25,000—4-5-32.

Block 7

Rack No.

Shelf No.

Serial No. 21

General No. 1208

this Day in the Presence of the Attorneys on both Sides on Reading the Complainants Bill With Copies of Bonds and an Account Current annexed. The Defendants Answer. The Replication The Rejoinder. The Interroga Depositions on the part of the Complainants Exhibits Marked - ABC & D annexed ing the Pleadings Made Use of by the and on due Consideration had thereon it doth Think fit to Order and Decree and doth Accordingly Order and Decree that the Defendants Shall 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 twelve fanams and Seventeen Cash / Pagodas 5633.. 12.. 17.. / to gether With all Such Interest as now is or shall hereafter become due thereon untill full Payment is Made and in default of Payment of the Amount Decreed that the Mortgaged Premises be Sold in satisfac- tion there of and ites further Ordered and Decreed that the Defendants do pay all Costs of this Suit

By Cur

/Sig.. George Taylor Regr

Jo

High Court Sent VI
Appeals against Supreme Court Decrees
Vol 7
Box No 1431
1825 /

P.C. No 14207
H.C. Vol. 18
24 to 53 1st Dec. 1791

To the Honourable Major General William Meadows
President in Council

In the Court of appeal } Fort Saint George
at Madraspatnam } 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 who was in his life in the Military Service of the Honourable the united Company of Merchants of England treading to the East Indies deceased, and administratrix of all and every the Goods and Chattles Rights and Credits which were the goods and Chattles Rights and Credits of the said Major William Collins at the time of his Death by her Attorney William Collins Jackson of Madras Esquire Complainant and James Taylor George Moubray Josias DuPre Porcher and Thomas Cockburn of Madras Esquires

Executors

Executors named in the last Will and Testament of George Savage late of Fort Saint George Esquire Deceased

Defendants.

Filed in my Office the 20th September 1790
Chas. V. White Clk.

The answer of the above named Complainants to the Petition and appeal of the above named Defendants—

This Respondent admits that she did by the attorney the said William Collins Jackson file her Bill of Complaint in the Honourable the Mayors Court at Madraspatnam Against the said 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 and that this Respondent did therein set forth that the said George Savage had 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 and that he did in Consequence thereof Apply to this Respondents former Husband the said Major then Captain William Collins to lend and Advance him the same which the said William Collins accordingly did and that to

secure

secure the Repayment thereof the said George Savage did enter into One Bond or Writing Obligatory bearing date the thirty 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 Discription of George Savage of Madras Merchant did acknowledge himself to be bound and did bind himself his heirs Executors and administrators unto the said Major then Captain William Collins then Commanding at Samulcotah in the sum of Five thousand three hundred and eighty four 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 Collins. his Heirs Executors. &c administrators or Asigns with Interest for the same at the rate of Twelve per Cent per Annum within three Months from the day of the date thereof or be the said Bond or obligation was to be and remain in

full

full Force and virtue. And this Respondent admits that there is a Copy of said Bond or writing Obligatory Marked with the Letter A annexed to this Respondents said Bell of Complaint this Respondent doth also admit that she did by her said Bill of Complaint further charge that the said William Collins so frequently in his life time Applied to the said George Savage to pay off and discharge the said debt with the Interest which was then due thereon but that the said George Savaage so frequently evaded the payment thereof and that since the decease of the said William Collins 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 this Respondent obtained Letters of Administration from the Mayors Court of Bombay in the East Indies of all and Singular the Goods and Chattles Rights and Credits which were of the said William Collins at the time of his Decease and that he made no will or other Disposition of his Effects but died intestate and this Respondent Admits that she

referred

referred to a Paper writing which was a true and faithful Duplicate of the said Letters of Administration and Attested by the proper officer of the said Court and under the Seal thereof and then in the Custody of this Respondents Attorney at Law and ready to be produced and proved to the said Mayors Court at Madras patnam and this Respondent Admits that she did by her said Bill of Complaint set forth as the truth was and is that no other Administration had been Committed of the Goods and Chattles Rights and Credits of the said William Collins and that this Respondent since the death of the said William Collins had entermarried with John Beaumont of Bombay Esquire who is since deceased and that he departed this Life on or about the day of which was in the year of our Lord one thousand seven hundred and eighty Eight And this Respondent also Admits that she did in and by her said Bill of Complaint also

Also charge that the Complainant after the death of her said former Husband the said William Collins as his Administratrix by her Attorney the said William Collins Jackson cause repeated Applications to be made to the said George Savage for Payment of the Principal monies and Interest due upon the said receited Bond but that the said George Savage from various pretences and excuses not only post poned from time to time the payment of the Principal Monies so due and owing on the said Bond but also the Interest Monies arising there=on and that this Respondent being at Length wearied with the Continual promises and dis=appointments of the said George Savage and being in narrow and distressed circumstances and thereby unable to give the said George Savage any further Indulgence this Respondent did by her Attorney the said William Collins Jackson call upon the said George Savage in a peremptory manner to pay off the full amount of the said Principal and Interest Monies and that there=upon

thereupon the said George Savage as he had theretofore done alledged his Inability of discharging the same and that in consequence thereof this Respondent about the twelfth day of December which was in the Year of our Lord one thousand seven hundred and eighty five 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 this Respondents Possession some Collateral Security sufficient to discharge the same and that in Answer to such Application the said George Savage on or about the said twelfth day of December wrote such letter addressed to the said Charles Bromley as in this Respondents said Bill of Complaint stated as in the said Petitioners said Petition of Appeal is particularly set forth and mentioned and to which this Respondent humbly craves leave to Refer. And this Respondent Admits that in Consequence of such letter this Respondent 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 untill about the fourth Day of April which was in the Year of Our Lord One thousand Seven hundred and eighty seven And that this Respondent being then as she still is in distressed Circumstances she did again by her said Attorney renew her former solicitations to the said George Savage for payment of the said Debt and that he as he had theretofore done alledged his Inability to pay the same and that this Respondent finding that the promises of the said George Savage were not to be Relied on and fearing that the loss of the said Principal monies and Interest would be the ultimate result of this Respondents lenity towards the said George Savage as also from the heavy losses which this Respondent had sustained by means of the

defaults

default of the said George Savage in not even paying the interest due upon the said principal Sum this Respondent found it in Compatible either injustice to herself or with her duty as administratrice to the Estate of the said William Collins longer to risk the said Monies by granting the said George Savage any further Indulgence And therefore she desired that he either would pay the Amount of the said debt or Counter Secure the same as the only Terms of Forbearance on the part of this Res= =pondent and that in Consequence thereof 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 this Respondent his Bond for the Amount of the Interest Monies which were then due to this Respondent on the foot of the said his Original Bond of the thirty first day of May which was in the said year of our Lord One thousand Seven hundred and Seventy Seven then Amounting to the Sum of Star Pagodas Three thousand One hundred

And

And Eighty One Twenty five fanams and Sixty Cash And that the said George Savage should also Assign unto this Respondent 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 this Respondent also Admits that she did in And by her said Bill of Complaint further Charge that the said George Savage in pursuance and Confirmation of his said Agree= =ments did enter into One Bond or writing Obliga= =tory 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 Saint George Esquire did Acknowledge himself to be bound and did bind himself his heirs Executors and Administrators unto this Respondent by the name and Discription of Emm Beaumounts late Emm Collins the widow and Administratrix of the late Major William Collins

Collins deceased in the Sum of Six thousand three hundred and Sixty three Pagodas Nine fanams and forty Cash with Condition there under 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 this Respondent as Administratrixe as aforesaid her 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 And this Respondent Admits that a Copy of the said Bond is Annexed to this Respondents said Bill of Complaint marked with the letter B and is prayed to be taken as part thereof And this Respondent also Admits that she did further state that the said George Savage in further performance of the said Agreement did by a certain deed Poll or assignment duly executed and bearing date on or about the Eleventh day

of

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 this Respondent by the name and Description of Mrs Emm Beaumont as the Administratrixe to the Estate and Effects of her then late Husband Major William Collins in the said Principal Sum of Two Thousand six hundred and Ninety two Pagodas seven fanams and seventy four Cash on 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 this Respondent Admits that the said Deed did further recite that the said George Savage was also indebted to this Respondent 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

Seven hundred and Eighty seven aforesaid and that for securing the Payment thereof the said George Savage had agreed with this Respondent by the means of her Attorney the said William Collins Jackson to make over and deposite a new Consolidated Bond N° 52 of his Highness the Nabob of the Carnatic for the principal Sum of Fourteen Thousand one hundred and thirty nine Pagodas declared 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 And that it is by the said recited Deed Poll or 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 this Respondent as Administratrix as aforesaid her certain attorney Heirs Executors administrators or assigns the said

recited

recited new Consolidated Bond of his said Highness the Nabob N° 52 together with the principal sum due thereon and also all such Interest as was then due or to grow due thereon To Hold to this Respondent her heirs Executors administrators or assigns Subject Nevertheless to the Redemption of the said George Savage his heirs Executors and administrators by Payment of the Principal and Interest due on the said two Bonds and that the same would Appear by the said Deed Poll or assignment under the hand and seal of the said George Savage and which was produced and proved in the said Mayors Court at Madras patnam and this Respondent admits that the said Annex to her said bill of Complaint a true and faithful Copy of the said new Consolidated Bond marked with the Letter C and of certain certificates indorsed thereon which this Respondent prayed might be taken as part of her said Bill of Complaint and that the Originals thereof were in the possession of this Respondents said Attorney ready to be

To be produced and proved to the said Mayors Court And this Respondent also Admits that she did by her said Bill of Complaint further Charge that the said George Savage being indebted to this Respondent in manner Aforesaid and being possessed of a Considerable real and personal Estate more than sufficient to satisfy 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 Princi= =pal Monies or any part thereof And that he first duly made and published his last Will and Testament in Writing bearing date on or about the thirtieth day of January which was in the Year of our Lord One Thousand seven hundred And eighty nine And that the said Testator did Nominate and Appoint the said Petitioners Executors and that the said George Savage departed this Life without Altering or Revoking the said will and that upon his Death the said

said 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 Considera= =ble Amount And this Respondent Admits that she has frequently by her Attorney the said William Collins Jackson since the Death of the said George Savage but to no effect Applied to the Petitioners for Payment of her said just demands And that more particularly this Respondent by her said Attorney the said William Collins Jackson did on or About the twentieth day of September then last Apply by letter to the Petitioners for Pay= =ment of the Principal Monies And Interest So owing to this Respondent Which then Amounted to the Sum of Five Thousand Six hundred and twenty five Pagodas, twenty nine Fanams And fifty four Cash or thereabouts And that to the said letter of this Respondents said Attorney the Petitioners being thereunto Prompted replied on the fourteenth

Day

Day of November following but avoided giving this
Respondents said Attorney a definitive Answer as to
the payment of the said Principal Monies and
Interest untill as they alledged the Accounts of the
said George Savage should be arranged and that they
therein intimated that as this Respondent had a
Collateral security for the payment of her Demand
this Respondent had therefore no Cause to murmur
on account of her said demands being with held
And that this Respondent by her said Bill of
Complaint Charged as the fact is that she was
and is extremely Aggrieved by reason of the
Amount of the said Bonds not being paid
this Respondent then being in very straitened
Circumstances and deprived in great measure
of the means of providing the Common neces-
saries of life by reason of the said Petitioners with
holding from this Respondent the payment
of the Monies so due to her by the said George
Savage And this Respondent Admits that
there was then due and owing to her by the
Petitioners

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 allow-
ances 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
And that the same would fully appear by a true
and faithful Account Current to this Respondents
said Bill of Complaint Annexed and marked
with the letter D and which she prayed might
be taken as part thereof and that in the said
Account Current this Respondents said Attorney
had given the Petitioners Credit for all such
sums as had been from time to time received
and paid on Accounts of this Respondents said
demands and this Respondent Admits that
she did by her said Bill of Complaint further

Charge

Charge that she had frequently by her said Attorney the said William Collins Jackson Applied to the &c Petitioners in an Amicable manner either to pay off the said Principal Monies and Interest so due &c and owing to this Respondent on the said Bonds or to Consent that the said Consolidated Bond of His Highness the Nabob of the Cornatic 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 this Respondent And this Respondent Saith that she did in and by her said Bill of &c Complaint also charge but which the said Petitioners have artfully omitted to state in their said Petition and &c Appeal that the said Petitioners pretended that &c the said George Savage died possessed of little or no personal Estate except a Sum of about Thirty five thousand Pagodas which they said was due and owing to the said George Savage by the United Company of Merchants of England trading to the East &c Indies and that untill they should receive the &c Same they were incapable of paying this Respondent her said respective demands or any part thereof Whereas the said Petitioners well knew as the truth is that they had received other Assets from the Estate of the said George Savage and more then sufficient to pay the whole of this Respondents said demands and that the said Petitioners insisted upon &c Carrying the same into Account for the general good of the Creditors of the said George Savage &c without regard to this Respondents said demand and without giving a precedency to the particular Claim of any Individual Whereas the said Petitioners well knew that this Respondent as a Bond Credi-tor was and is intitled to be paid her said Claims in preference to the Simple Contract Creditors of the said George Savage and that the said petitioners refused to Consent to a sale of the said Consolidated Bond of his highness the Nabob of the Cornatick so Assigned to this Respondent by the said George Savage as a Collateral Security alledging that they as Executors were not Warranted to join in

Such

Such Sale until this Respondent should have previ=
=ously Obtained the Decree of the said Mayors Court
for that purpose tho they well knew that the
said Bond might Considerably decrease in its
value by delaying the sale thereof and that at other
times the said Executors and particularly the
said Thomas Cockburn gave out with a view
to deter this Respondent from seeking redress
in the said Mayors Court That not only himself
but the said other Petitioners herein before named
would in case this Respondent should proceed to
enforce a Sale of the said Bond give this Respondent
every possible delay and protract as far as in his and
their power the progress of any Suit which this
Respondent should institute in the said Mayors
Court for that purpose And this Respondent by
her said Attorney saith that she did in and by her
said Bill of Complaint pray that the said Petitioners
might Admit assets in their hands sufficient to pay
this Respondent her said demands or that they
might set forth a full true just and particular
Account

Account of the said George Savages personal Estate with the
Natures, quantities, qualities, and true and full values
thereof, and what part thereof had come to their or any
or either of their custody or power, or to the hands Custody
or power of any other person or persons in trust for them,
or any or either of them or to their or any or either of their use
to their or any or either of their knowledge and belief
privity Consent or procurement and how the same
has been applied and disposed of and that the said
Petitioners or some or one of them might pay and
satisfy this Respondents said demands and that
in the mean time the monies in the hands of the
said Petitioners or so much thereof as should be suffi=
=cient to pay and satisfy this Respondents said respec=
=tive demands with Costs of this Suit might be stayed
in the hands of the said Petitioners and that in case the
said Petitioners should not pay and satisfy this
Respondents her said respective demands that then
the said now Consolidated Bond of his Highness the
Nabob of the Carnatick which this Respondent said
by her said Bill of Complaint offer to deliver up to
the

the said Petitioners on being paid her said demand might be sold under the Decree of the said Mayors Court and that the monies arising from such sale might be Applied in and towards the discharge and Satisfaction of this Respondents said respective demands and of the growing Interest thereof and of such Costs and expences as this Respondent should sustain and be put to in the expence of this Suit, and that in case the said new Consolidated Bond should be sold under the decree of the said Mayors Court that then the said Petitioners should join in Executing a good and Sufficient Assignment thereof to such person as should purchase the same and that this Respondent might have such other and further relief in the premises as to the said Mayors' Court should seem Meet and as the nature of her case should require And this Respondent by her said Attorney admits that the said Petitioners did on or about the twentieth day of April in the present year of our Lord One thousand Seven hundred and ninety file their Answer to this

Respondents

Respondents said Bill of Complaint and that they therein set forth that the said George Savage for aught the Petitioners knew to the Contrary Might have borrowed and taken up at Interest the said Sum of Two thousand Six hundred and ninety five Pagodas seven fanams and Seventy four Cash and that he for securing the Payment thereof might have executed such Bond as is set forth in this Respondents Bill of Complaint and that it might be true that this Respondent had taken out Letters of Administration of all and Singular the Goods Chattles Rights Credits and Personal Estate of the said Major William Collins and that this Respondent by her said Attorney might have caused such Application to be made to the said George Savage for Payment of the said Bond as are set forth in this Respondents said Bill of Complaint and that the said George Savage might have written such letter to this Respon=dents Attorney at Law as was therein stated and that the said George Savage might have executed such second Bond for Payment of Star Pagodas Three

Thousand

Thousand One hundred and Eighty one Twenty five
fanams and Sixty Cash and might have assigned
over such Collateral Security for payment of the
said Bond as was set forth in this Respondents
said Bill of Complaint and that the Petitioners
admitted that the said George Savage departed
this Life posed 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 that the Petitioners by their
said Answer Admitted that the said George Savage
previous to his Death made such Will as is set forth in
this Respondents said Bill of Complaint and that he
died as the Petitioners believed without revoking the
the same and that the 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 chattles Estates
securities And Effects as they could come at and that
the Petitioners by their said Answer Admitted that
this Respondent by her said Attorney did apply to
them

them for payment of her demand and that he wrote a
such Letter to the said Petitioners and received such a
Answer from them as are stated in this Respondents
Bill of Complaint, and this Respondent also admits
that the said Petitioners by their said Answer admitted
that they have received Assets sufficient to pay off this
Respondents demand but that they would not be
Warranted in giving any preference to this Respondent
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 them the said Petitioners as Executors
of the said George Savage for the Sum of Eighteen
Thousand Sixe hundred and Ten Star Pagodas and
thirteen fanams Current Money of Madras and
Interest thereon And that the said Petitioners had
been obliged to Appeal from the said Decree from
the same principals of equal and impartial Justice
which as they alledged obliged them to resist the
Application of this Respondent for payment of her
claim And this Respondent admits that the Petitio
oners by their said Answer further stated that for

the

The same reason they could not Consent to the sale of the said new Consolidated Bond which this Respon=dent by her said Attorney held as security for her said demand and that they humbly submitted that as this Respondent had such security for the Claim it was unjust as the said Petitioners pretended, to harrass them and to subject the Estate of the said George Savage to litigation and Expence especially as the time for rendering an account of their Executorship to the said Mayors Court was not then expired and that the said 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 Posession or Power and that at or before the Expi=ration of 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 this Respondent as well as the other Creditors of the said George

Savage

Savage and that they humbly hoped that as this Respondents Attorney had been Appriased of the involved situation of the affairs of the said George Savage the said Mayors Court would not subject the Estate of the said George Savage to the Expense of the said Suit, and that they would give the Petiti=oners as Executors of the said George Savage such further and other relief as to the said Mayors Court might seem meet And this Respondent by her said Attorney admits that this Respondent did by her said Attorney the said William Collins Es= Jackson on or about the twenty Seventh day of April now last past file a Replication to the said Petitioners said Answer And that this Respondent said thereby insist that the Petitioners Testator the said George Savage did in his life time execute the Bonds mentioned in this Respondents 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 this Respondent by the Petitioners as Executors of the said George Savage and this Respondent Admits

that

That she did by her said Replication also alledge that she obtained such Letters of Administration of all and singular the Goods and Chattles Rights and Credits of the said Mayor[illegible] William Collins deceased as in this Respondents Bill of Complaint was particularly mentioned and that the said George Savage did write such Letters to this Respondents said attorney the said William Collins Jackson as in this Respondents said Bill of Complaint were particularly mentioned and this Respondent Admits that she did for further Replication to the Petitioners said Answer by her said attorney the said William Collins Jackson state as the truth is that the Petitioners or some or one of them had received Assets of the said George Savage much more then sufficient to pay off this Respondents demands after satisfying the judgement in the Petitioners said Answer mentioned if any such judgments there was and this Respondent Admits that she did in and by her said Replication particularly state and aver that the said 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 and that the said monies was part of the Estate and Effects of the said George Savage besides various other sums of Money which the Petitioners or some or one of them had received as executors of the said George Savage on account of the Estate of the said George Savage and this Respondent Admits that she did for further Replication to the Petitioners said Answer by her said attorney the said William Collins Jackson Apert that the Petitioners would be well warranted in preferring this Respondent her said demands in preference to any other Bond Creditor of the said George Savage who had not put his or her Bond in suit against the said Petitioners if any such Bond Creditor there was And this Respondent saith that she did also by her said Replication allege which the said Petitioners have cunningly omitted to set forth in their said Petition of Appeal that it was and is the duty of the said Petitioners And that they are bound in Law to pay this Respondent her said demands in preference to any Bond Creditor of the said George Savage who has not put his or her Bond in Suit Against the said Petitioners as Executors of the

The said George Savage in as much as this Respondent had Commenced and was prosecuting her suit in the Mayors Court Against the said Petitioners as Executors of the said George Savage for recovery of her said demands and that this Respondent had thereby actually gained 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 this Respondent Admits that she did for further Replication to the said Answer of the said Petitioners say that if the Petitioners had either paid her the Amount of her said Demands or if they had Consented to a sale of the new Consolidated Bond of His Highness the Nabob of the Carnatic in the Bill mentioned which this Respon= =dent Admitted she held as a Collateral Security this Respondent would not have been driven to the unavoi= =dable necessity of Applying to the said Mayors Court to enforce the payment of her said Demands and this Respondent saith that she did not in and by her said Replication pretended but that she did absolutely insist as the truth is that if the said Defendants had

Either

Either paid this Respondent the Amount of her said demands or if they had Consented to a sale of the new Consolidated Bond of His Highness the Nabob of the Carnatick in the Bill mentioned which this Respon =dent holds as a Collateral Security she would not have been driven to the unavoidable necessity of inforcing the payment of her said demands by due Course of Law and that it was and is the said Defen =dants themselves who subject the Estate of the said George Savage to expense and ruin this Respondent either to pay this Respondent the amount of her said demands out of the Estate and Effects of the said George Savage or to Consent to a sale of the said new Consolidated Bond and this Respondent saith she did by her said Replication also insist that tho the time for rendering an Account to this Honourable Court in its Capacity of Kings Ordinary might not then have expired yet that the said Executors were liable to be sued immediately after the said George Savages death for the debts due and

Owing

owing to this Respondent by the said George Savage
and that the said Defendants were bound either to pay
off such debts or to render an Account of this Respondent
in the said Mayors Court in its Capacity of a Court of
Equity of such part of the said George Savages personal
Estate as had from time to time came to the hands
power or Custody of the said Petitioners or to the hands
power or Custody of any or either of them and to shew
how and in what manner they had Applied and
disposed thereof and that the said Defendants were
also out of the Monies which should appear by such
Account to be in their or any or either of their hands
power or Custody bound to pay off and discharge
this Respondents said Demands in such manner as
the Law directs And this Respondent by her said
Attorney doth admit that the said Petitioners did
on or about the Eighteenth day of May now last
past file a Rejoinder to this Respondents said
Replication and they said therein set forth that
altho they had received all the several sums charged
in this Respondents said Replication that nevertheless

A principal



A principal part thereof being 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 Savage
as Military Storekeeper and was therefore subject to the Discharge
of the Expenses or debts incurred in carrying it on and
only 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, as the said Petitioners
pretended and that it would have been unjust to
have Applied such balance to the Payment in full of
any individual Creditor while others of the same
degree were unpaid for that it was well known that
such balance as well as the other sums so charged by
this Respondent as having been received by the
Petitioners or some of them on Accounts of the Estate
of their Testator bore but a very small proportion
tion to the Amount of the several Claims by Bond
on the said Estate and that whilst the said
Petitioners were in 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

As if such Claims had been put in Suit as the
Petitioners pretended And this Respondent admits
that the said Petitioners did by their said Rejoin
=der also state that for the same reason they could
not Consent to this Respondents selling the said
Mortgaged property And this Respondent
admits that the said Petitioners did also state
that their intention being to act to the best of
their understanding for the Good of the Estate of
the deceased as they alledged 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
And this Respondent by her said Attorney
also admits that Issue was joined upon the
aforesaid pleadings and that witnesses were
examined on the part of this Respondent and that

Publication

passed and that the said Cause was
set down for hearing and that the same on to be
heard by and before the said Mayors Court on
Tuesday the seventeenth day of August now last
past and that the said Mayors Court was then
pleased to Order and Decree and did according
=ly Order and Decree that the said Petitioners
should pay unto this Respondent out of the Estate
and Effects of the said George Savage deceased the
full and just sum of Five Thousand Six hundred
and thirty three Pagodas twenty fanams and
Seventeen Cash together with all such Interest
as then was or which should thereafter become due
thereon until full payment should be made and
that in default of Payment of the amount Decreed
within fourteen days from the date thereof the
Mortgaged premises should be sold towards
satisfaction of this Respondents demand and that
the said Petitioners should pay all Costs of the
said Suit.—

And this Respondent by her said
Attorney Inanswer to the first cause or reasons —

Apprized

Assigned by the said Appellants for preserving their said Petitioner and Appeal before this Honourable Court Saith That the said Decree of the Mayors Court as far from being erroneous is a most legal just and righteous Decree And this Respondent saith That the said Appellants having in and by their said Answer Admitted That the said George Savage died possessed of a Considerable personal Estate and effects and that they had possessed themselves thereof and that they the said Appellants had received Assets more than sufficient to pay off this Respondents demands And the said Appellants having afterwards in And by their said Rejoinder also Admitted that they had received as Executors of the said George Savage a Sum of Thirty Thousand Pagodas and they not having proved to the said Mayors Court how or in what manner or that they had at all Appropriated or Applied the said Effects and monies of the said George Savage to the discharge of his debts the said Decree was lawful and Equitable this Respondent saith That the said Appellants as Executors of the said George Savage are as they well know bound by Law to pay the debts of their said Testator and Effects will extend in a due Course of Administration and it is not in the power of the said Executors without Committing a devastavit to prefer the Creditors of the said George Savage in an inferiour Decree to this Respondent Who hath Obtained a Decree for the Amount of her demands And this Respondent saith That she has nothing to do with the ultimate Situation of the said Testators Estate for the said Appellants having Acknowledged the Receipt of Assets Considerably more than sufficient to pay off the Debt due to this Respondent their discharging the same so far from being an act of injustice to the other Creditors of the said George Savage would be a manifest advantage to them for this Respondent saith That the interest on this Respondents debt is accumulating which must evidently lessen the fund for the payment of the other Creditors Whilst the said Appellants from motives best known to themselves with

with hold the said Monies which should be duly appropre-
=ated to the discharge of their said Testators debts.

In Answer to the second Cause or reason
Assigned by the said appellants for prefering their
said Petition of Appeal This Respondent saith that
the Decree to sell the Mortgaged premises being the
Collateral security in this Respondents said Bill of
Complaint particularly mentioned is the Decree of a
Court of Equity which relaxes the rigaur of the
Common Law and this Respondent saith that whether
Deeds writings or notes with the $\mathfrak{Se}^{a}$ mentioned in
the Appellants said Petition of Appeal Can or Cannot
According to the Strict Rules of Law be taken in
execution is altogether impertinent and irrevalent to
the present case. And this Respondent saith that
in a Court of Equity a chose in Action may be and
frequently is Assigned; and transactions are daily
established in Equity which could not at Law and
decrees obtained and this Respondent saith that
the said Decree of the Mayors Court is Conformable
to the Rules Equity And to the decisions of the High
Court of Chancery of Great Britain

And

And this Respondent by her said Attorney
further saith that the said Decree of the Mayors Court
so obtained Against the said Appellants being in the
alternative either that they should pay off this Respon-
=dents said Demand or that the said Consolidated Bond
should be sold it was thereby at the Option of the said
Appellants to Redeem the said Bond which they
might have done had they been so inclined as they
Confessedly had Monies in their hands belonging to the
said Testator to a very large Amounts but this
Respondent saith that the said Appellants adhering
to their Systematical plan of that avowed provocati-
=nation of which the said letter written by the said
Thomas Cockburn is a most incontrovertible proof: have
in strict observance thereof and without a Shadow
of justice to warrant such a procedure appealed from
the said Decree of the Mayors Court to this Honour-
=rable Court thereby to run this Respondent thro
every possible stage of litigation and this Respondent
saith that the said Executors have by prolonging the
Payment of this Respondents demands reduced her
to the most indigent Circumstances and that she is

thereby

thereby as the Appellants will known deprived of the means of Providing the Common necessaries of Life and this Respondent saith that her being relieved from her present distressed situation depends solely upon a speedy Confirmation of the said Decree of the Honourable the Mayors Court.

For all which Causes and reasons and for such others as may be offered at the hearing of the Appellants said Petition of Appeal This Respondent Humbly prays that the said Decree of the Honourable the Mayors Court may stand and be affirmed and that the Petition of the said Appellants be hence dismissed with exemplary Costs to be paid to this Respondent by the said Appellants and that this Respondent May be further and otherwise relieved in the Premises as to this Honourable Court shall seem meet and as the nature Merits and Circumstances of this Respondents case shall require.

/Signed/ John White Sollicitor for the Respondent

Court

Court of Appeals at Madraspatnam } To Saturday the 24th day of December Anno Domini 1791

Between James Taylor, George Moubray, Josias Dupre Porcher, and Thomas Cockburn, of Fort St. George Esqrs Executors Named in the last will and Testament of George Savage late of Fort St. George Esqr Deceased Appellants and Emm Beaumont alias 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 Collin Jackson of Fort St. George Esqr 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 to gether

Gether with the Decree of the said Court given in this Cause on Tuesday the 17th 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 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.

P Cur.

/Signed/ Chas. N. White
Clk

To



# To the Kings most Excellent Majesty in Council

Between Emm Beaumont otherwise Collings formerly of Bombay in 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 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 and Credits of the said Major William Collings at the time of his death by her Attorney William Collins Jackson of Madras Esquire Complainant And James Taylor George Moubray Josias DuPre Porcher and Thomas Cockburn of Madras Esquires Executors Named in the last Will and Testament of George Savage late

late of Fort Saint George
Esquire Deceased,

Defendants

The Humble Petition and Appeal of the above named Defendants

Most Humbly Sheweth

That the said Complainant did by her said Attorney file a Bill of Complaint in the Mayors Court at Madras patnam against Your Petitioners as Executors of the said George Savage on the Sixth day of March which was in the Year of Our Lord One Thousand Seven hundred and Ninety wherein she Setforth 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 lend and 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

Filed in my Office the 6th January 1792
Chas. White
Clk

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 Merchants did Acknowledge himself to be bound and did bind himself his Heirs Executors and 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 Day of 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 Whereof Marked with the

Letter

Letter A is 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 Savage to pay off and
discharge the said Debt with the Interest which
was then due thereon but that the said George
Savage as 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 administra-
tion 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 Ad-
ministration Attested by the proper Officer of the
said Court and under the Seal thereof then in the

Custody

Custody of the Complainants Attorney at Law and ready
to be Produced and proved to the said Mayors Court
at Madras Patnam Relation being thereunto had
might more 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 Madras Patnam and the
Complainant Charged that no other Administra-
tion 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 eight and
the Complainant did further Shew that the
Complainant after the Death of her said former
Husband the said William Collings as his Admi-
nistratrix by her Attorney the said William

Collins

Collins Jackson Caused repeated Applications to be made to the said George Savage for Payments of the Principal Monies and Interest due upon the said Vecited Bond but that the said George Savage from various Pretences and Excuses not only prostponed from time to time the Payments of the Principal monies so due and owing on the said Bond but also the Interest Monies arising thereon and the Complainant being at length Wearied with the Continuual 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 Collings Jackson callid 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 Madrasspatnam and Since deceased either to pay off the said Debt, or to lodge in the Complainants Posession some Collateral Security Sufficient to discharge the same, in Answer to which Application the said George Savage on or about the said Twelfth day of December Wrote a Letter Addressed to the said Charles Bromley to the following Effect.

I had flattered Myself that Mr. Jacksons Representation of the Case to Mr. Beaumont in Consequence of my Letter to him of the Fourteenth March last would have induced her to favor me with the Patience therein requested as the Inability then pleaded still exists and as I have it not in 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 thereby Authorise him to do, that I have at present reason to think I shall be enabled in about Twelve Months

Months more / Imean if the Country remains in
Peace / to either pray 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 Complain
ant being much distressed she did again by her Attorney
renew her former Solicitations to the said George Savage
for Payment of his said Debt. but he as he had
heretofore done alledged his Inability to pay the same
and the Complainant finding that the said George
Savage could not fix any precise time to discharge his
said Obligation and Considering it as incompatible either
in Justice to herself or with her Duty as Administra
trix to the Estate of the said William Collings 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

Counter Secure the same as the only Terms 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 Seven When Amounting to the Sum of Current
Pagodas 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 Accure thereon a New
Consolidated Bond of his Highness the Nabob of the
Carnatic And Your Petitioner Sheweth that
the Complainant did further Represent that the
said George Savage in pursuance and Confirmation

of his

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 Description of George Savage of Fort Saint George Esquire did Acknowledge himself to be bound and did bind himself his Heirs Executors and Administrators unto the Complainant by the Name and Description of Emm Beaumont late Emm Collings the Widow and Administratrise of the late Major William Collings deceased in the Sum of Sixe 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 Administratrise 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 and the Complainant did further State that the said George Savage in further Performance of his 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 Mrs Emm Beaumont of Bombay as the Administratrix to the Estate and Effects of her then late Husband Major William Collings in the said principal Sum of Two thousand Sixe hundred and Ninety two Pagodas Seven Fanams and Seventy four Cash on 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

And further reciting That the said George Savage was also indebted to the Complainants 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 Duop Bond of the said George Savage bearing date the Fifth day of April One Thousand Seven hundred And eighty Seven afore said and that for the Securing the Payment thereof the said George Savage had Agreed with the Complainant by the means of her Attorney the said William Colling Jackson to make over and deposits A New Consolidated Bond Number Fifty two of His Highness the Nabob of the Carnatic for the principal Sum of Fourteen Thousand One hundred and Thirty Nine Pagodas declared due on the said New Consolidated Bond 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 Poll or 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 abovementioned 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 in part recited New Consolidated Bond of his said Highness the Nabob Number Fifty two 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 Administrators by Payment of the Principal and Interest due on the said Second Bond as by the said Deed Poll or Assignment under the Hand and Seal of the said George Savage and ready to be produced and proved to the said Mayors' Court at Madrasapatnam — as Relation being thereunto had might as therein stated more at large Appear and your Petitioners shew — that the Complainant States that she had for the further Information of the said Court thereunto Annexed a true

And

And faithfull Copy of the said New Consolidated Bond Marked with the Letter C and of a certain Certificate endorsed thereon which the Complainant prayed might be taken as part of her Bill of Complaint as by the Originals thereof in the Posession of the Complain=nants 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 Savage being indebted to the Complainant in manner aforesaid and being possessed of a Considerable real and personal Estate more than sufficient to satisfy all his Just Debts departed this Life on or about the Tenth Dayg 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 Thou=sand seven hundred and Eighty six and that the s

the

The said Testator did Nominate and Appoint your Petitioners Executors 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 them=selves 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 the Death of the said George Savage applied to your Petitioners for Payment of the Complainants said Just demands and more particularly the Complainants 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 Petitioners for Payment of the Principal monies and Interest so owing to the Complaindant which

then

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 prefsed replied on the Fourth day of November following but avoided giving the Complainants said Attorney a defenitive Answer as to the Payments of the said Principal Monies and Interest untill as they alledg-ed 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 murmer on account of her said Demands being with held whereas the Complainant Charged that she was esteemly aggrieved by reason of the amount of the said Bonds not being paid the Complainant being in very straitened Circumstances the Complain-ant 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

Of Five thousand Six hundred and Thirty three Pagodas Twelve fanams and Seventy 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 Sese shillings and Two Pence or thereabouts as by a true and faithful Account 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 morefully appear in which Account Current the Complainants said Attorney had given 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 Complainant did further shew that she had frequently by her said Attorney the said William Collins Jackson applied to your Petitioners in an Amicable 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 Consolidated Bond of his Highness the Nabob of the Carnatic should be sold at the discount

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 Complainant in
manner afore said and the Complainant did pray that
a Decree might be granted Accordingly 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 thousand Seven
hundred and ninety file their answer wherein they
said that the said George Savage for aught if 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
Sevenfanams and Seventy four Cash and for Securing
the Payment thereof might have executed such
Bond as is setforth 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
personal Estate of the said Major William Collins
and the Complainant by her said Attorney might
have caused such application to be made to the

said

Said George Savage for payment of the said Bond as are
set forth in the Bill of Complaints and the said George
Savage might have written such letter to the Complain-
nants Attorney at Law as was therein stated and
the said George Savage might have Executed such
second Bond for payments of Star Pagodas Three
Thousand One Hundred and Eighty One Twenty five
fanams and Sixty Cash and might have assigned such
such Collateral Security for Payments of the said
Bond as was set forth in the said 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 said as Your Petitioners believed 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

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 Complainants by her Attorney did apply to them for payment of her Demand and did write such Letter to your Petitioners and receive such Answer from them as are stated in the Bill of Complaint— Your Petitioners also admitted that they had received a Letter sufficient to pay off the Complainant's demand but that they would not be warranted in giving any preference to the Complainants to the prejudice of the several other Bond Creditors of the said George Savage especially as one of them to wit Tremanum Annachellum Moodely 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 thereon from which Decree Your Petitioners have been Obliged to Appeal from the same Principals of equal and impartial Justice which

Obliged

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 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 expence 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 Posession 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 Complainants as well

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 George Savage to the Expenses of this 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 Complai= nant did by her said Attorney the said William Collins 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

further say that she did obtain such Letters of Admen= stration of all and Singular the Goods and Chattels Rights and Credits of the said Major William Collins deceased as in the Complainants' Bill was particu= larly 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 particu= larly mentioned and the Complainant for further Replication to your Petitioners Answer did by her said Attorney the said William Collins Jackson states that your Petitioners or some or one of them had received Assetts of the said George Savage so much more than Sufficient to pay off the Complain= ants' Demand after Satisfying the Judgment in your Petitioners Answer mentioned if any such Judg= ment there was and particularly the Complain= ant 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 there abouts being part of the Estate and Effects of the said George

Savage

Savage besides various other sums of Money which
your Petitioners or some or one of them had recieved
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 Petitio-
=ners would be well warranted in paying the
Complainant her said Demands in preference to
any other Bond Creditor 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 in asmuch 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 she
pretended gained a Legal Presidency 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 had
either

either paid the Complainant the Amount of her said Demands or if they had Consented to a Sale the New Consolidated Bond of His Highness the Nabob of the Carnatic in the Bill mentioned who 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 inforce the Payment of her said Demands and the Complainant pretended that your Petitioners were to blame for the Consequences 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 Complainants set forth other frivolous Charges against Your Petitioners because they had Refused to pay the Complainant all which will appear by the Replication of the Complainant — To which said Replication your Petitioners did on or about the Eleventh

day

Day of May then last past file a Rejoinder in which they said that al tho' 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 Savage as Military Store Keeper and was therefore Subject to the discharge of the Expenses or Debts incurred by carrying it on and only the neat sum or profit or Balance thereof was to go to the Creditors of the General Fund or Assetts of his Estate for the Benefit of his Creditors which Balance it would have been unjust to have Applied to the payments 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 in the

Said



Said Estate and while your Petitioners were in 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 espicially at this eventful period when their value was less than in times of Peace and the Estate must in consequence be proportion=bly 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' Courts in the premises especially when by the Inven=tory 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 Degree of the deceased

Your

Your Petitioners further shew unto your Most Excellent Majesty in Council that upon the above proceedings issue was joined and Witnesses were examined on the part of the Complainants 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 Complainants 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 18 seventeen Cash together with all such Interest as then was or should thereafter become due thereon untill full payment was made and in default of payment of the said Amount the said Mayors' Court Decreed that the Mortga=ged 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 Mayor's Court your Petitioners did appeal to the Honourable the Court of Appeals as they conceived the said Decree to be Erroneous and that they were very 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 intitled. —

Secondly Because the Order to sell the Mortgaged Premises is Contrary to Law those pre=mises being Bonds or Written Obligations for Payment 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.a Bank Notes &c.a cannot be taken in Execution as they remain in some Measure choses in Action" is

To which said Petition and Appeal the Complainant did put in her Answer setting forth

Many

Many evasive matters and things which your Petitioners cannot be 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 Twenty fourth Day of December last 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 as Executors as afore said 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 and Courts of Appeals to which said Several Proceedings and to each of them respectively your Petitioner 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 her in 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

Said Appeal to the Courts of Appeals at Madras as above stated and for such other reasons as may be offered at the hearing of this Cause and your Petitioners most Humbly pray that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set aside as far as the same tend to give a preference to the Complainant before other Creditors of equal Degree of the said Testator and that the Complainants together with the other Creditors of equal Degree may be obliged to give into the Registry of the Mayors Court an Account of their Claims and that Due proof being had thereon they may receive from the Assets of the Deceased the proportion of their respective Claims and that the Complainant may pay all expense of this Appeal. ——

/Signed/ Stephen Popham ——

Solicitor for Appellants. ——

Court

Court of Appeals
at
Madraspatnam

Saturday the 24th day of December

Anno Domini 1791

Between James Taylor George Mc
Moubray Josias Dupre Porcher, and
Thomas Cockburn of Fort St George
Esquires Executors named in the
last Will and Testament of George
Savage late of Fort St. George Esqr
Deceased Appellants and 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 Mc
Major William Collins and of
Administratrix of all and every
the Goods Chattles Rights and
Credits of the said Major William
Collins Deceased by her Attorney
William Collin Jackson of Mc
Fort St George Esqr Respondents

This Cause Coming on this Day to be heard and debated before this Court by the Attornies both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Hble the Mayors' Court together with the Decree of the said Court given in this Cause on Tuesday the 14th 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 doth Accordingly Order and Decree that the said Decree of the Hble the Mayors' Court do Stand Affirmed and that the Appellants' Petition be hence Dismissed with Costs.

By Cur.

/Signed/ Chas. N. White Clk

To

To the Kings most Excellent Majesty in Council

Between Emma 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 who was in his life time in the Military Service of the United Company of Merchants of England trading to the East Indies deceased and Administratrix of all and every the Goods and Chattles Rights and Credits which were the Goods and Chattles Rights and Credits of the said Major William Collins at the time of the Death by her Attorney William Collins Jackson of Madras Esquire Complainant — and James Taylor George Moubray Isaias Dupre Porcher and Thomas Cockburn

Cockburn of Madras Esquires as Executors named in the Last will and Testament of George Sagage late of Fort St George Esquire as deceased Defendants —

The Answer of the above named Complainant to the Petition and appeal of the above named Defendants

Filed in my Office this 23d day January 1792
Chas. K. White Clk

This Respondent admits that she did by her Attorney the said William Collins Jackson file her Bill of Complaint in the Honourable the Mayors' Court at Madraspatnam against the said Petitioners as Executors of the said George Savage on the sixth day of March which was in the Year of our Lord one thousand Seven hundred and Ninety and that this Respondent did therein setforth that the said George Savage had in his life time occasion to borrow the Sum of Two thous and Six hundred and Ninety two Current Pagodas seven fanams and seventy four Cash and that he did in Consequence thereof apply to this Respondents former Husband the said Major then Captain William Collins to lend and advance him the same which the said William Collins accordingly did and that

that to Secure the repayments thereof the said George Savage did enter into one Bond or writing Obligatory bearing date the thirty firs 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 unto the said Major then Captain William Collins then Commanding at Samulcotah in the Sum of Five Thousand Three hundred and Eighty four Currens Pagodas fifteen Fanams and Sixty eight Cash with Condition thereunder Written to be void upon payments of the Sum of Two thousand six hundred and ninety two ½ Currens Pagodas Seven fanams and Sixty four Cash unto the said Major then Captain William Collins his heirs Executors Administrators or ½ Assigns with Interest for the same at the rate of Twelve per cent per Annum within three 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 and this Respondent admits that



That there is a Copy of the said Bond or writing Obligatory Marked with the Letter A Annexed to this Respondents said Bill of Complaint this Respondent doth also admit that she did by her said Bill of Complaint ½ further Charge that the said William Collins ½ frequently in his life time Applied to the said George Savage to pay off and discharge the said debt with the Interest which was then due thereon but that the said George Savage as frequently evaded the payments thereof And that since the Decease of the said William Collins 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 this Respondent Obtained Letters of Administration from the Mayors Court of Bombay in the East Indies of all and singular the Goods ½ and Chattles Rights and Credits which were of the said William Collins at the time of his decease and he made no will or other Disposition of his Effects but died intestate And this Respondent Admits that She Referred to a proper Writing which was a true and faithful Duplicate of the said Letters of administration and Attested by the ½ proper

Proper Officer of the said Court and under the Seal
thereof and then in the Custody of this Respondents
Attorney at Law and ready to be produced and prove
to the said Mayors Court at Madras patnam and
this Respondent Admits that she did by her said
Bill of Complaint set forth as the truth was and
is that no other Administration had been Commit
-ted of the Goods and Chattles Rights and Credits
of the said William Collins And that this Respon
-dent since the death of the said William Collins
had intermarried with John Beaumount of
Bombay Esquire who is Since deceased and
that he departed this Life on or about the
day of which was in the year of our Lord one
thousand Seven hundred and Eighty Eight
And this Respondents also admits that she did
in and by her said Bill of Complaint also Charge that
the Complainant after the death of her said former
Husband the said William Collins as his adminis
-tratrix by her Attorney the said William Collins
Jackson caused Repeated Applications to be made
to the said George Savage for Payment of the Princi
-pal Monies and Interest due upon the said

recited



Recited Bond but that the said George Savage from
various pretensions and Excuses not only ostponed
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 that this
Respondent being at length Wearied with the
Continual Promises and Disappointment of the
said George Savage and being in narrow and dis-
-tressed Circumstances and thereby unable to give the
said George Savage any further Indulgence this
Respondent did by her Attorney the said William
Collins Jackson call upon the said George
Savage in a peremptory Manner to pay off the full
Amount of the said Principal and Interest
Monies and that thereupon the said George
Savage as he had theretofore done alledged his
Inability of discharging the same and that in
Consequence thereof this Respondents 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 Brantley
late one of the Attornies of the said Mayors
Court

Court at Madras patnam and since deceased, either to pay off the said Debt or to lodge in this Respondents possession some Collateral Security sufficient to discharge the same and that in answer to such Application the said George Savage on or about the said Twelfth day of December wrote such Letter Addressed to the said Charles Bromley as in this Respondents said Bill of Complaint and as in the said Petitioners said Petition of Appeal is particularly set forth and mentioned and to which this Respondent humbly craves leave to refer And this Respondent admits that in Consequence of such Letter this Respondent 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 And that this Respondent being when as she still is in distressed Circumstances she did again by her said Attorney renew her former solicitat= =ons to the said George Savage for Payment of the Said

Said debt and that he as he had theretofore done alledged his Inability to pay the same and that this Respondent finding that the promises of the said George Savage were not to be Relied on and fearing that the loss of the said principal monies and Interest would be the Ultimate result of this Respondents lenity towards the said George Savage as also from the heavy losses which this Respondent had sustained by means of the defaults of the said George Savage in not even paying the interest due upon the said principal Sum this Respondent found it incompatable either in Justice to herself or to her Duty as Adminis= =tratrix to the Estate of the said William Collins longer to risk the said monies by granting the said George Savage any further Indulgence and therefore desired that he either would pay the Amount of the said debt or Counter Secure the same as the only Terms of Forbearance on the part of this Respondent and that in Consequence thereof 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 this Respondent his Bond for the Amount

Of the Interest monies which were then due to this Respondent on the foot of the 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 Seven then Amounting to the Sum of Star Pagodas Three thousand one hundred and Eighty one Twenty five fanams and Sixty Cash and that the said George Savage should also assign unto this Respondent 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 this Respondent also admits that she did in and by her said Bill of Complaint further Charge 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 Saint George Esquire

did



Did Acknowledge himself to be bound and did bind himself his heirs Executors and Administrators unto this Respondents by the name and Description of Emm Beaumonts late Emm Collins the Widow and Administratrix of the late Major William Collins deceased in the Sum of Six thousand three hundred and Sixty three Pagodas Nine fanams and forty Cash with Condition there under written to be void upon payment of the Sum of three thousand one hundred and Eighty one Pagodas twenty five fanams and Sixty Cash aforesaid her 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 and this Respondent Admits that a Copy of the said Bond is annexed to this Respondents said Bill of Complaint marked with the Letter B and is prayed to be taken as part thereof and this Respondent

also

Also Admits that she did further state that the said George Savage in further performance of the said Agreement by ascertaining did Pass or Assignment 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 this Respondent by the name and Description of Mrs Emm. Beaumont of Bombay as the administratrix to the Estate and Effects of her late husband Major William Collins in the said Principal Sum of Two thous=and six hundred and Ninety two Pagodas seven Fanams and Seventy four Cash on 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 this Respondent by the name and description aforesaid in the further Sum of Three thousand One hundred and Eighty One Pagodas



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 this Respondent by the means of her Attorney the said William Collins Jackson to make over and deposit anew 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 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 and that it is by the said in part Recited Deed Poll or 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

Bargain sell assign And make over unto this
Respondent as Administratrix as aforesaid her &c.
certain Attorney heirs Executors administrators or
Assigns the said Recited new Consolidated Bond of
his Highness the Nabob N°52 together with the
Principal Sum due thereon and also all such
Interest as was then due or to grow due thereon
to hold to this Respondent her heirs Executors
Administrators or Assigns Subject nevertheless
to the Redemption of the said George Savage his
heirs Executors And Administrators by Payment
of the Principal and Interest due on the said
Two Bonds and that the same would appear by
the said Deed Poll or Assignment under the hand and
seal of the said George Savage and which was produced
and Proved to the said Mayors' Court at Madras afore
=said and this Respondent admits that she did
annex to her said Bill of Complaint a true and
faithful Copy of the said new Consolidated Bond
marked with the Letter C and of certain certificates
indorsed thereon which this Respondent prayed
might be taken as part of her said Bill of Complaint

and



And that the originals thereof were in the possession
of this Respondents said Attorney Ready to be produced
and proved to the said Mayors Court And this
Respondent also admits that she did by her said
Bill of Complaint further charge that the said
George Savage being endebted to this Respondent in
manner aforesaid and being possessed of a Conside=
=rable real and personal Estate more than suffi=
=cient to satisfy 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 &c
Principal Monies or any part thereof and that he
first duly made and published his last Will and
Testament in Writing bearing date on or about the
thirtieth day of January which in the Year of
our Lord One thousand Seven hundred and &c
Eighty six and that the said Testator did Nomi=
=nate and appoint the said petitioners Executors
and that the said George Savage departed this
life without altering or revoking the said Will
and that upon his death the said Petitioners &c

proved

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 this Respon= =dent admits that she has frequently by her Attorney the said William Collins Jackson since the death of the said George Savage but to no effect Applied to the Petitioners for Payment of her said just dema= =nds and that more particularly this Respondent by her said Attorney the said William Collins Jackson did on or about the twentieth day of September then last Apply by letter to the Petitio= =ners for Payment of the Principal monies and Interest so owing of this Respondent Which then Amounted to the Sum of Five thousand Six hundred and twenty five Pagodas twenty nine fanams And fifty four Cash or thereabouts and that to the said Letter of this Respondents said Attorney the Petitioners being thereunto pressed replied on the further day of November following but avoided giving this Respondents said Attorney a definitive

Answer

Answer as to the Payment of the said Principal monies and Interest until as they alledged the accounts of the said George Savage should be arranged and that they therein intimated that as this Respondent held a Collateral Security for the Payment of her de= demand this Respondent had therefore no cause to murmur on account of her said demands being with held and that this Respondent by her said Bill of Complaint Charged as the fact is that she was and is extremely Aggrieved by Reason of the amount of the said Bond not being paid this Respondent then being in very Straitened Circumstances and deprived in a great measure of the means of providing the Common Necessaries of life by reason of the said Petitioners with holding from this Respondent the payment of the Monies so due to her by the said Mr George Savage And this Respondent admits that there was then due and owing to her by the 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 Princi= =pal Sum of Five Thousand Six hundred and thirty

three

Three Pagodas twelve fanams and Seventeen Cash
Current Money of Madrass Making in Sterling money
of Great Britain at the rate of Eight shillings to
forevery Pagoda the Sum of Two Thousand two
hundred and fifty three Pounds six shillings and
two Pence or thereabouts And that the same would
fully appear by a true and faithful Account
Current to this Respondents said Bill of Complaint
annexed and marked with the Letter **D** and
which she prayed might be taken as part thereof
and that in the said Account Current this
Respondents said Attorney had given the Petitioners
Credit for all such Sums as had been from time
to time received and paid on Account of this
Respondents said demands And this Respondent
Admits that she did by her said Bill of Complaint
further Charge that she had frequently by her
said Attorney the said William Collins Jackson
Applied to the Petitioners in an Amicable
manner either to pay of the said Principal
Monies And Interest so due and owing to this
Respondent on the said Bonds or to Consent that

the



The said Consolidated 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 this Respondent And this Respondent
saith that she did in and by her said Bill of
Complaint also charge but which the said Petitioners
have Artfully omitted to state in their said Petition
of Appeal that the said Petitioners pretended that
the said George Savage died possessed of little or no
personal Estate except a Sum of about Thirty five
Thousand Pagodas which they said was due and
owing to the said George Savage by the United
Company of Merchants of England trading to the
East Indies And that until they should receive
the same they were incapable of paying this Respondent
her said respective demands or any part thereof
Whereas the said Petitioners well know as the truth
is that they had received other Assets from the
Estate of the said George Savage And more than
sufficient to pay the Whole of this Respondents said
demands and that the said Petitioners insisted upon

Carrying

Carrying the same into Account for the General good, as they alledged of the Creditors of the said George Savage without regard to this Respondents said demand and without giving a precedency to the particular Claim of any individual whereas the said Petitioners well know that this Respondent as a Bond Creditor was and is entitled to be paid her said Claims in preference to the Simple Contract Creditors of the said George Savage and that the said petitioners refused to Consent to a sale of the said Consolidated Bond of his Highness the Nabob of the Carnatic so assigned this Respondent by the said George savage as a collateral Security alledging that they as Executors were not Warranted to join in such sale until this Respondents should have previously obtained the Decree of the said Mayors Court for that purpose tho' they well knew that the said Bond might considerably increase in its Value by delaying the sale thereof and that at other times the said Executors and particularly the said Thomas Cockburn gave out with a view to deter this Respondent from seeking redress in the said Mayors Court that not



Not only himself but the said other Petitioners herein before named would in case this Respondent should proceed to enforce a sale of the said Bond give this Respondent every possible delay and protract as far as in his and their power the progress of any suit which this Respondent should institute in the said Mayors Court for that purpose And this Respondent by her said Attorney saith that She did in and by her said Bill of Complaint pray that the said Petitioners might admit assists in their hands sufficient to pay this Respondent her said demands or that they might set forth a full true just and particular account of the said George Savage personal Estate with the Natures quantities Qualities and true and full Values thereof and what part thereof had come to their or any or either of their hands custody or power or to the hands custody or power of any other person or persons in trust for them or any or either of them or to their or any or either of their use to their or any or either of their knowledge and belief privity Consent or procurement and how the same has

