit" he this Deponent saith he does not know that any Sum or Sums of Money was or were in Consequence of the said Bond paid to him the said Boodoor Moodoo Moodeliar — do not contain the Words sense or Meaning deposed by this Deponent at such the time of his Examination but are directly contrary to his Sense and Meaning and what he then Deposed as such at the time of his Examination — Because this Deponent doth know that there was a Sum of Two Thousand Pagodas paid to him the said Boodoor Moodoo Moodeliar in consequence of the said Bond and this Deponent further saith that the said Depositions were read over to him at the Time of this Deponents signing the same in a very great hurry and so as he could not understand them or he

Could

could have pointed out the Error thereon,

A true Translation as near as can be from the Malabar Language,

/Signed/ Ranganaudom
Interpreter

/Signed/ J. Popham
Attorney Pet.r

Sworn to before me this 16th day of July 1789.

William Webb
Mayor

A true Copy /Signed/ G. Taylor Regr.

A true Copy /Signed/ James S. Wall,
Sol.r for Respond.t

Extract

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Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 21st day of July Anno Domini 1789

Present

William Webb Esquire Mayor,
Edward Garron George Savage, and
Andrew Ross Aldermen,

Tayapah Moodelliar by his attorney William Lancock

Vers

Vieroosahen and Cheddambaram Moodelly

Petition of the Complainant with the affidavit of Chengleroyen Moodelliar Sworn to before the Mayor the 16th Instant and filed this Day — Ordered that the Petition be thrown out with Costs, —

A true Extract

/Signed/ G. Taylor Regr.

A true Copy /Signed/ J. S. Wall
Sol.r for Respond.t

Court

Court of Appeals
at
Madraspatnam } for Saturday the 17th day of December
Anno Domini 1791

Between Chedumbaram Moodelly
and Veroosapen of Madras Inhabitants
Executors Named in the last Will and
Testament of Boothoor Moodoo Moodelly
Deceased Appellants and Tayapah Moodelly
of Madras Inhabitant by his Attorney
William Lewcock of the same place
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 15th day of December Anno Domini 1789. 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 Cste. —

Hur
/ Signed / Chas. N. White
Cth

To

To the Kings Most Excellent Majesty in Council

Between Tayapah Moodelliar of Madras Inhabitant by his Attorney William Lencock also of the same place Complainant and Chedambara Moodelly and Yettoosapan of Madras Inhabitants Executors Named in the last Will and Testament of Boothoor Moodoo Moodelliar Deceased Defendants—

The humble Petition and Appeal of the above named Defendants,—

Most Humbly Shew—

That some time on or about the Twenty fourth day of December which was in the Year of Our Lord one thousand Seven Hundred and Eighty three the above Named Tayapah then and now of Madraspatnam Inhabitant by his said Attorney William Lencock then And Now also of the same place did Exhibit a Bill of Complaint

Filed in my office the 29th. December 1791
Chas. H. Wilbraham Clk

Complaint against your Petitioners as Executors Named in the last Will and Testament of Boothoor Moodoo Moodeliar deceased setting forth that your Petitioners as Executors as aforesaid stood indebted unto the said Complainant in the full and just Sum of Three thousand and thirty one Pagodas and fourteen fanams Current Money of Madras making in Sterling Money of Great Britain at the Rate of Eight Shillings for every Pagoda the Sum of One thousand two hundred and Twelve Pounds Ten Shillings and Nine Pence or thereabouts— The said Complainant Alledging that the said Testator Boothoor Moodoo Moodeliar borrowed and received of Robert Hughes then of Fort St. George Esquire the full and just Sum of Two thousand Pagodas Current Money of Madras to Secure the Repayment of which unto the said Robert Hughes his Heirs Executors Administrators or Assigns the said Complainant alledged that he the said Testator Boothoor Moodoo Moodeliar entered into and duly executed Signed Sealed and delivered in the presence of Credible Witnesses as and for his Act and Deed a certain Bond or Written Obligation whereby the said Testator Acknowledged to have at or before the time of executing the said Deed Bond or Written Obligation borrowed and Received of and from the said Robert Hughes Esqr. the said Sum of Two thousand

Star

Star Pagodas payable at five Months from the day of the date thereof
with Interest at and after the Rate of Twelve per Cent per annum and your
Petitioners shew that the said Bill discharge that the said Testator did
thereby for himself his heirs Executors and Administrators become held
and firmly bound unto the said Robert Hughes Esquire his heirs
Executors administrators or assigns for the true and Just payment of the
said Principal Sum of Two thousand Pagodas Current Money of Madras
With Lawfull and Legal Interest which might arose and become due
thereupon — And the said Bill did further Allege that on the
Twenty fifth day of August which was in the year of our Lord
One thousand Seven hundred and Eighty at Fort St. George aforesaid for
good and Valuable consideration in hand paid by the said Tayapah
the Complainant unto the said Robert Hughes Esquire — He the
said Robert Hughes Esquire did fully and effectually assign transfer
and Set over unto him the said Tayapah and did also falsely state
in the said Bill unto the said Tayapah his heirs Executors
Administrators or Assigns." —

All which Matters and transactions
the Complainants did in his said Bill further say would morefully
and clearly appear by Copies of the original Bond and the Assignment
of Good and Valuable considerations being by the said Complainants

to

to the said Robert Hughes Esquire paid and made to his full &
Satisfaction and also Copies of an Assignment with an Account Current
annexed — which he also prayed might be taken and Received as part
and parcels of his said Bill of Complaint &c.ª —

And the said Bill did further more Set forth
that the Complainants had frequently and in an amicable manner
Requested payment from the said Testator in his life time and since his
decease of and from your Petitioners as Executors of the said Testator
of the said Sum of Three thousand and thirty one Pagodas and
fourteen fanams Current Money of Madras. —

And the said Bill did Charge that your
Petitioners did refuse to pay the same — and did pray that your
Petitioners might be decreed so to do and that your petitioners
Might be Summoned to appear before the said Mayors Court and to
Answer thereto — and your Petitioners further shew unto your Most
Excellent Majesty that they did accordingly Appear to the said Bill of
Complaint and did put in a Joint and several plea and Answer thereunto
— Your Petitioners by way of plea unto the said Bill first
shewing That it appeared by the said Bill of Complaint and the
Exhibits thereunto Annexed that the Ground on which the said Action
Was established was a Bond or Obligation pretended to have

been

been given by the aforenamed Testator in his life time To Wit into
Robert Hughes Esqure dated the Twenty fifth day of August
One thousand Seven hundred and Seventy nine for the Sum of Two
Thousand Pagodas payable in five Months from the date thereof
at Twelve per Cent per annum nevertheless the said Robert Hughes
Was not made a party to the said Bill as he ought to have been
consistent with the established and indispensable Rules and
practice of Law or Equity in which altho a Bond may be assignable
the assignee must sue upon such assigned Bond According to
the forms prescribed and laid down in both these Courts except in
Cases of Bankruptcy and some other special Cases in any wise relating
to the present and which your Petitioners in their said plea said
Were constantly adhered to by the said Mayors Court in the Admission
of Suits of that Nature — which were not for the assignee to
commence an action in his own name but in the Name of the
assignor and for which purpose even your Petitioners said it was
Necessary that a Letter of attorney authorizing the assignee to
commence a Suit under that Power should be annexed and made
part of the assignment by which the property in such Bond
Was meant and intended to be made over and assigned and not
in the manner and form the present Suit is commenced in the
Name

Name of the assignee in the first instance claiming under the said
Bond which provided the same had been assigned according to the
Rules aforementioned ought to have been sued upon in the
Name of Robert Hughes by his Attorney Tayapah by his Attorney
William Lewcock and not in the Name of Tayapah the pretended
assignee — and your Petitioners did also allledge that altho No
power was given to the said Tayapah to commence the said Action
against the Testator or your Petitioners his Executors — the said defect
and deficiency in the said assignment did not cure the Error of
commencing the said Action in his own Name contrary to all rule
and practice — Much less could the Second assignment and power
of attorney to William Lewcock help or aid the said Error but that
such Original assignment was left exceptionable upon its own Ground
as being irregular in itself and Must of course fall as well as the said
Action entill a conformity to the Rules of the said Honble Court
should entitle the said assignee to commence another Action upon a
More legal foundation — and your Petitioners did therefore demand
the Judgement of the said Mayors Court on the Matters and things
in their said Plea before pleaded and your Petitioners without waiving
their said plea but relying thereon for answer unto the rest and residue
of the said Bill of Complaint or unto such Matters therein contained
alledged

alledged and Setforth as they were advised to be Material for them to make Answer unto — And your Petitioners did say that they denied to stand indebted unto the said Jayapah in the Sum of Three Thousand and Thirty one Pagodas and fourteen Fanams or unto his said Attorney William Lewcock in any other Sum or Sums of Money what soever — And your Petitioners did deny that they were answerable to pay all and Singular the Debts due and owing by the said Testator further than his Effects would extend and the Law would oblige them which your Petitioners said would in due time be seen by an Inventory and account of such his Effects which had since or which might — thereafter come to their Hands or Possession — And your Petitioners by way of further Answer unto the said Bill prayed to lay before the said Court what they knew relating to the present demand of the Complainant and first they did deny that the said deceased Brother Moodoo Moodelliar did ever directly or indirectly receive any Sum or Sums of Money or any consideration whatever upon the said Bond from the said Robert Hughes or any person or persons on his Account — and your Petitioners did also say that they did not admit that the said Robert Hughes on the said fifth day of August one Thousand Seven Hundred and eighty at Fort St. George or else where for any good or other consideration did fully and effectually or otherwise assign transfer

Transfer and Set over unto the said Complainant the said Bond or Obligation on the contrary your Petitioners said that the whole of the said Jayapahs Bill of Complaint was an unjust and unfair Action Worked and contrived by him and his Attorney for the purpose of Wronging the Estate of the deceased as your Petitioners said the said Jayapah well knew and your Petitioners did alledge Sundry Matters by way of further Answer shewing that the Testator did not receive any Value or consideration for the said Bond — to the particulars Whereof your Petitioners most humbly pray to refer your Most Excellent Majesty and your Petitioners did in their said Answer further more Setforth that they were well acquainted with the dealings and transactions of the said Testator in his lifetime and that they never knew nor heard him mention the Bond in Question but as they represented in those parts of their Answer before referred to that they had often heard him mention the said Bond to have been given in the Name of Mr. Thomas Welch but never a Word of a Bond given to Mr. Robert Hughes and that they firmly believed that the Testator died in ignorance as to having ever given such a Bond always believing that the said Bond was given in the Name of Thomas Welch as he declared a few hours before he died — and your Petitioners further shewed that about the Fourth day of December

one

One Thousand Seven hundred and Eighty the Testator Received a Note from the said Robert Hughes demanding of him payment of the aforesaid Bond — and which your Petitioners said they verily believed was done at the instance of the said Tayapah and who they said they also believed had come to the possession of the said Bond by some under hand and unfair Means because they said they did not believe that the said Robert Hughes ever saw the said Bond — and your Petitioners did annex a Copy of the said Note unto their said Answer — And your Petitioners did shew that the Testator gave for an Answer that he never knew he had given a Bond in the name of the said Robert Hughes but that he had given one in the Name of the said Thomas Welch and that he had never before heard the Name of the said Robert Hughes therein and therefore had Nothing to do with the said Gentleman. — And your Petitioners did Set forth in their said Answer that all that they knew further of the said Matter of the said Robert Hughes demanding the said Money was that about fifteen days after one Velloydum Conyceply to Mr. Charles Bromley one of the Attornies of the said Mayors Court came to the deceased and demanded payment of the said pretended Bond and that in Answer whereto the Testator informed him of

What

what he had before given in Answer to the said pretended Note from the said Robert Hughes and your Petitioners did further say that it was not likely that the said Robert Hughes or any person or persons interested in the said Bond would if he or they had not known that he or they had not any Title to receive the same that they would have suffered the said Bond to remain unpaid and undischarged That it was certain that the said Robert Hughes knew he was not interested therein and that those who were in possession thereof knew that they were not entitled to demand payment of it — And your Petitioners did also shew that it appeared strange and was a demonstrative [illegible] that the said Tayapah if he had any Right should only endeavour to avail himself of it untill after the death of the said deceased — And your Petitioners did in their said Answer further point out that the truth of the said Matter was further brought to light by the pretended demand of the said Robert Hughes being after the pretended Assignment of the said Bond to Tayapah the demand being in December One thousand seven hundred and Eighty and the Assignment in August in the same year your Petitioners did in their said Answer observe that nevertheless this unaccountable conduct was preserved in the present Action by the same being commenced in

the

the Name of the said Tayapah in the first instance as Complainant—

Your Petitioners further pray leave to shew unto your Most Excellent Majesty that it is not the practice of the said Mayors Court at Madras in case of a plea and Answer being put into a Bill to set down the plea to be argued immediately but for the Complainant to demurr to the plea or put in a Replication to the plea and Answer — and your Petitioners shew that the said Complainants did put in a Replication and afterwards an Amended Replication to the said plea and Answer — Wherein he denied the Several Matters and things contained in the said joint and several plea and Answer the said Tayapah thereon alledging that it was him who advanced and paid the Money to the Testator in his life time for the Bond in question and that thereby the property and Title in and to the said Bond was in him the said Tayapah and that the name of Robert Hughes Esquire by his the Testators express permission and assent was put into the said Bond after the Custom of the Country he the said Tayapah being the Dubash to the said Robert Hughes had full liberty and permission to use his said Masters Name in and by way of a Sanction or Security to him the said Repliant which fact and Circumstance

to

as alledged the Repliant said was well known and Assented to by the Testator But your Petitioners shew unto your Most Excellent Majesty that neither the said Fact or Custom have in any degree been proved by the Repliant altho the Repliant in his said Replication axed that he would severally prove the same — and the said Repliant did further therein set forth that he did not suppose it Would Materially affect or injure his Claim in a Court of equity whether his suit was commenced and prosecuted in the Name of Tayapah Moodelliar by his attorney William Lewcock or if it was commenced in the Name of Robert Hughes by his attorney Tayapah by his attorney William Lewcock. — And your Petitioners shew unto your Most Excellent Majesty that they did put in a General Rejoinder unto the said Replication, — and thereupon Issue did join and Rules passed for the examination of Witnesses and Witnesses were examined by the said Complainant but not on the part of your Petitioners. who totally relying on their said plea and other conclusive parts of their Answer your Petitioners were Advised that it was not Necessary for them to prove the other parts thereof — and your Petitioners shew that the said Complainant did not prove his said unjust demand and ought not to have had a Decree for the same even without the Merits of your Petitioners plea — and your petitioners shew that upon the aforesaid

proceedings

Proceedings your Petitioners did procure the said Cause to be set down for hearing and the same did accordingly come on to be heard before the said Mayors Court on or about the fifteenth day of December one thousand Seven hundred and eighty nine when the said Court did order and Decree that your Petitioners should pay out of the Estate and effects of the said Testator the Sum of Three thousand and thirty one Pagodas and fourteen fanams together with such Interest as there was or should thereafter become due thereon and moreover all Costs of Suit altho your Petitioners were sued and did defend the said Suit as Executors Copy of which said Decree of the said Mayors Court and also of an Extract from the Minutes of the said Court are hereunto annexed for the inspection of your Most Excellent Majesty humbly praying that the same may be admitted as part of this their Petition and appeal, —

And your Petitioners shew that they do find themselves as Executors as aforesaid greatly aggrieved by the said Decree of the said Mayors Court and did therefore on or about the Twenty Ninth day of the said Month of December appeal therefrom unto the President and Governor &c.a Council of Fort St. George in the Court of appeals at madrapatnam and for Causes of appeal before the said Court from the said Decree of the said Mayors Court your Petitioners did

shew

shew, —

That the said Mayors Court ought not to have over Ruled their said plea and to have decreed upon the said Bill that your Petitioners should pay the amount principal and Interest of the said Bond upon the Evidence produced and for that the said Bill was very insufficient to Warrant the said Decree — as your Petitioners were not called upon to Answer the said Bill in that Manner and form prescribed by the Law in Cases of Assignments of Bonds which as Assignments thereof are allowed for the Convenience and benefit of Trade and Money Negotiations ought to be strictly construed according to Regular forms, in order that those beneficial purposes may be solely answered and not to leave to the Arbitrary or Mistaken Notions or Will of people to deviate from such prescribed forms the doing of which your Petitioners observed could not be grounded upon any Necessity or turned to any fair use or Advantage but that if on the Contrary such deviations from such established Rules and forms were allowed to Obtain in this instance a general deviation from all prescribed Forms and Rules of Law would be equally liable to indulgence and therefrom a confusion and uncertainty engendered and introduced

into

into the practice of Courts as would greatly endanger not only the Rights of a Defendant to be called upon in no other Manner than is Warranted by Law but the practice and Law of Courts would be thereby over thrown and be forced to give way to Error informality and the Arbitrary Will of ignorance or contumacy — The practice of the Court was therefore Justly determined to be the Law of the Court which enjoins punctuality and Observance to all its Suitors to these first and Necessary lines by which the way of Justice could only be attained — Your Petitioners did therefore Humbly insist in their said Petition and appeal that they were justified by their said plea against the Arbitrary and illegal proceeding of the Complainant who had the Right on his side to have conformed to the Necessary Steps to obtain it by Amending his Bill by causing the said Robert Hughes to execute to him an assignment and power of attorney in form and by making him the said Robert Hughes a party thereto which Amendment your Petitioners shewed they did right to insist on in support of their own right as well as in maintenance of the Established Rules of Law — And your Petitioners also said that the said Mayors Court could not dispense with such a — Necessary and fundamental Observance in the Complainants to proceed to Judgement upon the deficient and imperfect Bill before them upon any presumptive Grounds of Equity or implied Rights or upon an admission of Arguments Appearance or implication of Rights unsupported by law facts and uncontrovertable Rights the Law would in that case be made to give way to arbitrary reasoning Justice to the Various Ideas of men upon it and the Rule of implication be substituted for deficiency of Evidence — and your Petitioners in their said Petition and appeal did maintain that it was of the utmost importance that the said Robert Hughes should be made a party in the said Suit and that the said Tayapah was not entitled to a Decree upon the said Bond upon the bare ground of his having by some means come to the possession of it and that it was not indifferent in the Law whether the said Decree had been for your Petitioners to pay the said Money to the said Robert Hughes by his Attorney Tayapah by his Attorney William Lewcock or whether the said Decree be in the Manner that it is now made that your Petitioners shall pay the Money to the said Tayapah by William Lewcock Because your Petitioners said that in Case the said Action had been commenced in the form prescribed by Law in the Name of the said Robert Hughes it cannot be determined what plea or Answer your Petitioners might have been advised to put in or what evidence they might not have produced in proof thereof

The

The Bill would have been totally changed not simply in its form but in its nature and consequence — and that your Petitioners would in such Case have been advised to file a Cross Bill against the said Robert Hughes for the discovery of his Orgenal interest in the said Bond how he became in possession thereof for what consideration it was executed to him and for what consideration it was assigned and finally for a delivery thereof to be cancelled — Which your Petitioners said they could regularly have done against the said Tayapah upon his Bill of Complaint for want of the said Robert Hughes being made a party the said Tayapah being an Indian Native and because the said Tayapah would have had in his power to conceal himself under the absence of the said Robert Hughes as a party and your Petitioners would have been without relief by being without the means of discovery — For that whatever the said Tayapah might pretend that the Sum falsely asserted to have been paid was his own property — The said Robert Hughes was never the less a party on the said Bond at the time of its execution and at the time of the pretended Assignment thereof — Whereby he avowed and took upon himself every consequence derived from the Orgenal execution of the Bond altho by his deposition he doth not Appear

Appear informed of the said Bond — but that might be because the said Tayapah had not interrogated him to it — Which your Petitioners in their said Appeal said they conceived was Necessary without that his answering to an Interrogatory leading to a discovery of such his knowledge might also lead to a discovery of what was contrary to the interest of the Complainant — And for that altho the said Complainant declares in his said Bill that the said Robert Hughes did pay the Testator the Sum acknowledged to be due on the said Bond your Petitioners had denied that the said Testator did receive any Money or consideration for the said Bond directly or indirectly from the said Robert Hughes or from any person or persons whatever — And that altho the Complainant had set forth that the said Robert Hughes did make over the same for a Valuable consideration your Petitioners have also denied that did so — And your Petitioners did therefore set forth that — whatever the Complainant did set forth in his Replication was in every respect contrary to what he set forth in his Rep. Bill of Complaint respecting the execution consideration and assignment of the said Bond and therefore so far from being a denial of what your Petitioners did in these respects set forth in their plea

and Answer. — The said plea and Answer did stand on Oath uncontroverted and Allowed of in every Matter respecting the same and as the said Replication did not support the Bill it did not deny the plea and Answer and of course the same ought to have been affirmed and the Bill dismissed. —

And your Petitioners humbly shew unto Your Most Excellent Majesty that they did lastly Setforth in their said Petition and appeal to the said President and Governor & Council at Fort St. George that in Consideration of the aforegoing Circumstances therein recited he was not bound by the course of the Law to prove his Answer because his Plea was good to every purpose and intent of the Law and was in fact admitted by the Replication — And your Petitioners did further Observe that having already remarked on the Evidence produced by the Complainant how imperfect and unavaileing the same was to — Support even that part of the Complainants proceedings which he had been desirous to establish as the foundation for a Decree they your Petitioners did humbly conceive that it was not — requisite or Necessary for them to make any further Remark to Shew its invalidity and your Petitioners did therefore pray that the said Court of Appeals would be pleased to take the said &c

Several

Several proceedings beforementioned into their Serious Consideration And to order and Decree that the said Decree of the Mayors Court of the fifteenth day of December One thousand Seven hundred and eighty Nine be reversed with Costs in both Courts and that the said Court would grant your Petitioners such further and other Relief in the premisses as to them might seem Meet. —

And your Petitioners shew unto your Most Excellent Majesty that the said Complainant (then) as Respondent to your Petitioners said Petition and Appeal to the aforesaid Presidents and Governor & Co. Council at Fort St. George did file his Answer thereto and did set up a Variety of matter No way analogous to the Merits of the Cause but quite extraneous therefrom — And the said Appeal and the said Answer thereto did come on to be heard before the said President and Governor and Council on or about the Seventeenth day of this present Month. — When your Petitioners shew that the said President and Governor and Council in their Capacity as a Court of Appeals at Madraspatnam aforesaid were pleased to order and Decree and did Accordingly order and Decree that the said Decree of the said Mayors Court should stand affirmed and your Appellants Petition should be dismissed with Costs. — By which said

Decrees

Decrees of the said Mayors Court and Court of Appeals at Madraspatnam aforesaid your Petitioners do find themselves aggrieved and do therefore Appeal therefrom unto your Most Excellent Majesty in Council for the aforegoing reasons suggested in their said Petition and Appeal, and also because your Petitioners most humbly Crave to Represent unto your Most Excellent Majesty in Council that the said Court of Appeals ought to have allowed of your Petitioners Plea and not to have passed their Decree affirming that of the Mayors Court because that the several Matters therein and thereby pleaded were good and sufficient in the Law and because there was not any evidence produced by the Respondent before the said Mayors Court whereon they could justly grant their said Decree For your Petitioners shew that altho it was pretended by the Respondent in his Answer to your Petitioners Appeal that it was clearly established by the depositions of Several Witnesses that the principal Sum of Two thousand Pagodas in the said Bond mentioned was the sole property of the Respondent nevertheless your Petitioners have shewn that the said Witnesses of which there are only four in Number do all lead off to opposite points instead of uniting in an uniform Testimony of one and the same fact — and your Petitioners say that

that they humbly conceive that their plea is not of a Nature that partakes only of the evil of delay or evasion but on the Contrary that the said plea is founded upon principles dictated by the Necessity of Justice which the Respondent had artfully attempted to deprive them of by commencing his action in that manner and form that would have been prejudicial to your Petitioners to have admitted of without pointing out the irregularity and injustice thereof — and therefore it was not an attempt to do injustice to the Respondent or any one but to preserve that right and Justice to themselves as Executors whose duty it is and was to watch over the Estate of their Testator by not allowing themselves in that Capacity to be called upon in a Court of Justice in any other Manner than such as was warranted by the known and established Rules and practice thereof and of the Laws in General — and your Petitioners shew that the strongest pretension exhibited by the Respondent towards the Mayors Court and Court of Appeals to induce them to favor the irregularity of his said Suit is by setting forth to them that they are Courts of Equity which they are in their practice determine according to the Right of the Cause without attention to the form in which a Cause may be brought but your Petitioners have on the contrary shewn that a Want of form is productive of injury that if allowed to continue may also be productive of a Want of Justice and indeed a denial of it as no person can be legally called before a Court of Law

of

or Equity but According to the forms of those Courts and by such persons only who are legally or equitably qualified and authorized thereto. The Respondent had not a legal or equitable qualification to commence an action in his own Name by the Suppression of Robert Hughes as a party — a Bond cannot be assigned in equity so as to enable the Assignee to commence an action in his own Name — and there must be a Consideration for the Assignment — and of course the payment or not of the Consideration ought to be given in Evidence as well as of the Assignment if denied as in the present Instance; — and the Original Consideration for which the said Bond is Charged to be have been given is also a Matter of Evidence as your Petitioners are advised because the Assignee that is Tayapah took the Assignment subject to the same Equity that it was in the Hands of Robert Hughes the Obligee — not any of which requisite Matters are proved or in evidence altho the Respondent was put on the proof of them — and your Petitioners shew unto your most Excellent Majesty that your Petitioners as Executors as aforesaid do evidently sustain very great wrong and injury by the said Tayapah commencing the said action as a Bond Creditor of the said Estate for the Recovery of a Bond pretended to be given by your Petitioners Testator in the Name of Robert Hughes contrary to the practice of the Mayors Court and of every Court wherein Actions of that Nature are admitted — and your Petitioners are advised that if he had not set forth the said irregularity by

by way of Plea — but that the said Cause had been brought on to a hearing under the irregular form it now appears that the Court ought not to have proceeded to a Decree or that if they had that the said Decree ought thereafter to have been reversed — upon the external Evidence exhibited on the face of the said Bill, that Tayapah who had commenced the said Action in his own Name and sued in his own right was not legally or equitably qualified so to do. — and your Petitioners humbly conceive And are so advised that no Right could be made to appear in the said Tayapah as is pretended by him in the present instance under the irregular form in which the said Action is commenced and your Petitioners have also shewn contary to what the Respondent hath set forth in his answer to the said appeal that the Respondent hath not nor could not prove any Right to Recover in the present action — and your Petitioners shew that Chengleroy the only Witness who the said Respondent hath examined to the said Bond deposes that he sett and Subscribed his Name as a Witness to the Bond enquestion at the particular desire of the Testator to whom he read and explained the same — goes no further than to prove that the Testator did not understand the English Language nor doth it appear by any interrogatory or part of his own deposition that he understood that Language himself — And the said Chengleroy contrary to what the Respondent saith in his said Answer deposes that he does not know that any Sum or Sums of Money was or were paid

paid in consequence of the said Bond — And altho' he says that his Name thereto subscribed is of his own hand writing — yet to the Second Interrogatory he deposes that it was given to the said Robert Hughes and in his Deposition to the fifth Interrogatory he deposes that the Contents of the said Bond were explained to the Testator were that he had borrowed and received the Money therein acknowledged from the Complainant Tayapah and he signs his Name in English Chengleroyen to his said depositions but in his own Language to the said Bond — The Respondent in his Answer to the said Petition and Appeal says that Covy Vendigum alias Peryah Sah Moodelly deposes that he sent the Bond and the Money to the Testator who returned the Bond executed and detained the Money — your Petitioners shew that it does not appear that this Evidence was present at the execution of Bond he says that it was executed in the Name of Robert Hughes — but that it was Tayapahs Money but it does not appear further that this Money ever came to the hands of the Testator Iyah Moodelly contradicts the former Evidence for he says that the Bond was in the Name of Robert Hughes and that the Money also was the property of Robert Hughes — And he deposes to the execution of the Bond accordingly but doth not appear to be a Subscribing Witness — Robert Hughes deposes to the Seventh Interrogatory

Interrogatory that he is not any way interested in the event of the said Suit — And to the Eighth he deposes that he made over the Exhibit B to Tayapah for the purpose and intent that the said Tayapah should recover the full amount of a Bond granted to him by one Boothar Moodoo Modelliar — but this is no proof of the execution was paid for the Bond nor any Consideration for the Assignment of it — And therefore your Petitioners do presume that the said deposition is not sufficient as is alledged in the Respondents answer to destroy the suggestion made use of by your Petitioners in their said Plea but on the Contrary proves that he the said Robert Hughes ought to have been a party in the said Suit and your Petitioners shew that the dissent grounded upon a former determination in the Mayors Court between John Charles Desvoeux against the Executors of Whatmough shews that the Mayors Court at Madras were not so ignorant of the forms of Law, but they were satisfied that they could not ground a Decree upon a Bill brought by him in his own Name as Assignee of the Obligee Bromley — And your Petitioners shew that the Judgement of the Court does not depend upon Bromley having not relinquished his Right in form which it is evident he must have done contrary to what the Appellant hath set forth in his Answer to your Petitioners said Appeal but that the

said

said Charles Desvoeux had not commenced the said Action in the Name of Bromley the original Obligee but in his own Name as Assignee of Bromley which was a mode still less exceptionable than that which the Respondent has adopted. — And your Petitioners shew that the Respondent in his said Answer hath Mistaken the Nature of an Assignment of a Chose in Action nor doth the explanation thereof in any degree tend to Justify the irregularity of the Respondent's proceedings which your Petitioners shew are in no wise framed to prevent a Multiplicity of Suits nor was any such a Litigation designed by your Petitioners but your Petitioners humbly conceive that the irregular mode in which the Respondent has brought his Action seems to be calculated for the purpose of Suppressing a very necessary party thereto which your Petitioners say appears to be as great an injustice as if an unnecessary party were added to the said Bill for the purpose of Vexation or to prevent him becoming an Evidence or otherwise — and your Petitioners do Maintain that Justice is evidently subverted by the said Robert Hughes in this instance contrary to all Rule being made an — evidence instead of a party and the Arguments used by the Respondent in favor of this practice that the said Robert Hughes hath No interest whatever in the events of the present Suit is very futile indeed because it is evident that an appearance of Interest was indispensible to be given to one of the parties either Tayapah or Hughes — If it was in Tayapah and not ever in Hughes the Bond is Void in Itself as Hughes could not make over to Tayapah that in Which he had no Value by not having given any Consideration — If on the other side the Interest was originally in Hughes he could not assign the Bond over to Tayapah without such Right existing in him at the time of the Assignment nor without consideration nor without the usual mode and Form of Assignment — nor could the said Tayapah hold the said Hughes Bond otherwise than dependant on the Resolutions on which the said Hughes did originally Solicit nor could he commence an Action thereupon in his own Name for that very Reason but ought to have commenced the same in the Name of Robert Hughes in order that he might be made a party and thereby Responsible for that Act without which your Petitioners could not even formally, be called to Account because it is by a Conformity to the Rules and practice of Making the Obligee a party to a Bill grounded on an Assignment that the Obligor can hold him Responsible for such acts as might have been illegally done as a means to obtain such Bond and thereby at once render void the said Bond not only as to the Obligee but as to his Assignee also. — Because your Petitioners shew that if it were otherwise the

the Assignee by commencing an Action in his own Name would put the principal party entirely out of the way and as to any Matter of discovery whereto he might be interrogated it is evident that he Might evaded it under pretence of the same being the Act of another antecedent to his Interest in the Suit. — and your Petitioners shew that the Justice fairness and Necessity of making the said Robert Hughes a party are so evident that it is scarcely Necessary to point of the irregularity and insufficiency of the mean shewn by the Respondent for obtaining of substantial Justice by examining him the said Robert Hughes as a Witness your Petitioners could not have adopted this mode as your Petitioners plea was on the Ground of the said Robert Hughes not being a party - and on that Character only your Petitioners did and do maintain they could properly have examined the said Robert Hughes and they would from the Nature of his Answer to their Cross Bill have then been able to take advice upon what Witnesses would have been further Necessary to examine in support or disproof thereof - and Your Petitioners humbly shew unto your Most Excellent Majesty that the Respondents having been irregular through out his proceedings it was not Necessary for him to demur to the Respondents Replication and your Petitioners were advised to leave the Whole of the said irregularities to the Mayors Court at the hearing - and your Petitioners shew that they did not as they are advised admit of the Several facts stated in the said Replication by having rejoined thereto as is evident not only from the Date Rejoinder but from the general operation of that pleading. —

And your Petitioners shew unto your Most Excellent Majesty that he humbly hoped that the said Mayors Court and Court of Appeals at Madras would have taken up the Matters contained in their said Plea according as the same was supported before them and that they would upon the Ground thereof have dismissed the said Bill which your Petitioners shew they are advised that they ought to have done and that the same might have been done without prejudice to any of the parties Complainant as they would have been thereafter at liberty to file another Bill as Rule and practice directly bringing all parties before the Court. —

But instead thereof the said Mayors Court have gone upon the Sole Evidence produced by the said Complainant which is very insufficient because very Contradictory and they have upon the Grounds of the said Bill and Replication which are founded upon facts differently stated and are not either of them

them supported by two Witnesses so as to countervail your Petitioners Answer — and upon these Grounds have made the said Tayapah a Judgement Creditor upon Bond, which your Petitioners shew is a Contradiction without the said Bill is taken to be true and if the same is taken to be true the said Replication is false — and on the contrary if the said Bill is false the said Suit of Course falls to the Ground without that it may be presumed that the said Court did go upon the Replication in the founding of their Decree in which Case it is evident that the said Tayapah pretended demand is not upon specialty but upon simple contract. — All which Matters your Petitioners as Executors of the said Testator have thought their duty to lay before your Most Excellent Majesty in discharge of their duty to the Heirs and Creditors of the Estate of the said Testator — and as your Petitioners conceive that they are aggrieved by the said Decrees of the said Court of Appeals and Mayors Court at Madras in as Much as they humbly hoped that they would have dismissed the said Bill upon the demerits of irregularity as also in consideration that your Petitioners could Not do themselves Justice in the premises without that the same Was brought in regular form your Petitioners do also further more find themselves aggrieved and the Estate of the Testator injured by the additional part of the said Decree of the Mayors Court whereby the said Estate of the said Testator is adjudged to pay all Costs and also by the Decree of the Court of Appeals at Madraspatnam aforesaid which being a burthen upon the Estate is a prejudice to the Just and fair Creditor and your Petitioners shew that there are no Circumstances attending the proceedings on the part of your Petitioners as Executors as aforesaid that could induce the Courts to superadd to their said Decrees the payment of Costs. — Your Petitioners do therefore most humbly implore to aid of your Most — Excellent Majesty in the premises praying that your Most Excellent Majesty will take the premises into serious — consideration and that your most Excellent Majesty will be pleased to Reverse into to the aforesaid Decree of the Mayors Court of the Sefteenth day of December one thousand Seven hundred and Eighty nine, and also that of the Court of Appeals of the Seventeenth day of December One thousand Seven hundred and Ninety one Copies whereof your — Petitioners humbly lay before your Most Excellent Majesty in Council and that your Most Excellent Majesty will grant unto your Petitioners such further and other Relief

in

in the premisses as to your Most Excellent Majesty in Council may Seem Meet.—

/Signed/ Henry DuPuy
Attorney for the Pets.—

Mayors

Mayors Court at Madraspatnam

Tuesday the 15th day of December Anno Domini 1789.