Has been Applied and disposed of and that the said
Petitioners or some or one of them might pay and Satisfy
your Respondents said demands and that in the
mean time the monies in the hands of the said
Petitioners or so much thereof as should be sufficient
to pay and Satisfy this Respondents said respective
demands with Costs of this Suit might be stayed
in the hands of the said Petitioners and that in case
the said Petitioners should not pay and Satisfy this
Respondent her said respective demands that then the
new Consolidated Bond of his Highness the Nabob of
the Carnatic which this Respondent in and by her
said Bill of Complaint offers to deliver up to the
said Petitioners on being paid her said demand might
be sold under the Decree of the said Mayors Court
and that the monies Arising from such sale might
be Applied in and towards the discharge and
Satisfaction of this Respondents said respective demands
and of the growing Interest thereof and of Such Costs
and Expences as this Respondent should sustain
and be put to in the expense of this Suit and that
in Case the said New Consolidated Bond should

be

Be sold under the Decree of the said Mayors Court
that then the said Petitioners should join in executing
a good and Sufficient Assignment thereof to such
person or persons as should purchase the same and
that this Respondent might have such other and
further relief in the premises as to the said Mayors
Court should seem Meet and as the Nature of her
case should require And this Respondent by her said
Attorney admits that the said Petitioners did on or
about the twentieth day of April in the present
Year of our Lord one Thousand seven hundred and
Ninety file their Answer to this Respondents said
Bill of Complaint and that they therein set forth
that the said George Savage for ought the petitioners
knew to the Contrary might have borrowed and
taken up at Interest the said Sum of Two thousand
Six hundred and Ninety five Pagodas Seven fanams
and Seventy four Cash and that he for Securing
the Payment thereof might have executed such
Bond as is set forth in this Respondents Bill of
Complaint and that it might be true that this
Respondent had taken out Letters of Administration

of all

Of all and singular the Goods chattles Rights and Credits and Personal Estate of the said Mayor William Collins and that this Respondent by her said Attorney might have Caused such Application to be made to the said George Savage for Payment of the said Bond as are setforth in this Respondents said Bill of Complaint and that the said George Savage might have written such Letter to this Respondents Attorney at Law as was therein Stated and that the said George Savage might have executed such second Bond for Payment of Six Pagodas Three thousand one hundred and Eighty five Fanams and Sixty Cash and might have Assigned over such Colateral Security for payment of the said Bond as was Setforth in this Respondents said Bill of Complaint and that the Petitioners Admitted that the said George Savage departed 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 that the Petitioners by their said Answer admitted that the said George Savage previous to his death made and

will

Will as is setforth in this Respondents said Bill of Complaint and that he died as the Petitioners believed without revoking the same and that the 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 and chattles Estates Securities and Effects as they could come at and that the Petitioners by their said Answer admitted that this Respondents by her said Attorney did Apply to them for payment of her demand and that he wrote such Letter to the said Petitioners and received such Answers from them as are Stated in this Respondents Bill of Complaint and this Respondent also admits that the said Petitioners by their said Answer admitted that they had received Assets sufficient to pay off this Respondents demand but that they would not be Warranted in giving any preference to this Respondent to the Prejudice of several other Bond Creditors of the said George Savage especially as one of them to wit Tremanium Arnachellum Moodelly had Obtained a decree against them the said Petitioners as Executors of the said George

Savage

Savage for the Sum of Eighteen thousand Six hundred and Ten Star pagodas and thirteen fanams Current money of Madras and Interest thereon and that the said petitioners had been Obliged to Appeal from the said Decree from the same principles of equal and impartial Justice Which as they alledged, obliged them to resist the Application of this Respondent for payment of her claim And this Respondent Admits that the Petitioners by their said Answer further stated that for the same reason they could not Consent to the Sale of the said new Consolidated Bond Which this Respondent by her said Attorney held as Security for her said demand and that they humbly Submitted that as this Respondent had such Security for her claim it was unjust as the said Petitioners pretended to harrass them 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 that the said Petitioners said that they would shortly file a true and perfect Inventory of all the Estate and

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 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 this Respondent as well as the other Creditors of the said George Savage and that they humbly hoped that as this Respondent 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 George Savage to the Expences of the said Suit and that they would give the Petitioners as Executors of the said George Savage such further and other Relief as to the said Mayors Court might seem Meet — And this Respondent by her said Attorney Admits that this Respondent did by her said Attorney the said William Collins Jackson on or about the Twenty seventh day of April now last past file a Replication to the said Petitioners said Answer and that this Respondent did thereby insist that the Petitioners Testator the

said

Said George Savage did in his life time execute the
Bonds mentioned in this Respondents Bill of Compliant
and that the monies Secured by the said Bonds toge=
=ther with a Considerable Arrear of Interest thereon
was still due and owing to this Respondent by the
Petitioners as Executors of the said George Savage
and this Respondents admits that she did by her
said Replication also alledge that She obtained such
Letters of Administration of all and singular the Goods
and Chattles Rights and Credits of the said Major
William Collins deceased as in this Respondents
Bill of Complaint was particularly Mentioned
and that the said George Savage did write such
Letter to this Respondents said Attorney the said
William Collins Jackson as in this Respondents said
Bill of Complaint were particularly Mentioned —
And this Respondent admits that she did for further
Replication to the Petitioners said Answer by her
said Attorney the said William Collins Jackson
state as the truth is, that the Petitioners or some or
one of them had received Assets of the said George
Savage much more than Sufficient to pay off this

Respondents demands after Satisfying the Judgments in
the petitioners said Answer mentioned if any such Judgmen
there was and this Respondent admits that she did in
and by her said Replication particularly state and
aver that the said 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 Forty Five
Thousand Pagodas or thereabouts and that the said
Monies was part of the Estate and Effects of the said
George Savage besides various other Sums of money
which the Petitioners Some or one of them had
as Executors of the said George Savage on Account
of the Estate of the said George Savage And this
Respondent Admits that she did for further Replication
to the Petitioners said Answer by her said Attorney
the said William Collins Jackson Aver that the
Petitioners would be well warranted in paying this
Respondent her said demands in preference to any
other Bond Creditor of the said George Savage who
had not put his or her Bond in Suit Against the said
Petitioners if any such Bond Creditor there was — And

this

This Respondent saith that she did also by her said Replication allege which the said Petitioners have willingly omitted to setforth in their said Petition of Appeal that it was and is the duty of the said Petitioners and that they are bound in Law to pay this Respondents her said demands in preference to any Bond Creditor of the said George Savage who has not put his or her Bond in Suit against the said Petitioners as executors of the said George Savage in as much as this Respondent had commenced and was prosecuting her suit in the Mayors' Court against the said Petitioners as Executors of the said George Savage for recovery of her said demands and that this Respondent had thereby Actually gained 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 this Respondent admits that she did for further Replication to the said Answer of the said Petitioners say that if the Petitioners had either paid her the Amount of her said demands or if they had consen-

-ted

Consented to a sale of the new Consolidated Bond of his Highness the Nabob of the Carnatic in the Bill mentioned which this Respondent admitted she held as a collateral Security this Respondent would not have been driven to the unavoidable Necessity of Applying to the said Mayors' Court to enforce the payment of her said demands and this Respondent saith that she did not in and by her said Replication pretend but that she did absolutely insist as the truth is that if the said Defendants had either paid this Respondent the Amount of her said demands or if they had consented to a sale of the new Consolidated Bond of his Highness the Nabob of the Carnatic in the Bill mentioned which this Respondent holds as a Collateral Security she would not have been driven to the Unavoidable Necessity of enforcing the payment of her said demands by due Course of Law and that it was and is the said Defendants themselves who subject the Estate of the said George Savage to expense and ruin this Respondent into litigation by having unjustly and inflexibly refused either to pay this Respondent the Amount of her said demands out of the Estate and Effects of the said George

Savage

Savage or to Consent to a sale of the said new Consolidated Bond and this Respondent saith she doth by he said Replication also insist that tho the time for rendering an Account to this Honourable Court in its Capacity of Kings Ordinary might not then have expired yet that the said Executors were liable to be sued immediately after the said George Savage death for the debts due and owing to this Respondent by the said George Savage And that the said Defendants were bound either to pay off such debts or to render an Account to this Respondent in the said Masters Court in its Capacity of a Court of Equity of such part of the said George Savages personal Estate as had from time to time come to the hands power or custody of the said Petitioners or to the hands power or custody of any or either of them And to shew how and in what manner they had applied and disposed thereof And that the said Defendants were also out of the monies which should appear by such Account to be in their or any or either of their hands power or custody bound to pay off and discharge this Respondents said demands in such manner as the Law directs. And this



This Respondent by her said Attorney doth Admit that the said petitioners did on or about the Eighteenth day of May now last past file a Rejoinder to this Respondents said Replication And they did therein set forth that altho they had received the several Sums Charged in this Respondents said Replication that Nevertheless a principal part thereof being 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 Savage as Military Storekeeper and was therefore Subject to the discharge of the Expences or debts incurred in carrying it on and only 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 as the said Petitioners pretended and that it would have been unjust to have applied such Balance to the Payment in full of any individual Creditor while others of the same degree were unpaid for that it was well known that such Balance as well as the other Sums so Charged by this Respondent as having been received by the Petitioners or some of them on Account of the

Estate

Estate of their Testator bore but a very small Proportion to the Amount of the several Claims by Bond on the said Estate and that whilst the said Petitioners were in knowledge of those claims they were as fully bound in Law and in Concience to act on Principles of equal Justice to such Creditors as if such claims had been put in Suit as the said Petitioners pretended and this Respondent Admits that the said Petitioners did by their said Rejoinder also state that for the same Reason they could not Consent to this Respondents selling the said mortgaged Property And this Respondent admits that the said Petitioners did also state that their Intention being to act to the best of their understanding for the Good of the Estate of the deceased as they alledged 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 as they pretended that their Reasons for acting as they had done were founded in equal

and



And impartial Justice to all the Claimants in equal Degree of the deceased,—

And this Respondent by her said Attorney also Admits that Issue was joined upon the aforesaid pleadings And that witnesses were examined on the part of this Respondent and that Publication passed And that the said Cause was setdown for hearing and that the same came on to be heard by and before the said Mayors Court on Tuesday the Seventeenth day of August now last past And that the said Mayors Court was then pleased to Order and Decree accordingly Order and Decree that the said Petitioners should pay unto this Respondent out of the Estate and Effects of the said George Savage deceased the full and just Sum of Five thousand six hundred and thirty three Pagodas Twenty fanams and Seventeen Cash together with all such Interest as then was or should hereafter become due thereon untill full payment should be made and that indefault of payment of the Amount Decreed within fourteen days from the date thereof the mortgaged premises should be sold towards Satisfaction of this

Respondents

Respondents said demand And that the said Petitioners should pay all Costs of this Suit.

And this Respondent Admits that the said Appellants did Appeal from the said Decree of the said Mayors Court to the Honourable the Court of Appeals but not as this Respondent Verily believes from a Conception of the said Decree being erroneous but for the sole purpose of procrastination and to with hold as long as the said Appellants possibly could the payment of this Respondents demand thereby to retain the same in their own hands for a Considerable length of time without paying any Interest therefor out of their own pockets Knowing that the Interest of the debt soowing to this Respondent would fall a charge upon the Estate of the said Testator And this Respondent saith that the said Appellants could not in fact Conceive themselves to be in any manner Aggrieved by the said Decree of the said Mayors Court other than as Executors who with held a large Sum of Money the property of their Testator without paying any Interest for the same might feel themselves Aggrieved by being Obliged to Appropriate a part

Part of such monies to the payment of the debt so due and owing to this Respondent by the said Appellants Testator And this Respondent Admits that the said Appellants said Petition and Appeal and this Respondents Answer thereto came on to be heard and determined And was Accordingly heard and determined on the Twenty fourth day of December which was in the Year of our Lord one thousand Seven hundred and Ninety One when the said Court of Appeal did Confirm the Decree of the said Mayors Court and From which said Decree of the Mayors Court and Court of Appeal the said Appellants have Appealed to your most Excellent Majesty in Council from the same Spirit of litigation which has actuated the said Appellants through out the whole progress of this Suit.

And this Respondent by her said Attorney In Answer to the first cause or reason Assigned by the said Appellants for preferring their said Petition and Appeal to the said Court of Appeal and to your Most Excellent Majesty in Council saith that the said Decree of the Mayors Court so far from being

Being erroneous is a most legal and just Decree and this Respondent saith that the said Appellants having in and by their said Answer admitted that the said George Savage died possessed of a considera-ble personal Estate and Effects and that they had possessed themselves thereof and that they the said Appellants had received Assets more than sufficient to pay off this Respondents demands And the said Appellants having afterwards in and by their said Rejoinder also Admitted that they had received as Executors of the said George Savage a sum of Thirty thousand Pounds and they not having proved to the said Mayors Court how or in what manner or that they had at all appropriated or applied the said Effects and monies of the said George Savage to the discharge of his Debts the said Decree therefore was lawful and equitable, this Respondent saith that the said Appellants as Executors of the said George Savage are as they well know bound by Law to pay the debts of their said Testator so far as his Estate and Effects will extend in a due Course of administration And it is not in the power of the said Executors without

Committing

Committing a devastavit to prefer the Creditors of the said George Savage in an inferior Degree to this Respondent Who hath Obtained a Decree for the Amount of her demands And this Respondent saith that she has nothing to do with the Ultimate situation of the said Testators Estate for the said Appellants having Acknowledged the receipt of Assets considerably more than sufficient to pay off the Debt due to this Respon-dent their discharging the same so far from being an act of Justice to the other Creditors of the said George Savage if any there are would be a manifest advantage to them for this Respondent saith that the Interest on this Respondents debt is accumula-ting which must lessen the founds for the payment of the other Creditors whilst the said Appellants from unjust Motives with hold the said monies which should be duly appropriated to the discharge of their said Testators debts.

In answer to the second Cause or reason assigned by the said appellants for preferring their said Petition of Appeal This Respondent saith that the Decree to sell the Mortgaged premises being the

Collateral

Collateral Security in this Respondents said Bill of Complaint particularly mentioned is the decree of a Court of Equity which relaxes the rigour of the Common Law and this Respondent saith that whether deeds Writings or notes with the qualities mentioned in the Appellants said petition and Appeal can or cannot according to the Strict Rules of law betaken in execution is impertinent to the present case and this Respondent saith that in a Court of Equity a chose in Action may be and frequently is assigned and transactions are daily established in Equity which could not at Law and decrees obtained and this Respondent saith that the said Decree of the said Mayors Court is Conformable to the rules of Equity.—

And the Respondent by her said Attorney further saith that the said Decree of the Mayors Court so obtained against the said Appellants being in the Alternative either that they should pay off this Respondents said demand or that the said Consolidated Bond should be sold it was thereby at the option of the said Appellants to redeem

redeem the said Bond which they might have done had they been so inclined as they confessedly have monies in their hands belonging to the said Testator to a very large Amount but this Respondent saith that the said Appellants adhering to their Systimatical plan of that avowed procrastination of which the said Letter written by the said Thomas Cockburn is a most incontrovertible proof have in strict Observance thereof And without a shadow of Justice to warrant such a procedure appealed from the said Decree of the Mayors Court to the said Court of Appeal and from thence to Your most Coccellent Majesty in Council thereby to ruin this Respondent thro' every possible stage of litigation And this Respondent saith that the said Executors have by thus prolonging the payment of this Respondents demands reduced her to the most indigent Circumstances and that she is thereby as the Appellants to well know deprived of the means of providing the Common Necessaries of life and this Respondent saith that her being relieved from her present distressed Situation

depends

Depends Solely upon a speedy Confirmation of the said Decree of the Honourable the Mayors Court and Court of Appeals.

For all which Causes and reasons and for such others as may be offered at the hearing of the Appellants said Petition and Appeal before your most Excellent Majesty in Council this Respondent humbly prays that the said Decree of the Mayors Court and Court of Appeal may stand and be affirmed and that the Petition of the said Appellants be hence dismissed with Exemplary Costs to be paid to this Respondent by the said Appellants and that this Respondent may be further and otherwise relieved in the premises as to your most Excellent Majesty in Council shall seem Meet and as the nature merits and Circumstances of this Respondents case shall require.

/Signed/ John White Solicitor for the Respondent.

To the Honble Major General William Medows
President in Council

In the Court of Appeals
at Madrasapatnam

Fort St. George.

Between John Cuppage late a Captain now a Major in the Service of the Honble the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St. George by his Attornies Josias Du Pre Porcher and Henry Readhead of Fort St. George Merchants Complainants and Vincentio Corbett and Hugh Boyd also of the same Place Merchants. — Defendants. —

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

Sheweth

That the said Complainant by his said Attornies Josias Du Pre Porcher and Henry Readhead

Filed in my Office the 29th October 1790 Chas. H. White Clk

did on the first Day of June in this present year of our Lord

Lord One thousand Seven hundred and nirty fifte on
Bill of Complaint in the Honble the Mayors Court at
Madraspatnam Wherein he set forth that Your
Petitioners stood justly and truely indebted unto the
Complainant in the Sum of Seven thousand and
eighty Six Pagodas and he did also further set forth
that on the Twenty eighth day of June in the year
of Our Lord One thousand Seven hundred and eighty
five Your Petitioners did borrow and receive from the
Complainant Six Bonds executed by the Agents
and on Behalf of the Honble the East India Compa
=ny at their said Presidency of Fort Saint George and
that Your Petitioners did on Account thereof on the
said twenty eighth day of June duly execute unto
the Complainant a Bond or Writing Obligatory where
=in your Petitioners jointly And Severately bound
themselves their Heirs Executors and Administrators
in the Penal Sum of Fourteen thousand One hundred
and Seventy two Pagodas Current Money of Ma=
=dras or Company's Bonds to that Amount and the
Complainant did also set forth that the said Bond
or Writing Obligatory stated that whereas Your
Petitioners

Petitioners had borrowed and received of the Complainant
Six Company's Bonds as per margin Amounting to
the full and just Sum of Seven Thousand and
eighty Six Pagodas Current of Madras Currency to run at
Interest at Eight per Cent per Annum payable in
Twelve Months and the said Complainant further
stated that the Condition of the said Bond or
Writing Obligatory was such that if your
Petitioners jointly or seperately or their Heirs Executors
Administrators or Assigns should well and truly pay or
Cause to be paid unto the Complainant his Heirs
Executors Administrators or Assigns the full and just
Sum of Seven Thousand and eighty Six Pagodas or
Company's Bonds to that Amount together with such
Interest as should or might become due thereupon
then the said Obligation was to be void and of no
Effects otherwise to Continue in full Force and
Virtue to which said Bond the Complainant
begged leave to refer a Copy thereof being Annexed to
the said Bill of Complaint And the Complai=
=nant lastly said that he had frequently requested

Your

Your Petitioners to pay unto him the said Sum of
Seven Thousand and eighty Six Pagodas or other-
=wise to Perform the Conditions of their said joint
and Seperate Bond executed to the Complainants
as aforesaid — To which said Bill of Complaint
Your Petitioners did on the Twenty Seventh Day of
July now last past file a Plea and Answer and for
Plea thereto Your Petitioners did say that it is
Appeared by the Complainants own Shewing that
the Scope and End of the Complainants Bill
Complaint was to be decreed the Payment of the
Sum of Seven Thousand and eighty Six Pagodas
Current Money of Madras together with such
Interest as then was or should hereafter become due
thereon or otherwise that your Petitioners should
perform the Condition of their joint Bond or
Writing Obligatory and further that your Petitio
=ners might be decreed to pay all Costs of the
Suit And Your Petitioners Stated that their
said joint Bond or writing Obligatory Copy whereof
was Annexed to the Complainants said Bill is under

Date

Date the Twenty eighth day of June which was in the year
of our Lord One thousand seven hundred and eighty five
and your Petitioners thereby Covenant for themselves
jointly and Seperately and for their Heirs Executors
administrators and Assigns to pay unto the Complainant
his Heirs Executors administrators and Assigns the
full and just Sum of Seven thousand and eighty
Six Pagodas Current Money of Madras or Company
Bonds to that Amount together with such Interest
as should or might become due thereupon, it being
recited in the said Bond or writing Obligatory
that your Petitioners had borrowed and received
from the Complainant Six Company's Bonds as
per Margin Amounting to the full and just Sum
of Seven Thousand and eighty Six Pagodas Current
Money of Madras to run at Interest at the rate
of Eighty per Cent per Annum payable in Twelve
Months

Your Petitioners further stated that by the
said Bill of Complaint it would appear as if Your
Petitioners owed unto the Complainant the Principal

Sum

Sum of Seven Thousand and eighty six Pagodas and near five Years Interest thereon at the time of filing the said Bill at the Rate of eight per Cent per Annum or about Nine Thousand nine Hundred and twenty Star Pagodas thereby estimating the said Companys Bonds at Par when it was known their Bonds were then and still are considered below par and were and are to be purchased at a Considerable Discount or Deduction from their Nominal Amount. Your Petitioners therefore set forth that the Complainant should have stated the Rate or Valuation of the Compys Bonds at this Time and made a special Complaint against Your Petitioners for a specific Principal Sum and Interest thereon up to a Day certain and to have set forth the same in an Account Current Annexed to his Bill of Complaint Whereas their Demand as the same now stands appears to want Certainty and therefor Your Petitioners pleaded such want of Certainty in Abatement of the Complainants

Right

Right to recover under the said Bill of Complaint and prayed the Judgment of the said Mayors Court thereon and whether they should make any further or other Answer thereto And your Petitioners for Answer to the Residue of the Complainants Bill did say that they admitted having executed the Bond Copy whereof is annexed to the Complainants said Bill of Complaint but they denied to stand indebted to him in the Sum of Money for which he had sued even in the Subscription which Your Petitioners cannot admit that the Companys Bonds were at Par for the Complainant had not given Credit to Your Petitioners for any Interest Monies or other Sums of Money paid by Your Petitioners to the Complainant or for his Account or for the several Matters supplied by Your Petitioners to the Complainant whereas it would appear if the Complainant had duly set forth all accounts and Dealings between him and Your Petitioners that Your Petitioners have paid considerable

Sums

Sums to the Complainant and laid out and expended other Considerable Sums for the use of the Complai=nant amounting as your Petitioners believed to a Sum which is less than Three Hundred Pagodas short of all Interest Monies received by Yours Petitioners on Account of the said six Bonds And your Petitioners did therefore humbly submit that by Reason of the several Matters and Things set forth in their Plea and Answer whereby it appears first that the Complainant hath brought his Action for an uncertain Sum and secondly that he hath manifestly charged your Petitioners on the Day he filed his said Bill with near five Years Interest on the Principal Sum in Company's Bonds which your Petitioners borrowed when that the fact certainly was that over carrying on the Interest Account up to the last Day of the same Month your Petitioners are Debtors upon a Balance of Interest Monies received on Account of the said Bonds and all other Accounts only a Sum less than Three hundred Pagodas

Pagodas besides the estimated Value of the said Company's Bonds the Complainants Bill ought to be dismissed with Costs to be paid by the Complainant

Your Petitioners further shew unto this Honble Court that upon the aforesaid Pleadings the Cause was set down for Hearing and the same came on to be heard by and before the said Mayor's Court on Saturday the sixteenth Day of this Instant October when the said Mayor's Court were pleased to Order and decree and did accordingly order and decree that Your Petitioners should pay unto the Complainants the full and just Sum of Seven Thousand and eighty six Pagodas together with all such Interest as then was or should thereafter become due thereon until full Payment be made and in default thereof that Your Petitioners should deliver up unto the Complainant Company's Bonds of that Value together with all such Interest as then was or should thereafter become due thereon until full Payment was made, and that Your Petitioners should pay all Costs of the Suit

From

From which said Decree of the said Mayors Court your Petitioners now appeal to this Honble Court of Appeals as they conceive the same to be errone=ous and that they are much aggrieved thereby for the following among other Reasons

First. Because the Answer of Your Petitioners being upon Oath and uncontroverted, was Evidence of the Facts therein stated, therefore the Court should not have decreed the full Interest appearing due upon the Face of the Bond executed by your Petitio=ners and amounting nearly to the Sum of Three thousand Pagodas when by the Answer of Your Petitioners upo Oath as aforesaid it appeared that not even Three hundred Pagodas were due on the Score of Intrest.

Secondly Because the Decree is two fold in its Operation which ought not to be the Case, and it is uncertain inasmuch as it adjudges the Delivery of Company's Bonds to the Value of Seven Thousand and eighty six Pagodas and Interest which Value of such Bonds cannot ever be precisely ascertained.

For

For all which Reasons and such Others as may be offered at the Hearing your Petitioners pray that the said Decree may be reversed with Costs to be paid by the Complainant.

/Signed/ Stephen Popham
Solicitor for Appellants

Mayors Court at Madrasapatnam

SJ

Saturday the 16th Day of October Anno Domini 1790

Present
James Call Esquire Mayor
William Webb and Andrew Ross
Aldermen

Between John Cuppage late a Captain now a Major in the Service of the Honble the United Company of Merchants of England trading to the East Indies and under their Presidency of Fort St George by his

His Attornies Josias DuPre
Porcher & Henry Read head of
Fort St. George Merchants &
Complainants & Vincents Corbett
& Hugh Boyd also of the same
place Merchants Defendants.

This Cause Coming on to be Heard and
Debated this Day in the Presence of the Attornies on
both Sides on Reading the Complainants Bill
with Copy of a Bond or Obligation annexed The
Defendants Plea and Answer the Replying 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 Defendants shall pay
unto the Compts. the full and Just Sum of Seven
thousand Eighty Six Pagodas /Pags. 7086:/
together with all Such Interest as now is or
shall hereafter become due thereon untill full
Payment is Made and in Default thereof that
the Defendants do Deliver up unto the Complainants
Companys

Companys Bonds of that Value 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

H Cur

/Signed/ George Taylor
Regr

To

To the Honorable Major General William Medows

President in Council of Fort St. George

In the Court of Appeals
at Madraspatnam

Between John Cuppage late a Captain now a Major in the Service of the Honorable the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort St George by his Attornies Josias DuPre Porcher and Henry Readhead of Fort St. George Merchants Respondents and Vincentio Corbett and Hugh Boyd also of the same place Merchants Appellants

The

Filed in my Office
the 19th November 1790
Chas. N White Clk

The Answer of the abovenamed John Cuppage by his said Attornies the said Josias DuPre Porcher and Henry Readhead to the Petition and Appeal of the above named Vincentio Corbett and Hugh Boyd

This Respondent by his said Attornies Admits that on or about the First day of June in this present year of Our Lord One thousand Seven hundred and Ninety he did file a Bill of Complaint in the Honorable the Mayors Court at Madraspatnam against the said Appellants wherein he Setforth that the said Appellants stood Justly and truely Indebted unto this Respondent in the full and Just Sum of Seven thousand and Eighty Six Pagodas and did also further setforth that on the Twenty Eighth Day of June in the Year of Our Lord One thousand Seven hundred and Eighty five the said Appellants did borrow and receive from this Respondent Six Bonds Executed by the Against and on behalf of the Honorable the East India Company at their said Presidency of

Fort

Fort St George and that the said Appellants did on
Account thereof on the said Twenty Eighth Day of
June duly Execute unto this Respondent a Bond
or Writing Obligatory wherein the said Appellants
Jointly and Seperately bound themselves their heirs
Executors and administrators in the Penal sum of
Fourteen thousand one hundred and Seventy Two
Pagodas Currentmoney of Madras or Companys
Bonds to that Amount and this Respondent did
also setforth that the said Bond or Writing Obligato-
-ry did state that Whereas the said Appellants
had borrowed and received of this Respondent Six
Company's Bonds as per Margin Amounting to
the full and Just Sum of Seven thousand and
Eighty Six Pagodas Currents of Madras to run at
Interest at Eight per Cent per Annum Payable
in Twelve Months and this Respondent did
further state that the Condition of the said Bond
or writing Obligatory was such that if the said
Appellants Jointly or Seperately or their heirs
Executors Administrators or Assigns should well

And

And truely pay or Cause to be paid unto this
Respondent his heirs Executors Administrators or
Assigns the full and Just Sum of Seven thousand
and Eighty Six Pagodas or Companys Bonds to that
Amount together with such Interest as should
or might become due thereupon then the said
Obligation was to be void and of no effect otherwise
to continue in full force and Virtue to which said
Bond this Respondent begged leave to refer a Copy
thereof being annexed to the said Bill of
Complaint and this Respondent lastly said
that he had frequently Requested the said
Appellants to Pay unto him the said Sum of Seven
thousand and Eighty Six Pagodas or otherwise to
perform the Conditions of their said Joint and
Seperate Bond Executed to this Respondent as
aforesaid with Interest and Costs of Suit And this
Respondent doth further Admit that the said
Appellants did on the Twenty Seventh day of
July now last past file a Plea and Answer to
this Respondents said Bill of Complaint and that

they

They therein do say that it Appeared by this Respondents own Shewing that the Scope and End of this Respondents Bill of Complaint was to be Decreed the payment of the Sum of Seven thousand and Eighty Six Pagodas Current money of Madras to gether with such Interest as then was or should thereafter become due thereon or otherwise that the said Appellants should &c perform the Condition of their said Joint Bond or Writing Obligatory and further that the said Appellants might be Decreed to pay all Costs of the said Suit and the said Appellants do state that their said Joint Bond or Writing Obligatory Copy whereof was annexed to this Respondents said Bill is under Date the Twenty Eighth Day of June &c which was in the year of Our Lord One thousand Seven hundred and Eighty five and the said Appellants thereby Covenant for themselves Jointly and Seperately and for their heirs Executors &c administrators and Assigns to pay unto this &c Respondent his heirs Executors Administrators and Assigns the full and Just Sum of Seven thousand and

and Eighty Six Pagodas Current money of Madras or Company's Bonds to that Amount together with such Interest as should or might become due thereupon it being recited in the said Bond or Writing Obligatory that the said Appellants had borrowed and received from this Respondent Six Company's Bonds as per marg in Amounting to the full and Just Sum of Seven thousand and Eighty Six Pagodas Current money of Madras to run at Interest at the rate of Eight per cent per Annum Payable in twelve months — The Appellants doth further state that by the said Bill of Complaint of this Respondent it would Appear as if the Appellants owed unto this &c Respondent the Principal Sum of Seven thousand and Eighty Six Pagodas and near five years Interest thereon at the time of filing the said Bill at the rate of Eight per Cent per Annum or about Nine thousand Nine hundred and Twenty Star Pagodas thereby Estimating the said Company's Bonds at Par when it was known that

their

Their Bonds were then and still are Considered below par and were and are to be purchased at a Considerable Discount or Deduction from their Nominal Amount the Appellants therefore Setforth that this Respondent should have stated the rate or Valuation of the Companys' Bonds at this time and made a Special Complaint the Appellants for a Specific Principal Sum And Interest thereon up to a day certain and to have Setforth the same in an Account Current Annexed to this Respondents Bill of Complaint whereas their demand as the same now stands appears to want certainty and therefore the Appellants pleaded such want of certainty in abatement of this Respondents rights to recover under the said Bill of Complaint and Prayed the Judgement of the said Mayors Court thereon and whether they should make any further or other Answer thereto And the said Appellants for Answer to the Residue of this Respondents Bill did say that they Admitted having Executed the Bonds Copy whereof is Annexed to this Respondents

Respondents said Bill of Complaints but they denied to stand Indebted to him this Respondent in the Sum of money for which he had Sued even in the Supposition which the Appellants cannot Admit that the Companys Bonds were at Par for this Respondents had not given Credit to the said Appellants for any Interest monies or other Sums of money paid by the said Appellants to this Respondent or for his Account or for the Several matters Supplied by the Appellants to this Respondent whereas it would appear if this Respondent had duly Setforth all Accounts and Dealings between him and the Appellants that the Appellants have paid Considerable Sums to this Respondent and laid out and Expended other Considerable Sums for the use of this Respondent Amounting as the Appellants believed to a Sum which is less than three hundred Pagodas short of all Interest monies received by the Appellants on Account of the said Six Bonds and the Appellants did therefore humbly

Humbly submit that by reason of the Several matters and things Setforth in their Plea and Answer whereby it appears first that this Respondent hath brought his Action for an uncertain Sum and Secondly that he hath manifestly Charged the Appellants on the Day he filed his said Bill with nine years Interest on the Principal Sum in Companys Bonds which the Appellants borrowed when that the fact certain was that even Carrying on the Interest accrued up to the last Day of the same month the Appellants were Debtors upon a Balance of Interest monies received on Account of the said Bonds and all other Accounts only in a Sum less than Three hundred Pagodas besides the Estimated Value of the said Companys Bonds And these Appellants did allledge that for these reasons this Respondents Bill ought to be dismissed with Costs to be paid by this Respondent — This Respondent Admits that upon the aforesaid Proceedings the Cause was set down for hearing and the same came on to be

First

Be heard by and before the said Mayors Court on Saturday the Sixteenth day of October when the said Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that the Appellants should pay unto this Respondent the full and Just Sum of Seven thousand and Eighty Six Pagodas together with all such Interest as then was or should thereafter become due thereon untill full Payment be made and in default thereof that the Appellants should Deliver up unto this Respondent Companys Bonds of that Value together with all such Interest as then was or should thereafter become due thereon untill full Payment was made and that the Appellants should pay all Costs of the said Suit — But this Respondent cannot Admit that the said Order or Decree of the said Mayors Court was Erroneous or that the Appellants are aggrieved thereby — for the following reasons. —

Because this Respondent Claims only a performance of the Covenants contained in the Bond granted

Granted to him by those Appellants By which
Bond they have bound and obliged themselves to
pay to this Respondent the full and Just Sum
of Seven thousand and Eighty Six Pagodas being
the Amount at which the aforesaid Company's
Bonds were Estimated borrowed and received by
the said Appellants from this Respondent and
as is particularly expressed in their said Bond so
granted to him as aforesaid In default of which
Payment by them so to be made those Appellants
then and in that Case bound themselves to
Deliver over to this Respondent Bonds of the
Honorable Company to the Amount of the afore-
said Sum of Seven thousand and Eighty Six
Pagodas together with such Interest as should
or might become due thereupon.

Secondly... Because the Answer alluded to by those
Appellants is by no means uncontroverted, nor an
Evidence of facts as alledged by them, they therein
speak of an indefinite Sum due on Account of
Interest whereas they ought to have Spoke positively

But

But had those Appellants been inclined to act
agreeable to Equity and good Conscience they would in
their said Answer have Setforth in a full and
Sufficient manner their transactions / if such they /
had
with this Respondent, and would have annexed
an Account Current to that effect to their said
Plea and Answer; but this they did not nor could
not do their Answer therefore is to be regarded as
an Assertion only not as an Evidence of facts.

Thirdly... Because the Decree cannot be said to be
two fold in its operation whilst it strictly conforms
itself to and only enforces the tenor of the Bond so
granted by those Appellants to this Respondent

For all which reasons and such others
as may be offered at the hearing this
Respondent humbly Prays that the
Decree of the said Mayors Court so made
and passed as aforesaid may be affirmed
and that the Petition of the said Appellants
be dismissed with exemplary Costs.

/ Signed / John Hamilton
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 24th day of December
Anno Domini 1791

Between Vincentio Corbett and Hugh Boyd of Fort St. George Merchants Appellants and John Cuppage late a Captain Major in the Service of the Honble the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George by his Attornies Josias DuPre Porcher and Henry Readhead of Fort St George Merchants 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 Saturday the 16th day of October 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 Honble the Mayors' Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs.

By Cur.
(Signed) Chas. N. White
Clk

To the Kings Most Excellent Majesty in Council

Between John Cuppage late a Captain now a Major in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George by his Attorneys Josias Du Pre Porcher and Henry Readhead of Fort St George Merchants Complainants and Vincentio Corbett And Hugh Boyd also of the same place Merchants Defendants.

The Humble Petition and Appeal of the above named Defendants

Most humbly Sheweth

That the said Complainant by his said Attornies Josias Du Pre Porcher and Henry Readhead did on the first day of June which was in the Year of our Lord One Thousand Seven hundred and Ninety file a Bill of Complaint in the Mayors Court at Madras patnam wherein he setforth that Your Petitioners stood

Filed in my Office
the 6th January 1792
Chas. N. White
Clk

stood justly and truly indebted unto the Complainant in the Sum of Seven Thousand and Eighty Six Pagodas and he did also further setforth that on the Twenty eighth day of June in the Year of Our Lord One Thousand Seven hundred and eighty five your Petitioners did borrow and Receive from the Complainants Six Bonds executed by the Agents and on behalf of the said East India Company at their said Presidency of Fort St George and that your Petitioners did on account thereof on the said Twenty eighth day of June duly execute unto the Complainant a Bond or Writing Obligatory wherein your Petitioners Jointly and Separately bound themselves their Heirs Executors and Administrators in the Penal Sum of Fourteen Thousand One hundred and Seventy Two Pagodas Current Money of Madras or Companys Bonds to that Amount and the Complainant did also setforth that the said Bond or Writing Obligatory Stated that Whereas your Petitioners had borrowed and received of the Complainant Six Companys Bonds as per Margen Amounting to the full and just Sum of

Seven

Seven Thousand and Eighty Six Pagodas Current money
of Madras to run at Interest at eight per Cent per
Annum payable in Twelve Months And the said
Complainant further Stated that the Condition
of the said Bond or Writing Obligatory was such
that if Your Petitioners jointly or seperately or
their Heirs Executors Administrators or Assigns
should well and truly pay or cause to be paid
unto the Complainant his Heirs Executors Admin-
istrators or Assigns the full and just Sum of
Seven Thousand and Eighty Six Pagodas or
Complaints Bonds to that Amount together with
such Interest as should or might become due
thereupon then the said Obligation was to be
void and of no Effect otherwise to continue in
full Force and Virtue to which said Bond the
Complainant begged leave to refer a Copy Thereof
being annexed to the said Bill of Complaint
And the Complainant lastly said that he
had frequently requested your Petitioners to
pay unto him the said Sum of Seven Thousand

and

And eighty six Pagodas or otherwise to perform the
Conditions of their said joint and seperate Bond as
executed to the Complainant as aforesaid to which
said Bill of Complaint Your Petitioners did on
the twenty seventh day of July now last past file
a Plea and Answer and for Plea thereto Your
Petitioners did say that it appeared by the
Complainants own Shewing that the Scope and
end of the Complainants Bill of Complainant was
to be decreed the payment of the Sum of Seven
Thousand and eighty Six Pagodas Current Money
of Madras together with such Interest as then
was or should thereafter become due thereon or
otherwise that Your Petitioners should perform
the Condition of their Joint Bond or writing
Obligatory and further that Your Petitioners might
be Decreed to pay all Costs of the Suite And Your
Petitioners stated that their said Joint Bond or
writing Obligatory Copy whereof was annexed to
the Complainants said Bill is under date the
Twenty eighth day of June which was in the Year of

Our

Our Lord One Thousand Seven hundred and eighty
five and your Petitioners thereby covenant for them-
=selves jointly and severately and for their Heirs
Executors Administrators and Assigns to pay unto
the Complainant his Heirs Executors Administra-
=tors and Assigns the full and just Sum of seven
Thousand and Eighty Six Pagodas Current Money
of Madras or Company's Bonds to that Amount
together with Such Interest as should or might
become due thereupon it being recited in the
said Bond or Writing Obligatory that Your
Petitioners had borrowed and received from the
Complainant Six Company's Bonds as per Marge
Amounting to the full and just Sum of Seven
Thousand and Eighty Six Pagodas Current Money
of Madras to Bear at Interest at the rate of eight
per Cent per Annum payable in Twelve Months
Your Petitioners further Stated that by the said
Bill of Complaint it would appear as if your Petit-
=oners owed unto the Complainants the principal Sum
of Seven Thousand and eighty Six Pagodas and near

five

Five years Interest thereon at the time of filing the
said Bill at the Rate of eight per Cent P Annum or
about Nine Thousand nine hundred and twenty Star
Pagodas thereby estimating the said Company's Bonds
at Par when it was known that their Bonds were then
and Still are considered below par and were and are
to be purchased at a Considerable Discount or deduction
from their nominal Amount Your Petitioners did therefore
Set forth that the Complainant should have stated
the Rate or Valuation of the Company's Bonds
at this time and made a Special Complaint against
Your Petitioners for a Specific Principal Sum and
Interest thereon up to a day certain and to have set
=forth the same in an Account Current annexed
to his Bill of Complaint Whereas their Demand as
the same now Stands appears to want Certainty
and therefore Your Petitioners pleaded such want of
Certainty in abatement of the Complainants Right
to Recover and the said Bill of Complaint and
prayed the Judgment of the said Mayors Court
thereon and whether they should make any

further

Further or other Answer thereto and your Petitioners for
Answer to the Residew of the Complainants Bill did
say that they admitted having Executed the Bond copy whereof
is annexed to the Complainants said Bill of Complaint
but they denied to stand indebted to him in the Sum of
Money for which he had sued even in the Supposition
which your Petitioners cannot admit that the Companys
Bonds were at Par for the Complainant had not given
Credit to your Petitioners for any Interest Monies or
other Sum of Money paid by your Petitioners to the
Complainant or for his Account or for the several
Matters supplied by your Petitioners to the Complai-
nant whereas it would appear if the Complainant
had duly setforth all Accounts and Dealings betwixt
him and your Petitioners that your Petitioners have
paid Considerable Sums to the Complainant and laid
out and expended other Considerable Sums for the use
of the Complainant amounting as your Petitioners
believe to a Sum which is less then Three hundred
Pagodas short fall Interest Monies Received by your
Petitioners on account of the said Six Bonds and your

Petitioners

Petitioners did therefore humbly submit that by Reson of the
several matters and things setforth in their Plea and
Answer whereby it appears first that the Complainant
hath brought his action for an uncertain Sum and
Secondly that he hath manifestly charged your
Petitioners on the day he filed his said Bill with near
five years Interest on the Principal Sum in Com-
pany's Bonds which your Petitioners borrowed when
the Fact certainly was that even carrying on the
Interest Account up to the last day of the same
month your Petitioners are Derectors upon a Balance
of Interest Monies Received on Account of the said
Bonds and all other Accounts only a Sum less than
Three hundred Pagodas besides the estimatia Value
of the said Companys Bonds the Complainants
Bill ought to be dismissed with Costs to be paid
by the Complainant

Your Petitioners therefore shew unto
your most Excellent Majesty in Council that upon
the aforesaid Proceedings the Cause was set down
for Hearing and the same came on to be heard by

and

And before the said Mayors Court on Saturday the Sixteenth day of this Instant October 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 the full and just Sum of Seven Thousand and eighty six Pagodas together with all such Interest as then was or should thereafter become due thereon until full Payment be made and in default thereof that your Petitioners should deliver up unto the Complainant Company's Bonds of that Value together with all such Interest as then was or should thereafter become due thereon until full Payment was made and that your Petitioners should pay all Costs of the Suit.

From which said Decree of the said Mayors Court your Petitioners did appeal to the Court of Appeals as they conceived the said Decree to be Erroneous and that they were much aggrieved & thereby for the following among other Reasons.

First

First ... Because the Answer of your Petitioners being upon Oath and uncontroverted was Evidence of the Facts therein stated, therefore the Court should not have decreed the full Interest appearing due upon the force of the Bond executed by your Petitioners and amounting nearly to the Sum of three Thousand Pagodas when by the Answer of your Petitioners upon Oath as aforesaid it appeared that not even three Hundred Pagodas were due on the score of Interest.

Secondly ... Because the Decree is twofold in its Operation which ought not to be, the one part contradicting the other in as much as it adjudges the Delivery of Company's Bonds to the Value of Seven Thousand and Eighty Six Pagodas and Interest which Value of such Bonds cannot ever be precisely ascertained.

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

Thereto Came on to be heard and Determined on the Twenty fourth day of December last by the said Court of Appeals at Madras who were pleased to Confirm the Decree of the said Mayors Court with Costs of Suits in the said Court of Appeals to be paid by your Petitioner 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 and Court of Appeals to which said several Proceedings and to each of them Your Petitioners pray leave to refer and to have such full and ample benefit of them and of each of them as if they and each of them were herein before fully Stated and 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

Court of Appeals at Madras as above stated and because the Complainant has not Verified his Demand by affidavit, whereas the Defence of Your Petitioners has their joint and Separate Oath thereto for which reason and such others as may be offered at the hearing of this Cause Your Petitioners most humbly Pray that the said Decrees of the said Mayors Court and Court of Appeals at Madras Patnam be reversed and set aside and that the Complainants be Ordered to setforth the Sums he hath received from your Petitioners since they have executed their said Bond to him and that the Register of the Mayors Court may be Ordered to take an Account thereof and to Report to the Mayors Court the Sums so appearing due by Your Petitioners and that the Complainant may pay all Costs of Suit.

/Signed/ Stephen Popham
Solicitor for Appellants

Court

Court of Appeals
at
Madraspatnam

To Saturday the 24th day of December
Anno Domini 1791

Between Vincents Corbett and
Hugh Boyd of Fort St. George —
Merchants Appellants and John
Cuppage late a Captain now Major
in the Service of the Honble the
United Company of Merchants of
England trading to the East Indies
under their Presidency of Fort St.
George by his Attornies Isaias Dutré
Porcher and Henry Readhead of
Fort St. George Merchants —
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 Saturday the 16th day
of October Anno Domini 1790 Upon due Considera-
tion had of the Matters therein Severally Contained and
of the Pleadings and Arguments used by the Attornies
on both sides This Court doth think fit to Order and
Decree and Doth Accordingly Order and Decree that
the said Decree of the Honble the Mayors' Court do
stand Affirmed and that the Appellants Petition
be hence Dismissed with Costs. —

J Cur. —
Signed/ Chas. N. White
Clk

To

To the Kings most Excellent Majesty
in Council

Between John Cuppage late a
Captain now a major in the
Service of the United Company
of Merchants of England trading
to the East Indies under their
presidency of Fort Saint George
by his Attornies Isaias Dupre
Porchier and Henry Readhead of
Fort Saint George Merchants
Complainants and Vincentio N
Corbett and Hugh Boyd also of
the same place Merchants N
Defendants, —

The Answer of the above Named Complainants
to the Petition and appeal of the above named N
Defendants. —

This Respondent admits that he did
by his Attornies Isaias Dupre Porchier and Henry N
Readhead on the first Day of June which was in the
Year

Year of Our Lord one thousand Seven hundred and Ninety
file a Bill of Compliant in the Mayors Court at Madras
patnam and did therein charge that the Appellants did
stand justly and truly indebted unto this Respondent in
the Sum of Seven thousand and Eighty Six pagodas and
this Respondent did in and by his said Bill of Complaint
further setforth that on the twenty Eighth day of June
which was in the year of our Lord One thousand Seven
hundred and Eighty five the Appellants did borrow
and receive from this Respondent Six Bonds Executed
Company at their said presidency of Fort Saint George
and that the Appellants did on account thereof On the
said Twenty Eighth day of June duly Execute unto
this Respondent a Bond or writing Obligatory wherein
the Appellants did Jointly and Separately bind N
themselves their Heirs Executors and Administrators
in the penal Sum of Fourteen thousand One hundred
and Seventy two Pagodas Current Money of Madras or
Companys Bonds to that Amount and that the said
Bond or writing Obligatory did setforth that the — N

Appellants

Appellants had borraved and received of this Respondent Six Companys Bonds as per Margin Amounting to the full and Just Sum of Seven Thousand and Eighty Sive Spagodas Current money of Madras to Run at Interest at Eight per Cent per Annum payable in Twelve Months and that the Condition of the said Bond or Writing Obligatory was such that if the Appellants Jointly or seperately or their Heirs Executors Administrators or assigns should well and truly pay or cause to be paid unto this Respondent his Heirs Execu-tors Administrators or assigns the full and Just Sum of Seven Thousand and Eighty Sive Spagodas or Companys Bonds to that Amount together with such Interest as should or might become due thereupon then this Obligation to be Void and of no Effect. or otherwise to Continue in full force and Virtue a Copy of which said Bond this Respondent did annex to his said Bill of Complaint and did therein and thereby pray have to refer thereunto and pray that the same might be taken as a part of his said Bill and lastly this Respondent did say that he had frequently requested the Appellants to

To pay unto him the said Sum of Seven Thousand and Eighty Sive pagodas or otherwise to perform the Condition of their said joint and seperate Bond Executed to this Respondent as aforesaid but which the Appellants not having Complied with this Respondent did in and by his said Bill pray that the Appellants might be decreed so to do— and this Respondent further Answering admits that to his this Respondents said Bill of Complaint the Appellants did on the twenty Seventh day of July now last past file a Plea and Answer and for plea did say that it appeared by this Respon-dents own Shewing that the Scope and end of this Respondents Bill of Complaint was to be decreed the payment of Seven Thousand and Eighty Sive Pagodas Current Money of madras together with such Interest as then was or should thereafter become due thereon or otherwise that the Appellants should perform the Condition of their Joint Bond or writing Obligatory and further that the Appellants might be decreed to pay all Costs of the Suit and the Appellants did say that their said Joint Bond or writing Obligatory

Copy

Copy whereof was annexed to this Respondents said Bill was under dated the twenty Eighth Day of June which was in the year of Our Lord One thousand Seven hundred and Eighty five, and that the Appellants did thereby Covenant for themselves Jointly and separately and for their Heirs Executors Administrators and Assigns to pay unto this Respondent his Heirs Executors Administrators and Assigns the full and Just Sum of Seven thousand and Eighty Six Pagodas Current money of Madras or Companys Bonds to that Amount together with such Interest as should or might become due thereupon it being stated in the said Bond or writing Obligatory that the Appellants had borrowed and received from this Respondent Six Companys Bonds as per Margin Amounting to the full and Just Sum of Seven thousand and Eighty Six Pagodas Current Money of Madras to run at Interest at the rate of Eight per Cent per Annum payable in twelve Months and that by the said Bill of Complaint it would appear as if the Appellants owed unto this Respondent the principal

Sum

Sum of Seven thousand and Eighty Six pagodas as and near five years Interest theron at the time of filing the said Bill of the rate of Eight per Cent per Annum or about Nine thousand Nine hundred and twenty Star Pagodas thereby estimating the said Companys Bonds at par when it was known that their Bonds were then and still were Considerably below par and were then to be purchased at a Considerable discount or deduction from their Nominal Amount the Appellants did therefore set forth that this Respondents should have stated the rate or Valuation of the Companys Bonds at that time and made a special Complaint against the Appellants for a specific principal Sum and Interest thereon up to a Day Certain and to have set forth the same in an account Current annexed to his Bill of Complaint Whereas their demand as the same then stood appeared to want Certainty and therefore the Appellants had Pleaded such want of Certainty in Abatement of this Respondents right to recover under the said Bill of Complaint and Prayed the Judgment of the said Mayors

Court

Court thereon whether they should make any further or other Answer thereto And this Respondent admits that the Appellants for Answer to the Residue of this Respondents Bill did say that they admitted having Executed the Bond Copy whereof was annexed to this Respondents said Bill of Complaint but denied to stand indebted to him in the Sum of money for which he had sued even in the supposition which the Appellants could not admit that the Companys Bonds were at par for this Respondent had not given Credit to the Appellants for any Interest Monies or other Sum of money paide by the Appellants to this Respondents or for his Account or for the several matters pretended to have been supplied by the Appellants to this Respondent whereas they pretended it would appear if this Respondent had duly Setforth all accounts and dealings between him and the Appellants that the Appellants had paid Considerable Sums to this Respondent and laid out and Expended other Considerable Sums for the use of this Respondent

Amounting

Amounting as they the Appellants did say they believed to a Sum which was less than three hundred pagodas short of all Interest Monies received by the Appellants on account of the said Six Bonds and the Appellants did therefore humbly submit that by reason of the Several matters and things set forth in their Plea and Answer whereby they did say it appeared first that this Respondent had brought his action for an uncertain Sum and Secondly that he had Manifestly Charged the Appellants on the Day he filed his said Bill with near five Years Interest on the principal Sum in Companys Bonds which the Appellants borrowed when the Appellants did say the fact certainly was that Even Carrying on the Interest account up to the last day of the same Month they the Appellants were debtors upon a Balance of Interest Monies received on account of the said Bonds and all other accounts only a Sum less than three hundred pagodas besides the Estimated Value of the said Companys Bonds this Respondents Bill ought to be dismissed

With

With Costs to be paid by this Respondent

And this Respondent further Answering says he admits that upon the aforesaid proceedings the Cause was Set Down for Hearing and the same came on to be heard by and before the said Mayors Court on Saturday the Eleventh Day of this present Instant October, when the said Mayors Court were pleased to Order and Decree and did accordingly Order and Decree that the Appellants should pay unto this Respondent the full and Just Sum of Seven Thousand and Eighty Six Pagodas together with all such Interest as then was or should thereafter become due thereon until full payment be made, and in default thereof that the Appellants should Deliver up unto this Respondents Companys Bonds of that Value together with all such Interest as then was or should thereafter become due thereon until full payment was made and that the Appellants should pay all Costs of the Suit

From which said Decree of the said Mayors Court this Respondent admits that the Appellants did Appeal to the Court of Appeals of Madras patinam the pretext

Pretext that the said Decree was Erroneous and that they were much aggrieved thereby and for Cause of Appeal did state the following amongst other Reasons —

First Becaus the Answer of the Appellants being upon Oath and uncontroverted was Evidence of the Facts therein stated therefore the Court should not have Decreed the full Interest appearing due upon the face of the Bond Executed by the Appellants and Amounting nearly to the Sum of Three Thousand Pagodas when by the Answer of the Appellants upon Oath as aforesaid it appeared that not even three hundred Pagodas were Due on the score of Interest —

Secondly Because the Decree was two fold in its Operation which Ought not to be the Cause and it was uncertain inasmuch as it adjudged the delivery of Companys Bonds to the Value of Seven Thousand And Eighty Six Pagodas and Interest which Value of such Bonds could not ever be precisely ascertained — And this Respondent admits that the Appellants said Petition of Appeal to the said Court of Appeals this Respondent did put in his Answer And Notwithstanding the assertion of the Appellants to the Contrary and

Wherein

Therein set forth such matters and things as were pertinent and relevant as arising out of the said Proceedings aforesaid for this Respondents Most humbly Sheweth unto Your most Excellent Majesty in Council that he did therein state, that he claimed only a performance of the Covenants contained in the Bond granted to him by the Appellants and by which Bond they bound and Obliged themselves to pay to this Respondent the full and Just Sum of Seven Thousand and Eighty Six Pagodas being the Amount at which the aforesaid Companys Bonds were Estimed when borrowed and received by the said Appellants from this Respondent And as was also particularly Expressed in their said Bond as granted to him as aforesaid Indefault of which payment by them So to be made the Appellants then and in that Case bound themselves to deliver over to this Respondent Bonds of the Honble Company to the Amount of the aforesaid Sum of Seven Thousand and Eighty Six Pagodas together with such Interest as should or might become due thereupon That the

The Answer of the Appellants was by no means uncontroverted nor an Evedence of facts as by the appellants alleged as they did in their said answer speak of an indefinite Sum due on Account of Interest Whereas they ought to have Spoken positively and that had the Appellants been inclined to act agreeable to Equity and Good Conscience they would in their said Answer have setforth in a full and sufficient manner their transactions / if any they had / with this Respondent And would have annexed an Account Current to that Effect to their said Plea and Answer but which they did not do, their Answer therefore was to be regarded as an Assertion only / Not as an Evedence of facts and Lastly this Respondent did state that the Decree could not be said to be two fold in its Operation whilst it strictly conformed it self to / and only enforced the Tenor of the Bond so granted by the Appellants to this Respondent Therefore this Respondent did humbly pray that the said Decree of the said Mayors Court might be affermed and that the Appellants Petition of Appeal might be dismissed with Exemplary Costs

And

And this Respondent further answering says he admits that the Appellants said Petition of Appeal and his Answer thereto did come on to be heard and Determined before the said Court of Appeals on the twenty fourth Day of December last when the said Court were pleased to affirm the said Decree of the said Mayors Court with Costs

From which said Order of the said Court of Appeals of Madraspatnam this Respondent most humably submits the Appellants ought not to have Appealed to your most Excellent Majesty in Council

First ..... Because in all Appeals from an Order or Decree the Appellant should shew some Grievance whereon to Ground his Appeal And in the present instance the Appellants so far from shewing any grievance by the said Order or Decree of the said Court of Appeals at Madraspatnam he has not even pretended that he was any wise aggrieved thereby and the only reason he has brought forward in opposition to the Claims of this Respondent is that he this Respondent has Not Verified the same by affidavit Whereas they shew that the Appellants

defence



Defence by them set up in their Joint and several plea and Answer was upon Oath Whereupon this Respondent most humbly submits to your most Excellent Majesty in Council that an affidavit of Debt by a Complainant is not read as Evidence at the hearing of a Cause and that therefore the said Reason of the Appellant is altogether superfluous and unfounded And this Respondent humbly submits to Your Most Excellent Majesty in Council that the said Court of Appeals at Madraspatam were in a manner bound to affirm the Decree of the said Mayors Court Because first the Plea set up by the Appellants was misconceived and was in fact no plea further than as the same was Denominated by the Caption thereof and Secondly that Even had it been a good plea the Appellants Answer did over rule the same inasmuch as they did in their said Answer set forth the like matters and things as insisted on as matter of abatement in and by their said pretended plea And because the Appellants in their said Answer to this Respodents said Bill of Complaint admit the Execution of

the

The Bond upon which this Respondent did Com-
-mence his Suit against them and although they
deny to stand indebted unto this Respondent in
the Sum charged to be due and owing to him in
and by his said Bill they do not shew any Reason
whereby to strengthen and Support the same
and the only Objection they make is to the point
of Interest and that only upon their belief and in a
manner so Vague and indefinite as carries with
it prima facie Evidence that it is altogether
unfounded And this Respondent humbly submits
to your Most Excellent Majesty in Council
that if any accounts had actually existed between
the appellants and this Respondent they ought
to have specified the same in an account Current
and have annexed the same to their said Answer
and tendered the Balance thereon appearing
due to this Respondent either in Money or in
Companys Bonds according to the Condition of
their Joint and separate Bond Executed to this
Respondent as aforesaid upon the benevolent
Maxim that they who would have Equity should do

Equity

Equity but not having set forth any such Account
Current it was Evident that they had it not in
their power so to do and therefore this Respondent
most humbly submits that although the said
Answer of the appellants to this Respondents said
Bill of Complaint was upon Oath Yet that it
was not Conclusive inasmuch as it did not
set forth any matters sufficiently Certain to be
Regarded as Relevant and pertinent but on the
Contrary could be considered as mere Evasion and
pretext to harrass and Vex this Respondent in
the premises by forcing him into a length of
litigation and Expence contrary to Equity
and Good Conscience and therefore and for the
Reasons in this Respondents Answer to the
Petition of Appeal of the appellants to the said
Court of Appeals at Madrasapatnam and from
the General Equity of the thing this Respondent
most humbly Submits to Your Most Excellent
Majesty in Council that the appellants had
no foundation whatever in Reason, or in Justice

Whereon

Whereon to ground an Appeal from the said Order or Decree of the said Court of Appeals of Madraspatnam to Your Most Excellent Majesty in Council.