LS

Present

William Webb Esquire Mayor
Edward Garrow — Andrew Ross
and John Mitford — Aldermen

Between Tayapah of Madraspatnam Inhabitant by his Attorney William Lencoch also of the same place Complainants and Chedembara Moodelly and Yerroosapen of Madras Inhabitants Executors Named in the Last Will and Testament of Boothoor Moodoo Moodeliar Deceased Defendants.

This Cause Coming on to be Argued and determined this Day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of four Exhibits annexed. the Defendants Joint and Several Plea and Answer with three — Exhibits annexed the Amended Replication the General Rejoinder The Interrogatories and Depositions on the part of the Complainant with

two

two Exhibits Marked A. & B. annexed One Exhibit on the part of the Defendant On Hearing the Pleadings Made use of by the Attorneys and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly order and Decree that the Defendants do pay unto the Complainant out of the Estate and Effects of Boothoo Moodoo Moodelliar Deceased the full and Just Sum of Three thousand and thirty one Pagodas and fourteen Fanams — Pagodas /3031. 14. / 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. —

/Signed/ George Taylor
Dep. Reg.

A true Copy

/Signed/ Henry DuRuy.
atty Appellant

Tayapah

Tayapah Moodelliar by his attorney William Lewcock

Vers.

Chidambara Moodelliar & Yeroosapen Executors of Boothoo Moodoo Moodelliar

Deceased, —

Idissent to the Decree of the Court in this Cause Because of the insufficiency of the Assignments by Hughes to Tayapah and that the Action is Commenced in the Name of Tayapah instead of being brought in the Name of Hughes by his attorney Tayapah and in the Name of Tayapah by his attorney Lewcock Which is the mode of Suing in such Cases prescribed by the Law and Practised by the Court and was so determined lately in this Court in a Cause where Deveaux Sued the Executors of one Whatmough in his own Name on a Bond made over to him by Bromley but the Court was of Opinion that the Action was Not properly laid and should have been brought in the Name of the Assignor Bramley by his attorney Deveaux the more especially / as is the Case in the present instance / it did Not appear that there was a regular Power granted by Bromley to Sue upon and therefore the Court thought proper to Dismiss the Bill with Cost — Because the Bill of

Compl.

Complaint Setts forth that the Money was borrowed by the Deceased from Hughes and was transferred by him to Tayapah for a Valuable Consideration But the Replication is a total departure from the Bill by Charging that the Money was the Property of Tayapah and that the Name of Hughes was only made use of According to the Custom of Dubashes taking Bonds in the Name of their Masters. Which Appears to me a practice not only illegal but very detrimental to the public good and too often made use of in that riged exercise of Power and influence which the Strong are Seldom backward in Practising over the weak, and Should therefore in my Opinion be encountered with every discouragement that a Court of Justice finds a proper Occasion to make use of. —

Because the Answer of the Executors which is upon Oath denies the receipt of the Money and they insist that the Bond against which the Relief is prayed was a Voluntary one, on which no Consideration was given and as the Bond is Claimed in Consideration of Money lent and the Prosecutor has not brought Sufficient proofs in Support of his Consideration he should not now be allowed to make it a Claim on the Estate of the Deceased even as a Voluntary Bond — Seeing that the Evidence brought in proof of the Consideration is so Contradictory as not Sufficiently to refute the answer of the Defendants

Covey Venayagam Says — that the Money was Lent and detained on the delivery of the Bond but Sales that it was the money of Tayapah and procured from him. —

Iyah Sawmy Says it was Mr. Hughes Money

Chengleroy Says — he does not know of any Money having been paid. —

For all which reasons I am of Opinion that there are Not Sufficient grounds for the Present Decree. —

/Signed/ Andrew Ross
Alderman

A true Copy
15th Dec. 1729

/Signed/ James Taylor
Regr.

True Copy /Signed/ Henry DuBuy
Atty appel.

Court

Court of Appeals
at
Madraspatnam } for Saturday the 17th day of December
Anno Domini 1791.

Between Chedambara Moodelly
and Veroosapen of Madras Inhabitants
Executors Named in the Last will and
Testament of Boothoo Moodoo Moodeliar
Deceased Appellants and Tayapah
Moodelly of Madras Inhabitant by
his Attorney William Lewcock of
the same place 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 15th day of December Anno Domini 1789 upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments

Arguments used by the Attornees on both sides This Court doth think fit to Affirm 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 Hur,

/ Signed / Chas. N. White
Clk

To the Kings Most Excellent Majesty in Counci

Between Tayapah Moodeliar of Madras Inhabitant by his attorney William Lewcock Complainant and Chedambara Moodelly and Yeroosapen Executors Named in the last Will and Testament of Boothoor Moodoo Moodelly deceased Defendants.

The Answer of the above named Complainants to the Petition and Appeal of the Above Named Appellants.

Filed in my Office the 31st March 1792 Chas. S. White Clk.

This Respondent admits that some time on or about the Twenty fourth day of December which was in the year of our Lord one thousand Seven hundred and Eighty three he this Respondent and by his attorney the above Named William Lewcock Exhibit a Bill of Complaint against the appellants above named as Executors of the last Will and Testament of Boothoor Moodoo Moodeliar Deceased and did therein Set forth that the Appellants

Appellants as Executors as aforesaid did Stand Justly and Truely indebted unto this Respondent in the full and Just Sum of Three thousand and Thirty one Pagodas and fourteen fanams Current Money of Madras Making in Sterling Money of Great Britain at the Rate of Eight shillings for every Pagoda the Sum of one thousand two hundred and Twelve Pounds ten Shillings and Nine pence or thereabouts This Respondent shewing that the appellants said Testator had borrowed and Received of Robert Hughes then of Fort St. George Esquire the full and Just Sum of Two thousand pagodas Current Money of Madras and that to secure the repayment thereof unto the said Robert Hughes his Heirs Executors Administrators or Assigns he the Appellants said Testator had entered into and duly Executed Signed Sealed and delivered a certain Bond or Written Obligation whereby their said Testator acknowledged to have borrowed and Received of and from the said Robert Hughes the said Sum of Two thousand Star Pagodas payable at five Months from the day of the date thereof with Interest of and after the Rate of Twelve per Cent per Annum and this Respondent admits that he did in and by his said Bill further Charge that on the Twenty fifth day of August which was in the year of our Lord One thousand Seven

hundred

hundred and Eighty at Fort St. George aforesaid for good and Valuable Consideration in hand paid by this Respondent unto the said Robert Hughes he the said Robert Hughes did fully and effectually and not falsely as the Appellants would insinuate assign transfer and set over unto him this Respondent and to his Heirs Executors Administrators or Assigns the said Bond or Written Obligation — and this Respondent admits Leded in and by his said Bill further state that he had frequently and in an Amicable Manner Requested payment from the said Brother Moodoo Moodeliar in his life time and from the Appellants as his Executors since his decease of the said Sum of Three thousand and Thirty one Pagodas and fourteen Fanams Current Money of Madras and that the Appellants had refused to pay the same and that Respondent did in and by his said Bill pray that the Appellants Might be decreed so to do, —

And this Respondent admits that the Appellants did appear to his this Respondents said Bill of Complaint and did put in a Joint and Several plea and answer thereunto and that by way of plea to this Respondent said Bill they did amongst other things therein and thereby pretend that he the said Robert Hughes ought to have been Made a party

to

to the said Bill agreeable to the established and indispensable Rules and practice of Law or Equity in which the appellants did pretend that altho a Bond according to the forms and practice prescribed and laid down in both these Courts except in cases of Bankruptcy and some other especial cases in no wise relating to the present and which the Appellants in and by their said plea and answer did say were constantly adhered to by the said Mayors Court in the admission of Suits of that Nature which were not for the Assignee to Commence an action in his own Name but in the name of the Assignor and for which purpose the appellants said it was necessary that a Letter of attorney authorizing the Assignee to Commence a Suit under the form should have been annexed and made part of the Assignment by which the property in such Bond was meant and intended to be made over and Assigned and not in the Manner and form the Suit in question had been Commenced in the Name of the Assignee in the first instance claiming under the said Bond which provided the same had been Assigned according to the Rules aforementioned ought to have been sued upon in the Name of Robert Hughes by his attorney Tayapah by his attorney William Lewcah and not in the Name of Tayapah the pretended Assignee and that altho No power was given to the said Tayapah to commence the said action against their said Testator or the Appellants as his Executors the said

depest

Defect and difficuency in the said Assignment did not cure the Error of commencing the said Action in his own Name contrary as the Appellants pretend to all rules and practice much less would the Second Assignment or power of attorney To William Lewcock help or aid the said Estate but that such Original Assignment was left exceptionable upon its own ground as being irregular in itself and would of course fall as well as the said Action until a conformity to the Rules of the Mayors Court should entitle the said Assignee to commence another Action upon a More legal foundation and this Respondent Admits that the Appellants for answer unto the rest and residue of this Respondents said Bill did State that they denied to stand indebted unto this Respondent in the Sum of Three thousand and thirty one Pagodas and fourteen fanams or unto his said Attorney William Lewcock in any other Sum or Sums of Money whatsoever and that the Appellants did deny that they were Answerable to pay all and singular the debts due and owing by their said Testator further than his Assets would Extend and the Law oblige them which the Appellants pretended would in due time be seen by an Inventory and account of such his effects which had since or which might thereafter come to their Hands or possession and this Respondent Admits that the Appellants in their said Answer unto this Respondents said Bill did pray to lay before the said Court what they knew relating to

to the said demand of this Respondent and thereon did state that they first denied the said deceased Boothoor Moodoo Moodelliar did ever directly receive any Sum or Sums of Money or any Consideration Whatever upon the said Bond from the said Robert Hughes or any person or persons on his Account and the Appellants did also state that they did not admit the said Robert Hughes on the said fifth day of August one thousand Seven hundred and Eighty at Fort St. George or else where for any good or other Consideration fully and effectually or otherwise Assign transfer and set over unto this Respondent the said Bond or obligation on the Contrary the Appellants did say that the whole of this Respondents Bill of Complaint was an unjust and unfair action worked and contrived by this Respondent and his Attorney for the purpose of wronging the Estate of the deceased as the Appellants insinuated this Respondent well know and this Respondent admits that the Appellants might have set forth and alledged sundry other Matters by way of further answer as in the Appellants said Petition of appeal the same is alledged to have been stated but which this Respondent denies did or could ever have shewn as the Appellants insinuate that their Testator the said Boothoor Moodoo Moodelliar did not receive any Value or Consideration for the said Bond and this Respondent further

Admits

admits that the Appellants in and by their said Answer did furthermore Set forth that they were well acquainted with the dealings and Transactions of their said Testator in his life time and that they never knew nor heard him mention the Bond in question but as they represented in the former part of their Answer that they had heard him Mention the said Bond to have been given in the Name of Thomas Welch but never a word of Bond given to Robert Hughes that they firmly believed their Testator died in ignorance as to his Ever having given such a Bond always believing that the said Bond was given in the Name of Thomas Welch and which the Appellants pretended he declared a few hours before he died and that the Appellants in and by their said Answer to this Respondents said Bill did further set forth that about the fourth day of December one thousand seven hundred and Eighty their Testator received a Note from the said Robert Hughes demanding payment from him of the aforesaid Bond which the Appellants did state they verily believed was done at the Instance of this Respondent but who they did unfairly state they believed had come into the possession thereof by some under hand and unfair means because they pretended they did not believe that the said Robert Hughes ever saw the said Bond and that a Copy of which Note the Appellants did annex to their said Answer and the Appellants did in their said answer further state that their Testator

Testator in Answer to the said Note did say that he never knew he had given a Bond in the Name of the said Robert Hughes but that he had given one in the name of the said Thomas Welch that he had never before heard of the name of the said Robert Hughes therein and therefore had nothing to do with that Gentleman and that all that they the Appellants knew further of the said matter of the said Robert Hughes demanding the said Bond was that about fifteen days after one Vellah dum Concoply to Charles Bromley one of the Attornies of the said Mayors Court came to the deceased and demanded payment of the said Bond and that in Answer thereto their Testator informed him of what he had before given in answer to the said Note from the said Robert Hughes This Respondent also admits that the Appellants in their said Answer did further state that it was not likely the said Robert Hughes or any person interested in the said Bond would if he or they had not known that he or they had not any Title to receive the same that they would have suffered the said Bond to remain unpaid and undischarged that it was certain that the said Robert Hughes knew he was not interested therein and that those who were in possession of the said Bond knew that they were not entitled to demand payment thereof and this Respondent admits that the Appellants did pretend

pretend to shew that it appeared strange and was a demonstrative Conviction that such right did not exist in any one that this Respondent if he had any right should only endeavour to avail himself of until after the death of their said deceased Intestate and that the Appellants did in their said answer pretend to point out that the truth of the said matter was further brought to light by the pretended demand of the said Robert Hughes being after the pretended assignment of the said Bond to this Respondent the demand being in December one thousand Seven hundred and Eighty and the assignment in ~~December~~ august in the same year the Appellants did in their said Answer observe that nevertheless this unaccountable Conduct was preserved in the present action by the same being commenced in the name of this Respondent in the first instance as Complainants and this Respondent admits that it is not the practice of the said Mayors Court at Madras in case of a plea and answer being put into a Bill to set down the plea to be argued immediately but for the Complainant to Demur to the Plea or put in a Replication to the plea and answer and these Respondent admits that accordingly this Respondent did put in a Replication to the said plea and Answer of the appellants And did therein and thereby deny the several matters and things

Contained

Contained in the said Joint and Several plea and answer and say that the same did not relate to him or in any Manner effect the Claim of this Respondent and that the same were impertinent and foreign to the point or Matter in question for that he this Respondent advanced and paid the Money to Boothoor Moodoo Moodelliar in his lifetime for the Bond in question whereby the property and Title in and to the said Bond was in this Respondent and that the Name of Robert Hughes Esquire was by his Express permission and assent put into the Bond after the Custom of the Country this Respondent being the Debash to the said Robert Hughes Esquire had full liberty and permission to use his said Masters name as and by way of a Sanction or Security to him this Respondent which fact and Circumstance was Well known and assented to by the said Boothoor Moodoo Moodelliar when he received the money from this Respondent which he also well know to be the absolute right and property of this Respondent and not of his said Master Robert Hughes Esquire and all which Circumstances this Respondent did in and by his said Replication assert he would in due time prove to the Satisfaction of the said Mayors Court and did not doubt but his right would be established in and to the said Bond

and

and the power of assigning the Money due thereupon Notwithstanding
any thing the said Appellants had as Executors of the said Beathoo
Moodoo Moodelliar pleaded or stated to the Contrary in and by their
said Joint and Several plea and answer and this Respondent
humbly shews to your most Excellent Majesty in Council that
he did in and by his said Replication further than what the
Appellants have thought proper to recite in their said Petition
of Appeal state that he this Respondent doubted not but the
open and fair manner in which he had submitted his Claim
to the Judgement and determination of the said Mayors Court
against the said Appellants as Executors as aforesaid would
produce the desired effect and prove the means of affording this
Respondent the Relief sought for in and by his said Bill
of Complaint the full and Clear declaration of the said
Robert Hughes regarding the property of the said Bond or
written obligation and the Money due thereupon being vested
in and the absolute property of this Respondent he this
Respondent humbly conceived would prove sufficient to
establish the Claim of this Respondent before the said mayors
Court as a Court of Equity a true Copy of which declaration
Was annexed to this Respondents Bill of Complaint and

which

which this Respondent did say would Evidently shew the
transactions and as such mode of transacting Business
in India was well known to the Judges of the said Mayors
Court he this Respondent did Submit the same to their
Judgement and rely upon their Equitable decision for the
Recovery of the Money advanced and lent unto the Appellants
said Testator by this Respondent at his especial instance
and Request in the time of his great distress for Money and
this Respondent admits that he did in and by his said
Replication state that he did not suppose it would materially
affect or injure his claims in a Court of equity whether
his Suit was commenced and prosecuted in the Name of
Tayapah Moodeliar by his attorney William Lencock
or if it was in the Name of Robert Hughes by his
attorney Tayapah by his attorney William Lencock as was pretended by the Appellants
if the transaction on which the Suit had been commenced
Was fair and Just which this Respondent did avers to be
the case and that the Money was Justly due and Owing
from the Estate of the Appellants said Testator to
unto this Respondent in manner and form as stated and
shewn in and by this Respondents said Bill of

Compl.

Complant together with the Exhibit thereunto annexed with Lawfull Interest of Twelve per Cent per annum. —

And this Respondent further answering most humbly Sheweth to your Most Excellent Majesty in Council that he did in and by his said Replication further state other than what the appellants did in and by their said Petition recite that he this Respondent did not Charge nor did he consider the appellant as Executors as aforesaid answerable or liable to pay the debts of the deceased further than the effects of the deceased which came on their hands custody or possession would extend and the Law oblige them but as this Respondent had every reason to conceive that the Estate of their said deceased Testator was solvent and that the appellants as Executors thereof had fully and sufficiently possessed themselves of assets and effects to pay off and satisfy all just debts and demands against the said Estate it would have been More to the Credit of the appellants as Executors as aforesaid to have taken up and discharged the Bond or written Obligation to this Respondent than to have set up or attempted such a laboured and evasive plea and

Answer

Answer as they had done against the Just demands of this Respondent in order to harrass and Vex him litigiously and unjustly and this Respondent did say that the contradictory and evasive mode of pleading used by the Appellants as Executors as aforesaid was altogether new and contrary to Reason or any rules of practice followed or Observed in any Court of Law or Equity for that the said Executors did admit that their said Testators name was duly subscribed in his proper hand writing to the said Bond or Written Obligation which was Sufficient to establish the right of action in the Holders thereof it being a specialty that the possession thereof entitled the Holder to such a right and interest therein as all the arguments and long span Narratives of the Appellants would not by the Rules of Law and equity be able to Annul without discharging the Obligation by payment of the debt to the Holder of the said Bond or written Obligation together with lawfull Interest and Costs and that very absurd and Contradictory to the principles which ought to actuate every honest man were the insinuations or Charges of the Appellants in their said Joint and Several plea and Answer wherein

immediately

Immediately after admitting the Signature of the deceased to be in his proper hand Writing subscribed to the Bond or Obliga=tion in question they dare say they did not admit that the said Robert Hughes on the Twenty fifth day of August One thousand Seven hundred and Eighty at Fort Saint George or else where for any good or other Consideration did fully and effectually or otherwise assign transfer and set over unto this Respondent the said Bond or Obligation and on the Contrary that the whole of this Respondents Bill was an unjust and unfair action worked and contrived by him and his Attorney for the purpose of Wronging the Estate of the deceased as the Appellants insinuated this Respondent did well knew thereby Endeavouring to impress the said Mayors Court with the Idea that no Consideration was ever paid for the said Bond or Written Obligation that the said Robert Hughes Must have been assisting aiding and abetting this Respondent in the Commission of fraudulent practices and that the Attorney of this Respondent was an Agent for the furtherance of a Scheme to obtain money under false pretences whereas this Respondent did Solemnly aver that his demand was Just and=

unexceptionable

unexceptionable that it was for Good and Valuable Considera=tion in Cash advanced and that the whole and every part thereof Remained unpaid.—

And this Respondent humbly Shews to your Most Excellent Majesty in Council that he did amongst other things in and by his said Replication further state that although the Appellants in and by their said Joint and Several Plea and Answer assert that their said deceased Testator the said Boothoor Moodeo Moodelair did on the fourth day of December which Was in the Year of Christ one thousand Seven hundred and Eighty Receive the Note from the said Robert Hughes demand=ing payment of the Money due on the said Bond yet that they did say that they did Not believe the said Robert Hughes ever saw the said Bond or knew any thing of the Matter and did attempt to Charge the said Robert Hughes with having been led by this Respondent to any thing required even to induce and unfair purpose which this Respondent did submit to the Judgement of the said Mayors Court to determine upon and to those who knew and were acquainted with the Character and Conduct of the

Said

Said Robert Hughes and this Respondent did lastly state that upon a full and clear Investigation of the Merits of his Cause he hoped that the said Mayors Court would Consider him to be clearly entitled to the Relief sought for and to his debt Interest and Costs. —

And this Respondent further answering admits that to his this Respondent said Replication the Appellants did put in a general Rejoinder and thereupon Issue did Join and Rules passed for the Examination of Witnesses and Witnesses were examined Accordingly by this Respondent but the Appellants did abandon the defence by them set up as aforesaid in as much as they did wholly decline supporting the same by Evidence which Notwithstanding any thing to the Contrary in the Appellants said petition of Appeal contained they ought to have done had it been in their power so to do and this Respondent most humbly shews unto your Most Excellent Majesty in Council that notwithstanding the assertion of the appellants the Witnesses so examined by this Respondent as aforesaid did fully and sufficiently support and maintain and clearly and distinctly prove his the Respondents right in the premisses and this Respondent admits that upon the proceedings aforesaid the said Cause was set down for Hearing and that the same coming on to be heard before the said Mayors Court on or about the fifteenth day of December One thousand Seven hundred and Eighty Nine the said Court did order and Decree in manner and form as by the Appellants said petition of Appeal the same is particularly set forth. —

And this Respondent admits that from the said Decree of the said Mayors Court the Appellants did on or about the Twenty Ninth day of the said Month of December appeal to the Court of appeals at Madrasapatnam but this Respondent denies that the Appellants was or could in the least have been aggrieved by the said Decree of the said Mayors Court or that they had any Cause of appeal therefrom.

This Respondent further Answering admits that the appellants for a pretended Cause of appeal from the said Order and Decree of the said Mayors Court to the said Court of appeals did state that the said Mayors Court ought not to have over ruled their the appellants said plea and given a Decree in favor of this Respondent upon the evedence produced by this Respondent for that this

Respondent.

Respondents said Bill was every insufficient as the appellants pretended to Warrant the said Decree because that they were Not called upon to Answer the said Bill in that manner and form prescribed by the Law in Cases of assignments of a Bond which as assignments thereof were allowed for the Convenience and benefit of Trade and Money Negotiation the appellants did say ought to have been strictly construed According to Regular forms in order that those beneficial purposes Might be solely Answered and not to be left to the Arbitrary or Mistaken Notion or will of a person to deviate from such prescribed forms the doing of which the appellants did say could not be grounded upon any Necessity or turned to any fair use or Advantage but that if on the Contrary such deviations from such established Rules and forms were allowed to Obtain in the present instance a general deviation from all prescribed forms and Rules of Law would be equally liable to indulgence and therefrom a confusion and uncertainty would be engendered and introduced into the practice of Courts as would grally endanger not only the Rights of a Defendant to be called upon in no other

manner

Manner than was warranted by Law but the practice and Law of Courts would be thereby overthrown and forced to give way to Error informality and the Arbitrary will of ignorance or contumacy – the practice of Courts was therefore Justly determined to be the Law of the Courts which enjoins punctuality and observance to all its Suitors the first and necessary lines by which the way of Justice could only be attained and that the appellants did therefore insist in their said Petition of appeal that they were Justified by their said plea against the arbitrary and illegal proceeding of this Respondent who as the appellants did pretend ought if he had Right on his side to have conformed to the Necessary Steps to obtain it by amending his Bill by causing the said Robert Hughes to execute unto him an assignment and power of Attorney in form and by making him the said Robert Hughes a party thereto Which amendments the appellants did state they had a right to insist in support of their own rights as well as in maintenance of the established Rules of Law and the appellants did also say that the said Mayors Court could not dispense with such a Necessary and fundamental Observance in this Respondent or proceed to Judgement upon the deficient and imperfect Bill before them upon any presumptive Grounds of Equity or implied right or

upon

upon an admission of Agreement appearance or implication of Right unsupported by Law facts and uncontrovertable Rights The Law would in that case be made to give way to arbitrary Reasoning Justice to the Various Ideas of men upon it and the rule of implication be substituted for deficiency of Evidence and this Respondent admits that the appellants did further urge that it was of the utmost importance that the said Robert Hughes should have been made a party in the said Suit and that this Respondent was not entitled to a Decree upon the said Bond upon the bare ground of his having by some means come to the possession of it and that it was not indifferent in the Law whether the said Decree had been for the appellants to pay the said Money to the said Robert Hughes by his attorney Tayapah by his attorney William Lewcock or whether the said Decree was in the Manner that it has been made that the appellants should pay the money to the said Tayapah by his attorney William Lewcock because the appellants said that in Case the said action had been commenced in the former prescribed by Law in the Name of the said Robert Hughes it could not have been determined what plea or answer the

the appellants might have been advised to put in or what evidence they might not have produced in proof thereof the Bill would have been totally changed not simply in its form but in its Nature and consequence and that the appellants in such Case would have been advised to file a Cross Bill against the said Robert Hughes for the discovery of his Original interest in the said Bond how he became in possession thereof for what consideration it was Executed to him and for what Consideration it was assigned and finally for a Delivery thereof to be cancelled which the appellants said they could not Regularly have done against this Respondent upon his Bill of Complaint for want of the said Robert Hughes being made a party — This Respondent being an Indian native and because this Respondent would have had it in his power to Conceal himself under the absence of the said Robert Hughes as a party and that they the appellants would have been without Relief by being without the Means of discovery for whatever this Respondent might have pretended that the sum asserted to have been paid was his own property the said Robert Hughes Was nevertheless a party in the said Bond at the time of its Execution and at the time of the pretended Assignment thereof whereby

thereby he avowed and took upon himself every consequence
derived from the Orgenal Execution of the Bond altho for
so the appellants did pretend he did not by his deposition appears
informed of the said Bond but that might have been they did say
because this Respondent had not interrogated him thereto which they
the appellants in their said appeal did say they conceived was
Necessary without that his answering to an Interrogatory
leading to a discovery of such his knowledge might also lead
to a discovery of what was contrary to the interest of this
Respondent and for that altho this Respondent declared
in his said Bill that the said Robert Hughes did pay the
Testator the Sum acknowledged to be due on the said Bond
the appellants denied that their said Testator had received
any Money or Consideration for the said Bond directly or
indirectly from the said Robert Hughes or from any
person whatever and that altho this Respondent had
Set forth that the said Robert Hughes did make over the
same for a Valuable Consideration yet they the appellants
had denied that he had done so — and the appellants
did further set forth that whatever this Respondent had
stated in his said Replication was in every Respect

Contrary

Contrary to what he had set forth in his Bill of Complaint respecting
the Execution Consideration and Assignment of the said Bond and
thereupon so far from being a denial of what the appellants did in
these Respects Set forth in their Plea and Answer The said plea
and answer did stand on both uncontroverted and allowed of in
every matter respecting the same and that as the said Replication
did not support the Bill it did not deny the plea and answer
and of course they did pretend the same ought to have been
affirmed and the Bill dismissed and this Respondent admits
that the appellants did in their said petition of appeal also
that they the appellants were not bound by the course of Law to
prove their answer because their plea was good to every
purpose and intent of the Law and was in fact they did say
admitted the Replication and they did further pretend that as
this Respondents Evidence was imperfect and unavailing to
establish the proceedings on his part the appellants had not
conceived it Requisite or Necessary for them to make any
further remark to shew its invalidity and the appellants
did thereupon pray the said Court of Appeals would take the
proceedings before mentioned into their serious Consideration

and

and order and Decree that the said Decree of the said Mayors Court should be reversed with Costs in both Courts and that the said Court of appeals would grant unto the appellants such further and other Relief in the premisses as to them might seem meet.—

And this Respondent further answering says that he admits that to such the appellants said petition of appeal to the said Court of appeals he this Respondent did file his answer but this Respondent denies notwithstanding anything to the contrary in the appellants said petition of appeal contained that he did set up a Variety of Matters no way analagous to the merits of his cause and quite Extraneous thereto on the contrary this Respondent humbly Submits the same was in every respect pertinent and relevant for this Respondent most humbly shews unto your Most Excellent Majesty in Council that he did in his said Answer state that the Assertion of the Appellants in stating that the Mayors Court ought not to have over Ruled their the appellants said plea and give a Decree was without Foundation in Reason or in Equity for this Respondent in favor of this Respondent did say that from the Nature of the thing and from the several proofs adduced by this Respondent in support thereof the said Mayors Court could not agreeable to Justice have decreed otherwise Because in the first instance the Appellants had themselves admitted the Execution of the said Bond by their said Testator and upon which this Respondent had grounded his action and in the second Instance it had been clearly established by the depositions of Several Witnesses on the part of this Respondent that the said Sum of Two thousand Pagodas in the said Bond acknowledged to have been Received by their said Testator was the Sole property of this Respondent and the only plea the appellants offered to the Contrary was a pretended informality in a Point of Law and upon such plea alone they held themselves Excusable in an attempt to deprive this Respondent of his Just dues But this Respondent did also deny the Informality so pleaded by the Appellants to be of any force or efficacy whatever And did say that even if it had been of force or efficacy that they themselves had destroyed it by rejoining generally to special Matters set forth in the Replication of this Respondent and this Respondent did also say that although the formalities of the Law might be requisite in some instances yet that Equity did correct the Law and did decide as the Right appeared

Appeared to be and in the present instance the Right Evidently
and incontestably was with this the Respondent for that he had
proved the Execution of the said Bond by subscribing Witnesses
thereto one of whom Chenglerayen had deposed that he had set
and Subscribed his name as a Witness to the said Bond
at the particular desire and Request of the said Boothoor
Moodoo Moodeliar to Whom he read and Explained the
same and he also proved the Consideration in the said Bond
Set forth to have been received by the said Boothoor Moodoo
Modelliar and Covey Vanaygum alias Periyah Modelliar
deposed he sent the said Bond and Money to Boothoor
Moodoo Moodelliyar who returned the Bond and detained
the Money and Sah. Lawmy deposed that he carried the
Money to the said Boothoor Moodelliyar and that the said
Bond was filled up in his the Deponents hand Writing
for the said Sum of Two thousand Pagodas and this Respondent
to Shew his sole and Exclusive right to the Sum conditioned to
be paid in and by the said Bond Last produced the
said Robert Hughes to whom it was Executed and who
had deposed that he did make over the said Bond to
this Respondent for the purpose and intent that this Respondent
Should

Should recover the full amount thereof together with Interest that
might be due thereon and further that he the Deponent had
not any Manner of Right in the present Suit and this Respondent
did in his said Answer say that the deposition of the said
Robert Hughes was in itself Sufficient to destroy the
Suggestion made use of by the Appellants in their said plea
and effectually to do away the arguments made use of in the
dissent to the appellants said petition of appeal annexed for
that the Case in the said dissent cited of Devaux & the
Executors of Whalmough was not a case in point for that the
obligee Bromley had not declared upon Oath that he had made
over to Devaux the Bond Executed to him for the Sole
Benefit and advantage of the said Devaux or that he was
Not in any manner or ways interested in the Event of the
Suit instituted by the said Devaux against the said Executors
for the Recovery of the Amount of the said Bond and therefore
the Court could not have decided in favor of the said Devaux
because Bromley had not Relinquished his Right to the Condition
of the said Bond in such Manner and form as the
Law demanded or as Equity required. — and this Respondent
did say that the Maxim of the Common Law as formerly

established

established that a chose in action was not assignable Was
adopted merely to prevent the Multiplication of Suits and the
Subversion of Justice but that in the present Instance there could
be no multiplication of Suits nor could Justice be subverted
inasmuch as the said Robert Hughes had declared upon Oath
that he had made over the said Bond in question to this
Respondent in order that he might recover the Amount thereof
principal and Interest from the Obligee and further that he
the said Robert Hughes had no Interest whatever in the
event of the present Suit so that even agreeable to the Spirit
of the Common Law this Respondents demand was well founded
and much more was it sanctioned by equity which protected
a Chose in Action in the same manner as the Common Law
did protect a Chose in possession and departing from the
Subtilties and Refinements of the Law was grounded upon
Reason and the Matter of fact and gave Judgement —
According to Right and Justice and this Respondent therefore
did say that the Contention of the Appellants on a point of Law
went no further than to evince a spirit of Litigation in the
Respondents and their evil disposition to harrass this —
Respondent and this Respondent did in his said answer
further

further say that the arguments used by the appellants to shew that
the arguments used by the appellants to shew that the said Robert
Hughes ought to have been made a party to the Suit were
fallacious and nugatory for this Respondent did say that had the
Appellants been inclined to file a Bill in the Nature of a
Bill of discovery they might have filed it against this Respondent
and have examined the said Robert Hughes on Interrogatories
and thereby have obtained the same benefit as they would have done
had they filed a Bill against the said Robert Hughes
had he been made as the appellants pretend he ought to have been
a party to the Suit and further this Respondent did say that in
Examining the said Robert Hughes he this Respondent had
exhibited every Interrogatory Necessary and that therefore the
Insinuation of the Appellants that this Respondent had not
Examined the said Robert Hughes to points which might have
led to a discovery relative to his the said Robert Hughes
knowledge of the said Bond was altogether absurd and the
more so as the Appellants were themselves at liberty to Bill
Examine the said Robert Hughes and might have
proposed him any and as many Interrogatories as they might have
thought proper but which for prudential Reasons they had —

declined

declined doing and for the same Reasons that they had also declined entering into any proof in support of the very extraordinary and equally impertinent matter Set forth in their said plea and Answer and this Respondent did in his said Answer say that it Was not for the appellants at that time to Speak of the Replication of this Respondent as having departed from the declaration in his said Bill of Complaint contained for that they Judged such a departure of Sufficient Information they might and ought to have demurred thereto or in their Rejoinder have urged such matters as might have appeared Necessary but on the contrary they had absolutely and to all intents and purposes admitted the Several facts as stated in this Respondents said Replication by filing thereto a general Rejoinder only and declining to examine Witnesses and this Respondent did in and by his said answer further insert that the appellants having acknowledged the Signature "Boothoor Moodoo Moodeliar" to the said Bond as exceeding to be of the Proper handwriting of their said Testator which proved the execution of the said Bond and as the only objection urged thereon by the appellants that their Testator did imagine the Obligee was Thomas Welsh and not Robert Hughes was done away by the face of the Bond itself and by the said Note

of the said Robert Hughes addressed to the said Boothoor Moodoo Moodeliar annexed to the Appellants said Answer both of which did shew the Obligee to be Robert Hughes and not Thomas Welsh and that the same therein mentioned contained to be paid to the said Robert Hughes was under the several Circumstances herein before Set forth vested in and the sole property of this Respondent and this Respondent did say that the said Robert Hughes in and by his said deposition and by the letter by him addressed to the appellants said Testator and their said plea and Answer annexed as aforesaid shewed he the said Robert Hughes did during the life time of the appellants said Testator take an active part to recover the amount of the said Bond and of the said Bond and by his said deposition he the said Robert Hughes further shewed that he had made over to this Respondent all right Title and Interest in and to the same and that he had not therein any Interest Right or Title whatever and lastly this Respondent did in and by his said answer pray that the said Court of appeals would Confirm the said Decree of the said Mayors Court and that the appellants Petition of appeal from their

very

Very litigious Conduct in the premises be dismissed with Exemplary Costs to be paid out of their own pockets &c.—

And this Respondent further answering admits that the appellants said Petition of appeal to the said Court of appeals and this Respondents said Answer thereto did come on to be heard before the said Court of Appeals at Madraspatnam aforesaid on or about the Seventeenth day of December and year of our Lord one thousand Seven Hundred and Ninety one when the said Court of appeals were pleased to order and did accordingly Order that the Decree of the said Mayors Court should Stand affirmed and the Appellants petition be dismissed with Costs—But this Respondent does not admit that the Appellants were in any wise aggrieved thereby or that they had any just Cause of appeal therefrom to your Most Excellent Majesty in Council either for the Reasons by him suggested or for any other reasons whatever on the contrary this Respondent says that they the appellants ought not to have prosecuted their litigious Measures further but in Conformity to the Decree of the said Mayors Court and the Order of the Court of appeals thereupon they ought to have paid and Satisfied to this Respondent the Amount of his Claim on the Estate of their said Testator and this Respondent says notwithstanding anything to the Contrary in the appellants said Petition of appeal contained that the said Court of appeals considering the Matters urged by this Respondent and the several proofs adduced in support thereof could not have done otherwise than affirm the said Decree of the said Mayors Court without an evident departure from Equity and good conscience for this Respondent says Notwithstanding the assertion to the contrary in the appellants said Petition of Appeal contained that the appellants said plea was in its principal erroneous and altogether abandoned by the appellants themselves in as much as they did not examine Witnesses in Support thereof further this Respondent most humbly Submits that when a Bill is defective for the want of parties the regular course is to demurr thereto as a Demurrer goes to points evident on the face of the Bill and requiring no proof by evidence to establish the fact insisted on and which must be the case when there is a Want of

parties

Parties to a Bill wherein the Matter of a plea although
arising out of the Bill is not therein Set forth Sufficiently &
Complete for Judgement thereon without further Reference and
other support and therefore the Several Matters and things
Covered by a plea if Replied unto and in such Reply denied
by the Repliant must be supported by the Testimony of
Witnesses and thereupon this Respondent further Most humbly
Submits to your Most Excellent Majesty in Council that
the pleading so much insisted on by the Appellants as a
Plea for the Want of parties is in fact no plea further
than as the same is denominated by the Captain thereof
and therefore and for as much as this Respondent did
Support the Justness of his demands against the Appellants
by the ample testimoney of Witnesses the said Mayors Court
Notwithstanding any thing to the contrary in the Appellants
said Petition of appeal contained had before them
Sufficient foundation for the said Decree and this
Respondent says that the Reasons offered in objection thereto
by the Appellants are totally groundless and contrary
to the real matter of fact for this Respondent says
that

that he has clearly proved that the principal Sum of Two thousand
Pagodas in the said Bond mentioned was his own property
Nor do the Witnesses as the Appellants have suggested led off
to opposite points, but on the contrary their several
depositions follow in that Necessary and connected Chain
of facts requisite to establish the Right of this
Respondent for this Respondent Says first that the
Execution of the Bond is proved by the deposition of
Chenglarayen one of the Subscribing Witnesses who declares
that the said Bond was Executed by the Defendants said
Testator in his the deponents presence and that he the
deponent did set and Subscribe his Name as a
Witness to the due Execution of the said Bond
at the express desire and request of the Appellants said
Testator Secondly Jah Savmy proves the Consideration Money
and says that he himself carried the Sum of Two thousand
Pagodas to the Appellants said Testators Intestate
that the said Bond was filled up in his the deponents
own hand writing and that the contents thereof were
fully explained to and understood by the Appellants
said Testator previous to his Executing the same and
the

the Testimony of the said Sah Sawmy is in part
corroborated by Cossar Veinayagam alias Periah who shews
how the loan was originally Negociated and says that
the Sum of Two thousand Pagodas together With the
Bond in question was sent to the Appellants Testator
that he kept the Money and returned the Bond duly
Executed and thirdly Robert Hughes Examined to the
Exhibit B. says that the Signature affixed to the said
Assignment of the said Bond in Assignment is of his
Own proper hand writing and that he did so Execute
the same for the purpose and intent that he this Respondent
should receive the full amount of a Bond granted
to him the Deponent by the Appellants said Testator as he
and that he had no Manner of right therein in as
Much as he has declared in his deposition to the Seventh
Interrogatory that he is in no wise whatever interested in
the Event of the present Suit. — and this Respondent
says that the Appellants must have misconceived in
as much as they have misstated the fact in their
allusion to the Evidence of Chengleroy which this
Respondent says Notwithstanding the Assertion of
the

The appellants to the contrary goes much further than to prove their Testator
did not understand the English Language for first the said Chengleroy
deposing to the Second Interrogatory proves that the Bond in question
Was given and granted by the Appellants Testator to the said
Robert Hughes and that he set and subscribed his name as a
Witness thereto and that he did so set and Subscribe his Name
At the particular instance and Request of the Appellants Testator
and further deposing to the same Interrogatory he the said Chengleroy
Says the Name "Booder Moodoo Moodeliar" so set and subscribed
to the said Bond so given and granted by the said Braden Moodoo
Moodeliar is of he the said Boodoor Moodoo Moodeliar's own hand
Writing and that the said Bond was Executed in his the
deponents presence and that the Seal affixed to the said Bond
is the Seal of the said Boodoor Moodoo Moodeliar and this Respondent
further says that the Appellants have equally misstated the fact in
Asserting that the said Chengleroy is the only Witness which this
Respondent has examined to the said Bond for this Respondent
says that Sah Sawmy is particularly interrogated thereto and who
thereon deposing says he has looked at the paper Writing shewn
to him at the time of his Examination Marked with the Letter B
purporting to be a Bond granted by one Boodoor Moodoo Moodeliar
to the said Robert Hughes for the Sum of Two thousand Star Pagodas

and

And says the Contents thereof were fully explained and understood by the person whose Name is Subscribed thereto and Seal affixed before he Executed it that he the deponent carried the Sum of Two thousand Pagodas to the said Boothoor Moodoo Modelliar on Account of the said Robert Hughes and that the said Bond Was filled up in his the deponents own hand Writing and this Testimony is corroborated by the deposition of Covey Venaigum alias Periyah Jah Modelliar and who although the said Bond Was not produced to him at the time of his Examination in effect deposes thereto for to the third Interrogatory he says that he himself Negociated the loan of the said Sum of Two thousand Pagodas and says that the said Boothoor Moodoo Modelliar interceded With him the deponent to procure five Months Credit for the Repayment thereof and that this point being adjusted the Bond granted for the said Sum of Two thousand Pagodas was drawn out payable to the said Robert Hughes that the said Bond Was then sent together with the said Sum of Two thousand Pagodas to Boothoor Moodoo Modelliar for his perusal who detained the Money and returned the Bond properly and fully Executed and this Respondent says that the Appellants in and by their said Petition of appeal say that it does not appear by any part of the deposition of the said Chengleroy that he understood the

the English Language thereby meaning to insinuate that he could not have read and Explained the said Bond to their said Testator yet immediately afterwards the Appellants shew that he certainly did understand the English Language and that he was not only capable of reading the English Language but that he could write it also for they shew that he signed his deposition in English and in answer to the Assertion in the Appellants said Petition of Appeal contained that the said Chengleroy deposes that he does not know whether any Sum or Sums of Money was or were paid in consequence of the said Bond this Respondent says that he has shewn in his Answer to the Petition of the Appellants in the Court of Appeals at Madraspatnam aforesaid that the same was an Error in the Examination for that the said Chengleroy had deposed or meant to depose Vice Versa and that on publication passing and such Error being thereby discovered he this Respondent did Exhibit and file a petition in the said Mayors Court together with the affidavit of the said Chengleroy to the fact and thereon pray the same Relief granted by the said Mayors Court in similar occasions that the said Chengleroy might be examined Viva Voice at the hearing but as this Respondent in his said Answer has shewn the said Mayors Court did refuse to grant such

the

the prayer of this Respondent and which this Respondent humbly Submits to your Most Excellent Majesty in Council as a particular hardship and great grievance and that notwithstanding anything to the contrary in the Appellants said Petition of Appeal contained the principal Sum of Two thousand Pagodas in the said Bond Mentioned is clearly established to be the sole property of this Respondent so as to enable him to Sue for and recover the amount thereof and this Respondent most humbly submits that the appellants having in fact admitted the Execution of the said Bond and by an Exhibit to their plea and answer annexed further admitted the payment of the amount thereof had been demanded of their Testator in his lifetime by the said Robert Hughes the only thing encumbent on them in the discharge of their duty as Executors watching over the Estate of their Testator - was to be careful that the person who might have any demand thereon should on payment thereof being made Execute a proper Release and discharge therefor And as the said Robert Hughes in and by his Assignment of the said Bond to this Respondent did relinquish all his right and Title therein and on account thereof to this Respondent he this Respondent was thereby and by reason thereof fully Entitled to demand

demand and receive from the Appellants the Amount thereof and to give a full and sufficient release discharge and acquittal for the same and therefore this Respondent humbly submits that the plea and Answer of the Appellants is evasive and unjust for that even had there been any irregularity in the mode adopted by this Respondent in bringing his action against the Appellants yet such irregularity could not have been injurious to the Appellants had they discharged the Amount of the said Bond upon which the said action was brought and which they have admitted to have been Executed by their Testator and the act of attempting to deprive this Respondent of his right by setting up a false plea upon a frivolous pretext was and is as this Respondent humbly Conceives not only inequitious on the part of the Appellants But this Respondent most humbly submits to your Most Excellent Majesty in Council that his action was not irregularly brought and that under the Circumstances of the Case it was totally unnecessary for him to have made the said Robert Hughes a party to the said Bill or that he the said Robert Hughes could have been made a party for this Respondent most humbly submits that in Equity no particular words are necessary for an Assignment of a Chose in action and so the fact is laid down in the Books and which fact

is illustrated by the following Words— Where an Obligee receives Money on a Bond and Writes on the back of it I have received the principal and Interest do you the Obligor pay the Money to him and which this Respondent most humbly submits is a case in Point and further most humbly submits that as there is no Mention made therein of a Constitution of an Attorney the Suit must be commenced upon the special matter and in the Name of the party who holds the Bond and has the sole rights and Title to the amount thereof so that had this Respondent brought his Suit as directed by the appellants he would have so brought it without any legal authority for although the said Robert Hughes had clearly and sufficiently made over all his right title and Interest of in and to the said Bond to this Respondent yet he did not grant him any power to sue in his Name as he the said Robert Hughes Attorney and this Respondent humbly submits to your Most Excellent Majesty in Council this Evident fact that his Suit was not commenced contrary to the practice of the said Mayors Court Notwithstanding the assertion of the Appellants in as much as the Mayors Court did retain this Respondents said Bill and thereon decree in favor of this Respondent and this Respondent further most

humbly

humbly submits that the Appellants themselves have Evinced their full conviction that the said Robert Hughes ought not to have been made a party to this Respondents Bill and that he Was not interested in the Event thereof in as much as they the Appellants did not except to the deposition of the said Robert Hughes as given in the Cause in favor of this Respondent and thereupon and for the reasons hereinbefore Set forth this Respondent further most humbly Submits to that Notwithstanding any thing to the Contrary in the Appellants said Petition of appeal Set forth he this Respondent had a legal and equitable Right in himself to commence his Suit Against the Appellants in manner and form as in his said Bill the same appears and that it was not requisite for this Respondent to make nor could he have made the said Robert Hughes a party thereto and this Respondent Most humbly Submits to your Most Excellent Majesty in Council that by proving the Execution of the said Bond and that the amount therein set forth was paid to the Appellants Testator and that the Right Title and Interest of in and to the same was Vested in and become the Sole property of this Respondent was proving all that was Requisite for this Respondent to do. and all that was Necessary for the said Mayors Court and the said Court of appeals to Judge and

determine

Determine on and this Respondent further says he admits that he did take the said Bond subject to the same Equity as in the Lands of the said Robert Hughes and he humbly trusts that he has clearly shewn that Equity first by proving the original Contract to have been fair and bona fide and Secondly that the Consideration Money therein set forth was actually paid into the Hands of the Appellants said Testator nor have the Appellants disputed the Equity of the said Bond either in their said plea and Answer or by a course of Evidence produced on their part and behalf or by a Cross Examination of the Evidence produced on the part and behalf of this Respondent and therefore and for the several Reasons hereinbefore set forth this Respondent doth humbly submit to your Most Excellent Majesty in Council that the Assertions repeatedly urged by the Appellants in and by their said Petition of appeal that they as Executors do evidently sustain very great wrong and injury by this Respondent Commencing this his Suit in manner and form aforesaid are without any kind of foundation in reason or in truth and this Respondent humbly submits the further Assertion of the Appellants that he this Respondent had not nor could he prove any right to Recover in the present Suit so equally unfounded in as much as no injury could have arisen to the Appellants in paying a Sum Justly due provided a

a Sufficient release and acquittal was granted on account thereof and this Respondent humbly submits that holding the said Bond under the said Assignment of the said Robert Hughes the obligor in the said Bond Named with a declaration from him the said Robert Hughes shewing that he held no further right or title therein but that the same was vested in and remained with this Respondent was legally and to every other intent and purpose fully authorized to deliver up the said Bond to the Appellants to be cancelled and to grant such acquittals releases and discharges Sufficient to indemnify and keep harmless the Appellants in the premises and further this Respondent humbly Submits to your Most Excellent Majesty in Council that it not only lay in this Respondents power to prove but that he has actually proved his right to recover against the Appellants by proving that the said Bond was made over to him by the said Robert Hughes the obligor and by the evidence of the said Robert Hughes that he this Respondent Solely possessed all right and title in and to the said Bond and the Money therein and thereby conditioned to be paid by the Appellants said Testator and this Respondent humbly conceives that the Charge of contradiction in the deposition of the said Chengleroy as insisted on by the Appellants is so trifling to require any

any confutation on the part of this Respondent The Apposition of the said Chengleroy was read at the hearing of the Cause & Without any objection made or Acceptance taken on the part of the Appellants This Respondent did before the said Cause come on to be heard pray the said Mayors Court as herein before Set forth that the said Chengleroy might at the hearing of the Cause be Examined Viva Voce when any apparent contradictions might have been Explained and which this Respondent is advised is the invariable course in such cases but this Respondent says that such his Reasonable Request was objected to by the Appellants who Now It would seem aim at taking an advantage of the injury thereby sustained by this Respondent and this Respondent says that the Observation of the Appellants on the Testimony of Coovery Venaigum alias Peryah Sah Moodeliar is principally to state that he was not present at the Execution of the said Bond which this Respondent never insisted on but this Respondent most humbly submits that the Evidence of the said Coovery Venaigum alias Peryah Sah Moodelly is of that kind which goes far to shew the Execution of the said Bond — and that the Consideration therein expressed was actually received by the said Boothoor Moodeo Moodeliar for this Respondent

Says

says as he has herein before said that the said Coovery Venaigum alias Peryah Sah Moodelly in and by his deposition shews that he in fact Negociated the loan for the said Boothoor Moodeo Moodeliar and that the Bond filled up was sent together with the Money therein Set forth to the said Boothoor Moodeo Moodeliar who kept the money and returned the Bond Executed and which Evidence this Respondent Most humbly Submits is conclusive as to the principal Object the establishing the fact that the Money was received by the said Boothoor Moodeo Moodeliar and that in consequence thereof he executed the Bond in question but this Respondent Most humbly Submits he has not made out the Invalidity of the said Bond or the payment of the Consideration money to the said Boothoor Moodeo Moodeliar upon the said Evidence of the said Coovery Venaigum alias peryah Sah Moodeliar but on the contrary that he has proved the same partly by the Testimony of the said Chengleroy who deposes to the Execution of the said Bond and fully so by the said Sah Sawmy who although not a subscribing Witness to the Execution of the said Bond deposes to the fact in the clearest manner — shews that he carried the Money to the said Boothoor Moodeo Moodeliar for which the said Bond

Was

Was Executed that the Bond was filled up in his & the deponents own hand Writing and that it was explained to and fully understood by the said Boothoor Moodoo Moodeliar before he Executed it and thereupon this Respondent most humbly submits that the insinuation in the Appellants said Petition of appeal contained that it does not appear that the Money ever came to the hands of the said Boothoor Moodoo Moodeliar is without any manner of foundation in truth and this Respondent further most humbly Submits notwithstanding any thing to the contrary in the Appellants said Petition of Appeal contained that the Evidence of the said Sah Sawmy does not in any wise contradict the Evidence of the said Covery Venaigum alias Periyah Sah Moodelly for the said Sah Sawmy says that he received the Money he carried to the said Boothoor Moodoo Moodeliar from this Respondent on account of the said Robert Hughes which Was the information he received at the time from this Respondent who for the reasons hereinbefore set forth and that more fully in this Respondent answer before the said Court of Appeals at Madraspatnam did not conceive it necessary to make the said Sah Sawmy acquainted with every matter connected With the said Transaction and the said Covery Venaigum alias

Periyah.

Periyah Sah Moodelly in his deposition does not positively say as the Appellants state the fact to be that the Money Was absolutely the money of this Respondent but that this Respondent advanced it and received on account thereof and as Security therefore the Bond in question and this Respondent most humbly submits that the observations of the Appellants on the Evidence of the said Robert Hughes are groundless in as much as it may fully appear that the only thing incumbent on the said Robert Hughes to do he the said Robert Hughes has fully performed for that he has declared upon Oath that he is not in any wise interested in the Event of the Suit and that he gave the Exhibit B to this Respondent for the purpose and intent that he this Respondent should recover the full amount of the Bond in question and this Respondent says in opposition to the objection of the Appellants that he humbly conceives it was not necessary that the said Robert Hughes should have deposed to the Execution of the said Bond for the purpose therein expressed or that any consideration was paid for the said Bond because this Respondent says Chenglevoy the Subscribing Witness to the said Bond has been examined and fully deposed to the Execution thereof and Sah Sawmy deposes both to the Execution

of

of the said Bond although not a subscribing Witness and to the payment of the consideration Money thereon expressed and Which is corroborated as hereinbefore shewn by the Testimony of the said Coovery Venkyum alias Peryah Jah Moodelly and this Respondent humbly Submits to your most Excellent Majesty in Council Notwithstanding any thing to the contrary in the appellants said Petition of appeal contained that the Evidence adduced and the several Matters urged by this Respondent in support of his rights in the premises are amply Sufficient to destroy the Matters and things Setforth and urged by the Appellants in their said Plea and answer and to Shew that it was in no wise Necessary or Requisite that the Said Robert Hughes should have been made a party to the Suit and this Respondent further most humbly Submits that he has already answered and fully confuted the Matters Setforth in the dissent to the Appellants said Petition of Appeal contained and further Most humbly Submits that the Dissent itself does not State the fact nor is it warranted by the proceedings on which it is grounded and this Respondent Most humbly Submits that as the said Dissent was not delivered into the said Mayors Court at the hearing of the Cause but

But evidently on another day when the same members before Whom the Cause was heard were not present so as to have been enabled to give their Reasons in Objection thereto the said Dissent Was Exparte and this Respondent Most humbly submits that as Matters forming no part of the pleadings consequently not in issue on the Original Cause and in Cause not read at the hearing thereof cannot be brought forward upon an appeal the said Dissent ought not to have been introduced by the Appellants in their Petition of appeal to the Court of appeals at Madraspatnam and thereupon this Respondent humbly submits that it ought not to have become a part of the Appellants Petition of appeal to your Most Excellent Majesty in Council. And this Respondent Submits to your Most Excellent Majesty in Council Notwithstanding any thing to the contrary in the Appellants said Petition of appeal contained that this Respondents proceedings are completely framed to prevent the positively of a Multiplicity of Suits arising from the said Bond further than as the Appellants themselves might have promoted the same by a Cross Suit which they were at liberty according to the practice of the said Mayors Court to have brought against this Respondent and whereby they might have obtained a full discovery of every Matter and thing relative to the said Bond and in pursuit thereof they

they might also have made the said Robert Hughes a party but not having done so this Respondent most humbly submits that the Appellants cannot at this time advantage themselves of their own wrongs and thereupon this Respondent humbly submits to your most Excellent Majesty in Council that it is highly irregular in the Appellants to pretend they have not obtained a discovery relative to the said Bond or that the said Robert Hughes ought not to have been brought forward as an Evidence and the more Particularly as to the evidence of the said Robert Hughes because they the Appellants said as this Respondent has hereinbefore shewn an opportunity of excepting thereto on publication passing in the Cause and thereby have shewn if it had been in their power so to do that the said Robert Hughes was an interested Witness or set forth such other Reasons as they might have Judged Necessary and that by Neglecting so to do they admitted and received the Evidence of the said Robert Hughes as regular unexceptionable and conclusive and this Respondent most humbly submits Notwithstanding the Reasonings of the Appellants to the Contrary that it is the Equity of the Case which governs in Courts of Equity and that the Equity of this Respondents Case is sufficiently established upon the equitable principle that the Money for which the Bond was executed by the Appellants Testator was actually and bona fide paid to him and that all Right in and to the said Bond and to the Consideration Money therein and thereby conditioned to be paid to the said Robert Hughes became Vested in and the Sole property of this Respondent who according to the practice of Courts of Equity as laid down in the Books was fully authorized in bringing his Bill against the Appellants in his own Name and not as the Attorney of the said Robert Hughes Who this Respondent humbly submits to your Most Excellent Majesty in Council he has shewn might have been interrogated by the Appellants as to any Matter of discovery upon a Cross Bill or by a Cross Examination as in Evidence nor could he the said Robert Hughes as this Respondent humbly conceives have evaded such discovery as the Appellants assert he might have done under the pretence that the same was the Act of another antecedent to his Interest therein or under any other pretence whatever and this Respondent most humbly Submits to your Most Excellent Majesty in Council that if his said Replication was a Material departure from his said Bill it was absolutely Necessary for the Appellants to have demurred thereto if they had Meant to take Advantage thereof and that the General Rejoinder put into this Respondents said Replication and the Joining in Issue thereon

thereon is a full admission and allowance of the Several Matters and things in this Respondents said Replication contained and Sufficient to overrule the Appellants said plea and the Matters and things therein Set forth even if the same had been well pleaded. — And this Respondent humbly submits to Your Most Excellent Majesty in Council that the Appellants have further overruled their said plea if it ever had any foundation in as much as they have in and by their said Answer answered to the Matter Set forth in their said Plea that is to say that this Respondent has illegally assumed the title of Complainants and this Respondent humbly submits to Your Most Excellent Majesty in Council that the Appellants have entered into impertinent and irrelevant Matter Relative to transactions between Peryah Sah Kistna Roya and Vencayen and although they deny being indebted unto this Respondent yet the circumstantial Matters Set forth in Support of such denial are inconsistencies and contradictions for at the time they deny positively that their Testator did ever directly or indirectly receive any consideration upon Account of the said Bond they admit the hand Writing to the Execution thereof to be of the hand Writing of their Testator they then pretend that the Bond in question was at the time it was brought to their said Testator for execution declared to be in the Name of the said Thomas Welsh and that thereupon their said

then said Testator did Execute the same and go into a long delayed & ruinous Transaction between their said Testator the said Thomas Welsh and others to a very considerable amount pretending that Coovery Peryah Sah alias Venaigum Moodelly was principally engaged therein but who examined on the part of this Respondent declares such the Shewing of the appellants to be without any kind of foundation in truth and the appellants in further attempting to invalidate the said Bond say that their Testator mentioned a Bond in the Name of Thomas Welsh which Mention appears to have been unnecessary if the facts had been as they state it to be for they when they were present at its Execution but they say their said Testator never mentioned a Word of a Bond given to the said Robert Hughes and they say they firmly believe their said Testator died in ignorance as to having ever given such a Bond always believing that the said Bond was given to the said Thomas Welch as he declared a few hours before his death although they shew immediately afterwards by a Letter which they annex to their said Answer that their said Testator did well know that the said Bond was not in the Name of the said Thomas Welsh but in the Name of the said Robert Hughes whom in his said Note shews that he had frequent correspondence or communication with their said Testator on account thereof and that he had often demanded the amount therein conditioned to be paid and that their said Testator had put off the payment from time to time until he the said Robert Hughes as he expresses himself in his said Note was determined to wait no longer than a day or Two and if not paid in that time that he Would proceed against him according to Law and this Respondent humbly submits to your Most Excellent Majesty in Council and thereon Most humbly relies that he has sufficiently shewn and amply established his right to recover against the Appellants upon those principles of equity which correct and soften the rigid doctrines of the Law that the plea of the appellants is erroneous and misconceived and that if otherwise their said Answer has over ruled the same that their said Answer is replete with extraneous Matter altogether impertinent and irrelevant inconsistent contradictory and insufficient that this Respondents Replication is a candid statement of

facts

facts and that the same is admitted as irregular in as much as the Appellants have not Demurred but has filed a general Rejoinder thereto and lastly that it is not the Matter of form but the equity of this Respondents case that this Respondent submits to your Most Excellent Majesty in Council and thereupon most humbly prays your Majesty Excellent Majesty in Council —

That your Most Excellent Majesty in Council will be graciously pleased to affirm the said Order of the said Court of appeals at Madraspatnam and the said Decree of the said Mayors Court and further that your Most Excellent Majesty in Council will be pleased to dismiss the Appellants said Petition of appeal with such Exemplary Costs as to your Most Excellent Majesty in Council may seem Meet. —

[Signed] James Stuart Hall
Solicitor for Respondents —

To

To the Honourable John Holloid Esquire
President in Council
Fort St George

In the Honble the
Court of Appeals

Between Anadanum Paupiah
Bramny of Madras Dubash by
his Attorney Andrew Christian
Mayor of the same place Inha-
bitant Complainant and Collah
Raugavah Chitty of Madras
Merchant Defendant —

The humble Petition and appeal of the said
Defendant Collah Raugavah Chitty —

Sheweth

That the above named Complainant Anadanam Paupiah
Bramenyof Madras Dubash by his said attorney Andrew
Christian Meyor of the Same place Inhabitant did on the
fifteenth dayof August in this present year of our Lord one
Thousand Seven hundred and Eighty nine file a Bill of Com-
plaint in the Honble the Mayors Court at Madraspatnam
against your Petitioner for the Sum of One Thousand Seven
hundred and forty two Pagodas one fanam and Sixty Cash
falsely setforth to appear by Copies of an account Current
and

Filed in my Office
the 28 December 1789
Chas K. White Clk

and an assignment unto the said Bill annexed and your Pett.r Sheweth that the said Bill did also pretend that the said Complainant Arradanum Ruspiah Brawney and your Petitioner did Some time on or about the Twenty Sixth day of November one thousand Seven hundred and Eighty Eight come to a Settlement of all accounts between them and by such Settlement it did fully appear that there Remained a Balance due to the Complainant of the Sum of one thousand Six hundred and thirteen Pagodas for which said Sum the Complainant did pretend that your Petitioner did execute unto him a certain Written Engagement whereby he undertook to pay unto the said Complainant the said Sum of one Thousand Six hundred and thirteen Pagodas with lawfull Interest for the same from the date untill full Payment thereof And that he upon receiving the same did execute a full release and discharge of all accounts between them and the said Complainant did also pretend that no part of the said Sum of money or the Interest thereon had been paid to him - But pretended that the same was still owing and that the same amounted with Interest on the Twenty Sixth day of July in this present year of our Lord one Thousand Seven hundred and Eighty nine to the said Sum of One Thousand Seven hundred and forty two Pagodas

Pagodas one fanam and Sixty Cash and the Complainant did in his said Bill pretend that he had some way or other since either mislaid or lost the said Written Engagement so that he could not at that present time find it to produce before the said Honble Court but pretended that he was ready to enter into any Indemnity Bond or other Security to Save your Petitioner from the said paper if he would pay him the said debt which the Complainant pretended he had often requested your Petitioner to do but that your Pett.r had always refused so to do and still did refuse to pay the same The Complainant pretending that your Pett.r did say that he had already paid the amount of the said Engagement and in order to give a Colour to the said unjust Claim he pretends that your Petitioner did Say that he had past off the said paper to some other person and that therefore your Petitioner had no right to pay the same and at other times that the pretended Bond of Indemnity by him pretended to have been offered was not a Sufficient Security to Indemnify him from the said pretended Written Engagement and the said Complainant did then under the same unjustifiable Colour proceed to Set forth that your Petitioner had not ever paid the said Sum of money and that tho reason

reason that he did not produce the said Engagement was because he could not find it and the said Complainant did pretend that your Petitioner was bound in Equity and Conscience to pay the said Sum of money notwithstanding the same cannot be found as the Bond of Indemnity pretended to have been offered was a Sufficient Security for your Petitioner and the Complainant in his said Bill did interrogate your Petitioner respecting the said matters and did pray that your Pet.r might answer the Same on oath and that your Petitioner might be Decreed to pay the said Sum of one thousand Seven hundred and forty two Pagodas one fanam and sixty Cash and that your Petitioner might be Summoned &a—