Wherefore and for such other Reasons as may be offered at the hearing of this Cause this Respondent humbly prays that your Most Excellent Majesty in Council will be pleased to affirm the said Decree of the said Mayors Court and the Order of the Court of Appeals aforesaid. And that the Appellants said Petition of Appeal may be dismissed with Exemplary Costs. And that Your Most Excellent Majesty in Council will be graciously pleased to grant unto this Respondent such further and other Relief in the premises as to Your Most Excellent Majesty in Council shall seem Most Meet.

/Signed/ John Hamilton
Solicitor for Respondent

To

To the Honble Major General William Medows
Governor &c Council — Fort Saint George

In the Honorable the Court of Appeals

Between Daddy Naserwanjee by his attornies William Balfour John Spalding and Oliver Colt Complainant

and

Richard Legge Willis Defendant

The humble Petition and Appeal of the abovenamed Defendant Richard Legge Willis —

Most Humbly Sheweth

That the abovenamed Complainant Daddy Naserwanjee did on or about the twenty Second Day of February One Thousand Seven hundred and Ninety file his Bill of Complaint in the Honorable the Mayors' Court at Madraspatnam by his Attornies abovenamed against Your Petitioner and therein charged that Your Petitioner was indebted to him the said Daddy Naserwanjee in the Sum of Nineteen Thousand One hundred and thirty four Pagodas twenty Eight fanams & thirty two Cash Current Money of Madras being equal to the Sum of Seven Thousand Six hundred and fifty three Pounds Seventeen Shillings and four pence

Filed in my Office the 7th March 1791
Chas. N. White Clk

Pence Sterling Money of Great Britain or thereabouts which Sum of Money the said Complainant pretended was due to him upon the Ballance of an account between him and Your Petitioner arising upon certain Transactions which Your Petitioner had with him while Your Petitioner was at Bombay for which Ballance he charged that Your Petitioner had drawn two Setts of Bills of Exchange in favor of two Persons in the Bill of Complaint named which had not been paid as by the Bill of Complaint will more fully appear

Your Petitioner sheweth that on the Court Day after the said Bill of Complaint was filed Your Petitioner regularly appeared thereto by his Attorney Peter Walker of Fort Saint George Gentleman One of the Attornies of the said Honble Court and after the usual Rules had passed he did in due time regularly put in his Plea and Answer upon Oath thereunto in which he absolutely denied that he was indebted to the Complainant either in the Sum sued for or in any other Sum of Money whatever and Your Petitioner further stated that he was norway interested or concerned in any Transactions with the Complainant but had acted therein merely as an Agent for others without even receiving or being ever to receive even a Comission or any other Benefit or Advantage whatever and therefore he insisted that even if he was liable by the Strictness of Law to make good the Debt to the Complainant (which however he by no means admitted) yet that Your Petitioner not having any Interest himself therein a Court of Equity as the said Honble the Mayors Court is would upon such Grounds relieve him therefrom and Your Petitioner also stated many other facts in his said Answer respecting the Original Agreement with the Parties Concerned who were all Resident in Great Britain which when proved as Your Petitioner undertook they should would fully and clearly do away the Charge of the Complainants as by his said Plea and Answer remaining of Record in the said Honble Court will more fully appear.

Your Petitioner Sheweth further that to this his Plea and Answer the said Complainant did on or about the tenth of August of the same Year file his Replication in the

In the said Hon^ble the Mayors Court and did t
reply and insist That Your Petitioner in the Tra
= actions to which he had alluded actually was a
Party and deeply interested therein; and he did
also deny and Controvert many other Facts and
allegations in Your Petitioners said Plea and
Answer Contained Concerning the Original Cont
and the Transaction alluded to as well as regard
other Matters which it was incumbent upon Yo
Petitioner to prove as by the said Replication al
remaining of Record may at large appear. —

Your Petitioner sheweth further that to the
Replication he did in due time file his Rejoinder
in which among other things he said and insisted
that notwithstanding any thing that might be alleged
by the Complainant to the Contrary he did and
would aver and maintain and in due time fully
prove by the Oath of the Parties themselves or some
or One of them that he your Petitioner was not a
Party in the Transactions alluded to by the Complai=
=nant in his Replication nor in any manner interested
therein to the value of a Single Pagoda nor ever

was



Was in any possible Event to receive any Advantage
thereby" as by the said Rejoinder may also appear. —

Your Petitioner sheweth further that on these
Proceedings and the several Facts therein Contained
Issue was joined on the Seventh Day of February in
the Year of Our Lord One Thousand Seven hundred
and Ninety One and Rules passed in the usual
manner for examining such Witnesses as each Party
wished to examine — and Your Petitioner having two
very material Witnesses to examine who were Resident
in Great Britain namely James Willes and Andrew
Duncan and who alone could prove the Facts above
stated besides many others relative to the said
Transaction which were very material for your
Petitioner he did on the thirteenth Day of the
said Month of February / being the very next Court
Day after / file a Petition in the said Honorable
the Mayors Court stating therein that the said
Two Persons were very material Witnesses on the
part of Your Petitioner and that without their
Testimony Your Petitioner Could not with Safety
proceed to a hearing and having annexed thereto

Your

Your Petitioners Own Affidavit taken at Tranquebar / where Your Petitioner then resided / in support of the Facts in the Petition stated and also the Affidavit of Your Petitioners Solicitor in Confirmation of the same Your Petitioner humbly prayed the said Honble the Mayors Court that they would be pleased to issue a Commission directed to certain Commissioners therein named to take the Examination and Depositions of the said James Willis and Andrew Duncan on the part and Behalf of Your Petitioner — Your Petitioner sheweth further that the said Petition came on to be heard and determined on Tuesday the Twenty Second Day of the said last mentioned Month of February when the said Honble the Mayors Court were pleased to dismiss Your Petitioners Petition — Whereupon Your Petitioner conceiving himself much aggrieved thereby he did on the first Day of this Instant Month of March present another Petition to the said Honble the Mayors Court praying that a Rehearing might be allowed him upon the said last mentioned Order of the Court of the twenty Second of February which was accordingly



Accordingly granted to your Petitioner and it was Ordered that it should come on to be reheard on the fifth Day of March Instant when the same coming on to be heard the said Honble the Mayors Court were pleased to Order that the said Order for Rehearing should be reversed and your Petitioners Petition was of Course dismissed and your Petitioner deprived of any Opportunity of examining his said Witness By which Proceedings of the said Honble the Mayors Court Your Petitioner conceives himself much injured and aggrieved and therefore most humbly prays leave to appeal therefrom to this Honorable Court for the following among other Reasons. —

First... Because after Issue is joined and Rules passed for examining Witnesses the Court of Chancery (whose Rules of Practice the said Honble the Mayors Court have in general adopted) will always upon any probable Cause shewn Grant a Commission to examine Witnesses to any distant Place that may be required. —

Secondly... Because the same has been invariably the Practice of the said Honble the Mayors Court and an Application

for

For the granting such Commission was formerly consid-
=ered as a Motion of Course and it was granted
frequently without any Affidavit and when there
there was an Affidavit Your Petitioner has not been
able to discover a single Instance where it has been
denied nor does he believe the Opposite Party can
shew one. —

Thirdly.... Because on the very same Day on which Your
Petitioners' Petition was dismissed the Court were
pleased to grant a Commission to examine Witnesses
in Great Britain in another Cause namely Payne
&c his Attorney Jackson against Johnson in which
the Petition filed and the Affidavit sworn was —
exactly Similar to those filed by your Petitioner and
the same having been granted on the Motion of
the same Attornies who act for the Complainant
they will not of Course deny it —

Fourthly.... Because your Petitioners Application was support
=ed not only by his own Affidavit but also by the
Affidavit of his Attorney at Law who must be
competent to Judge of the Witnesses necessary and
who swears that he is fully of Opinion that Your

Petitioner



Petitioner cannot safely proceed to a hearing without
the Testimoney of these Witnesses which being sworn
by a Person no way interested in the Event of the
Cause Your Petitioner humbly conceives is much
stronger than any Affidavit he could have made
himself and would be alone a sufficient Ground
either in the high Court of Chancery or agreea-
=bly to the Practice of the said Honble the Mayors
Court to obtain the Commission prayed for. —

Fifthly Because your Petitioner did really not apply
for the said Commission from a Desire to delay
the Suit but from an honest and fair Motive
of supporting a very material part of his Defence
by the Testimony of the abovenamed Persons who
are alone able to prove it for Your Petitioner —
having insisted in his Answer that he had no
Interest whatever in the Transactions alluded
to in the Bill of Complaint and the Complai-
=nant having in his Replication insisted that
he had an Interest which your Petitioner
has again denied in his Rejoinder (as is —
herein before more particularly set forth) the —

Question

Question of your Petitioners being interested or not is among the Facts on which Issue is joined and Rules have passed for examining Witnesses and therefore surely Your Petitioner ought not to be debarred from examining the only Witnesses he has thereupon —

Sixthly ... Because the Concern to which the Proceedings allude and on Account whereof Your Petitioner is Charged to be indebted to the Complainant did in Fact originate in Great Britain and of Course the only Person who can give Evidence thereof are there Resident. —

Seventhly ... Because the fact herein before noticed and which your Petitioner wishes to prove is exceedingly material for him; it being the Ground on which the whole Equity of his Case Rests and he has also other very Material Points to Examine these Witnesses to by which it will clearly appear that Your Petitioner is no way liable to the Complainant for the Debt sued for and therefore it would be the utmost Cruelty and attended with the most fatal Consequence to him to be deprived of their Testimony

Eighthly

Eighthly ... Because the principal Reason urged by the Opposite Attorney for the Court to deny the Prayer of Your Petitioners Petition was because Your Petitioner was in Contempt for not having given Bail to a Warrant of Arrest that had issued against him — but Your Petitioner denies that he ever did incur any Contempt thereby as he had always an Attorney appearing in Court for him and the Warrant of Arrest did not issue untill after many Months to wit Eight or Ten Months from the Commencement of the Suit after issuing of which Your Petitioner constantly appeared as before by his said Attorney and the Rules passed in the same manner as they did in other Causes and in pursuance of such Rules Your Petitioner filed his Rejoinder and prayed that Issue might be joined and Rules pass for examining Witnesses which would be altogether useless if he were not at liberty so to do if he is at Liberty to examine them no Reason can be given why he should not have an equal Claim to examine by a Commission such of those who live at too remote a Distance to be examined otherwise. —

And

And lastly Because at the time of determi=
=ning Your Petitioners Petition the said Honble the
Mayors Court were much divided in their
Opinions and it was only carried against Your
Petitioner by the Majority of One Voice and four
differentes Dissents were entered upon the Records
of the said Honble the Mayors Court against
the same as by the Copies of the Extracts therefrom
hereunto annexed for the Inspection of this
Honble Court and the Originals ready to be pro=
duced when required may more fully and at
large Appear.

For which Reasons and for such other
as may be offered at the hearing Your Petitio
=ner most humbly prays that the said Order of
the Mayors Court of the twenty Second Day of
February last whereby Your Petitioner Petition
was dismissed may be reversed and set aside
and that the Prayer of the same wherein Your
Petitioner prayed that a Commission might
issue from the said Honble the Mayors Court
directed to certain Persons therein named to

examine

Examine and take the Depositions of the said James
Willes and Andrew Duncan on the part and
Behalf of Your Petitioner may be granted with
Costs And that Your Petitioner may have such
other and further Relief as to this Honble Court
may seem meet.

(Signed) Peter Walker.

Solicitor & Attorneys for Appellant.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22nd Day of February Anno Domini 1791

Present

Josias DuPre Porcher Csq.re Mayor
James Call — William Webb —
Andrew Ross John Mitford
Henry Chichley Michell James Amos
Henry Readhead Benjamen Raebuck
James Daly — and — Aldermen

The Mayor being interested goes off the Bench and the Maces are taken away and Mr. Alderman Call takes the Chair —

Daddy Nasarwanjee by his Attornies William Balfour John Spalding and Oliver Colt. —

Richard Legge Willis vers.

A Further time of One Week for the return of the Warrant of Arrest issued against the Defendants Body prayed for and Granted —

Messrs James Stuart Hall and John Hamilton Attornies for the Complainant agreeable to the order of last Court Day object to the prayer of the Defendants Petition being granted because the Affidavit upon which the prayer is grounded is irregular and Contrary to the Practice of the Court the same having

Having been taken or said to be taken before a Personat Tranquabar which is a foreign Settlement whereas all Proceedings before this Court that require an Oath it is necessary that such Oath should be Administered before a Judge or under the Authority of this Court as also because it appears from the Defendants Affidavit that the same is said to have been Sworn to Two Months before Issue was Joined in this Cause The said Attornies in further Support of their Objections pray leave to file the Affidavit of John Christian Pengel Sworn to before Mr. Alderman Call the 21st Instant from which it appears that the Defendant has absconded from the Jurisdiction of this Court and thereby stands in Contempt thereof in not having obeyed the Order for Bail — Extract from the Minutes of last Court Day read Petition and Affidavit filed last Court Day read — Affidavit of John Christian Pengel read — The Court having taken the same into Consideration it is Ordered that the Petition be over Ruled with Costs — Further Day is given the Parties till the 8th March next to Examine Witnesses

Witnesses in default of which Publication will pass in this Cause — Messrs. Aldermen Call Webb Milford & Michell Dessent to the Resolution of the Court —

A True Extract
(Signed) George Taylor
Regr.

A true Copy
(Signed) Peter Walker —
Solicitor & Attorney for Appellant —

Extract from the Minutes of Court Held at the Town Hall on Saturday the 5th Day of March Anno Domini 1791

Present

Josias DuPre Porcher Csqr. Mayor
James Call William Webb
Andrew Ross John Milford
Henry Chicheley Michell Henry Readhead
Benjaman Roebuck & James Daly
Aldermen

The Mayor being interested goes off the Bench and the Maces are taken away &
Mr. Alderman Call takes the Chair, —

Daddy Nasarwanjee by his Attornies William Balfour John Spalding and Oliver Coll. —

Vers

Richard Legge Willis

Extract from the Minutes of Court of the 5th. Instant Read Petition of the Defendants Read. —

Mr. Alderman Roebuck Moves that the Order of Court of last Court Day for granting a Rehearing of the Order of Court of the 22nd Ultimo may Stand Revoked which is Seconded by Mr. Alderman Michell and the Question being put it is Ordered that the Same do Stand Revoked Accordingly & that the Petition be Over Ruled with Costs — Messrs. Aldermen Call & Milford Dessent to the Resolution of the Court. —

a true Copy A True Extract —
(Signed) Peter Walker —
(Signed) George Taylor
Regr.

Solicitor & Attorney for Appellants.

To

To the Honorable Major General William Medows
Governor &c Council
In the Honorable the
Court of Appeals
Fort Saint George

Between Richard Legge Willis appellant and Daddy Nasseranjee by his attornies William Balfour John Spalding and Oliver Colt Respondent.

The Answer of abovenamed Respondent

This Respondent admits he did on or about the Twenty Second Day of February One thousand Seven hundred and Ninety file his Bill of Complaint in the Mayors Court at Madraspatnam by his attornies abovenamed against the abovenamed appellant and therein Charged that the appellant was indebted to him this Respondent in the Sum of Nineteen Thousand One hundred and thirty four Pagodas Twenty Eight fanams thirty two Cash Current Money of Madras and which this Respondend did Charge was due to him upon the Balance of an Account between him and the appellant Arising upon certain Transactions which the appellant had with him while the appellant

Was

Filed in my Office
the 9th May 1791
Chas N White
Clk

was at Bombay and for which Balance he this Respondent charged that the appellant had drawn two Sets of Bills of Exchange in favor of two Persons in the Bill of Complaint named and that they had not been paid.

And this Respondent admits that to his said Bill of Complaint the appellant did appear by his attorney in Court and after the usual Rules had passed did put in his Plea and Answer in which he absolutely denied that he was indebted to this Respondent either in the Sum for or in any other Sum of Money whatever and that he was no way interested or Concerned in any Transactions with the Complainant but that he had Acted therein Merely as an agent for others without even Receiving or being desirous to receive even a Commission or any other Benefit or advantage whatever and therefore insisted that even if he was liable by the Strictness of Law to make good the Debt to the Complainant which however he by no Means Admitted yet that he the appellant not having any Interest himself therein

Court

The Petitioners Attorney in Court did file an Affidavit in Support thereof yet he doth not admit an Affida=vit of the Appellant himself was ever filed in the Cause but this Respondent Admits the Appellant did pray the said Mayors Court to ifsue a Commiſ=on directed to certain Commiſsioners therein named to take the Examination and Depositions of the said James Willis and Andrew Duncan on the part and Behalf of the Appellant and this Respondent Admits that the said Petition came on to be heard and determined on Tuesday the Twenty Second Day of the said Month of February when the said Mayors Court were pleased to dismiſs the Appellants said Petition Whereupon the Appellant pretending he was much aggrieved thereby did on the first Day of the Month of March following present another Petition to the said Mayors Court praying that a Rehearing might be allowed him upon the said last Mentioned order of the said Mayors Court of the Twenty Second of February but this Respondent denies the same

was

Was granted to the Appellant and this Respondent for further Answer to the Appellants said Petition says he denies that the Appellant is any way aggrieved or that he has cause of Appeal to this Honble Court and further this Respondent says it is the Course of this Honble Court that when an Appellant has Cause of Appeal from the Order or decree of the Court below he must setforth the particular order and Decree from whence he appeals together with the particular date of such order or Decree which this Respondent says the Appellant has omitted doing and has appealed only from the Proceedings of the said Mayors Court generally and therefore this Respondent submits whether the Appellants said Petition ought not to be Dismiſsed for want of that Regularly and precision usual and Necessary in like cases and this Respondent says that should this Honble Court be of Opinion that the Appellants said Petition is sufficiently Regular then and in that case this Respondent further answering says that the reasons for appeal as in the Appellants said Petition the same are stated and setforth are either erroneous or untrue and therefore

and

And in Answer thereto this Repliant says. —

First ..... That the said Mayors Court is not governed by the Practice of the Court of Chancery relative to the Examination of Witnesses upon Commission beyond the Seas but by its own Rules and Regulations and under such Rules and Regulations it Requires More than probable cause to the granting of such Commission and it Frequently it not always occure that where very good cruse is not Shewn the said Mayors Court will Refuse to grant the Commission prayed for and in So doing it proceeds upon the equitable prencisple of preventing vexacious litigation and ruinous delay. —

Secondly ..... This Respondent says that whatever Might have been the former Practice of the said Mayors Court with Respect to granting Commissions for the Examination of Witnesses it now is as stated by this Respondent in his Answer to the Appellants first Reason for Appeal and further this Respondent says as he has already said that frequent Instances have occurred and Some of them very recently wherein the said Mayors Court has Refused to grant a Commission to Examine Witnesses. —

Thirdly ..... This Defendants says that the said Mayors Court in granting a Commission to examine Witnesses are Governed by Circumstances and therefore what Might have appeared equitable and Just in the Case of Payne v. Johnston by his Attorney Jackson as cited by the Appellant to the hon granting the Commission prayed for Might have been as it really was demetrically opposite in the appellants own case and this Respondent denies that the Affidavit for in one case was the same as in the other for this Respondent is advised that the affidavit filed on the Part of Payne by his Attorney Jackson was regular and according to the Practice of the said Mayors Court whereas the affidavit filed on the Part of the Appellant was altogether Irregular and unknown in the Practice of any Court whatever and this Respondent says that reference to the conduct of an Attorney of the said Mayors Court in pursuing the Interest of his Client in a Matter foreign to the matter in question before this Hon^ble Court is irregular impertinent and contrary to Practice. —

Fourthly ..... This Respondent says that he has already stated in his Answer to the Appellants Third Reason for appeal that the Affidavit produced on his the Appellants part was altogether

altogether Irregular and so the same will More fully appear by the Copy of an Extract of the Minutes of the said Mayors Court to the Appellants said Petition Annexed and this Respondent says that if the Affidavit of the Appellant was Irregular and Insufficient the Affidavit of his Attorney at Law could not render it perfect but on the contrary Must from the Nature of the Thing have added to its Irregularity and this Respondent further says that it is neither the practice of the High Court of Chancery nor of the said Mayors Court to Grant a Commission for the examination of Witnesses upon the Affidavit of an Attorney at Law employed in the Cause who this Respondent does not admit to be a disinterested party —

Fifthly ..... This Respondent says that the Appellants Fifth reason for appeal is Irregular for that the Matters and Things therein contained donot appear on the Record of the said Mayors' Court and therefore the same is New matter and for as Much as this Respondent is advised that it is contrary to the Practice of this Honble Court to Introduce on its Proceedings any Matter that was not in Evidence in the Court below this Respondent Humbly prays the same may be

Be expunged from the Record —

Sixthly ..... This Respondent to the Appellants sixth Reason for appeal says that the same stands in a like predicament with the Matters setforth in his the Appellant said fifth reason and thereupon this Respondent prays as in his said Answer to the Appellants said fifth reason he has already prayed —

Seventhly ..... This Respondent to the appellant seventh Reason for appeal says that the same with the Appellants fifth and sixth Reason for Appeal is new Matter and therefore upon the grounds in this Respondents several Answers thereunto prays as in and by his said several Answers he has already prayed —

Eighthly ..... This Respondent denies that the principal reason urged by his Attornies in Court in Opposition to the Prayer of the Appellants said Petition was because that the Appellant was in contempt for not giving Bail and this Respondent says that the reverse will appear by the said Extract of the Minutes of the said Mayors Court copy whereof is to the Appellants said Petition annexed and therefore this Respondents says that the insinuations and the suggestions in the

Appellants

Appellants said eighth reason for appeal contained are impertinent irrelevent and groundless. —

Lastly..... And this Respondent says that the Appellants last reason for appeal is absurd and inconsistent for this Respondent says the Act of Parliament has so provided that there can be no devesion in the said Mayors Court because that the same consists of a Majority of the Members thereof and where there are two and two the Mayor or in his Absence the senior Aldermen has a casting voice and thereupon this Respondent says that the introduction of Dissents as in and by the Appellants said Petition the same appears has nothing to do with the Act of the said Mayors Court and that such introduction and of the Copies of Extracts to the appellants said Petition of appeal annexed and by him referred to as relative to the said dissents is altogether irregular errelevent and inpertenent and therefore this Respondent prays the same may be expunged from the Record. —

From all which Reasons and such others as may be offered at the Hearing this Respondent humbly prays this Honble Court to Confirm the said Order

Order of the said Mayors Court of the twenty Second day of February and of the fifth Day of March last past and that the Appellants Petition and Appeal from his very litigious Conduct in the premises be dismissed with Exemplary Costs —

/ signed /

James L. Hall
John Hamilton
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 24th day of December

Anno Domini 1791

Between Richard Legge Willis
Appellant and Diddy Nasserwanjee
by his Attornies William Balfour
John Spalding and Oliver Coll of
Fort St George Esqrs 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 Order of the said Court given in this
Cause on Tuesday the 22d. day of February Anno
Domini 1791 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 Order of the Honble the Mayors
Court

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

By Cur.

/Signed/ Chas. N. White
Clk

To

To the Kings Most Excellent Majesty in Council

Between Daddy Naperwanjee of Bombay Merchant by his attorneys William Balfour John Spalding and Oliver Colt of Fort St George Merchants Complainant

and

Richard Legge Willis Senior Merchant in the Civil Service of the Honble the United Company of Merchants of England trading to the East Indies under ~~their~~ their Presidency of Fort St George aforesaid Defendant

The humble Petition and Appeal of the abovenamed Defendant Richard Legge Willis —

Most humbly Sheweth

That the abovenamed Complainant Daddy Naperwanjee did on or about the Twenty Second day of February in Year One Thousand seven hundred and Ninety file his Bill of Complaint in the Honorable the Mayors Court at Madraspatnam by his attorneys abovenamed

Filed in my Office the 6th January 1792
Chas N. White Clk

abovenamed against Your Petitioner and therein charged that Your Petitioner was indebted to him the said Daddy Naperwanjee in the sum of Nineteen Thousand One hundred and thirty four Star Pagodas twenty Eight fanams thirty two Cash Current Money of Madras being equal to the Sum of Seven Thousand Six hundred and fifty three Pounds seventeen Shillings and four Pence Sterling Money of Great Britain or thereabouts which Sum of Money the said Complainant pretended was due to him upon the Ballance of an Account between him and Your Petitioner arising upon certain Transactions which Your Petitioner had with him while your Petitioner was at Bombay for which Ballance the said Complainant charged that Your Petitioner had drawn two setts of Bills of Exchange in favor of Two Persons in the said Bill of Complaint named which had not been paid as by the said Bill of Complaint will more fully appear

Your Petitioner further most humbly — Sheweth That on the Court day after the said Bill of Complaint was filed Your Petitioner regularly appeared thereto by his Attorney Peter Walker of Fort St George aforesaid

aforesaid Gentleman one of the Attornies of the said Honble the Mayors Court and after the usual Rules had passed he did in due time regularly put in his Plea and Answer upon Oath thereunto in which he absolutely denied that he was indebted to the Complainants either in the Sum sued for or in any other Sum of Money whatever And Your Petitioner further stated that he was no way interested or Concerned in any Transactions with the Complainant but had acted therein merely as an agent for others without ever receiving or being ever to receive even a Commission or any other Benifit or Advantage whatever and therefore he insisted that even if he was liable by the Strictness of Law to make good the Debt to the said Complainant (which however he by no means admitted) Yet that Your Petitioner not having any Interest himself therein a Court of Equity as the said Honble the Mayors Court is would upon such Grounds relieve him therefrom and Your Petitioner also stated many other Facts in his said Answer respecting the Original Agreement with the Parties concerned who were all Resident in Great Britain which when proved as Your Petitioner undertook they should would fully and clearly do away the Charge of the Complainant as by his said Plea and Answer will more fully appear

Your Petitioner furthermost humbly sheweth that to this his Plea and answer the said Complainant did on or about the Tenth day of August in the same Year file his Replication in the said Honble the Mayors Court and did therein Reply and insist that Your Petitioner in the Transactions to which he had alluded actually was a Party and deeply interested therein and he did also deny and controvert many other Facts and allegations in Your Petitioners said Plea and Answer contained Concerning the Original Contract or Transaction alluded to as well as regarding other Matters it was incumbent on Your Petitioner to prove as by the said Replication will more fully appear

Your Petitioner further most humbly sheweth that to this Replication he did in due time file his Rejoinder in which among other Things he "said and insisted that notwithstanding any thing "that might be alledged by the Complainant to the

Contrary

" Contrary hereto and would aver and maintain and in
" due time fully prove by the Oaths of the Parties themselves
" or some or one of them that he Your Petitioner was not a
" Party in the Transactions alluded to by the Complainant
" in his Replication nor in any Manner interested therein
" to the Value of a single Pagoda nor ever was in any
" possible Event to receive any advantage thereby" as by
his said Rejoinder will more fully appear —

Your Petitioner further most humbly sheweth
that on these Proceedings and the several Facts therein
contained Issue was joined on the Seventh day of
February in the Year of Our Lord One Thousand
seven hundred and ninety One and Rules passed in
the usual Manner for examining such Witnesses as
each Party wished to examine and Your Petitioner
having two very material Witnesses to examine who
were Resident in Great Britain namely James
Willis and Andrew Duncan and who alone could
prove the Facts above stated besides many others
relative to the said Transaction which were very material
for Your Petitioner he did on the Thirteenth day of the

said



Said Month of February (being the very next Court day
after) file a Petition in the said Honorable the Mayors
Court stating therein that the said Two Persons were
very material Witnesses on the part of Your Petitioner
and that without their Testimony Your Petitioner could
not with safety proceed to a Hearing and having annext
thereto Your Petitioners own Affidavit taken at Tranque-
bar (where Your Petitioner then resided) in support of the
Fact in the Petition stated and also the Affidavit of Your
Petitioners Solicitor in Confirmation of the same Your
Petitioner humbly prayed the said Honble the Mayors
Court that they would be pleased to issue a Commissi-
on directed to certain Commissioners therein named to
take the Examinations and Depositions of the said
James Willis and Andrew Duncan on the part and
behalf of Your Petitioner — Your Petitioner further
most humbly sheweth that the said Petition came on
to be heard and determined on Tuesday the twenty
second day of the said Month of February when the
said Honble the Mayors Court were pleased to dismiss
Your Petitioners Petition — Whereupon Your Petitioner

considering

Considering himself much aggrieved thereby he did on the first day of the Month of March in the same year present another Petition to the said Honble the Mayors Court praying that a Rehearing might be allowed him upon the said last mentioned Order of the Court of the said Twenty Second day of February which was accordingly granted to Your Petitioner and it was ordered that the same should come on to be reheard on the Fifth day of March when the same coming on to be heard the said Honble the Mayors Court were pleased to order that the said Order for Rehearing should be revoked and your Petitioners Petition was of course dismissed and your Petitioner deprived of any Opportunity of examining his said Witnesses— By which said Proceedings of the said Honorable the Mayors Court Your Petitioner did conceive himself much injured and aggrieved and did therefore appeal therefrom to the Honble the Court of Appeals at Madraspatnam and in his Petition and Appeal did state the following Reasons. —

First Because after Issue is joined and Rules have

passed



passed for examining Witnesses the Court of Chancery (whose Rules of Practice the said Honble the Mayors Court has in general adopted) will always upon any probable Cause shewn Grant a Commission to examine Witnesses to any Distant Place that may be required.

Secondly Because the same has been invariably the Practice of the said Honorable the Mayors Court and an application granting such Commission was formerly considered as a Motion of Course and it was frequently granted without any Affidavit and where there was an Affidavit Your Petitioner has not been able to discover a single Instance where it had been denied nor does he belive the Opposite Party can shew one —

Thirdly... Because on the very same day on which Your Petitioners Petition was dismissed the Court were pleased to grant a Commission to examine Witnesses in Great Britain in another Cause namely Payne by his Attorney Jackan against Johnston in which the Petition filed and the Affidavit sworn was exactly similar to those filed by your Petitioner and the same having been granted on the Motion of the same Attornies who act for the Complainant they will not of Course deny it. —

Fourthly

Fourthly Because Your Petitioners Application was supported not only by his own Affidavit but also by the Affidavit of his attorney at Law who must be competent to judge of the Witnesses necessary and who swears that he is fully of Opinion that Your Petitioner cannot with safety proceed to a Hearing without the Testimony of these Witnesses which being sworn by a Person no way interested in the Event of the Cause Your Petitioner humbly conceives is much stronger than any Affidavit he could have made himself and would be alone a sufficient Ground either in the High Court of Chancery or agreably to the Practice of the said Honble the Mayors Court to obtain the Commission prayed for —

Fifthly Because Your Petitioner did really not apply for such Commission from any Desire to delay the suit but from an honest and fair Motive of supporting a very material part of his Defence by the Testimony of the abovenamed Persons who were alone able to prove it for Your Petitioner having insisted in his Answer that he had no Interest whatever in the Transaction alluded to in the Bill of Complaint and the said Complainant having in his Replication insisted that he had an Interest which Your Petitioner again denied in his Rejoinder as is herein before more particularly setforth the Question of Your Petitioner being interested or not is among the Facts on which Issue is Joined and Rules have passed for examining Witnesses and therefore surely Your Petitioner ought not to be debarred from examining the only Witnesses he has thereupon —

Sixthly Because the Concern to which the Proceedings allude and on Account whereof Your Petitioner is charged to be indebted to the Complainant did in fact originate in great Britain and of course the only Persons who can give Evidence thereof are now there Residents —

Seventhly Because the Fact herein before noticed and which Your Petitioner wishes to prove is exceedingly material for him it being the Ground on which the whole Equity of the Case rests and he has also other very material Points to examine these Witnesses to by which it will clearly appear that Your Petitioner is no way liable to the Complainant for the Debt sued for and

therefore

Therfore it would be the utmost Cruelty and attended with the most fatal Consequence to him to be deprived of their Testimony —

Eighthly Because the principal Reason urged by the Opposite Attorneys for the Court to deny the Prayer of Your Petitioners Petition was because Your Petitioner was in Contempt for not having given Bail to a Warrant of Arrest that had issued against him but Your Petitioner denies that he ever did incur any Contempt thereby as he had always an Attorney appearing in Court for him and the Warrant of Arrest did not issue untill after many Months to wit Eight or Ten Months — after the issuing of which Your Petitioner constantly appeared as before by his said Attorney and the Rules passed in the same Manner as they did in other Causes and in pursuance of such Rules Your Petitioner filed his Rejoinder and prayed that Issue might join and Rules pass for examining Witnesses which would be altogether useless if he were not at Liberty to examine them and if he is at Liberty to examine them before the Examiner no Reason can be given why he should not have an equal Claim to examine by a Commission

Such

Such of them as live at too remote a Distance to be examined otherwise —

And lastly Because at the Time of determining Your Petitioners said Petition the said Honble the Mayors Court were much divided in their Opinions and it was only Carried against Your Petitioner by the Majority of One voice and four different Dissents were entered upon the Records of the said Honble the Mayors Court against the same as by Extracts therefrom annext to his said Petition and Appeal for the more full Inspection of the said Honble Court might more fully and at large appear

For which Reasons and for such others as might be offered at the Hearing Your Petitioner most humbly prayed that the said Order of the said Mayors Court of the Twenty Second day of February then last past whereby Your Petitioners Petition was Dismissed might be reversed and set aside and that the Prayer of the same whereby Your Petitioner prayed that a Commission might Issue from the said Mayors Court directed to certain Persons therein named to examine and take the

Depositions

Depositions of the said James Willis and Andrew Duncan on the part and Behalf of Your Petitioner might be granted with Costs and that Your Petitioner might have such other and further Relief as to the said Court of Appeals might Seem meet — as by Your Petitioners said Petition and Appeal remaining of Record in the said Court of Appeals and by a Copy thereof herewith transmitted to Your Majesty in Council may more fully and at large appear. —

Your Petitioner further most humbly sheweth that to this his Petition and Appeal the said Complainant did put in his Answer and did therein admit the several Proceedings above recited in the Manner stated by Your Petitioner and more particularly that Your Petitioner has insisted in his said Answer that he had acted in the Transaction alluded to merely as an Agent for others without ever receiving or being ever to receive even a Commission or any other Benefit and Advantage whatever and therefore insisted that even if liable by the Strictness of the Law which however he by no means admitted that having no Interest himself therein a Court of Equity as the said Honble the Mayors Court would would relieve him therefrom — And the said Complainant his said Answer did further admit that he did in his Replication insist that Your Petitioner was interested in carrying said Transaction and that your Petitioner had filed his Rejoinder in which he denied that he was interested thereto — and further that Issue was thereupon duly joined and that on the next Court day after Issue was so joined your Petitioner did make his Application for the Commission prayed for stating therein that the said Persons above named were very material Witnesses on Your Petitioners part and that without their Testimoney he could not with safety proceed to a Hearing — And the Complainant did further admit that Your Petitioners Attorney in Court did file an Affidavit in support thereof thought he pretended that Your Petitioner had himself filed any Affidavit in the Cause whereas the Truth is that your Petitioner did also file his own Affidavit regularly taken before the Superior Court of Justice at Tranquebar where Your Petitioner then was and authenticated in the most formal and regular Manner that an Oath there could be attested as by the same filed and remaining of Record in the said Honble the Mayors Court at Madraspatnam and whereof a

Copy

That

Copy is herewith transmitted for the Inspection of Your
Majesty in Council may more fully and at large appear
And the Complainant does admit that Your Petitioner
did pray for the said Commission as above set forth and that
the same Coming on to be heard on Tuesday the Twenty
Second day of February the said Mayors Court was pleased
to order the Prayer of the Petition to be over ruled Yet he
pretends to say Your Petitioner has not specifically set forth
the particular Order or Decree from whence your Petitioner
did appeal altho it must appear Evident that he has
done so in the most specific and precise Manner possible
by not only [illegible] the pursuit of the Commission
prayed for and the Orders made thereupon but by specifying
the Date when the same were passed so that there cannot
be the least Doubt about the Or[illegible] from whence he did
appeal — & in regard to the different Objections stated
by the Complainant in his Answer to the Reasons adduced
by Your Petitioner for appealing Your Petitioner most
humbly begs leave to observe that in regard to the First
that the said Mayors Court is not governed by the
the Court of Chancery in the Matter in Question
Rules and those Rules require more than
granting a Commission beyond the Seas
the

The fact is the said Mayors Court have been still more
than the Court of Chancery in granting such Commi
and not till lately required any Oath whatever, and
respect to their requiring more than probable cause
is impossible to know what the Witnesses to be exam
may say no Cause whatever can be shewn for examining
that amounts to more than probability — and in reg
to practice the Examination of Witnesses is not of the
Nature as to be regulated by local Practice but pa
of the general Law of the Land as ascertained by the an
Usage of the Court of Chancery whose Regulations ma
=ning granting such Commissions or not
must obtain in every other Court possessed of similar
Powers — And in the Book of Instructions that was
transmitted with Your Majestys Charter for the
Establishment of the said Mayors Court the Practice of
Your Majestys High Court of Chancery is constantly
referred to and made the ground of the Proceedings in the
said Mayors Court —

The Complainants then proceeds to state his
Objection to the Second Reason by stating that altho the
former Practice of the said Mayors Court was as is stated
by Your Petitioner (that is to say without Oath) Yet
that

That now it was as is before stated by the Complainants and that frequent Instances had occured wherein the said Mayors Court had refused to grant such Commissions yet the said Complaint did not produce any either in his said Answer or at the Hearing of the said Appeal altho' called upon by Your Petitioners Solicitor so to do and the Truth really is no Instance of such a Refusal has ever existed in the Proceedings of the said Mayors Court from its first Constitution to the present Hour except alone in the Instance now appealed and in that as in Your Petitioner said Appeal is particularly stated the Then upon the Bench four were for granting it and were so fully of that Opinion as to think it proper to enter their dissent to its being refused —

The Objections of the Complainant to the third Reasons of Your Petitioner are that the Affidavit filed in the Cause of Payne Against Johnston was different from that filed by Your Petitioner — but he does not pretend to point out the Difference and Your Petitioner insists that they were exactly the same being both taken from the Common Form in the Books of Practice and therefore if one was regular the other was so and as the Prayer founded

On the One was granted Your Petitioner humbly presumes Your Petitioners Application ought also to have been allowed. —

The Complainant then proceeds to state his Objection to the Fourth Reason of Your Petitioner by stating that it is not the Practice of Your Majestys High Court of Chancery or of the said Mayors Court to grant a Commission for the Examination of Witnesses upon an Affidavit of an Attorney at Law employed in the Cause but Your Petitioner most humbly begs leave to urge that Your Petitioners Application was not supported by his Attorneys Affidavit alone but also by his own Oath taken in the Most solemn Manner it could be Administered at the Place he then resided And also by the Nature of the Case itself which spoke of the Original Transaction arising in England

To the Fifth Sixth and Seventh Reasons the Respondent pretended to Object because the Substance thereof did not appear upon the Records and that therefore the same as he insisted was New Matter altho it is Obvious the Matters and even the Words contained therein were taken exactly from the Proceedings filed in the Cause

To the Eighth Reason the Respondent says that the Cause of the Decision of the Mayors Court was

as

and

As this Deponent has stated it but as the Complainant insists it was otherwise - it is his Province to shew upon what the Decision was founded as your Petitioner most humbly insists there were no sufficient Reasons for their so doing -

And to his last Objection Your Petitioner says that the Extract from the Minutes expressly states the Dissent of Four of the Members who sat on the Bench as he has stated in his Petition and Appeal

Your Petitioner further most humbly sheweth that the said Petition and Appeal together with the Respondents said Answer came on to be heard and determined and was accordingly heard and determined on Saturday the Twenty fourth day of December last when the said Court of Appeals at Madraspatnam was pleased to confirm the said Order of the said Mayors Court and did accordingly confirm the same as by their said Order may more fully appear — by which said Order of the said Mayors Court as well as by that of the said Court of Appeals Your Petitioner considers himself much aggrieved and therefore most humbly prays leave to appeal therefrom to Your Most Excellent Majesty in Council for the several Reasons above stated

and

And moreover because Your Petitioner has on his Rejoinder filed in the said Mayors Court particularly stated that the Complainant must know that there are Circumstances attending the Bills above-mentioned and which Your Petitioner can easily prove which would render them ipso facto void so that it would be totally out of the Power of the Complainant to recover any thing upon them and Your Petitioner says the Fact being so it would be a great Hardship to deprive him of the Testimony he is contending for

For which Reasons and for such others as may be offered at the Hearing Your Petitioner most humbly prays that the said Order of the said Mayors Court and also of the Court of Appeals may be reversed and set aside and that the Prayer of Your Petitioners Petition wherein he prayed that a Commission might issue directed to certain Persons therein named to examine and take the Depositions of the said James Willis and Andrew Duncan on the part and Behalf of Your Petitioner may be granted with Costs and that Your Petitioner may have such other and further Relief as to Your most Excellent Majesty in Council may seem meet

(Signed) Peter Walker

Solicitor for Appeals

Court

Court of Appeals
at
Madraspatnam

Saturday the 26th day of December
Anno Domini 1791

Between Richard Legge Willis
Appellant and Daddy Nasserwanjee
by his Attornies William Balfour John
Spalding and Oliver Colt of Fort St.
George Esqrs 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 Order
of the said Court given in this Cause on Tuesday the 22d day
of February Anno Domini 1791. Upon due Consideration had of
the Matters therein Severally Contained and of the pleadings And Argu-
ments 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 Order of the Honble the Mayors Court do Stand Affirmed
And that the Appellants Petition be hence dismissed with Costs.

Vera

(Signed) Chas. N. White
Clerk —

Before

Before the Kings Most excellent Majesty in Council

Between Daddy Nasserwanjee of Bombay
Merchant by his Attornies William Balfour
Spalding and Oliver Colt of Fort Saint George
Merchants Complainant

and

Richard Legge Willis Senior Merchant
in the Civil Service of the Honble the United
Company of Merchants of England trading
to the East Indies under their Presidency
of Fort St. George aforesaid Defendant. —

This Respondent admits that he did exhibit
and file his Bill of Complaint in the Mayors Court of
Madraspatnam on or about the time in the Appellants
Petition of Appeal for that purpose set forth and for the Sum
therein particularly mentioned And this Respondent
admits that the Petitioner did appear thereto by his attorney
in Court that after the usual Rules he did put in his
Plea and Answer and that the same might have been
in manner form and substance as in the Appellants said
Petition of Appeal the same is more particularly set forth And

Filed in my Office the
27th July 1792.
Chas. N. White
Clk

this

This Respondent admits that to the Appellants said Plea Answer he did on or about the time in the Appellants Petition of Appeal set forth exhibit and file his Replication and did amongst other things admitted by the Appellant state the several matters in the Appellants Petition and Appeal for that purpose set forth And this Respondent admits that thereto the Appellant did exhibit and file his Rejoinder and did therein and thereby amongst other things state as in his said Petition and Appeal is for that purpose set forth And this Respondent admits that on the Proceedings had issue did join and Rules did pass for the examination of Witnesses and that the Appellant pretending that he had material Witnesses resident in Great Britain to be Examined in the Cause, namely James Willis and Andrew Duncan and who alone he did allledge could prove the facts in his said Petition of Appeal set forth and many others relative to the transaction and which as he did also pretend were very material for him the Appellant And this Respondent admits that the Appellant did on the next Court day file a Petition in the said Mayors Court and therein did state as in his said Petition of Appeal is recited and that his Attorney in Court did in support

of the said Petition file his Affidavit but this Respondent does not admit that the Appellant did himself file his own Affidavit taken at Trangquebar as in the Appellants Petition of Appeal the same is erroneously stated And this Respondent admits that the Appellant did in and by his said Petition Pray a Commission directed to certain Commissioners therein named to take the examinations and depositions of the said James Willis and Andrew Duncan on his the Appellants part and behalf And this Respondent admits that the said Petition coming on to be heard at the time in the Appellants Petition of Appeal set forth the said Mayors Court were pleased to dismiss the same And this Respondent Admits that the Appellant did exhibit and file a second Petition to the said Mayors Court and therein and thereby did pray a rehearing of the said Order of the said Mayors Court, but this Respondent does not admit that the said Mayors Court did grant a rehearing and afterwards revoke the same as the Appellant in his said Petition of Appeal has so stated the fact to be. And this Respondent humbly submits to your most excellent Majesty in Council that from the nature of the thing the Appellant never did entitle himself to a Commission for

the

The Examination of Witnesses by an observance of the Rule and
practice of Your most excellent Majestys Court to that therefore
that this the Appellants said Petitions filed as aforesaid
in the said Mayors Court were irregular and unfoun-
ded in the first instance and in the second Instance
apparently litigious and contrary to equity that therefore
the said Mayors Court could not have given any
Order thereon other than an order to dismiss the same
as aforesaid and therefore this Respondent further humbly
submits to your Most excellent Majesty in Council that
the Appellant is not aggrieved by the said Order of the
said Mayors Court nor that he had any cause of Ap-
peal therefore to the Court of Appeals at Madraspa-
tnam although this Respondent admits the Appel-
lant did appeal to the said Court of Appeals from
the said Order of the said Mayors Court and that he
did as cause of Appeal set forth the several reasons
in his said Petition of Appeal to Your most excellent
Majesty in Council particularly setforth And this
Respondent admits that thereupon the Appellant
did pray as in his said Petition of Appeal to Your most
excellent Majesty in Council the same is particularly
recited And this Respondent admits that to such

the

The Appellants Petition of Appeal to the said Court of
Appeals this Respondent did put in his Answer but
this Respondent humbly submits to Your Most
Excellent Majesty in Council that it does not app
that he this Respondent did admit the several
Proceedings as the Appellant in his Petition of Appe
to Your Most excellent Majesty in Council has
Asserted the fact to be this Respondent says he
might have admitted that the Appellant in
his said Answer before the said Mayors Court did
state the several matters and things in his Petition
of Appeal to Your most excellent Majesty in Counc
recited and this Respondent says that in and
by his Replication to the Appellants said Answer
he this Respondent did maintain and support
his Bill of Complaint and contravert the Appel-
lants said Answer shewing the same to be without
any manner of foundation either in Law or in reason
and that the whole and every part thereof which
opposed the just claims of this Respondent and his
right in the premisses was contrary to equity and good
conscience and this Respondent for further Answer to
the Appellants said Petition of Appeal says that he

this

This Respondent might in his Answer in the said Rim of
of Appeals have admitted the matters stated to have been
setforth in the Appellants Rejoinder and that issue
joined thereon and that on the succeeding Court day
the Appellant did make his application for a Commis-
=on stating that the persons therein named were
very material witnesses, that without their testamo-
=ny he could not safely proceed to a hearing that the
Appellants Attorney in Court did file an Affidavit
but does not admit, nor could he ever admit that
such Affidavit was in support of the said Petition
because from the nature of the thing such Affidavit
was irregular and contrary to the Course of the said
Mayors Court — And this Respondent humbly submits
to Your most excellent Majesty in Council that
notwithstanding any thing to the Contrary in the
Appellants Petition of Appeal Contained that the
Appellant never did file any Affidavit of his own
in the Cause, and so this Respondent humbly
submits to your most excellent Majesty in Council
the fact will appear upon reference had to the
paper Writing by the Appellant exhibited in the
said ..... Mayors Court, as and for his said

Affidavit

Affidavit for this Respondent humbly sub to Your mos
excellent Majesty in Council first that the said appear
writing does not appear to have been sworn to and
Secondly that even had it been sworn to, the same woul
not have been admitted by the said Mayors Court
in as much as an Affidavit in a Cause to support a
Motion therein must be taken before a Judge of t
said Court, or by a Commission issuing therefrom.
And this Respondent says he does not admit that
the Appellant did Pray for the said Commission in
manner and from as in and by his said Petition of
Appeal the same is set forth, but this Respondent
admits that the prayer of the Appellants Petition
in the said Mayors Court was as he has stated the
same to be And this Respondent humbly submits
to Your Most excellent Majesty in Council that
notwithstanding any thing to the Contrary in the
Appellants said Petition of Appeal Contained it
may appear that the Appellant in appealing to
the Court of Appeals at Madraspatnam did
omit to setforth the particular Order of the said
Mayors Court from whence his pretended grievance
and Cause of Appeal did arise; but that he did

Appeal

Appeal generally from the Proceedings of the said Mayors Court in the case in question and therefore this Respondent in his Answer to the appellants Petition of Appeal to the said Court of Appeals at Madraspatnam did submit whether the Appellants said Petition of Appeal ought not to be dismissed for want of that regularity and precision usual and necessary in like cases And this Respondent further answering says that the Appellant in observing upon the first Objection of this Respondent to his the Appellants first reason of Appeal from the Order of the said Mayors Court to the said Court of Appeals in attempting to establish his own object does virtually defeat the same and Effectually estab= =lish the said Objection of this Respondent for the Appellant in his said first reason does pretend that the said Mayors Court has in general adopted the Rules of practice of Your most Excellent Majestys Court of Chancery relative to the granting of a Com= =mission for the Examination of Witnesses beyond Sea. but by its own Rules and Regulations that such Commissions have been frequently granted upon Motion without any Affidavit whatever And this Respondent says that the said Observation of the

Appellant

Appellant thereon is that the said Mayors Court have been stile more liberal than the Court of Chancery in granting such Commissions and not till lately required any Oath whatever which this Respondent humbly submits is totally Contrary to the Rules of Practice of the Court of Chancery. And this Respondent admits that the examination of Witnesses is not of that nature as to be regulated by local practice but that it partakes of the general Law of the Land but this Respondent humbly submits to Your most excellent Majesty in Council not= =withstanding any thing to the Contrary in the said Appellants Petition of Appeal Contained that Your Majestys inferior Courts are not governed nor is the Law of the Land with respect to the examination of Witnesses as ascertained by the ancient usage of the Court of Chancery but that each distinct Court of Judicature has its distinct practice and that the practice of the Court is the Law of the Court And further this Respondent admits that the Court of Chancery will or will not according to the particular circumstances of the case from the Cause shewn grant or refuse a Commission for the

examination

Examination of Witnesses beyond Sea. for otherwise
Contrary to every principle of equity the Rich and
powerful might obtain the means of ruining the poor
and indigent Suitor and thereby deprive him of that
right to which he had a just title or might harrass
and oppress him by a wanton and unjustifiable litiga-
tion. And this Respondent humbly submits that
notwithstanding the Assertion of the Appellant to
the Contrary it is not in the Nature of things that the
practice of your Majestys Court of Chancery can be
made the ground of the proceedings of the said Mayors
Court in as much as the said Mayors Court is a
Court of Law and of Equity partaking equally of Both
this Respondent further answering says that the
Observation of the Appellant on this Respondents
Answer to his the Appellants Second reason of
Appeal to the said Court of Appeals is trivial &
and inconsistent in as much as it points to matter
left undone by this Respondent in his Answer to
the said Court of Appeals which if done would
have been irregular for therein this Respondent
must have annexed Extracts from the Minutes
of the said Mayors Court not Read at the hearing
of

of the Cause and it is the Course of the said Court of Appeals
that no new matter not at issue in the Court below
and read at the hearing of the Cause shall be introduc-
ced in an Appeal or Answer but this Respondent
humbly presumes that his Solicitors if called upon
to that purpose by the Appellants Solicitor did
produce at the hearing such instances Authorities
and precedents as were sufficient to weigh with the
said Court of Appeals to induce them to affirm the said
Decree of the said Mayors Court. In answer to the
Assertion of the Appellant that no instance of such a
refusal has ever existed in the proceedings of the
said Mayors Court from its first Constitution to
the present hour except alone in the instance of
Appealant this Respondent were it not for irregularity
might shew unto your most excellent Majesty in council
that the said Mayors Court have in divers instances
refused to grant a Commission for the examination
of Witnesses beyond Sea although the Petition to that
end has been supported by the requisite Affidavit
of the respective Parties as in the Cause of Edward &
Raphael against Jose Antonia et e contra where the
prayer of the Petition was to examine Witnesses at Manilla

and

And in the Cause of Rummalinga Moodliar Veera
Stuart Hall for the examination of a witness in England.