And your Petitioner Sheweth that he did appear to the said Bill by his attorney in Court on or about the Eighteenth day of the said month of august and did file a Demurrer thereto which was dismissed by the said Mayors Court and your Petitioner was ordered to put in an answer to the said Bill on Friday the twenty Seventh day of November last past and a fourteen days Rule did Issue for your Petitioner so to do—

And your Petitioner Sheweth that his attorney had prepared an answer for your Petitioner to the said Bill of Complainant, and your Petitioner was in Court ready to make

oath

Oath to the same on Tuesday the Fifteenth day of this present month of December which your Petitioner Sheweth was the first Rotation Court or return day after the expiration of Fourteen days from the said Twenty seventh day of November and was Therefore as soon ready to be filed and presented to the said Court as the Same could be according to rule and practice required— nevertheless your Petitioner Sheweth that the said Complainants attorney did Obtain a Certificate from the register that the usual Rules had issued for your Petitioner to answer the said Complainants Bill which he had neglected doing and prayed a Decree might then pass whereto your Pet.rs attorney did Object and did pray leave to file a General answer his Client being in Court ready to answer to the Same and your Petitioner Sheweth that notwithstanding the said mayors Court did not attend to the premisses urged by your Petitioner in his favor but did consider that as a Demurrer had been filed and urged in the said Cause and that your Petitioner was ordered to put in an answer by the Eleventh of the said Month of December the said Mayors Court did order the said answer then tendered be not received and that a decree should pass and the said mayors Court did Accordingly record that as the usual Rules had issued for your Petitioner to answer the Complainants Bill which

he

he had neglected doing the said Court did therefore think fit to order and decree and did accordingly Order and Decree that your Petitioner Should pay unto the Complainant the full and just Sum of one Thousand Seven hundred and forty two Pagodas one fanam and Sixty Cash together with such Interest as there was or Should thereafter become due thereon untill full & payment was made also all Costs of Suit as may appear by Copys of the Extracts from the minutes of the said Court of the said Fifteenth day of December One Thousand Seven hundred and Eighty nine and of the said decree hereto annexed

By which said decree your Petitioner doth conceive himself to be greatly aggrieved upon the General Ground of the irregularity and injustice of the said Complainants Bill whereon no decree could be legally granted and also for that the said Decree doth declare the said Bill to be taken pro Confesso when your Petitioner did not confess or acknowledge the same to be true but ready in Court to make oath by his answer that he was not but that he absolutely denied to stand indebted unto the Complainant in the manner as the Same was charged in the said Bill of Complaint and your Petitioner doth therefore appeal therefrom unto this Honble Court and for Cause of appeal your Petitioner Sheweth

First. . . Because upon the General Principles of Law and Equity no Decree

Decree could pass upon the said Bill for the manifest Errors uncertainties insufficiencies and imperfections therein Contained —

Second. . . Because the reason upon which the said decree is founded is erroneous to wit that a Demurrer had already been filed and urged in the Cause is not a regular and practicial pleading and your Petitioner had leave to file the said Demurrer by the order of the said Mayors Court and your Petitioner did file the same in time and as the dismission thereof was attended with an order to pay the Costs thereof the payment of said Costs was the utmost penalty that could be extended by the Judgement of the said Court therein and your Petitioner could not nor ought to suffer any prejudice in the defence of the said action merely because the same had been demurred unto by them and your Petitioner did not in any manner delay the hearing of the said Demurrer —

Thirdly. . . Because the Second Reason for the said Court grounding the said Decree is also Erronious to Wit Because your Petr was ordered to put in an answer by the Eleventh of the said Month of december for your Petitioner Sheweth that the fourteen days Rule for your Petitioner to put in an answer did not pass on a Court day on which there was any return of writs nor did the said Fourteen days Expire on any return day nor a Rotation day But the Twenty seventh day of November

the

the aforesaid day on which the said Demurrer was argued and dismissed and that the said rule did issue was on a day set aside for the sole purpose of expediting of Causes ready for hearing towards the Close of the year on the approach of the Vacation and your Petitioner Sheweth that there was casually another Court appointed for the same purpose exactly Fourteen days after the expiration of the said Rule for your Petr to answer which fell on the Eleventh of the said month But the said Rule did not pass in Contemplation that the Court would meet on that day for the purpose of receiving the said answer and that the said answer was absolutely required to be delivered in on that day but the said Rule of fourteen days did pass because it was the usual time given for an answer where no longer time was prayed for which is commonly done and which your Petitioner might have prayed for and which the Court would have granted and your Petitioner is advised that it was irregular to make the said Rule expire in the days of adjournment because altho the said answer might have been offered to the Court on the Eleventh on the day of their Casual meeting the same could not regularly have been received as the said day was not a day for the dispatch of Current Busines but for the sole purpose of hearing one Particular cause

and

and your Petitioner ought not to be prejudiced by the said Eleventh day of December casually falling on a special Court day because if there had not been a Court day and that your Petitioner had bin advised to file his answer exactly on that day it would only have been filed and recorded on the following Rotation Court and if a Commission had been necessary your Petitioner could not have obtained one till then in further proof of which your Petitioner saith that the minutes of the proceeding Regular Court for the return of writs which was on Tuesday the Eighth day of December were not read on the Eleventh day of December nor were the minutes of the Twenty seventh of November read on the said day to shew what had passed fourteen days preceding your Petitioner therefore saith that the Eleventh day of December was not a proper day for him to deliver in his answer But the fifteenth day Because your Petitioner Sheweth that if he had delivered in his answer on the Eleventh day of December the same would only have been recorded on the Fifteenth day of that Month and your Petitioner could not have had a Rule to Reply on the fifteenth day of December but only seven days after because the ordinary rules of the Mayors Court are from Tuesday to Tuesday which is the only return day of the said Court and if a Casual Court day for any particular purpose

intervenes

intervenes as for Instance that a Bill had been introduced on that day by special permission of the Court the Summons would have been made returnable on a Tuesday and on no other day But no return or any duty is injoined by the said Court to be performed within the days of adjournment or any day intermediate between the Tuesday and Tuesday and in further proof that your Petitioners attorney could have no apprehension of being called upon for the said answer on the Eleventh but the fifteenth only your Petitioner sheweth that as his attorney was not imployed in the sole business for which the said Court did on the said Eleventh day of December meet that he requested as is common in such cases to have his attendance dispensed with which is in conformity to the orders of the said Court for all attornies to attend at the meeting of the Court or send an Excuse to the Court or mayor which your Petitioner sheweth his attorney did send on that day the said Eleventh day of December and his attendance was accordingly dispensed with and your Petitioner sheweth that even if the said answer ought to have been delivered in on the said Eleventh day of December that he was dispensed therefrom by the permission he obtained in consequence of his said prayer of dispensation which might not have

adverted

adverted to the said Court at the time of granting their said Decree and in additional proof your Petitioner sheweth that the attorney for the Complainant did not believe that the said Court would allow a decree by default to pass on the said Eleventh day of December in case he had prayed the same Because he did not then produce any Certificate of the Expiration of the Rules but did only produce it on the fifteenth day of December which shews that he did not think that the said Rule for your Petitioner to answer did expire before that time and your Petitioner sheweth that as the said Certificate was only dated on the fifteenth day of December the same was too late to entitle the Complainant to a Decree on that Day as your Petitioner had ~~had~~ an answer actually ready to be put in and your Petitioner in person at the Bench of the said Court ready to make Oath to the truth of it and he is humbly of Opinion under these Circumstances that the said Certificate and Consequent Decree are erroneous it being Evident that the attorney for the Complainant did not conceive that your Petitioner had incurred the penalties of a Default until the fifteenth of December when he prayed his decree upon the Wrong Ground of his having been entitled to it on the Eleventh of that Month and your Petitioner sheweth that the Circumstance of Rules passing in the days of adjournment to terminate in a day of adjournment is unusual

and

and not at all in practice nor can any instance be shewn that the penalty of non Conformance on that day and postponing the Observance to the first Rotation Court was ever attended with the Rigors of Contumacy or Contempt and all the Rules whether Peremptory or not are not made to expire in the adjournment but at the first meeting of the Court even after a Vacation or which is some times for one months —

Your Petitioner therefore humbly contends that his answer ought to have been received in order that the Complainant might have implied thereunto as it is clear that your Petitioner hath not had delay in this having provided himself with a Copy of the Bill and other proceedings merely for the purpose of defending the Suit by those Justifiable means that are allowable and according to practice — that the denial to allow your Petitioner to file his answer and particularly to a Bill of Complaint of a Complexion so very unfavorable was a great hardship — Because even upon the Supposition that the Complainant had been advised to Except to the said answer and that the same should have been held insufficient nevertheless a Decree could only have passed upon the insufficient matter not answered unto But it is uninstanced in the practice of the mayors Court to pass a Decree when a Defendant hath appeared and hath had an answer ready to file

and

and he believes also that the Books do not furnish any instance of a Similar hardship in any of his majestys Court in England that there could be no legal Cause for refusing to accept the said answer upon any Supposed insufficiency because no insufficiency could be alledged out of form and contrary to practice that your Petitioners answer was good to every purpose and Effect of the Law and ought not to be otherwise presumed but after fair and regular hearing

That it is Evident that your Petitioners Object hath not been delay because he could have Petitioned for a rehearing after his Demurrer had been dismissed and could thereafter have appealed But his Object was to defend the suit upon such grounds as he thought were fair and admissible with practice and therefore declined every attempt to delay —

And your Petitioner sheweth that if his answer had been admitted as he presumes it ought to have been on the said Fifteenth day of December one thousand seven hundred and Eighty nine and which he prays it may be the Defendant could not have prayed any Rule for the Complainant to reply in the days of adjournment altho according to practice any fourteen days are given to Reply nor could he have prayed any Rule untill after the adjournment which happened on that day for the return of writs and Rules which return day will be on the Nineteenth day of January next ensuing your Petitioner

Therefore

therefore conceives that he had not only not incurred the penalty of Contempt but that there was no reason nor necessity for it being inflicted in this Instance any more than the denial of an answer in any other which may Happen in the said Court as it is evident that the Complainant would have been as much favored by the accident of adjournment in case his answer had been admitted as he your Petitioner is now condemned by it – and that not by any confirmed or regular practice But by a Circumstance in practice hitherto unknown wherein the Complainant hath been allowed to take the advantage of retrospection after he had declined insisting on it at the time he might pretended he was entitled to that advantage which your Petitioner humbly conceives to be a very great hardship upon him as he is Decreed to pay a Sum of money said for Contrary to all principle of Law or Equity upon a suit founded upon the most unwarrantable and unjustifiable Ground which the Complainant in his Conscience well Knows he could never have prevailed in ——

your Petitioner therefore prays in Consideration of the premisses that this Honble Court will be pleased to reverse the said Decree of the Mayors Court and to order his said answer tendered on the fifteenth day of this month to be received and Accepted and that this Honble Court will grant your Petitioner such further and other Relief in the Premisses as to this Honble Court shall seem meet

/Signed/

Henry Dupuy

Attorney for the Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th day of December Anno Domini 1789

Present

William Webb Esquire Mayor

Edward Garrow Andrew Ross

and

John Milford Aldermen

Avadanum Paupiah Braminy by his attorney Andrew Christian

Meyer Collah Vera Ragavah Chitty

The attorney for the Complainant produces to the Court a Certificate from the Register setting forth that the usual Rules has been issued for the Defendant to answer the Complainants Bill which he has neglected doing the therefore Prays that a Decree may now pass to which the Opposite attorney Objects and prays leave to file a General Answer his Client being in Court ready to a=swear to the same — The Court having taken the same into Considera=tion and as a Demurrer has already been filed and argued in this Cause and the Defendant ordered to put in an answer by the 11th Instant it is ordered that the general answer now tendered be not received and that a Decree do pass Bill read —

It appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants

Complainants Bill which he has neglected doing this Court doth therefore thinks fit to order and Decree and doth accordingly order and Decree that the Defendant shall pay unto the Complainant the full and just Sum of one Thousand Seven hundred and Forty two Pagodas one fanam and Sixty Cash Pagodas 1742. 1. 60/ 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 —

A true Extract

/ Signed /

George Taylor

Deputy Regr.

true Copy

Henry Dupuy

Attorney Appellant

Avadanum

Avadanum Paupiah Braminy by his Attorney andrew Christian

Mayr

Vers

Collah Ragavah Chitty

Mr. Alderman Ross Dessents to a Decree

Passing against the Defendants Because he thinks the Defendant

should still be considered within the time limited to file an

answer as the Demurrer was argued on a day intervening between

the usual Court days the order of the Court should be considered as

a Rule of the following Court day Tuesday being the Judicial day

for which it always bills the opening and the Returning of the com-

-mon Precess of the Court and that therefore the Present day should

be considered as that on which the Rule expires and even where a

further day has been desired after the expiration of the Rule for

an answer on the dismission of a Demurrer such indulgence both

for Receiving a General answer and for allowing a further time

for a Special answer are not without precedent —

As in the Cause of Stringer vers Shaw in

1779. 14 days having been allowed for giving an answer on

the Dismission of a Demurrer a General Answer was then

filed —

And in the Cause of Sunka Chinnakistnamah

Chitty

409

1781

October 23 — Chitty vers Ragavah pillay. Attorney to Henry Brooke —

a Demurrer was Dismissed and one month allowed the Defendant

to file his answer which not being ready within the Rule one week

more was prayed for and allowed and the answer was filed on

the 27th November —

/Signed/ Andrew Ross

A true Copy Alderman

/ Signed / 15th December 1779

George Taylor

Deputy Regr

A true Copy

Henry Deputy

Attorney appellant

Mayors

Mayors Court
at
Madraspatnam

Tuesday the 15th Day of December
Anno Domini 1789

Present

William Webb Esquire Mayor
Edward Farrow Andrew Ross
and
John Mitford Aldermen

Between Avadanum Paupiah
Brammy of Madras Dubash by
his attorney Andrew Christian Mayor
of the same place Inhabitant Complai
nant and Collah Ragavah Chitty
also of Madras Merchant Defendant

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 accor=dingly order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of one thousand Seven Hundred and forty two Pagodas one fanam and sixty Cash

Cash Pagodas 1742 . 1 . 60 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 Curr

(Signed)
George Taylor
Dupty Regr

true Copy
Henry Dupuy

F

To the Honorable John Hollond Esquire

President in Council

For Fort Saint George

In the Honble the Court of Appeals

Between Arrakanum Paupiah Brawmy of Madras Dubash by his attorney Andrew Christian Meyor of the same place Inhabitant Complainant and Collah Rangavah Chitty of Madras Merchant Defendant

The Answer of the above Named Complainant to the Petition and appeal of the above Named Defendant

This Respondent admits that he did by his attorney Andrew Christian Meyor on the fifteenth day of August in the year of our Lord one thousand Seven hundred and and Eighty nine file a Bill of Complaint in the Honble the Mayors Court at Madras patnam against the Petitioner for the Sum

Filed in my Office the 20th January 1790. Chas. H. Whitehill

Sum of one thousand Seven hundred and forty two Pagodas Arie fanam and Sixty Cash and which did Justly and fully appear by Copies of an Account Current and an Assignment unto the said Bill annexed and the said Bill did also shew that this Respondent and the Petitioner did some time on or about the Twenty Sixth day of November one thousand Seven hundred and Eighty Eight come to a Settlement of all Accounts between them and that by such Settlement it did fully appear there remained a Balance due to this Respondent of the Sum of one thousand Six hundred and thirteen Pagodas for which said Sum this Respondent did shew that the Petitioner did execute unto him a certain written Engagement Whereby he undertook to pay unto him the said Sum of One thousand Six hundred and thirteen pagodas with lawfull Interest for the same from the date of the said Engagement until full payment thereof and that upon Receiving the same he did Execute a full Release and discharge of all Accounts between them and this Respondent did also shew that no part of the said Sum of Money or the Interest thereon had been paid to him but that the

Same

Same was Justly due and owing and unsatisfied with Interest
to the Twenty Sixth day of July in the Year of our Lord One
thousand Seven hundred and Eighty Nine to the said Sum of
One thousand Seven hundred and forty Two Pagodas one fanam and
Sixty Cash and the Respondent did in his said Bill shew that
he had some way or other either mislaid or lost the said
Written Engagement so that he could not at that time find it
to produce before the said Worthle the Mayors Court but declared
that he was ready to enter into any Indemnity Bond or other
Security to save the Petitioner from the said Paper if he
often in an amicable manner Requested the Petitioner to do
but that he had always refused and Still did Refuse to pay
the same or give this Respondent any Satisfaction touching
the Premises sometimes pretending and giveing out that he had
paid the Amount of the said Engagement and at other times
that he had never given any such Engagement and at other
times that this Respondent had passed off the said paper
to some other person and that therefore the Petitioner had
No right to pay the Same and at other times that the Bond
of Indemnity by this Respondent offered was not a Sufficient

Security

Security to indemnify the Petitioner from the said Written
Engagement — And this Respondent then Set forth that the Petitioner
had not ever paid the said Sum of Money or any part thereof or the
Interest thereon but that the same was justly due and owing to this
Respondent from the Petitioner and this Respondent did also charge
the truth to be that the petitioner did duly sign the said Written
Engagement and that this Respondent had not passed off the same
to any other person or persons whomsoever and that the only reason
Why he did not produce the said Engagement was because he could
not find it and this Respondent did also charge that the Petitioner
Was bound in Equity and Reason as well as in conscience to pay
the said Sum of Money notwithstanding the same could not be
found as the Bond of Indemnify offered was a Sufficient —
Security for the Petitioner and this Respondent in his said Bill
did specially and particularly interrogate the petitioner respecting
the said Matters and did pray that he might answer the same
upon Oath and that the Petitioner might be decreed to pay the
said Sum of one thousand Seven hundred and forty two Pagodas
one fanam and Sixty Cash and this Respondent admits that the
Petitioner did appear to the said Bill by his attorney in Court
on or about the Eighteenth day of the said Month of August and did

file

file a Demurrer thereto and which from its complexion and from a total want of those essentials Necessary to have given some colour to such a mode of process plainly evinced and so it fully appeared that it was not resorted to by the Petitioner from a conviction that this Respondent had brought his action improperly or that he the Petitioner was persuaded he had a Cause of demurrer thereto but merely to gratify his Vexatious and litigious Spirit in harrassing and distressing this Respondent and by such delatory Pleadings to prevent him as long as possible from obtaining his just due. And this Respondent saith that to such the Demurrer of the petitioner he did file his Joinder and did therein maintain the regularity of his Bill of Complaint and his right of Action against the Petitioner upon the doctrine of the law and upon the principles of Equity in a Manner so clear and Satisfactory that on the Demurrer and Joinder coming on to be argued the said Worshipful the Mayors Court did on Friday the Twenty Seventh day of November last past as the Petitioner has stated in his petition of appeal dismiss the said Demurrer of the Petitioner and order him to put in an Answer to this Respondents said Bill of Complaint

Complaint granting him a time of fourteen days for that purpose This Respondent admits that by the Extract from the Minutes of Court Copy whereof is annexed to the Petitioners said Petition of appeal it appears that the attorney for the petitioner did pray leave to file a General answer his Client being in Court Ready to Swear to the same but this Respondent humbly insists that that after avoiding to enter on the Merits of this Respondents Claim by Demurring instead of answering to a Special Bill and afterwards on the Demurrer being thrown out to have contenanced his Evasion by a General instead of a special answer the Appellant had no claim whatever on the indulgence of the said Mayors Court and the Court was therefore well warranted in passing a Decree as Marking their disapprobation of the Evasive and Litigious Spirit of the Appellant This Respondent admits that Tuesday the fifteenth day of December one thousand Seven hundred and Eighty Nine was the first rotation Court after the expiration of fourteen days from the Twenty Seventh day of November preceding but denies any inference therefrom against the Regularity of the Mayors Court in passing the Decree on an Extra

or

Extra or Full Court for as the fourteen days Rule for answering had expired before an answer was filed the appellant was in Contempt of the Court in having failed to file his answer in time in so much that in the event of the appellant having had his answer ready to file on a day after the Eleventh day of December being the day the Rule expired and before the fifteenth following being the day the Court met the Register could not have received such answer without leave from the Court consequently this Respondents attorney in obtaining a Certificate from the Register that the usual Rules had issued for the Petitioner to answer this Respondents said Bill of Complaint which he had neglected doing and thereon praying a Decree might pass obtained no more than what this Respondent was Justly and fully entitled to and his prayer was strictly conformably to every days practice — of course the objections which the Petitioner states to have made thereto and the prayer made and the Argument urged thereon were highly litigious and improper and this is strikingly evident from the Petition of appeal itself for the Petitioner therein shews and which this Respondent admits to have been the Real Matter of that the said Mayors Court did not attend to the premises by him urged

urged because urged out of Time and when in Contempt but did consider that as a Demurrer had been filed and argued in the said Cause that he had been ordered to put in his Answer by the Eleventh day of the said Month of December but that having neglected so to do they thought proper that a Decree should pass and a Decree did Accordingly pass that the Petitioner should pay unto this Respondent the full and Just Sum of one thousand Seven hundred and forty two pag? one farthing and Sixty Cash together with such Interest as then was or should thereafter become due thereon until full payment made also all Costs of Suit as by the said Decree of the said Mayors Court copy whereof is to the Petitioners said petition of Appeal annexed reference being thereunto had May appear — This Respondent does not admit that the Petitioner was greatly aggrieved by the said Decree of the said Mayors Court upon any ground whatever much less upon the pretended general ground of the irregularity and injustice of this Respondents said Bill of Complaint upon which the Petitioner pretends his Grievance arises for this Respondent humbly insists that his said Bill of Complaint was both — Regular and just and that the Petitioner by demurring thereto absolutely

absolutely demonstrated its truth and Justice for a Demurrer admits the Matter of fact because it refers the Law arising out of the fact to the Judgement of the Court and therefore the fact is taken to be true on such Demurrer or otherwise the Court has no foundation on which to make any Judgement Gilberts History of Chan: P 55 and therefore it is irregular and unjust in the Petitioner to reprobate that which he himself has pronounced equitable — or thereon to declare that no decree could be legally granted — This Respondent humbly insists Notwithstanding the Suggestion of the Petitioner that it is not necessary for a Defendant to confess or acknowledge the Plaintiffs Bill of Complaint to be true in order to its being taken pro confesso for it is laid down in the Books that if a defendant obstinately insists on his demurrer and refuses to answer where the Court is of opinion that sufficient matter is alledged in the Bill to oblige him to answer and for the Court to proceed upon the Court will decree the Matter of the Plaintiffs Bill because by the demurrer are confessed all Matters of Fact that are alledged Curs: Cone: 209 and it is the Course of the said Mayors Court to take a Bill pro Confesso when the Rules for answering have expired and no Answer filed a sufficient Cause shewn why a further indulgence should be granted and in the Cases of Demurrers there are many instances where the Court on throwing out a Demurrer have given Judgement for the prayer of the Plaintiffs Bill but which has not been the case in the present Instance although fully warranted from circumstances but instead thereof on throwing out the Petitioners said Demurrer the Mayors Court were pleased to indulge him with a fourteen day Rule to put in his Answer to this Respondents said Bill of Complaint but which he neglected and at the time he prayed leave to file his said General Answer he was in Contempt and it is laid down in the Books that if a defendant is in contempt for not — Answering the Matter contained in the Bill shall be taken as if it were confessed by the Defendant Thomas De Lys so that upon every ground the Decree of the Mayors Court was legal and Just and under every consideration it appears that the petitioner was not aggrieved thereby and that he has no Just grounds to appeal therefrom to this Honble Court nor are the Reasons brought forward by the Petitioner in support of such his appeal of any force whatever —

And in Answer to the first Reason this Respondent says that the Petitioner having in the first Instance made use of a

a delatory Plea for the purpose of litigation and harrassing
this Respondent instead of coming forward as he ought to
have done with his answer and denying of consistent.
with his own Safety he could have denied the Several
Matters in this Respondents said Bill of complaint
contained and in the second Instance after his demurrer
had been dismissed and he was ordered to put in his
Answer to the Bill of Complaint of this Respondent instead
of so doing he suffered the time limitted for that purpose to
expire and then when this Respondent produced the Registers
certificate and thereon prayed a Decree as being fully
entitled thereto the appellant without taking any Notice
of the Contempt in which he stood and offering Cause by affidavit
in order to induce the Court to take off the same came forward
under such Circumstances with a General Answer the
Mayors Court were warranted in taking the Matters
contained in the Bill pro Confesso and thereon passing
a Decree in favor of this Respondent — and the More
particularly so as the Petitioner had established the Several
facts therein contained because his Demurrer Referred
to the Law arising out of such facts to the Judgement of
the Court and the Court in determining on the point of Law

a

so referred to them were pleased to give Judgement in favor
of this Respondent and the Petitioner satisfied with the
Justice thereof did not appeal therefrom so that the said Bill
of Complaint of this Respondent independent of the Real Matter
of fact as set forth by this Respondent stood agreeable to
the Shewing of the Petitioner and his Conduct in the premises
upon the broad Seale of Law and of Equity every way correct
certain Sufficient and perfect and therefore the Assertion of
the Petitioner in his said first Reason for appeal contained
is contrary to the fact and is fallacious and absurd. —

To the Second Reason of the Petitioner as Cause
of Appeal this Respondent Says it is not correct to say that
the said Mayors Court founded the said Decree upon a
Demurrer having been filed and argued in the Cause
all the 4 Nights and no doubt had a very great weight
in their decision but the decree was granted as well from
the impression given of the Justness of this Respondent's Claim
from the Manner in which it was stated in the Bill
of Complaint as from the Appellants avoiding to enter into
the Merits thereof and the doctrine held forth by such

decree

Decree is conformable to the practice of the Mayors Court as well as supported by the Words of the Decree it self to wit "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 do therefore think fit to Order and Decree and Doth accordingly order and Decree — as by the said Decree Copy whereof is Annexed to the petitioners said petition reference being thereunto had may appear — This Respondent admits that a Demurrer is a regular and consequently a practical pleading and that the Petitioner might have obtained leave to file the said Demurrer but denies that on the dismission thereof the payment of Costs was the utmost penalty that could be extended by the Judgement of the said Mayors Court thereon this Respondent with all Submission humbly insists and so the truth really is that the said Mayors Court have a right to Mark their disapprobation of a demurrer on throwing out the same in a more pointed and severe manner than by ordering the defendant to pay Costs and that they do exert that right is evident for they sometimes on dismissing a demurrer give Judgement for the Complainant agreeable to the prayer of his Bill of Complaint but such right was not exercised in the present Instance for the Petitioner on his demurrer being dismissed was ordered to pay Costs only and indulged with a rule of fourteen days to put in his answer to this Respondents said Bill of Complaint therefore the insinuations of the Petitioner and the argument thereon set forth in his said Second Reason or cause of Appeal are by no means supported by the Fact and advanced Solely with a View to lead the Judgement from the real object and so obtain by illusive means an advantage over this Respondent contrary to the dictates of Justice —

To the third Reason of the Petitioner as cause of Appeal this Respondent says that the principle upon which the said Decree was granted is not erroneous as the Petitioner has asserted but that the arguments of the Petitioner in support of such assertions are not only very erroneous but are also highly unfair because this Respondent says that the fourteen day rule for answering his Bill of Complaint having passed the appellant was bound to pay attention thereto and to have filed his answer accordingly and this Respondent denies such Rule passed on a day Set aside for the sole

purpose

purpose of expediting causes ready for hearing towards the close of the year on the approach of the Vacation but such as is held occasionally any week in the year as the Mayor may see proper and this Respondent says that it was perfectly regular to make the rule of fourteen days expire in the days of adjournment for agreeable to the Petitioners own shewing it could not have been otherwise for he himself says that the Rule of fourteen days did pass because it was the usual time given for an answer and the Twenty Seventh day of November being a Special Court day fourteen days from thence must have of Course expired in the days of Adjournment and this Respondent says it was not necessary to have offered his answer to the Court on the Eleventh day of December or on any other Court day but in the Registers Office during the days of Adjournments and which is in fact the proper and Regular way so that the insinuation of the Petitioner that he ought not to be prejudiced by the said Eleventh day of December casually falling on a special Court day is absurd and inconsistent because from the Circumstance of the Case no prejudice attacks to him or to his Cause and he is incorrect in the assertion that he had been advised to file his Answer exactly on that day it would only have been filed and recorded on the following rotation Court. — for this Respondent says that the Amount an answer is Sworn to it may be filed in the Registers office and that moment becomes of record and this Respondent says that had a Commission been Requisite the day on which the Rule for answering expired was not the day for praying it such process should have been prayed for an some preceding Court day and Neglecting so to do it would have been the fault of the Petitioner and the Court would have been careful that he should not have taken and advantage of his own wrong. — and this Respondent says that it is not customary on any Court day to read the Minutes of a preceding Court day except when reference is absolutely Necessary and then only the particular Matter referred to therefore there is nothing extraordinary although the Petitioner would so insinuate that the proceedings of the Regular Court as he terms it held on the Eighth day of November were not read on the Court held on the Eleventh day of December this Respondent therefore says that on or before the Eleventh day of December was the time proper for the Petitioner to have delivered in his answer because on the Eleventh day of December the Rule for that purpose expired. — And this Respondent says that the Matter shewn by the Petitioner in Support of his Strange Reasonings is not opposite nor are the Conclusions drawn therefrom fair

fair or Just the Petitioner says Tuesday is the only return day of the said Mayors Court which the Respondent says is not the real fact for that returns are sometimes made on a full or Special Court day and the petitioner observes that if a Bill of Complaint was introduced in a Casual Court day by Special permission of the Court the Summons would have been Made returnable on a Tuesday and on no other day but he has not shewn first that previous permission is Necessary to file a Bill of Complaint on a particular day indeed he could not have so shewn because a Bill may be filed on any day — and Secondly that there is an order of Court that a Bill of Complaint shall be filed on the days of Adjournment and not on a Court day and so far from the Summons thereon being made returnable on a Tuesday it frequently happens that the Summons is made returnable immediately and a Warrant of Arrest thereon the petitioner pursuing his argument declares that no return or any duty is enjoined by the said Court to be performed within the days of Adjournment or any day intermediate between the Tuesday and Tuesday Whereas the Contrary is the fact this Respondent has Shewn that Summons is Granted by the Mayor on a Bill of

Compt

Complaint filed in the days of Adjournment and made returnable also in the days of Adjournment and the Oaths of Administrators are ordered to be administered in the days of Adjournment the Mayor or any of the Judges of the Court have power to commit or Defendant surrendered by the Bail and where Bail is refused by the Plaintiff the Court take Bail so offered if offered on a Tuesday until Thursday if on a Friday until the monday following and if in the interim Exceptions be not filed to their Sufficiency they stand good on Justification before the Mayor and if Exceptions are filed they are first Sworn to before the Mayor and filed immediately and on a Special or full Court Writs are returned and Bail taken motions made and other Business transacted as on a rotation Court from all which Circumstances and a Variety of others which might be offered it will fully appear that returns and Various duties are enjoined by the Court to be performed on the days of Adjournment and on every intermediate day sunday excepted between the Tuesday and Tuesday. — and this Respondent says that the further pretended argument brought by the petitioner to shew that his Attorney could have had no Apprehension of being called upon for the said answer on the Eleventh but on the fifteenth only

only affords the Reason why the Decree was not prayed for by this Respondent on the Eleventh the day on which the Rule for answering expired instead of the fifteenth day on which the Decree was prayed for and granted. — The Petitioner says his Attorney not being employed in the Business on which the Court met on the Eleventh obtained permission from the Court to be absent and this Respondent says it is often the Course of the Court that where one of the Attorneys employed in a Cause be absent that no special process be had thereon consequently no decree is granted but as the Appellants Attorney was present when the decree was passed no argument can arise in the Appellants favor from his Attorney having been absent on the Eleventh of December and it is therefore preposterous in the Petitioner to suggest that even if his answer ought to have been delivered in on that day yet he was dispensed from therefrom in consequence of the permission his Attorney obtained from the Court to be absent for this Respondent humbly insists it is contrary to reason as to the Nature of the thing that because the Court granted permission of absence to an Attorney on account of indisposition or some other personal cause that it should break through its process and invalidate its orders. In Answer to the pretended Additional proof adduced by the Petitioner that

that this Respondents Attorney well knew the said Court would Not have allowed a Decree to pass on the said Eleventh day of December or that he would produced the Certificate of the Expiration of the Rule and thereon have prayed a Decree. This Respondent says he has already shewn that when the Attorney of the opposite Side is absent as the Petitioner himself has shewn to have been the Case in the present Instance the Court will not grant a Decree and therefore it would have been highly improper in this Respondent because no wise beneficial to have prayed a Decree on the said Eleventh day of December — This Respondent saith that the date of the Certificate has nothing to do with the time Specified in the Rule it only certifies that the usual Rules have expired so that the Certificate on which this Respondent obtained the said decree might have been dated on the fifteenth or thirteth of December had there been a Court on that day, therefore Notwithstanding the said Certificate Was dated on the fifteenth of December the Same was Not too late to entitle this Respondent to a Decree on that day although the Petitioner might have had an Answer ready to be put in for he was actually in contempt as being out of Time and consequently the said