And this Respondent further Answering says that the Appellants remark upon this Respondents third Answer to the Appellants reason for Appeal to the said Court of Appeals has already been refuted by this Respondent. And this Respondent says that as the Affidavit filed in the Cause of Payne against Johnston and the paper writing purporting to be an Affidavit were both taken from the common form in the Books of practice yet this Respondent humbly submits to your most excellent Majesty in Council that they are totally different inas much as the former was according to the practice of the said Mayors Court taken before one of the Judges of the said Mayors Court and the latter does not appear to have been sworn to and if it had been sworn to it would have been irregular and such as the said Mayors Court ought not to have admitted for the reasons herein before humbly submitted to Your Most Excellent Majesty in Council And this Respondent further Answering humbly

Submits

Submits to your Most excellent Majesty in Council that he has already shewn that the paper writing pretended to have been the Affidavit of the Appellant does not appear to have been sworn to, and that even if it had been sworn to yet that for the reasons herein before set forth it could not have been admitted by the said Mayors Court. And thereupon this Respondent humbly submits to your Most excellent Majesty in Council that the shewing of the Appellants in his remarks upon this Respondents Answer to the Appellants fourth reason for Appeal to the said Court of Appeals is neither pertinent nor relevant.

And this Respondent further Answering humbly submits to your Most Excellent Majesty in Council that his objections to the Appellants fifth Sixth and Seventh reasons of Appeal to the said Court of Appeals were and are well founded that the said fifth Sixth and Seventh reasons of Appeal do contain and are formed of new matter and that the same was not in issue in the matter Appealed.

And

And this Respondent further Answering says that in his Answer to the appellants Eighth Reason of Appeal to the said Court of Appeals he did in denying the Assertions therein Contained refer the fact to the Extract of the Minutes of the said Mayors Court to the said Appellants said Petition and Appeal to the said Court of Appeals Annexed and thereupon this Respondent humbly submits to your most excellent Majesty in Council that he has sufficiently shewn the Grounds of the decision of the said Mayors Court and that such decision was just and equitable and according to the nature of the thing —

And this Respondent further Answering humbly submits to your most excellent Majesty in Council that his Objection to the last cause of Appeal to the said Court of Appeals as stated by the Appellant is strictly just for that your most excellent Majestys Charter has provided in the event of dispention that the Majority of the Members of the said Mayors Court Compose the Court and that where there is two and two the Mayor or Senior Alderman on the Bench as the case may be shall have a casting Vote And

thereupon

Thereupon this Respondent most humbly submits to your most excellent Majesty in Council that when the said Mayors Court is spoken of it is the majority of the Members that is meant and therefore that the dispents as introduced and spoken of by the Appellant is irregular and irrelevant.

And this Respondent further Answering says he admits that the Appellants said Petition of Appeal in the said Court of Appeals together with this Respondents said Answer thereto did come on to be heard and determined and that the same was accordingly heard and determined on or about the time in the Appellants said Petition of Appeal for that purpose set forth And this Respondent admits that the said Court of Appeals was pleased to confirm the said Order of the said Mayors Court, and the said Court of Appeals did accordingly confirm the same But this Respondent does not admit that by the said Order of the said Mayors Court or by the said Order of the said Court of Appeals, the Appellant was any wise aggrieved or that he had any cause of Appeal therefrom to your Most Excellent —

Majesty

Majesty in Council by reason of the several Matters and things in objection thereto in this Respondents said Answer contained and herein Submitted to Your Most excellent Majesty in Council And this Respondent humbly submits to Your Most excellent Majesty in Council that the matters stated in the Appellants Rejoinder filed in the said Mayors Court as inserted in his said Petition of Appeal ought not to have been brought forward because in the first place a Rejoinder being bare Assertain depends upon Evidence to give it validity and secondly because such Matters if the Appellant could with safety have sworn thereto ought to have been brought forward in his Plea and Answer filed in the said Mayors Court And this Respondent further submits to Your Most Excellent Majesty in Council it is evident by the proceedings in the Cause Attested Copies whereof Accompanies this Respondents Answer for the inspection of Your most excellent Majesty in Council that the transaction upon which this Respondent

Respondent did Commence his Suit in the said Mayors Court was and is on the part of this Respondent fair and bona fide and the same are not confined to the Bills of Exchange but involve settled Accounts between the Appellant and this Respondent signed by the Appellant with his own hand and thereupon this Respondent humbly submits to Your Most Excellent Majesty in Council that the Appellants in appealing from the Order of the said Mayors Court to the said Court of Appeals And from the Order of the said Court of Appeals to Your Most excellent Majesty in Council is actuated by a litigious spirit and has in view to harrass and oppress and if possible to injure this Respondent by depriving him of his just dues.

From all which Reasons and such others as may be offered at the hearing this Respondent humbly prays that Your Most excellent Majesty in Council will be pleased to confirm the Order of the said Mayors Court and the Order of the said Court of Appeals and to dismiss the Appellants Petition of Appeal with Costs.

(Signed) J. Stuart Hall
John Hamilton
Sol.rs for Resp.t

To

To the Honourable Major General William Medows
President in Council
Fort Saint George

In the Court of appeals
at Madraspatnam.

Between Petty Tombo Naick of Madraspatnam dubash Administrator of all and every the goods and Chattles rights and Credits which were the Goods and Chattles Rights and Credits of Paucala Ramasaumy Naick late of Madraspatnam aforesaid Dubash deceased Complainant and Francis Lind of Madraspatnam aforesaid and now or late a Senior Merchant in the Civil Service of the Honourable the United Company of Merchants of England trading to the East Indies under thier presidency of Fort St George Defendant —

The Humble Petition and appeal of the above named Complainant

Sheweth

That your Petitioner did on the Twenty fifth day of February in the present Year of our Lord One thousand Seven hundred

Filed in my Office
the 4th April 1791
Chas. S. White
Clk

and Ninety one exhibit his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the said Defendant Francis Lind thereby setting forth that the said Defendant being in or about the Year of our Lord One thousand Seven hundred and Eighty three in Very Narrow Circumstances and he the said Defendand being anxious and desirous to Acquire an Estate and fortune and well knowing that your Petitioners said Intestate the said Paucala Ramasaumy Naick was not only a person Conversant and well Skilled in Trade and Merchandize but was also enabled from his own fortune and Credit and from the large and extensive property of his father family and friends and from other Creditable Connections that attached to him in Consequence thereof to make such Loans and advances to the said Defendant as were necessary as well for the then support and maintenance of the said Defendand as to enable him to launch out and engage in different branches of Trade and Commerce he the said Defendant did some time in or about the Year of our Lord one thousand Seven hundred and Eighty three apply to and Solicit the said Paucala Ramasaumy Naick to become his the said Defendants head Dubash to which Requisition of the said Defendant the said Paucala Ramasaumy Naick did after much

Much entreaty on the part of the said Defendant Consent and agree and accordingly from thenceforth became and was the head Dubash of the said Defendant in which Station the said Paucala Ramasaumy Naick continued until the time of his Death which happened on or about the Seventh day of April which was in the Year of our Lord One Thousand Seven hundred and Ninety Your Petitioner further sheweth unto this Honourable Court that he did in and by his said Bill of Complaint further Charge that the said Paucala Ramasaumy Naick from time to time whilst he so continued the Dubash of the said Defendant M^r as aforesaid actually lent and advanced to the said M^r Defendant very Considerable Sums of Money not only to defray the said Defendants domestick expences but also to enable the said Defendant to carry on and enter into Various Mercantile businesses and Speculations until at length the Estate and Fortune of the said Defendant was by the great care skill industry and attention of the said Paucala Ramasaumy Naick in and about the business of the said Defendant and by the pecuniary aids with which the said Paucala Ramasaumy Naick furnished and provided the said Defendant

exceedingly

Exceedingly increased Your Petitioner further Sheweth unto this Honourable Court that he did in and by his said Bill of Complaint further Charge that the Station or employment of Military Storekeeper at Fort Saint George for the providing and furnishing the said Honourable Company and their Armies with Military Stores tents gun Carriages and other Carriage Conveyance for the said Stores having on or about the Tenth day of August which was in the Year of our Lord one thousand Seven hundred and Eighty Nine became vacant by the death of George Savage Esqure who had for some time previous thereto held the said Employment the said Defendant did represent to the said Paucala Ramasaumy Naick that if he the said Defendant could so manage Matters as to prevail upon John Holland Esqure the then President and Governor of Fort Saint George and upon Edward John Holland then one of the Members of the said Government of Fort Saint George to nominate and appoint him the said M^r Defendant to the said Employment or office of Military Storekeeper which had so become vacant by the death of the said George Savage that his the said Defendants fortune would be ultimately made at the same time intimating to

the

The said Paucala Ramasawmy Naick that he the said Defendant had been given to understand that previous to the said John Holland and Edward John Holland nominating the said Defendant to the said appointment of Military Storekeeper he the said Defendant should actually Advance and pay down to them the said John Holland and Edward John Holland or to one of them a Sum of Twenty thousand Pagodas or thereabouts and that the said Defendant did shortly Afterwards inform the said Paucala Ramasawmy Naick that they the said John Holland and Edward John Holland or one of them had actually consented and agreed to nominate and appoint him the said Defendant to the said office of Military Storekeeper upon his the said Defendants previously paying to them the said John Holland and Edward John Holland or to one of them a Sum of Twenty thousand Pagodas and to which terms he the said Defendant had as he informed the said Paucala Ramasawmy Naick Acceded and that Matters having been so concluded the only Obstacle which then prevented the said Defendant entering into the immediate posession and enjoyment of the said office of Military Storekeeper was the non payment of the

said

said Sum of Twenty thousand Pagodas to obviate Which he the said Defendant did entreat and implore the said Paucala Ramasawmy Naick not only to lend him the said Defendant such part of the said Sum of Twenty thousand Pagodas as he the said Paucala Ramasawmy Naick could then as conveniently Command but also to procure and obtain on the Credit of the said Defendant such part of the said Twenty thousand Pagodas as he the said Paucala Ramasawmy Naick might be unable to advance and your Petitioner did by his said Bill of Complaint further Charge that he the said Paucala Ramasawmy Naick from an anxiety and desire further to aggrandize and promote the fortune of the said Defendant did in his the said Paucala Ramasawmy Naicks life time to wit on or about the Eleventh day of August which was in the Year of our Lord one thousand Seven hundred and Eighty Nine at the special instance and request of the said Defendant for his use and upon his Account actually pay and advance to Avadauna paupa Braminy then head Dubash to the said John Holland and Edward John Holland the Sum of Five thousand Pagodas Whereby the said Defendant became and was indebted to the said Paucala Ramasawmy

Naick

Naick in his life time in the said Sum of Five thousand Pagodas and that being so Indebted he the said Defendant In Consideration thereof faithfully promised the said Paucala Ramasaumy Naich in his life time to pay to the said Paucala Ramasaumy Naick the said Sum of Five thousand Pagodas when he the said Defendant Should be thereunto Afterwards required but that the said Defendant Contriving and intending to deceive and defraud the said Paucala Ramasaumy Naick in his life time and your Petitioner Since his death in this behalf did not pay the said Five thousand Pagodas or any part thereof to the said Paucala Ramasaumy Naick in his life time nor had he since the death of the said Paucala Ramasaumy Naick paid the same or any part thereof to your Petitioner although often requested so to do and that the said Paucala Ramasaumy Naick having borrowed and procured for the said Defendant the sum of Fifteen thousand Pagodas being the residue of the said Principal Sum of twenty thousand Pagodas he the said Defendant was actually nominated and appointed to the said Station or Office of Military Storekeeper and on the Eleventh day of August which was in the Year of our Lord one thousand Seven hundred and Eighty Nine entered into the Receipt of the Issues and profits thereof and your Petitioner further Sheweth unto this Honourable Court that he did in and by his said Bill of Complaint further Charge that he the said Defendant being indebted to Rudrapah and Eyah Pillay of Madras inhabitant upon a Settlement of Accounts with them the said Rudrapah and Eyah Pillay in the sum of Thirteen Hundred Pagodas and the said Defendant being prested by them the said Rudrapah and Eyah Pillay for the payment of the said Sum of Thirteen hundred Pagodas and it not being Convenient to the said Defendant at that particular prieod to pay off the same he the said Defendant did apply to the said Paucala Ramasaumy Naick in his life time to wait some time in or about the beginning of the Month of February in the Year of our Lord one thousand Seven hundred and Ninety to pay off and discharge the said Sum of Thirteen hundred Pagodas or otherwise to Satisfy the same so as that he the said Defendant should not be further prested by them the said Rudrapah and Eyah Pillay for the payment of the said Thirteen hundred Pagodas and that the said Paucala Ramasaumy Naick did Accordingly in his

His life time to wit on or about the fourteenth day of February which was in the Year of our Lord One thousand Seven hundred and Ninety at the Special instance and request of the said Defendant and for his use and upon his Account pay off discharge and Satisfy to them the said Rudrapah and Cyah Pillay the said Sum of Thirteen hundred Pagodas by granting and Executing unto them the said Rudrapah and Cyah Pillay on the fourteenth day of February in the said Year of our Lord one thousand Seven hundred and Ninety his the said Paucala Ramasawmy Naicks Bond or written Obligation Conditioned for the true payment by him the said Paucala Ramasawmy Naick to them the said Rudrapah and Cyah Pillay of the said Thirteen hundred Pagodas on or about the fourteenth day of May in the Year of Our Lord one thousand Seven hundred and Ninety Whereby the said Defendant became and was indebted unto the said Paucala Ramasawmy Naick in the said Sum of Thirteen hundred Pagodas and that being so indebted he the said Defendant did faithfully promise the said Paucala Ramasawmy Naick in his life time that he the said Defendant would well and truly pay unto the said Paucala Ramasawmy

Ramasawmy Naick in his life time the said Sum of Thirteen hundred Pagodas when he the said Defendant should be thereunto required but that the said Defendant although often required so to do had not paid unto the said Paucala Ramasawmy Naick in his life time or to Your Petitioner since the decease of the said Paucala Ramasawmy Naick the said Sum of Thirteen hundred Pagodas or any part thereof but that the said Sum of Thirteen hundred Pagodas together with the Interest thereof was and is still due and owing from the said Defendant to Your Petitioner as Administrator of the said Paucala Ramasawmy Naick as aforesaid and Your Petitioner further Sheweth unto this Honourable Court that he did in and by his said Bill of Complainant also charge that the said Defendant upon entering into the said employment of Military Storekeeper In Consideration that the said Paucala Ramasawmy Naick would as the head dubash of the said Defendant Conduct and Manage the said Business and office of Military Storekeeper agree with and promise the said Paucala Ramasawmy Naick in his life time to pay and allow him the said

Paucala

Paucala Ramasawmy Naick for his diligence Work and
labour in and about the busines of the said Defendant as
Military Storekeeper as aforesaid the sum of fifteen Pagodas
for every one hundred Pagodas that should arise to the said
Defendant and be produced from the Neet or clear profits
of the said office of Military Storekeeper and that the said
Paucala Ramasawmy Naick Confiding in the said
promises and undertaking of the said Defendant did in
his life time at the Special instance and request of the
said Defendant to wit from the first day of September
which was in the Year of our Lord One Thousand Seven
hundred and Eighty Nine until the thirtieth day of
March which was in the Year of our Lord One Thousand
Seven hundred and Ninety Carefully and diligently supe-
-rintend Conduct and manage the said business office
and Employment of the said Defendant as his the said
Defendants head dubash and under his direction and your
Petitioner did by his said Bill of Complaint expresly
Charge that the said Defendant absolutely received by the
clear and Neet profits of his said employment of Military
Storekeeper from the said first day of September One
Thousand Seven hundred and Eighty Nine until the said

thirtieth

Thirtieth day of March one thousand Seven hundred and
Ninety the Sum of Thirty Nine thousand Six hundred
and ninety three Pagodas Eight fanams and Seventy one
Cash or thereabouts and that by means thereof the said
Defendant on the said Thirtieth day of March in the
said Year of our Lord one thousand Seven hundred
and Ninety became liable to pay and ought to have
paid unto the said Paucala Ramasawmy Naick in
his life time the Sum of Five thousand Nine hundred
and fifty three Pagodas forty three fanams and Sixty
Cash according to his said Agreement and his said
promise and Undertaking so made as aforesaid but
that the said Defendant Craftily intending to deceive
the said Paucala Ramasawmy Naick in his life time
and your Petitioner Since his decease in this behalf
did not pay the said Five thousand Nine hundred
and fifty three Pagodas forty three Fanams and Sixty
Cash or any part thereof to the said Paucala Ramasaw-
-my Naick in his life time nor had he since the death
of the said Paucala Ramasawmy Naick paid the
same or any part thereof to your Petitioner although
often requested so to do Your Petitioner further Sheweth

unto

Unto this Honourable Court that he did in and by his said Bill of Complaint further charge that the said Defendant was also indebted to the said Paucala Rama-saawmy Naick in his life time and Still was and is indebted to your Petitioner as his Administrator in Various other Sums of Money by the said Paucala Rama-saawmy Naick in his life time laid out expended and paid for the said Defendant and at his Special instance and request Amounting together to the sum of Pagodas Sexteen thousand Nine hundred and fifty five Twenty fanams and Sixty Cash or thereabouts the particular Items of which and the respective times when the said monies were as paid laid out and expended by the said Paucala Ramasaawmy Naick were particularly setforth and mentioned in an Account Current annexed to Your Petitioners said Bill of Complaint and which Your Petitioner prayed might be taken and received as part of his said Bill of Complaint a true Copy of which account Your Petitioner hath also annexed to this his Petition of Appeal which he prays may be taken and received as part hereof and to which he humbly Craves leave to refer

Vefer and that the said Defendant under and by virtue of the Several Matters and things in Your Petitioners said Bill of Complaint and herein before particularly setforth and mention-ed became and was indebted to the said Paucala Rama-saawmy Naick in the principal Sum of Ten thousand one hundred and Ninety Seven Pagodas Twenty Six fanams and fifty four Cash being the balance of the said Annexed Account Current and Making in Sterling Money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Four thousand and Seventy Eight Pounds Seventeen Shillings and three pence or thereabouts and that being so indebted he the said Defendant in Consideration thereof undertook and faithfully promised the said Paucala Ramasaawmy Naick in his life time to pay him the said Several Sum of Money as by him the said Defendant due and owing to the said Paucala Ramasaawmy Naick when he the said Defendant should be thereunto afterwards requested and that Your Petitioner had frequently in an Amicable manner as Administrator of the said Paucala Ramasaawmy Naick applied to and requested payment from the said Defendant of the said Sum of Ten thousand One hundred and Ninety Seven Pagodas Twenty Six fanams

and

and fifty four Cash — But that so it was and is that the said Defendant Combining and Confederating with divers persons unknown to your Petitioner how to injure and defraud ~~and~~ Your Petitioner in this behalf not only refused to pay Your Petitioner the said Sum of Ten thousand One hundred and Ninety Seven Pagodas Twenty Six fanams and fifty four Cash or to make Your Petitioner any manner of Satisfaction touching the Premises but actually gave out and pretended that Your Petitioner as Administration of the said Paucala Ramasawmy Naick was Considerable indebted to him the said Defendant in as much as the said Paucala Ramasawmy Naick did in his life time and in the Capacity of head ambash to the said Defendants receive Considerable Sums of Money from the agents of the said Honaurable the United Company on account of the said Defendant as Military Storekeeper Whereas your Petitioner by his said Bill of Complaint expresly Charges that the said Paucala Ramasawmy Naick did in his life time faithfully layout and disburse all such monies as he as received on the said defendants account and that Your Petitioner had Accordingly on the debit said of the said Annexed account Current given the said

Said Defendant just Credits and Allowances for all such sums of Money as the said Paucala Ramasawmy Naick so received on Account of the said Defendant and that the said Defendant at other times gave out and pretended that as his Continuing in the said Office or employment of Military Storekeeper was an uncertain event he the said defendant was not therefore bound to pay unto Your Petitioner as administrator of the said Paucala Ramasawmy Naick the said Sum of Five thousand Pagodas which the said Paucala Ramasawmy Naick so paid and Advanced for the use at the instance and upon Account of the said Defendant as herein before is particularly Set forth and Mentioned Whereas the said Defendant well Knew as the fact is that the said Paucala Ramasawmy Naick as paid and advanced the said Five thousand Pagodas upon his the said Defendants Account at his special instance and request and Solely to promote his the said Defendants fortune and views and that the said Paucala Ramasawmy Naicks being repaid the said Sum of Five thousand Pagodas did not depend upon the said Defendants being Continued in or removed from the said office of Military Storekeeper or upon any

Any other Event Contingency or Condition Whatever
And that the said Defendant also refused to pay
Your Petitioner the said sum of Thirteen hundred
Pagodas and as an excuse for his so doing gave
out and alledged that he the said Defendant
never had any dealings or transactions with
the said Rudrapah Moodelliar and Eyah
Pillay or with either of them Whereas the said
Defendant well knew the truth to be that he
the said Defendant had Considerable Money
transactions with the said Rudrapah &
Moodelliar and Eyah Pillay and that the
said Defendant being indebted to them in the
said Sum of Thirteen hundred Pagodas and
presed for the payment thereof actually &
Applied to the said Paucala Ramasawmy
Naick and requested him to discharge the said
Thirteen hundred Pagodas and that the said
Paucala Ramasawmy Naick accordingly &
Complied with the said request of the said
Defendant and actually passed his Bond for
the said debt of the said Defendant as therein

and

And herein before is mentioned And that the said Defen-
dant further to deceive and defraud Your Petitioner as
the Administrator of the said Paucala Ramasawmy
Naick denied that he the said Defendant was indeb-
ted to the said Paucala Ramasawmy Naick in his
life time in the said full sum of Five thousand Nine
hundred and fifty three Pagodas forty three fanams
and Sixty Cash notwithstanding that he the said
Defendant admitted the agreement which he entered
into with the said Paucala Ramasawmy Naick as
in Your Petitioners said Bill of Complaint and herein
before is mentioned but then the said Defendant in order
to evade the payment of the said Sum of Five thousand
Nine hundred and fifty three Pagodas forty three
fanams and Sixty Cash pretended and alledged that
the profits which accrued to the said Defendant in
his said office of Military Storekeeper during the period
which the said Paucala Ramasawmy Naick so served
as his head dubash were very inconsiderable whereas
Your Petitioner Expressly charged that the said Profits
from the said first day of September in the said Year
one thousand Seven hundred and Eighty Nine to the

said

Said thirtieth day of March in the said Year One thous=
=and Seven hundred and Ninety Amounted to clear Sum
of Thirty Nine thousand Six hundred and Ninety three
Pagodas Eight fanams and Seventy one Cash And
that the said Defendant under various other frivolous
Excuses refused to pay Your Petitioner the residue of
the said monies Which make up the said princi=
=pal Sum of Ten thousand one hundred and Ninety
Seven Pagodas Twenty Six fanams and fifty four Cash
being the balance of said Annexed Account Current
and pretended and gave out that Your Petitioner was
not administrator to the said Paucala Ramasawmy
Naick Whereas Your Petitioner particularly shewed
that administration of all and Singular the Goods
Chattles and Credits which were of the said Paucala
Ramasawmy Naick at the time of his death whereby
the said Honourable the Mayors Court of Madras
=patnam in its Capacity of Kings ordinary on the
Sixth day of May in the Year of our Lord One thous=
=and Seven hundred and Ninety to wit at Madrasha=
=tnam aforesaid in due form of Law to Your Petitioner
granted and were ready to be produced whenever the

said

Said Honourable the Mayors Court should require the same
And your Petitioner did in and by his said Bill of
Complaint pray that the said Defendant might upon
his Corporal Oath full true and perfect answer make
to all and Singular the premises And that the said
Defendant might set forth he did not at the time in
Your Petitioners said Bill of Complaint and herein
before mentioned or at any other time and when
particularly apply to and Solicit the said Paucal
Ramasawmy Naick to became his the said Defendants
head Dubash and whether the said Paucala Rama=
=sawmy Naick did not Accordingly become his the
said Defendants head Dubash and Whether the
said Paucala Ramasawmy Naick did not in his
life time Lend and advance the said Defendant
Considerable Sums of Money upon various occasions
and whether the said Paucala Ramasawmy Naick
did not as his the said Defendants head Dubash
Conduct Manage and Superintend his the said
Defendants private and public Concerns and business
And particularly that the said Defendant might
set forth whether the said Paucala Ramasawmy

Naick

Naick did not in his life time and upon the occasion
herein before mentioned and at his the said Defendants
special instance and request and upon his the said
Defendants accounts advance and pay to Avadaina
pauliah Brahmin as the dubash of the said John M
Holland and Edward John Holland or how otherwise
the said Sum of Five thousand Pagodas or any other
and what Sum of Money and whether the said Sum of
Five thousand Pagodas or and what part thereof was not
due and owing by the said Defendant to your Petitioner
as Administrator of the said Paucala Ramasawmy Naick
and that the said Defendant might also set forth whether
he the said Defendant was not at the time herein before
mentioned or at any other time and when particularly
pressed by Rudrapah and Cyah Pillay herein before
mentioned for the payment of the Sum of Thirteen M
hundred Pagodas or of any other and what Sum of Money
and whether the said Defendant did not in Consequ=
=ence thereof or how otherwise apply to and request
of the said Paucala Ramasawmy Naick to discharge
And satisfy the said Sum of Thirteen hundred M
Pagodas and whether the said Sum of Thirteen M

hundred

Hundred Pagodas was not in pursuance of such the
request of the said Defendant and upon his account
discharged and satisfied by the said Paucala Rama=
=sawmy Naick or how otherwise and whether the said
Sum of Thirteen hundred Pagodas was not due and
owing by the said Defendant to your Petitioner as admi=
=nistrator of the said Paucala Ramasawmy Naick and
whether the said Defendant did not refuse to pay the
same and why he so refused And that the said M
Defendant might also set forth whether he was not at
the time herein before and in Your Petitioners said
Bill of Complaint mentioned or at any other time
and when appointed to the said office or employment
of Military Storekeeper and whether the said Defendant
did not upon his entering into the said Office of Military
Storekeeper or when else promise and agree to allow
the said Paucala Ramasawmy Naick for his the
said Paucala Ramasawmy Naick deligence work
and labour in and about the business and office of
the said Defendant as Military Storekeeper as afore=
=said the sum of Fifteen Pagodas or any other and what
Sum of Money for every one hundred Pagodas that should

arise

Arise to the said Defendant from the Clear profits of the said
Office of Military Storekeeper or what other Consideration did
the said Defendant promise or agree to allow the said
Paucala Ramasawmy Naick in that respect and
whether the said Paucala Ramasawmy Naick did not
in his life time and during the period herein before
and in your Petitioners said Bill of Complaint mentio-
=ned or for any other and what length of time and as
the head Dubash of the said Defendant or how other-
=wise Superintend Conduct and manage his the said
Defendants business in and about the said office of
Military Storekeeper and whether the clear and nett
profits arising to him the said Defendant from the
said office of Military Storekeeper did not Amount
from said first day of September in the said Year of
our Lord One thousand Seven hundred and Eighty
nine to the said Thirtieth day of March in the Year
one thousand Seven hundred and Ninety to the Sum
of Thirty Nine thousand Six hundred and Ninety
three Pagodas Eight fanams and Seventy One Cash or
to any other and what particular Sum of Money
and whether the said Defendant did not refuse to allow

Your

Your Petitioner the said Sum of Fifteen Pagodas per Cent
upon the said Sum of Thirty Nine thousand Six hun
=dred and Ninety three Pagodas Eight fanams and Se
=venty one Cash and why did he so refuse and whether the
said Defendant was not also indebted to your Petitioner a
Administrator of the said Paucala Ramasawmy Naick
in the several Sums of Money in your Petitioners said
Bill of Complaint and herein before and in the said
Account particularly mentioned to be due and owing by
him the said Defendant to your Petitioner as adminis=
=trator aforesaid or in any and which of them and whe
ther the said Defendant did not refuse to allow the
same or any or either and which of them and why; he so
refused Your Petitioner did therefore by his said
Bill of Complaint further pray that the said
Defendant might be decreed by the said Honourable
the Mayors Court to pay unto your Petitioner the
said Sum of Ten thousand One hundred and Ninety
seven Pagodas Twenty Six fanams and fifty four Cash
being the balance of the said Annexed Account Current
And which is so due and owing from him the said
Defendant to Your Petitioner together with all such

Costs

Costs and Expences as Your Petitioner should Sustain
and be put to in the Recovery thereof Which with Prayer
of Summons to Appear and Answer and General Relief
Is the scope of Your Petitioners said Bill of Complaint

Your Petitioner further Sheweth unto this
Honourable Court that the said Defendant having
been duly Served with Process to Appear to and Answer
Your Petitioners said Bill of Complaint he the said
Defendant did on the first day of March in the
present Year of our Lord One thousand Seven
hundred and Ninety one by his Attornies at Law
Appear and plead to Your Petitioners said Bill of
Complaint and for Plea thereunto the said Defen-
dant in and by his said plea Setforth And said
that therefore And before Your petitioner Exhibited
his said Bill in the said Honourable the Mayors
Court Against the said Defendant to wit on the
Eighteenth day of February in the present Year of
our Lord One thousand Seven hundred and Ninety
one the said Defendant then Complainant did
Exhibit his Bill of Complaint in the said Honourable
the Mayors Court to which Bill of Compliants Your

Petitioner

Petitioner did Appear but to which said Bill Your Petitioner
had not put in his Answer and that the said Bill was depending
in the said Honourable the Mayors Court and undetermined
and the said Defendant for further Plea said that if
Your Petitioner ever had any Cause of Suit against him
the said Defendant Your Petitioner ought to have pleaded
the same by way of set off for that by a Statute or Act
of Parlament made in the twenty Ninth Year of the Reign
of King George the Second entitled an act of for the Relief
of debtors with respect to the imprisonment of their persons
it is amongst other things enacted That where there are
mutual debts between the plantiff and Defendant or if
either party sue or be sued as Executor or administrator
where their are mutual debts between the Testator or
Intestate and either party one debt may be set off against
the other and such matters may be given in Evidence
at the general Issue or pleaded in Bar "as by the said
Act might as the said Defendant alledged appear
and the said Defendant did therefore plead the said
Act of parliament and prayed the benefit thereof "all
which matters and things the said Defendant did
Aver and pleaden Bar to Your Petitioners said Bill

And

And of Your Petitioner said demands and prayd the Judgment of the said Honourable the Mayors Court whether he should be Compelled to make any further or other Answer thereunto and prayd to be thence dismissed with his Costs and Charges in that behalf sustained

Your Petitioner further sheweth unto this Honourable Court that the said Plea of the said Defendant to Your Petitioners said Bill of Complaint was on the Eighth day of March instant set down to be Argued and that the said Plea came on to be Argued Accordingly in the said Honourable the Mayors Court on Tuesday the Twenty Second day of the said Month of March When a Majority of the Members of the said Honourable the Mayors Court was pleased to declare themselves to be of Opinion that the said defendants said plea was good and Sufficient and the said Mayors Court did therefore think fit to order and did accordingly Order that Your Petitioners said Bill of Complaint should stand dismissed with Costs — From which said Order of the said Mayors Court Your Petitioner Appeals to this Honourable Court of Appeals as Your Petitioner is Advised and believes that the said



Said Order of the said Mayors Court is erroneous and that Your Petitioner is much aggrieved thereby from the following Amongst other reasons. —

First Because — That the said Defendant in his said Plea of a former Suit depending has not in or by his said Plea in any manner shewn or Averred that the said Suit in the said Defendants plea mentioned to have been by him instituted against Your Petitioner as the Administrator of Pancala Ramasawmy Nauck in the said Honourable the Mayors Court on the Eighteenth day of February in the present Year of Our Lord one Thousand Seven hundred and Ninety One was for one or the same Matters or to the same effect Nor for the like relief or purpose as the Suit which has been instituted by Your Petitioner against the said Defendant Francis Lind in the said Honourable the Mayors Court on the Twenty fifth day of February in the said Year one thousand Seven hundred and Ninety one And Your Petitioner doth aver that the said Suit in the said Defendants said Plea mentioned to have been by him the said Defendant so instituted against Your Petitioner on the said Eighteenth day of February in the present

Year

Year of our Lord One Thousand Seven hundred and Ninety One in the nature of an Action of detinue for the with holding and detaining Two hundred and forty four pieces of muslins in the said Frances Linds said Bill of Complaint mentioned to be in the profession of Your Petitioners and which Muslins the said Francis Lind in and by his said Bill of Complaint Values at the Sum of Seven hundred and forty Six Pagodas —

Whereupon Your Petitioner saith he is advised and humbly Submits to the Judgment of this Honourable Court that the said Order of the said Honourable the Mayors Court for dismissing Your Petitioners said Bill of Complaint upon the ground of a former Suit being depending for one and the same matter is manifestly Erroneous for that it appears by the Records of the said Mayors Court that the suit so instituted by Your Petitioner against the said Defendant Was for the Recovery of the sum of Ten thousand One hundred and Ninety Seven Pagodas Twenty Six fanams and fifty four Cash which cannot be Construed to be for One or the Same matter or for the like relief as the Suit which has been so instituted by the

the said Defendant Against Your Petitioner —

Secondly Because — That the plea of the said Defendant is false upon the face of it for that it is not by the Statute or act of Parliament of the Twenty Ninth of George the Second in the said Defendants Plea mentioned Enacted "That where there are mutual debts between the Plaintiff and Defendant or if either party sue or be sued as Executor or Administrator Where there are Mutual debts between the Testator or Intestate and either party one debt may be set off against the other and such matters may be given in Evidence at the General Issue or pleaded in Bar" And Your Petitioner Sheweth unto this Honourable Court if the said Act of Parliament had Contained the Clause so set out in the said Defendants said Plea the said Defendant has by his said Plea perverted the Obvious Meaning of the said Clause for that the said Defendant has not in or by his said Plea set off or pleaded any debt Whatever either against or in Bar of Your Petitioners said Demand of Ten Thousand One hundred and Ninety Seven Pagodas Twenty Six fanams And fifty four Cash And Your Petitioner sheweth that his said demand against the said defendant could only have been barred by a debt

of

Of an equal Amount had any such debt been due or owing from Your Petitioner to the said Defendant and not by the said Clause in the said Plea mentioned for that no debt or Consideration passes thereby from the said Defendant to your Petitioner whereby to Countervail Your Petitioners said demand and therefore the said Mayors Court should not have dismissed Your Petitioners said Bill of Complaint but should have retained the same

Thirdly ... Because there is manifest Error in the said Order of the said Mayors Court for dismissing Your Petitioners said Bill of Complaint in as much as the said Mayors Court has given Judgement for the said Defendant upon a clause said to be Continued in an Act of Parliament Made in the Twenty Ninth of George the Second Whereas there is no such clause Contained in the said Act. —

Fourthly ... Because that your Petitioner is not bound or Obliged by Law to set off the said Sum of Ten thousand one hundred and Ninety seven Pagodas Twenty Six fanams And fifty four Cash which by the said Defendant is due and owing to Your Petitioner against the said demand of the said Defendant in such manner as in and by the said Defendants said Plea is pretended and alledged for that the Law in that respect is not Compulsory but leaves it at the Option of the

the party Where there are mutual debts to between the plantiff and defendant to set off the one debt against the other and thereupon Your Petitioner saith that the said Order of the Mayors Court for dismissing Your Petitioners said Bill of Complaint is further Erroneous and Contrary to Law for that the Suit in the Defendant said Plea mentioned to have been by him Commenced against Your Petitioner being an action of detinue for the holding and detaining Two hundred and forty four pieces of Muslins therein mentioned Your Petitioner Could not therefore in Law set off any part of his said Claim against the said demand of the said Defendant for that if the said Defendant prevails in his said Suit against Your Petitioner he will Specifically recover the said Two hundred and forty four pieces of Muslin. —

Fifthly ..... Because that if your Petitioner had set off any part of the Defendants said demand against the Demand of Your Petitioners upon him the said Defendant Without the said defendant having previously proved his property in the said Two hundred and twenty four pieces of Muslins of any he has, it

would

Would have been an Acknowledgment of the said Defendants right to recover in his said Suit in which Your Petitioner would not as the Administrator of the said Paucala Ramasawmy Naick be warranted as it may Ultimately turn out that the said Two hundred and Forty four pieces of Muslin Are not the property of the said Defendant. —

Sixthly — Because that if Your Petitioner had been at liberty to set off so much of his said demand Against the said Defendant as would have Countervailed the said Defendants said demand against Your Petitioner and that Your Petitioner had so done. there would still have remained a balance of Ninethousand three hundred and thirty five Pagodas forty three fanams and fourteen Cash due and owing from the said Defendant to your Petitioner which is Apparent upon the Records of the said Mayors Court and because that the said Mayors Court and because that the said Mayors Court has by dismissing Your Petitioners said Bill of Complaint debarred Your Petitioner of that discovery which Your Petitioner in a Court of Equity was and is entitled to have upon the Oath of the said Defendant of the Monies which

Which by him are due and owing to your Petitioner as administrator as afore said Whereas the said Mayors Court should have over ruled the said plea and Compelled the said Defendant to Answer Your Petitioners said Bill of Complaint. —

Seventhly Because if the said Defendant had any just or well founded Claim upon Your Petitioner as administrator of the said Paucala Ramasawmy Naick he the said Defendant Might if the Law in that respect would admit and that he was inclined so to do have set off such claim against Your Petitioners said demand and upon the Defendants establishing such claim by Proof so much as he proved himself entitled to might have been remitted out of the said Sum of Ten thousand one hundred and ninety Seven Pagodas Twenty Six fanams and fifty four Cash whereby Complete justice would have been easily done; and because that it is Contrary to Law and Equity for the said Honourable the Mayors Court to attempt to preclude Your Petitioner from recovering his said demand from the said Defendant upon the ground of the said defendant having a Cross Claim upon Your Petitioner for Two

hundred

Hundred and forty four pieces of Muslins which the said
Defendant only Values at the Sum of Sevenhundred and
forty Six Pagodas. —

Eighthly Because it appears by the Extract from the said H.
Honourable the Mayors Court of the first day of March
last the day on which the defendant filed his said plea
that he the said defendant did on the same day pray a
further day for Your petitioner to Answer to the Bill whic
he therein pleaded by doing of which Your Petitioner shewith
if there could be or was any irregularity in Your Petitioners
having filed the aforesaid Bill on his part before he your
Petitioner had answered the Defendants aforesaid Bill
that any such supposed irregularity was waived by
the Defendant by his moving that Your Petitioner
might answer thereto and Your Petitioner sheweth
that on the Eighth day of the said Month of March
he Your Petitioner did actually file his Answer to the
said Bill without any Objection being thereto made by the
said Defendants Attornies in Court and Your Petitioner
sheweth that he did by his Attornies move on the fifteenth
day of the said month of March that the said defendant
might reply to the said Answer and the said Defendant

did

Did on the Twenty Ninth day of the said month file a Replication
accordingly as is more particularly shewn by the General
Extracts from the minutes of the said Court hereto Annexed —

From all which matters it evidently
Appears that the Order of the Mayors Court
for the dismission of Your Petitioners Bill
is Erroneous and Your Petitioner doth
therefore Appeal therefrom to the Judgment
of this Honourable Court praying to
Annex hereto the said Order of the said
Mayors Court and also adjoins there-
-from by M.r Alderman Andrew Ross
Which said Order Your Petitioner prays
may be Reversed and that this Honourable
Court will be pleased to Order that the
said Bill of Complaint may be retained
in the said Honourable the Mayors Court
And that the said Defendant may be
Ordered and directed to put in his
Answer to the said Bill and also that
he may pay all Costs and that this Honourau

Court

Court May Grant Your Petitioner
such other and further relief as to them
may seem Meet. —

(Signed) Henry Dupuy
(Signed) John White Solicitors
for the Appellant. —

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 22d day of March Anno Domini 1796

Present

Josias Duke Porcher Csq.r Mayor
James Call — Andrew Ross
John Mitford — Henry Chubby Mitchell
Henry Readhead — Benj.n Roebuck
& James Daly — Aldermen —

Petty Jamboo Naik Administrator to the Estate & Effects of
Paucala Ramah Sawmy Naik Deceased
vers
Francis Lind

Bill With Copy of an Account Current annexed Read —
Affidavit of the Complainant Read. —
Plea Read. —

The Defendants' Plea to the Complainants' Bill Coming
on to be Argued & Determined this Day in the Presence of the Attornies
on both Sides and The Court having had due Consideration thereon
are of Opinion that the Defendants' Plea is good and Sufficient
This Court doth therefore think fit to Order and doth Accordingly
Order that the Complainants' Bill do Stand Dismissed with Costs. —

A true Extract
(Signed) George Taylor Regr

# D.r Frances Lind Esqr. in account Current with Petty Tomboo

| | | | | | |
|---|---|---|---|---|---|
| 1789 Augst 11th | To Cash paid to Avadanum Laupiah Brammy Head Dubash to John Holland Esqr. late Governor of Madras and to Edwd John Holland one of the Members of Council | " | " | " | 5000 |
| 1790 May 11th | To Principal of a Bond executed to Rudrapah and Gabpillah by the deceased for a Debt by you to them Owing and on your Account executed the 11th of February 1789 this day | " | " | " | 1300 " |
| March 8th | To Cash sent you at the Garden House | | | 100 | " " |
| 6th | To D.o paid Colonel Moorhouse as p.r your Order | | | 1012 | " " |
| 8 | To D.o paid on account of Mr. Vaughn | | | 92 | 26 " |
| | To D.o Advanced Cashavah for the Purchase of Stores as per your Order | | | 5000 | " " |
| 9 | To D.o paid Mr. Chase on account of Wax Candle as per Bill | | | 535 | 35 " |
| | To D.o D.o Cashavah on account of Colonel Moorhouse | | | 196 | 31 " |
| 10th | To D.o D.o Miguel Johannes an Account of Timber as p.r Bill | | | 85 | 41 20 |
| | To D.o D.o Colonel Moorhouse for the purchase of Gun Carriage as p.r Bill in Cashavahs possession | | | 969 | 28 " |
| 11 | To D.o D.o Robert Clark on Account of Cutlery Bill | | | 25 | 18 " |
| 16 | To D.o D.o Mr. Chas N. White on account of a Bill of Exchange for London | | | 6500 | " " |
| 23 | To D.o D.o Colonel Moorhouse as p.r your Order | | | 500 | " |
| 24 | To D.o D.o you | | | 200 | " |
| | To D.o D.o Singanah for the use of Carpenter yard Sam.o 25200 @ 45 fan.m Pagoda | | | 560 | " " |
| | To D.o D.o Mootoo on account of Ironas p.r Bill | | | 8 | 5 40 |
| | To D.o D.o Cashavah for Military Charges Sam.o 36000 @ 36 fan.m p.r Pagoda | | | 1000 | " " |
| | To D.o D.o for the purchase of Stores | | | 50 | " " |
| 30th | To D.o D.o Morto painter in full as p.r his Bill | | | 19 | 14 20 |
| | To D.o D.o Sundry Charges as p.r Account particular | | | 52 | 3 60 |
| | To D.o D.o Sundry Charges as p.r Mr. Lindes Order from Augst 1st to March 1790 as p.r Account particular | | | 48 | 5 " |
| | To Commission on Pags 37663 & 71 being the Emoluments from the purchase of Stores Carpenter yard and Gunpowder as p.r Account particular from 1st Sept.r 1789 to 31st March 1790 | | | | " " 5953 43 60 |
| | | | | | 29209 19 40 |
| 1790 June 11th | To Interest on Pags 5000 from 1st Sept.r 89 to the day p.r 9 & 11 @ 12 p.c p.r Ann. | | | 468 | 15 " |
| | To Interest on P.s 1300 from 12th Feby 90 to this day is 3 & 27 @ 12 p.c p.r | | | 50 | 31 40 |
| | | | | | 519 1 40 |
| | Pagodas | | | 29728 | 21 " |

# Nauck Administrator of Baucala Ramasawmy Naick Deceased &c.

| | | | | | |
|---|---|---|---|---|---|
| 1790 March 1st | By Ballance of an Account furnished by the Writer of the Deceased in which Nau not included the Debt of 5000 Pags as p.r Contra the Sum being decreased expenditure on account of the said Frances Lind and therefore not being brought into the Office Accounts of the deceased with the said Frances Lind | | | " | " 782 26 |
| 2d | By Cash Received from Captain Durand on Account of Mr. Craig about Mr. Gills Estate | | | 191 | " " |
| 6th | By D.o D.o from the Company's Treasury in Gold | | | 10000 | " " |
| | in Fan.m 36000 @ 36 fan.m p.r Pagoda | | | 1000 | " " |
| | D.o 45000 @ 45 fan.m D.o | | | 1000 | " " 12000 " " |
| | By D.o D.o from Civil paymaster General Moore Rent for Jany and Feby | | | 50 | " " |
| | Dest money for D.o D.o | | | 16 | 16 " 66 46 |
| 10th | By D.o D.o from Mr. Cockburn for a Draft on him M.s pags 100 p.r M.s | | | | 109 " " |
| 16 | By D.o D.o from Mr. Chase on Account of Mrs. Hamilton for Mr. Williams Dobbys Bond dated 1st Feby 89 | | | | 66a " |
| 17 | By D.o borrowed from Cashavah | | | 3600 | " " |
| 25th | By D.o D.o | | | 300 | " " |
| 30 | By D.o received from Rajah of Calastry | | | 3900 | " " |
| | By D.o D.o Colonel Halcocks House Rent | | | 100 | " " |
| | By D.o D.o for pieces Goods Sold | | | 24 | " " |
| | By Sundries debited on your last Months Account by the Deceased & now Credit you for not discharging the same Viz.t | | | 320 | 42 70 |
| | Charcoal Contractor | | | 80 | " " |
| | Yard Rent for Feby | | | 50 | " " |
| | Mr. Breathwaight p.r Bill | | | 200 | " " |
| | Sawmy Naicks Coolies for Timber | | | 33 | 10 10 363 40 10 |
| | By Cash Rec.d for 550 Sheathing Boards sold | | | 110 | " 16758 39 " |
| | | | | | 19530 39 26 |
| | By Ballance | | | | 10197 26 54 |

Madras 12th June 1790.

E. E. p.r Petty Tomboo Nauck Administrator of Baucala Ramasawmy Nauck Deceased

Pagodas — 29728 26. "

Reasons offered by Mr. Alderman Rose for his Dissent to the Order of the Court for allowing the Plea of the Bill of Complaint of Petty Tamboo Naick Administrator to the Estate and Effects of Ramasawmy Naicka Vers. Francis Lind - and dismissing the said Bill -

Because in his Opinion none of the reasons offered in Support of the said Plea appear to be well founded - or give a Sufficient foundation for putting the present Complainant under the necessity of Seeking for relief in this Court by the mode of a Cross Bill - to be brought forward on the ground of the Action which the Defendant in the Present Suit has recently entered against the Present Complainant; that being clearly an action in the Nature of a trespass Where no Specific Debt is alledged - but merely the redelivery of a Certain property which is said to be wrongfully withheld - or the value thereof is required to be performed - And this being an Action upon the Case in the Nature of a Bill of Discovery - where Several Articles of Charge are Specially Set forth to which the Defendant is required to give Specific Answers and a Claim made upon the foundation of such Charges to the Amount of Pagodas 10. 197. Which is also Supported by Affidavit - and under such Circumstances is of a Nature altogether different from and totally unconnected with the ground of Action in the Bill of Present Defendant who cannot therefore be entitled to plead the Statute which was made for the relief of Debtors in the View of giving them an option (but by no means of compelling them) to set off one Debt against another - a mode of proceeding for which there does not appear to be the most distant Colour of reason in the present Case - nor can the Complainant (whose Bill is now dismissed) be put under the necessity of adopting it - without Subjecting him to a hardship in the mode of Seeking redress (tho' that Surely cannot be the intention of this Court) totally incompatible with the Rules of proceeding in all Courts. and Should now therefore have been avoided in the Present instance. -

(Signed) Andrew Ross

Alderman - 22d. March 1791

True Copy

(Signed) George Taylor Rgr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 29th. Day of March Anno Domini 1791 —

Present

Josias Dupre Porcher Csqr. Mayor

Andrew Rofs Henry Chichley

Michell and Henry Readhead

Aldermen

Francis Lind

vers

Petty Tomboo Naick Administrator of Paucala Ramasawmy Naick Deceased General Replication filed this Day —

A True Extract

(Signed) George Taylor Kpr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d. Day of February Anno Domini 1791

Present

Josias DuPre Porcher Esquire Mayor

William Webb Andrew Rofs

and

James Daly Aldermen —

Francis Lind

vers

Petty Tomboo Naick administrator of Paucala Ramasawmy Naick Deceased

Bill with Copy of an Account Current Annexed filed between the days of Adjournment Summons issued thereupon returned Served The Defendants appears by his Attornies Mess.rs Henry DuPuy and John White who pray that they may be allowed One Week to Plead or Demrer — as Ordered Accordingly —

A True Extract

(Signed) George Taylor Kpr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 1st. Day of March Anno Domini 1795

Present

Josias DuPre Porcher Csq.r Mayor

Andrew Ross John Mitford and Henry Readhead Aldermen.

Francis Lind

vers.

Petty Tombo Naick Administrator of Paucala Ramasaumy Naick Deceased

Further Day is given the Defendants till the 8th. Instant to Answer the Complainants Bill

A True Extract

(Signed) George Taylor Regr

Extract from the Minutes of a Court Held at the Town on Tuesday the 8th. Day of March Anno Domini 1795



Present

Josias DuPre Porcher Csq.r Mayor

James Call Andrew Ross

and

Henry Chichley Mitchell Aldermen.

Francis Lind

Petty vers. Tombo Naick Administrator of Paucala Ramaka Saumy Naick Deceased

Answer Sworn to in Court and filed this Day

A True Extract

(Signed) George Taylor Regr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th Day of March Anno Domini 1791

Presents

Josias Du Pre Porcher Esqr. Mayor
William Webb — Andrew Ross
James Daly — and Aldermen.

Francis Lind

vers

Petty Tamboo Naick administrator of Paucala Ramah Sawmy Naick Deceased

Day is given the Complainants till the 29th Instant to Reply indefaults of which this Cause will be heard on Bill and Answer —

A True Extract
(Signed) George Taylor Regr.

To the Honble Major General William Medows —
Resident and Governor &c in Council
Fort St George

In the Honble the Court of appeals

Between Petty Tamboo Naig administrators to all and Singular the Goods Chattels and Effects of Paucala Ramasawmy Naig Deceased appellant and Francis Lind Respondent —

The answer of the above named Respondent to the Petition and appeal of the above named appellant

This Respondent admits that the appellant above named did on the Twenty fifth Day of February in the present Year of Our Lord One thousand Seven hundred and Ninety one exhibit his Bill of Complaint in the Mayors Court at Madraspatnam against this Respondent and that he did therein and thereby Setforth that this Respondent being in or about the Year of Our Lord one thousand Seven hundred and Eighty three in very narrow Circumstances and being Anxious and Desirous to acquire an Estate and fortune and well Knowing that the Appellants said Intestate the said Paucala Ramasawmy Naick was not only a person Conversant and well skilled in Trade and merchandize but that he was also enabled from his own fortune and Credit and from

Filed in my Office
the 5th May 1791
Chas K White
Clk

From the large and extensive property of his Father Family and Friends and From other Creditable Connections that attached to him in Consequence thereof to make such Loans and advances to this Respondent as were necessary as well for the then Support and Mountenance of this Respondents as to enable him to launch out and engage in different branches of trade and Commerce this Respondent did some time in about the year of our Lord one thousand Seven hundred and Eighty three apply to and Solicit the said Paucula Ramasaumy Naick to become his this Respondents Head Dubash and that to such Reguation of this Respondent the said Paucala Ramasaumy Naick did after much entreaty on the part of this Respondent consent and agree and did accordingly from thence forth become and was the head Dubash of this Respondent in which Station the said Paucala Ramasaumy Naick Continued until the time of his Death and this Respondents further admits that the appellant did further shew unto the said mayors Court in and by his said Bill that the said Paucala Ramasaumy Naick from time to time whilst he so continued the Dubash of this Respondent as afore said did actually lend and advance to this Respondent very Considerable Sums of Money not only to Defray this Respondents domestick expences but also to enable this Respondent to carry on and enter into Various mercantile business and Speculations until at length the

Estate

Estate and Fortune of this Respondent was by the great care Skill industry and attention of the said Paucala Ramasaumy Naick in and about the business of this Respondent and by the pecuniary aids with which he was by the said Paucala Ramasaumy Naick furnished and proveded exceedingly encreased and this Respondents admits that the appellant did in and by his said Bill further charge that the Station or Employment of military Storekeeper at Fort Saint George for the proveding and furnishing the Honorable Company and their armies with military Stores Tents gun Carriages and other Carrage Conveyance for the said Stores having on or about the Tenth day of August which was in the year of our Lord One thousand Seven hundred and Eighty Nine become Vacant by the Death of George Savage Esquire who had for some time previous thereto held the said Employment this Respondent did Represent to the said Paucala Ramasaumy Naick that if he this Respondents could so manage matters as to prevail upon John Holland Esquire the then President and Governor of Fort Saint George and upon Edward John Holland then one of the members of the said Government of Fort Saint George to nominate and appoint him this Respondent to the said Employment or office of military Store Keeper which had so become Vacant by the Death of the said George Savage

that

That he this Respondents fortune would be ultimately made
at the same time intimating that he had been given to under=
=stand that previous to the said John Holland and Edward
John Holland Nominating this Respondent to the said
appointment of Military Store Keeper he this Respondent
should actually advance and pay down to them the said
John Holland and Edward John Holland or to one of them
a Sum of Twenty thousand pagodas or thereabouts that this
Respondent did shortly afterwards inform the said Paucala
Ramasawmy Naick that they the said John Holland and
Edward John Holland or one of them had actually Consen=
=ted and agreed to nominate and appoint him this Respon=
=dent to the said Office of Military Store Keeper upon his
this Respondents paying to them the said John Holland
and Edward John Holland or to one of them a Sum of Twenty
Thousand Pagodas and to which terms he this Respon=
=dent had as he informed the said Paucala Ramasawmy
Naick Acceded and that matters having been so concluded
the only Obstacle which then prevented this Respondents
entering into the immediate profession and injoyment of
the said office of Military Store Keeper was the non =
payment of the said Sum of Twenty Thousand pagodas to
Obviate which he this Respondent had interceded and
employed the said Paucala Ramasawmy Naick not =
only

only to lend him this Respondent such part of the said Sum of Twenty
thousand pagodas as he the said Paucala Ramasawmy Naick could
then Conveniently Command but also to procure and obtain on the
Credit of this Respondent such part of the said Twenty thousand
pagodas as he the said Paucala Ramasawmy Naick might
be unable to advance and this Respondent admits that the
Appellants did in and by his said Bill further Charge that he
the said Paucala Ramasawmy Naick from an anxiety and
Desire further to aggrandize and promote the fortune of this
Respondent had on or about the Eleventh Day of August which was
in the Year of our Lord One thousand Seven hundred and Eighty
Nine at the Special instance and request of this Respondent
and for his use and upon his Account actually paid and
advanced to Anandana praupiah Braminy then head =
Dubash to the said John Holland and Edward John =
Holland the Sum of Five thousand pagodas whereby this
Respondent had become and was indebted to the said Paucala
Ramasawmy Naick in his life time in the said Sum of
Five thousand Pagodas and that being so indebted he this
Respondent in consideration thereof faithfully promised
the said Paucala Ramasawmy Naick to pay to him the said
Sum of Five thousand pagodas when he this Respondents
should be thereunto afterwards required but that this =
Respondent contriving and intending to Deceive and Defraud the said =
Paucala

Paucala Ramasawmy Naick in his life time and the appellant since his Death had not paid the said Five thousand pagodas or any part thereof to the said Paucala Ramasawmy naick in his life time nor to the appellant since his Decease although often requested soto do and that the said Paucala Ramasawmy Naicks having borrowed and procured for this Respondent the Sum of Fifteen thousand pagodas the residue of the said principal Sum of Twenty thousand pagodas he this Respondent was actually nominated and appointed to the said Station or office of military Store keeper and on the Eleventh Day of August which was in the Year of our Lord One thousand Seven hundred and Eighty nine entered into the Recipts of Stores and took the charge thereof And this Respondent admits that the appellant did in and by his said Bill further charge that this Respondent being indebted to Rudrapah and Eya pillay of Madras Inhabitants upon a Settlement of Accounts with them the said Rudrapa and Eya pillay in the Sum of Thirteen hundred pagodas and being prefsed by them the said Rudrapah and Eya pillay for the payments of the said Sum of thirteen hundred pagodas and it not being Convenient to this Respondent at that particular periad to pay off the same he had applied to the said paucala Ramasawmy Naick in his life time to pay off and Discharge the said Sum of Thirteen hundred pagodas or otherwise to

Satisfy

Satisfy the same so as that he this Respondent should not be prefsed by them the said Rudrapah and Eya pillay for the payment thereof and that the said Paucala Ramasawmy Naick had accordingly at the Special Instance and request of this Respondent and for his own use and upon his Account paid off Discharged and Satisfied them the said Rudrapah and Eya pillay the said Sum of Thirteen hundred pagodas by granting and Executing unto them the said Rudrapah and Eya pillay his the said Paucala Ramasawmy Naicks Bond or writting Obligation Conditioned for the true payment by him the said Paucala Ramasawmy Naick to them the said Rudrapah and Eya pillay of the said Thirteen hundred pagodas whereby this Respondent had become and was indebted unto the said Ramasawmy Naick in the said Sum of thirteen hundred pagodas and that being so indebted this Respondent had faithfully promised the said Paucala Ramasawmy Naick in his life time that he this Respondent would well and truly pay unto the said Paucala Ramasawmy Naick in his life time the said Sum of Thirteen hundred pagodas when he this Respondent should be thereunto required but that this Respondent although often required so to do had not paid unto the said Paucala Ramasawmy Naick in his life time nor to the appellant since the decease of the said Paucala Ramasawmy Naick the said

of Thirteen hundred pagodas or any part thereof but that the said Sum of Thirteen hundred pagodas together with the Interest thereof was still due and owing from this Respondent to the Appellant as Administrator of the said Paucala Ramasawmy Naick as aforesaid And this Respondent admits that the Appellant did in and by his said Bill also charge that this Respondent upon entering into the said Employment of Military Store Keeper in Consideration that the said Paucala Ramasawmy Naick would as the Head Dubash of this Respondent Conduct and manage the said Business and Office of military Storekeeper agree with and promise the said Paucala Ramasawmy Naick in his life time to pay and allow him the said Paucala Ramasawmy Naick for his diligence Work and labour in and about the Business of this Respondent as military Storekeeper aforesaid the Sum of Fifteen pagodas for every one hundred pagodas that should arise to this Respondent and be produced from the neat or clear profits of the said office of military Store=keeper and that the said Paucala Ramasawmy Naick Confiding in the said promises and undertaking of this Respondent he had in his life time at the Special instance and request of this Respondent to wit from the first Day of September which was in the Year of our Lord One thousand Seven hundred and Eighty nine until the thirtieth Day of

of March which was in the Year of our Lord One thousand Seven hundred and Ninety Carefully and diligently Superintended Conducted and managed the said Business Office and Employment of this Respondent as this Respondents Head Dubash and under his Direction And this Respondent admits that the Appellant did by his said Bill Expresly Charge that this Respondent absolutely received by the clear and neat profits of his said Employment of Military Store=keeper from the said first Day of September One thousand Seven hundred and Eighty Nine until the said thirtieth Day of March One thousand Seven hundred and Ninety the Sum of Thirty Nine thousand Six hundred and Ninety three pagodas Eight fanams and Seventy one Cash or thereabouts and that by means thereof this Respondent on the said thirtieth Day of March in the said Year of our Lord One Thousand Seven hundred and Ninety became liable to pay and ought to have paid into the said Paucala Ramasawmy Naick in his life time the Sum of Five thousand nine hundred and fifty three Pagodas forty three fanams and Sixty Cash according to his said Agreement and his said promises and Undertaking made as aforesaid but that this Respondent had not paid the same to the said Paucala Ramasawmy Naicke in his life time nor had he since his Death paid have paid

Same or any part thereof to this Appellant although often requested
so to do and this Respondent admits that the Appellant in
and by his said Bill did further Charge that this Respondent
was also indebted to the said Paucala Ramasawmy Naicke
in his life time and still was indebted also to the said
Appellant as his Administrator in Various other Sums of money
by the said Paucala Ramasawmy Naick in his life time laid
out
expended and paid for this Respondent and at his special
instance and request Amounting together to the sum of Pagodas
Sixteen thousand Nine hundred and fifty five twenty fanams
and Sixty Cash or thereabouts the particular Sums of which
and the respective times when the said monies were so
paid laid out and expended by the said Paucala Rama-
sawmy Naick were particularly set forth and mentioned
in an Account Current annexed to the Appellants Bill of
Complaint and which the Appellant did pray might be
taken and received as part of his said Bill and that this
Respondent under and by Virtue of the several matters and
things in the Appellants said Bill particularly set forth
and mentioned had become and was indebted unto the said
Paucala Ramasawmy Naick in the principal Sum of Ten
thousand one hundred and ninety Seven pagodas twenty
Six fanams and fifty four Cash being the balance of the said

Account

Account Current And this Respondent admits that the appellant did thereupon charge the several matters and things and did thereunto interrogate this Respondent and did in and by his said Bill pray as in his said Petition and appeal the same is stated and set forth

And this Respondent further answering admits that having been duly served with process to appear to and answer the Appellants said Bill of Complaint he this Respondent did on the first day of March in the present Year of our Lord One thousand Seven hundred and Ninety one by his attornies at Law appear and plead thereunto and for plea did say that heretofore and before the Appellant had exhibited his said Bill in the said Mayors Court against this Respondent to wit on the Eighteenth Day of February in the present Year of Our Lord one thousand seven hundred and Ninety one this Respondent then Complainant had exhibited his Bill of Complaint in the said Mayors Court to which Bill of Complaint the Appellant had appeared but to which said Bill the Appellant had not put in his answer and that the said Bill was depending in the said Mayors Court and was Undetermined and this Respondent admits that for further Plea he did say that if the Appellant ever had any cause of Suit against him this Respondent the Appellant ought to have

pleaded

Pleaded the same by way of set off for that by a Statute or
Act of Parliament made in the Twenty Ninth year of
the Being of king George the Second intitled an act for
the relief of Debtors with respect to the imprisonment of
their persons it is amongst other things Enacted that
where there are mutual Debts between the plantiff and
Defendant or if either party Sue or be Sued as Executor or
administrator where there are mutual Debts between the
Testator or Intestate and either party one Debt may be set
off against the other and such matters may be given in
evidence at the General Issue or pleaded in Bar as by
the said act might appear and that this Respondent
did therefore plead the said act of parliament and
pray the benefit thereof all which matters and things
this Respondent did aver and plead in Bar to the
Appellants said Bill and his demands and pray
the Judgment of the said mayors Court whether he
should be compelled to make any further or other
Answer thereunto and did further pray to be thence
dismissed with his Costs and Charges in that behalf
Sustained

And this Respondent further Answering
says he admits that the said Plea of this Respondent to the



The Appellants said Bill of Complaint was on the Eighth day of
March last set down to be argued and that the said Plea came
on to be argued Accordingly in the said Mayors Court on Tuesday
the twenty second day of the said month of march when the
said mayors Court was of Opinion that the Respondents
said Plea was good and Sufficient and did therefore think
fit to Order and did accordingly Order that the Appellants
said Bill of Complaint should stand dismissed with Costs
And this Respondent saith that the said Order of the said
mayors Court is not Erroneous, nor is the Appellant
Aggrieved thereby and that the Appellants pretended reasons
for Appeal therefrom as in the Appellants said Appeals the
Same are set forth are untrue Vague and Negatory and altogether
immaterial insufficient

To the First of which this Respondent says it was not necessary for him
to shew in and by his said Plea that the Suit by him institu-
=ted against the Appellant was for one and the same matter
or to the same effect or for the like relief or purpose as the
Suit which had been by the Appellant instituted against this
Respondent for this Respondent says that his said Plea
does not go to those separate points but that the said Plea
stating a former Suit Depending and that the same was
unanswered by the Appellant at the Time he filed his said

Bill

Bill shews that he the Appellant ought not to have exhibited the same against this Respondent under such Circumstances but that he ought to have answered the Bill exhibited against him by this Respondent and in Conformity to the Clause of the act in this Respondents said Plea Setforth and thereby pleaded have sit off the debt due from this Respondents to the Appellant if any had really existed and if in so doing and thereby there should have appeared a Balance in his the Appellants Favor he should have ~~taught~~ brought his Cross Bill for the recovery thereof but not having done so and having filed a Bill of Complaint against this Respondent without having answered the Bill of Complaint of this Respondent against him the Appellant he did that which was illegal and oppressive totally contrary to the practice of the said Mayors Court and in opposition to the act of parliament in such Case made and provided and thereupon this Respondent filed his said Plea and by reason whereof this Respondent humbly insists that the Judgment of the said Mayors Court is not Erroneous nor is the Appellant aggrieved thereby and this Respondent begs leave to submit that no matter can be introduced into the proceedings of this Honble Court that does not arise out of the records of the Court below and immediately before them and this Respondent shews that the Bill of Complaint by this Respondent filed against

against the Appellant is not nor can it be before this honble Court so as to form a part of the Record in the present Litigation and thereupon this Respondent says that the Appellant in entering into the merits of the said Bill so filed by this Respondent has to all intents and purposes introduced new matter & Contrary to practice and therefore this Respondent prays the same may be expunged from the Appellants said first reason beginning from the words "and your Petitioner that the said Suit Viz" and ending with the words the Sum of seven hundred and forty Sive pagodas" and this Respondent says that should this Honble Court be of Opinion that the said matter except to by this Respondent is not new matter and that the same ought not to be Expunged this Respondents further Answering says that the said matter as stated by the Appellant is unfair and untrue for this Respondent Solumly avers that his said Bill was not brought for the recovery of a Certain quantity of Muslins as insinuated by the Appellant but that the same was brought for the recovery of a certain Sum of money and upon an account Current whereof a Copy is to this Respondents said Bill annexed and this Respondent says that as by the Appellants own Shewing his first Reason for Appeal is Grounded upon Untruth it must of Course fall to the Ground.

Secondly

Secondly This Respondent says in Answer to the appellants Second Reason for appeal that he has in his said Plea stated the title of the act by him pleaded to wit an act for the relief of Debtors with respect to the imprisoment of their persons" and has set forth the Clause in the said act Contained to wit "where there are mutual debts between the Plantiff and Deffendant or of either Party sue or be sued as Executor or administrator where there are mutual Debts between the Testator or Intestate and other party one Debt may be set off against the other and such matters may be given in Evidence at the general Issue or pleaded in bar" and therefore this Respondent says that he said Plea is well founded and is certain and sufficient and further say that the "act for the relief of Debtors with respect to the imprisonment of their persons" is in full force is a Public act, and as a public act His Majestys Courts Competent to hold plea thereon are bound to take notice thereof and this Respondent says he has not perverted the said act as the Appellant has asserted, That the appellants Reasonings thereon are fallacious and negatory and further says as he has above set forth that as this Respondent had filed his Bill of Complaint against the Appellant he the appellant instead of filing a Bill against this Respondent should first have Answered and if by setting off any Debt he might have Conceived due to him against the Sum Sued for by this Respondent a balance should have remained in his favor he should have filed a Cross Bill for the recovery of the Amount thereof and from all which matters this Respondent says that the Appellants said Second Reason for Appeal is without foundation.

Thirdly This Respondent Says that he has in and by his Answer to the Second Reason of the appellants fully answered the matters mentioned on in the appellants third Reason for appeal and thereupon says that the appellants said third Reason for appeal is without foundation.

Fourthly This Respondent says in answer to the appellants fourth Reason for appeal that he excepts to a part and so much thereof as he has excepted to when Speaking to the appellants first Reason for appeal and rests his Exception upon the same Doctrine as therein set forth and further saith that in and by his answer to the said first Reason of the appellant he has answered to the remainder of the appellants said fourth Reason and thereupon this Respondent humbly insists as he has thereon humbly insisted on.

Fifthly This Respondent says that the matter in the appellants fifth Reason for appeal Contained is fallacious and absurd for this Respondent says that it was to the appellant a matter of no

Consequence

Consequence whether this Respondents said Bill of Complaint
wasor was not true in manner form and substance as the
same is stated and setforth and this Respondent says that
the Appellants in suggesting that to have answered this
Respondents said Bill would have been to acknowledge his
this Respondents right to Recover his said Suit is highly ridiculous
and positively untrue for this Respondent says that in answer-
=ing this Respondents said Bill he the Appellant should have
Denied being indebted to him this Respondent in the Sum
sued for or in any other Sum or Sums of Money whatever if so the
Fact was and have Charged that on the Contrary this Respon-
=dent was indebted to him the Appellant and as hereinbefore
shewn have brought a Cross Bill for the Amount thereof
for this Respondent says that if to Answer a Complainants
Bill of Complaint Would be to admit his Right to Recover the
amount Charged the Answer of a Defendant instead of being
beneficial to him would at once throw him at the mercy of a
Complainant whereas this Respondent says the Answer
of a Defendant goes to so much the Reverse that if the denies
the Charges in the Complainants Bill of Complaint setforth
it will Require two Witness on the part of the Complainant to
Disprove the same or he Cannot have a Decree and his Bill
must stand dismissed and therefore this Respondent says

That



That the Appellants fifth Reason for Appeal is false
in its principle and Consequently insufficient as to its
intent

Sixthly This Respondent says that to the former part of the
Appellants Sixth Reason of Appeal he has already answer-
=ed in his Answer to the Appellants first reason and as
to the latter part thereof this Respondent denies that the
Mayors Court by Dismissing the Appellants said Bill
Deprived him of any Discovery and that the Appellant
in insisting to the Contrary has advanced that which
is not true for this Respondent says as he has herein-
=before repeatedly Shewn that even after the Dismission
of the said Bill the Appellant might have filed a Cross
Bill and have charged and interrogated this Respondent
to any point whatever and that such is the regular
Course of the said Mayors Court and further this Respon-
=dent says that he would have been Compelled to answer
such Cross Bill and the Discovery therein and thereby
sought for and that such Answer notwithstanding the
insinuation of the Appellant to the Contrary must have
been given in by this Respondent upon Oath and
thereupon this Respondent says the Appellant in his

said

Said Sixth Reason of Appeal has Defeated his own designs by shewing that all he wanted was a Discovery upon the Oath of this Respondent and as this Respondent has shewn that by the Dismission of his the Appellants said Bill, he the Appellant was not Deprived of the Benefit of such Discovery and that his the Appellants Assertion to the Contrary is erroneous and untrue this Respondent says that the Appellants said Sixth Reason for Appeal is without foundation. —

Seventhly This Respondent to the Appellants Seventh Reason for Appeal to adopt the Expression used by the Appellant Says that the Law would not admit of his Answering the Appellants said Bill and of setting off his Demand against the Sum therein and thereby Charged but this Respondent says as hereinbefore shewn that upon the Appellants Answering the said Bill of this Respondent and thereon Exhibiting a Cross Bill this Respondent would have Answered thereto that on the pleadings Issue would have Joined and upon that Issue singly the



the right of the Appellant and of this Respondent would have been Determined and with respect to the latter part of the Appellants said Seventh reason this Respondent says that as he has already shewn in his answer to the Sixth reason that the said Mayors Court did not preclude him the Appellant from discovering any Demand he might have had against this Respondent and this Respondent says it is absurd in the Appellant to state that he was so precluded because this Respon = dent had a Cross claim against him for this as Respondent says it was he and not the Appellant who Exhibited and filed the Original Bill and as a Cross Suit arises out of an Original Suit it was the Appellant and not this Respondent who had the Cross Claim if he had in reality any Claim against this Respondent and thereupon this Respondent says that the Appellants Seventh Reason for Appeal is unfounded in truth and is as fallacious and nugatory. —

Eighthly This Respondent in Answer to the Appellants Eighth Reason for Appeal says that the Rule for

Answering

Answering this Respondents said Bill as by the
Appellant the same is setforth was regular and
according to the Course of the Mayors Court for
this Respondent Says he never denied the Appellants
Right to Answer his this Respondents said Bill
and that all he Denied was that the Appellant
had a right to exhibit And file a Bill of Complaint
against this Respondent until he had first put in
an Answer to the said Bill of this Respondent
and therefore this Respondent Denies the irregularity
the Appellant would insinuate as arising therefrom
And this Respondent says it is irregular &
in the Appellant to introduce any mention
of his Answer to this Respondents said Bill of
Complaint because it is a matter that took &
place Subsequent to and is no wise Connected
with the matter in question and for the
Reasons setforth in this Respondents Answer
to the first reason of the Appellant this &
Respondent Doth Except thereto and to the &
Extracts Connected therewith and humbly prays—

the

The same may be Expunged from the record and this
Respondent further says that the Reasons offered
by Mr. alderman Ross and whereof a Copy is annexed
to the Appellants said Appeal has nothing to do with
the matter in question is mere matter of Opinion
of one man and therefore not admissible in point
of Law and this Respondent humbly insists
that the same is new matter not at issue in
the matter in question and that the Introduction
thereof is Highly irregular and contrary to the
practice of this honble Court and therefore this
Respondent prays that the Same may be
Expunged from the Records with Costs. —

And Lastly this Respondent
says that his said Plea was either replied or
Demurred unto by the Appellants but that
the Same was set Down to be Argued &
without any Manner of Objection whatever &
which this Respondent humbly Submits was
to all intents and purposes a Confession both of

the

The Law and of the Fact as the same is in this Respondents said Plea stated and setforth and therefore this Respondent says that the said Mayors Court could not but give Judgment thereon in favor thereof because the appellant was in Truth Consenting thereto and Consequently he the Appellant cannot be aggrieved thereby nor can he have any Just Ground to Appeal therefrom

From all which Reasons and such others as may be offered at the hearing this Respondent humbly prays that this Honble Court will affirm the said Order of the said Mayors Court and Dismiss the appellants said Petition of appeal with Costs. —

[Sgned] James St. Hall
John Hamilton
Solicitors for the Respondt.

Court

3547

Court of Appeals
at
Madraspatnam

Saturday the 24th Day of December
Anno Domini 1791

Between Petty Iambo Naick of Madras Dubash administrator to the Estate and Effects of Paucala Ramah Sawmy Naick of the same place Dubash Deceased appellant and Frances Lind Esquire in the Civil service of the Honble the United Company of Merchants of England trading to the East Indies Respondent —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides the Solicitors for the Respondent having Objected to the introduction of Mr. Alderman Ross's Dissent to the Order of the Mayors Court a Copy of which was annexed to the Petition of Appeal and the Court having Considered such Objection — It is Ordered that the same be expunged — Upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 22d. day of March Anno Domini 1791 Upon due Consideration had of the Matters therein

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 Order of the Hon^ble the Mayors Court dated the 22^d day of March Anno Domini 1791. be Reversed and that the Respondent do put in his Answer to the Appellants Bill of Complaint in the Hon^ble the Mayor's Court by the 24^th. January Next - and also that the Respondent do pay all Costs in both Courts. —

By Order of Court
Chas N. White
Clk

Saturday

Saturday 31^st December 1791

Present

Sir Charles Oakeley Baronet

William Petre and John Hudleston

To the Hon^ble Major General William Medows
President in Council
Fort Saint George

In the Hon^ble the Court of Appeals at Madraspatnam

Between William Burke of Madras Esquire Complainant and Isaac Dupre Porcher of Fort Saint George Esquire Defendant

The humble Petition and Appeal of the abovenamed Complainant

Sheweth

That Your Petitioner did on or about the fifth day of May in this present Year of Our Lord One thousand Seven hundred and Ninety One exhibit and file a Bill of Complaint in the Hon^ble the Mayors Court at Madraspatnam against the abovenamed Defendant wherein

Filed in my Office the 4^th July 1791
Chas N. White Clk

wherein he did Setforth and alledge that by a certain Statute made and passed in the Parliament holden at Westminster in the Twenty first Year of the Reign of Our Sovereign Lord the King it was among other things enacted ordained and established that the Rt Honble the United Company of Merchants of England trading to the East Indies should pay and they became thereby bound to pay unto his Majesty our said Sovereign Lord the King and to his Heirs and Successors a certain Proportion of Pay Subsistence and Allowance for such of his Majestys Troops as should be then Serving or should thereafter serve in India and that in Consequence of this Statute so made and enacted the Paymaster General of his Majestys Forces that is to say the Right Honble Richard Rigby then of London or elsewhere in the Kingdoms of Great Britain or Ireland Esquire being called upon by his Majestys Servants to nominate and appoint some Person to act as his Deputy in India he the said Richard Rigby replied that he knew no Individual in India to nominate and appoint as his Deputy nor would he take upon him any

Responsibility

Responsibility for Persons he did not know but the said Richard Rigby did give a formal Diputation some short time afterwards to Lieutenant General Sir Eyre Coote then Commander in Chief of the Army in India who upon Receipt of such Duputation and by Virtue of the Power by which he became vested did appoint as his Deputy William Tierney late of Fort Saint George Esquire and did thereby authorize him to act for him in the said Deputation – Your Petitioner did further shew that soon after and before the said William Tierney had entered upon the Duties of his Office the Right Honble Edmund Burke then One of his Majestys Privy Council and Paymaster of his Troops in the Room of the said Richard Rigbby did duly depute and appoint Your Petitioner to act for him in the Payment of his Majestys Troops Living or to serve in India and to receive and pay such Sum and Sums of Money as were from time to time to be received and payed and to transact and perform all such other Duties of the said Office as might belong or appertain thereto – Your Petitioner did further setforth that he received the said Deputation

about

about the Middle of the Year One thousand Seven
hundred and Eighty three and very shortly after
he received another Deputation from the Right
Honble Isaac Barre Esquire the then Paymaster
General appointing Your Petitioner his Deputy in
the same manner and with the same Powers as the
said Edmund Burke had before appointed him
and by Vertue thereof and of your Petitioners due
Acceptance of the Trust and Powers then given
Your Petitioner became Will and justly authorized
and empowered to demand and receive from the said
Companys Presidencies in India or from whomsoever
else the Payment thereof should or might become
due all Monies that then were or should thereafter
be payable by the said Company for his Majestys
Troops that then were or should thereafter be serving
in India to issue so much of the same as should be
wanting for the Subsistence of the Commissioned
and Non Commissioned Officers and private Men
of the several Corps serving there And was also
further empowered to act as fully and effectually
and in as ample a Manner as possible as the

Deputy

Deputy of the said Paymaster General subjecting
however Your Petitioner to such Directions and Instruc-
tions as he should thereafter receive And Your Petitioner
did set forth that this Deputation from the said
Paymaster General was publickly and openly made
with the Consent and Approbation of the Right
Honble the Lords of his Majestys Treasury and as
publick and formal Notification thereof was made
by the Honble the Court of Directors of the said Honble
Company to their several Presidencies in India
directing them to make the necessary Issues to Your
Petitioner by Name - Your Petitioner did further
set forth that being at Tanjore when he received the
said
Deputation he made all possible haste to the
Presidency of Fort Saint George aforesaid But did not
enter into the Duties of his Office or in any manner
exercise the same untill on or about the Twelfth
day of October in the Year of Our Lord One thousand
Seven hundred and Eighty three although before
that time to Wit on or about the Twelfth day of
September in the same Year the Right Honble George
Lord Macartney Governor and President of Fort
Saint George and the other Members of the Board
called

called the Select Committee did give out certain General
Orders in the Words following Fort Saint George &
20th September 1783 G. O. the Right Honble the Pre-
-sident and Select Committee have been pleased to resolve
that the Subsistence of his Majestys Troops be in &
future issued to William Burke Esquire who has
been appointed by the Right Honble Isaac Barré
Paymaster General of his Majesty's Forces to be his
Deputy in the East Indies upon his Mr. Burke's
Indent founded on actual Muster of the Honble &
Companys Commissaries and to be paid by him to
the Orders of the Commanding Officers of the &
Respective Regiments who will accordingly trans-
-mit to Mr. Burke their Distributions for Subsis-
-tince and Cattle with him for the Same - By Order
of the Right Honble the President and Select
Committee John Hudleston "Your Petitioner did
further set forth that on or about the Twenty fifth day
of October aforesaid Your Petitioner received the
first Payment that was made by the said &
Honble Company on Account of the said Troops
in the form and manner following that is to say

first



first making out an Estimate or Indent of the Sums &
supposed to be due to the Commissioned and Non Commis-
-sioned Officers and Privates of all his Majestys Troops
serving under the Presidency for the Two Months then
next to come and which Space of two Months was &
stated to commence on the twenty fifth day of &
October and to end on the twenty fourth day of December
of that year that upon this Estimate or Indent the
Amount was issued to your Petitioner And your &
Petitioner having himself received the same lodged
it in a Cash Chest provided for that purpose of which
he himself kept the Key and paid out the Money to the
respective Regimental Paymasters according to their
different Distributions or Regimental Papers setting
forth the Specific Charges or Claims of each respective
Regiment And your Petitioner did further set forth
that Your Petitioner continued to transact the &
Business and duty of the Office from such the
time of his entering on the Duties of his Office afore-
-said untill sometime on or about the latter end of the
Month of December in the said Year One thousand Seven
hundred and Eighty three when Your Petitioner being

Obliged

obliged to return to Tanjore found himself under the
Necessity of having some Person to act for him and
on his Behalf as his Agent at Madras in the Office of
Paymaster that Your Petitioner among others mentio-
=ned to George Maule Esquire Mayor of Engineers in
the Service of the said Honble Company the Difficulty
he found in supplying himself with a fit and proper
Person for the Purpose that the said George Maule
thereupon in the Strongest terms recommended to your
Petitioner a friend of his Josias Du Pre Porcher the
Defendant as a Young Man already in good
Business and particularly in the Agency line and
the said George Maule represented the said Defen-
=dant to Your Petitioner as a Person whose wonderful
Care and attention to Business and whose Deligena
and great punctuality in the discharge of any
Trust reposed in him had already procured
him so many Friends that he was the most
rising Man in the Country And the said George
Maule moreover represented to Your Petitioner
that exclusive of the usual diligence and attention
paid by the said Defendant to the General Business
entrusted

entrusted to his Care Your Petitioner might safely and
fully rely on his particular Care and punctuality in
the Business to be entrusted to him by Your Petitioner
since the said Defendant would find himself accredi-
=ted in the World by having the Superintendance
and Sole management of the Kings Pay Office commit-
=ted to his Charge in as much as it would be the Means
of introducing the said Defendant to the acquaintance
of Gentlemen in the Army which could not fail of being
of material and particular Service in his Business
or line of an Agent and that the Office and every thing
relating thereto would be carried on without the least
Irregularity or Confusion And your Petitioner did
further set forth unto the said Honble the Mayors
Court that he was highly satisfied with the Account
and Representation made to him by the said George
Maule of the Ability and Integrity of the said Defen-
=dant inasmuch as the Deputation by which Your
Petitioner was appointed to the Offices of Paymaster
General of his Majestys Forces in India did not contain
any Clause or Authority empowering Your Petitioner
to delegate or Substitute any Person to act for him in
the

the said Office and that any Appointment of any
Agent would therefore be at Your Petitioners own &c
Risk Your Petitioner therefore eagerly availed &c
himself of a Recommendation of a Man so suitable
to his purpose and so worthy of the great Trust to be
reposed — And Your Petitioner having Settled some
Preliminaries which are herein after set forth with
the said Defendant did accordingly by a Depu-
-tation or Power for that purpose prepared and &c
bearing date some time on or about the fifth day
of November One Thousand Seven hundred and
Eighty three appoint the said Defendant as his
Agent Attorney or Substitute to act for Your &c
Petitioner in Matters relative to the Kings Pay
Office at Madras the same being nearly a Trans-
-cript of his own Deputation and was in the following
Words that is to say Knowall Men by these &c
Presents that I William Burke Paymaster General
of all his Majestys Forces in the East Indies by &c
Deputation from the Paymaster General of all
his Majestys Forces as well as within Great Britain
as without / except in the Kingdom of Ireland / have
authorized

authorized and empowered and by this Present do &c
authorize and empower Josias Du Pre Porcher Esquire
of Fort Saint George for me and in my Name and Stead
to receive from the Government of the President in &c
Council at Fort Saint George or from whomsoever else
the Payment doth or may Concern all Sums that
now are or shall hereafter become payable by the
said Government of the President and Council of
Fort Saint George for his Majestys Forces that now
are or shall hereafter be serving under their said
Presidency to Issue so much of the Same as shall be
wanted for the Subsistence of the Commissioned Non
Commissioned Officers and private Men of the several
Corps Serving there I do hereby give the said Josias
Du Pre Porcher my Deputy full power and Authority
to execute and transact the same in as full effec
-tual and ample a Manner as I might or could do
if personably present at the same time subjecting
the said Josias Dupre Porcher to such Directions
and Instructions respecting the Premises as he
may receive from me or by my Order In Witness
whereof I have hereunto set my hand and Seal

this

this fifth day of November One thousand Seven hund.
and Eighty three in the twenty third Year of his —
Majestys Reign — William Burke — Signed Sealed
and Delivered in the Presence of Wm. Mitchele Wm.
Greene" As by the same remaining in the hands of
the said Defendant when produced might fully
appear and Your Petitioner did further set forth —
that the said Deputation or Appointment made
by Your Petitioner of the said Difendant to act for
Your Petitioner in the said Office of Deputy Pay=
=master was joyfully and thankfully accepted by
the said Defendant who therefore wrote to the afore=
=said Right Honble George Lord Macartney and the
Select Committee a Letter bearing date the Tenth of
December of the said Year One thousand Seven
hundred and Eighty three in the Words following
To the Right Honble George Lord Macartney K.B.
President and Governor &c. Select Committee My Lord
and Gentlemen Mr. William Burke the Paymaster
General of His Majestys Forces in India having
done me the honor to appoint me his Deputy to
act for him in that Office during his absence I

take

take the Liberty to lay before you his Power to me for
that purpose and to request the favor of Your Lordship
to publish my Appointment in General Orders should
You think it necessary I have the honor to be with
much Respect My Lord and Gentlemen Your
most obedient humble Servant Josias du pre
Porcher Dept. Pay.r General of his Majestys —
Forces Port St George 10.th December 1783" And that in
Consequence of the said Letter so acquainting them
of the Appointment of the said Defendant by Your
Petitioner to be his Deputy or Agent and his Accep=
=tance of the same the same was approved of by the
Governor and Select Comittee at Fort Saint George
and the said Defendant was put and named as
a Person appointed by Your Petitioner to Act for him
in the said Office in General Orders at that time
ipsum and which were in the Words following —
General Orders Fort Saint George 15.th Dec.r 1783
William Burke Esquire Paymaster General of his
Majestys Forces in India having appointed
Mr. Josias Du pre Procher to Act as his Deputy
in that Office during his Absence from the —

Presidency

Presidency the Right Honble the President and Select
Committee are pleased to publish the Appointment
in General Orders and to direct that all Distributions
for Subsistence to his Majestys Troops be transmitted
accordingly to Mr Josias Du Pre Porcher in the
Manner already specified in the General Orders of
the 20th of Sept last by Order of the Right Honble
the President and Select Comittee W.G. Wasey Secretary
And Your Petitioner did further setforth that previ-
-ous to the said Defendants receiving the said
Appointment he proposed to Your Petitioner in
Consideration of the Credit and Respectability that
such a Trust would give him that he would execute
the Duties of the Office gratiutously without receiv-
-ing any Recompence whatever but this Your Petitioner
expressly declined and desired the said Defendant
to charge twenty Shillings Sterling per day in
Your Petitioners Account with the Crown And
Your Petitioner engaged that he would pay it to
him as soon as the Account was allowed by the
Kings Paymaster General and Your Petitioner
setforth that upon this Arrangement taking
place

place he directly apprized his Principals thereof and
although the Office at home has taken no Notice
thereof Your Petitioner from the Day of the said Defen-
-dants taking upon himself the said Office to the end
of his continuing in the Same has allowed and paid
him twenty Shillings Sterling per day for all the
time he continued to act for Your Petitioner therein
and sometime afterwards that is to say on or about
the Month of May One thousand Seven hundred
and eighty Six the Government of Fort Saint George
having allowed Your Petitioner fifty Pagodas a Month
for Rent of Office in Consideration of his being appoin-
-ted to pay the Honble Companys Extra Allowances
to his Majestys Troops in India Your Petitioner
did immediately make over the same to the said
Defendant who actually received the Amount
thereof during his Continuance in the Office Your
Petitioner further setforth that soon after his having
executed the said Power of Attorney he left Madras
and previous thereto delivered over his Iron Chest to the
said Defendant and the Office all the Books and
Papers and every other Matter respecting the same was

immediately

immediately and from the Moment the said
Defendant began to act for your Petitioner trans-
ferred to the Dwelling House of the said Defendant
situate in Fort Saint George aforesaid and the
whole was subjected to the entire Controul and
Superintendance of the said Defendant and from
that time henceforth for all the time hereinafter
mentioned the whole Business of the said Office
(excepting some Parts of the Correspondence which
your Petitioner reserved to himself but which
had nothing whatever to do with the actual Receipt
or Payment of Money or the Management of the
Treasury Chest) was carried on under the Manage-
ment Superintendance and Controul of the said
Defendant And your Petitioner did in no One
Instance ever receive or in any manner interfere
with the Issues to the Office or with the Disburse-
ments from it and though it sometimes happe-
ned that going to the said Defendants House
your Petitioner saw Officers and other Persons
come in for their Money yet your Petitioner never
interfered nor ever at any time directed the
said Defendant or any of his Servants or Cash

Keeper

Keeper (Sic) one fanam but referred all Parties to the said
Defendant and your Petitioner likewise set forth that
this Matters continued when your Petitioner left
Madras for Tanjore And your Petitioner never again
assumed the Executive part of the Office but the whole
ordinary Conduct Superintendance and Consequent
Responsibilty thereof remained with and was vested
entirely in his said Agent the said Defendant And your
Petitioner did further set forth unto the said Honble the
Mayors Court that during the time the said
Defendant Continued in the Management Superin-
tendance direction and Controul of the said Office
under the Power herein before mentioned to have been
granted to him by your Petitioner several large Sums
of Money from time to time were issued by the said
Company to and received by the said Defendant as
your Petitioners Attorney or Agent to be distributed in
the manner your Petitioner was directed and required
to pay and distribute the same and that on Settling
the Accounts of the Monies that had been received from
the Honble Company on Account of the Crown by the
said Defendant and comparing the same Issues

with

with what had been distributed to the Persons entitled to receive the same there appeared the following — Deficiencies that is to say — It appeared there had been issued from the Treasury of the Honble the East India Company and received by the said Defendant upon Balances charged by the Pay Office as due to the Nineteenth Regiment of Dragoons from the twenty fifth day of October One thousand Seven hundred and eighty to the twenty fourth day of December One thousand Seven hundred and eighty six the Sum of Four Thousand two hundred and twenty Seven Pagodas One fanam and seventy Cash more than and over and above the Sum that had been distributed by him the said Defendant to the said Nineteenth Regiment of Dragoons from the Office of Deputy Paymaster or his Agent — It further appeared that in like manner there had been issued from the Company's Treasury to the Pay Office as Balances Charged to be due to the fifty Second Regiment within the same period the Sum of Seven Thousand Nine hundred and twenty two Pagodas twenty five fanams and three Cash over & above what had been distributed to the said

said Regiment — It further appeared that in like manner there had been issued from the said Treasury to the Pay Office as Balances charged to be due to the Seventy first Regiment within the same period the Sum of three thousand five hundred and forty Nine Pagodas twenty three fanams and thirty five Cash over and above what had been distributed to the said Regiment — It lastly appeared that in like manner there had been issued from the said Treasury to the Pay Office as Balances due to the thirty Sixth Regiment within the same period the sum of Five thousand Eight hundred and fifty Nine Pagodas five fanams and fifty Cash over and above what had been distributed to the said Regiment as your Petitioner stated would appear by the several Exhibits annexed to his Bill — And Your Petitioner set forth that the said several Sums of Money made together the Sum of twenty One thousand five hundred and fifty eight Pagodas thirteen fanams and forty eight Cash which appeared to be deficient and not accounted for the same being acknowledged by the said Defendant to have been received from the

Honble

Honble Companys treasury or Pay Office and
brought to his the said Defendants Office or
received in his Name but no Voucher whatever
appears to account for the Application of this
Money or any part of it on the part of the Crown
your Petition further setforth that the said
Defendant did at the time he acted as your
Petitioners Deputy also receive Sundry large Sums
of Money from the Companys Pay Office
on account of his Majestys Ninety eighth - One
hundredth - One hundredth and first - and
One hundredth and Second Regiments of Foot
which said Regiments being since returned to
England together with the accounts respecting
the Payments made to them it was not possible
for your Petitioner to state at present such Errors
as may have arisen in the Payments made
to them but which Deficiences whenever disco-
-vered your Petitioner Expressly charged the
Defendant is Equally responsible for and your
Petitioner expressly charged that he has frequen-
-tly and in an Amicable manner both by
himself

himself and others called upon the said Defendant
to come to an Account with Your Petitioner for such
excess or surplus of Monies so received by him
and on Account of Your Petitioner and to satisfy
Your Petitioner how and in what manner and
in what Proportions the Same or any part thereof
has been distributed yet he has not been able to
obtain any Account thereof and though the said
Defendant admits and has always admitted that
such excess as herein before is particularly stated
has been issued and received by him and that
no part thereof has been distributed and paid
away Yet the said Defendant notwithstanding
hath hitherto refused to Account with and pay
Your Petitioner the same as in Justice and
Equity he ought to have done - And Your Petitioner
doth further setforth unto the said Honble the
Mayors Court that the said Defendant combi-
-ning and confederating with divers Persons un-
-known to your Petitioner who when discovered
Your Petitioner prayed might be made Parties
to his Bill of Complaint designing as Yeoer
Petitioner

Petitioner has great Reason to apprehend he deprive him of the said several large Sums of Money as well as of such other Sums of Money as may hereafter appear to be deficient in the Receipts and Payments of the said Defendant on Account of any other of his Majestys Troops serving in India and further to bring him into disgrace and disrespects with his Majesty his said Sovereign Lord for not having faithfully preformed the great and respectable trust reposed in him by his said Majestys Principal Servants altogether refuses to pay the same unto Your Petitioner or to give Your Petitioner any manner of Satisfaction respecting the Premises sometimes pretending that he never was Your Petitioners Agent or ever received any Money on his Account or if he admits that he was and did receive the Money he is charged with Yet then he says that he did not receive any Salary or Emolument whatever for performing the several Trusts and Duties of his Office and therefore he did not take upon himself any

Responsibility

Responsibility for any Neglect or Deficiency therein Whereas Your Petitioner expresly charged and so the Truth really is that Your Petitioner did give and duly execute and the said Defendant did duly accept of as full ample and effectual a Power of Attorney as could be formed the same being as is before mentioned as exact a transcript as could be of the Power Your Petitioner had himself received as Your Petitioner has before noticed and of which he has in his said Bill of Complaint inserted a Copy And Your Petitioner did further set forth that under and by Virtue of the said Power of Attorney the said Defendant acted and received all the Monies issued from the Honble Companys Treasury to or on Account of Your Petitioner as Paymaster as aforesaid and which Your Petitioner expresly charged ever received under the Sanction and Confidence of the said Defendant upon Papers made out in his Office and which was kept in the said Defendants House and all Monies received were carried

to

to his Office to be there distributed which acts of receiving and disposing of the Money received did as Your Petitioner charged imply by the very Act a Responsibility that the Money should be rightly received and when received Strictly accounted for to Your Petitioner and if any part thereof is not accounted for the said Defendant remains of Course responsible for the same to Your Petitioner And Your Petitioner further Expressly charged that the said Defen= =dants did not act gratuitously but without any Recompence and reward in Exercising the Duties of the Office as he affects to say for Your Petitioner did allow him the Sum of Twenty Shillings Sterling a day for the same and upon a Settlement with him this was one of the Items charged and allowed in the Settle= =ment of the Accounts between Your Petitioner and the said Defendants and for securing the same with Interest Your Petitioner charged that he did duly Seal and deliver a certain Bond or Obligation which is now remaining in the

the Possession of the said Defendants And Your Petitioner set forth that sometimes in or the said Defendant is ready to admit that he was the Agent of Your Petitioner and duly imploy= =ed thereto and that he did receive and has not accounted for the several Sums of Money above specified and also that he did receive in the manner above mentioned the said Salary or daily Payments for his Trouble in Executing the said Trust But then Your Petitioner stated in his said Bill of Com= =plaint that the said Defendant gives out and pretends that One John Charles Wilkins Box who had been formerly employ= =ed by Your Petitioner and from Your Petitioner transferred to him the said Defendants had embezzled the Money that is deficient and that the said John Charles Wilkins Box was in fact a Servant of Your Petitioner and therefore that he the said Defendant was not answerable for any breach of Trust he might be guilty of and the said Defendant further

adds

adds that Your Petitioner vindicated the Character of the said John Charles Wilkins Box by a publick Notification of his Good Opinion of him in the Public Papers when he lay under some suspi=cions of improper Behaviour But Your Petitioner Expressly Charged and so the truth really is that the said John Caharles Wilkins Box was never in any manner employed by Your Petitioner in any Trust respecting the said Office but acted in no other Capacity but as a Copying Clerk and when he passed from Your Petitioner employ to that of the said Defendant no Guarantee or Indemnification was ever thought of for any breach of trust he might be guilty of but he immediately became a Clerk in the employ and at the disposal of the said Defendant exactly in the same Manner as any other Clerk he employed and he had in the same Manner his Monthly Wages paid by the said Defendant And Your Petitioner did also charge that the said John Charles Wilkins Box's Wages were actually raised by

by the said Defendant from the Good Opinion that he the said Defendant entertained of his Fidelity to him without the least Idea of his being in the Service of Your Petitioner or in any manner employ=ed by him And Your Petitioner set forth that as to the Public Vindication of his Character the same was done by the Express desire of the said Defendant who expressed at the time the most favorable Sentiments of the Man neither the said Defendant nor Your Petitioner having at that time discovered any Fraud nor was there any Suspicion of Fraud except that the said John Charles Wilkins Box had the Appearance of living beyond his Income of which Your Petitioner set forth he apprized the said Defen=dant who in reply thereto assured Your Petitioner he the said Defendant was not in the least alarmed on that head for that he would defy him to help himself to any Money out of his Office or used Words to that or the like Effect And Your Petitioner set forth that knowing it to be the Business entirely of the

said

said Defendant and that the said John Charles Wilkins Box was his the said Defendants Servant and solely and intirely under his Direction he never Concerned himself further in the Matter and that this was the Opinion of the said Defendant Your Petitioner charged to be evident from his having prosecuted the said John Charles Wilkins Box for the said Fraud and embezzlements and Convicted him thereof at the Quarter Sessions held at and for the Town of Madras at his the said Defendants sole Cost Charge and Expence and also because the said Defendant before the Discovery of the Embezzlements of the said John Charles Wilkins Box upon there having been found a small Deficiency in the Monies brought to the Pay Office and the actual Receipt from the Company of the Sum of or thereabouts and he the said Defendant being called upon to make good the same he did upon Conviction that the actual and real Sums from the Company had exceeded the Distributions from

from his the said Defendants Office in that Sum consent to pay and make good the Same and made the same good accordingly all which Your Petitioner charged to be true and therefore it is altogether absurd as Your Petitioner set forth he humbly conceived for the said Defendants to attempt to say now that larger Deficiences appear that he is not as much liable for the Defaults of this Servant in a great Sum as much as he was in a Small One and as much as he would be for the Default of any other and also liable for this Sum of Money which is to be accounted for to Your Petitioner as much as if it belonged to any other Person by whom the said Defendants had been entrusted And Your Petitioner did also set forth that Sometimes indeed the said Defendants would readily admit that the said John Charles Wilkins Box was not a Servant of Your Petitioner but was employed by him and that he is responsible for any Peculation he may have been guilty of And Your Petitioner set forth that

the

the said Defendant also admits that the said Public Notification as to his Character was done at his the said Defendants request and was agreeable to his Sentiments and therefore could not affect any Confidence he might either before or after have placed in him — But then Your Petitioner has stated that the Defendant gives out and pretends that the Cash Chest and Books of Account as being Your Petitioners the Office continued to be his and Your Petitioner alone Responsible for the Acts committed but Your Petitioner expressly charged that in whomsoever the property of the Chest and Books remained it is clear that the said Defendant had the Key and Custody thereof and the whole passed in his the said Defendants own House and of Course he had the Controul and Disposal of the Cash contained therein And such Controul and Disposal Your Petitioner charged to imply that whatever Money was received should be disposed of agreeably to the purposes for which it was received and for no other and if more was received than was adequate to such Purposes such surplus should be accounted for by Your Petitioner and Your Petitioner did also set forth that at other times the said Defendant readily admits this but Your Petitioner set forth that then he gives out and pretends that no part of the Money that had been paid and not accounted for was paid upon Distribution Papers signed by Your Petitioner and as every Person he said must be answerable for his own Signature he insisted that Your Petitioner must at any Rate be answerable for the overplus that had been issued upon the Papers signed by him — And Your Petitioner did set forth that he was ready to admit that if there ever had been any recal or suspension of the Power deputed to the said Defendant and that in consequence thereof Your Petitioner had signed such Papers it would have been incumbent on him to have seen that the Papers had been correctly calculated before he signed them and to have received or been

present

present at the Receipt of the Money himself and taken care that all the Money received thereon was applied to the Purposes intended — But Your Petitioner Expressly charged that there never was for a single Moment any Recall or Suspension of the Power And Authority so given by Your Petitioner to the said Defendants of transacting the whole Business of the said Office but the same did constantly remain in its full force and efficacy — And Your Petitioner further asserted and expressly charged that the Fact of Your Petitioners having signed some of the said Distribution Papers if such there are was merely accidental or arising perhaps from Motives of Civility and respect from the said Defendants himself or from his Servants who knowing Your Petitioner to be the princ=ipal in the Kings Pay Office might have imagined it respectful to hand the Indent ready calculated and wrote out fair to be signed by Your Petitioner And Your Petitioner did also set forth that whatever he signed of the sort was

was not signed by Reason of his Claiming the exercise of any Right that might be vested in him but at the mere Instance and Insti=gation of the said Defendants by whom or his Servants the Paper was presented to Your Petitioner And Your Petitioner before signing the same did not in any Degree enterfere in the making out or Calculating the said Papers but with full Confidence relied upon the Calculation having been previously examin=ed by the said Defendant and that the same was correct and known by him to be so And Your Petitioner set forth that the Papers after being signed by him were returned again immediately to the Office kept in the House of the said Defendant or left there and the Money received therein never in any one Instance came to the hands of Your Petitioner but was Carried to the House of the said Defen=dant where and under whose Guidance the Office was kept and there it was distributed in the very same manner as the Money received

upon

present Demand which is a Simple Requisition
of an Account by an Employer from his Agent
and must be incidental to every Situation
similar to the One between Your Petitioner and
the said Defendant and your Petitioner charg-
-ed it must be agreable to Reason and Commun
Sense that if any Man entrusts another with
receiving Money on his Account he may at
any time call upon him for an Account
Current and the Receives is at any time
whenever called upon liable to render such
Account and Your Petitioner set for the that in
fact to suppose otherwise would be to subject
Your Petitioner to the Risk of being turned out
of his Place altogether as no Person appointed
by Your Petitioner has ever been at any time
recognized by Your Petitioners Principals at
home who alone looks to Your Petitioner and to
whom every Defulcation would be attributed
in the first Instance without Reference to
any other Person whatever and more parti-
-cularly to a Person acting under and by the
Sole

sole Appointment of Your Petitioner as his Agent And
Your Petitioner set forth that in this Conviction he has
regulated his Conduct in respect to his Principals
with whom Your Petitioner reserved to himself the
Case of the Correspondence on Account of the Duties
of his Office and the trust reposed in him well
assured that any Person substituted by Your
Petitioner without the previous Sanction of his
Principals could not be officially recognized And
Your Orator charged that from the Accounts
rendered by Your Petitioner it is at this time un-
known that any such Deficiency exists nor could
Your Petitioner submit without great Hazard
not only to his Credit and Reputation to let such
Deficiences appear against him but also of
his Office altogether and to the forfeiture of a
Bond given and executed by Your Petitioner to
his Principals with Securities to the due and
faithful Discharge of the Trusts reposed in him
and Your Petitioner set for the that this is well
known to the said Defendant And Your
Petitioner further shews that having particularly

Interrogated

Interrogated the Defendant respecting the several facts
he did in his said Bill of Complaint procud to pray
that the said Defendant in this Cause might set forth
a true and just Account of all and every Sum and
Sums of Money received by him or any Persons or
Persons sent employed or entrusted to receive the
Money ispued by the Government of Madras for
the Payment of the Kings Troops then during the
time he the Defendant directed the Office and
managed the Business of Your Petitioner as Deputy
Paymaster and also a true and just Account of
all and every Sum and Sums of Money paid
by him during the same time to or for the use
of the Kings Troops then serving at Madras that
the said Defendant may be decreed to pay to
Your Petitioner the aforesaid Sum of Twenty One
Thousand five hundred and fifty eight Star
Pagodas thirteen fanams and forty eight Cash
or such other Sum and Sums of Money as may
appear deficient with such Interest as now is
or may hereafter become due thereon as also all
Costs of Suit and likewise all and every other such

Sum and Sums so ispued by the said Government
of Madras during that period and paid to
him the Defendant or any Person or Persons
employed or trusted by him as have not been
duly paid or applied to the purposes for which
the same were ispued or have not been already
accounted for and paid over to Your Petitioner
or his present Deputy for executing the said
Office and that Your Petitioner may have such
other and further Relief in the Premises as may
be agreable to Equity and Good Consience —

And Your Petitioner sheweth —
further that to this his Bill of Complaint
the said Defendant did on the twenty fourth
day of May file his Demurrer wherein he for
Cause of Demurrer did set forth and alledge
that it appears by Your Petitioner said Bill
that the Scope and End thereof is to be relieved
touching Several Sums of Money making together
the sum of twenty One thousand five hun-
dred and fifty eight Pagodas thirteen fanams
and forty eight Cash therein set forth and
thereby

thereby charged to have been received by him the said Defendant as Deputy to Your Petitioner under a certain Power in Your Petitioners Bill set forth and by him granted to the Defendant whereby the Defendant was authorized to act for Your Petitioner in his Office of deputed Paymaster General under certain Powers granted to your Petitioner by the Right Honble Isaac Barre Esquire Paymaster General of all his Majestys Forces and which said Sum of Twenty One thousand five hundred and fifty eight Pagodas thirteen fanams and forty eight Cash so charged to have been received by him is in and by Your Petitioners Bill further charged to have been unaccounted for by him the Defendant and therefore and by Reason thereof it is in and by Your Petitioners said Bill pretend that he the Defendant ought to pay the same to Your Petitioner And the Defendant doth further set forth and for Cause of Demurrer doth allege that forasmuch as it appears by Your Petitioners own Shewing that he has not been injured or damnified in the said Sum of Twenty One thousand five hundred

hundred and fifty eight Pagodas thirteen fanams and forty eight Cash or in any part thereof and that he has not been called upon to Account nor hath he accounted therefor and forasmuch as where no Injury has been sustained no Redress can be granted And the Defendant set forth that forasmuch as it appears by Your Petitioners shewing that his Authority of Paymaster General of his Majestys Forces in India under the Deputation granted to him by the said Isaac Barre as Paymaster General of his Majesty's Forces is specifically limited to receive from the Government of the President and Council of Fort saint George or from whomsoever else the Payment may Concern all Monies that might become payable by the said Government of the President and Council of Fort Saint George for his Majestys Forces - And the Defendant further set forth that as it also appears by Your Petitioners shewing that the Deputation by which Your Petitioner was appointed to the said Office did not contain any Clause or Authority to empower Your Petitioner to delegate or substitute any Person to act for him in

in his said Office and that it is a Maxim in Law that a Person deligated cannot deligate it thereupon appears that he the Defendant could not have been nor could he be Considered as having acted in any other Capacity in the said Office than as a Head Clerk And the Defendant did further set forth that as it likewise appears by Your Petitioners shewing that Your Petitioner was no more than the Deputy of the said Isaac Barre who was the Ostensible Person in the Office of Paymaster General of all his Majestys Forces and therefore of any Deficiencies ever did actually arise as in and by Your Petitioners Bill are charged to have arisen in his Office of Deputed Paymaster General in India that the same belonged to the Department of the said Isaac Barre as Paymaster General as aforesaid and the Defendant did further set forth that the sole Power of prosecuting for the Recovery thereof is vested and remains in the said Isaac Barre or his Successor or Successors in Office and the said Defendant prayed the Bill might stand dismissed as by the said Demurrer will appear

And

And Your Petitioner sheweth that to this Demurrer of the said Defendants Your Petitioner did on the fourteenth day of June file his Joinder wherein Your Petitioner did join in Demurrer with the said Defendant and for Joinder did say and insist that Notwithstanding any thing that might be alledged to the Contrary the said Defendant had by referring the Matter in dispute to a Question of Law fully and to every Intent and purpose confessed and Acknowledged that all the Matters and things in Your Petitioners Bill contained are true And Your Petitioner further set forth that the Defendant did thereby admit that he had received on Account of Your Petitioner the several Sums of Money therein mentioned amounting the Sum of Twenty One thousand five hundred and fifty Pagodas thirteen fanams and forty eight Cash and that he is justly indebted to Your Petitioner in that Sum And that the said Defendant did agree that the Mayors Court should decree such Sum with Interest and costs of Suit to be paid by him and that Your Petitioner should also have full