Certificate

Certificate produced by this Respondent and Decree granted thereon are correct and it is very evident from what has been already shewn that the Attorney for this Respondent did well know that the Petitioner had incurred Penalties of a default on the Eleventh day of December although he prayed a Decree on the Seventh of December more is frequent to pray for Decrees many Weeks after the Time for answering hath expired —

And this Respondent says notwithstanding what the Petitioner may have urged to the Contrary that the Circumstance of Rules passing in the days of Adjournment is usual and conformable to the practice of the said Court and if they pass in the days of Adjournment they must of course terminate in the days of Adjournment and it were unnecessary for this Respondent to shew instances where an Act ordered to be performed on a certain day if Neglected that the penalty of Non-performance and postponing the observance to the first sitting Court is attended with the rigors of contumacy and contempt because the Fact speaks for itself and Requires no aid whatever to shew its force. — The Court issues a peremptory order and the party Neglecting or Refusing to Comply

comply therewith on or before the Time thereby specified — expires here in contempt of the Court and Must first cure the Contempt before he can obtain any indulgence. — and as No affidavit was produced on the part of the Petitioner to cure the said Contempt this Respondent humbly hopes it will Satisfactorily appear to this Honble Court therefrom as well as from the Facts brought forward by this Respondent that the Petitioners answer ought not to have been Received and this Respondent hopes it will also Appear Notwithstanding the Suggestions of the Petitioner to the contrary that procrastination has been the Petitioners object for had it been otherwise he could have entered on the merits of this Respondents Bill of Complaint with as little trouble as was necessary to have formed the Demurrer which was done purposely to evade the Interrogatories it contained to which he could not give a — Negative and therefore thought it most prudent to avoid them and harrass and Vex this Respondent by pleadings that are ever discountenanced as much as possible by all Courts in Genl and more particularly so by the said Mayors Court one of whose Rules of practice is in the Words following to Wit forasmuch as divers persons being prosecuted in this Court for debts and

other

other matters cognizable here have for delay and to prevent as much as in them lay the due and speedy Administration of Justice put into the Bills preferred against them pleas and Demurrers the Court taking the same into Consideration do for the prevention of such Evil practices in future order that no plea or Demurrer beat any Time hereafter received or admitted to any Bill to be exhibited unless such plea or Demurrer be put in on the very day assigned for the appearance of the Defendant in such Respondent Suits provided the Summons is served upon him four days before the Time limited for such appearance — and this Respondent says that so far from the refusal of the Court to the answer offered by the Petitioner being a hardship the Mayors Court with Submission could not have decided otherwise because the Petitioner had in the first Instance made use of pleadings evidently for the purposes of litigation and then when such Pleadings were thrown out be refused filing his answer until the time limited for that purpose had expired and he was in Contempt of the Court so that the said Court in refusing the answer of the Petr did no more than what in Justice that could not avail and in granting a Decree in favor of this Respondent granted no More than he was by Law and Equity and in conformity to the

established

Established practice of the Court every way entitled to this Respondent denies that the Complexion of the Bill was unfavorable and says that the reasonings on the Exception to an answer is irrelevant to the Matter in question and tells the other Reasonings made use of by the Petitioner in his said petition of appeal is calculated for the Sole purpose of rendering confused and intricate a plain ample question whether he had not neglected to file his answer to this Respondents said Bill of Complaint until the time limited for that purpose had expired and as this has been fully proved upon a Variety of grounds all the arguments the Petitioner may produce upon what might have been subsequent Considerations of the said Court or of this Respondent of the answer of the Petitioner had been filed is absurd and even upon such grounds the petitioner has misstated or insufficiently stated matters for a Decree wile not only gobs insufficient matter of an answer so found upon Exceptions thereto but it is laid down in the Books that upon a repeated insufficient Answer the Matter of the Bill not Sufficiently answered unto shall be taken pro Confesso and decreed Accordingly and this Respondent says in opposition to the Assertion of the petitioner to the contrary that there are several Instances in the practice of the said Mayors Court where a Decree has

passed

Passed when a defendant has appeared and hath had an Answer
ready to file and indeed such an instance amongst a Number of
others took place on the very day that is to say on the fifteenth of
December last past on which the answer of the Petitioner was
Rejected although the Defendant had not used any delatory plea
and although he was not in contempt as the Rule for answering —
expired only on that day and the Books furnish an instance of a
similar nature although the Petitioner believes to the contrary
and of similar proceedings in his Majestys Courts in England for
it is held that if a defendant insists on his Demurrer and refuses
to Answer where the Court is of opinion that sufficient matter
is alledged in the Bill to oblige him to answer and for the
Court to proceed upon the Court will decree the Matter of the
Plaintiffs Bill for by the Demurrer are confessed all matters of
fact that are alledged Curs: Cane: 209. and this too is an Instance
exactly in point so that whether the Petitioners answer which he
pretends was ready to be Sworn to was or was not every or any
Way sufficient is not a Matter of consideration he insisted
evidently upon his Demurrer in neglecting to put in his Answer —
Agreeable to the rule of Court for that purpose and this Respondents
said Bill of Complaint was in consequence taken pro Confesso

because

Because it could not be regarded otherwise. — and this Respondent says
that after what has been already shewn by him on the subject of the
Petitioners litigious Spirit he humbly conceives it were unnecessary
to enter into further matter to prove that the Petitioners object has been
delay nor what might or might not have been the process had the answer
been filed it is sufficient to say as has already been shewn that the
usual rules for answering having expired and he having Neglected to do
a Decree was in consequence granted in favor of this Respondent. —

And this Respondent begs to observe it
appears that the Petitioner grounds his supposed grievances and
right of appeal from the said Decree of the said Worshipful the
Mayors Court upon a pretended irregularity with respect to the rule
upon which the said Decree was granted because he says such rule
did not pass upon a Court Day on which there was any Return of
Writs and because the fourteen days did not expire on any Return
day nor on a relation day but that the said rule did issue on a day
set aside for hearing Causes towards the Close of the year for expediting
of Causes ready for hearing and did expire in the days of Adjournment
a time when as he asserts no return or any duty is enjoined to be
performed by the Court. — This Respondent has already shewn and
so the truth really is that Returns are made writs issue and other
process is had on a full court in the same manner as on a rotation

Court

Court day that such Courts are not confined to any particular Season but are held occasionally in any Week in the year as the Mayor may see proper and that it is a Court to which every matter of very great importance is referred So that the assertion of the Petitioner to the contrary is not well founded and this Respondent has also Shewn the assertion of the Petitioner that no returns or any duty is enjoined by the Court to be performed in the days of adjournment is diametrically opposite to the fact for that Summons is granted by the Mayor on a Bill of Complaint and made returnable immediately and a Warrant of arrest thereon and that the Oath of Administrators is ordered to be administered by the Mayor in the days of Adjournment that the Mayor or any of the Judges of the Court have power to commit a defendant - Surrendered by the Bail and that where Bail is offered and refused by the Plaintiff the Court take the Bail so offered if offered on a Tuesday until Thursday and if on a Friday until the monday following allowing that interval to the purpose of enquiring into their sufficiency and if no Exceptions are filed thereto or before Twelve o'clock on either of those such Bail to stand good thus it fully appears that the Most important duty is enjoined by the Court and indisputably performed in the days of Adjournment and it is a fact that if ten Minutes elapse

beyond

beyond the particular Hour limited in the rule for filing Exceptions to Bail they will not be received how then can the Petitioner presume to approach this Honble Court with grievances founded on such premises how can he assert that although the Rule expired in the days of Adjournment yet that the time for filing his answer did not expire until the Tuesday following because that as he says no return or duty is enjoined by the Court to be performed in the days of adjournment but to place the Subject in a more conspicuous point of View and to shew at once that the said Rule expired Regularly in the days of Adjournment and that the Petitioner Neglecting to file his Answer on the day it so expired precluded himself from the Benefit and advantage it was intended he might have derived therefrom It is necessary to refer to the practice observed in appealing from the Decree of the said Mayors Court By his Majesty's Charter fourteen days are allowed on a Decree of the said Mayors Court for an appeal to this Honble Court and if the Decree is granted on a Friday which is very frequently the case the term limited for appeal necessarily expires on a day of Adjournment and if the party intending to appeal does not attend thereto but suffers one day to elapse he to see his right of appeal and an execution is the immediate Consequence. — From all which Matters and Things this Respondent humbly conceives it may

appear

appear to this Honble Court that the Conduct of the Petitioner has been and is Vexatious and unjust and that he has no Well founded pretensions to any Right of appeal from the said Decree of the said Mayors Court of the said fifteenth day of December last past. —

For all which Reasons and such others as may be offered at the hearing of this Cause. the Respondent humbly prays this Honble Court to confirm the said order and Decree of the said Mayors Court of the fifteenth day of December last and the appellants Petition and appeal to be dismissed with Costs to be paid by the Appellant. —

[Signed] Stephen Lapham
James I. Hall
Solicitors for Respondent

Court

Court of Appeals
at
Madraspatnam

} ff. Saturday the 17th day of December
Anno Domini 1791

Between Collah Rajavah Chetty of Madras Merchant appellant and Avadanum Paupah Brammy of Madras Dubash by his attorney Andrew Christian Meyer of the same place 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 Tuesday the 15th day of December Anno Domini 1789. 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 dated the 15th day of December Anno Domini 1789. be reversed and that the further

time

time of fourteen days from this 17th day of December Anno Domini 1791 between the appellant to answer the Respondents Bill of Complaint ere the Hon'ble the Majors Court each party paying his own Costs in this Court. —

Thur

/Signed/ Chas. N. White
Cth.

To the Hon'ble Major General William Medows
President in Council
Fort St. George.

In the Court of Appeals
at Madraspatnam

Between Stephen Towne Esquire —
Captain in the Service of the United Company of
Merchants of England trading to the East
Indies under their Presidency of Fort St. George
Complaint and Roger Darvel of Masulipatam
Esquire Senior Merchant in the said Service
and under the said Presidency of
Fort St. George, Defendant —

The humble Petition and Appeal of the above
Named Complainant. —

Sheweth,

That your Petitioner did on or about the
Eleventh day of August which was in the year of our Lord

Filed in my Office
this 16th August 1791
Chas N. White Clk

one

one thousand seven hundred and Eighty Nine exhibit a Bill of Compliant in the Mayors Court at Madras against the above named Defendant wherein your Petitioner did Set forth that the said Defendant stood indebted unto your Petitioner in the Sum of One Thousand two hundred and Two Pagodas and five Fanams together With Interest thereon from the twentieth Day of October which Was in the year of our Lord one thousand seven hundred and eighty six being sale for so much Money the property of your Petitioner which or the Security for the same the Defendant had under his Care Management and Controul as the friendly Agent at that time of your Petitioner as well as of Alexander Pringle late of Masulipatam Esquire and then and now in Europe and which Sum the said Defendant ought to have Received for your Petitioner or to have recovered for the Use of your Petitioner his proportion of any public or individual Security which the said Defendant took in Law of the former Security whereon the same was placed at the time the said Defendant settled the outstanding Concern to which the same related And in order to explain to the said Mayors Court the Grounds of your Petitioners Claims your Petitioner did state that sometime in the Year of our Lord one thousand

thousand seven hundred and seventy nine the then President and Council of the Presidency of Fort St. George sent Instructions to the Chief and Council at Masulipatam to take into their Consideration the Debts due from Apparow Zemindar of Nozeed to his European Creditors and having ascertained the Amount thereof and to whom by name such Debts were respectively owing to take such Measures for securing the Payment of the same as to them might seem most expedient — Whereupon the said Chief and Council did take the same into Consideration and it appeared that James Hodges Esquire then and now of Masulipatam and a Senior Merchant in the said Service the said Alexander Pringle then also in the said Service Arthur Lysaght Esquire then a Captain in their said Service but since deceased and your Petitioner were the only Europeans to whom the said Apparow was indebted and in order to secure the Payment of such Debts in equal and fair Proportions according to the Amount thereof respectively it was considered and determined by the said Chief and Council and afterwards approved and confirmed by the President and Council of Fort St. George that the annual Produce of certain Villages belonging to the said Apparow should be appropriated to the Discharge of his Debts to the said James Hodges and Alexander Pringle and that the Debts due to the said Arthur Lysaght and your Petitioner should be discharged by the annual Payment of

the

the Sum of Three thousand Pagodas out of the Money to be
Collected from the Land Customs of the Gomindary of Nozeed
aforesaid and the Chief and Councell of Masulipatam for the time being
Were to guarantee the punctual Payment of the said specific Sum
of Three Thousand Pagodas to the said Arthur Lysaght and your
Petitioner, and your Petitioner did further state that for the
first year they received the said Sum whereof the proportion
to your Petitioner amounted to Two Thousand five hundred
Pagodas but that from the said Period for four Years
Subsequent thereto your Petitioner did not receive any further
Sum nor hath he since received any Sum whatever from
the said Land Customs— your Petitioner did further set forth
that it being well known at the time the said Instructions had
been sent from the Presidency of Fort St. George to the Chief and
Council of Masulipatam that no preference was intended in
favor of the said James Hodges and Alexander Pringle and
the said Arthur Lysaght and your Petitioner having
frequently represented the same to the said James Hodges and
Alexander Pringle and having further represented that unless
the were allowed to receive their Proportions of the Annual
produce of the Villages assigned according to their

Respective

Respective Debts it having been the evident Intention of the
Government of Fort St. George that no preference whatever should
be shewn either in the Payments made to the said four Persons
above mentioned over the manner of securing such Payments
the said Arthur Lysaght and your Petitioner were determined to
Represent the same to the Government of Fort St. George and seek
Redress whereupon the said James Hodges and Alexander Pringle
did consent thereto and in consequence thereof did engage and faithfully
promise and undertake to pay unto your Petitioners his several
Proportions of all such Money as should be received from the
Produce of the assigned Villages and the said Alexander Pringle
being about to depart for Europe did previously empower the
said Defendant to act as his Attorney and communicated
to him the purpose of his Engagement with your Petitioner
and in Consequence thereof the said Defendant did after his
Departure of the said Alexander Pringle as his Attorney and in
Conjunction with the said James Hodges pay over unto your
Petitioner his proportion of one years Produce of the Villages
assigned to them as will more fully and at large Appear
by the Copy of a Declaration on Oath of the said James Hodges
Marked A Annexed to your Petitioners said Bill of
Complaint.— Your Petitioners did further set forth that after the

Payment

Payment of the Same the said James Hodges and the Defendant as the Attorney of the said Alexander Pringle did receive another Years Produce of the said Villages and the said James Hodges did settle with and pay unto your Petitioner his proportion of the Produce of the said Villages assigned to him and your Petitioner reasonably expected that the said Defendant also would have paid your Petitioner his proportion of the Villages assigned to the said Alexander Pringle being the said Sum of One thousand two hundred and two Pagodas and twenty five fanams. — To which said Bill of Complaint the said Defendant did on or about the Twenty Sixth Day of January in this present year of our Lord one thousand Seven hundred and ninety file his Answer whereby he denied to stand indebted unto your Petitioner in the said Sum of One thousand two hundred and two Pagodas twenty five fanams or in any other Sum or Sums of Money whatsoever and doth thereby pretend that it appeared by your Petitioners own shewing that he ought not to have any Demand on the Defendant touching the matters in Question as it did not appear by the said Bill that the Defendant did owe any Sum of Money to your Petitioner under any Construction whereon a Debt could be legally created but that he

was

Was called upon as the Attorney or Agent of the said Alexander Pringle and the Defendant did further pretend that being so irregularly called upon to answer the said Bill he could only do as Attorney to the said Alexander Pringle and of Course he could only answer for such Matters as he had heard and been informed of in order whereto the Defendant said that some years ago the aforenamed Alexander Pringle and James Hodges had a considerable Demand as he had been informed on one Macca Narsena Apparow one of the Zemindars of the Honble Companys Northern Disbricts who for securing the same mortgaged and assigned over to them the said Alexander Pringle and James Hodges certain Villages that ona Division of the said Villages so mortgaged and assigned a Number amounting to Twenty three Villages on the Weyour Disbricts fell to the Share of the said Alexander Pringle. — That sometime afterwards the Governor and Council of Madras divested the said Apparow of his Zemindary or Country but confirmed to the said Alexander Pringle and James Hodges the Mortgage of the Villages he had made to them as aforesaid for the securing of their several Debts and the said Alexander Pringle continued to hold the aforesaid Twenty three Villages under the Sanction of Government until the latter end of the year one thousand Seven hundred and eighty four when the said Governor and Council

ordered

ordered them to be surrendered and given up that the said Alexander Pringle being at that time in Europe the Defendant as his attorney did accordingly cede and vocate the Possession he had before held in the said Twenty three Villages that in Consideration and in lieu thereof the said Governor and Council did on the Twentieth day of October one thousand Seven Hundred and eighty six give unto the Defendant as attorney to and in the Name of the said Alexander Pringle a Bond for the Sum of Six thousand Six hundred and Nineteen Pagodas twenty Six fanams and forty Cash for the produce of the Year one thousand Seven hundred and eighty four and considered at the same time to give of Assurances that they would recommend the said Alexander Pringles demand and Claim on the said Apparow to the Court of Directors the Defendant also pretended that he Was not informed that on any of these Occasions and Transactions thereupon any Mention was Made that your Petitioner had any Interest either in the Original Settlement with Apparow afore setforth or in the granting the Said Bond for the produce of the Assigned Villages for the Year one thousand Seven hundred and eighty four nor that it appeared by the Masulipatam Records or from any other

Information

Information that the Defendant had obtained but that the said Villages were made over by the said Apparow to the said Alexander Pringle for his sole use and for the purpose of securing to him his own Debt only due from Apparow and not that your Petitioner or any other person should have a Right in any Degree to Claim a share or participate with him therein and the Defendant pretended that it appeared by your Petitioners own shewing that the produce of certain Villages belonging to the said Apparow should be Appropriated to the seperate Discharge of the Debts due by him to the said Alexander Pringle and James Hodges and that the separate Debts due by the said Apparow to your Petitioner and Arthur Lysaght since deceased were to be discharged by other means to wit by the Annual Payment of three thousand Pagodas out of Money to be collected from the Land Customs of the Zemindary of Nozeed and that the Chief and Council of Masulipatam for the time being were to guarantee the Punctual and regular Payment of the said Specifick Sum of three thousand Pagodas to your Petitioner and the said Arthur Lysaght and that it also appeared by your

Petrs

Petitioners own shewing that after this Arrangement for the Securing those Respective Claims or Appears by those different Means your Petitioner did actually receive the first year thereafter in part of his said Debt the Sum of Two thousand and five hundred Pagodas being his Proportion of three thousand Pagodas so agreed to be paid on the Account aforesaid no part of which it Appeared was otherwise appropriated but for the Purpose of Paying off your Petitioners and the said Arthur Lysaghts Claims and the Defendant did further set forth that he was not informed of any Demand from your Petitioner or Consequent Promise and Agreement made thereupon by the said Alexander Dringle previous to his Departure for Europe Which was in the begening of the year one thousand Seven hundred and Eighty four to allow your Petitioner any Proportion in the Produce of the aforesaid Villages assigned to him for the Payment of his Debt and that the Defendant had written to the said Alexander Dringle since he has been in Europe respecting the same and the said Alexander Dringle since he has been in Europe respecting the same and the said Alexander Dringle did not admit of or allow that he ever made any such Promise or Agreement with your Petitioner and the

Defendant

Defendant further said that the said Alexander Dringle in the latter End of the year one thousand Seven hundred and Eighty three when he was on the point of taking his Departure for Europe did appoint the Defendant his Attorney and did the inform him verbally of some Intentions that the said James Hodges and himself had of allowing your Petitioner a share in the Produce of the year one thousand Seven hundred and eighty three but did not explain himself further than by saying that if Mr. Hodges did that he the Defendant might that some time after the said Alexander Dringles Departure from India the said James Hodges made your Petitioner a Payment on the account aforesaid and the Defendant also made the Complainant a payment of three hundred Pagodas which the Defendant did without having any authority than what he had before set forth and not any Written Authority for that purpose. That Matters rested in this Posture till October one thousand seven hundred and Eighty Six when the Governor and Council granted their aforesaid Bond sometime after which the Defendant Stated that your Petitioner laid a Claim to a propo- of the produce of the aforesaid Villages assigned over to

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said Alexander Pringle for the year one thousand Seven hundred and eighty four which your Petitioner grounded on an agreement entered into between the said James Hodges the said Alexander Pringle Arthur Lysaght and your Petitioner. — and also in Virtue of having received from the Defendant a Payment on account of the Produce of the year one thousand Seven hundred and Eighty three and that the Defendant informed the Complainant that he had never heard of such an Agreement that he had a bare authority to pay the aforesaid three hundred Pagodas but Was in no manner authorized by the said Alexander Pringle to make any further Payment but informed your Petitioners that he would write to the said Alexander Pringle on the Subject and the Defendant said he had since received a Letter from the said Alexander Pringle dated London Twenty Ninth July One thousand Seven hundred and eighty Seven Copy Whereof was Annexed to the Defendants Answer and whereby the Defendant said that it appeared he had gone further than he was authorized by paying your Petitioner the Sum of three hundred Pagodas and consequently the Defendant could Not Lawfully allow your Petitioner any Interest on the Bond in Question granted by the Governor and Council on the Account aforesaid

aforesaid and the Defendant pretended that it Clearly appeared by the said Letter that your Petitioner could not with any Shew of Reason or Justice make any Claim thereon in as much as he had not shewn any and that his Right was absolutely disputed by the said Alexd Pringle and the Defendant pretended that the conduct of the said James Hodges could in no sense be binding upon him as the same Might arise from Motives which it was evident the said Alexand Pringle did not allow to be binding on him and could not therefore be binding on the Defendant who was no more in the Business in question than in the Capacity of an Attorney or agent. To which Answer your Petitioner did on or about the Seath day of April in the present year of our Lord one thousand Seven hundred and Ninety file his Replication wherein your Petitioner stated that he allowed the Defendant to be the Attorney of the said Alexander Pringle and it was as attorney to him that your Petitioner demanded Payment and Satisfaction as is set forth in his Bill of Complaint And such Demand was made from the specific Funds of the said Alexander Pringle which are stated to be in the Defendants Hands and Subject to your Petitioners said proportional Claim thereupon as having had originally an inherent Right thereto whether the said Second Years Crop of Neyour Villages was delivered in that

to the said Alexander Dringle or his Attorney or whether the Value Was paid in specie or whether as the Case en Question happens to be Such Value was secured by a company's Bond. — And your Petitioner Said that altho the Defendant had been sued as the Attorney of the said Alexander Dringle so far as related to your Petrs Claim being on Property which the Defendant held as attorney to the said Alexander Dringle yet if it should appear to the Satisfaction of the said Mayors Court that the Defendant was fully informed of your Petitioners Claim on the said Property and had therefore wantonly and unjustly with held from your Petitioner that satisfaction to which your Petitioner had a Claim your Petitioner hoped the said Mayors Court would give Judgement against the Defendant for the Amount Charged by your Petitioner With Costs of Suit. — your Petitioner did further Say that by his Bill of Complaint it Appeared that your Petitioner and Arthur Lysaght having Considered that the true Intent spirit and purport of the Instructions sent from the Presidency of Fort St. George to the Chief and Council of Masulipatam was to give no Preference whatever to the said James Hodges and Alexander Dringle and that after Representing the same to the said James Hodges and Alexander Dringle and their Determination to seek redress from the Government of Fort St. George unless they were allowed to receive their proportions —

According

According to their respective Debts of their Annual Produce of their Villages assigned the said James Hodges and Alexander Dringle did Consent thereto and did in Consequence faithfully promise and undertake to pay to your Petitioner his several proportions of all such Money as should be received from the said Villages and that such promise and undertaking were made before the Departure of the said Alexander Dringle for Europe and that his Attorney the said Defendant did in the knowledge thereof pay your Petitioner his share of the first year to wit the year of our Lord one thousand seven hundred and eighty three and that When instead of Continuing to Receive the produce of the said Countries Governments had been pleased to pay the Amount thereof by their Bonds and that the said James Hodges did pay your Petitioner his proportion out of his Bond and did upon Oath as set forth in the exhibit A annexed to your Petitioners Bill of Complaint state that after Certain Conversations held with the said Alexander Dringle respecting your Petitioners Situation With Apparon the said Alexander Dringle did at length resolve to abide by what he the said James Hodges should determine to do for your Petitioners advantage respecting their Villages of Nellour and told the said James Hodges he should leave Instructions to

that

that effect with his Attorney the Defendant and that after Conversing with the Defendant he found the said Alexander Pringle had left such instructions with him and that in Consequence the Defendant and he paid to your Petitioner a share of the Crop of one year of the said Villages of Weyour in proportion as your Petitioners claim stood with the said Alexander Pringle and James Hodges Jointly and that in Consequence of such agreement between the said Alexander Pringle and James Hodges the said James Hodges did make over unto your Petitioner in the same Proportion as he did the former year some share of a Company's Bond being in part amount of Another years Produce of the Villages which were the said James Hodges in Weyour and that he had no Doubt the Defendant stood firmly bound to do the same from those Villages that from the Directions the Defendant received from the said Alexander Pringle Were the said Alexander Pringle, and by force of the said Agreement between the said Alexander Pringle and James Hodges your Petitioner humbly Submitted that the Defendant Was bound to make good to your Petitioner the share aforesaid in the said Bond so granted by Government to the Defendant for account of the said Alexander Pringle being equal to his share of the Crop of the said Year One thousand Seven hundred and eighty four and with Interest thereon from the

the Date of the said Bond as charged by your Petitioner in his Bill of Complaint and your Petitioner further said that the Defendant could not at all advantage himself by any Argument from the acquiesence of your Petitioner and the said Arthur Lysaght in receiving their Separate proportion from the Land Customs because such acquiesence for the time was in the idea of the Continuances of Payment from such fund for as many Years as the said James Hodges and Alexander Pringle did receive their assigned proportions from the said Villages of Weyour and that it appeared that the Claim in Question Originated from the discontinuance of Payment from such Land Customs to your Petitioner and the said Arthur Lysaght while the Payments continued to be made to the said James Hodges and Alexander Pringle from the Villages of Weyour which advantage in their favour was so evidently against the Intention of Government that the said James Hodges and Alexander Pringle would not risk the Consequence of a Representation thereof to Government and therefore Manifestly gave into the Arrangement in question as their only Alternative and your Petitioner humbly insisted that the Testimony of the said James Hodges in manner as above Stated was Conclusive in favor of your Petitioner and Shews the injustice as

well

Well as fatelily of the evasions used by the said Alexander Pringle and the Defendants and your Petitioner prayed leave to call the attention of the said Mayors Court to the hardiness of the Defendant in his Assertions in his Answer wherein he ventures to say "that he "is not informed of any demand from the Complainants or Consequent "promise or Agreement made thereupon by the said Alexander Pringle "previous to his departure to Europe which was in the beginning "of the Year one thousand Seven hundred and Eighty four to allow "the Complainant any proportion in the produce of the aforesaid Villages "Assigned to him for the payment of his Debt" when the Defendant had before him the said Testimony on Oath of the said James Hodges who could have had no interest whatever in stating the fact but had parted with the property under the Conviction of your Petitioners Right thereto under the Same Circumstances which gave Rise to your Petitioners Claim on the Defendant from the said Property of the said Alexander Pringle and your Petitioner was surprised at another Strong Assertion of the Defendant which his own Letter Contradicts Namely that the said Villages are made Over by the said Apparon to the said Alexander Pringle for his Sole use and for the purpose of securing to him his own Debt only Due from Apparon When the said affidavit of the said James

James Hodges Calls them our Villages of Neyour meaning the said James Hodges and Alexander Pringle jointly and in the Defendants Letter annexed to his Answer under date the said Twenty eighth day of January he says "when Pringle left this "Country he told me that Mr Hodges and himself had it in Agitation "to allow a certain Share in the Produce and desired to be "guided in a great Measure by what Mr Hodges might do" Nor can it avail to the said Alexander Pringle to disallow your Petitioners Claim by any Letter to the said Defendant when it stands so firmly supported by his previous Assurance to the said James Hodges and the Payment to your Petitioners of Three hundred Pagodas on account which shewed that the Defendant had a Conviction of your Petitioners Right on the said Alexander Pringle and it is further manifested by the Admission of the Defendant in his Answer that your Petitioner Made his Demand soon after the Governor and Council had granted the said Bond for account of the said Alexander Pringle and the Truth is that your Petitioner made the demand as soon as he know the Bond had been granted your Petitioner disavows that any motives could have urged the said James Hodges which are not equally binding on the said Alexander Pringle Namely the good faith and honour of the parties in the transactions and arrangements in question your Petitioner Lastly says that the defendants Letter to your Petitioner under date the Twentieth day of January which was in the year of Our Lord

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One thousand Seven hundred and Eighty seven Copy whereof he has annexed to his Answer appears to contradict such parts of the Defendants Answer which Militate against your Pets Claim on the said Alexander Pringle for after acquiescing as the Defendant had done as by his Letter of the Eighth day of the said Month of January on your Petitioners Requisition for a Share of the said Bond he refers in his said Second Letter to the Instructions of the said Alexander Pringle and endeavours to shelter his Refusal under the Tenor thereof nevertheless he said that he did not mean to dispute your petitioners Right to a Proportion but looked to an Authority for his own Security stating however Pringle might be satisfied his heirs in Case of an accident to him might justly call me to Account when Pringle left this Country he told me that Mr Hodges and himself had it in agitation to allow a certain Share on the Produce and desired me to be guided in a great Measure by what Mr Hodges might do and in Consequence I made you a Payment on a former Occasion but this was merely Verbal and I had no Authority whatever for it. — The Defendant then states that as there was No Prospect of touching the Money for many Years it could be No Detriment to your Petitioners Claim to wait the Answers

of the said Alexander Pringle on the Subject which he said he was induced to do from no other Motive than to avoid disagreeable Consequence from all which your Petitioner humbly submitted that the Defendant acknowledged himself bound to act as the said James Hodges had done and that his Refusal to do so was because the said Alexander Pringle might not agree and that he as his Attorney might be made responsible had he acted without legal Sanction which Sanction your Petitioner humbly prayed might be granted by the said Mayors Court by giving a Decree in favor of your Petitioner in manner as he had already prayed in his Bill of Complaint to which said Replication the said Defendant filed a General Rejoinder that upon the above Proceedings Issue was Joined and one Witness to wit the said James Hodges was examined on the part of your Petitioner and Publication passed and the Cause was set down for Hearing and the same came on to be heard by and before the said Mayors Court on the Twenty Seventh day of July last when the said Mayors Court did think proper to order and Decree and did accordingly order and Decree that your Petitioners said Bill of Complaint be dismissed and that each party do pay their own Costs as by the said Decree herewith lodged for the Inspection of this Honble Court of Appeals and prayed by your Petitioner to be taken as part of this his Petition and

Appeal

Appeal may Appear. —

From which said Decree of the said Mayors Court your Petitioner doth appeal to this Honble Court as he conceives the same erroneous and that your Petitioner is much aggrieved thereby for the following among other Reasons. —

First — Because your Petitioner by a Special affidavit in the Cause to which he prays Reference deposed to all and singular the Principal Matters above set forth. —

Second — Because the said James Hodges deposed to the said Alexander Pringle having agreed to the same purpose as he had done with your Petitioner and Acknowledges not only the Payment of your Petitioners Proportion of the second years Crop but that if he had received another year he should have considered himself bound to pay to your Petitioner his Proportion thereof And he also states that he considers the said Alexander Pringle as well as the Defendant as his Attorney bound thereby inasmuch as the said James Hodges and Alexander Pringle had agreed thereto on your Petitioners Requisition before the — Departure of the said Alexander Pringle for Europe and that such Agreement had been fully communicated to the Defendant as

the intended Attorney avowed by the said Alexander Pringle for the Management of his remaining Concerns in this Country. —

Third — Because the Defendant notwithstanding his pretended Ignorance upon Oath to the aforesaid Premises as is Charged in your Petitioners Bill and Replication doth Acknowledge the Payment to your Petitioner of Three hundred Pagodas and such Payment was so made to your Petitioner by the Defendant under the full knowledge of the Claim of your Petitioner and of all the incidental Circumstances thereof as will appear by the following Extract from the Defendants answer. —

And the Defendant further Saith that the said Alexander Pringle in the latter end of the year one thousand Seven hundred hundred and eighty three when he was on the point of taking his Departure for Europe did appoint this Defendant his Attorney and did then inform him verbally of some Intentions that the said James Hodges and himself had of allowing the Complainant a share in the Produce of the year one thousand Seven hundred and eighty three but did not explain himself further than by saying that if

Mr.