Benefit

Benefit of every part of the Prayer of the said Bill of the Causes of Law alledged in his Demurrer should be found Insuffecient — And Your Petitioner stated that it is inconsistent that the Defendant should shew as Cause of Demurrer that Your Petitioner has not been injured in the Sum sued for and that Your Petitioner hath not been called to Account therefor and that no Injury having been sustained no Redress can be granted Your Petitioner in Joinder thereunto said that it is on the Contrairy evident he hath been injured by the Defendant having received on Your Petitioners Account and in his Name agreater Sum of Money than he hath paid on Your Petitioners Account — And Your Petitioner said it is equally inconsistent to urge that Your Petitioner hath not been called upon to Account nor hath Accounted for the Several Sums so received by the Defendant under the Delegation of Your Petitioner — Because as Your Petitioner Set forth the Drafts of Cash made by the Defendant on the Accounts Charged in Your Petitioners Bill are severally charged against Your Petitioner And Your Petitioner is debited therewith

therewith upon the Grounds of the Defendants Receipts being in the Name and under the Sole Authority of Your Petitioners said Deligation — And Your Petitioner said the said pretence offered by way of Demurrer and to satisfy the detaining and converting to the Defendants own use the Sum sued for is very frivo=lous and unjust — And Your Petitioner in Joinder to the further part of the Defendant Demurrer — Because it appears that Your Petitioner was by the Deputation granted to him by the said Isaac Barre specifically limited to receive from the Government of the President in Council at Fort Saint George all Monies that might become payable by them for his Majestys Forces and for as much as it also appeared by Your Petitioners own shewing that the Deputation by which Your Petitioner was appointed to the Office of Paymaster General of His Majestys Forces in India, under the Right Honble Isaac Barre did not contain any Clause or Authority, to empower Your Petitioner to delegate or substitute any person to act for him in his said Office of Paymaster General in India — And that it is a Maxim

Maxim in Law that a person delegated cannot delegate, from Whence, as Your Petitioner setforth, the Defendant would wish to infer, that he would not be considered, as having acted in any other Capacity in the said Office of Your Petitioner than as a Head Clerk — to this Your Petitioner setforth, that the said Cause of Demurrer is equally frivolous and evasive, as the preceeding Cause of Demurrer — Because Your Petitioner said that it is not material, under what Title the Defendant Received the said Money not Accounted for by him the fact, Your Petitioner setforth, is, that the Defendant Received the Money under Authorities to him so delegated by Your Petitioner, and it was his duty to have Accounted with Your Petitioner for the Sum whereof he caused Your Petitioner to be debited in the Books of the said President in Council, not as Your Petitioners Clerk, but as Your Petitioners Deputy — Which Office Your Petitioner setforth, the Defendant informed the President in Council, had been Conferred on him by Your Petitioner, and in consequence whereof his said Appointment was confirmed by them, as Your Petitioners Deputy, and which Appointment was notified in General Orders at Fort Saint George Accordingly, and for the due execution of which Office Your Petitioner Setforth the Defendant received from Your Petitioner an adequate Salary or Compensation — Your Petitioner setforth that therefore the Defendant did not receive the said Money, as Your Petitioners Head Clerk, but as Your Petitioners Deputy in the Office of Paymaster General of his Majestys Forces in the East Indies. And Your Petitioner Setforth, that the said Defendant is from the natural Consequence of the said Appointment and his having acted in that office, under and in the Name of Your Petitioner, Accountable to him for all Sums of Money by him the Defendant Received, and not Accounted for during the time he continued in the said Office — And Your Petitioner further setforth, that the Defendant hath mistaken the true construction of the Maxim under which he seeks to shelter himself from the

Respon-

Responsibelity he is bound under to Your Petitioner to come to a fair and exact Account and Reckoning for the Sums whereweth he is charged in Your Petitioners Bill— And Your Petitioner setforth that the said Maxim is not Applicable to favor Persons who Accept of a trust or Office that cannot be legally deligated, and to Afford a screen to such wrong appointed trustee, from being Answerable to the Person who so wrongly appointed him— But Your Petitioner setforth that the true Construction thereof is, that a deligated Person cannot deligate his Powers to another, so as to render his Constitu=ent Responsible for any mismanagements of a=ny third Person in any Office that was solely con=fided to him— But Your Petitioner setforth that the Error in the Appointment doth not contrary wise exempt the Sub-Deputy from accounting with the Person from who he accepted his Powers to act in his Name— Because Your Petitioner setforth if he was not Accountable to the Person from whom he accepted the immediate Power to act, he could not consequently be &c

Responsible

Responsible to the Original Constituent, from whom he naturally stood at a greater distance of connection and of course by this Argument in no Degree of &c Responsibility &c

But Your Petitioner said that the same is a meer subterfuge, and is an attempt to turn his own wrong to a private advantage— Because, if Your Petitioner did with the beneficial Views &c towards the Defendant setforth in his Bill, deputy the Defendant to act in his place and stead as Paymaster of his Majestys Forces in the East Indies, without Requiring such Security for the faithfull Execution of that trust confided in him, by Your Petitioner, as hath been Required from Your &c Petitioner Your Petitioner setforth that neither Law nor Equity will construe such marks of Benivolence and Confidence to the disadvantage of Your Petitioner, so as to leave him Remedeless against the Person who by these means became possessed of a Power to injure him— And Your Petitioner setforth that much less will they &c

allow

tioner

allow such person to justify himself for this Injury, ~~having~~
by pleading that because he could not be legally
invested with such ~~such~~ Powers: that he is not
legally bound for what he did under them

And for further Joinder unto the
said Demurrer of the Defendant that for as much
as it likewise appears by Your Petitioners own
Shewing, that he Your Petitioner was himself no
more than a Deputy to the Right Honble Isaac
Barre, and that the said Isaac Barre was the
Ostensible Person in the Office of Paymaster General
of all his Majestys Forces, and therefrom the ~~the~~
Defendant said that if any Defficiency ever did ~~the~~
actually arise as Your Petitioner hath particularly
charged to have arisen in the Office of Deputy ~~the~~
Paymaster General of his Majestys Forces in India,
that the Same belonged to the Department of the
Right Honble Isaac Barre as Paymaster General
of all his Majestys Forces and that the Sole Power ~~it~~
for the Recovery thereof is vested in and Remains with
the Right Honble Isaac Barre or his the said
Right Honble Isaac Barre, Successor or Successors

in Office

To this Your Petitioner did in his said
Joinder Set forth that it is impossible that the said
Isaac Barre could be the ostensible person in the
Office of Paymaster General of all his Majestys Forces
in India And Your Petitioner said that the ~~the~~
Defendant should not have said that if any Defficie-
ncy did actually exist that the same belonged to the
Department of the Right Honble Isaac Barre ~~the~~
Because Your Petitioner Set forth the Defendant
had by his Demurrer admitted the Defficiency charged,
and the Defendant hath thereby waved whatever ~~the~~
Benefit he might have had of discovering by way of
answer whether the amount of the Defficiency was the
Same as was charged, and have shewn that he
had accounted for the same, or paid the Same to the
said Isaac Barre, or to some other Person legally ~~the~~
appointed to Receive it. And Your Petitioner said,
that it was inconsistent in the Defendant to ~~the~~
pretend, that the sole Power for the Recovery is vested
in and Remains with the said Isaac Barre or his
Successor or Successors. Because Your Petitioner ~~the~~
set forth, the said Isaac Barre could not have any

Authority

Authority or If he could have any at all in the present Case to call upon the Defendant as having Received the Money which he now detains and Refuses to Account for, but through the Medium of Your Petitioner as being deputed by the said Isaac Barre to be Paymaster of his Majestys Forces in India and from whom the Defendant hood Accepted a Power to Receive it — But the Defendant disputes the Legality of this deligation from Your Petitioner to him, altho Your Petitioner set forth, it is certain he hath not Received any — from the said Isaac Barre, whereby he would be pleased in Your Petitioners stead as Paymaster — General of his Majestys Forces in India, and Your Petitioner Set forth, that if Your Petitioners deligation to the Defendant is not good for the purpose of making the Defendant Responsible to him for such Acts done by the Defendant under it, the said Defendant cannot also be answerable for any such to the said — Isaac Barre — Because, Your Petitioner Set forth, the said Isaac Barre could only make the Demand on the Defendant in consequence of his having Rd. — Received the Money on the Account, and for the Service

service of the Department of the Office of Paymaster — General of his Majestys Forces in India in the Name and under the Authority of Your Petitioner as his Agent or Deputy — It was not, Your Petitioner — set forth, to be presumed that the Defendant Receiv= =ved this Money under any other pretence or — Authority, than such as he was vested with by Your Petitioner, as the said said Isaac Barre Deputy or Agent, But as he did Accept that Power from Your Petitioner he is of Course Responsible to Your Petitioner and if he did not Receive the Money under that Authority, he is not Responsible to — either — Nor are either of them accountable to the Persons from whom he received it — But the Defen= =dant hath insisted, that because Your Petitioner had no Authority to authorize him to receive this Money that he is not therefore Answerable to Your Petitioner and that he the Defendant is solely Answerable to Isaac Barre who had solely Authorized Your Petitioner to receive it — And Your Petitioner Set forth, That Nevertheless the

Do

Defendant doth not dispute the Legality of Isaac Barres Deputation to Your Petitioner as Paymaster General of all his Majestys Forces in the East Indies, and consequently he admits therefrom, that Your Petitioner, at such the time of his appointment of the Defendant, was invested with every authority in that Department that the said Isaac Barre could exercise were he personally present — And that the said Authorities deputed to him by the said Isaac Barre, all Intents and purposes were remaining unimpeached and in full force, and could not have been superseded, but by the presence of the said Isaac Barre at Fort Saint George or by the said Authorities becoming annulled and Revoked by the Appointment of some other Person in the East Indies as Paymaster of his Majestys Forces there, which the Defendant doth not pretend they then were or indeed now are, And Your Petitioner set forth that the pretence of the Defendant being solely responsible to the said Isaac Barre, a person totally unknown to and unconnected with him in the Matter in Question, is altogether frivolous and Evasive, And still more so is the Pretence of the sole Power of Prosecuting for the Recovery of the Money he hath Received and now detains and Refuses to come to an Account and Reckoning for, being also vested in the said Isaac Barres Successor or Successors as the same leads into an intricate discussion of the Rights of Persons unknown nor directly nor indirectly under any probability or event parties to or named in this Suit —

And Your Petitioner further said that having joined unto the several parts of the said Demurrer upon the ground that the same are stated, he doubted not that the same would appear sufficiently satisfactory to the said Hon^ble the Mayors Court to lead them to a Judgment, that the said Suit is rightly commenced by Your Petitioner for a discovery and Account of Monies Received by the Defendant in the Name of Your Petitioner and also to lead to their further Judgment and Decree of Payment of the said several Sums that might upon

upon such discovery appear to have been received by the Defendant, and that the Defendant having had every Benefit and advantage that might have accrued to him by putting in an answer to the said Bill, and having by his Demurrer fully and legally confessed the several matters therein charged and set forth, as well as admitted the Justness of Your Petitioners prayer a Decree as thereupon, Your Petitioner prayed that the said Demurrer might stand dismissed that the said Hon^ble Court would Order and Decree, as in Your Petitioner said Bill is prayed together with Costs

Your Petitioner Sheweth further, that the said Demurrer and joinder came on to be argued and determined as was accordingly argued and determined before the said Hon^ble the Mayors Court on Tuesday the twenty first day of June in the present Year, when the said Hon^ble Court was pleased to order Your Petitioners Bill to stand dismissed, as by any Extract from the minutes of the said Hon^ble Court to hereunto annext the Original being in Your Petitioners possession may more fully and at large appear By which said Order of the said Hon^ble the Mayors Court, Your Petitioner conceived himself much aggrieved and therefrom prays leave to appeal unto this Hon^ble Court for the following among other Reasons,

First — Because the Causes shewn by the Defendant in his Demurrer to the Bill of Complaint of Your Petitioner are first Because Your Petitioner has not already accounted to his Principal for the Money deficient, Secondly Because his Power directed the Receiving of the Money to himself without authorizing him to transfer that Power to any other, Thirdly Because a Person deligate cannot deligate — And Forthly Because the Suit should have been brought in the Name of Your Petitioner Principal, and not of his own, all which said several Causes Your Petitioner insists are insufficient as will appear by considering them — separately as hereinafter is done,

Secondly — Because in Regard to the first Cause of Demurrer so that Your Petitioner not having Accounted for the Money deficient to his Principal, and therefore that he ought not to call the Defendant to Account, Your Petitioner — humbly insists that this Can be no Reason whatever for it appears Plain and is admitted that the money was Received in the Name and on Account of Your Petitioner

And

and the act of Receiving for another implies an Obligation on the Receiver to account to that other for what he has received. this is perfectly agreeable to Reason and Common Sense, and is the usual Practice in all the Intercourses of life, in every line of Service from the Highest to the Lowest, the Servant is exclusively Accountable to him, who is next immediately put over him. it is under him alone that he acts, and it is to him alone, that he is to account for what he does It would be totally Inconsistent, and absurd, that he should have it in his Power to say, as the Demurrer says "I admit that I have not Accounted to you for a large Sum of Money that you have charged, and which has been issued on your account to me or to my Servants as your Deputy, nor will I account to you for it Because you have not yet paid this deficient Sum Yourself, the absurdity of such an Answer must be obvious, for it is plain from their respective Relations to each other, that as this Complainant may at any time be called upon and no doubt will be called upon, to make up the Deficiency for which, it is charged in the Bill of Complaint, and is admitted, that he has been obliged to give Security, so there can be no Reason why the Defendant

Defendant should not be called upon by this Complainant to make up such Deficiency, in Order that he may have it Ready, when he is called upon to pay it and not have them to sue it through a long Litigation, and in the mean time run the Risk of the Defendants Death or other accidents to prevent its Recovery It is plain that Your Petitioner not having Received it from the Defendant, would be no answer to a Demand from his Majesty's Poymaster General made upon Your Petitioner, but he or his Securities would be immediately Obliged to pay down the Money Deficient and therefore it is but fair and Reasonable, that he should be furnished by the Defendant, either with the money or at least with some Account of what is become of it, this is most undoubtedly agreeable to Conmonsance and it is also agreeable to Law as Your Petitioner humbly presumes will appear by the following Determinations In the first Volume of Crokes Reports Page 53. In the Case of the Sheriffs of Norwich against Brad shaw an Action was brought by a Sheriff against the Defendant for an Escape, whereby the Sheriff became chargeable with the Debt, and an Objection was taken, because it was alledged that he was chargeable with the Debt, but it is

Not

not he was chargede, nor Shewn that he was otherwise
damnified, and if he be not damnified he has no Cause
of Action, for it may be the Party will never sue or he
may die before Suit &c. to which the Court Replied, so
that the Action lay upon this Escape, before the
Party is Sued — For the wrong was done by the Escape
and the Sheriff is always chargeable to the other Party,
and if he stays till sued, perhaps the party may
die or fly the Country and Judgment was given
Accordingly, the same Determination was also given, in
the Case of Holt against Hill, and again in the Second
Volume of the same Reports in the Case of Furnace against
Leicester in an Action brought for a fraud in a Person
selling Goods that did not belong to him, it was objected
that the Complainant had not shewn that the Goods
where taken from him or that he was sued for them, or
otherwise damaged but the Court then overruled
this Objection, and declared that the Cause of Action
arose and became immediately vested upon the
Wrong done, for if the Defendant should stay without
bringing his Action, untill the Goods were taken
from him again it might peradventure be mischie-
vous unto him, and he might be without Remedy

Which

Which Cases so exactly apply to your Petitioners Cases that
Your Petitioner humbly Conceives that the Honble the
Mayors Court should have consired themselves as bound
thereby and therefore Your Petitioner say that this
Cause of Demurrer is totally groundless and unsuppor-
-ted by Reason or Law —

Thirdly, Because with Regard to the Second Cause of
Demurrer that this Powers under which he acted
directed the Receiving of the money to himself —
without authorizing him to trans for the Power to
any other — Your Petitioner says, and insists that
Such direction could not be supposed to tie him
up to Receive all Such Moneys personally him-
-self as the fact was impossible for he was not only to
receive Money at Madras but also at Bengal and
Bombay and he could not be always present —
at all these Places to Receive it with his own hands
but if he authorized any person to receive it for him
this was sufficient to answer every Construction of
the Words Recited by the Defendant which must
merely to Confine the Responsibeletys of such Receipts
to Your Petitioner, but even if it were otherwise it
could be no Reason for the Defendant to with hold

the

the Money, or at least Some Account of the Money from Your Petitioner It is absurd and unreasonable for him to say in the Words of the Demurrer you had no Right to send me for the money, but You should have gone Yourself and therefore I will not account to you for it This would be in the grossest manner taking advantage of a Mans own wrong doing and placing him in a better Situation by having acted without any legal Authority than if he had been possessed of the most Compleat but it is plain that the act of receiving, as has been before observed implies an account no matter how the Money has been received and therefore Your Petitioner humbly insists that this Cause of Demurrer was altogether Groundless and Insufficient —

Fourthly . . Because with regard to the third Cause of Demurrer that a Person deligated cannot deligate Your Petitioner says and insists that this Maxim of Law is totally misrepresented in the Defendants Demurrer for it does not mean, that the deligated Person cannot employ another to act for him that would be absurd and frequently defeat the very purposes of the deliga tion but the real honest fair and true Meaning is that a Person delegated cannot so far put a nother Person in his place with regard to his principal as to preclude his Principal from calling upon him to account for any acts that may be done, though the same are not done by himself but by the person he had deligated this is plainly the meaning of the Law and no other and in Regard to Your Petitioners case the Operation of this Maxim is that your Petitioner could not in any manner or by any Powers he might be vested with so far divest himself of his own Responsibility as not to be always Accountable to the Postmaster General for any deficiency that might arise notwithstanding such deficiency should be occasioned not by any default or Neglect of his own, but by the Neglect and default of some other Person, and in regard to what is stated by the Demurrer that the Defendant could only be considered as a Head Clerk to Your Petitioner. Your Petitioner humbly insist that even supposing for a Moment him to have acted in this Character. it does not do away his Responsibility to account to Your Petitioner for such money as has been Received in Your Petitioners Name or on his Accounts Responsibility must be ever incidental to Service from its very

Nature

Nature, And therefore in whatever Light this Defendant chuses to place himself his Relation with Your Petitioner must be wer considered either as a place of Trust or as Service, and as such the Defendant must in either Case be Answerable for the faithful performance of the Trust Reposed in him, the Service he was employed in and therefore your Petitioner insists that this Cause of Demurrer is equally groundless and unsupported,

Because, In Regard to the fourth Cause of Demurrer that the Suit should have been brought in the name of Your Petitioners Principals, and not in his own name Your Petitioner says and insists that it is plain that who ever can give a Legal Discharge for any money or whose Signature would be an Acknowledgement of any Account can if that money is with held or that Account Refused, bring a Suit at Law to procure it. And in the present Case it is plain Your Petitioner could have given a Discharge for the money or substantiated by his Signature any Account, And therefore it is plain he could bring a Suit for the same and that it was in him and in him alone that the action was vested, and not in the Kings Paymaster General or in any other person whatever—again it is to be observed that the money does not belong to the Kings Paymaster General any more than it does to your Petitioner and therefore the same Objection might be pleaded to him as to Your Petitioner— But the fact is and it is particularly charged so in Your Petitioners Bill, and of Course admitted by the Defendant, that the Relation between the Crown and Your Petitioner had nothing whatever to do with his present Demand which is a Simple Requisition of an Account by an Employer from his agent, and to render such Account must be incidental to every Similar Situation, and it must ever be agreeable to Reason and Common Sense that if any Man intrusts another with Receiving Money on his Account, he may at any time call upon him for an Account thereof, and the Receiver is at any time Whenever called upon liable to give in such Account— Your Petitioner has further charged in his Bill of Complaint that no Person appointed by him has ever been at any time recognized by his Principals at home, who alone looks to Your Petitioner, and to whom every Defalcation would be attributed in the first Instance, without

Reference

Reference to any other person whatever, and more particu=
=larly to a Person acting under and by the sole appoint=
=ment of Your Petitioner as his Agent, which Facts
being charged by Your Petitioner in his Bill of
Complaint, ought to be

Your Petitioner Shew
entitled to
That your Petitioner therefore sheweth
that upon this Equitable Ground the said Mayors
Court ought at least to have Ordered the Defendant
to Answer and discover the Sums of Money he had
received and disbursed under the Authorities
delegated by Your Pe
of Your Petitioner — And which Your
Petitioner was undoubtedly entitled to have allow=
=ed him — And they might at the hearing have
Ordered the Deficiency or Balance appearing u=
upon the said Accounts to have been paid unto
Your Petitioner as of Right in the first Instance
or if they had seen Cause they might have
modified their said Decree by Ordering that
the said deficient Monies should be paid
unto Your Petitioner under Certain Conditions
and indemnities, as they might see fitting for
the quieting of all Claims, as well from Your
Petitioner

thereby depriving him of the Benefit of the
Answer
entitled to sue for the
And which Decree the Defendants would
have effectually pleaded in bar to any Action
thereafter to be commenced against him — And
Your Petitioner Sheweth, that the Propriety of the
Defendant pursuing the mode of Answering and
tender pointed out by Your Petitioner is not only
strictly legal and equitable, but the same was
evidently beneficial to the Defendants because
upon the uncertainly which the Defendant
by the Plaint Your Petitioners Right to call him
to Account and his Obligation to pay Your Petitio=
=ner the Deficiency of Accounts, by demurring
to Your Petitioners Bill, he the Defendant is
Exposed to several Actions, by the several parties
who he saith in his Demurrer have a preferable
right of Action to Your Petitioner — But the
said Defendant having made the election of his
mode of defence to the said Bill it can only be
presumed that such mode is the best that the
Defendant had or could make thereunto — And
as by the said Demurrer he hath received every
benefit

benifit he otherwise had by way of Answering to the Charges in the said Bill contained, And hath by the Construction of the Law admitted the facts therein charged to be true — And hath Set up no Plea against the merits, but only to the Form — the Defendant having only Demurred to the form, And thereby admitted the Facts — Therefore Your Petitioner Shweth if this Honble Court shall be of Opinion that the said Demurrer is Defective and evasive, Your Petitioner humbly presumes that their Judgment thereon will be that the said Demurrer shall be dismissed, and in pursuance of the legal Construction of the Law upon Demurrers in such Cases — that Your Petitioner shall have a Decree — According to the Prayer of his Bill. —

For all which Reasons and such others as may be adduced at the hearing Your Petitioner humbly Prays that the said Order of the Honble the Mayors Court may be — Reversed and that the prayer of Your — Petitioners Bill of Complaint may be — granted and that Your Petitioner have — such other and further Relief in the Premises as to this Honble Court may Seem meet together with Costs of Suit —

Henry Dutton

[Signed]

Peter Walker

Solicitor for the Appellant —

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 25th day of June Anno Domini 1791.—

Present

Josias DuPre Porcher Esqr. Mayor

Andrew Ross John Mitford

& James Amos — Aldermen —

Messrs. Aldermen Call Webb Mitchell Read Read Roebuck & Daly take their Seats upon the Bench The Mayor being interested goes off the Bench and the Maces are taken away and

William Burke

vers

Josias DuPre Porcher

Bill with Copies of Four Exhibits annexed Read —

Demurrer Read —

Joinder Read —

The Demurrer & Joinder

Coming on to be Argued and Determined this Day in the Presence of the Attornies on both sides and the Court having had due Consideration thereon are of Opinion That the Pleas Made use of by the Defendant in his Demurrer are good and Sufficient This Court doth therefore think fit to Order and doth Accordingly by Order that the Complainants Bill do Stand Dismissed with Costs. —

A True Extract

[Signed] J. Taylor Regt

A true Copy

[Signed] D. Walker

for W. DuBuy

Solicitor Appellt

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 25th day of June Anno Domini 1791 —

Present

Josias DuPre Porcher Esqr. Mayor

Andrew Ross John Mitford

and James Amos — Aldermen

Messrs. Aldermen Call Webb Mitchell Read Read Roebuck and Daly take their Seats upon the Bench. —

The Mayor being interested goes off the Bench and the Maces are take away and Master Alderman

Call

Extract from the Minutes of a Court Held
at the Town Hall on Tuesday the 25th day of June
Anno Domini 1791.—

Present

Josias DuPre Porcher Esqr. Mayor

Andrew Rofs John Mitford

& James Amos Aldermen—

Messrs. Aldermen Call Webb Mitchell Read head Roebuck

& Daly take their Seats upon the Bench The Mayor being

interested goes off the Bench and the Maces are taken away and

Mr. Alderman Call takes the Chair—

William Burke

vers

Josias DuPre Porcher

Bill with Copies of Four Exhibits annexed Read—

Demurrer Read—

Joinder Read—

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Sufficient This Court doth therefore think fit to Order

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A True Extract

[Signed] J. Taylor Regr.

A true Copy

[Signed] D. P. Walker

for H. DuBuy

Solicitor Appt.

Extract from the Minutes of a Court Held at the
Town Hall on Tuesday the 25th day of June Anno
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Present

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and James Amos Aldermen

Messrs. Aldermen Call Webb Mitchell Readhead

Roebuck and Daly take their Seats upon the Bench—

The Mayor being interested goes off the Bench and the

Maces are take away and Master Alderman

Call

Call takes the Chair —

William Burke

vers

Josias DuPre Porcher —

Bill with Copies of four Exhibits Annexed Read

Demurrer Read —

Joinder Read —

The Demurrer and Joinder

Coming on to be Argued and Determined this Day in the Presence of the Attornies on both Sides and The Court having had due Consideration thereon are of Opinion that the Pleas made Use of by the Defendants in his Demurrer are good and Sufficient This Court doth therefore think fit to Order and doth Accordingly Order that the Complainants Bill do stand Dismissed with Costs — Mess.rs Aldermen Ros. Milford and Michell Dissent to the Resolution of the Court being of Opinion that the Demurrer should be Thrown out and that the Defendant should be put upon his Answer

A True Extract

/ Signed / G Taylor Regr.

To the Honble major General William Meadows

President in Council

Fort St. George

In the Honble Court of Appeals

Between William Burke Appellant and Josias DuPre Porcher Respondents —

The answer of the above named Respondents to the Petition and appeal of the above named Appellant —

This Respondent admits that the Petitioner did on or about the fifth day of May in the present Year of Our Lord One Thousand Seven hundred and ninety One Exhibit and file his Bill of Complaint in the Mayors Court against this Respondent and that the same might have contained the several Charges Matters and things and been in manner from and substance as in and by his said Petition the same is stated and set forth And this Respondent also admits that to the Petitioners said Bill of Complaint this Respondent did on the Twenty Forth day of the said month of May Exhibit

And

Filed in my Office this 12 August 1791 Chas K. White Clk.

And fail his Demurrer and for Cause of Demurrer he
did say that it appeared by the Petitioners said Bill
that the Scope and end thereof was to be relieved as
touching several Sums of money making together
the Sum of Twenty One thousand five hundred
and fifty Eight pagodas thirteen fanams and
forty Eight Cash therein Setforth and thereby
charged to have been received by him this Respon
=dent as Deputy to the Petitioner under a certain
power in the Petitioners said Bill setforth and
by him granted to his Respondent whereby he
this Respondent was authorized to Act for the
Petitioner in his office of deputed pay master General
under certain powers granted to the Petitioner
by the Right Honble Isaac Barre Esqure Pay =
=master General of all His Majestys Forces and
which said Sum of Twenty One thousand five
hundred and fifty Eight pagodas thirteen fanams
and forty Eight Cash so charged to have been
received by him was in and by the Petitioners
Bill further charged to have been unaccounted
for by him this Respondent and therefore and

by

by reason thereof it was in and by the Petitioners said Bill pretended
that he this Respondent ought to have paid the same to the Petitioner
that for Cause of Demurrer thereto this Respondent did say that
forasmuch as it appeared by the Petitioners own shewing that
he had not been injured or damnified in the said Sum of Twenty
One thousand five hundred and fifty Eight pagodas thirteen
fanams and forty Eight Cash or in any part thereof and
that he had not been called upon to account nor had he
Accounted therefor, and forasmuch as where no Injury had
been Sustained no redress could be granted, and as it appeared
by the Petitioners shewing that his Authority of Pay Master
of his majestys Forces was specifically limitted to receive from
the Government of the President and Council of Fort Saint
George or from whomsoever else the payment might Concern
all monies that might become payable by the said Govern
=ment of the President and Council of Fort Saint George for his
Majestys Forces, that forasmuch as it also appeared by the
Petitioners own shewing that the deputation by which the
Petitioner was appointed to the Office of pay master General
of His majestys Forces in India under the said Right Honble
Isaac Barre did not contain any clause or authority to
unpower

power the Petitioner to delegate or Substitute any person to act
for him in his said Office and that it was a maxim in Law that
a Person delegated could not delegate it therefore appeared that this
Respondent could not have been nor could he be considered as
as having acted in any other Capacity in the said Office of the
Petitioner than as a head Clerk and that forasmuch as it
likewise appeared by the Petitioners own shewing that he the
Petitioner was no more than the Deputy of the said Isaac
Barre who was the ostensible Person in the Office of Pay master
General of all his Majestys Forces and therefore if any deficien-
-cies ever did actually arise as in and by the Petitioners said
Bill were charged to have arisen in his Office of deputed Pay
master General in India that the same belonged to the
Department of the said Isaac Barre as Paymaster General
as aforesaid and that the Sole power of persecuting for the
recovery thereof was Vested and remained in the said
Isaac Barre or his Successor or Successors in Office and
this Respondent did therefore and for many other Errors and
Insufficiencies in the Petitioners said Bill contained
Demur in Law thereto and did humbly pray the Judgment
of the said Mayors Court whether this Respondent ought
to make any other Answer to the Petitioners said Bill and

That

That he might be further Dismissed with Costs in his behalf wrong-
-fully Sustained

And this Respondent for further Answer to the Petitione
said Petition Says that he admits that to the Respondents said
Demurrer he the Petitioner did exhibit and file his Joinder
and did therein and thereby absurdly as well as unjustly
pretend that this Respondent by referring the matter in
dispute to a question of Law had Confessed the matters and
things in the Petitioners said Bill contained were true that
this Respondent was indebted to the Petitioner in the sum
sued for, and that he did agree the said Mayors Court
should Decree the same with Interest and Costs of Suit to
be paid by this Respondent if his this Respondents Causes
of Demurrer should be found insufficient And the Petitioners
for further Rejoinder did unjustly pretend it was evident he
had been injured by this Respondent having received on
his the Petitioners Account And in his Name a greater Sum
of money than he had paid on the Petitioners Account
And in his Name, and that it was equally inconsistent
to urge that he the Petitioner had not been called upon to
Account, nor had he accounted for the Several Sums of
Money so received by this Respondent under his the Petitioners
deligation and the Petitioner actuated by the most unfair
principles

Principles and Contrary to what he knew to be the matter of fact as
appears by his own shewing in his said Petition Contained did
in and by his said Joinder further pretended that as he the
Petitioner had setforth the Drafts of Cash made by this Respondent
on the Accounts charged in the Petitioners said Bill as severally
Charged against the Petitioner that he was debitted therewith
upon the grounds of this Respondents Receipts being in the name
and under the Sole Authority of the Petitioners said delegation
And that the said pretence offered by way of Demurrer and
to Satisfy the detaining and Converting to this Respon=
=dents own use the Sum sued for was very privolous and
unjust for this Respondent says that the Petitioner has in
and by his said Petition shewn that the Sum for which
he brought his said Action and from which the prevent =
Appeal arises was imbezzled by John Charles Wilkins Box
and that the said John Charles Wilkins Box was tried and
Convicted thereof And the Petitioner in and by his said Joinder
did further say that this Respondent had wished to infer that
he Could not be Considered as having acted in the Petitioners
Office in any other Capacity than as Head Clerk and that
such Cause of Demurrer was equally privolous and evasive
as the preceeding Cause became the Petitioner did say that
it was not Material under what Title this Respondent =

received



Received the said Money not accounted for by him that the fact
setforth by the Petitioner was that this Respondent received the
Money under authorities to him deligated by the Petitioner and
that it was this Respondents duty to have Accounted with him
the Petitioner for the Sum whereof the Petitioner did pretend this
Respondent had caused him to be debitted in the Books of the said
President in Council not as his the Petitioner Clerk but as this
Deputy which office this Respondent informed the president in =
Council had been conferred upon him by the Petitioner that in
Consequence thereof the said Appointment was confirmed by
them and that the same was notified in General Orders at
Fort Saint George aforesaid and the Petitioner did in his said
Joinder pretend that for the Execution of the said office this
Respondent did receive from the Petitioner an adequate Salary
or Compensation that therefore this Respondent had not receive=
the said Money as the Petitioners Head Clerk but as his Deputy
in the said Office of pay Master General of his majestys Forces
in the East Indies, that from the natural Consequence of the
said Appointment and his having acted in the Office in the =
Name of the Petitioner this Respondent was accountable to
him for all Sums of money by him this Respondent received
and not accounted for during the time he Continued in the
said Office and the Petitioner did in and by his said Joinder

further

Further setforth and pretend that this Respondent had Mistaken the Construction of the Maxim under which he sought to shelter himself from the Responsibility he was bound under to the petitioner to come to a fair and Correct Account and Reckoning for the Sums wherewith he was charged in the Petitioners said Bill that the said Maxim was not Applicable to favor of persons who accepted a trust or Office which Could not be legally delegated and to afford a screen to such wrong is Authorities deputed to him by the said Isaac Barre were to all intents and purposes remaining unimpeached and of full force and Could not have been superceeded by the presence of the said Isaac Barre at Fort Saint George or by the said Authorities becoming annulled and Revoked by the Appointment of some other person in the East Indies as pay master of His Majestys Forces there And the Petitioner did in and by his said Joinder Say That the pretence of this Respondent being Solely responsible to the Said Isaac Barré a person totally a Stranger to, and unconnected with him in the matter in question was altogether frivolous and evasive and Still more so was the pretence of the Sole power of prosecuting for the recovery of the money he had recived and detained and refused to come to an Account and reckoning for being also Vested in the said Isaac Barrés Successor or Successors as the Same did into



Into an intricate discussion of the right of persons unknown nor directly or indirectly under any probability or Event of parties to or named in the said Suit

And the Petitioner did in and by his said Joinder say that the said Suit was by him Rightly Commenced for a discovery and Account of money received by this Respondent in his the Petitioners name, and then absurdly and untruly Stating that this Respondent had by his said Demurrer fully and legally Confessed the several matters therein Charged and Setforth as well as admitted the Justness of the Petitioners prayer. the Petitioner did pray that the said Demurrer might stand Dismissed and that the said Mayors Court would order and Decree as in the Petitioners said Bill was prayed together with Costs —

And this Respondent for further answer to the Petitioners said Petition of Appeal admits that the said Demurrer and Joinder did come on to be argued and Determined before the said Mayors Court on Tuesday the twenty first Day of June in the present Year of Our Lord One thousand Seven hundred and ninety One and that the said Mayors Court was pleased to Order that the Petitioners said Bill should stand Dismissed with Costs but this Respondent denies that the Petitioner was in any wise aggrieved thereby or

that

That he had any manner of Reason whatever to appeal therefrom to this honble Court but on the contrary this Respondent says and humbly insists thereon that the said Decree of the said Mayors Court is founded upon the Course and practice thereof strictly Conformable to Law and the nature of the thing and that the Reasons by the Petitioner Offered in objection thereto are privolous and Contradictory and altogether fallacious and Nugatory —

To the first Reason this Respondent says that the several matters and things in the Petitioners said First Reason for Appeal Contained are Merely a brief Recapitulation of his this Respondents Demurrer to the Petitioners said Bill with a bare Denial of their insufficiency on the part of the Petitioner and therefore this Respondent says it does not shew the grievance Complained of by the Petitioner as arising out of the Decree of the said Mayors Court nor any Cause of Appeal therefrom to this honble Court and of Course the same can be regarded in no other light than as it Nugatory. —

To the Petitioners Second Reason for Appeal this Respondent Says that the Matters and things therein Contained are Conclusions Drawn from false premises and attempted to be supported by Arguments altogether Erroneous for this Respondent says that in and by his said Demurrer he has stated that the Petitioner had not been Damnified in the Sum for which he brought his Action against this Respondent, nor in any part thereof and that he had not accounted nor had he been called upon to account therefor and thereupon this Respondent did in and by his said Demurrer insist that where there had been no injury sustained no redress could be given, which this Respondent Says is a proposition so clearly established by every principle of Law and Equity that it is a Self evident Fact but which the Petitioner did in and by his said Joinder notwithstanding attempt to confute by stating first that he had been injured for that he this Respondent had received on his the Petitioners Account and in his name a greater Sum of Money than he had placed to the Petitioners Account and in his Name and Secondly that the Drafts for Cash made by this Respondent were severally brought to Account and Charged against him the petitioner and that he was Debitted therewith Where-upon this Respondent Says that in arguing a Demurrer the parties before the Court are restricted to the matters in the Appointed truster from being Answerable to the person who so wrongfully appointed him but that the free Construction thereof was that as a delegated person Could not delegate his powers to another so as to render his Constituent responsible for any

Mismanagement

Mismanagement of a third person in an office that was Solely
Confided to him, and that the Error in the Appointment did
not Contra wise exempt the Sub Deputy from Accounting
with the person from whom he accepted the immediate powers to
Act because that if he was not Accountable to the person
from whom he Accepted the immediate power to act he
Could not Consequently be Responsible to the Original Constit-
tuent from whom he naturally stood at a greater distance
of Connection and of Course by the Argument in no Degree of
Responsibility And the Petitioner did unjustly and untruly
Say that the same was a Subterfuge and an Attempt to
turn his this Respondents own wrong to his own private
advantage because as the Petitioner did Say that if the
Petitioner had with those beneficial Views towards this
Respondent as the same were set forth in his Bill Deputed
this Respondent to Act in his place and Stead as pay
Master of his Majestys Forces in the East Indies without
requiring any Security for the Execution of that Trust,
And the Petitioner did further Say that neither Law nor
Equity would Construe such marks of benevolence to the
Disadvantage of the Petitioner so as to leave him remedi-
-less against the Person who by such means had become
possessed
possessed of a Power to injure him much less Could they allow such
person to justify himself for such Injury by pleading that
because he Could not be legally invested with such powers
that he was not legally bound for what he did under them,
and the Petitioner in and by his said Joinder did say that
it was impossible that the said Isaac Barre Could be
the Ostensible person in the Office of pay master General of
His Majestys Forces in India, and that this Respondent
Should not have said that if any deficiency did actually
Exist the Same belonged to the Department of the said
Right Honble Isaac Barre because as the Petitioner did
unjustly state that this Respondent had by his Demurrer
admitted the Deficiency Charged and had thereby waived
the benefit of Discovering by way of Answer whether the
Amount of the Deficiency was the same as was Charged
And the Petitioner did further Say that the said Isaac
Could not have any Authority or if he had that he Could
not have had any in the present case to call upon this
Respondent as having received the Money which the
Petitioner did unjustly And untruly say this Respondent
had Detained And refused to Account for but through the
Medium of the Petitioner as being Deputed by the said
Isaac

Isaac Barre to be pay master of his majestys Forces in Indoia
from whom this Respondent had accepted a power to Receive it
and the Petitioner did further say that if his Delegation to
this Respondent was not good for the purpose of making
him Responsible to the Petitioner for such acts done by this
Respondent under it he this Respondent Could not also be
Answerable for any such to the said Isaac Barre because
that the said Isaac Barre Could not make the Demand
on this Respondent in consequence of his having Received the
Money on Account of and for the Service of the Department
of Pay master General of His Majestys Forces in Indoia in
the Office and under the authority of the Petitioner as his
Agent or Deputy that it was not to be presumed that this
Respondent received the said Money under any other pritence
or authority than such as he had been Vested with by the
petitioner, as the said Isaac Barres Deputy or agent
and that if he did not receive the money under that
authority he was not responsible to either) nor were either
of them Accountable to the person from whom he received
it and the Petitioner did further in and by his said Joinder
say that this Respondent did not dispute the Legality of the
deputation of the said Isaac Barre to the Petition as pay

Master

Master General of all His Majestys forces in India and did thereon
Absurdly and untruly infer that this Respondent did admit that
the Petitioner was at such the time of his appointment of this Respon-
dent invested with every authority in that Department that the
said Isaac Barre Could have Exercised were he personally
present and that the said the Bill Contained and by a re
reference to the said Bill as recited in the Petitioners said
Petition of Appeal he the Petitioner will stand Confuted upon
his own shewing for he therein shews that the pretended deficiency
is not even known to his principal and he no where shews that
he has been Charged therewith much less that he had accounted
for the same and further this Respondent says that as far from
his this Respondents having ever received the said Sum of twenty
One thousand five hundred and fifty pagodas thirteen fanams
and forty Cash on the Petitioners Account or in his name the
said Bill Charges that this Respondent did receive it in his
this Respondents own name and further shews that this
Respondent never had the said Sum of Twenty One thousand
five hundred and fifty eight pagodas thirteen fanams and
forty Cash in his possession for that John Charles Wilkins
Boxe in the Complainants Bill named had embezzled the same
and that he had been tried and convicted thereof and which

Shewings

Shewings of the Petitioner applies in opposition to the unfair and ill founded Asertions in his said Joinder contained and in his said Petition of Appeal insinuated that this Respondent had actually received the said Sum of Twenty One thousand five hundred and fifty eight pagodas thirteen fanams and forty Cash that he now detains it and that he refuses to account for the same And this Respondent in order further to shew that the Action of the Petitioner is misconceived And by way of further Answer to the Petitioners said second reason for Appeal says that it appears by the Petitioners own Shewing and repeatedly insisted on in his said Bill that he the Petitioner was no more than the Deputy or agent of the said Isaac Barre and therefore if any Cause of Suit Against this Respondent really existed the same should have been brought in the name of the said Isaac Barré whereas the present Suit is in the Name of the Petitioner solely for this Respondent Says that no man can sue in his own right who acts under the powers of another but must sue in the name of his principal and that this position is further strengthened by the well known and Established doctrine that all parties interested whether plantiffs or Defendants must be made parties to a Bill

and

And therefore this Respondent Says that the Petitioner farlingto do that which by Law was required to be done his Action against this Respondent is irregular and Contrary to Law Nor are the Precedents quoted by the Petitioner of any avail because not analogous to the matter in question so far as relates to the Cause of the Petitioner for this Respondent Says that the Sheriff is a principal and the Officers under him his own immediate Servants, but this Respondent Says it is some what a case in point in support of the matter in this Respondents said Demurrer contained and wherein this Respondent does insist that a person delegated cannot Delegate and as it appeared by the Petitioners own Shewing that he could not delegate powers to him granted by the said Isaac Barré delegate a Power to this Respondent and therefore that this Respondent was no more than a head Clerk in the said Office of the said Isaac Barre and it is Acknowledged by the Petitioner that the said John Charles Wilkins Box was also a Clerk in the said Office and that he had embezzled the Sum for which the Petitioner has brought his Action against this Respondent and thereupon this Respondent says that as Clerks in an Office are only Accountable each for his own Act the Petitioner should have brought his Action against the said

John

John Charles Wilkins Box; and thus applies the Case of the Sheriff who although he had a Deputy and many Officers under him he did not look to his Deputy or to any of his Officers except the particular Officer who suffered the Escape for which the Petitioner shews the Action was brought and the Case of Duncan against Lucister is so totally Foreign to the question before this honble Court that the introduction thereof by the Petitioner is absurd and preposterous there it is said that a man sold goods that did not belong to him and in the Suit instituted by the Petitioner against this Respondent it clearly appears by the Petitioners own shewing that the Sum sued for, so far from having been disposed of by this Respondent never was in his profession but that it was embezzled by the said John Charles Wilkins Box and that he was tried therefore and Convected thereof.—

And this Respondent says that the Petitioner has Mistaken the doctrine of Demurrers which by referring to the Law arising from Facts does not admit the Facts themselves but insists upon the Supposition that Even if the Facts Were as Stated in the Complainants Bill it that the Complainant had no right of Action or that the same was misconceived and brought Contrary to the Law And then and in that Case the Defendant is not bound to Answer whether the Facts Charged in the Complainants said Bill are or are not true or how and in what manner they are false or any matter or thing in any wise relating thereto the Complainant must first do that which by Law is required to be done or failing therein he cannot take advantage of his own wrong And thereupon this Respondent says that the Assertion of the Petitioner in his Joinder so Contained and insisted On in his said Petition of Appeal that this Respondent has by his Demurrer admitted the several matters in his said Bill of Complaint Contained is without foundation and as to the Assertion of the Petitioner in his said Petition Contained that this Respondent in and by his said Demurrer has admitted that he has not Accounted with the Petitioner for a large Sum of money the Petitioner had charged him with and which had been issued to this Respondent on his the Petitioners Account or to his Servants as his the Petitioners Deputy but that he this Respondent would not account to him for it because the Petitioner had not himself paid the deficient sum this Respondent says that the same is altogether contrary to the truth and this Respondent says that as to the Petitioners Suggestion that he ought at least to have some account of what is become

of

of the Money the same is absurd because this Respondent says the Petitioner has himself shewn what is become thereof by stating in his said Bill of Complaint that the said John Charles Wilkins Box did embezzle the same and that he had been tried and convicted thereof. —

To the Petitioners third Reason for appeal this Respondent says that the same is absurd and inconsistent and contains no one Argument that proves the sufficiency of the Petitioners said Bill or that impeaches this Respondents ground of Demurrer and being the same in substance with the Petitioners said second Reason this Respondent has already answered it by his answer thereto This Respondent never imagined the desirableity of the Petitioners Person as he has himself suggested nor was such desirableity Necessary the Petitioner had his offices in the three different Presidencies and his head Clerk transacted the Business of each in his the Petitioners absence from either. —

To the Petitioners fourth Reason for appeal this Respondent says that the Maxim of Law is as set forth in this Respondents Demurrer and its operation is to be taken in its literal sense and expressed Meaning that a person delegated cannot delegate and not by twisted Construction such as is made use of by the Petitioner to answer his own purposes and this Respondent says that as to the Responsibility which attacks to him as the head Clerk in the Petitioners Office he has already answered in and by his second Answer to the Petitioners said second Reason for appeal by shewing that each Clerk in an Office is accountable separately for his. —

To the Petitioners fifth Reason for appeal this Respondent says he has already answered the Material parts thereof in and by his Answer to the Petitioners said second Reason and as to the Residue as to the arguments brought forward by the Petitioner relative to a Release and discharge for any Monies received this Respondent says the same is contrary to the fact for the Petitioner cannot in his own right give either a Release or discharge for any Monies received on account of the Office of the Paymaster consequently he cannot bring a Bill against this Respondent for Monies pretended to have been received by him on account of the said Office in his the Petitioners own Name but in the Name of his principal and which this Respondent says is the practice invariably observed by the Mayors Court and is in fact the Law and as to the position laid down by the Petitioner that the Money does not belong to the

King

King paymaster General any more than it does to the petitioner this Respondent says that the only conclusion to be drawn from such premises is that the Petitioner does not know to whom the same belongs and this Respondent says that the Petitioner in his said fifth Reason for appeal and as in every other and as he has Repeatedly shewn the same in and by his said Bill of Complaint constantly speaks of his principals thereby shewing that he is not himself a principal but an agent and yet — attempts to support the Act of bringing as Bill in his own Name which this Respondent says is a contradiction in terms and contrary to the well known and established Doctrine hereinbefore shewn that an agent shall not sue in his own Name but in the Name of his principal and this Respondent says that whenever a person is liable to be called to Account he must be so called According to the established forms observed in his Majesty's Courts and thereupon this Respondent says an Executor cannot sue in his own right but as an Executor the Assignee of a Bond in the Name of the Assignors and the Attorney or agent in the Name of his principal and therefore this Respondent says that the Petitioners Actions is misconceived

and

And that if he ever had any Cause of action against this Respondent which this Respondent never admitted Nor does he now admit the same should have been brought in the Name of his the Petitioners principal and consequently and thereupon this Respondent humbly insists that his said Demurrer is well founded and that the Decision of the said Mayors Court thereon is altogether legal and just —

To the Sixth Reason for appeal this Respondent says that the discovery pretended to be sought for by the Petitioner in and by his said Bill is in and by the said Bill discovered for by the Petitioner therein shews that the said Sum of Twenty One thousand five hundred and fifty Eight pagodas thirteen fanams and forty eight Cash was embezzled by the said John Charles Wilkins Box that he had been tried therefore and convicted thereof and further this Respondent says that the Grievances in the said Sixth Reason Complained of by the Petitioner on account of the dismission of his said Bill are groundless because that the Petitioner as herein before shewn in bringing his said Bill has acted wrong and no Man ought or can take advantage of his

his own wrong. —

For all which Reasons this Respondent humbly prays that this Hon^ble Court will be pleased to Confirm the said Decree of the said Mayors Court — and that the Petitioners said Petition of Appeal be Dismissed with Costs. —

Signed { Popham / I. S. Hall / Jn^o. Hamilton } Sol^rs for Respondent.

Court of Appeals at Madraspatnam } Saturday the 31st. day of Decem^r Anno Domini 1791.

Between William Burke of Madras Esq^r. Appellant and Josias DuPre Porcher 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 Order of the said Court given in this Cause on Tuesday the 25th. day of June Anno Domini 1791 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 Order of the Hon^ble the

Court.

the Mayors Court dated the 25th day of June Anno Domini 1791. be Reversed and that the Respondent do put in his Answer to the Appellants Bill of Complaint in the Honble the Mayors Court by the 31st January Next and also that the Respondent do pay all Costs in both Courts.

Errors

[Signd] Chas. N. White
Clk

To the Honble
Major General William Medows
President in Council
Fort Saint George.

In the Honble the
Court of Appeals
at Madraspatnam

Between William Devaynes
and Samuel Pepys Cockrell of
the County of Middlesex in the
Kingdom of Great Britain Esquires
Acting Executors of Sir Robert
Barker Knight and Baronet
Deceased by their Attornies Charles
Cockrell and Henry Trail of Calcutta
in the East Indies Esquires by
their Attornies William Balfour
John Spalding and Oliver Colt
of Madras Esquires Complainants
and James Call of Fort Saint
George Esquire Defendant

To the Humble Petition and Appeal of the above Named James Catt

Sheweth That the above Named Robert Barker did in his Lifetime by his then Attornies William Baxton Charles

Filed in my Office
the 10th May 1791
Chas. N. White
Clk

Charles Cockrell Philip De Lisle and Henry Trail by their Attornies William Balfour John Spalding and Oliver Colton the Twenty first Day of November which was in the Year of Our Lord One thousand Seven hundered and Eighty Nine file a Bill of Complaint in the Mayors Court against Your Petitioner for the Recovery of the Sum of Ninety Thousand Five hundred and fifty One Star Pagodas and Forty two Fanams Current Money of Madras Charged to be due on the Bond or Obligation of Your Petitioner Copy of Whereof together with an Accounts and a Power of Attorney are Annexed to the said Bill of Complaints— To which said Bill of Complaint Your Petitioner 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 George Savage late Deceased together with Andrew Mojendie also 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 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 hath Claims on his Highness Wow Law Jow &c.a Nabob of the Carnatic to the Amount of several Lacks of Pagodas the Payment whereof altho now in a Train of Settlement under the Sanction of an Act of Parliament must depend on the Continuance of Peace in the Carnatic the Competency of the said Concern to settle with their Numerous Creditors must in like Manner depend on the same Event and Your Petitioner 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 Portion of the Claims of the said Concern on his said Highness

the

Highness the Nabob of that discription while many
of the debts due by the said Concern are at an Interest
of Twelve per Cent that Your Petitioner could not
nor could the said Concern form any Accurate
State of the ultimate Situation of such Concern
and that it was therefore out of the Power of Your
Petitioner to give to the said Robert Barker 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 your
Petitioner 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 possession or Power
before they can Appropriate those Funds to the
liquidation of the debts of the Individual Mem-
-bers of the said Concern and that when the debts
of the said Concern shall have been fully dis-
-charged there and not before the Partners thereof
have individually a Right each to his Seperate

Share of the Surplus Fund and may individually
Apply the same to the Payment of their Seperate and
individual debts or in such other manner as to them
individually shall seem Meet.

Your Petitioner did also Set forth
that as the Arrangement above Mode for the
Reduction of Interest on the New Consolidated Debt
was so made under and by Vertue of an Act of the
Parliament of his present Majesty and done on the
principles of fair Justice to his said Highness Wow
Law Jaw Nabob of the Carnatic and his several
Creditors and in such a manner as was Consistent
with His Highness's Finances and Resources after
the heavy Expences he had incurred by a Long
and Calamitous War in the heart of his Country
as 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 Re-establish-
-ment of the Public 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

Enabled to discharge their Several Obligations And
Your Petitioner 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 Highess in his political
Exigencies, —

Your Petitioner did therefore humbly
Submit to the Consideration of the said Mayors
Court whether the said Robert Barker should
receive any greater Interest than Six Per Cent upon
such Original Claim as he should prove to have
upon Your Petitioner And your Petitioner further
said that he hoped the said Mayors Court
would postpone any further Procedings in this
Cause to such future time as might enable Your
Petitioner 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 the hope of a benign
Attention from the said Court to the peculiar
Circumstances

Circumstances of his Situation Because the Lord
Chancellor of Great Britain had set an Exam-
=ple of the like Clemency and on Similar Grounds
during the general distresses of the late Wars by
postponing the foreclosure of the Equity of Redemp-
=tion on Mortgaged Estates while the War raged
and the price of Lands was much below their
real and Intrinsic Value which Case Your
Petitioner submitted was not so forcible as Your
Petitioners whose distresses in Part Originated
from the liberal Attention which he Shewed
jointly with his other Partners in the Said
Concern to the Public and General Weal-
To which said Answer the said Robert Barker
by his said Attornies filed his Replication and
did thereby among other things insist that Your
Petitioner was indebted unto him in the said
Sum of Ninety thousand five hundred and fifty
One Pagodas and forty two Fanams and did further
set forth that it was nothing to the matter in
Agitation before the said Court whether Your

Petitioner

Petitioner was ingaged with the said James Taylor or any other Gentlemen in Certain money trans= actions 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 Robert Barber did further in and by his said Replication Set forth Many other matters which your Petitioner did not nor doth by any means Admit To which said Replication your Petitioner filed his Rejoinder that upon the above proceedings the said Cause was Joined and publication passed and the said Cause was set down for hearing and Your Petitioner Sheweth that in the Interim the said Robert Barber departed this Life having previously made his Last Will and Testament and thereof Appointed William Devaynis and Samuel Pepys Cockrell two of the Executors who duely proved the said Will in the Prerogative Court of the Arch= Bishop of Canterbury and having Obtained Probate they the said William Devaynes and Samuel

Samuel Pepys Cockrell as Acting Executors of the said Robert Barber by their attornies Charles Cockrell and Henry Trail by their attornies William Balfour John Spalding and Oliver Colt filed a Bill of Revivor therein stating the Death of the said Robert Barber and so Prayed that the said Suit might be revived in the name of the said William Devaynes and Samuel Pepys Cockrell the Acting Executors of the said Robert Barber which Prayer was granted by the said Mayors Court and Your Petitioner Sheweth that the said Cause Came on to be heard on Saturday the thirtieth day of April last when the said Mayors Court were pleased to Order and Decree and said accordingly Order and Decree that Your Petitioners should Pay unto the said Robert Barber the said Sum of Ninety thousand five hundred and fifty One Pagodas and forty two Fanams together with all such Interest as then was or should thereafter become due

Whereon

thereon untill full Bayment was made also all
Costs of the suit nor did they in the said Decree
express any time for the Stay of Execution thereof
Notwithstanding all the equitable Circumstan-
-ces above set forth were Stated to the said Court
at the Hearing of the said Cause — Wherefore
Your Petitioner Conceives that the said Decree
is Contrary to the Principles of Substantial &c
Justice for the following Among other Reasons —

First ..... Because the Estate of the said Robert
Barker has no Right whatever &c to a preference
of the other Creditors of an Equal Degree and &c
Because he well knew the Actual Situation of
Your Petitioner and of the said Concern to be such
as has been above set forth for which reasons the
said Robert Barker ought not to have attempt-
-ed to put Your Petitioner to the expence of a
Suit at Law from a principale which does not
Carry with it an equal Justice to the other
Creditors in equal Degree of Your Petitioner

Secondly ..... Because the Arrangement above made
for the Reduction of the Interest on the New
Consolidate 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 Wow Low Low &c &c Nabob
of the Carnatic and his several Creditors and in
such a manner as was Consistent with the
Situation of his Highness Finances and Resour-
-ces after the heavy Expense he had incurred by
a long and Calamitous War in the heart
of his Country so that His Creditors who are
Sufferers by such reduced Interest have a
Claim of Similar indulgence from their
Creditors at large by Moderating the Rigor
of the Law and giveing time till a Restablisment
of the Public Resources of his Highness the Nabob
shall have enabled him to Discharge his &c
Debts and thereby enable Your Petitioner and
the said Concern to discharge their Several &c
Obligations to their respective Creditors the more
so as the same were incurred by the Assistance
given

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 Mortgaged Estates while the War raged and the Price of Lands was much below their real and Intrinsic Value which Case Your Petitioner Submits is not so forcible as that of Your Petitioner whose distress had in part Originated as aforesaid from his liberal Attention to the Public and General Weal.

For all which Reasons and such Others as may be offered at the hearing Your Petitioner most humbly Prays that the Decree of the said Mayors Court be reversed with Costs of Suit to be paid from the Estate of the said Robert Barker

(Signed) Stephen Popham
Solicitor for Appellant

Mayors Court

Mayors Court at Madraspatnam } Saturday the 30th day of April Anno Domini 1791

Present

Josias Dupre Porcher Esqr Mayor &c Andrew Ross and Benjamin Roebuck

Aldermen

Between William Devaynes & Samuel Pepys Cockerell of the County of Middlesex in the Kingdom of Great Britain Acting Executors of Sir Robert Barker Knight and Baronet Deceased by their Attornies Charles Cockerell and Henery Trail of Calcutta in the Kingdom of Bengal by their Attornies William Balfour John Spalding & Oliver Colt of Madras Esquires Complainants and James Call Esqr late of Fort St. George a Senior Merchant in the Service of the Honble the United English East

East Indies Company Defendants

This Cause Coming on to be Heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of a Bond an Account Current and a Letter of Attorney annexed The Defendants Answer The Replication The Rejoinder The Bill of Revivor with Copies of Powers of Attorney annexed Three Exhibits on the part of the Complainants 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 Complainants the full and Just Sum of Ninety Thousand five hundred and fifty One Star Pagodas and forty Two Fanams / Star Pagodas 90,551.42 / Together with all such Interest as now is or shall hereafter become due thereon untill full Payment is Made to all Costs of this Suit

Thos Carr
/ Signed / Gn. Taylor Regr.

To the Honble Major General William Medows.

President in Council

Fort St George

In the Honble the Court of Appeals

Between William Devaynes and Samuel Pepys Cockerell of the County of Middlesex in the Kingdom of Great Britain Esquires acting Executors of Sir Robert Barker Knight and Baronet Deceased by their Attornies Charles Cockerell and Henry Trail of Calcutta in the East Indies Esquires by their Attornies William Balfour John Spalding and Oliver Colt of Madras Esquires Complainants and James Call of Fort Saint George Esquire Defendant

Filed in my Office the 2d January 1792
Chas. V. White Clk

The Answer of William Devaynes and Samuel Pepys Cockerell acting Executors of Sir Robert Barker decd by their attornies Charles Cockerell and Henry Trail by their Attornies Wm. Balfour Jno. Spalding and Oliver Colt to the Petition of Appeal of James Call

These

These Respondents for Answer to the said Petition of Appeal or unto so much thereof as these Respondents are Advised is Material or Necessary for them to Make Answer unto Answer and Say they admit that the Above Named Sir Robert Barker did in his life time by his then Attornies William Baxton Charles Cockerell Philip Delisle and Henry Trail of Calcutta Esquires by their Attornies William Balfour John Spalding and Oliver Colt of Madras Esquires on the Twenty first day of November which was in the Year of Our Lord One thousand Seven hundred and Eighty Nine file a Bill of Complaint in the Hon^ble Mayors Court Against the said Appellant for the Recovery of the Sum of Ninety Thousand five hundred and fifty One Star Pagodas and forty two fanams Current Money of Madras Charged to be due on the Bond or Obligation of the said Appellant Copy Whereof to gether with an Account Current and a power of Attorney were Annexed to the said Bill of Complaint and prayed to be taken as part thereof to which said Bill of Complaint the said Appellant did

did Appear by his Attorney at Law and after Certain Rules had Issued for him to Answer the said Bill of Complaint he filed his Answer Now on Record and did therein and thereby Set forth that he and James Taylor and George Savage late deceased to gether with Andrew Mayendie also deceased had been for Several Years back Jointly interested in Certain Money Transactions or dealings Under the Name of the Concern which said Concern was by the said Appellant in his said Answer Represented to be indebted unto divers and Sundry Persons in very Considerable Sums of Money which was not in the Power of the said Concern to Liquidate nor Could they even Venture to fix a Period When such Liquidation Could take place because as the said Concern had Claims on his highness Wow Law Jaw Bahander Nabob of the Carnatic to the Amount of Several Lacks of Pagodas the Payment whereof altho' then in a Train of Settlement Under the Sanction of an Act of Parliament depended on the Contenuance

of

of Peace in the Carnatice The Competency therefore
of the said Concern to to Settle with their &
Numerous Creditors was in like Manner to &
depend on the same event; And these Respondents
do further Admit that the said Appellant 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 was
reduced to Six per Cent on all such as were included
in that Species of Debts Commonly Known and
Distinguished by the Name of the New Consolida-
-ted Debt, and as a Considerable Portion of the Claims
of the said Concern on his said Highness the Nabob
was of the Discription while Many of the Debts &
due by the said Concern were at an Interest of &
Twelve per Cent, that the said Appellant 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 Appellant to give to the said Robert Barker
any Precise Satisfaction Respecting the same and

that

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
these Respondents do admit that the said Appel-
-lant did further Set forth 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 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 a Right each to his Seperate
Share of the Surplus funds, and Might individually
Apply the same to the Payments of their Seperate
and individually Debts or in Such Other Manner
as to them individually Should Seem Meet.

And these Respondents do further
admit that the said appellant did also Set forth
that

that, as the Arrangements Above Made for the Reduction of Interest on the New Consolidation Debt, was so made Under and by Vertue of an Act of Parliment of his Present Majestys, and done on Principles of fair Justice to his said Highness Wauw Law Jauw 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 as his Creditors who have Suffered by such Reduction of Interest had a Claim of Similar Indulgence from their Creditors at large by Moderating the Rigors of the Law, and giving time till by a Restablishment of the Public Resources of his highness the Nabob he should have Discharged his debts, and the said Concern and his Creditors at large be thereby enabled to Discharge their Several Obligations And these Respondents do further Admit that the said Appellant did also Setforth that the said Concern had a greater Claim to the

Moderation

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; And these Respondents Admit that the said Appellant did thereupon humbly Submit to the Consideration of the said Mayors Court whether the said Robert Barker should Receive any Greater Interest than Six per Cent Upon such Original Claims as he should prove to have on the said Appellant; And these Respondents do further Admit that the said Appellant did also Say that he hoped the said Honble the Mayors would post pone any further Proceedings in the Cause to Such future time as might enable the said Appellant to discharge all his individual as well as partnership Debts the Period of which indulgence he Submitted to the said Court, and that he the said Appellant was the more encouraged in the hope of a Benign Attention

from

from the said Court to the peculiar Circumstances of his Situation. Because the Lord Chancellor of Great Bretaun have Set an Example of the Like Clemency and on Similar Grounds during the General Distresses of the late War by post poning the foreclosure of the equity of Redemption on Mortgaged Estates while the Warr Raged and the price of Lands were much below their Britin= =sic Value which Case the said Appellant is Submitted was not so forcible as his whose Distress in part Originated from the liberal Attention which he had Shewn Jointly with his Other Partners in the said Concern to the Public and General Weal. —

To which said Answer these Respondents do Admit the said Robert Barker deceased by his said Attornies did file a Replication and did therein and thereby insist that the appellant Stood Justly and truly indebted to him the full and Just Sum of Ninety Thousand five hundred and fifty One Star Pagodas and forty two fanams Current

Current Money of Madras as Stated in the Account Current Annexed to and exhibited with the said Bill of Complaint and which Sum the Appellant did in and by his Answer thereto in no wise Deny, but endeavoured to render Compleat and intricate a Clear Case by the Most Laboured Sophistical Arguments for instead of Confessing or Denying the Debt He was due the Quation and pleaded inability to Discharge the Amount Brought against him by the said Sir Robert Barker and to that end Entered into the most Vague and Extraneous Reasoning Totally Unconnected with the Subject Matter And these Respondents for further Answer say that the said Sir Robert Barker did by his said Attornies Set forth that it was Nothing to the Matter in Agitation before the said Hon^ble Mayors Court, whether the Appellant was or was not engaged with James Taylor or any Other Gentleman in Certain Money Transaction or dealings render the name of a Joint or Other Concern, or whether such Concern was or

was

was not indebted unto Divers and Sundry Persons
in very Considerable Sums of Money the Question
being whether the Appleant did or did not, Stand justly
and truly indebted to the said Sir Robert Barker
in the said Sum of Ninety Thousand five hundred
and fifty One Pagodas and forty two fanams, as
Charged in the Bill of Complaint, and which the
Appellant in his Answer thereto, Not having &
denied such answer was to be taken and understood
Agreeable to equity and the practice in like Cases
a full and Sufficient Confession. And these
Respondents further say that the said Sir Robert
Barker by his said Attornies said in his said &
Replication further Setforth that they were
Surprised that the Appellant If he ever inten-
ded or expected his Answer Could have any weight
with the said Honble Mayors Court Should
only Offer a Train of Doubts and a field of Uncertain
for it to Judge and Determine on for although
the said Appellant had attempted to Avoid a &
Confession of the said Debt due from him to the said

Robert

Robert Barker Yet he did not deny it, and at other
times when under the Conviction that it Must
evidently Appear to the said Honble Mayors Court
as justly due, he pleaded his inability to pay and
Discharge it and then Without Specifying any
particular period when he might be able so to
do he Says the said Concern, owed such large
Sums of Money to so many People that it was
not in their Power to Liquidate it then nor
Could they Venture to fix a time When such
Liquidation Might take Place, and that all
their hopes of ever having Such Power Depended
upon peace Which was a very Strange and
irregular Mode of Proceeding in a Court of
Judicature and Could only be Considered in its
true Sence as pursued for the Purpose of pro-
crastination And these Respondents further
say that the said Replication did further
State that the Rate of Interest Which the
Nobobs Bonds then bore was Not at all Connected
with, or had any Relation to the Quantum of

Interest

Interest allowed on the Bond Executed by the
Appellant in favor of the said Sir Robert Barker
On which the Action was grounded the Business
at the Durbar And Transaction between indivi-
duals not bearing Comparison being of a very
Different Complexions and of totally Opposite
discriptions. And these Respondents further
say that in Order to Shew and in what Manner
the Debt was Contracted and for which the
Appellant did execute the Bond upon which
the Action was Brought the said Sir Robert
Barker by his said attornies prayed leave to
Set forth to the said Honble Mayors Court that
from an intimacy which had long Subsisted
Between him and the Appellant and from
a Confidence which he had pleased in the
Appellant he the said Sir Robert Barker
was induced to appoint him his agent or
Attorney in his Country with full and
Sufficient Powers to Recover and Collect
Certain Sums of Money due to him in the

Carnatic

Carnatic, that in Consequence thereof the
said Appellant Carried at Different times in
to the Possession of very Considerable Sums of
Money Which Instead of Remitting to the
said Sir Robert Barker, in Conformity to the
Instructions given him on that behalf he retained
the Whole in his Possession and in Lieu Whereof
he the said Sir Robert Barker was at last
Obliged to accept of the Bond Copy Whereof
is annexed to the Bill of Complaint. And these
Respondents further say that the said Sir
Robert Barker by his said Attornies did in
his said Replication further State that it
would appear evident to the said Honble
Mayors Court by a Reference to the Date of the
said Bond that the Appellant had experi-
enced Much indulgence in Regard to the
Discharge Thereof, and Thereupon he Considered
the Extraordinary Defence which he had
attempted to Shape as an Ungrateful Return
for his forbearance

And

And these Respondents further say that the said Replication did also state that it was immaterial What Debts the said Concern Conceived to be incumbent on them first to Discharge. Because the said Sir Robert Barker Never was in any Manner Connected with them And if their Speculative projects had been blighted By the Operation of an Act of Parliaments he the said Sir Robert Barker saw no Reason why he should Suffer thereby. Consequently he expected the Interest Secured to him by the said Bond of the Appellant and by him Executed in his favor As the Act of Parliaments which Provides for the Payments of his highness the Nabobs Debts Could not affect the Debt of Individuals in no wise Concerned therein And therefore the said Sir Robert Barker humbly Insisted that introducing the Mention of such an Act of Parliaments and the attempts of Rendering the Powers thereof Contrary to its true intent Subservient to the Purpose of the Appellant

Was

Was altogether irregular and improper, nor was the Instance Produced respecting the Decision of the Lord Chancellor of Great Britain in post poning the foreclosure of the equity of Redemption of a Mortgage of Greater force and Virtue nor Could it be Construed as Applicable to the Matter before the said Honble Mayors Court. And these Respondents say that the said Sir Robert Barker did thereupon Observe that the foreclosure of the Equity of redemption of a Mortgaged Estate Might injure Members and Ruin Many. But a Judgments upon a Common Bond Could only affect the Obligor and give that Justice to the Obligee which the Nature of his Claim required When a Man holds a Mortgage, his Debt is secured and few Accidents Can Subject him to a Risk but in a Simple Bond the Obligor has no other Security than the Person of the Obligee, whose Situation Might at best be Precarious and Uncertain. For all

which

large by Moderating the Rigour of the law and
giving time till a Restablishment of the Public
Resources of his highness the Nabob. Should Enable
him to Discharge his Debts. and thereby enable
him to Appellants and the said Concern to Discharge
their Several Obligations to their Respective Creditors
and there upon the said Appellants humbly
insisted that his Situation had a Claim to
the benigna Consideration of the said Honble
Court for a Reduction of Interest on the very
principle which had induced the Legislature
of Great Britain to Moderate the Interest as
aforesaid on the Debt due by his Highness the
Nabob and the said Appellants in his said
Rejoinder lastly said, that even on the Supposition
that his Debt to the Complainants Originated in
Manner as Stated in the Replication, he the
Appellants had done no Otherwise with the
said Sir Robert Barkers Money than he
had done with his own for it was well known
that the Amount Charged by the said Sir
Robert Barker to be due to him by the Appellant

bore very Small Proportion to the Claims which he the
Appellant had upon his said Highness the Nabob of the
Carnatic And this Respondents do admit that
upon these proceedings Issue and Join and Rules passed
for the Examination of Witnesses But these Respondents
deny that publication then passed or that the Cause was
Set down for hearing These Respondents however Say that
the Appellant having Made Oath that the said Sir
Robert Barker had departed this life The Suit became
Abated and Remained so Untill the 27th of October last
past when these Respondents as Acting Executors of the said
Sir Robert Barker by their Attornes Charles Cockrell and
Henry Trail of Calcutta in the Kingdom of Bengal by
their Attornies William Balfour John Spalding and
Oliver Colt of Madras Merchants did file a Bill of Revivor
and did therein Set forth that on the Twenty first day of
November which Was in the Year of Our Lord One
Thousand Seven hundred and Eighty Nine The said Sir
Robert Barker did through and by the Means of his
Attornies William Baxton Charles Cockerell Philip
De Lisle and Henry Trail of Calcutta by their Attornies
William Balfour John Spalding and Oliver Colt of
Madras file and Exhibit a Bill of Complaints In the

Honble

Mayors
Honble Court Against the said Appellant Towhich
said Bill the said Defendant being Served with procefs
appeared and Answered to which the said Sir Robert
Barker by his said Attornies Replied and the said
Defendant having Rejoined Issue and Join Agreeably
to the Practice of the said Honble Court and Rules paſsed
for the Examination of Witneſses as by the said Bill
Answer Replication and Rejoinder on Record in
the Honble Court Relation being thereunto had would
More fully and at Large Appear And these
Respondents did further Setforth in the said Bill
of Reviver that before any further Procedings were
had in the said Cause the said Sir Robert Barkers
the Complainant died by Reason whereof the said
Cause and Procedings therein became and Stood
abated And these Respondents did further State
unto the said Honble Mayors Court that the said
Sir Robert Barker did in his life time Make his
last Will and Testament bearing date the Twenty
Second day of January Which was in the Year of our
Lord One thousand Seven hundred and Eighty eight and
did thereof Constitute and Appoint William Devaynes
Samuel Pepys Cockrell, John Cockrell and George
Bristow

Bristow Esquire his Executors and these Respondents by
their said attornies did further Shew that as two of the
Executors of the said Will they duly proved the same
and Obtained Probate thereto in the prorogative Court
of Canterbury with Power Reserved to the said John
Cockerell and George Bristow the Other executors in the
said Will Named, as by the Exemplification thereof
in the Poſsesion of these Respondents Attornies Ready
to be produced When required Relation being thereun-
to had would More fully and at Large Appear And
these Respondents by their said Attornies did
humbly Shew in their said Bill of Reviver that as
Acting Executors of the said Sir Robert Barker they
were as much intitled to have benefit and Relief against
the said James Call as the said Sir Robert Barker
Might or Could have had If he had been Alive, And
thereupon these Respondents by their said Attornies
prayd that the said Suit and all Orders and Proce-
dings therein Might Stand and be Revived Against
the said James Call and that they Might be put in
like State and Condition as the same were in at the
time they so became Abated, Which prayer was Complied
with and the Suit Accordingly Stood Revived

And

And these Respondents by their said Attornies for further Answer Say that Publication having passed the Cause was Set down for hearing And accordingly Came on to be heard on Saturday the Thirtieth day of April last past when the said Hon^ble Mayors Court were pleased to Order and Decree And did Accordingly Order and Decree that the said Appellant should pay unto the said Sir Robert Barker the said Sum of Ninety Thousand five Hundred and fifty One Pagodas and forty two fanams with all such Interest as then was or Should thereafter become due thereon untill full payment was made Also all Costs of Suit as by the said Decree Copy whereof is Annexed to the Appellants Petition of Appeal Relation being thereunto had, doth and will More fully and at large Appear.

And these Respondents do also Admit that the said Hon^ble Mayors Court did not express any particular time for the Stay of Execution thereon, nor does it Appear to these Respondents that there were any Circumstances to induce them to deviate from the General Rule which they invariably Observe in passing of Decrees, on the Contrary these Respondents say that from the Litigious disposition which the Defendant has Manifested in evading the payment of a Just and legal demand that he is rather deserving of Reprehension than intitled to lenity To the first Reason given by the Appellant Namely that the Estate of the said Sir Robert Barker has no right to a preference of Creditor of an equal Degree, These Respondents will only Observe that they have no Kind of Concern with any Other Creditors if any there be / nor can any Other Claim Whatsoever affect the said Sir Robert Barkers, which in itself is Clear, and distinct from any Other Persons. And these Respondents further say that the said Sir Robert Barker had no Other mode left than Coercive Means to procure that Justice and attention to his Claim which it demanded and which every Amicable Measure had failed in Obtaining.

To the Second Reason these Respondents Say they Admit That an Act of Parliament has Reduced the Interest to Six per Cent on Certain Claims Which the said Appellant and Others had upon the Nabob Wallajah Loan Sach, Commonly Called the New Consolidation debt, and that such Reduction was on principles of fair Justice to him the said

said Nabob. Yet these Respondents Cannot see how such Reasoning will Apply to the said Sir Robert Barker who never was interested or Concerned in their Speculative projects and who Never Could hope or expect to derive any benefit therefrom, These Respondents have Already Shewn that the said Appellant had executed the Bond in Question on account of Certain Monies which he had Received as the Agent or Attorney of the said Sir Robert Barker, and which instead of Remitting Agreeably to his instructions he had Appropriated to his own particular use, and therefore these Respondents Conceive Such Matter of Fact to be a Complete Answer to any other Reasons Set forth by the Appellant all of which Appears to be used for the Sole purpose of procrastination and are in every respect extraneous, Nugatory and impertinent.

For all which Reasons and Such Others as may be Offered at the hearing these Respondents prays this Honble Court will be pleased to Affirm the Decree of the said Mayors Court, And the Appellants Petition and Appeal be Dismissed with Exemplary Costs to be paid by the Appellant.

/signed/ J. Chalmers
Solicitor for Respts.

Court of Appeals
at
Madraspatnam } Fs.

Saturday the 31st day of December
Anno Domini 1795

Between James Call of Fort St. George Esqre Appellant and William Davaynes and Samuel Peppys Cockerell of the County of Middlesex in the Kingdom of Great Britain Acting Executors of Sir Robert Barker Knight and Baronet Deceased by their Attornies Charles Cockerell and Henry Trail Calcutta in the Kingdom of Bengal by their Attornies William Balfour John Spalding and Oliver Colt Fort St. George Esquires 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 Saturday the 30th day of April Anno Domini 1795 upon due Consideration had of the Matters

said Nabob. Yet these Respondents Cannot see how such Reasoning will apply to the said Sir Robert Barker who never was interested or Concerned in their Speculative projects and who Never Could hope or expect to derive any benefit therefrom. These Respondents have Already Shewn that the said Appellant had executed the Bond in Question on account of Certain Monies which he had Received as the Agent or Attorney of the said Sir Robert Barker, and which instead of Remitting Agreeably to his instructions he had Appropriated to his own particular use, and therefore these Respondents Conceive Such Matter of Fact to be a Complete Answer to any other Reasons Set forth by the Appellant all of which Appears to be used for the Sole purpose of procrastination and are in every Respect extraneious, Nugatory and impertinent.

For all which Reasons and Such Others as may be Offered at the hearing these Respondents prays this Honble Court will be pleased to affirm the Decree of the said Mayors Court, And the Appellants Petition and Appeal be Dismissed with Exemplary Costs to be paid by the Appellant.

/signed/ G Chalmer.
Solicitor for Respt.

Court of

Court of Appeals
at
Madraspatnam } Fs.

Saturday the 31st day of December
Anno Domini 1795

Between James Call of Fort St. George Esqure Appellant and William Davaynes and Samuel Peppys Cockerell of the County of Middlesex in the Kingdom of Great Britain acting Executors of Sir Robert Barker Knight and Baronet Deceased by their attornies Charles Cockerell and Henry Trial of Calcutta in the Kingdom of Bengal by their attornies William Balfour John Spalding and Oliver Colt Fort St. George Esquires 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 Saturday the 30th day of April Anno Domini 1795 upon due Consideration had of the Matters

Matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides &c 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

Hur

Signed Chas. N. White
Clk

To the Kings most Excellent Majesty
in Council

Between William Devaynes and Samuel Pepys Cockerell of the County of Middlesex in the Kingdom of Great Britain Esquires Acting Executors of Sir Robert Barker Knight and Baronet Deceased by their Attornies Charles Cockerell and Henry Trail of Calcutta in the East Indies Esquires by their Attornies William Balfour John Spalding and Oliver Colt of &c Madras Esquires Complainants &c

and James Call of Fort Saint George Esquire Defendant

The Humble Petition and Appeal of the above named James Call.

Most Humbly Sheweth

That the above named Robert Barker did in his life time by his then Attornies William Paxton Charles Cockerell Philip De Lisle and Henry Trail by their Attornies William Balfour John Spalding and Oliver Colt. on the Twenty first day of November which was in the

Filed in my Office the 13th January 1792
Chas. N. White Clk

the Year of our Lord One thousand seven hundred and Eighty nine file a Bill of Complaint in the Mayor's Court against Your Petitioner for the Recovery of the Sum of Ninety thousand Five Hundred and Fifty one Star Pagodas and Forty two Fanams Current Money of Madras Charged to be due on the Bond or Obligation of Your Petitioner Copy whereof together with an Account and a Power of Attorney are Annexed to the said Bill of Complaint To which said Bill of Complaint Your Petitioner 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 George Savage late Deceased to gether with Andrew Mayendie also 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 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 fix a period when such liquidation would take place be cause as the said Concern hath Claims on His Highness Waw. Law Jaw Jc 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 Credi= =tors must in like manner depend on the same event and Your Petitioner 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 former ly run is reduced to Six Per Cent on all such as are in= =cluded 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 that Your Petitioner 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 Your Petitioner to give to the said Robert Barker any precise Satisfaction Respecting the same and that he could not therefore ascertain the time when he should be able to discharge any private Claim on him

Upon your Petitioner and your Petitioner further said that he hoped the said Mayors Court would post pone any further proceedings in this Cause to such future time as might enable Your Petitioner to discharge all his Individual as well as Partner= =ship Debts the Period of which Indulgence he Submit= =ted to the said Court and that he was the more encouraged in the hope of a benign attention from the said Court to the peculiar an 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 Redumption on Mortgaged Estates while the War raged and the Price of Lands was much below their Real and intrinaic Value which Cause Your Petitioner Submitted was not so forcible as Your Petitioners whose Distresses in part Originated from the liberal attention which he shewed Jointly with his other Partners in the said Concern to the Publick and General Weal — To which said Answer the said Robert Barker by his said Attornies filed his Replication

Replication and did thereby among other things insist that Your Petitioner was in debted unto him in the sum of Ninety Thousand Five hundred and Fifty one Pagodas and Forty two fanams and did further set forth that it was nothing to the matter in Agitation before the said Court whether Your Petitioner was engaged with the said James Taylor 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 Robert Barker did further in and by his said Replication set forth many other matters which Your Petitioner did not nor doth by any means admit — To which said Replication Your Petitioner filed his Rejoinder, that upon the above Proceedings Issue was Joined and Publication passed and the said Cause was set down for hearing And Your Petitioner Sheweth that in the Interim the said Robert Barker departed this Life having previously made his Last Will and Testament and thereof Appointed William Devaynes and Samuel Pepys Cockerell two of the Executors who

duly

duly proved the said Will in the Prerogative Court of the Arch Bishop of Canterbury and having Obtained Probate they the said William Devaynes and Samuel Pepys Cockerell as acting Executors of the said Robert Barker by their Attornies Charles Cockrell and Henry Troud by their Attornies William Balfour John Spalding and Oliver Colt filed a Bill of Revivor therein stating the Death of the said Robert Barker and Prayed that the said Suit might be Revived in the Name of the said William Devaynes and Samuel Pepys Cockerell the acting Executors of the said Robert Barker which Prayer was granted by the said Mayors Court And your Petitioner sheweth that the said Cause came on to be heard on Saturday the Thirtieth Day of April last past when the said Mayor's Court were pleased to Order and Decree and said Accordingly by Order and Decree that Your Petitioner should pay unto the said Robert Barker the said Sum of Ninety thousand Five hundred and fifty One Pagodas and Forty two Fanams together with all such Interest as then was or should thereafter become due thereon untill full Payment was made also all Costs of the Suit From which said Decree

Decree of the said Mayors Court Your Petitioner Appealed to the Court of Appeals at Madraspatnam and said therein among other things Setforth that the said Mayor's Court did not in their said Decree express any time for the Stay of Execution thereof Notwithstanding all the Equitable Circumstances above Setforth were Stated to the said Court at the hearing of the said Cause Wherefore Your Petitioner conceived that the said Decree was contrary to the Principles of Substantial Justice for the following among other Reasons

First ..... Because the Estate of the said Robert Barker has no Right whatever to a preference of the other Creditors of an equal Degree and because he well knew the Actual Situation of Your Petitioner and of the said Concern to be such as has been above Setforth for which Reasons the said Robert Barker ought not to have Attempted to put Your Petitioner to the Expense of a Suit at Law from a Principle which does not carry with it an equal Justice to the other Creditors in equal Degree of Your Petitioner

Secondly ..... Because the Arrangement above made for the reduction of the Interest on the New Consolidated Debt

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 Wau
Law Law &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 Finances and
Resources after the heavy Expence he had incurred
by a long and Calamitous War in the heart of his
Country so that his Creditors who are Sufferers by such
Reduced Interest have a Claim of similar indulgence
from their Creditors at large by moderating the Rigor
of the Law and giving time till a Re-establishment
of the Public Resources of his Highness the Nabob
shall have enabled him to discharge his Debts and
thereby enable Your Petitioner 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

ly..... Because the Lord Chancellor of Great
Bretain has set an Example of the like Clemency
and on Similar Grounds during the general distress

of

2d Nov.r 92

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 were much below their
real and Intrinsic Value which Case Your Petitioner
Submits is not so forcible as that of Your Petitioner
whose distress had in part Originated as aforesaid
from his Leberal Attention to the Public and
General Weal.

To which said Petition and Appeal the
Complainants by their Said Attornies did Put in their
Answer setting forth many evasive Matters and things
which Your Petitioner cannot by any means Admit
and your Petitioner Sheweth that his Petition and
Appeal and the Answer of the said Complainants thereto
came on to be heard and determined on the Thirty
first day of December last past by the said Court
of Appeals at Madras who were pleased to confirm
the Decree of the said Mayor's Court with Costs
of Suit in the said Court of Appeals to be paid by
Your Petitioner all which will more fully and at
large Appear by Reference to the several Proceedings
had in the above Cause in the said Mayor's Court
and Court of Appeals to which said several Proceed-

-dings

Proceedings and to each of them respectively Your Petitioner prays leave to refer and to have such full and ample benefit of them and of each of them as if they and each of them were herein before fully Stated and Set forth and made part of this Appeal

From which said Decree of the said Mayor's Court and Court of Appeals Your Petitioner most humbly Appeals to Your Most Excellent Majesty in Council for the Reasons Assigned in Petitioner's said Appeal to the Court of Appeals at Madras as above Stated.

For all which Reasons and such others as may be offered at the hearing of this Cause Your Petitioner most humbly Prays that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be Reversed and set aside and that the Complainants be Ordered to Pay all Costs of Suit.

/Signed/ Popham
Solicitor for Appellant

Court

Court of Appeals
at
Madraspatnam
} &c.

Saturday the 31st day of December A.D.

Between James Cadl of Fort St George Esq.re Appellant and William Dawaynes and Samuel Pepys Cockerell of the County of Middlesex in the Kingdom of Great Britain Acting Executors of Sir Robert Barker Knight and Baronet Deceased by their Attornies Charles Cockerell and Henry Trial of Calcutta in the Kingdom of Bengal by their Attornies William Balfour John Sparnes and Oliver Cols Fort St George Esq.res 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

Court together with the Decree of the said Court given in this Cause on Saturday the 30th day of April Anno Domini 1791 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 Mayor's Court do stand Affirmed and that the Appellant's Petition be hence Dismissed with Costs

Hur

Signed/ Chas. N. White Clk

To the King's most excellent Majesty in Council

Between William Devaynes and Samuel Pepys Cockrell of the County of Middlesex in the Kingdom of Great Britain Esquires acting Executors of Sir Robert Barker Knight and Baronet deceased by their Attornies Charles Cockrell and Henry Trail of Calcutta in the East Indies Esquires by their Attornies William Balfour John Spalding and Oliver Colt of Madras Esquires Complainants and James Call of Fort St George Esquire Defendant

The Answer of the abovenamed Complainants to the Petition and Appeal of the abovenamed James Call

Filed in my Office the 5th February 1792
Chas. N. White Clk

These Respondents admit that the abovenamed Sir Robert Barker died in his lifetime by his then attornies William Baxton Charles Cockrell Philip de Lisle and Henry Trail by their Attornies

Attornies William Balfour John Spalding and Oliver Bt
on
the Twenty ferst day of November which was in the yiar
of our Lord one thousand seven hundred and eighty nine
file and exhibit a Bill of Complaint in the Hon^ble
Mayors Court of Madras patnam against the said
Petitioner for the recovery of the sum of Ninety Thousand
five hundred and fifty one Pagodas Fort two Fanams
/90551..42/ Current money of Madras charged to be due
on the Bond or Obligatation of the said Appellant
Copy whereof together with an Account Current
and a Power of Attorney were annexed to the said
Bill of Complaint To which said Bill of Complaint
the said Appellant appeared by his Attorney at
Law and after certain rules had issued he filed
his Answer thereto which said Answer being
fully recited by the said Appellant in his Petition
and Appeal to Your most excellent Majesty in
Council These Respondents pray a reference may be
had thereto and that it may be taken as part
and parcel of this their Answer to the said Petition
and Appeal

To which said Answer These Respondents
do admit the said Sir Robert

Attornies also file a Replication and doe thereby insist
that the said Defendant stood justly and truly
indebted to him in the full and just sum of Ninety
Thousand five hundred and fifty one Pagodas forty
two Fanams /90551..42/ as stated in the Account
Current annexed to and exhibited with the said
Bill of Complaint and which sum the Defendant
in and by his said Answer thereto did not in any
wise deny but endeavoured to render complex and
intricate a clear case by the most laboured ~~sophistica~~
= cabb sophistical arguments for instead of confessing or
denying the debt he evaded the question and pleaded
inability to discharge the amount brought against
him by the said Sir Robert Barker and to that
end entered into vague and exstraneous reasoning
totally unconnected with the subject matter And
These Respondents for further answer say That the
said Sir Robert Barker did in his said Replication
by his said Attornies further set forth That it was not the
to the matter in agitation before the said Court to
whether the Defendant James Call was or was not
engaged in certain money transactions or dealings

inasmuch

under the name of a Concern or whether such Concern
was or was not indebted unto sundry persons in very
Considerable sums of Money the question being whether
the Defendant did or did not stand indebted unto the
said Sir Robert Barker in the sum of Ninety
Thousand five hundred and fifty one Pagodas Forty
two Fanams /90 551.. 42/ as charged in the Bill of
Complaint and which the Defendant in his answer
thereto not having denied such Answer was to be
taken and understood agreeable to Equity and the
practice in like cases as a full and sufficient
confession and the said Replication further
set forth and stated that they were unprepared that
the Defendant if he ever intended or expected his
Answer could have any wether with the said Mayors
Court, should only offer a train of doubt and a field
of uncertainty for it to judge and determine on for
altho' the said Defendant had Attempted to avoid
a confession of the said debt due from him to the said
Robert Barker yet he did not deny it and at other
times when under the Conviction that it must
evidently appear to the said Mayors Court, as justly
due he pleaded his inability to pay and discharge it and
then



then without specifying any particular period when he
might be able so to do he says the said Concern owed such
large sums of money to so many people that it was not in
their power to liquidate it then, nor could they even
venture to fix a time when such liquidation might
take place and that all their hopes of ever having such
power depended upon peace which was a very strange and
irregular mode of proceeding in a Court of Judicature
and Could only be considered in its true sense as pursued
for the purpose of procrastination And the said Replica-
tion did further state that the rate of Interest which
the Nabobs Bonds then bore was not at all connected
with or had any relation to the Quantum of Interest
allowed on the Bond executed by the Defendant in
favor of the said Sir Robert Barker on which the
Action was graunded the business at the Durbar
and transactions between Individuals not bearing
Comparation being of a very different complexion
and of totally opposite descriptions And in order to
shew how and in what manner the debt was contracted
and for which the Defendant had executed the Bond
upon which the action was brought The said Sir Robert

Barker

Barker in his said Replication prayed leave to add
to the said Mayors Court that from an intimacy which
had long subsisted between him and the Defendant
and from a Confidence which he had placed in the
said Defendant he the said Sir Robert Barker
was induced to appoint him his Agent or Attorney
in this Country with full and sufficient power to
recover and collect certain sums of money due to
him in the Carnatic. That in Consequence thereof
the said Defendant came at different times into the
possession of a very Considerable sum of money which
instead of remitting to the said Sir Robert Barker
in Compormity to the Instructions given him on
that behalf he retained the whole in his possession
and in lieu thereof he the said Sir Robert Barker
was at last obliged to accept of the Bond a copy
whereof is annexed to the Bill of Complaint and upon
which the present action is founded And the
said Replication did further state that it would
appear evident to the said Hon^ble Mayors Court
by a reference to the date of the said Bond that the
Defendant had experienced much Indulgence in



regard to the discharge thereof and thereupon he considered
the extraordenary defence which he had attempted to
shape as an ungrateful return for his forbearance And
the said Replication did also state that it was
immaterial what debt the said Concern conceived
to be incumbent on them first to discharge because
the said Sir Robert Barker never was in any manner
Connected with them and if their speculative projects
had been belighted by the Operation of an Act of
Parliament he the said Sir Robert Barker saw
no reason why he should suffer thereby Consequentially as
expected the Interest secured to him by the said
Bond of the Defendant and by him executed in his
favor as the Act of Parliament which provides for
the payment of his Highness the Nabobs debt could
not affect the debt of Individuals in no wise concerned
therein and therefore the said Sir Robert Barker
humbly insisted that introducing the mention of such an
Act of Parliament and the attempts of rendering the
power thereof contrary to its true intent subservient
to the purpose of the Defendant was altogether Irregular
and Impertinent Nor was the instance produced

Respecting

respecting the decision of the Lord Chancellor of
Great Britain in postponing the Foreclosure of the
Equity of Redemption on a Mortgage of greater force
and virtue nor could it be construed as applicable to
the matter before the said Mayor's Court. And these
Respondents say that the said Sir Robert Barker
by his said Attornies in his said Replication did
thereupon observe that the Foreclosure of the Equity
of Redemption of a Mortgaged Estate might injure
Numbers and ruin many, but Judgment upon
a common Bond could only affect the Obligor and
give that Justice to the Obligee which the nature
of his claim required, when a person holds a
Mortgage his debts are secured and few accidents
can subject him to a risk but in a Simple Bond
the Obligor has no other security than the person
of the Obligee whose situation might at best be
precarious and uncertain. For all which circum-
stances the said Sir Robert Barker by his said
Attornies humbly insisted that the arguments of the
Defendants as urged in his said Answer were futile
and nugatory inasmuch as they were wholly foreign to

the matters before the said Court. That the rate of Interest
which the said Bond carried as being conformable to an
Act of Parliament was legal, just an unalterable
and that the Defendants evading to deny the several
matters charged in the Bill of Complaint to agreeable
to Equity and the practice of the said Honble Court
and the Court of Chancery was a full confession thereof

To which said Replication the said
Defendant did file a Rejoinder and therein set forth
that if their was any case wherein the Debtor hade
a claim to the Indulgence of a Court of Justice to
moderate the rigor of the Law by giving time for
paying off his debt he the defendant had such claim
against the said Sir Robert Barker, because that
his distress principally originated by the Assistance
given by the Concern as mentioned in his the Defendants
Answer towards the relief of his Highness the Nabob in
his political Exigencies, and from his the Defendants
liberal attention to the public and general Weal, and
particularly as the arrangement made for the reduction
of the Interest on the New Consolidated debt was so made
under and by virtue of an Act of Parliament of his present
Majesty

Majesty and done on principles of fair Justice to his said Highness Waw Law Law and his several Creditors and in such a manner as was consistent with the situation of his Highness's finances and resources after the heavy expences he had incurred by a long and calamitous War in the Heart of his Country so that his Creditors who were sufferers by such reduced Interest had a claim to similar Indulgence from their Creditors at large by moderating the rigor of the Law and giving time, till a reistablishment of the public resources of his Highness the Nabob should enable him to discharge his debts and thereby enable him the Defendand and the said Concern to discharge their several Obligations and thereupon the said Defendant insisted that his situation had a claim to the benegn consideration of the said Mayors Court for a reduction of Interest on the very principle which had induced the Legislature of Great Britain to moderate the Interest as aforesaid on the debt due by his said Highness the Nabob And the said Defendand in his said Rejoinder lastly said that even on the supposition that his debt to the Compl=

=and

Complaintent originated in the manner as stated in the Replication he the Defendant had done no otherwise with the said Sir Robert Barkers money than he had done with his own for it was well known that the amount charged by the said Sir Robert Barker to be due to him from the Defendant bore a very small proportion to the claims which he the Defendant had upon his said Highness the Nabob of the Carnatic

And these Respondents to admit that upon these proceedings Issue did join and rules passed for the Examination of Witnesses but that the said Defendant having filed an Affidavit shewing that the said Sir Robert Barker had departed this life the suit became abated and remained so until the same was revived by these Respondents as acting Executors of the said Robert Barker who by their said Attornies filed a Bill of Revivor wherein these Respon= dents did set forth and state that the said Sir Robert Barker did in his lifetime duly make and publish his last Will and Testament bearing date the Twenty second day of January which was in the year of Our Lord one thousand seven hundred and eighty nine and did thereof constitute and appoint these Respondents with

John

John Cockrell and George Bristowe Esquires his Executors
That as two of the Executors of the same will they duly prvd
and obtained probate thereto in the Prerogative Court of
Canterbury with power reserved to the said John
Cockrell and George Bristowe the other Executors in the
said Will named as by the Exemplification thereof
in the possession of these Respondents Attornies and
ready to be produced when required would more fully
and at large appear And these Respondents by their
said Attornies having in their said Bill of Revivor
stated the several proceedings that were had in the
said Cause previous to the abatement thereof They did
thereupon pray that the said Suit and all orders
and proceedings therein might stand and be revived
against the said James Call and that they might
be put in like state and and condition as the same
were in at the time they so became abated Which
prayer was complied with and the suit accordingly
stood revived

And these Respondents further
say that Publication having afterwards passed
the Cause was set down for hearing and came on to be

heard



heard on Saturday the Thirtieth day of April last past
by and before the said Honble Mayors Court who were
pleased to order and decree that the said Appellant
should pay unto these Respondents the sum of Ninety
Thousand five hundred and fifty one Pagodas Forty
two Fanams (90551. 42) with all such Interest as
then was or should thereafter become due thereon
until full payment should be made also all Costs of
Suit as by the said Decree of the said Mayors Court
copy whereof is hereunto annexed relation being there-
unto had will more fully appear From which Decree
of the said Mayors Court these Respondents
that the said Defendant did appeal to the Honble
Court of Appeals at Madraspatnam and did therein
among other things set forth that the said Mayors
Court did not in their said Decree express any time
for the stay of Execution notwithstanding the many
equitable Circumstances set forth in the pleadings
of the said Cause and stated to the Court at the
hearing thereof wherefore he the said Appellant
conceived that the said Decree was contrary to the
principles of Substantial Justice for certain Reasons
Set forth

Set forth and stated in his said Appeal and to which these Respondents crave leave to refer

And these Respondents admit that they did by their said Attornies file and put in an Answer to the said Appeal and to the first Reason given by the said Appellant namely that the Estate of the said Sir Robert Barker had no right to a preference of Creditors of an equal degree these Respondents for Answer thereunto prayed leave to observe that they had no Kind of concern with any other Creditors (if any there were) nor could any other Claim whatever affect that of Sir Robert Barkers which was clear and distinct from any other persons That the said Sir Robert Barker had no other more left than coercive means to procure that Justice and attention to his claims which it demanded and which every amicable measure had failed in obtaining

To the Second Reason these Respondents for Answer said they admitted that an Act Parliament had reduced the Interest to six per Cent on certain claims which the said Appellant and

others had upon the Nabob Wau Law Jau Commonly called the New Consolidated debt and that such reduction was on principles of fair Justice to him the said Nabob yet these Respondents could not see how such reasoning could apply to the said Sir Robert Barker who never was Interested or concerned in their speculative projects and who never could hope or expect to derive any benefit therefrom, that these Respondents had already shewn that the said Appellant had executed the Bond in question on account of certain monies which he had received as the Agent or Attorney of the said Sir Robert Barker and which instead of remitting agreeably to his Instructions he had appropriated to his own particular use and therefore these Respondents conceived such matter of fact to be a compleat Answer to any other reasons set forth by the Appellant all of which appeared to be used for the sole purpose of Procrastination and were in every respect Extraneous nugatory and impertinent

And these Respondents admit that the said Petition of Appeal and their Answer thereto came on to be heard and determined on the Thirty

first

first day of December last past by and before the said Court of Appeals at Madras who were pleased to affirm the Decree of the said Mayors Court with Costs of Suit as by the said Decree copy whereof is hereunto annexed relation being thereunto had will more fully and at large appear And these Respondents deny that there are any equitable Circumstances in the case of the Appellant which could have warranted the said Honble Mayors Court and Court of Appeals to express any time for a stay of Execution on the Decree or Judgment they have passed, on the contrary the Respondents consider the arguments adduced by the said Appellant in his several Pleadings as foreign and irrelevant and which the said two Courts could pay no attention to.

These Respondents consider this last Appeal to your most excellent Majesty in Council praying a reversal of the Decrees of the Courts of Madras for the Reasons adduced by the said Appellant in his Appeal to the Court of Appeals at Madras as an insult to Justice and a direct Infringement on the several Acts which the Legislature has made and passed

passed to avoid unnecessary delays of Execution.

For all which matters and things these Respondents humbly trust Your Your most excellent Majesty in Council will be graciously pleased to affirm the aforesaid Decrees of the Courts of Madras with exemplary Costs and that these Respondents may receive such other and further relief as to your most Excellent Majesty in Council may seem meet

(signed) George Chalmer
Solr for Respts

Mayors.

Mayors Court at
Madraspatnam

Saturday the 30th day of April
Anno Domini 1791

Present

Josias dupre Porcher Esqr Mayor
Andrew Ross and Benjn Roebuck
Aldermen

Between William Devaynes and
Samuel Pepys Cockrell of the County of Mi
-ddlesex in the Kingdom of Great Brita
acting Executors of Sir Robert Barke
Knight and Baronet deceased by their
Attornies Charles Cockrell and Henry
Trail of Calcutta in the Kingdom of
Bengal by their Attornies William
Balfour John Spalding and Oliver Ell
of Madras Esquires Complainants and
James Call Esquire of Fort St George a
Senior Merchant in the Service of the
Honble the United English East India
Company Defendant.

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides on reading the Complainants Bill with Copies of an Bond an Account Current and a Letter of Attorney annexed the Defendants Answer the Replication the Rejoinder the Bill of Reviver with Copies of Powers of Attorney annexed. Five Exhibits on the part of the Complainants 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 Complainants the full and just sum of Ninety Thousand five hundred and fifty one Star Pagodas and Forty two Fanams / Star Pagodas 90.551.42 / 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 Court

/Signed/ G Taylor
Regr

True Copy
G Chalmer
Solicitor for Respt

Court

To the Honble Major General

In the Court of Appeals
at Madraspatnam

William Medows

President in Council
Fort Saint George

Between Thomas Pelling John de Fries Senior Adrian de Fries and John de Fries Junior Complainants

and

Nicholas Pitts Defendant

The Humble Petition and Appeal of the above Named Defendant

Sheweth

That on the Thirteenth day of May in this Present Year of Our Lord One thousand Seven hundred and Ninety One the above Named Complainants did file a Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner for the Recovery of the Sum of One thousand two hundred and Six Star Pagodas Forty one Fanams and seventy seven Cash Charged to be due and owing to them by your Petitioner upon a

Filed in my Office the 4th July 1791
Chas St. White

Bill

Bill of Exchange or Copy whereof is Annexed to the said Bill of Complaint And your Petitioner Sheweth that a Summons did Issue from the said Mayors Court directing your Petitioner to appear to and Answer the said Bill of Complaint and Accordingly your Petitioner did Appear by his Attorney at Law and the usual Rules having passed for your Petitioner to Answer Your Petitioner Sheweth that on the Twenty first day of June Last before such Answer could be prepared the said Mayors Court at the Instance of the Complainants's Attornies passed a Decree that your Petitioner should Pay unto the Complainants the said Sum of One thousand two hundred and Six Pagodas Forty One Fanams and Seventy Seven Cash together with the Interest due or which might grow due thereon as also all Costs of Suit as will Appear by a Copy of the said Order or Decree herewith lodged

From which said Order and Decree of the said Mayors Court your Petitioner doth Appeal to this Honble Court as he Conceives himself Aggrieved and injured thereby Because it is the Practice of the

said

said Mayors Court to grant a further time of several Weeks According to the Circumstances of the Case for a Defendant to put in his Answer therefore your Petitioner humbly Submits that no Prejudice could have happened to the Complainants to by granting a further time for Your Petitioner to file his Answer And also because Your Petitioner declareth that altho he hath accepted the Bill of Exchange for a Specific Sum and payable on a day Certain nevertheless he did as in the Connection that he should Receive from the Persons to whom he sold the Effects for the purchase whereof he [illegible] so Accepted the said Bill the full Amount of Such Acceptance, instead of which he hath only Received Five Hundred and Sixty Pagodas which Sum he has been and Still is ready to pay to the Complainants and he hath offered the same Accordingly And to give the Bills on the Several Purchasers of the said Goods for the difference between the said Sum of Five Hundred and Sixty Pagodas and the full Amount of the Complainants demand and Interest thereon

Your Petitioner therefore Prays that this

this Honble Court will be pleased to set aside the Decree of the Mayors Court and to Order that a Rule may pass for a further time of One Week only your Petitioner to file his Answer to the said Bill of Complaint of the Complainants in Order that he may Submit the foregoing Matters and Pray the Equitable Judgment of the said Mayors Court thereon.

/signed/ Popham
Solicitor for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 21st Day of June Anno Domini 1791

Present

Josias Dupre Porcher Esquire Mayor

Andrew Ross — John Mitford

James Amos — and — Aldermen;

Thomas Pelling John De Fries Senior Adrian De Fries

and John De Fries Junior

Nicholas vers Gillet

The Attornies for the Complainants produce to the Court a Certificate from the Register Setting forth that the — Usual

Usual Rules have issued for the Defendant to Answer the Complainants Bill which he has Neglected doing they therefore pray that a Decree may now pass- to which the Opposite Attorney Objects and prays that he may be Allowed a further time of One Week to put in the Defendants Answer- The Court having taken the same into Consideration it is Ordered 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 Bill which he has Neglected doing This Court doth therefore think fit to Order and Decree that the Defendant shall pay unto the Complainants the full and Just Sum of One Thousand Two Hundred and Six Pagodas Forty One Fanams and Seventy Seven Cash /Pagodas 1206..41..77/ 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/ G Taylor
Rgr.