Mr Hodges did that he this Defendant might that
Some time after the said Alexander Pringles Departure
from India the said James Hodges made the Complainant
a Payment on the account aforesaid and this Defendant
also made the Complainant a Payment of Three Hundred
Pagodas which this Defendant did without having any
other authority than what he has before set forth and not
any written authority for that Purpose. —

Fourth, Because such Payment under such —
Circumstances and after the Departure of the said Alexander
Pringle is as strong Evidence of your Petitioners
Claim as any written Document whatever. —

Fifth Because the Evidence of the said James Hodges is
the best possible Evidence of your Petitioners Claim inasmuch
as by such Evidence he establishes points against his own
Interest and states the Principles by which he considered
himself bound to pay your Petitioner and he also states
that like principles bind the said Alexander Pringle
by Vertue of his Agreement in favor of your Petitioner
and binds the Defendant as his attorney by Vertue of his
knowledge

knowledge of such agreement before the Departure of the said Alexander
Pringle and the Defendants subsequent Payment in Conformity
to such Agreement which Payment your Petitioner humbly
conceives as being an Acquiescence to and in part performance
of such Agreement binds the Defendant to compleat the
Performance thereof by paying the Proportion of such Second
Years Crop of the said Villages of Veyour. —

For all which Reasons and such others
as may be offered at the hearing your Petitioner prays that
the said Decree of the said Mayors Court of the Twenty
Seventh day of July last may be reversed and that he
may be decreed to pay unto your Petitioner the aforesaid Sum
of One Thousand two Hundred and two Pagodas and Twenty
Two Fanams with Interest thereon from the said Twentieth
Day of October which was in the Year of our Lord one
Thousand seven Hundred and eighty six or that he may be
Decreed to Assign over unto your Petitioner that proportion
of the said Bond of the Government of Fort St George
and to pay the Share of Interest received and to be received
into the Hands of your Petitioner as the Same shall
come into the Defendants hands and that the Defendant
may

May pay the Costs of this Suit from his own Pocket.

[Signed] Stephen Popham.
Solicitor for Appellant.

Mayors Court at
Madraspatnam

Tuesday the 3d day of August
Anno Domini 1790.

Present
Vincentio Corbett Esquire Mayor
James Call & Andrew Ross
Aldermen

Between Stephen Towns Esqr. Captain in the Service of the united Company of Merchants of England trading to the East Indies under their Presidency of Fort St. George Complainant and Roger Darvall of Masulipatam Esquire Senior Merchant in the said Service and under their said Presidency of Fort St. George Defendant. —

This Cause Coming on to be heard and Debated this day in the presence of the Attorneys on both sides on Reading the Complainants Bill with Copies of Two Exhibits Marked A and B annexed the Affidavit the Defendants Answer with Copies of

five

five Exhibits Marked N°1 2 3 4 5 The Replication the General Rejoinder The Interrogatories and Deposition on the part of the Complainant With one Exhibit annexed On Hearing the Pleadings Made use of by the Attorneys and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly order and Decree that the Complainants Bill do stand Dismissed and that each party do pay their own Costs —

Hur,

/Signed/ George Taylor
Regt.

To

To the Honble Major General Wm Medows
President in Cncl
Fort St. George

In the Court of Appeals
at
Masulipatnam

Between Stephen Towns Esquire Captain in the Service of the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort Saint George Complainant and Roger Darvel of Masulipatam Esquire Senior Merchant in the said Service and under the Presidency of Fort St. George Defendant —

The Answer of the above named Defendant to the Petition and Appeal of the Abovenamed Complainant

This Respondent Admits that some time on or about the Eleventh day of August which was in the Year of our Lord One thousand seven hundred and Eighty Nine the

Filed in My Office
the 25th September 1790
Chas. N. White Clerk

the Appellant did file and Exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam against this Respondent setting forth that this Respondent stood indebted unto the said Appellant in the Sum of one Thousand Two hundred and two Pagodas and Twenty four fanams together with Interest thereon from the Twentieth day of October which was in the year One thousand seven hundred and Eighty six being for so much Money the property of the Appellant which or the Security for the Same this Respondent had under his Care management and Controul as the friendly agents at that time of the Appellant as well as of Alexander Pringle late of Masulipatam Esqr and now on Europe and which Sum the Appellant pretended this Respondent ought to have received for him or to have Reversed for the use of the Appellant his proportion of any Publick or individual Security which this Respondent took in Lieu of the former security Whereon the same was placed as he says at the time this Respondent settled the Outstanding Concern to which the same related and the Appellant in order to explain to the satisfaction of the said Mayors Court the Grounds of his Claim the Appellant did state that sometime in the year of our Lord One Thousand seven hundred and seventy Nine the then President and Council of the Presidency of Fort St. George sent Instructions to the Chief and

and Council at Masulipatam to take into their Consideration the Debts due from Apparon Zemindar of Nizeed to his European Creditors and having ascertained the Amount thereof and to whom by name such Debts were Respectively owing to take such Measures for securing the Payment of the same as to them Might seem most expedient and that thereupon the said Chief and Council did take the same into Consideration and he the Appellant also added that it Appeared that James Hodges Esquire then and late of Masulipatam and a Senior Merchant in the said Service the said Alexander Pringle then also being in the said service Arthur Lysaght Esquire then a Captain in their said service but since deceased and the Appellant were the only Europeans to whom the said Apparon was indebted and in order to Secure the payment of such Debts in equal and fair proportions according to the Amount thereof Respectively It was Considered and Determined by the said Chief and Council and afterwards approved and Confirmed by the President and Council of Fort Saint George that the annual produce of certain Villages belonging to the said Apparon should be appropriated to the discharge of his Debts to the said James Hodges and Alexander Pringle and that the Debts due to the said

said Arthur Lyaughs and the Appellant should be discharged by the Annual Payment of the Sum of Three Thousand Pd Laft out of the Money to be collected from the Land Customs of the Zemindary of Nizeed aforesaid and the Chief and Council of Masulipatam for the time being were to Guarantee the punctual payment of the said specific Sum of Three thousand Pagodas to the said Arthur Lyaughs and the said Appellant and the Appellant did further setforth and State that for the first year they Received the said Sum whereof the Proportion to the Appellant Amounted to Two thousand and five hundred Pagodas but that from the said period four Years Subsequent thereto the Appellant did not Receive any further Sum nor had he said since Received any Sum whatever from the said Lands Customs the appellant did further setforth that it being well known at the time the said Instructions had been sent from the Presidency of Fort St George to the Chief and Council of Masulipatam that no preference was intended in favor of the said James Hodges and Alexander Prungle and the said Arthur Lyaught and the Appellant having frequently Represented the same to the said James Hodges and Alexander Prungle

and having further Represented that unless they were allowed to receive their proportions of the annual produce of the Villages Assigned according to their respective Debts it having been as the Appellant pretended the evident intention of the Governments of Fort St George that no preference whatever should be shewn either in the payments made to the said four persons abovementioned or in the manner of securing such Payments they the said Arthur Lyaughs and the Appellant were determined to represent the same to the Government of Fort St George and seek Redress therefrom whereupon the said James Hodges and Alexander Prungle did as he pretends Consent thereto and in Consequence thereof engage and faithfully promise and undertake to pay unto the Appellant his several proportions of all such Money as should be received from the produce of the said Assigned Villages and the said Alexander Prungle being about to depart for Europe did previously empower this Respondent to act as his Attorney and Communicated to him as he pretends the purpose of his engagements with the Appellant and in Consequence thereof

this

this Respondent did after the departure of the said Alexander Pringle as his Attorney and in Conjunction with the said James Hodges pay over unto the Appellant his proportion of one years produce of the Villages Assigned to them in copy of a declaration whereof on Oath of the said James Hodges Marked A Was annexed unto the said Appellants Bille of Complaint and the Appellant did further setforth that after the payment of the same the said James Hodges and this Respondent as the Attorney of the said Alexander Pringle did receive another Years produce of the said Villages and the said James Hodges did settle with and pay unto the Appellant his proportion of the Produce of the said Villages assigned to him and the Appellant Reasonably expected that this Respondent also would have paid the Appellant his proportion of the Villages assigned to the said Alexander Pringle being the said Sum of One thousand Two hundred and Two Pagodas and Twenty four Fanams to which said Bill of Complaint this Respondent Admits that he did on or about the Twenty sixth day

of January in this present year of our Lord One thousand seven hundred and Ninety file his Answer wherein and whereby this Respondent denied to stand indebted unto the Appellant in the said Sum of One thousand Two hundred and Two Pagodas and Twenty four fanams or in any other Sum or Sums of Money whatsoever and did thereby setforth that it appeared by the Appellants own shewing that he ought not to have any demand on this Respondent touching the Matters in question as it did not appear by the said Bill that this Respondent did owe any Sum of Money to the Appellant under any Construction wherein a Debt could be legally created but that he was called upon as the Attorney or agent of the said Alexander Pringle And this Respondent did further setforth that he being so irregularly called upon to answer the said Bille he could only do so as Attorney to the said Alexander Pringle and of course he could only Answer to such Matters as he had heard and been informed of and in Order whereto this Respondent said that some years ago the aforenamed Alexander Pringle and James Hodges had a Considerable Demand as he had been informed on one Maca Narsinva apparon one of the Zemindars of the Honble Company's Northern Districts who for the Securing the Same Mortgaged and assigned over to them the said Alexander Pringle and James Hodges certain Villages that on a division of the said Villages so Mortgaged and assigned a

Number

Number amounting to Twenty three Villages in the Mejour Districts full to the share of the said Alexander Pringle that some time afterwards the Governor and Council of Madras devested the said Apparon of his Zemindary or Country but confirmed to the said Alexander Pringle and James Hodges the Mortgage of the Villages he had made to them as aforesaid for the Securing of their several Debts and the said Alexander Pringle Continued to hold the aforesaid Twenty three Villages under the Sanction of Government untill the latter end of the year One thousand Seven hundred and eighty four when the said Governor and Council did Order them to be surrendered and given up that the said Alexander Pringle being at that time in Europe this Respondent as his Attorney did accordingly as he was obliged cede and Vacate the possession he had before held in the said Twenty three Villages — That in Consideration and in lieu thereof the said Governor and Council did on the Twentieth day of October one thousand seven hundred and Eighty six give unto this Respondents as Attorney to and in the Name of the said Alexander Pringle a Bond for the Sum of Six thousand Six hundred and Nineteen Pagodas Twenty six fanams and forty Cash for the produce of the year One thousand seven hundred and eighty four and Condescended at the same time to give Assurances

that

that they would Recommend the said Alexander Pringles demand and Claim on the said Apparon to the Court of Directors This Respondent further said that he was not informed that on any of these Occasions and Transactions thereupon any mention was made that the Appellant had any interest either in the Original Settlement with Apparon aforesaid or in the Granting the said Bond for the produce of the assigned Villages for the year one thousand seven hundred and Eighty four Nor did it appear by the Masulipatam Records or from any other information that this Respondent had obtained but that the said Villages were made over by the said Apparon to the said Alexander Pringle for his sole use and for the purpose of securing to him his own Debt only due from Apparon and not that the Appellant or any other Person should have a Right in any Degree to Claim a Share or participate within therein and this Respondent further said that it appeared by the Appellants own shewing that the produce of certain Villages belonging to the said Apparon should be appropriated to the separate discharge of the Debts due by him to the said Alexander Pringle and James Hodges and that the Separate Debts due by the said Apparon to the Appellant and Arthur Lysaght since Deceased were to be discharged by other Means to Wit by the Annual payment of three thousand pagodas out of Money to be collected from the Land Customs of the Zemindary of Nozeed and that the Chief and Council of

Masulipatam

Masulipatam for the time being were to Guarantee the punctual and Regular payment of the said Specifick Sum of Three Thousand Pagodas to the Appellant and the said Arthur Lysaght and that it also Appeared by the Appellants own Shewing that after the Arrangement for the securing those Respective Claims on Apparon by those different means that the Appellant did actually Receive the first year thereafter on part of his said Debt the Sum of Two thousand five hundred Pagodas being his proportion of three Thousand Pagodas so agreed to be paid on the Account aforesaid no part of which it Appeared was otherwise appropriated but for the purpose of paying off the Appellants and the said Arthur Lysaghts Claims — And this Respondent did further Setforth that he was not informed of any demand from the Appellant or consequent promise and Agreement made thereupon by the said Alexander Pringle previous to his departure for Europe which was in the beginning of the year one thousand Seven hundred and Eighty four to allow the Appellant any proportion in the produce of the aforesaid Villages Assigned to him for the payment of his Debt — And this Respondent had written to the said Alexander Pringle since he had been in Europe Respecting the same and the said Alexander Pringle did not admit of or allow that he ever made any such promise or Agreement with the

the Appellant and this Respondent further said that the said — — Alexander Pringle in the latter end of the Year One thousand Seven hundred and eighty three when he was on the point of taking his departure for Europe did appoint this Respondent his Attorney and did then inform him Verbally of some Intentions that the said James Hodges and himself had of allowing the Appellant a share in the produce of year One thousand Seven hundred and Eighty three but did not explain himself further than by saying that if Mr. Hodges did that he this Respondent might. That some time after the said Alexander Pringles departure from India the said James Hodges made the Appellant a payment on the Account aforesaid and this Respondent in his answer further setforth that he also made the Appellant a payment of Three hundred Pagodas and which he so did without having any Authority than what he had therein before Setforth and not upon any Written Authority for that purpose — That Matters rested in this posture till October One thousand Seven hundred and eighty six when the Governor and Council granted their aforesaid Bond some time after which the Appellant laid a Claim to a proportion of the produce of the aforesaid Villages Assigned over to the said Alexander Pringle for the year One thousand Seven hundred and eighty four which the Appellant Grounded on an Agreement entered into between the said James Hodges the said Alexander Pringle Arthur Lysaght and the

Appellant

Appellant — and also in virtue of having Received from
this Respondent a payment on account of the produce of
the Year One thousand Seven hundred and eighty three
and that this Respondent informed the Appellant that
he had never heard of such an Agreement as that
he had a bare authority to pay the aforesaid three hundred
Pagodas, but was in no manner authorized by the said
Alexander Pringle to make any further payment but
informed the Appellant that he would write to the said
Alexander Pringle on the Subject — and this Respondent
said that he had since Received a Letter from the said
Alexander Pringle dated London Twenty Ninth July
One thousand Seven hundred and eighty seven Copy whereof
Was annexed to this Respondents Answers and whereby
this Respondent said that it appeared that he had gone
further than he was Authorized by payeng the Appellant
the Sum of Three hundred Pagodas and consequently
that he this Respondent could not lawfully allow the
Appellant any Interest in the Bond in question granted
by the Governor and Council on the account aforesaid and
that

it clearly appeared by the said Letter that the Appellant
could not with any shew of Reason or Justice make any
Claim thereon in as much as he had not shewn any and
that his Right was absolutely disputed by the said Alex.
Pringle — And this Respondent further said that the Conduct
of the said James Hodges could in no sense be binding upon
him as the same might arise from Motives which it was
evident that the said Alexander Pringle did not allow to be
binding on him and could not therefore be binding on him
this Respondent who was no more in the Business in question
than in the Capacity of an Attorney or agent. — To which said
Answer the Appellant did on or about the sixth day of
April in the present year of our Lord One thousand Seven
hundred and Ninety file his Replication wherein the Appellant
did allow this Respondent to be the Attorney of the said
Alexander, and that it was as attorney to him that the Appellant
demanded Payment and Satisfaction as was set forth in the
Appellants Bill of Complaint and such demand was made
from the specific Funds of the said Alexander Pringle
which he pretends were stated to be in this Respondents hands

And

And Subject to the Appellants said Proportional Claim thereon as having had Originally an inherent Right thereto whether the said second years Crop of Weyour Villages was delivered to the said Alexander Pringle or his Attorney or whether the Value was paid in Specie or whether as the Case in Question as the Appellant said it happened to be such Value was secured by a Company's Bond. And the Appellant did further set forth that altho this Respondent had been sued as the Attorney of the said Alexander Pringle so far as related to the Appellants Claim being on property which this Respondent held as Attorney to the said Alexander Pringle yet if it should appear to the satisfaction of the said Mayors Court that this Respondent was fully informed of the Appellants Claim on the said Property and that he this Respondent did therefore wantonly and unjustly with hold from the Appellant that satisfaction to which the Appellant had a Claim the Appellant hoped the said Mayors Court would give Judgement Against this Respondent for the amount Charged by the Appellant with Costs of Suit. The Appellant did further say that by his

Bill

Bill of Complaint it appeared that the Appellant and Arthur Lysaght having Considered that the true Intent spirit and purport of the instructions sent from the Presidency of Fort St. George to the Chief and Council of Masulipatam was to give no preference whatever to the said James Hodges and Alexander Pringle and that after Representing the same to the said James Hodges and Alexander Pringle and their Determination to seek Redress from the Government of Fort St. George unless they were allowed to receive their Proportions according to their Respective Debts of the annual produce of the Villages assigned to the said James Hodges and Alexander Pringle did Consent thereto and did in Consequence faithfully promise and undertake to pay to the Appellant his several proportion of all such Money as should be received from the said Villages and that such promise and undertaking were made before the departure of the said Alexander Pringle for Europe and that his Attorney this Respondent did in the knowledge thereof pay the Appellant his Share of the first Year to Wit the year of our Lord One thousand Seven hundred and eighty three and that instead of continuing to receive the

produce

Produce of the said Countries Government had been pleased to pay
the amount thereof by their Bonds and that the said James
Hodges did pay the Appellant his proportion out of his
Bond and did upon Oath as set forth in the Exhibit A
annexed to the appellants Bill of Complaint state that
after certain Conversations held with the said Alexander
Drungle respecting the Appellants situation with Appears
the said Alexander Drungle did at length resolve to
abide by what he the said James Hodges should determine
to do for the Appellants respecting those Villages
of Meyour and told the said James Hodges he should have
Instructions to that effect with his Attorney this
Respondent and the Appellant further pretended that
after conversing with this Respondent he found the
said Alexander Drungle had left such instructions
with him and that in consequence this Respondent and
he paid the Appellant a Share of the Crop of one year
of the said Villages of Meyour in proportion as the
Appellants Claim stood with the said Alexander Drungle
and James Hodges Jointly and that in Consequence of

such

such agreement between the said Alexander Drungle and
James Hodges the said James Hodges did make over unto
the Appellant in the same proportion as he did the former
Year some Share of a Company's Bond being in part amount
of another Years produce of the Villages which were the
said James Hodges in Meyour and that he had no Doubt
this Respondent stood firmly bound to do the same from
those Villages that were the said Alexander Drungles from
the directions this Respondent received from the said
Alexander Drungle and by force of the said agreement
between the said Alexander Drungle and James Hodges
the Appellant humbly submitted that this Respondent
Was bound to Make good to the Appellant the Share
aforesaid in the said Bond so granted by Government
to this Respondent for Accounts of the said Alexander
Drungle being equal to his Share of the Crop of the said
Year One thousand Seven hundred and eighty four
and with Interest thereon from the date of the said Bond
as charged by the Appellant in his Bill of Complaint and the
Appellant
further said that this Respondent could not at all advantage

himself

himself by any agreement from the acquiescence of the Appellant and the said Arthur Lyaghs in Receiving their Seperate proportions from the Land Customs because such acquiescence for the time was on the Idea of the Continuance of payment from such fund for as many years as the said James Hodges and Alexander Brungle did Receive their Assigned Proportions from the said Villages of Neyour and that it appeared that the Claimers Question originated from the discontinuance of payment from such Land Customs to the Appellant and the said Arthur Lyaghs when the Payments continued to be made to the said James Hodges and Alexander Brungle from the Village of Neyour which Advantage in their favor was evidently against the intention of Government that the said James Hodges and Alexander Brungle would not Risk the Consequence of a Representation thereof to Government and therefore Manifestly gave into the Arrangement in Question as their only Alternative and the Appellant insisted that the Testimony of the said James Hodges in Manner as above stated was Conclusive in favor of

of the Appellant and shews the injustice as well as futility of the evasions used by the said Alexander Brungle and this Appellant prayed leave to call the attention of the said Mayors Court to the Hardiness of this Respondent in his Assertion in his Answer wherein he Ventures to say "that he is not informed of any demand from the Appellant or Consequent promise or Agreement made thereupon by the said Alexander Brungle previous to his departure to Europe which was in the beginning of the year One thousand Seven Hundred and eighty four to allow the appellant any proportion in the produce of the aforesaid Villages Assigned to him for the payment of his Debt When this Respondent had before him the said Testimony on Oath of the said James Hodges who could have had no Interest whatever in stating the fact but had parted with his property under the conviction of the Appellants Right thereto under the same Circumstances which gave rise to the Appellants Claim on this Respondent from the said property of the Late Alexander Brungle and the Appellant pretended also that he was surprized at another strong Assertion of this

Respondent

Respondent which the Appellant said his own Letter Contradicts Namely that the said Villages "were made over by the said Apparon to the said Alexander Pringle for his sole use and for the purpose of securing to him his own Debt only due from Apparon" when the said Affidavit of the said James Hodges calls them "Our Villages of Weyour" meaning the said James Hodges and Alexander Pringle jointly and in this Respondents Letter annexed to his Answer under date the said Twenty eighth day of January he says "when Pringle left this Country he told me that Mr. Hodges and himself had it in contemplation to allow a certain share in the produces and desired me to be guided in a great measure by what Mr. Hodges might do" and the Appellant pretended that it could not avail to the said Alexander Pringle to disallow the Appellants Claim by any Letter to this Respondent when it stands so firmly supported by his previous Assurance to the said James Hodges and the payment to the Appellant of three hundred Pagodas on account shewed that this Respondent had a conviction of the

the Appellants Rights on the said Alexander Pringle and it was further manifested by the Admission of this Respondents in his Answer that the Appellant made his demand soon after the Governor and Council had granted the said Bond for account of the said Alexander Pringle and the truth was that the Appellant made the demand as soon as he knew the Bond had been granted the Appellant disavowed that any motives could have urged the said James Hodges which are not equally binding on the said Alexander Pringle namely the good faith and honor of the parties in the Transaction and arrangements in question. — The Appellant lastly said that this Respondents Letter to the Appellant under date the Twenty eighth day of January which was in the year of Our Lord One thousand seven hundred and eighty seven Copy whereof he has annexed to his answer appeared to contradict such part of this Respondents Answer which militate against the Appellants claim on the said Alexander Pringle for after acquiescing as this Respondent had done as by his Letter of the Eighth day

of

of the said Month of January on the Appellants Requisition for a Share of the said Bond he refers in his said Second Letter to the Instructions of the said Alexander Pringle and the appellant falsely asserted that this Respondent endeavored to Shelter his Refusal under the tenor thereof nevertheless he said that he did not mean to dispute the appellants Right to a proportion but looked to an Authority for his own Security stating how Pringle might be satisfied his Heirs in case of an accident to him might Justly call him to account and make him Responsible when Pringle left this Country he told him that Mr. Hodges and himself had it in agitation to allow a Certain share in the produce and desired him to be guided in a great measure by what Mr. Hodges might do and in consequence he made him a Payment on a former occasion but this was merely Verbal and he had no Authority whatever for it. —

The appellant further said that this Respondent did then State that as there was no Prospect of touching the money for Many years it could be No detriment to the appellants claim to wait the Answer of the said Alexander Pringle on the Subject which he said he was induced to do from no other motive than to avoid a disagreeable Consequence from all which the appellant Submitted that this Respondent acknowledged himself bound to act as the said James Hodges had done and that his his refusal to do so Was because the said Alexander Pringle might not agree and that he as his attorney might be made Responsible how he acted Without legal Sanction which Sanction he appellant humbly prayed might be granted by the said Mayors Court by giving a Decree in favor of the appellant in manner as he had already prayed in his Bill of Compliant to which Replication this Respondent filed a General Rejoinder and that upon the above proceedings Issue was Joined and one Witness to Wit the said James Hodges was examined on the part of the appellant and Publication did pass and the Cause was Set down for hearing and the same came on to be heard by and before the said Mayors Court on the Twenty seventh day of July last when the said Mayors Court did think proper and Just to Order and Decree and did accordingly Order

&

and Decree that the Appellants Bill be dismissed and that each party do pay their own Costs as by said Decree Lodged in this Honble Court may appear — From which said Decree the Appellant hath appealed to this Honble Court under pretence as he conceives the same to be erroneous and that the Appellant is much aggrieved thereby but this Respondent doth humbly insist that the said Decree as far as it relates to the dismission of the said Bill is according to the Soundest principles of Law and that the Appellant cannot therefore be aggrieved thereby nor hath the Appellant any good Cause or Just Reason for appealing from the said Decree to the Judgement of this Honble Court and this Respondent in Answer to the several Grounds & Reasons for his said appeal Saith —

To the first, This Respondent saith that the Appellants affidavit is not only not Evidence in the said Cause but the said Affidavit is very irregular in form and Substance and was also very irregularly referred to in the proceedings — And this Respondent saith that altho the same was framed for the purpose of holding this Respondent to Special Bail the Appellant was so far sensible of its

its insufficiency that he declined putting the Merits of it to a trial on that question —

To the Second, This Respondent Saith that the Affidavit of the said James Hodges and his Subsequent deposition &c... Evidence in this Cause do not in any degree prove that this Respondent is indebted unto the Appellant in the Sum sued for nor hath the Appellant in any manner proved his pretended Claim in the first instance nor in any instance derived from it. But the whole of the Appellants suit is irregular it being grounded on a Certain Sum of Money under the description of a proportion or Share of a Bond given and granted to this Respondent as Attorney to Alexander Dringle without shewing what was the principal and if he had shewn the Amount of the principal he has not proved that it was due to him nor upon what legal Consideration and if all these previous essential proofs had been exhibited at the hearing of the said Cause the Appellant has not proved any promise whereby this Respondent could be bound to pay this presumed proportion of an unascertained principal either in his own person or in his Capacity of Attorney to the said Alexander Dringle

Pringle has on the Contrary the foundation of the Suit is Built on such uncertain and incoherent principles that it is not possible for the Appellant not to be sensible that Law Equity and Reason must Condemn and discourage him persisting in so vain a pursuit as that of engaging them in the smallest degree. To be favorable to him this Respondent therefore humbly insists that the sole object that the Appellant could have in Commencing the present suit was that of harrassing and Vexing the Respondent.—

This Respondent doth not therefore for these evident Reasons deem Necessary to enter into any further Answer to the third fourth and fifth Causes of appeal than by referring thereto and to the proceedings in the Cause and this Respondent is induced from the litigious Spirit discovered in the Appellant to hope and pray that this Honble Court will not only order and Decree that part of the Decree of the Mayors Court which goes to the dismission of the Appellants Bill be affirmed but that the Appellant may pay

Pay the Costs of the Suit in the said Court and exemplary Costs in this Court.—

/Signed/ Henry DuPuy
Attorney Respondent

Courts

Court of Appeals
at
Madraspatnam } ffo Saturday the 17th day of December
Anno Domini 1791

Between Stephen Lovens Esqr
Captain in the Service of the United Company
of Merchants of England Trading to
the East Indies under their Presidency
of Fort Saint George Appellant and
Roger Darvell of Masulipatam
Esquire Senior Merchant in the said
Service 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 3d day of August Anno Domini 1790 upon due
Consideration had of the Matters therein severally Contained
and of the Pleadings and Arguments used by the Attorneys
on

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 the Court

Signed Chas N. Whitehill
Clk

Court

Court of Appeals
at
Madraspatnam

Saturday the 17th day of December
Anno Domini 1791

Ordered that in future all Petitions of appeal shall briefly and fairly state the Case in Suit and the Substance of the Decree or order of the Mayors Court together with the Reasons for appealing therefrom and that the Answers to such Petitions shall not as hereto-fore practised recapitulate the particulars of the Bill of Complaint or of the proceedings in the Court below but shall admit the case as stated in the Petitions provided it be fairly stated in the Petitions or otherwise point out the deviations and then reply to the Objections to the said decree or Order. —

Ellis

(Signed) Chas. N. White Clk.

To

To the Kings most Excellent Majesty in Council

Between Stephen Towns Esqr. Captain in the Service of the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort Saint George Complainant — and Roger Darvall of Masulipatam Esquire Senior Merchant in the said Service and under the said Presidency of Fort Saint George Defendant. —

The Humble Petition and appeal of the above Named Stephen Towns. —

Most Humbly Sheweth

That your Petitioner did on or about the Eleventh day of August which was in the year of Our Lord One Thousand Seven Hundred and Eighty Nine Exhibit a Bill of Complaint in the Mayors Court at Madraspatnam against the above

Filed in my Office the 30th December 1791 Chas. N. White Clerk.

above Named Defendant Wherein your Petitioner did Set forth that the said Defendant stood indebted unto your Petitioner in the Sum of One thousand Two hundred and Two Star Pags and five Fanams together with Interest thereon from the Twentieth day of October which was in the Year of Our Lord One thousand Seven hundred and eighty six being for so Much Money the Property of your Petitioner which on the Security for the same the Defendant had under his Care Management and Controul as the friendly agent at that time of your Petitioner as well as [illegible] late of Masulipatam Esquire and then and now in Europe and which Sum the said Defendant ought to have received for your Petitioner or to have reserved for the use of your Petitioner his Proportion of any public or individual Security which the said Defendant took in lieu of the former Security whereon the Same was placed at the time the said Defendant settled the Outstanding Concern to which the Same Related and in order to explain to the said Mayors Court the Grounds of your Petitioners Claim your Petitioner did state that some time in the Year of Our Lord one thousand Seven hundred and Seventy Nine

the

553

the then President and Council of the Presidency of Fort Saint George sent Instructions to the Chief and Council at Masulipatam to take into their Consideration the Debts due from Apparow Zemindar of Nozeed to his European Creditors and having ascertained the Amount thereof and to whom by Name such Debts were respectively owing to take such Measures for securing the Payment of the same as to them might seem most expedient whereupon the said Chief and Council did take the same into Consideration and it Appeared that James Hodges Esquire then of Masulipatam and a Senior Merchant in the said Service the said Alexander Pringle then also in the said Service Arthur Lysaught Esquire then a Captain in the said Service but since deceased and your Petitioner were the only Europeans to whom the said Apparow Was indebted and in Order to secure the Payment of such Debts in equal and fair Proportions according to the Amount thereof Respectively it was Considered and determined by the said Chief and Council and afterwards Approved and Confirmed by the said President and Council of Fort St. George that the Amount Produce of Certain Villages belonging to the

said

said Apparow should be appropriated to the Discharge of his Debts to the said James Hodges and Alexander Pringle and that the Debts due to the said Arthur Lysaught and your Petitioner should be discharged by the Annual Payment of the Sum of Three Thousand Pagodas out of the Money to be Collected from the Land Customs of the Zemindary of Nozeed aforesaid and the Chief and Council of Masulipatam for the time being were to guarantee the Punctual Payment of the said specific Sum of Three thousand Pagodas to the said Arthur Lysaught and your Petitioner did further state that for the first Year they received the said Sum of whereof the Proportion to your Petitioner amounted to the Sum of Two thousand and Five hundred Pagodas but that from the said Period for four years Subsequent thereto your Petitioner did not receive any further Sum nor hath he since received any Sum whatever from the said Land Customs your Petitioner did further set forth that it being well known at the time the said Instructions had been sent from the Presidency of Fort St. George to the Chief and Council of Masulipatam that no Preference was intended in favor of the said James Hodges and Alexander Pringle

and

and to the Prejudice of the said Arthur Lysaught and your Petitioner and the said Arthur Lysaught and your Petitioner having frequently represented the same to the said James Hodges and Alexander Pringle and having further represented that unless they were allowed to receive their Proportions of the Annual Produce of the Villages assigned according to their respective Debts it having been the evident Intention of the Government of Fort St. George that no Preference whatever should be shewn either in the Payments made to the said four Persons above mentioned or in the Manner of securing such payments the said Arthur Lysaught and your Petitioner were determined to Represent the same to the Government of Fort St. George and to seek Redress therefrom whereupon the said James Hodges and Alexander Pringle did consent thereto and in consequence thereof did engage and faithfully promise and undertake to pay unto your petitioner his several proportions of all such Money as should be received from the produce of the assigned Villages and the said Alexander Pringle being about to depart for Europe did previously empower the said Defendant to act as his Attorney and communicated

to

to him the Purpose of his Engagement with your Petitioner and in Consequence thereof the said Defendant did after the Departure of the said Alexander Pringle as his attorney and in Consequence with the said James Hodges pay over unto your Petitioner his proportion of one years Produce of the Villages Assigned to him as well more fully and at large appear by the Copy of a Declaration on Oath of the said James Hodges Marked A annexed to your Petitioners said Bill of Complaint your Petitioner did further set forth that after the Payment of the same the said James Hodges and the Defendant as the Attorney of the said Alexander Pringle did Receive another years Produce of the said Villages and the Said James Hodges did Settle with and pay unto your Petitioner his proportions of the produce of the said Villages Assigned to him and your Petitioner Reasonably expected that the said Defendant also would have paid your Petitioner his proportion of the Villages Assigned to the said Alexander Pringle being the said Sum of One thousand two hundred and Two Pagodas and Twenty five Panams to which said Bill of Complaint the said Defendant did on or about the Twenty Sixth Day of January in the year of Our Lord One thousand

seven hundred and Ninety file his Answer whereby he denied to stand indebted unto your Petitioner in the said Sum of One thousand Two hundred and Two Pagodas and Twenty five or in any other Sum or Sums of Money whatsoever and did thereby pretend that it appeared by your Petitioners own shewing that he ought not to have any Demand on the Defendant touching the Matters in Question as it did not appear by the said Bill that the Defendant did owe any Sum of Money to your Petitioner under any Constructions whereon a Debt could be legally created but that he was called upon as the Attorney or Agent of the said Alexander Pringle and the Defendant did further pretend that being so irregularly called upon to Answer the said Bill he could only do as Attorney to the said Alexander Pringle and of Course he could only Answer for such Matters as he had heard and been informed of in Order whereto the Defendant said that some years ago the aforenamed Alexander Pringle and James Hodges had a Considerable Demand as he has been informed on one Macca Narsemia Apparau one of the Zemindars of the Honble Company's Northern Districts

who

who for the Securing the Same Mortgaged and Assigned over to them the said Alexander Pringle and James Hodges certain Villages that on a Division of the said Villages so Mortgaged and Assigned Amounting to a Number of Twenty three Villages in the Veyor Districts fell to the share of the said Alexander Pringle That some time afterwards the Governor and Council of Madras Divested the said Apparon of his Zemindary or Country but confirmed to the said Alexander Pringle Hadeanabone and James Hodges the Mortgage of the Villages he had made to them as aforesaid for the Securing of their several Debts and the said Alexander Pringle continued to hold the aforesaid Twenty three Villages under the sanction of Government until the Latter end of year One thousand Seven Hundred and Eighty four when the said Governor and Council ordered them to be surrendered and given up that the said Alex.r Pringle being at that time in Europe the Defendant as his Attorney did accordingly cede and Vacate the Possession he had before held in the said