To the Honble Major General William Medows
Presedent and Governor &c. In Council
Fort Saint George

In the Honble the Court of Appeals

Between Necholas Gillet appellant
and Thomas Belleng John De Fries
Senior Adrean De Fries and John
De Fries Junior Respondents

The Answer of the above named Respondents to the Petition and Appeal of the above named Appellants

These Respondents admit that they did on the thirteenth day of May in the present Year of Our Lord One Thousand Seven hundred and Ninety One file a Bill of Complaint in the Mayors Court of Madraspatnam Against the Appellant for the recovery of the Sum of One Thousand two Hundred and Six Star pagodas forty One fanams and Seventy Seven Cash Charged to be due and Owing to them by the Appellant upon a Bill of Exchange Copy Whereof was Annexed to these Respondents said Bill of Complaint and these Respondents

Filed in my Office the 23d July 1791
Chas W White Clk

admits that a Summons did Issue from the said Mayors Court directing the Appellant to Appear to and Answer these Respondents said Bill that the Appellant

Appellant did appear by his attorney at Law and that
the usual Rules having been found for the Appellant to
Answer and the Appellant not having Complied ~~w~~
therewith the said Mayors Court did on the twenty
first day of June last Decree that the Appellant
should pay unto these Respondents the said Sum of
One thousand two Hundred and Six pagodas forty
One fanams and Seventy Seven Cash together with the
Interest due or which might grow due thereon — And
these Respondents further say that the said mayors
Court in granting the Decree as aforesaid were Actuated
by Equity and good Conscience and that the said
Decree is conformable to established practice and ~~s~~
therefore these Respondents say that the Appellant
is not Aggrieved thereby nor has he any ~~just~~ ground
to Appeal therefrom to this honble Court, nor do the
Reasons urged by the Appellant in support of his
pretended grievance in any wise give a color thereto and
in Answer to such the Reasons of the Appellant these
Respondents say that although the said Mayors
Court will sometimes upon sufficient Cause shewn
grant an indulgence to a Defendant after the usual

Rules

Rules for answering have Expired; Yet that such is
not the practice thereof. And these Respondents
further say that all manner of Delay is injurious
to a Suitor who it is to be presumed is forced into
a Court by the litigious Conduct of a Defendant
to Obtain by Coercive means that Justice which he
Could not prevail upon the Defendant to grant
him by an amicable Accommodation and there-
upon these Respondents say, notwithstanding
the insinuation of the Appellant to the Contrary,
that the Greatest prejudice would have arisen to
the Cause of these Respondents had the said
Mayors Court upon the bare deceit of the
Appellants Attorney granted a further time for
Answering after the usual Rules had Expired
And these Respondents say that the Appellants
Reason for Appeal Wherein he shews what he
pretends would have been the grounds of his Answer
to these Respondents said Bill had the said
Mayors Court Extended the Rules for Answering
as aforesaid is Altogether irregular and impertinent
because these Respondents say that it does not

Appear

appear by the Copy of the Decree of the said Mayors Court that such matter was ever stated to the said Court, nor does the Appellant say that it is On the Records thereof and for as much as any matter introduced in ai Petition of appeal not in evidence before the Court below is inadmissible as contrary to the practice of this Honble Court these Respondents humbly pray that the shewing of the Appellant in his said Petition of Appeal begining with the Words and also Your Petitioner Declareth" and ending with the Words "and Interest thereon" may be expunged from the Appellants Petition of Appeal with Costs to be paid by the Appellant

For all which Reasons and such others as may be offered at the Hearing these Respondents pray that this Honble Court will be pleased to Confirm the Decree of the said Mayors Court and to Order that the Appellants Petition of Appeal be Dismissed with Costs

/signed/ James Stuart Hall
John Hamilton
Sol$^{rs}$ for Resp$^{ts}$

Court

Court of Appeals
at
Madraspatnam

Saturday the 31$^{st}$ day of December
Anno Domini 1791

Between Nicholas Gillet of Madras Merchant appellant and Thomas Pelling John De Fries Senior Adrian De Fries & John De Fries Junior of the same place Merchants 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 Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 21$^{st}$ day of June Anno Domini 1791 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 do think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court to do stand Affirmed and that Appellants Petition be hence Dismissed with Costs

/Signed/ Chas. N. White Clk

To

To the Honble Major General William Medows
President in Council Fort Saint George

In the Honble the
Court of Appeals

Between Mootiah Pilla of Madras
Inhabitant Complainant and
Anecha Pilla of the same Place
Inhabitant Defendants

The Humble Petition and Appeal of the
above Named Defendant

Sheweth

That on the Twenty fourth day of July
which was in the Year of Christ One Thousand Seven
hundred and Ninety the abovenamed Complainant
did File a Bill of Complaint in the Honble Majors
Court Against your Petitioner therein stating That
One Vadamela Pilla of Madras Inhabitant on or
about the Fifth day of February which was in the
Year of Christ One Thousand Seven hundred and
Eighty Seven having Occasion to borrow the Sum
of Sixty Eight Pagodas Current money of Madras
applied to him the Complainant to lend and advance
him the same and which he accordingly did To secure the

Filed in my Office
the 17th October 1791
Chas. S. White
Clk

Repayment of which the said Vadamela did by a certain
Cadjan Instrument or Writing bearing date the Fifth day
of February which was in the Year of Christ One Thousand
Seven hundred and Eighty seven aforesaid, mortgage to
Rausapilla of Madras Inhabitant the Complainants
Brother in Trust for him a Certain Chaulery Bill
of Sale of a house situated in the Black Town and particu-
=cularly Described and mentioned in the said Mortgage
Bond And the said Bill of Complaint did further state
and setforth that the time limited and appointed for
the Payment of the said Bond, and of the Monies
therein contained having elapsed and the said
Vadamela having neglected and omitted to pay off and
Discharge the same the Complainants Brother and
Trustee the said Rausapella on or about the 12th day of
August which was in the Year of Christ One Thousand
Seven hundred and Eighty eighty preferred his Bill of
Complaint in the said Honble Court against the said
Vadamela for the recovery of the said Sum of Sixty eight
Pagodas and of the Interest thereof in Trust for him
the Complainant as aforesaid And the said Bill
did further state that the said Vadamela on or about

the

the Second day of September then following by his Attr
at Law appeared to the said Bill of Complaint and
that such proceedings were had in the said Cause
that on or about the Second day of October in the said
Year of Christ One Thousand Seven hundred and
Eighty Eight the Decree of the said Honble Court was
pronounced in the said Causes whereby the said Va
Vadamela was decreed to pay unto the said Complai
nant the said Sum of Sixty Eight Pagodas together
with Interest for the same until paid and also
all such Costs as had been sustained in the Recovery
thereof. And the said Complainant did further
state that his said Brother and Trustee being about
to Sue Execution upon the said Decree, One
Anechapilla of Madras Inhabetant (meaning
Your Petitioner) thereupon in Consideration that
the said Execution should not Sue upon the
Foot of the said Decree and that all proceedings
should cease against the said Vadamela in the
said Suit did by a certain Cadjan or Written
Instrument
~~Instrument~~ bearing date on or about the Fourth
day of November in the Year of Christ One thousand
Seven

Seven hundred and Eighty eight Acknowledge to have borrowed
and received of the said Complainant the Sum of One
hundred Star Pagodas being the amount of Principal
Interest and Costs then due and owing upon the Foot of
the said Decree which Sum of One Hundred Star Pagodas
the said Bill did state that your Petitioner undertook and
faithfully promised to pay unto the said Complainant
on the Forth day of February next ensuing, which was
in the Year of Christ One Thousand Seven hundred
and Eighty nine if the said Vadamela did not on or
before the Thirteenth day of December in the Year One
Thousand Seven hundred and Eighty eight pay the
same to the said Complainant, as by a true and
faithful Translation of the said Cadjan or Written
Instrument to the said Bill annexed might more
fully appear The said Complainant did further
set forth that confiding in the said undertaking
and engagement of Your Petitioner he did not Sue
Execution upon the Foot of the said Decree but
acknowledged the Debt and Costs thereon to be
satisfied and he did further state that the said
Vadamela did not on the said Thirteenth day of
December

December which was in the said Year One Thousand
Seven hundred and Eighty eight or at any Other time
whatever pay to him the Complainant the said Debt
so due and owing or any part thereof and thereupon
he brought his Action against your Petitioner upon
the Security he had entered into as aforesaid"

To which said Bill of Complaint your
Petitioner did by means of his Attorney at Law enter
an appearance and on the Fourteenth day of September
which was in the Year of Christ One Thousand Seven
hundred and Ninety filed his Answer wherein your
Petitioner admitted "That he did Execute the Bond,
Copy whereof is to the said Complainants Bill annexed
whereby Your Petitioner undertook that the said
Vadamela Pilla should pay the said Complainant
the Amount thereof and such Interest as might or
should become due at the Rate of Twelve Pr Cent per ann
before the Thirteth day of December following, in
default of which Your Petitioner did by the said Security
Bond Engage to pay off the Principal Sum with
the Interest due thereon by the Fourth day of
February in the Year of Christ One Thousand Seven

hundred

hundred and Eighty nine; and thereby redeem the
Choultry Bill of Sale of the House which was Mortgaged
to the said Complainant by Vadamela Pilla and in
failure thereof the said Complainant was by Your
Petitioner authorized to recover the Amount from
Your Petitioner by a Prosecution in the said Mayors
Court And your Petitioner did in his said Answer
further state, that before the Time had expired which
was limited in the said Bond for Vadamela Pilla to
pay the Amount thereon due that your Petitioner
received a Letter from him bearing date the Twenty first
day of December in the said Year of Christ One Thousand
Seven hundred and Eighty eight to the following effect
and purport "That he had that day paid to the said
Complainant the Sum of Seventy Pagodas in part discharge
of the said Security Bond that he hoped your Petitioner
would pay to the said Complainant the remaining
Thirty Pagodas and get into his Posession the Bill of
Sale, that had been so mortgaged and that afterwards
he would return the Thirty Pagodas with the Interest
that might be due and redeem the same" a true and
faithful Copy of which Letter is to the said Answer

Annexed

Annexed and to which Your Petitioner humbly prays
reference might be had and that it might be taken
part and parcel thereof the Original being in his Posses
and ready to be produced when required And Your
Petitioner in his said Answer did further state that
after the Reciept of the said Letter he sent for the
Complainant and having in the presence of several
Witnesses informed him of the Contents thereof
him whether he had received the said Sum of Two
Pagodas in part Payment of the said Vadamelas
debt or not to which he replied that he had
received it And Your Petitioner did further
in Order that he might be enabled to pay off
remaining Balance of Thirty Pagodas and
redeem the Security Bond which he had gi
to the Complainant for and on behalf of the
Vadamela Pilla requested the Complainant
furnish the measurement of the House and Gr
of the said Vadamela Pilla agreeably to the Te
deeds thereof in Order that Your Petitioner m
place Advertizements on the said House and
of the Premises by Publick Sale or Outcry That

Accordingly the Complainant did furnish the required
Dimensions and proper measures were taking for the
disposal thereof when your Petitioner happening to be
at the House of one Latchoomana Pilla of Madras an
Inhabitant a Person of the name of Vencatasay pilla
Came in and your Petitioner having occasion to mention
the intended Sale of the said Vadamela Pillas House
the said Vencatasay Pilla did thereupon inform
Your Petitioner that the said Complainant had
promised and agreed with him in the presence of
several Witnesses to yield up and deliver the Bill
of Sale and Title deeds thereof through the means
of Vadamela Pilla Brother That being surprized
at so Extraordinary a piece of Information Your
Petitioner called upon the said Complainant to
know if such was the Cause, whereupon he positively
denied it but being afterwards Confronted by the Person
before whom he had said it, he then acknowledged
the Fact And Your Petitioner from such circumstan-
ce Considering himself exonerated from paying the
remaining Thirty Pagodas requested him to deliver
upon the Security Bond with which request the
said

said Complainant agreed and Faithfully promised to deliver it up as soon as his Brother in whose Possession he mentioned it to be, should arrive from the Country And your Petitioner in his said Answer did further say, that from the aforegoing Statement of Facts he trusted it would evidently appear to the said Mayors Court that he was not indebted to the said Complainant in any Sum whatever and that the present Suit was most wrongfully and unjustly instituted against him for the said Complainant having received the Sum of Seventy Pagodas from the said Vadamela Pilla and having entered into a negociation with the said Vencatasay Pilla for the Payment of the remaining Thirty Pagodas that the Condition of the Security Bond had been thereby fulfilled, and Your Petitioner Exonerated from all future Claim or Demand "To which said Answer your Petitioner Sheweth That the said Complainant did on or about the Nine-teenth day of October which was in the Year of Christ One thousand Seven hundred and Ninety Four a Replication therein among other things setting forth "That he the Repliant knew not

Whether

whether your Petitioner did or did not at the time in his said Answer mentioned or at any other time whatever receive from Vadamela Pilla the Letter Copy whereof was to your Petitioners Answer annexed That the said Vadamela Pilla never did any Person on his part or behalf pay unto him the Repliant the Sum of Seven-ty Pagodas in the said Letter mentioned or any part thereof and that the said Letter written or pretended to be written by the said Vadamela Pilla with a View thereby to defeat the Repliant from recovering from your Petitioner the amount of a Debt for the true Payment whereof he had become Security could not as he the Repliant was advised and believed be received as Evidence of the Payment of Monies therein mentioned and that if the said Vadamela Pilla had actually paid the said Seventy Pagodas in the said Letter mentioned he should have produced some Voucher acknowledging the Receipt thereof but the said Repliant did pretend the Fact to be that the said Vadamela Pilla never did pay the said Seventy Pagodas or any part thereof and therefore could not produce any such Voucher and

that

that the said Letter was a mere Fiction and calcula
to prevent him the Repliants recovering from
Petitioner the amount of his said Security Bond
by that means to bring the said Vadamela Pilla
would ultimately reimburse your Petitioner the
Payment of the amount And the said Repliant
did further deny that your Petitioner did
to him the Repliant at the time in his said
mentioned and that your Petitioner did not
presence of Several Witnesses or at all inform
the Contents of the said Letter neither has
Petitioner asked the Repliant whether he has
received the Sum of Seventy Pagodas for that
such meting was ever held nor did any such
=sation ever take place and therefore that he
not have informed your Petitioner that he had
the said Seventy Pagodas And by way of showing
the Falacy of the said pretended Letter the said
Repliant in his said Replication setforth that
said Vadamela Pilla on the Twentieth day of
December One Thousand Seven hundred and
which was one day previous to the day upon

the Payment of Seventy Pagodas in the said Letter mentioned
is pretended to be made was actually committed to Prison at
the Suit of One Vencatachellum Pillé of Madras for a
Sum of One hundred and two Pagodas Twenty Seven
Fanams, and that after the Date of the said pretended
Letter he demanded from your Petitioner the Payment
of the Principal Money and Intrest due upon his said
Bond and that your Petitioner did in the presence
of many credible Witnesses alledge his inability of
then paying off the said Debt. And the said Repliant
in his said Replication admitted that your Petitioner
did but not in order to pay off what was called the
remaining Balance of Thirty Pagodas, apply to him
the Repliant to furnish the Measurement of the
House and Ground in your Petitioners said Answer
mentioned and which the Repliant accordingly did
And the said Repliant did further setforth that he
knew not whether proper or any measures were taking
or taken for the disposal of the Premises in your
Petitioners said Answer mentioned, nor whether Venca
=tasay Pilla did upon that Occasion inform your
Petitioner that he the Repliant had promised

And

And agreed to deliver upon the Bill of Sale and Title deeds upon being paid the Sum of Thirty Pagodas, that if the said Vencatasamy Pilla did so inform your Petitioner, he informed him of that which never existed and that he verily believed that the conversation as pretended to have past between the said Vencatasamy Pilla and your Petitioner was solely calculated to lay a Foundation for introducing at a Future Period the Testimoney of the said Vencatasamy Pilla in that behalf with a View thereby to defeat him the said Repliant in the Recovery of his said just demand And the said Repliant further set forth that he never did enter into any Negociation or look to any other Person whatever for the Payment of that, which your Petitioner Called the remaining Balance of Thirty Pagodas but that he looked to your Petitioner solely and held him responsible for the full amount of his said Bond. And that he never promised or agreed to deliver up the said Bond until the same should be paid off and that not being done he submitted to the said Mayors Court, that so far from the Bond being discharged, it remained and was in full force To which said Replication your Petitioner did File and Amended Rejoinder wherein your Petitioner did setforth "That the Bond upon which the Repliant had brought his Action having been discharged in manner as your Petitioner in his Answer upon Oath had setforth, that the said Repliant had no further Claim or demand upon him and your Petitioner in his said Amended Rejoinder insisted as he would thereafter prove by the Testimony of credible Witnesses that the said Repliant, when Questioned by your Petitioners did acknowledge to have received from the said Vadamela Pilla the Sum of Seventy Pagodas in manner as your Petitioner has fully stated in and by his said Answer And your Petitioner further setforth that he would also be able to prove that the said Repliant had frequently promised to return your Petitioner the Security Bond upon which the present Action has been brought having acknowledged the same to be fully satisfied"

And your Petitioner further sheweth that

that upon these Proceedings Issue and Joen and Rules passed for the Caminations of Witnesses whereby Your Petitioner did adduce such clear and substantial proof in support of his defence and the matters by him alledged as at once supplied the defect which the Complainant dwelt so much upon namely the not obtaining a Voucher for the Seventy Pagodas paid by the said Vadamela Pilla on account of the Security Bond entered into by Your Petitioner And Your Petitioner sheweth unto this Honble Court that Pillay Alecatoor Vena Chitty was produced on the part of Your Petitioner and deposed to the following purport That he was a Subscribing Witness to the Security Bond entered into by your Petitioner and upon which the present Action is founded. Being a Witness to the Bond he knew well and therefore proves the Reason for which it was granted namely that your Petitioner undertook to pay it only in default of Vadamela Pilla failing to do so He then deposes that Vadamela did actually pay the Sum of Seventy Paigodas in his presence of the

Mootiah

Mootiah Moodelliar To the last Interrogatory he says that Vadamela Pilla did require a Receipt but that he told him this was altogether unnecessary as he would Endorse it on the back of the Bond That the said Vadamela Pilla then referred him to your Petitioner for the Payment of the remainning Thirty Pagodas and Desired him to deliver up to your Petitioner the Bond and Bill of his House as soon as he should receive it from your Petitioner, and which he was Promised to do And that Vadamela Pilla did thereupon write to your Petitioner the Letter, Copy whereof is annexed to the said Answer And Your Petitioner sheweth that the aforegoing Evidence is Corroborated by that of Trevedemaroo ther Mootiah Moodelly who also proves that Seventy Pagodas was paid by Vadamelo Pilla on Account of the Bond. That the Complainant having asked for the remaining Thirty he was referred by Vadamela Pilla to your Petitioner saying that he would receive it from him on Condition that he would deliver up the Bill of Sale together with the Security Bond of your Petitioner, to which the

Complainant

Complainant agreed, and accordingly Vadamela Pilla gave your Petitioner Information of the circumstance by writing the Letter which is annexed to the Answer And your Petitioner further sheweth that the said Testimoney is further supported by the Evidence of Vadamelaa Pilla himself who deposes that he did actually pay Seventy Pagodas in part of the said Security Bond And your Petitioner further sheweth that Kistnachellum Tellesinga Pilla proves a matter setforth by your Petitioner in his Answer to the said Complainants Bill and by him denied in his Replication for in the Evidence give by the said Kistnachellum Tellesinga Pilla he thus Deposes that he was present when your Petitioner sent for the Complainant to shew him the Letter which he had received from Vadamela Pilla and askid him if he had received the sum of Seventy Pagodas according to the Tenor thereof to which the Complainant answered in the affirmative and that as soon as he should recieve the remaining Thirty Pagodas he would return to the Defendant the Security Bond which he had Executed, which Evidence your Petitioner sheweth is supported by that of Ramasawmy Pilla who deposes to the same effect and proves that the Complainant promised to deliver up the Security Bond Executed by your Petitioner and Bill of Sale of Vadamelas' House upon receiving the residue of Thirty Pagodas And your Petitioner further sheweth unto this Honble Court that Jagarey Moodelly proves a very material Circumstance setforth in the Answer namely that your Petitioner required the Complainant to furnish him with the dimension of the House that was Mortgaged in Order that he might dispose of the Premises, and pay the Residue of the Debt still due That Accordingly the Dimension were furnished and Advertizements put up That being afterwards at the House of One Latchoomany Pilla where your Petitioner and One Vencatasa Pilla were present that a Conversation took place about the Sale of Vadamela Pilla's House, that your Petitioner having Occasion to speak of the intended Sale he was to make the said

Vencatasa

Vencatasa Pilla mentioned that the Complainant had made an offer to him of the Bill of Sale provided he would pay the residue of Money due That in Consequence thereof Your Petitioner went with the said Teagarry Moodelly to the Complainant to ask him if he had really entered into such negociation that he denied it at First but being afterwards Confronted by the said Vencata= =say Pilla he Confessed the whole and promised to deliver up the Security Bond which Your Petitioner had Executed Conceiving he had no further Claim on him And your Petitioner as further Sheweth that the said Vencatasay Pilla in a Very full and ample manner supports the Evidence of the said Teagarry Moodelly and proves that the Complainant proposed that he should pay him the Residue of Thirty Pagodas, through or by the means of Vadamela Pillas Brother when he would deliver up the Security Bond and Bill of Sale And your Petitioner further Sheweth that Narrain a Boor proved that he did frequently demand from the Com=

Complainant at your Petitioners desire the Security Bond in Question That he did for the Space of Six months at different times make Application on that head during which time he gave him many Promi= =ses although they never were fulfilled

And your Petitioner sheweth that in Opposition to such clear and substantial proof nothing but weak futile and Contradictory evidence was adduced on the part of the Complainant as may appear by the Testimony of Amachella Pilla the first and principal Evidence on that side He proves that the Complainant in his presence did demand of your Petitioner payment of a Secu= =rity Bond, being the Bond upon which the Pre= =sent Action was brought, but that no Money was paid thereon That afterwards the Defendant in the latter end of the Month again demanded Payment and which the Deponent says your Petitioner promised to Comply with in a short time, but to this request the Complainant peremptorily refused to acquiese and insisted on immediate Payment that Therefore your

Petitioner

Petitioner together with one Latchmany Pilla earnestly requested the Complainant to allow him a respite of only Ten days when he might rely on the Principal Sum and Interest due on the said Bond being discharged And your Petitioner begs leave to observe that the purport of the said Arnachella Pillas evidence is meant to shew that the said Complainant did produce the Security Bond to your Petitioner and that it was his intention to exact most rigidly the Payment thereof and that with infinite difficulty a Respite of Ten days could be Obtained. Such was the Complai= =nants Intention Your Petitioner prays leave to call the attention of this Honble Court to the Date of this Transaction which by the Complainants own shewing in Evidence happened in the Month of February One Thousand Seven hundred and Eighty nine whereas the present Action was not brought by the Complainant till the Twenty fourth day of June in the succeeding Year One Thousand Seven hundred and Ninety making an Intervening space of near Sixteen Months. which circumstance when corroberated by the Strong and Conclusive Testimony adduced on the part of your Petitioner carries with it the most clear and forcible Conviction and shews that the Sum of Seventy Pagodas was paid by the said Vadamela Pilla and and that the Complainant was so satisfied in himself that he had no further Claim upon your Petitioner otherwise the Complainant who had at first been so peremptory would not without some good reason for the same Cease so long in his demands And your Petitioner further sheweth that the said Complainant having Examined several other Witnesses particularly one Ponnapen Moodelly to the Letter so written by the said Vadamela Pilla informing your Petitioner of his having paid Seventy Pagodas That publication passed in the said Cause And your Petitioner further sheweth that after the Depositions had been delivered into Court and duly Published that the said Complainant did File Exception to the Deposition of the said Vadamela Pilla and to the Exhibit A being the Letter by him written

written as aforesaid and for cause of Exception and
Set forth and state "That the said Vadamela Pilla
was materially Interested in the Event of the suit
and therefore an inadmissible Evidence inasmuch
as the Bond upon which the Complainant had
brought his suit Against Your Petitioner was
granted by your Petitioner for a Debt thereduc
and owing by the said Vadamilla Pilla and
because that in the event of your Petitioner being
Decreed by the said Mayors Court to pay the
amount of his said Bond to the Exceptant he the
said Vadamela Pilla would be ultimately bound
to reimburse your Petitioner Wherefore the Excep.
= tant said it was manifest that the Deposition
of the said Vadamela Pilla to the Third Interroga =
= tory was Calculated to screen him the said =
Vadamela Pilla from any Claim which your
Petitioner might have upon him in that respect
for all which Causes the said Exceptant did
Except to the said Third Interrogatory and to the
Deposition of the said Vadamela Pilla taken =

thereto

thereto, and to the said Exhibit and prayed that
the said Third Interrogatory and Deposition therein
Excepted together with the said Exhibit might be
suppressed and not be allowed to be Read or received
in Evidence at the Hearing of the Cause, and that
your Petitioner might be directed to pay the Charge
of the Copy of the said Interrogatory and Deposition
together with the Cost of the Exception "

To which Exception your Petitian did
for Answer Set forth "That Exceptions of the said
Complainant were unjustly grounded and that
the Evidence of the said Vadamela Pilla was to
no means inadmissable or liable to Exception
because it did evidently Appear by and upon the
Face of the Bond upon which the present Action
was brought that your Petitioner had Covenanted
to become Answerable for the Payment thereof only
in default of the said Vadamela Pilla failing to
discharge it That as Vadamela Pilla had paide
the Sum of Seventy Pagodas in part Discharge of
the said Bond, he gave Information to your Petitioner

of the

of the Circumstance thro or by the means of the said Letter or Exhibit Copy whereof is annexed to Your Petitioners Answer and therein particularly referred to and which the said Complainant had prayed might be Expunged as well as the Deposition of the said Vadamelo Pella in support thereof And Your Petitioner did in his said Answer further State that the Law required the best Evidence and on this occasion the Evidence of the said Vadamelo Pella was the best that could be produced and ought to be admitted for the sake of Substantial Justice the more especially as the Facts proved by him were Corroberated by the Testimoney of the Witnesses to whom the said Letter had been also produced and shewn, and therefore if the said Exhibit was suppressed it would tend to a suppression of the Depositions of the said Witnesses to whom no Exception whatever had been made " For all which matter your Petitioner prayd the Exception might be over ruled, &

And your Petitioner further sheweth that the said Cause was set Down for hearing and a day

day being appointed for that purpose to wit Tuesday the Fourth day of this present month of October the said Exceptions came on first to be Argued when the said Mayors Court having taken the same into Consideration were of Opinion that the Exceptions were good and sufficient and therefore Ordered that the Third Interrogatory Exhibited to the Deposition of Vadamelo Pella taken thereto as also the Exhibit Marked Letter A with the Evidence on both sides taken thereto should stand suppressed And it was further Ordered that your Petitioner should pay all Costs attending the Exceptions as by the said Order. Copy whereof is hereunto annexed for the Inspection of this Hon^ble Court to relation being thereunto had, doth and will more fully and at large appear And your Petitioner further sheweth unto this Hon^ble Court that by the said Order your Petitioner was deprived of the Testimony of Three of his Evidence to the Sufficiency of which no Objection whatever had been made by the Opposite Party nor could any possibly be shewn And the said Mayors

Court

Court having thus deprived your Petitioner of that Priv
which by the Express Rule of Law and Equity he was
entitled to proceeded to determine on the said Cause and
did accordingly Order and Decree that Your Petitioner
should pay unto the said Complainant the sum sued
for together with all such Interest as then was, or
should thereafter become due also all Costs of this Suit
as by the said Order and Decree of the said Mayors
Court hereunto Annexed for the Inspection of this Ho
Honble Court relation being thereunto had will
and will more fully and at large Appear. From
which said Order and Decree Your Petitioner doth
Appeal to this Honble Court Conceiving the same to
be Erroneous and that he is much aggrieved thereby
for the following among other Reasons.

First..... Because the said Mayors Court in ordering the
Exhibit A to be suppressed with the Depositions
taken thereto, did manifestly injure Your Petitioner
by depriving him of that Testimony which in every
respect was legal and admissible both in Courts of
Law and Equity For although the said Mayors Court

Might

Might have had some Reason to Consider the said
Vasconcelos Pellas as being Interested in the Event of the
Suit yet his being Interested could in no wise implicate
the Exhibit A which being a mute and dead thing
could neither be Interested one way or another being
brought forward merely in Illustration of the Pleadings
and Evidence adduced thereon.

Second..... Because admitting that the Exhibit A was really
a matter to which Exceptions could legally be made, that
the Complainant had totally waved his right thereto
by not Excepting to the said Exhibit and which he
appears to have done in a very full and ample manner
in the Interrogatory Exhibited to Pennafa Moodly.
and by the Depositions taken thereon as by the said
Interrogatory and Deposition relation being thereunto
had doth and will more fully and at large appear;
which Doctrine is grounded upon the General Rule
of Evidence Explained by Books of the first and best
legal Authority who all concur in establishing that
when any matter is Cross Examined to, that it must
be admitted in Evidence the credibility nevertheless

being

being left to the Court or Jury according to the Nature of the Case whether in Law or Equity In Harrisons Chancery Practice it is laid down That Cross Examining a Witness by one said tending to the Merits makes him a good Witness to the other side though otherwise liable to an Exception And because the said Mayors Court in causing such parts of the Interrogatories and Depositions which related to the said Exhibit to be suppressed has not only injured the Cause of Your Petitioner but have greatly embarrassed their own Proceeding For the matters contained in the said Depositions are so blended together that in Expunging one part the other must be affected thereby

Third.... Because the said Mayors Court seem to have graunded their Decree principally on the circumstance of your Petitioner not having produced some written Voucher in support of the Seventy Pagodas having been paid in discharge of the Bond which defect was amply supplied by the Evidence adduced in support thereof and ought to have Equally operated upon the said Mayors Court as if a Specifick Voucher had been

been given, it being the peculiar Province of a Court of Equity (in which light the said Mayors Court may be Considered) to give that relief which necessity requires and the Nature of the Case demands there being many Instances where Accidents and defects much more material than the present have been supplied not only in Courts of Equity but in Law

Fourth.... Because it doth appear by the Complainants own shewing in Evidence that he did Consider the Bond as having been liquidated in full, for in the Deposition given by Arnachella Pilla on the part of the Com= =plainant it is set forth that some time in the month of February which was in the Year of Christ One Thousand Seven hundred and Eighty Eight Your Petitioner with infinite difficulty and not without the Interposition of a third Person obtained a respite of only Ten days and although nearly Sixteen months elapsed between that period and the filing of the Bill yet the Intervening space is not in any way accounted for which circumstance carries with it strong presumption of the Com= =plainant

Complainants being sensible that he had no further
claim on your Petitioner

Lastly Because all his Majestys Courts of Judicature are
ought to be governed by Evidence but from which
rule the said Mayors Court have departed although
your Petitioners has amply proved every thing set up
in defence by him as also those matters which have
been denied in the pleadings of the Opposite Party.—

For all which Reasons and such others
as may be adduced at the hearing your
Petitioner humbly prays that the Order of the
said Mayors Court with regard to the suppressing
of the Exhibit A and the Interrogatories and
Depositions taken thereto may be reversed,
and that your Petitioner may be allowed to
have the Benefit thereof And that this Honble
Court will be further pleased to Reverse
the Decree of the said Mayors Court and grant
him such relief in the Premises as in their
Wisdom may seem meet.

/Signd/ J. Chalmer
Sol.r for Appt.—

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 4.th Day of October Anno Domini 1791.—

Present

Josias DuPré Porcher Esquire Mayor
Andrew Rose and James Amos
Aldermen

Mootiapillah
vers
Anchapillah

Bill with Copy of a Security Bond Annexed Read.—
Answer with Copy of the Translation of a Letter Annexed Read
Replication Read
Amended Rejoinder Read
Interrogatories on the part of the Complainant Read.—
Four Depositions taken thereunto—three whereof and so much of the Deposition N.3 not Suppressed Read.—
Exceptions on the part of the Complainant Read.—
Answer thereto Read.—

The Complainants Exceptions to the 3.rd Interrogatory Exhibited to and the Deposition of Vadamala Pillay as also to the Letter Marked A and the Answer thereto Coming on to be Argued and Determined this day in

in the presence of the Attornies on both Sides and the Court having had due Consideration thereon are of Opinion that the Exceptions are good and Sufficient it is therefore Ordered that the 3.rd Interrogatory Exhibited to and the Deposition of Vadamala Pillay taken thereto as also the Exhibit marked Letter A with the Evidence on both Sides taken thereto do Stand Suppressed and it is further Ordered that the Defendant do pay the Costs Attending the Exceptions —

Interrogatories on the part of the Defendant with a Cadjan and a Translation thereof Annexed Read Six Depositions taken thereunto — three whereof and so much of the Depositions N.4 & 5. as were not Suppressed Read — The Witness N.7 did not appear for Examination —

Additional Interrogatories on the part of the Defendant Read — Two Depositions taken thereunto Read —

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 Copy of a Security Bond Annexed The Defendants Answer with Copy of the Translation of a Letter Annexed, The Replication The Amended Rejoinder The Interrogatories and Depositions on the part of the Complainant, The Interrogatories and Depositions on the part of the Defendant with a Cadjan and Translate thereof Annexed On Hearing the Pleadings made Use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of One Hundred Star Pagodas / Star Pagodas 100 - - - / 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

/ Signd / G. Taylor Regr

Mayors

Mayors Court at } Tuesday the 4th Day of October
Madraspatnam } Anno Domini 1791

Present

Josias DuPré Porcher Esqr Mayor

Andrew Ross and James Innes

Aldermen

Between Mootiapilla of Madras Inhabitant

Complainant & Anechapilla otherwise

Anechapan of the Same place Inhabitant

Defendant

Mayors Court

This Cause Coming on to be Heard & Debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill With Copy of a Security Bond annexed, The Defendants Answer With Copy of the Translation of a Letter annexed The Replication The Amended Rejoinder The Interrogatories & Depositions on the part of the Complainant The Interrogatories and Depositions on the part of the Defendant With a Cadjan & Translate thereof annexed, 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 One hundred Star Pagodas / Star Pagodas 100 . . . / 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

P. G. Cur

/ Signed / G. Taylor Regr

To The Honourable Major General William Medows

President in Council

Fort Saint George

In The Honourable the Court of Appeals

The answer of Mootiah Pilla of Madras Inhabitant to the Petition and Appeal of Anecha Pillay of the same place Inhabitant Appellant

This Respondent not Confessing or acknowledging all or any of the Matters or Things to be true as in and by the said Petition and Appeal are Mentioned and Set forth. For Answer thereunto Saith he Admits that he did at the time in the said Petitioners said Petition and Appeal Mentioned file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam Against the said Petitioner and that he did therein Set forth That one Vadamela Pilla of Madras Inhabitant on or about the Fifth day of February which was in the Year of Christ One

Filed in my office the 16th Nov: 1791
Chas: White Clk

One thousand Seven hundred and Eighty Seven having Occasion to borrow the Sum of Sixty Eight Pagodas Current Money of Madras Applied to this Respondent to lend and Advance him the same and which this Respondent Accordingly did and that to Secure the Repayment thereof the said Vadamela did by a Certain Cadjan Instrument or writing bearing date the Fifth day of February which was in the said Year One thousand Seven hundred and Eighty Seven Mortgage to Ramaa-pilla of Madras Inhabitant this Respondents Brother in Trust for this Respondent a Certain Chaultry Pilo of Sale of a House Situated in the Black town of Madras and particularly discribed and Mentioned in the said Mortgage Bond And that this Respondent did by his Bill of Complaint further Set forth that the time so limitted and Appointed for the Payment of the said Bond and of the Monies therein Mentioned having elapsed and that the said Vadamela having Neglected and Omitted to pay off and discharge the same this Respondents Brother and Trustee said Ramaapilla on or about the Twelfth day of August which was in the

the Year of Christ One thousand Seven hundred and Eighty Eight preferred his Bill of Complaint in the said Honourable the Mayors Court Against the said Vadamela for the Recovery of the said Sum of Sixty Eight Pagodas and of the interest thereof in trust for this for this Respondent as aforesaid And that the said Vadamela on or about the Second day of September then following by his Attorney at Law Appeared to the said Bill of Complaint and that such proceedings were had in the said Cause that on or about the Second day of October in the said Year of Christ One thousand Seven hundred and Eighty Eight the Decree of the said Honourable the Mayors Court was pronounced in the said Cause Whereby the said Vadamela was decreed to pay into this Respondent the said Sum of Sixty Eight Pagodas together with Interest for the same until paid and also all such Costs as had been sustained in the Recovery thereof And this Respondent Admits that he did by his said Bill of Complaint further State that his said Brother and Trustee being about to Issue Execution upon the said Decree the said petitioner thereupon in Consideration that the said Execution should not Issue upon the foot of the said Decree and that all proceedings should cease Against the said Vadamela in the said Suit did by a certain Cadjan or Written instrument bearing date on or about the fourth day of November in the year of Christ One thousand Seven hundred and Eighty Eight Acknowledge to have borrowed and Received of this Respondent the Sum of One hundred Star Pagodas being the Amount of the Principal Interest and Costs then due and owing upon the foot of the said Decree and that the said petitioner undertook and faithfully promised to pay unto this Respondent on the Fourth day of February Which was in the Year of Christ One thousand Seven hundred and Eighty Nine the said Sum of One hundred Star pagodas if the said Vadamela did not on or before the Thirtieth day of December Which was in the Year One thousand Seven hundred and Eighty Eight pay the Same to this Respondent as by a true and faithfull translation of the said Cadjan or Written instrument to this Respondents said Bill of Complaint Annexed more fully Appeared

And

And that this Respondent did further Setforth that he Confiding in the said Undertaking and engagement of the said petitioner did not Issue Execution upon the Post of the said Decree but Acknowledged the debt and Costs thereon to be Satisffyed And that the said Vadamela did not on the said Thirtieth day of December Which was in the Said Year One thousand Seven hundred and Eighty Eight or at any other time whatever pay the said Debt so due and owing to this Respondent or any part thereof And that this Respondent brought his action Against the said Petitioner upon the Security he had entered into as aforesaid And this Respondent Admits that the said Petitioner did by means of his Attorney at Law enter his Appearance to this Respondents said Bill of Complaint and that on the fourteenth day of September which was in the year of Christ One thousand Seven hundred and Ninety the said Petitioner filed his Answer thereto And that the said Petitioner therein admitted that he did Execute the Bond Copy whereof was to this Respondents said Bill of Complaint Annexed And that the said Petitioner thereby Undertook

That

that the said Vadamela Pilla should pay this Respondent the Amount of the said Bond and such Interest as might or should become due at the rate of Twelve per Cent on or before the Thirtieth day of December following and that in default thereof the said Petitioner did by the said Security Bond Engage to pay off the Principal Sum with the Interest due thereon by the Fourth day of February in the year of Christ One thousand Seven hundred and Eighty Nine and in failure thereof this Respondent was by the said Petitioner authorized to recover the Amount thereof from the said Petitioner by a Prosecution in the said Mayors Court And this Respondent also admits that the said Petitioner did in his said Answer further state that before the time had expired Which was limitted in the said Bond for Vadamala Pilla to pay the Amount thereon due, he the said Petitioner received a letter from him bearing date the Twenty first day of December in the said Year of Christ One thousand Seven hundred and Eighty Eight to the following effect and purport that he had that day paid to this Respondent the

Sum

Sum of Seventy Pagodas in part discharge of the said
Security Bond, and that he hoped the said Petitioner
would pay this Respondent the remaining of Thirty Pagodas
and get into his possession the Bill of sale that had been
so Mortgaged and that Afterwards he would return
the thirty pagodas with the Interest that might be
due and redeem the same and this Respondent Admits
that the said Petitioner did in and by his said Answer
further State that after the receipt of the said Letter
he sent for this Respondent and that he did inform this Respondent of
presence of Several Witnesses thereof and asked this Respondent Whether
he had received the said Sum of Seventy Pagodas in
part payment of the said Vadamela pillahs Debt or
to and this Respondent also Admits that the said
tioner did by his said Answer further Assert that
Respondent replied that he had received it And
the said petitioner did further state that in Order
he might be enabled to pay off the remaining Balance
ty Pagodas and thereby redeem the Security Bond
he had granted to this Respondent for and on behalf
aid Vadamela Pilla he the said Petitioner requested

this Respondent to furnish the measurement of the House
and Ground of the said Vadamela Pilla Agreeably to the
Title deeds thereof in Order that the said petitioner might
place Advertizements on the said House and dispose of
the premises by Publick Sale, or auction: And further stating
that this Respondent Accordingly furnished the required
Dimensions: And that proper Measures were taken
for the disposal thereof And the said petitioner did
further state that he happened to be at the House of
one Latchoomana Pilla of Madras Inhabitant When
a Person of the name of Vencatasay pilla came in and that
the said Petitioner having Occasion to Mention the intended
Sale of the said Vadamela Pillahs House the said Vencatasay
Pilla did thereupon inform the said petitioner that this
Respondent had promised and Agreed with him in the
presence of Several Witnesses to yield up and deliver the
Bill of Sale and Title deeds thereof through the means of
Vadamela Pillas Brother and that being surprized also
Extraordinary a piece of Information the said Respondent
did further state that he called upon this Respondent
to know if such was the Case and this Respondent positive
denied it but that this Respondent being afterwards —

Confronted

paid the said Seventy Pagodas in the said Letter Mentioned
he should have produced some Voucher Acknowledging the
Receipt thereof but that the fact was that the said
Vadamela Pilla never did pay the said Seventy Pagodas
or any part thereof and therefore could not produce
any such Voucher and that the said Letter was a mer
Fiction and Calculated to Screen the said Vadamela
Pilla who was ultimately bound to Reimburse the said
Petitioner in the payment of the Amounts of the Bond
now in Suit and this Respondent Admits he denied
that the said Petitioner did speak
at the time in his said Answer Mentioned and that
the said petitioner did not in the presence of Several
Witnesses or at all inform him of the Contents of the
said Letter and that the said Petitioner did not Ask
this Respondent whether he had Received the Seventy
Seventy Pagodas for that no such Meeting was ever
had nor did any such Conversation ever take place
And this Respondent Admits that he did by the
said Replication set forth as the truth was that
the said Vadamela Pillay on the Twentieth day
of December One thousand Seven hundred and Eight

Eight Which was one day previous to the day upon which
the payment of Seventy Pagodas in the said Letter mentioned
was pretended to be made was Actually Committed to
Prison at the Suit of one Vencatachellum Pilla of Madras
for a Sum of One hundred and two Pagodas Twenty Seven
fanams and that after the Date of the said pretended
Letter this Respondent demanded from the said Petitioner
the payment of the principal Money and Interest due
upon his said Bond and that this Respondent did in
the presence of many Credible Witnesses allege his
Respondent in his said Replication Admitted that the
said petitioner did but not in order to pay off what
was called the remaining balance of Thirty Pagodas
apply to this Respondent to furnish the measurement
of the House and Ground in the said Petitioners said
Answer Mentioned And this Respondent admits that
he did also set forth that he knew not whether proper
or any measures were taking for the disposal of Premises
in the said Petitioners said Answer mentioned nor
whether Vencatasa Pilla did upon that Occasion
inform

Inform the said Petitioner that he this Respondent had promised and Agreed to deliver up the Bill of sale and Title deeds upon being paid the Sum of Thirty Pagodas but that if the said Vencatasa Pilla did so informed the said Petitioner he informed him of that which never existed and that this Respondent Verily believed that the Conversation as pretended to have past between the said Vencatasa Pilla and this Respondent was solely calculated to lay a Foundation for introducing at a future Period the Testimony of the said Vencatasa Pilla in that behalf with a view thereby to defeat this Respondent in the Recovery of his said just demand And this Respondent admits that he never did inter into any Negotiation or look to any other Person whatever for the Payment of that which the said Petitioner called the remaining balance of Thirty Pagodas but that he looked to the said Petitioner solely and held him Responsible for the full Amount of his said Bond And that this Respondent never promised or Agreed to deliver up the said Bond until the same should be paid off and that not being done this Respondent Submitted that so far from the said Bond being discharged it remained And was in full force And this Respondent admits that the said petitioner did at the time in his said petition and Appeal mentioned file an Amended Rejoinder wherein the said petitioner set forth that the Bond upon which this Respondent had brought his Action having been discharged in manner As the petitioner in his said Answer had set forth that this Respondents had no further Claim or demand upon him. And that this Respondent When Questioned by the said petitioner did Acknowledge to have received from the said Vadiamala pilla the Sum of Seventy Pagodas in manner stated in and by the said petitioners said Answer And the said petitioner did further set forth that this Respondent had frequently promised to return the said Petitioner the Security Bond upon which the said Action had been brought having Acknowledged the same to be fully Satisfied This Respondent further Answering saith he admits that Issue was joined upon the Aforesaid proceedings and that publication passed in the said Cause as in the said Petition and appeal is mentioned but this Respondent saith that instead of

the

the said Petitioner having as he alleged by his said petition brought forth Clear and substantial proof in Support of his defence the Evidence of the said Witnesses which were exami- = ned on the part of the said petitioner did not Carry with it the most distant probability of truth. And in manifes- = tation thereof this Respondent saith that the Evidence of Ellacatoor Vencatasha Chittyar upon whose testimony the said Petitioner in his said Petition so firmly relies to prove the payment of the said Sum of Seventy Pagodas to this Respondent deserves no Credit whatever for that the said Ellacatoor Vencatasa Chittyar does take upon himself to depose that the said Sum of Seventy Pagodas was so paid by the said Vadamala Pilla not only before the time limited for the Payment thereof had expired but at a period when the said Vadamala Pilla was Actually a prisoner in the debtors Jail of Madraspatnam for a Sum of One hundred and twenty Pagodas to wit on the Twenty first Day of December which was in the Year one thousand Seven hundred and Eighty Eight And this Respondent further Saith that the Deposition of the said Ellacatoor Vencatasha Chittyar taken to the last

Intermgatory

Interrogatory is misstated by the said Petitioner in his said Petition for that the said Petitioner does therein Set forth that the said Deponent deposed that this Respondent Promised to deliver up the Bond in question to the Petitioner upon being paid a Sum of Thirty Pagodas which the said Deponent did not depose — And this Respondent Admits that the Deponent Trevadamarroo thoer Mootiah Mooduliar in the said petitioners said Petition and appeal mentioned did also depose to the payment of the said Sum of Seventy Pagodas at the time and place in the said = deposition of the said Ellacatoor Venoatasha Chittyar particularly Mentioned to wit in the Jail of Madraspa- = tnam Aforesaid and which Testimony of the said Trivadamarroothoer Mootiah Mooduliar this Respondent for the Reasons herein before mentioned Submits to this Honourable Court deserves no Credit whether to be given thereto This Respondent further Answering saith that the deposition of the said Vadamala Pilla being Suspected in regard that he was a Witness Materially interested in the Event of the said Cause and which the said Petitioner having himself Admitted he should not

have

have stated the Evidence of the said Vadamala pilla in his said Petition and Appeal and therefore this Respondents Submits to this Honourable Court that he is not bound to make any further or other Answer to such part of the said Petitioners said Petition and Appeal as includes the Evidence of the said Vadamela pilla This Respondent further saith that the Testamony of Kistnachellum Tellisinga Pilla as in the said Petition and Appeal is stated That the said Petitioner sent for this Respon= dent to shew him the said Letter so written by the said Vadamela Pilla and that the said Petitioner asked this Respondent if he had received the Sum of Seventy Pagodas. According to the Tenor thereof is a Circumstance which this Respondent submits to this Honourable Court even admitting it to be true instead of being as it is absolutely false shews that the said petitioner did not himself give any Credit to the Assertion of the said Vadamela pilla but this Respondent positively saith that such pretended transaction Appears to have been fabricated by the said Petitioner the Deponent

and

and the said Vadamela Pilla solely for the purpose of introducing the subsequent testimony of the said Deponent Kistnachellum Tellisinga Pillay whereby he attempts to prove that this Respondent promi= sed to deliver up the Bond in Question upon recei= =ving the Sum of Thirty Pagodas and which this Respondent admits Ramasawmy Pilla did also endeavour to prove but this Respondent Submits it is not to be presumed or Credited that this Respondent who held an ample Security for his said debt namely the Bond of the said Petitioner would have relinquished the interest which was due upon the said Bond and this Respondent Saith there were many other Witnesses produced on the part of the said petitioner whose testimony is stated in the said Petition and Appeal and which Appears to be irrelevant to the matter now before this Honourable Court This Respondent further Answering Saith he Admits that he did examine Arnachulla Pilla as a Witness on the part of this Respondent but this Respondent denies

That

that the testimony of the said Arnachella Pilla was either futile or Contradictory as is alleaged by the said petitioner for this Respondent saith that the said Deponent did depose that this Respondent did in the presence of the said Deponent demand from the petitioner the payment of his Security Bond and that this Respondent produced the said Bond that the Deponent read it and that it was for a Sum of One hundred pagodas being the Bond now in Question and that the Petitioner did not pay the monies which were demanded of him but that the said petitioner did in the latter end of February in the Yiar One thousand Seven hundred and Eighty Nine promise to pay the said money in a short time with the Interest thereof and that the foregoing Conversation took place in the Petitioners House in the Black Town of Madras. and further the said Deponent said not This Respondent saith that Trevengada Pillay Conicaply being also examined on the part of this Respondent deposed that he was acquainted with Vadamila pilla of

Madras

Madras Durbash and that a Conversation which passed between the Deponent and the said Vadamela Pilla respecting this Respondents intention of Suing the Petitioner in the Mayors Court for the Recovery of the Amount of the said Bond was that the said Vadamala Pilla promised to pay this Respondents the Principal of the said Bond being One hundred Pagodas with interest and which the said Vadamela Pilla told the Defendant in the Town Jail in the month of June One thousand Seven hundred and Ninety that this Respondent further Answering saith that Poonapen Moodelly durbash Deposed that he the Deponent was Confined for Debt in the Jail of madraspatnam in the month of July in the Year One thousand Seven hundred and Ninety and that he was Acquainted with Vadamela Pilla of Madras Durbash and that the said Vadamela pilla was also aprisoner for Debt in the said Jail in the said month of July and the said Deponent further deposed that he had at the time of his Examination Viewed a Certain Cadjan Writing bearing date the Twenty first day of

December

December in the Year One Thousand Seven hundred and Eighty Eight purporting to be a Letter Written by the said Vadamela Pilla to the Petitioner and that the said Deponent had previous to his Examination often seen the said Cadjan Writing And that the Deponent first saw the same in the said Jail of Madras in the month of August in the year One thousand Seven hundred and Ninety in the Custody and posession of the said Petitioner and that the said Cadjan writing was not signed When he first saw it in the Jail but that the said Vadamela Pilla did afterwards set his Name thereto And that the said Petitioner did Procure the said Written Cadjan from the said Vadamala Pilla for the purpose of depriving this Respondent of his property This Respondent further saith that Chengleroy Pilla Conicaply being also examined on the part of this Respondent deposed that the Deponents Brother named Namesevoy Pilla being indebted to the Petitioner in the Sum of One hundred Pagodas the same was paid off in Consequence of a prosecution that took place in the said Mayors Court and the said Deponent further Deposed that the Petitioner either in the month of March or April in the Year One thousand Seven hundred and Eighty nine informed the Deponent and the said Namasevoy that he the said Petitioner was indebted to this Respondent in the Sum of One hundred pagodas and the said deponent further deposed that the said Namasevoy was at Tritchinopoly which Prevented him giving his Evidence before the Examiner in the said Cause This Respondent further Answering saith he denies that the indulgence which this Respondent gave the said Petitioner for the purpose of enabling him to discharge his said Bond carries with it any Conviction Whatever of the said Vadamala Pillas having paid the said Sum of Seventy Pagodas but this Respondent Submits to this Honourable Court it not only shews that the said petitioner did in a great degree abuse the Indulgence which this Respondent has so

granted

Granted him but also proves the Litigious disposition
of the said petitioner in having after such unreasonable
forbearance on the part of this Respondent litigated
the payment of his said Bond This Respondent
further answering saith he admits that he did
file such exception to the Third Interrogatory
which was exhibited on the part of the said
Petitioner in the said Cause and to the Deposition
of the said Vadamala Pillay which was taken
thereto and to the Cadjan writing marked with
the Letter A in the said Interrogatory and
Deposition Mentioned as in the said petitioners
said Petition and Appeal is set forth and that
this Respondent said by his said Exception pray
that the said Third Interrogatory and the
Deposition taken thereto together with the
said Cadjan Writing might be suppressed
and this Respondent also admits that the said
Petitioner did file such Answer to the said
Exception which was so taken to the said Evidence
as in the said Petitioners said Petition and Appeal is

stated

stated and set forth And this Respondent saith that
the said petitioner so far from confuteing did by his said
Answer support the said Exception and this Respondent
admits that the Law as in the said petitioners Answer
is mentioned does require the best Evidence and this
Respondent saith that if the Evidence of the said
Vadamala Pilla was as the said petitioner alleged
the best Evidence which he the said petitioner could
produce it did Manifestly Appear therefrom that
the said petitioner could produce no good Evidence
Whatever in the said Cause for this Respondent is
advised the Law of Evidence does require that the
Witness should not be interested directly or indirectly
Whereas it did and does manifestly appear from the
pleadings in the said Cause that the said Deponent
the said Vadamala pilla is most materially interested
in the event thereof And is therefore not only an incre-
dible but was and is absolutely an inadmissible Witness
on the part of the said petitioner in the said Cause
and thereupon this Respondent saith that the
evidence of the said Vadamala was not and ought

not

not to be Entertained in the said Cause And this Respondent
admits that the said Cause was setdown to be heard
and that the said Exception came on to be Argued in
the said Mayors Court at the time in the said
petitioners petition and Appeal mentioned And
that the said Mayors Court did thereupon make
such Order and Decree in the said Cause as in the
said Petition and Appeal is mentioned

And this Respondent in Answer to the
first pretended Cause or reason by the said Petitio-
=ner Assigned as a ground for his said Petition and
Appeal to this Honourable Court from the said
Decree of the Mayors Court Saith That the said
Mayors Court in suspressing the said Exhibit
A being the Letter which was so fabricated by the
said Petitioner and the said Vadamala Pillay did
not thereby or at all injure the said petitioner for
this Respondent saith that as the Testimony
of the said Vadamala Pilla was not admissible
this said Letter so pretended to be written by the
said Vadamala Pillay was not admissible and

Could

Could not be Received in Evidence in the said Cause

In Answer to the Second Cause Assigned by the
said Petitioner this Respondent Saith that he did
not Examine the said Vadamila Pilla in the said
Cause and therefore this Respondent saith he did
not waive his right of excepting to the Evidence of the
said Vadamala Pillay

And this Respondent in Answer to the
fourth Cause or reason by the said Petitioner in his
said Petition and Appeal Assigned Saith That the
said Mayors Court did not Solely found their said
Decree upon the Single Circumstance of the said petitio-
=ner not having produced some written Voucher to prove
the alledged payment of the said Sum of Seventy
Pagodas But this Respondent saith that it having
been admitted by the said Petitioner that the said
Vadamala Pilla who he alledged had paid the
said Seventy Pagodas was at the time when the
said Seventy Pagodas was so pretended to have been
paid a prisoner in the Fauxn Jail of Madraspatnam
for a Sum of one hundred and two Pagodas and

Twenty

Twenty

~~Seventy~~ Seven fanams and it having also been proved on the part of this Respondent that the said Petitioner did frequently after the time when the said Seventy Pagodas were so asserted to have been paid make this Respondent frequent promises of paying this Respondent the full amount of the said Petitioners said Bond and it having also been proved that the said Letter was concerted between the said Petitioner and the said Vadiamelu Pillay in the said Jail after this Respondent had exhibited his said Bill of Complaint against the said Petitioner in the said Mayors Court the said Court did therefore and from other circumstances appearing in the said Cause look upon the defence which was set up by the said Petitioner and the Testimony of the Witnesses which were introduced in the said Cause to have been one Contrived Piece of Fraud and falsehood Therefore the said Mayors Court did make such Decree in the premises as is herein before mentioned —

And this Respondent saith that the fourth Cause assigned by the said Petitioner is herein before

Answered

Answered and this Respondent humbly Conceives and is advised that the said Order and Decree is agreeable to equ and Justice and therefore humbly hopes that the same sh be affirmed and that the said Petition and Appeal sh be dismissed this Honble Court with Costs —

[Signed] John White,

Solicitor for the Respondent,

Court

Cause wherein John Thompson of Fort St. George Merchant is Compt.
and the said Richard Wilson is Defendant or shall abide and
perform such final Order and Judgement as shall be made and
given upon any Appeal to be brought in the said Cause — or shall
surrender himself to the said Court to be Charged in execution til
the said order or Judgement shall be Satisfied or performed &c
or you will do it for him." —

The Instructions afterwards say that when the
Demand in bailing as under 20 Pagodas the Court may take the
Defendants own Recognizance with two Nominal persons only —
as Bail Vizt — John Doe and Richard Roe and that when
it is reasonable and proper they may award Special Bail
in which case if the Complainant thinks the Bail offered
are not of sufficient ability to answer his demand the Court
"the Court may take into their consideration the Value of the Demand
and oblige the Bail to Swear they are worth double the Value
of the thing demanded before they allow the Defendants to be
discharged upon Bail —"

In respect to Decrees the Instructions give only the
formal introduction ordered thus — This Court doth think fit to order
and Decree and Doth accordingly order and Decree that &c —
with an et cætera, but Since it to be the Uniform practice
of the Mayors Court when the Complainant prevails to decree "That
the Defendant shall pay unto the Complainant the full and just
Sum of with all such interest as now is or shall hereafter
become due thereon until full payment is made also all Costs of
this Suit, —

In regard to the Appeals in question the Charter gra
that persons thinking themselves agrieved by the decision of the
President and Council may Appeal to his Majesty in Council "inj
giving security to pay interest for the thing adjudged or decreed
to be paid done or delivered and the Costs of such Appeal in case the
said Judgement Sentence or Decree shall be affirmed"
but upon the Subject of Bail on this Occasion the Book of
Instructions is totally Silent. —

At the end of the Charters requiring this Bail is for the
Security of the Complainant the reason of the Silence of the Instruction
was probably because that security would be sufficiently
provided for by the Bail given in the Mayors Court and that this is
the case appears from the Nature of the bail piece before that Court and
from the uniform extent of its Decrees for the Bail piece before
that Court ~~no from the~~ secures obedience to the final Decree
even in Appeals and the Decrees award not only all Costs of
Suit but also all interest which now is or hereafter shall become
due until full payment be made. —

Conceiving that the Object of the Charter is the
Security of the Original Complainant in his Interest and Costs I submit
it to the Court as my Opinion that in all Cases when the Decrees of the
Mayors Court originally or of this Court in appeal award interest

J

And Costs and that special bail has / as it ought to be / already
been given in the Majors Court to answer both Common bail only
should be required an Appeals to the King in Council.—

/Signed/ Benjm. Sullivan,
Attorney General

31st. December 1791.