Twenty

Twenty three Villages. That in consideration and in lieu thereof the said Governor and Council did on the Twentieth day of October One thousand Seven hundred and Eighty Six give unto the Defendant as Attorney to and in the Name of the said Alexander Pringle a Bond for the Sum of Six Thousand Six hund.red and Nineteen Star Pagodas Twenty six fanams and forty Cash for the produce of the year One thousand Seven hundred and Eighty four and condescended at the same time to your assurances that they would Recommend the said Alexander Pringles Demand and Claim on the said Apparon to the Court of Directors the Defendant also pretended that he Was not informed that on any of these Occasions and Transactions thereupon any Mention was made that Your Petitioner had any Interest either in the Original Settlements with Apparon afore set forth or in the granting the said Bond for the Produce of the Assigned Villages for the year One Thousand Seven hundred and Eighty four nor that it appeared by the Masulipatam Records or from any other information which the Defendant could obtain but that the said Villages were made

over

Over by the said Apparow to the said Alexander Pringle
for his Sole and for the Purpose of Securing to him
his own Debt only due from Apparow and not that
your Petitioner or any other Person should have
a Right in any Degree to Claim a share or
participate with him therein and the Defendant
Pretended that it Appeared by your Petitioners own
Shewing that the produce of Certain Villages belonging
to the said Apparow should be Appropriated to the
Separate Discharge of the Debts due by him
to the said Alexander Pringle and James Hodges
and that the separate Debts due by the said Apparow
to your Petitioner and Arthur Lysaughts since deceased
were to be discharged by other means to wit by the
Annual Payment of Three Thousand Pagodas out of
Money to be collected from the Land Customs of
the Zemendary of Nozeed and that the Chief and
Council of Masulipatam for the time being were
to guarantee the punctual and Regular Payments
of the said Specified Sum of Three Thousand Pags
to your Petitioner and the said Arthur Lysaughts Exs
this

that it also appeared by your Petitioners own shewing that
after this Arrangement for the Securing those respective
Claims on Apparow by those different means your Petitioners
did actually receive the first year thereafter in part of
his said Debt the Sum of Two Thousand and five hundred
Pagodas being his Proportion of Three Thousand Pagodas
so agreed to be paid on the Account aforesaid no part
of which it appeared was otherwise appropriated but
for the purpose of paying off your Petitioners and the
said Arthur Lysaughts Claim— And the Defendant did
further set forth that he has not informed of any Demand
from your Petitioner or consequent Promise and agreement
Made thereupon by the said Alexander Pringle previous
to his Departure for Europe which was in the begening of
the the year one Thousand Seven Hundred and Eighty, but
to allow your Petitioner any Proportion in the Produce
of the aforesaid Villages assigned to him for the Payment
of his Debt and that the Defendant had written
to the said Alexander Pringle since he has been in
Europe respecting the same and the said Alexander Pringle
did not admit of or allow that he ever Made any such

Promise

Promise or agreement with your Petitioner and the Defendant further said that the said Alexander Pringle in the latter End of the year One thousand Seven hundred and Eighty three when he was on the Point of taking his Departure for Europe did appoint the Defendant his Attorney and did then inform him Verbally of some Intentions that the said James Hodges and himself had of allowing your Petitioner a share in the produce of the year One Thousand Seven hundred and Eighty three but did not explain himself further than by saying that if Mr. Hodges did that the Defendant Might that some time after the said Alexander Pringles Departure from India the said James Hodges made your Petitioner a Payment on the Account aforesaid and the Defendant also made the Complainant a payment of Three hundred Pagodas which the Defendant did without having any Authority than what he had before set forth and not any written Authority for that purpose That Matters Rested in this Posture till October One thousand Seven hundred and Eighty Six when the Governor and Council granted their aforesaid Bond some time after which the Defendants stated that your Petitioner laid a Claim to a

proportion

Proportion of the Produce of the aforesaid Villages assigned over to the said Alexander Pringle for the year One Thousand Seven hundred and Eighty four which your Petitioner grounded on an Agreement entered into between the said James Hodges the said Alexander Pringle arthur Lysaught and your Petitioner and also in Virtue of having received from the Defendant a Payment on account of the Produce of the year One thousand Seven hundred and Eighty three and that the Defendant informed your Petitioner that he had never heard of such an agreement that he had a bare authority to Pay the aforesaid Three hundred Pagodas to make any further Payment but informed your Pet.r that he would write to the said Alexander Pringle on the Subject and the Defendant said he had since received a Letter from the said Alexander Pringle dated London Twenty Ninth July One Thousand Seven hundred and Eighty Seven Copy whereof Was annexed to the Defendants Answer and whereby the Defendants said that it appeared he had gone further than he was authorized by paying your Petitioner the Sum of Three hundred Pagodas and Consequently the Defendant could not lawfully allow your Petitioner any Interest in the Bond in Question granted by the Governor and Council on the Account

aforesd

aforesaid and the Defendant pretended that it clearly appeared by the said Letter that your Petitioner could not with any shew of Reason or Justice make any Claim therein or was Much as he had not shewn any and that his Right Was absolutely disputed by the said Alexander Pringle and the Defendant pretended that the Conduct of the said James Hodges could in no Sense be binding upon him as the same Might arise from Motives which it was evedent the said Alexander Pringle did not allow to be binding on him and could not therefore binding on the Defendant who was no more in the Business in question than in the Opacity of an Attorney or agent. —

To which said answer your Petitioner did on or about the Sixth day of April in the year of our Lord One thousand Seven Hundred and Ninety file his Replication wherein your Petitioner Stated that he allowed the Defendant to be the attorney of the said Alexander Pringle and it was as attorney to him that your Petitioner demanded payment and Satisfaction as is Set forth in his Bill of Complaint and such Demand was made from the Specific Funds of the said Alexander Pringle which

are

are stated to be in the Defendants Hands and Subject to your Petitioners said proportional Claim therein as having had originally an Inherent right thereto whether the said Second Years Crop of Negroe Villages was delivered in kind to the said Alexander Pringle or his attorney or whether the Value Was paid in Specie or whether as the Case in Question happens to be such Value was secured by a Company Bond and your Petitioner said that altho the Defendant had been sued as the attorney of the said Alexander Pringle So far as related to your Petitioners Claim being on Property which the Defendant held as attorney to the said Alexander Pringle yet if it should appear to the Satisfaction of the said Mayors Court that the defendant was fully informed of your Petitioners Claim on the said property and had therefore Wantonly and unjustly with held from your Petitioner that Satisfaction to Which your Petitioner had a Claim your Petitioner hoped the said Mayors Court would give Judgement against the Defendants for the Amount charged by your Petitioner with Costs of Suit your Petitioner did further State that by his Bill of Complaint it appeared that your Petitioner and Arthur Speight having Considered that the

true

true intent spirit and Purport of the Instructions sent from the Presidency of Fort St. George to the Chief and Council of Masulipatam were to give no preference whatever to the said James Hodges and Alexander Pringle and that after Representing the same to the said James Hodges and Alexander Pringle and their Determination to seek redress from the Government of Fort St. George unless they were allowed to receive their Proportions according to their respective Debts of the annual Produce of the Villages Assigned as aforesaid the said James Hodges and Alexander Pringle did consent thereto and did in consequence faithfully promise and undertake to Pay your Petitioner his several proportions of all such Money as should be received from the said Villages and that such Promise and undertaking were made before the departure of the said Alexander Pringle for Europe and that his attorney the said Defendant did in the knowledge thereof pay your Petitioner his Share of the first Year to wit the Year of our Lord One thousand Seven hundred and Eighty three and that when instead of Continuing to receive the produce of the said Countries Government has

been

been pleased to pay the amount thereof by their Bonds and that the said James Hughes did pay your Petitioner his proportion of his Bond and did upon Oath as set forth in the Exhibit A annexed to your Petitioners Bill of Complaint state that after Certain Conversations held with the said Alexander Pringle respecting your Petrs Situation with Apparow the said Alexander Pringle did at length resolve to abide by what he the said James Hodges should determine to do for your Petitioners Advantage respecting their Villages of Weyaur and told the said James Hodges he should leave Instructions to that effect with his Attorney the Defendant and that after Conversing with the Defendant he found the said Alexander Pringle had left such Instructions with him and that in Consequence the Defendant and he paid to your Petitioner a Share of the Crop of one year of the said Villages of Weyaur in proportion as your Petitioners Claim stood with the said Alexander Pringle and James Hodges Jointly and that in consequence of such Agreement between the said Alexander Pringle and James Hodges did make over unto your Petitioner in the same proportion

as

As he did the former year some share of a Company's Bond being in part amount of another years produce of the Villages which were the said James Hodges's in Weyour and that he had no Doubt the Defendant stood firmly bound to do the same from those Villages that were the said Alexander Pringles from the directions the Defendant received from the Said Alexander Pringle and by force of the said Agreement between the said Alexander Pringle and James Hodges your Petitioner humbly submitted that the Defendant Was bound to make good to your Petitioner the Share aforesaid in the said Bond so Granted by Government to the Defendant for account of the said Alexander Pringle being equal to his share of the Prof. of the said Year One thousand Seven hundred and Eighty four and with interest thereon from the date of the said Bond as charged by your Petitioner in his Bill of Complaint and your Petitioner further said that the Defendant could not at all advantage himself by any Argument from the Acquiescence of your Petitioner and the Said Arthur Lysaght in receiving their seperate proportions from the land Customs Because such

Acquiescence

Acquiescence for the time was in the Idea of the Continuance of Payment from such Fund for as many years as the said James Hodges and Alexander Pringle did receive their assigned proportions from the said Villages Weyour and that it appeared that the Claim in question originated from the Discontinuance of Payment from such land Customs to your Petitioner and the said Arthur Lysaghts while the payments continued to be Made to the said James Hodges and Alexander Pringle from the Villages of Weyour which Advantages in their favor was so evidently against the intention of Government that the said James Hodges and Alexander Pringle would not risk the Consequence of a Representation thereof to Government and therefore manifestly gave into the arrangement in Question as their only alternative and your Petitioner humbly insisted that the Testimony of the said James Hodges in manner as above stated was conclusive in favor of your Petitioner and shews the Justice as well as Futility of the Evasions used by the said Alexander Pringle and the Defendant and your Petitioner prayed leave to call the attention of the said Mayors Court to the hardiness of the Defendant in his Assertions in his Answer wherein he ventures to say that he is not informed of

any

any demand from the Complainant or Consequent promise or
Agreement made thereupon by the said Alexander Pringle
Previous to his departure for Europe which was in the
Begining of the year One thousand Seven hundred and Eighty
four to allow the Complainant any proportion in the produce of
the aforesaid Villages assigned to him for the Payment of his
Debt when the Defendant had before him the said Testimony
on Oath of the said James Hodges who could then had no interest
Whatever in stating the fact but had parted with his
Property under the Conviction of your Petitioners Rights
thereto under the same Circumstances which gave Rise to your
Petitioners Claim on the Defendant from the said Property
of the said Alexander Pringle and your Petitioner was
Surprised at another very strong Assertion of the Defendant
which his own Letter contradicts Namely that the said
Villages were made over by the said Apparoo to the said
Alexander Pringle for his Sole use and for the purpose of
Securing to him his own Debt only due from Apparoo
When the Said Affidavit of the said James Hodges calls
them our Villages of Weyaur meaning the said James Hodges
and Alexander Pringle Jointly and in the Defendants Letter

Annexed

annexed to his answer under date the said Twenty eighth
day of January he says when Pringle left this Country
he told me that Mr Hodges and himself had it in
Agitation to allow a certain share in the produce and
desired me to be guided in a great measure by what
Mr Hodges might do nor can it avail to the said Alexander
Pringle to disallow your Petitioners claim by any Letter
to the said Defendant when it stands so firmly supported
by his previous Assurance to the said James Hodges and
the Payment to your Petitioner of three hundred Pagodas
on account which shewed that the Defendant had a
Conviction of your Petitioners Rights on the said
Alexander Pringle and it was further Manifested by
the admission of the Defendant in his answer that your
Petitioner made his demand soon after the Governor and
Council had granted the said Bond for account of the
said Alexander Pringle and the Truth is that your
Petitioner made the Demand as soon as he knew
the Bond had been granted your Petitioner disavows
that any motives could have urged the said James Hodges
which are not equally binding on the said Alexander

Pringle

Pringle namely the good Faith and honor of the parties in the Transactions and arrangements in question your Petitioner lastly said that the Defendants letter to your Petitioner under date the Twentieth day of January which Was in the year of our Lord one thousand seven hundred and Eighty seven Copy whereof he has annexed to his Answer appears to contradict such parts of the Defendants answer which militate against your Petitioners Claim on the said Alexander Pringle for after acquiescing as the Defendant had done as by his Letter of the Eighth day of the said Month of January on your Petitioners Requisition for a share of the said Bond he refers in his said second Letter to the Instructions of the said Alexander Pringle and endeavours to Shelter his refusal under the Tenor thereof nevertheless he said that he did not mean to dispute your Petitioners Right to a proportion but looked to an authority for his own security stating however Pringle might be satisfyed his heirs in case of an Accident to him might Justly call me to Account and Make me responsible when Pringle left this Country he told me that Mr Rodgers and himself had it in

agitation

agitation to allow a certain share in the produce and desired me to be guided in a great measure by what Mr Rodgers might do and in consequence I made you a Payment on a former Occasion but this was merely verbal and I had no authority whatever for it The Defendant then stated that as there was no Prospect of touching the Money for many years it could be no Detriment to your Petitioners claim to wait the answer of the said Alexander Pringle on the subject which he said he Was induced to do from no other Motive than to avoid disagreeable consequence from all which your Petitioner humbly submitted that the Defendant acknowledged himself bound to act as the said James Rodgers had done and that his refusal to do so was because the said Alexander Pringle might not agree and that he as his attorney might be made responsible had he acted without legal sanction which sanction your Petitioner humbly prayed might be granted by the said Mayors Court by giving a Decree in favor of your Petitioner in manner as he had already prayed in his Bill of Complaint to which Replication

the

the said Defendant filed a General Rejoinder that upon the above Proceedings Issue was Joined and one Witness to Wit the said James Hodges was Examined on the part of your Petitioner and Publication passed and the cause was set down for hearing and the same came on to be heard by and before the said Mayors Court on the Twenty seventh day of July last when the said Mayors Court did think proper to Order and Decree and did Accordingly order and Decree that your Petitioners said Bill of Complaint be dismissed and that each party do pay their own Costs —

From which said order and Decree of the said Mayors Court your Petitioner did appeal to the Court of Appeals at Madras as he conceived the said Order and Decree to be erroneous and contrary to the Principles of substantial Justice for the following among other Reasons —

First Because your Petitioner by a special affidavit in the Cause to which he prays Reference doth

To

all and singular the Principal Matters above set forth, —

Second Because the said James Hodges deposed to the said Alexander Dringle having agreed to the same purpose as he had done with your Petitioner and — acknowledges not only the payment of your Petitioners Proportion of the said Second years Crop but that if he had received another year he should have considered — himself bound to pay to your Petitioner his Proportion thereof and he also states that he considers the said Alexander Dringle as well as the Defendant as his attorney bound thereby in as much as the said James Hodges and Alexander Dringle had agreed thereto in your Petitioners Requisition before the Departure of the said Alexander Dringle for Europe and that such agreement had been fully Communicated to the Defendant as the intended Attorney Avowed by the said Alexander Dringle for the Management of his remaining concerns in this Country. —

Third Because the Defendant notwithstanding his pretended ignorance upon Oath to the aforesaid Premises

as

As is Charged in your Petitioners Bill and Replication doth acknowledge the Payment to your Petitioner of three hundred Pagodas and such Payment was so made to your Petitioner by the Defendant under the full knowledge of the Claim of your Petitioner and of all the incidental Circumstances thereof as will appear by the following Extract of the Defendants Answer. —

And this Defendant further saith „that the said Alexander Pringle in the latter end of „the year One thousand Seven hundred and Eighty three „when he was on the point of taking his departure for „Europe did appoint this Defendant his attorney and „did then inform him verbally of some intentions that „the said James Hodges and himself had of allowing „the Complainant a share in the produce of the year One „thousand Seven hundred and Eighty three but did not „explain himself further than by saying that if Mr Hodges „died that he this Defendant might that some time after „the said Alexander Pringles departure from India „the said James Hodges made the Complainant a payment „on the account aforesaid and this Defendant also made the

„the Complainant a payment of three hundred Pagodas which „this Defendant did without having any other Authority than „what he has before set forth and not any written Authority „for that purpose. —

Fourth, Because such Payments under such Circumstances and after the departure of the said Alexander Pringle is as strong Evidence of your Petitioners Claim as any written Document whatever. —

Fifth, Because the Evidence of the said James Hodges is the best possible Evidence of your Petitioners Claim in as much as by such Evidence he establishes points against his own Interest and States the principles by which he Considered himself bound to pay your Petitioner and he also states that the like Principles bind the said Alexander Pringle by Vertue of his agreement in favor of your Petitioner and binds the Defendant as his Attorney by Vertue of his knowledge of such agreement before the Departure of the said Alexander Pringle and the Defendants Subsequent payment in conformity to such agreement which Payment your Petitioner humbly conceives to be a full acquiescence to and in part performance of such agreement and to bind the Defendant to Compleat the

the performance thereof by paying the Proportion of such Second Years Crop of the said Villages of Neyour. —

To all which Reasons and such others as might be offered at the hearing of the Cause in the said Court of appeals your Petitioner prayed that the said Decree of the said Mayors Court of the Twenty Seventh day of July last might be Reversed and that the Defendant might be Decreed to pay unto your Petitioner the aforesaid Sum of One Thousand Two hundred and Two Star Pagodas and Twenty four Fanams with Interest thereon from the said Twentieth day of October which was in the Year of Our Lord One thousand Seven hundred and Eighty Seven at that he might be Decreed to assign over unto your Petitioner that proportion of the said Bonds of the Government of Fort St. George and to pay the share of Interest Received and to be Received into the hands of your Petitioner as the same should come into the Defendants hands and that the Defendant might pay the Costs of this Suit from his own Pocket. —

To which said Petition and appeal the said Defendant did put in his Answer setting forth Many evasive matters and things which your Petitioner doth

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Not nor doth by any Means Admit and your Petitioner doth Not Sheweth that his Petition and appeal and the Answers of the said Defendants thereto came on to be heard and determined on the Seventeenth day of this Instant December by the said Court of appeals at Madras who thought proper to confirm the Decree of the said Mayors Court and that your Petitioners said Petition and appeal be dismissed with Costs. — All which will More fully and at large Appear by Reference to the Several Proceedings had in the above Cause in the said Mayors Court of and Court of appeals to which said several Proceedings and to each of them Respectively your Petitioner prays leave to refer and to have such full and ample benefits 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 Mayors Court and Court of appeals your Petitioner Most humbly appeals to your Most Excellent Majesty in Council for the Reasons assigned in your Petitioners said appeal to the Court of appeal at Madras as above Stated and for such other Reasons as may be offered at the hearing of this Cause and your Petitioner Most humbly prays that the said

Decree

Decree of the said Mayors Court and Court of Appeal at Madraspatnam be Reversed and Set aside and that the Defendant may be Decreed to pay unto your Petitioner the aforesaid Sum of One thousand Two hundred and Two Star Pagodas and Twenty four Fanams with Interest thereon from the said Twentieth day of October One thousand Seven hundred and eighty Six or that he may be Decreed to Assign Over unto your Petitioner that proportion of the said Bond of the Government of Fort St. George and to pay the Share of Interest Received and to be Received into the Hands of your Petitioner as the same shall come into the Defendants Hands and that the Defendant may pay the Costs of this Suit from his own Pockets. —

/ Signed / Stephen Popham
Solicitor for Appellant

Court

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Court of Appeals at Madraspatnam

Saturday the 17th day of December Anno Domine 1791

Between Stephen Towns Esqr Captain in the Service of the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort St. George Appellant and Roger Darvell of Masulipatam Esqr Senior Merchant in the said Service 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 August Anno Domini 1790 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

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 H. White
Clk.

Saturday

Saturday 24th December 1791

Present

Sir Charles Oakeley Baronet

William Petrie and John Hudleston Esqrs

To the Honourable Charles Smith Esquire President and Governor &c
Council of Fort St George —

In the Court of Appeals

Between Covoor Videnadach Mooddeliar
of Madras Inhabitant Complainant —
and Henry Benjamin Sulivan
a Captain in the Nabobs Service
Defendant

The Humble Petition of Henry Boyle Sulivan.

Sheweth ... That the Complainant above named did on or about
the Twentieth Day of October last past and in the
Honourable the Mayors Court at Madras patnam file
his Bill of Complaint against Henry Benjamin
Sulivan for recovery of a Certain Sum of Nine hundred
Pagodas whereupon a Summons issued Requiring the
Appearance of the said Henery Benjamin Sulivan

Filed in my Office
the 25th Dec. 1790.
Chas. Freeman
Pr.

And

And your Petitioner sheweth that as the Complainant
hath in his Discription of the Defendant Stiled the said
Defendant a Captain in the Nabobs Service and as your
Petitioner is the only person of the Surname of Sulivan
who bears the Commission of Captain in the said Service
your Petitioner Conceived that the said Bill of
Complaint might have been intended to be filed
Against your Petitioner and he did therefore direct
his Attorney to Appear for him who did Accordingly
Appear and certain Rules having issued for the
said Henry Benjamin Sulivan to Answer the
Complainants said Bill of Complaint Your Petitioner
was Advised of the same by his Attorney but your
Petitioner Sheweth that being upon Service it was
not in Your Petitioners Power to give instructions in
due time for his said Attorney to Plead a Misnomer
or any other Plea or to file an Answer in Default
whereof the said Mayors Court proceeding According
to the Rigour of the Law in such Cases Did on the
Twelfth Day of December think fit to Order that a
Decree Should pass against the said Henry Benjamin

Sulivan

Sulivan for having made Default to Answer in
manner aforesaid as by the Records of the said Mayors
Court and the Decree thereof Reference being thereunto
respectively had may more fully Appear which
Order your Petitioner Sheweth cannot in Law affect
your Petitioner because your Petitioners name is
Henry Boyle Sulivan and not Henry Benjamin
Sulivan as Set forth in the Different Proceedings
held in the Above Cause and your Petitioner
Sheweth that before the Issuing of the Writ in the
Above Cause whereby Henry Benjamin Sulivan
was Summoned to Appear before the Honourable
the Mayors Court and at the time the said
Writ was so Issued your Petitioner was well
known to bear and did Actually bear and
make use of the name of Henry Boyle Sulivan
and did use that name in all his Dealings
whenever he had Occasion to write his Name
at full length Your Petitioner therefore Prayeth
that for the Furtherance of Law in favour of the
Complainant in Case it was the intention of the

Said

Said Complainant to file his Bill Against Your Petitioner this Honble Court will be pleased to Order that the said Order of the Mayors Court be set aside and that Your Petitioner be thereby enabled to Set forth his true name and thereby also the said Complainant in having a regular action in Law against Your Petitioner in Case he has any Claim Against Your Petitioner And that for effecting the purpose aforesaid One Weeks time be given for the Defendant in the said Cause to Reced or Answer to the Same And that the Complainant Pay all Costs of the said Decree and of this Appeal

/Signed/ Stephen Popham
Attorney for the Petitioner

Mayors Court

Mayors Court at Madraspatnam } Tuesday the 12th Day of Decr Anno Domini 1780

Present

Edwd John Holland Esqr Mayor
James Call and William Webb
Aldermen

Mayor's Court

P. P.

Between Covoor Vidinadah Modeliar of Madras Inhabitant Complainant
and Henry Benjamin Sullivan a Captain in the Nabobs Service 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 and Just Sum of Nine hundred Pagodas /Rgs 900.../ together with all such Interest as now is or shall hereafter become Due thereon untile full Payment is made also all Costs of this Suit

/Signed/ J. Taylor Regt

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

Between Cavor Videnadah
Modelliar of Madras Inhabitant
Complainant and Henry Benja-
=min Sulivan a Captain in the
Nabobs Service Defendant

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

Thus Respondent Admits that
he did on the Twentieth day of October which was in
the Year of our Lord One Thousand Seven hundred
and Eighty exhibit a Bill of Complaint Against
the said Defendant for the sum of Nine Hundred
Pagodas Whereupon a Summons did issue
requiring him the said Defendant to Appear
before the Honble the Mayors Court and your
Petitioner Sheweth that the Defendant did
Accordingly Appear upon Service of the said
Summons

Filed in my office
the 11th January 1781
Chas Freeman
Clk

Summons Against him in the Name of Henry
Benjamine Sulivan, and did not make any
Objection at the said time of his name and Title
not being Properly and Rightly Called and dis-
=cribed, nor did he Afterwards upon the usual
Rules passing for him the said Defendant
to Answer put in any plea of Misnomer &
Pointing out that his Name was Henry Bogle
Sulivan and not Henry Benjamin Sulivan
but did Suffer all the said Rules or Notices to
Answer to go And be directed in the Name of
Henry Benjamin Sulivan, And to which Name
his Attorney Regularly And Duely Appeared
And Consented when such Rules were prayed
in Open Court without alledging any thing
to the Contrary but that his Name was Henry
Benjamin Sulivan, and his said Attorney
upon a Certificate being produced According
to the practice of the Honble the Mayors
Court Attesting that the Usual Rules had
passed And that the Defendant had not put in
Any

Any Answer to his Respondents Bill of Complaint
the said Attorney did not Object to a Decree
passing against the Appellant in the Name
and Titles given him in the said Bill of
Complaint and for the full Sum therein Sued
for And this Respondent Saith that if it is
true that the Appellants Name is Henry Boyle
Sulivan he Cannot now avail himself of the
Misnomer of Henry Benjamin Sulivan after
having Suffered Judgement and Decree to
pass against him in that Name as may
Appear upon Reference to many Adjudged
Cases in Books of Law Reports. Moreover this
Respondent Saith that if the Defendant
had chosen to have taken the Advantage of
the said Misnomer if any there be the same
Should have been duely pleaded pointing out
what was his Real Name And the said plea
also ought to have been upon Oath. this Respon-
=dent might then have Amended his Bill by the
proper Additions of the Name of the Defendant.

Or have

or have Contested whether as the first of the Defendants
Christian Names was right the Mistake in the
Second could in Law Operate as a Misnomer it
having been the Opinion of some Learned Judges
in the Law "that a Man cannot Regularly have
two Names by Baptism but as the Case now
Stands and as the Appellant doth himself
Acknawledge that he knew of no other person
a Captain in the Nabobs Service of the Surname
of Sulivan but himself he therefore conceived the
Bill filed against him Such an Acknaw-
=ledged identity of the Defendant to person under
the Circumstances aforesaid is Sufficient in the
Law to warrant the Judgement of the Honble the
Mayors Court. And this Respondent is humbly of
Opinion he should not be obliged to revert thereto
by filing a fresh Bill of Complaint. According to
the direction and prayer of the Appellant for
as the Name of Henry Boyle Sulivan is not
Regularly Ascertained by plea on Oath the
Defendant might again plead that his Name

was

was not Henry Boyle Sulivan. but Henry Benjamin Sulivan. Wherefore if the Defendant had any benefit of pleading a Misnomer which he has not availed himself of According to the due Course of Pleading he cannot legally take the Advantage of his own Negligence in Order to avoid the aforesaid Judgements which this Respondent prays may be confirmed with Costs.

(Signed) Henry DuPuy
Attorney Respondents.

Court

Court of Appeals at Fort St George Madraspatnam. Saturday the 24th Day of December Anno Domini 1791

Between Benjamin Sulivan of Fort St George Esqr. Administer to the Estate and Effects of Henry Benjamin Sulivan alias Henry Boyle Sulivan Deceased Appellant and Covoor Yeagambarah Moodelly and Covoor Mootiah Moodelly &c Administrators to the Estate and Effects of Covoor Vydenadah Moodelly Deceased 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 12th Day of December Anno Domini 1780. Upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both sides

This

This Court doth think fit to Order and Decree And doth Accordingly Order and Decree that the said Decree of the Hon^ble the Mayors Court Dated the 12^th. day of December Anno Domini 1780 be Reversed and that the further time of Seven Days from this 24^th. Day of December Anno Domini 1793. be given the Appellants to Plead or Answer to the Respondents Bill of Complaint in the Hon^ble the Mayor's Court each party paying his own Costs in this Court.—

J Cur

/ Signed / Chas. N. White
Clk

Mr. Hudleston Dissent to the Decree of the Mayors Court.—

First— Because the only plea urged in the Petition of appeal Namely that of Misnomer not having been adduced in the Court below was irregularly brought forward in this Court and ought to have been Rejected—

2. Because the Assertion that it was not in the Appellants power to give Instructions in due time for his Attorney to plead a Misnomer was not entitled to any Weight since Admitting the fact as Stated it Certainly required no Instructions to Authorize the Appellants Attorney to pray of the Mayors Court a further time on the Contrary the circumstance itself of the Want of Instructions was a Strong & Sufficient Reason on which to found such prayer & would no doubt have induced the Court to Comply with it.—

/ Signed / J. Hudleston.

To the Hon^ble Major General William Medows
President in Council
Fort St. George.—

In the Court of Appeals
at Madraspatnam.—

Between Ninapah Moodeliar Administrator of all and Singular the Goods Chattles Rights and Credits which were left Unadministered of John Sykes deceased by his Attorney Richard Cole formerly of Madras Inhabitant but now elsewhere by his Attorney John Tulloh of Fort St George Esquire Complainant and Stephen Popham of Madras Gentleman one of the Attornies of the Hon^ble the Mayors Court at Madraspatnam Defendant.—

The Humble Petition and Appeal of the above named Defendant.—

Sheweth That the said Ninapah Moodeliar the Complainant did as Administrator of the said John Sykes by his Attorney

Filed in my Office
the 26th August 1790
Chas. H. White Clk

Attorney Richard Cole and on his Behalf by his Attorney
the said John Tulloh on the Thirteenth Day of May One
thousand Seven hundred and Ninety file a Bill of Complain-
-nt in the said Mayors Court against Your Petitioner
wherein he said by his said Attorney John Tulloh set forth
that your Petitioner stood indebted unto him the said
Complainant as Administrator as aforesaid in the Sum
of Four thousand four hundred and ten Star Pagodas
as might more fully Appear by the Copies of a certain
Mortgage Bond or Obligation a Chaultry Bill of
sale two Assignments thereof and an Account Current
Annexed to the said Bill of Complaint—To which
said Bill of Complaint your Petitioner said on the
Twenty Second Day of June in the said Year of our
Lord One thousand Seven hundred and Ninety file
his Answer wherein he Acknawledged to be indebted
to the Complainant in the Sum sued for and that
the Complainant had Shewn great Forberance in
not Pressing your Petitioner for Payment at an earlier
Period but Your Petitioner at the same time said
that he had so involved himself by a well known
public

public Speculation so as to be totally deprived of the
Means of Satisfying the Complainant either immediately
or within any Short limited Period and was therefore
Obliged from mere Necessity to Crave the benign
Interposition of the said Mayors Court under the
peculiar Hardship of his Situation to Stay Proceedings
to a Execution till after two Years from the then
time your Petitioner praying in the mean time the
Current Interest on the Aggregate Sum sued for and
the proportional Parts of the Principal at the Expira-
tion of every Six Months from the then Date which
Suggestion Your Petitioner Declared to be the
utmost he could look for but if he could by any
fortunate Event discharge his Debt to the Complai-
-nant sooner he promised to do so Your Petitioner also
said that as the Premises in Question are by the
Complainants own Shewing in the Chaultry Bills
of Sale Annexed to his said Bill of Complaint valued
at Seven thousand Pagodas the Complainant
Could run no Ultimate Risk by a Compliance
with your Petitioners Requestion—he therefore
humbly

humby prayed the same of the said Mayors Court on paying Costs of the Suit.—

Your Petitioner Sheweth that the said Cause was Afterwards Set down to be heard on Bill and Answer and Accordingly Came on to be heard and was heard before the said Mayors Court on Tuesday the Seventeenth Day of this Instant August when the said Mayors Court were pleased to Order and Decree that your Petitioner should pay unto the Complainant the said Sum of Four thousand four hundred and ten Star Pagodas with all such Interest as then was or might thereafter become due thereon with Costs of the Suit.

From which said Decree of the said Mayors Court Your Petitioner Appeals to this Honble Court of Appeals as he Considers that his Claim on the Community for his Exertions in a Public Speculation should have been Recognized by the said Mayors Court as the Judges thereof as Individuals knew the Fact to be as Stated by Your Petitioner.—

Wherefore and for such other Reasons as Your Honble

Honble Court may Suggest in favor of Your Petitioner—whose Situation as well known to Your Honble Court Your Petitioner prays that the indulgence prayed for and refused by the Mayors Court may be granted by—Your Honble Court in favor of Your Petitioner.—

/Signed/ Stephen Popham
Solicitor for Appellant

Mayors Court at Madraspatnam } Tuesday the 17th Day of August Anno Domini 1790

Present

Vincentio Corbett Esqr Mayor
Andrew Ross James Landon
& John Mitford Aldermen.—

Between Niniapah Moodaliar—Administrator of all and Singular the goods Chattles rights and Credits which were left Unadministered of John Sykes Deceased by his Attorney Richard Cole formerly of Madras Inhabitant but Now

P 2

Mayors Court

To the Honble Major General William Medows
President in Council

In the Honble the
Court of Appeals

Fort St George

Between Nincapah Moodelliar
Administrator of all and Singular the
Goods Chattles Rights and Credits which
were left Unadministered of John Sykes
Deceased by his Attorney Richard Cole
formerly of Madras Inhabitant but
now in the Kingdom of Great Britain
or else where by his Attorney John
Tulloh of Fort Saint George Esquire
Complainant And Stephen Popham
of Madras Gentleman One of the Attornies
of the Honble the Mayors Court at Madras
Patteen Defendant

The Answer of Nincapah Moodelliar by his Attorney
Richard Cole by his Attorney John Tulloh To the Petition and
Appeal of the above Named Stephen Popham

This

Now in the Kingdom of Great Britain
or else where by his Attorney John
Tulloh of Fort St George Esqre
Complainant and Stephen Popham
of Madras Gentleman an Attorney
in this Honble Court 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 Certain Mortgage
Bond or Obligation a Chaultry Bill of Sale two Assignments
thereof and an Account Current annexed The Defendants
Answer On Hearing the Readings 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 shall pay unto the Complainant the full
and Just Sum of Four thousand four hundred & Ten Star Pagodas
/ Star Pagodas 4 4 10 — / 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 —

By Cur

/ Signed / George Taylor Regr

Filed in my Office
the 20th Sept. 1790
Chas K. White Clk

J.C.

This Respondent for Answer to the said Petition of Appeal or unto so much thereof as this Respondent is Advised is Material for him to make Answer unto, Answereth and Saith That he does Admit that as Administrator of all and Singular the Goods Chattles Rights and Credits which were left Unadministered of John Sykes Deceased by his Attorney Richard Cole by his Attorney John Tulloh of Fort Saint George, He did on the Thirteenth day of May in the Present Year of Our Lord One Thousand Seven Hundred and Ninety Five File a Bill of Complaint in the said Honble Mayors Court Against the said Appellant wherein this Respondent did by his said Attorney the said John Tulloh Set forth that the said Appellant Stood Justly and truly indebted to him in the Sum of Four Thousand Four hundred and Ten Star Pagodas as might more fully Appear by the Copies of a Certain Mortgage Bond or written Obligation a Choultry Bill of Sale and Two Assignments To the said Bill of Complaint annexed To which This Respondent prayed a Reference might be had and that it might be Taken as part and parcel thereof. And this Respondent by his said Attorney further

Admits

Admits that to the said Bill of Complaint so filed the said Appellant did on the Twenty Second day of June last past Exhibit his Answer wherein he Acknowledged to be Indebted to this Respondent in the Sum Sued for and further Admitted that Great Lenity and Forbearance had been shewn to him in not being Pressed for Payment at an earlier Period But that he the said Defendant had so much involved himself by a Well known Publick Speculation as to be totally deprived of the means of Satisfying this Respondent either immediately or within any Short limited period, and was therefore Obliged from mere Necessity to Crave the benign Interposition of the said Honble Mayors Court under the peculiar hardship of his Situation to stay Proceeding to an Execution, till after Two Years from that time. The said Appellant in his said Answer Stating that he would pay the Current Interest on the Aggregate Sum Sued for and the Proportional parts of the Principal at the expiration of every six Months from that date, which Suggestion the said Appellant in his said Answer Declared to be the Utmost

He could

To ground an Appeal upon such as Never came before a Court of Justice And this Respondent by his said Attorney Says that if the Appellant has involved his Circumstances by Public Speculation hens doubt entered into that Speculation from the prospect of private gain If the Community has Reaped benefit from his executions It is to that Community he should look for Reparation. But it would be as equally Contrary to every Principal of Equity and Justice as it is Repugnant to Common Sence. If this Respondent as an Individual who had no Share in the views and Speculative projects of the Appellant, and who had derived no advantages therefrom Should suffer by his Miscarriages as would Certainly have been the Case If the said Honble Mayors Court had allowed so gross an innovation in the established Laws of England by Suspending the process of Execution Against the said Appellant for the time prayed by him in his said Answer to this Respondents Bill of Complaint — And this Respondent denies that the

the Appellant is deprived of the Means of Satisfying his demand as in his said Answer is suggested Because the Premises which the said Appellant has mortgaged to this Respondent by way of a Collateral Security for the Certain Payment of the Sum Originally Lent is Sufficient for that Purpose And the Conduct of the said Appellant in Resisting the Sale thereof, is the more unjust. Because the said Appellant has by his own act and Deed, In the Bond or written Obligation to this Respondents Bill of Complaint Annexed, as Covenanted to and with this Respondent, That in default of Payment Agreeably to the time in the said Bond or Obligation expressed, that the Premises should be Sold at Publick Outcry, —

For all which Reasons and such Others as may be Offered at the hearing, this Respondent prays this Honble Court will be pleased to Affirm the Decree of the said Mayors Court and that the Appellants Petition and Appeal be dismissed with Costs to be paid by the Appellant, — /Signed/ G. Chalmer.

Solicitor for Respondent

Court of Appeals at } Saturday the 24 day of December
Madraspatnam } Annodomini 1791

Between Stephen Popham of Madras Gentleman one of the Attornies in this Hon.ble Court Appellant and Ninagatt Moodellar Administrator of all and Singular the Goods Chattles Rights and Credits which were left un Administered of John Sykes Deceased by his attorney Richard Cole formerly of Madras Inhabetant but now in the Kingdom of Great Britain or else where by his attorney John Tulloh of Fort St. George Esq.r 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 Hon.ble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 17th August Anno Domini 1790 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 Hon.ble the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs.

By Cur

(Signed) Chas. W. Whiteside Clk

To

To the Honorable Major General William Medows
President in Council
For St. George

In the Court of Appeals
at Madraspatnam.

Between Emin Beaumont otherwise Collings formerly of Bombay in the East Indies but now of the City of London in the Kingdom of Great Britain Widow of her former Husband Major William Collings who was in his life time in the military Service of the Honble the United Company of Merchants of England trading to the East Indies & deceased and Administratrix of all and every the Goods and Chattels Rights and Credits which were the Goods and Chattels Rights of the said Major William Collings at the time of his Death by her Attorney Wm Collins Jackson of Madras Esquire Complainant and James Taylor, George Maubray Isaias Du Pre Parker and Thomas Cockburn of Madras Esquires Executors named in the last Will and Testament of George Savage late of Fort St George Esquire deceased Defendants

The Humble Petition and Appeal of the above named Defendants. —

Sheweth

That the said Complainant did by her said Attorney

Filed in my Office the 30th August 1790
Chas. H. White Clk

file a Bill of Complaint in the Honorable the Mayors Court at Madraspanam against Your Petitioners as Executors of the said George Savage on the sixth Day of March in this present Year of Our Lord One Thousand Seven hundred and ninety wherein she set forth that the said George Savage having in his life time occasion to borrow the Sum of Two Thousand Six hundred and ninety two Current Pagodas seven Fanams and seventy four Cash applied to the Complainants former Husband the said Major then Captain William Collings to advance him the same which the said William Collings Accordingly did and to secure the Repayment thereof the said George Savage did enter into one Bond or Writing Obligatory bearing date the twenty first Day of May which was in the Year of Our Lord one Thousand Seven hundred and seventy seven by which Bond the said George Savage by the name and Description of George Savage of Madras Merchant did Acknowledge himself to be bound, and did bind himself his Heirs Executors and Administrators

Administrators unto the said Major then Captain William Collings then Commanding at Samulcotah in the Sum of Five Thousand three hundred and eighty two Current Pagodas fifteen Fanams and sixty eight Cash with Condition thereunder written to be void upon Payment of the Sum of Two Thousand six hundred and Ninety two Current Pagodas seven Fanams and Seventy four Cash unto the said Major then Captain William Collings his Heirs Executors Administrators or Assigns with Interest for the same at the Rate of Twelve per Cent per Annum within three Months from the Date thereof or else the said Bond or Obligation was to be and remain in full Force and Virtue as by the said Bond or Writing Obligatory Copy thereof marked with the Letter A annexed to the said Bill of Complaint might Appear And the said Complainant did further shew unto the said Mayors Court that the said William Collings frequently in his life Time applied to the said George to pay off and discharge the said Debt with the Interest which was then due thereon but the said George Savage as frequently

by

frequently evaded the Payment thereof and the said Complainant did further set forth that since the Decease of the said William Collings to wit on or about the first Day of April which was in the Year of Our Lord one Thousand seven hundred and eighty two she obtained Letters of Administration from the Mayors Court at Bombay aforesaid of all and Singular the Goods and Chattels Rights and Credits which were of the said William Collings at the Time of his Decease he having made no Will or other Disposition of his Effects but having died intestate as by a Paper Writing stated to be a true and faithful Duplicate of the said Letters of Administration attested by the Proper Officer of the said Court and under the Seal thereof then in the Custody of the Complainants Attorney at Law and ready to be produced and proved to the said Mayors Court at Madraspatnam Relation being thereunto had might now at large appear the Original of which said Letters of Administration being then in the Kingdom of Great Britain the Complainant could not therefore produce the Same to the said Mayors Court at

Madraspatnam

Madraspatnam and the Complainant Margred that no other Administr had been committed of the Goods and Chattels Rights and Credits of the said William Collings and the Complainant did further shew that the Complainant since the Death of the said William Collings had intermarried with John Beaumont of Bombay Esquire who is also since deceased having departed this life on or about the day of which was in the Year of our Lord one thousand seven hundred and eighty and the Complainant did further shew that the Complainant after the Death of her said former Husband the said William Collings as his Administratrix by her Attorney the said William Collins Jackson caused repeated Applications to be made to the said George for Payment of the Principal Monies and Interest due upon the said recited Bond but that the said George Savage from various Pretences and Excuses not only postponed from time to time the Payment of the Principal Monies so due and owing on the said Bond but also the Interest Monies arising thereon and the Complainant being at

at length wearied with the continual Promises and Disappointments of the said George Savage and being in narrow and distressed Circumstances and thereby unable to give the said George Savage any further Indulgence she by her Attorney the said William Collins Jackson called upon the said George Savage in a peremptory manner to pay off the full amount of the said Principal and Interest Monies whereupon the said George Savage as he had before done alledged his Inability of discharging the same in Consequence whereof the Complainant about the twelfth Day of December which was in the Year of Our Lord One Thousand Seven hundred and eighty six caused Application to be made to the said George Savage by Charles Bromley late one of the Attornies of the said Mayors Court at Madraspatnam and since deceased either to pay off the said Debt or to lodge in the Complainants Possession some Collateral Security sufficient to discharge the same in answer to which Application the said George Savage on or about the twelfth Day of December wrote a Letter addressed to the said Charles Bromley to the following Effect

I had

I had flattered myself that Mr. Jackson's Representation of the Case to Mr. Beaumont in Consequence of my Letter to him of the fourteenth of March last would have induced her to favor me with the Patience therein requested as the Inabelity then pleased still exists and as I have it not my Power to give the Security you require I must express my hope that Mr. Jackson will oblige me by again addressing Mr. Beaumont on the Subject and assure her which I hereby authorize him to do that I have at present reason to think I shall be enabled in about twelve Months more / I mean if the Country remains in Peace / to either pay off my Debt to Major Collins's Estate or give Value or Security for it" In Consequence of which the Complainant from an Unwillingness to distress the said George Savage suspended any further Application to the said George Savage on the Subject of her said Demand until about the fourth Day of April which was in the Year of Our Lord one Thousand Seven hundred and eighty seven when the Complainant being much distressed she did again by her said Attorney renew her former

Solicitations

Solicitations to the said George Savage for Payment of the said Debt; but as he had heretofore done alledged his Inabelity to pay the Same and the Complainant finding that the said George Savage Could not give any proofs Time to discharge his said Obligation and Considering it as incompatible either in Justice to herself, or with her Duty as Administratrix to the Estate of the said William Collins longer to risk the said Monies by granting the said George Savage any further Indulgence desired that he either would pay the amount of the said Debt or Counter secured the same as the only Termes of Forbearance on the part of the Complainant, in Consequence of which it was on or About the fifth Day of April which was in the Year of Our Lord One Thousand Seven hundred and eighty seven agreed that the said George Savage should execute unto the Complainant his Bond for the Amount of the Interest Monies due to the Complainant on the foot of his said Original Bond of the Thirty first Day of May which was in the said Year of Our Lord one Thousand seven hundred and

Seventy

Seventy seven then amounting to the Sum of Current Pagodas of Three Thousand One hundred and Eighty one twenty five Fanams and Sixty Cash and that the said George Savage should also assign unto the Complainant as a collateral Security for the true Payment of the said Debt and of the Interest Monies which should accrue thereon a new Consolidated Bond of His Highness the Nabob of the Carnatic And your Petitioners Shew that the Complainant did further represent that the said George Savage in pursuance and Confirmation of his said Agreement did enter into one Bond or writing Obligatory bearing Date the fifth Day of April which was in the Year of our Lord one Thousand Seven hundred and eighty Seven by which Bond the said George Savage by the Name and Discription of George Savage of Fort St George Esquire did acknowledge himself to be bound and did bind himself his Heirs Executors and Administrators unto the Complainant by the Name and Discription of Emm Beaumont late Emm Collings the Widow and Administratrix of the late Major William

Collings deceased in the Sum of Six Thousand three hundred and sixty three Pagodas nine Fanams and forty Cash with Condition thereunder written to be void upon Payment of the Sum of Three Thousand one hundred and Eighty one Pagodas twenty five Fanams and Sixty Cash unto the Complainant as Administratrix as aforesaid his Heirs Executors Administrators or Assigns with Interest for the same at the Rate of Twelve per Cent per Annum within twelve Months from the day of the Date thereof or else the said Bond or Obligation was to be and remain in full Force and Virtue as by a Copy whereof is stated to be annexed to the Complainants said Bill of Complaint marked with the Letter B and is prayed to be taken as Part thereof might appear And the Complainant did further state that the said George Savage in further Performance of the said Agreement did by a Certain Deed Poll or Assignment charged to have been duly executed and bearing date on or about the Eleventh Day of April which was in the Year of our Lord one thousand Seven hundred and eighty seven, Reciting that the said George Savage stood justly and truly indebted unto the Complainant by the Name and Description

of

of Mrs Ennn Beaumont of Bombay as the Administratrice to the Estate and Effects of her then late Husband Major William Collings in the said Principal Sum of Two Thousand six hundred and ninety two Pagodas seven fanams and Seventy four Cash in the said herein before recited Original Bond of the thirty first Day of May in the said Year one Thousand seven hundred and Seventy seven And further Reciting that the said George Savage was also indebted to the Complainant by the name and Description aforesaid in the further Sum of Three Thousand One hundred and eighty one Pagodas twenty five Fanams and sixty Cash secured by the said second Bond of the said George Savage bearing Date the fifth Day of April One thousand Seven hundred and eighty seven aforesaid And that for securing the Payment thereof the said George Savage had agreed with the Complainant by the Means of her Attorney the said William Collins Jackson to make over and deposite a new Consolidated Bond No. 52 of his Highness the Nabob of the Carnatic for the principal Sum of fourteen Thousand one hundred and thirty nine Pagodas declared due

due on the said New Consolidated Bond of the twenty fourth Day of November which was in the Year of our Lord One thousand seven hundred and eighty six, it is by the said in part recited Deed Poller Assignment witnessed that the said George Savage in Consideration of the Premises and of the Sum of five Pagodas to him paid by the said William Collins Jackson as Attorney aforementioned the Receipt whereof was thereby acknowledged Did thereby grant bargain sell assign and make over unto the Complainant as Administratrix as aforesaid her certain Attorney Heirs Executors Administrators or Assigns the said recited new Consolidated Bond of his said Highness the Nabob No. 52 together with the principal Sum due thereon, and also all such Interest that was then due or to grow due thereon To Hold to the Complainant her Heirs Executors Administrators or Assigns Subject nevertheless to the Redemption of the said George Savage his Heirs Executors and Administrator by Payment of the Principal and Interest due on the said two Bonds as by the said

Deed

Deed Poller Assignment under the Hand and Seal of
the said George Savage and ready to be produced
and proved to the said Mayors Court at Madras
=patnam Relation being thereunto had might as
therein stated more at large appear, and your
Petitioner sheweth that the Complainant states
that she had further further Information of the
said Court thereunto Annexed a true and faithful
Copy of the said New Consolidated Bond marked
with the Letter C and of certain Certificates indorsed
thereon, which the Complainant prayed might
be taken as part of that her Bill of Complaint
as by the Originals thereof in the Possession of the
Complainants said Attorney ready to be produced
and proved to the said Mayors Court Relation being
thereunto had would more fully and at large
appear. The Complainant further shewed unto
the said Mayors Court that the said George
being indebted to the Complainant in manner
aforesaid and being possessed of a considerable real
and personal Estate more than sufficient to satisfy
all

all his just Debts departed this Life on or about the tenth
Day of August which was in the Year of our Lord one
Thousand seven hundred and eighty nine without paying
off the said Principal Monies or any Part thereof having
first duly made and published his last Will and
Testament in Writing bearing Date on or about the
thirteenth Day of January which was in the Year of our
Lord one Thousand seven hundred and eighty six
and that the said Testator did nominate and appoint
Your Petitioners Executers and the Complainant did
further shew unto the said Mayors Court that the
said George Savage departed this Life without
altering or revoking the said Will and upon his Death
Your Petitioners proved the said Will in the said
Mayors Court and took upon themselves the Burthen
and Execution thereof and by Virtue thereof possessed
themselves of all the personal Estate of the said
George Savage to a very Considerable Amount And
the Complainant further shewed unto the said
Mayors Court that the Complainant had frequently
by her Attorney the said William Collins Jackson

Since

Since the Death of the said George Savage applied to your Petitioners for Payment of the Complainants said just Demands and more particularly the Complainant by her said Attorney the said William Collins Jackson did on or about the twentieth Day of September then last apply by Letter to your Petitioner for Payment of the Principal Monies and Interest so owing to the Complainant which then amounted to the Sum of Five Thousand six hundred and twenty five Pagodas twenty nine Fanams and fifty four Cash or thereabouts to which Letter of the Complainants said Attorney your Petitioners being thereunto pressed replied on the fourth Day of November following but avoided giving the Complainants said Attorney a definitive Answer as to the Payments of the said Principal Monies and Interest until as they alledged the Accounts of the said George Savage Should be arranged and therein intimated that as the Complainant had a Collateral Security for the Payment of her Demand the Complainant had therefore no Cause

to

to murmur on Account of her said Demands being with held whereas the Complainant Charged that she was extreemly aggrieved by Reason of the Amount of the said Bonds not being paid the Complainant being in very straitened Circumstances — the Complainant further shewed that there was then due and owing to her by Your Petitioners as Executors of the said George Savage for Principal Monies and Interest on the Foot of the said two Bonds after all equitable and just Allowances the Principal Sum of Five Thousand six hundred and thirty three Pagodas twelve Fanams and seventeen Cash Current Money of Madras making in Sterling Money of Great Britain at the Rate of Eight Shillings for every Pagoda the Sum of Two thousand two hundred and fifty three Pounds six Shillings and two Pence or thereabouts as by a true and faithful Accounts Current to the Complainants Bill of Complaint annexed and marked with the Letter D and which she prayed might be taken as part thereof would more fully appear in which Account Current the Complainants said Attorney had given

Your

your Petitioners Credit for all such Sums as had been from time to time received and paid on account of the Complainants said Demands and the Complt= =nant did further shew that she had frequently by her said Attorney the said William Collins = Jackson applied to your Petitioners in an amica= =ble manner to pay off the said Principal Monies and Interest so due and owing to the Complainant on the said Bonds or to consent that the said Bond= =dated Bond of His Highness the Nabob of the Carnatic should be sold at the Discount of the Day and the Money arising from such sale applied to the Discharge of the Principal Monies and Interest so due and owing to the Complai= =nant in manner aforesaid and the Complainant did pray that a Decree might be granted accor= =dingly with Costs of Suit

To which said Bill of Complaint your Petitioners did on or about the twentieth day of April in the said Year of Our Lord one thous= =and seven hundred and Ninety file their Answer wherein

Wherein they said that the said George Savage for ought your Petitioners knew to the Contrary might have borrowed and taken up at Interest the said Sum of two Thousand six hundred and ninety two Pagodas Seven Fanams and Seventy four Cash and for securing the Payment thereof might have executed such Bond as is set forth in the Bill of Complaint and it might be true that the Complainant might have taken out Letters of Administration of all and = singular the Goods Chattels Rights Credits and Per= =sonal Estate of the said Major William Collins and the Complainant by her said Attorney might have caused such Applications to be made to the said George Savage for Payment of the said Bond as are set forth in the Bill of Complaint and the said George Savage might have written such Letter to the Complainants Attorney at Law as was therein stated and the said George Savage might have Executed such second Bond for Payment of Star Pagodas three Thousand One hundred and Eighty One Twenty five Fanams and Sixty Cash and might have

have assigned over such Collateral Security for Payment of the said Bond as was setforth in the Bill of Complaint and your Petitioners admitted that the said George Savage did depart this Life possessed of and entitled unto a Considerable Personal Estate and Certain Effects and that the said Bonds might have been unpaid at the time of his Death and your Petitioners admitted that the said George Savage previous to his Death did make such Will as is setforth in the said Bill of Complaint and died as your Petitioners believe without revoking the same and that your Petitioners duly proved the same and Obtained Probate thereof under the Seal of the said Mayors' Court and did afterwards take Possession of all such Papers Goods Chattels Estates Securities and Effects as they could come at and your Petitioners admitted that the Complainant by her Attorney did apply to them for payment of her Demand and did write such Letter to your Petitioners and receive such Amount from them as are stated in the Bill of Complaint— Your Petitioners also admitted that they had Received Assets sufficient to pay off the Complainants Demand but that they would not be warranted in giving any preference to the Complainant to the Prejudice of several other Bond Creditors of the said George Savage especially as one of them to wit Tremanum Arnachellum & Moodelly had obtained a Decree against your Petitioners as Executors of the said George Savage for the Sum of Eighteen Thousand Six hundred and Ten Star Pagodas and thirteen Fanams Current Money of Madras and Interest therein from which Decree your Petitioners have been obliged to Appeal from the same Principales of equal and impartial Justice which Obliged your Petitioners to resist the application of the Complainant for Payment of her Claim Your Petitioners further Stated that for the same reason they could not Consent to the Sale of the said New Consolidated Bond which the Complainant by her said Attorney held as Security for her said Demand and they humbly submitted that as the

Complainant

Complainant had such Security for her Claim it was unjust to harrass your Petitioners and to subject the Estate of the said George Savage to Litigation and Expense especially as the Time for Rendering an Account of their Executorship to the said Mayors Court was not then expired and your Petitioners said that they would shortly file a true and perfect Inventory of all the Estate and Effects Rights and Credits of the said George Savage which had come to their Knowledge Possession or Power and that at or before the Expiration of the Twelve Months from their Undertaking their said Executorship they would give in an Account thereof to the said Mayors Court for the Inspection and Satisfaction of the Complainant as well as the other Creditors of the said George Savage and they humbly hoped that as the Complainants Attorney had been Apprised of the involved Situation of the Affairs of the said George Savage the said Mayors' Court would not subject the Estate of the said Geore Savage to the Expences of this

Suit

Suit and that they would give your Petitioners as Executors of the said George Savage such further and other Relief as to the said Mayors Court might seem Meet To which said Answer the said Complainant did by her said Attorney the said William Collings Jackson on or about the Twenty Seventh day of April now last past file a Replication wherein She said that it was true that your Petitioners Testator the said George Savage did in his Life time execute the Bonds mentioned in the Complainants Bill of Complaint and that the Monies secured by the said Bonds together with a considerable Arrear of Interest thereon was still due and owing to the Complainant by your Petitioners as Executors of the said George Savage And the Complainant by her said Attorney the said William Collins Jackson did further say that she did obtain such Letters of Adminis-tration of all and singular the Goods and Chattels Rights and Credits of the said Major

William

William Collins Deceased as in the Complainants Bill was particularly mentioned and that the said George Savage did write such Letters to the Complainants said Attorney the said William Collins Jackson as in the Complainants Bill of Complaint was particularly mentioned and the Complainant for further Replication to your Petitioners Answer due by her said Attorney the said William Collins Jackson States that your Petitioners or some or one of them had received Assets of the said George Savage much more than sufficient to pay off the Complainants Demands after satisfying the Judgment in your Petitioners Answer mentioned if any such Judgment there was and particularly the Complainant said that your Petitioners or some or one of them had since the Death of the said George Savage received from the United Company of Merchants of England trading to the East Indies the sum of Thirty Five Thousand Pagodas or thereabouts being part of the Estate and Effects of the said George Savage besides various other Sums of Money which your Petitioners

or

Or some or one of them have received as Executors of the said George Savage on Account of the Estate of the said George Savage and the Complainant for further Replication to your Petitioners Answer by her said Attorney the said William Collins Jackson said that your Petitioners would be well warranted in paying the Complainant her said Demands in Preference to any other Bond Creditors of the said George Savage who had not put his or her Bond in Suit Against your Petitioners as Executors of the said George Savage inasmuch as the Complainant had Commenced and was prosecuting her Suit in the said Mayors Court Against your Petitioners as Executors of the said George Savage for Recovery of her said Demands and had thereby as the Pretended against a legal Precedency to any Bond Creditor of the said George Savage who had suffered his or her Bond to remain dormant if any such Bond Creditor there was and the Complainant for further Replication to the said Answer of your Petitioners said that if your

Petitioners

Petitioners had either paid the Complainant the remainder of her said Demands or if they had Contented to Sale of the New Consolidated Bond of his Highness the Nabob of the Carnatic in the Bill mentioned which the Complainant admitted She held as a Collateral Security, the Complainant would not have been driven to the unavoidable Necessity of Coming into the said Mayors Court to enforce the Payment of her said Demands and the Complainant pretended that your Petitioners were to blame for the Expenses which might accrue by the present Suit when as your Petitioners declare to be true they Know not how they could with Safety to themselves or Justice to the Estate or other Creditors of the deceased have acted otherwise than they have done And your Petitioners Shew that the Complainant set forth other frivolous Charges against your Petitioners because they had refused to pay the Complainant all which will appear by their Replication To which said Replication your Petitioners did on or about the Eleventh day of May now last past file a Rejoinder in which they said that

that altho they might have received all the several Sums charged in the Replication nevertheless a principal Part thereof to wit the Sum charged to have been received from the Government of Fort Saint George was on Account of the public Employ of the said George Lavage as Military Storekeeper and was therefore subject to the Discharge of the Expenses or Debts incurred in Carrying it on and only by the Neat Sum or Profit or Balance thereof was to go to the Credit of the General Fund or Assets of his Estate for the Benefit of his Creditors which Balance it would have been unjust to have applied to the Payment in full of any individual Creditor while others of the same degree were unpaid for it was well known that such Balance as well as the other Sums so charged by the Complainant as having been received by your Petitioners or some of them on Account of the Estate of their Testator bore but a very small Proportion to the Amount of the several Claims by Bond on the said Estate and while your Petitioners were in

Knowledge

Knowledge of those Claims they were as fully bound in Law and in Conscience to act on Principles of equal Justice to such Creditors as if such Claims had been put in Suit and Your Petitioners stated that for the same Reason they could not Consent to the Complainants selling the said Mortgaged Property especially at this eventful Period when their Value was less than in Times of Peace and the Estate must in Consequence be proportionally injured Your Petitioners lastly Stated that their Intention being to act to the best of their Understanding for the Good of the Estate of the Deceased they had every Confidence in the Approbation of the said Mayors' Court in the Premises especially when by the Inventory and Account which they meant in due Time to exhibit before the Kings Ordinary in the said Mayors' Court it would be seen that their Reasons for acting as they had done were founded in equal and impartial Justice to all the Claimants in equal Decree of the Deceased

Your

Your Petitioners further shew unto this Hon^ble Court that upon the above Proceedings Issue was joined and Witnesses were examined on the part of the Complainant and Publication passed and the Cause was set down for Hearing and the same came on to be heard by and before the said Mayors' Court on Tuesday the Seventeenth day of this Instant August when the said Mayors Court were pleased to Order and Decree and did accordingly Order and Decree that your Petitioners should pay unto the Complainant out of the Estate and Effects of George Savage Deceased the full and just Sum of Five Thousand Six hundred and Thirty three Pagodas Twenty Fanams and^c Seventeen Cash together with all such Interest as then was or should thereafter become due thereon until full Payment was made and in default of Payment of the Amount Decreed that the mortgaged Premises should be sold in Satisfaction thereof and that your Petitioners should Pay all Costs of the Suit

From

From which said Decree of the said Mayors' Court Your Petitioners Appeal to this Hon^ble Court of Appeals as they conceive the same to be erroneous and that they are much aggrieved thereby for the following among other Reasons.—

First ..... Because a Decree to pay the Complainant the full Amount of her Demand while the ultimate Situation of the Estate is uncertain would be an injustice to the other Creditors of Equal Degree who might thereby be deprived of that Equal distribution to which in Equity and Conscience they are entitled—

Secondly ..... Because the Order to sell the Mortgaged Premises is contrary to Law, those Premises being Bonds or written Obligations for payments of Certain Sums of Money and it is laid down in the Law Books that Nothing can be taken in Execution that cannot be Sold as Deeds, Writings &c— Bank Notes &c Cannot be taken in execution, as they remain in some measure Choses in Action"

For all which Reasons and such others as may be offered at the Hearing your Petitioners pray that the said Decree of the Mayors Court may be reversed So far as Relates to the Payment of the Complainants Demand without Regard to the other Creditors of Equal Degree and also as far relates to the Sale of Mortgaged Premises And that Your Hon^ble Court may be pleased to Decree that as the said Complainant is in Prospection of Sufficient Security She be Decreed to pay the Costs of this Suit

/Signed/ Stephen Popham
Solicitor for Appellants

Mayor's Court

Mayors Court at Madraspatnam

Tuesday the 17th Day of August Anno Domini 1790

SL

Present

Vincintio Corbett Esq.re Mayor
Andrew Ross James Landon
& John Mitford Aldermen

Mayors Court

Between Emm Beaumont otherwise Collins formerly of Bombay in the East Indies but now of the City of London in the Kingdom of Great Britain Widow of her former Husband Major William Collins and Administratrix of all and every the Goods & Chattles rights and Credits of the said Major William Collins Deceased by her Attorney William Collins Jackson of Madras Esquire Complainants and James Taylor George Maubray Isaias Dupre Porcher & Thomas Cockburn of Fort St George Esq.res Executors Named in the Last Will and Testament of George Savage late of Fort St George Esquire Deceased Defendants

This Cause Coming on to be Heard and Debated this